ISSUE BRIEF

Pakistan's Data-Protection Landscape in 2023

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A rapidly digitizing society, in which access to affordable mobile Internet has become the norm, is seen as a transformative opportunity for Pakistan. This, in addition to the fact that the majority of the country is below the age of thirty, is often cited as a datapoint that highlights the economic, technological, and social tailwinds of which Pakistan is primed to take advantage. As a result, Pakistan's technology ecosystem has taken off in the last few years, attracting record inflows of investment into the country's burgeoning startup ecosystem, and earning critical export earnings through both technology companies and freelancers selling their services in global markets.

At the same time, recurring economic and political crises, coupled with policy instability and ad hoc interventions in key sectors—including technology—continue to cast a dark shadow. These issues have been compounded by regulatory and legislative proposals that have raised concerns among both civil-society and private-sector actors, including foreign companies operating in Pakistan.

To better understand the regulatory and legislative state of play in Pakistan's technology ecosystem, and to uncover ways in which policymakers can build confidence among key stakeholders, the Atlantic Council's South Asia Center hosted a private roundtable in February 2023. This document seeks to highlight the concerns raised in this convening, and provides recommended steps that policymakers in Pakistan ought to take to address key concerns around free expression on the Internet, and to generate momentum to catalyze higher levels of growth in Pakistan's technology ecosystem.

In short, Pakistan's approach to technology policymaking needs a complete reorientation. In particular, the following changes to how the country approaches technology policy are necessary.

1) Arbitrary actions and rulemaking need to be abandoned, and a more constructive, transparent, and collaborative approach to drafting legislation needs to be followed.

2) Policymakers should develop a more comprehensive perspective of how their interventions impact investment, growth, and job creation in a sector that has the potential to transform the country's economy.

3) Policymakers should also recognize that near-term exigencies to curb expression and dissent, or to seek the support of specific interest groups in the country, have long-term ramifications for the technology sector.

4) Policy must balance the need to regulate with avoiding the imposition of onerous compliance costs on the technology ecosystem, as onerous regulations would further reinforce negative perceptions about the ease of doing business in the country.

With Pakistan's economy at an inflection point, and the country facing one of the most serious crises in its history, it is important for policymakers to pursue actions that improve the outlook for key sectors. This is especially true for the technology sector, which has the potential to not only catalyze much-needed export earnings, but to attract investment into the country while also improving the overall state of the economy.

The Current State of Play in Pakistan

The first holistic piece of legislation that sought to govern the digital ecosystem in Pakistan was passed in 2016. Dubbed the Prevention of Electronic Crimes Act 2016 (PECA), this legislation continues to create significant challenges for the country's technology ecosystem. Key concerns raised at the time of the law's passage, which have been realized in the years since, relate to its granting law enforcement the ability to arbitrarily restrict speech and privacy, including the ability to access data and get retroactive warrants for data "required for the purposes of a criminal investigation." The law also provides arbitrary powers to the Pakistan Telecommunication Authority, which can demand removal and blocking of content for various reasons, including when it is "necessary in the interest of the glory of Islam or the integrity, security, or defense of Pakistan."[1]

In addition, private-sector entities, especially global technology players, continue to assert that PECA remains a barrier to their potential expansion in the Pakistani market because the law would force their employees to provide "technical and other assistance" to law-enforcement officers conducting investigations. Private-sector actors argue that such arbitrary powers would create legal and operational risks for their operations and staff in the country, which is why they are unlikely to grow their presence in Pakistan.

The social media regulations proposed in 2020 and revised in 2021 have reinforced concerns about vague definitions and arbitrary powers. These issues have been compounded by arbitrary bans, such as the recent ban on Wikipedia in Pakistan. While the uproar against measures taken against Wikipedia led to a swift reversal, the fact that institutions such as the Pakistan Telecommunications Authority have the wherewithal to ban websites and apps without due process and transparency continues to raise alarm bells from civil-society actors, as well as from private-sector entities participating in the technology sector. For example, onerous requirements on the timeframe within which content must be removed will inadvertently increase compliance costs for businesses, and will potentially disincentivize them from growing their operations and footprints in the country.

The Ministry of Information Technology and Telecommunications has been working on Pakistan's Data Protection Bill since early 2020, and has prepared multiple drafts for feedback. Critics allege that it is insufficient to address the enormous challenge of protecting personal data in a country of 220 million people. Vague definitions, a lack of independent oversight of regulatory authorities, data localization, and broad powers ceded to the state present a Pandora's box of potential civil-rights issues.

This builds on the problematic 2016 PECA, which cedes a concerning level of oversight and access to a state already accused of curbing freedom of expression and only promoting pro-government and religious majoritarian narratives. An amendment in February 2022 took these developments further, making what it calls online "defamation" of state authorities—including the military but also the judiciary—criminal acts. According to Human Rights Watch, the proposed amendments made "defamation a nonbailable offense" and increase "the maximum prison term, if convicted, from three to five years."[2]

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1   "The Prevention of Electronic Crimes Act, 2016," National Assembly of Pakistan, 2016, https://na.gov.pk/uploads/documents/1470910659_707.pdf.

2   "Pakistan: Repeal Amendment to Draconian Cyber Law," Human Rights Watch, February 28, 2022, https://www.hrw.org/news/2022/02/28/pakistan-repeal-amendment-draconian-cyber-law.

While the Islamabad High Court struck down an ordinance seeking to expand an already problematic law to criminalize free speech, some clauses proposed by policymakers and signals emanating from Islamabad highlight policymakers' desire to push such regulations through. If approved, these regulations will stifle free expression. They will also create headwinds for the broader technology ecosystem by mandating onerous compliance requirements and forcing local staff to provide data and share technical expertise that can be used to stifle expression and dissent in the country.

As both the global and domestic economies digitize, loose and discretionary regulations related to local data-storage and processing requirements, as well as cross-border data flows, are likely to impede economic growth and foreign direct investment (FDI) into Pakistan. Furthermore, a lack of dialogue among policymakers on data-protection issues creates space for coercive and privacy-violating policies by authorities (military and civilian) with a history of overreach, often in response to dissent and legitimate criticism of their behavior.

Impact on Ecosystem Participants

Participants in the convening also highlighted that when it comes to data protection, disproportionate responsibilities are being placed on companies and businesses, leading to a potential increase in compliance costs. For larger companies—especially those with a global footprint—clauses about data localization, broad and vague definitions for what are and are not personal data, and requirements for sharing personal data with authorities are major concerns and act as barriers to potential investment in the country.

The onerous regulations and requirements also make it challenging for smaller businesses to scale in Pakistan, as the compliance burden would force them to redirect resources away from growth and toward compliance.

In addition, problematic developments such as the ban on Wikipedia reinforce negative perceptions about the Pakistani market among foreign investors, and once again raise questions about the lack of transparency in the way the Internet is regulated there. This further compounds the challenges being faced by entrepreneurs and technologists in the country, who are already finding it difficult to operate in a politically and economically uncertain and turbulent environment.

From the perspective of foreign companies, especially those based in the United States, current and proposed legislation is seen in a negative light and as a major barrier to entry and expansion in the Pakistani market. This stifles the inflow of investment from both large foreign companies and investors looking to take advantage of opportunities in Pakistan's startup ecosystem.

These regulatory and legislative concerns reinforce negative sentiments about the Pakistani market, where businesses are already facing headwinds when it comes to repatriation of profits and proceeds, delays in approval of letters of credit, lack of intellectual-property rights protections, and contract enforcement, to name just a few issues.

While many of the above issues are faced by sectors across the economy due to the prevailing economic crisis, onerous legislative and regulatory developments stand out as in stark contrast to policymakers' stated goal of promoting technology investments and exports in the country.

Civil-society stakeholders also continue to express concern over policy actions being proposed by Islamabad, especially clauses that have vague and broad definitions that can stifle free expression on the Internet. In addition, the lack of transparency and meaningful consultation in the way regulations are drafted and implemented continues to be a major sticking point.

While private-sector participants are, at times, positively engaged by key stakeholders, civil-society actors highlight that their recommendations are frequently ignored or dismissed. Participants in the convening highlighted that it is vital for private-sector and civil-society actors to collaborate more effectively, mainly because the types of policies that are proposed often end up having a negative effect on both stakeholder groups.

The Way Forward for Pakistan

A key issue participants highlighted was how much of the policy discourse in Pakistan is conducted in an ad hoc manner. In addition, stakeholders often react strongly to arbitrary decisions, such as the ban on Wikipedia. While this type of strong reaction forces policymakers to reverse their decisions, a lack of proactive engagement and collaboration means that stakeholders are often caught off guard when it comes to key regulatory and legislative developments.

As such, it is vital for ecosystem participants to regularly engage both with one another and with policymakers to

continue addressing concerns and reinforcing the need for a more robust and collaborative approach to policymaking.

It is essential for policymakers to educate themselves about the private sector's needs and concerns in the technology sector. This specifically applies to the unintended consequences of clauses inserted into key legislation. For example, an argument is made that localizing data in Pakistan would help secure data belonging to Pakistani citizens. However, this is not likely to be the case, as centralizing data with weak security may, in fact, make it easier for bad actors to access information. In addition, it may undermine network resiliency, where outages in the country have a cascading impact on the broader economy as data centers go offline. Finally, these requirements increase the cost of doing business for companies in Pakistan, especially startups that could access data-storage solutions at a lower cost abroad. It is important to note that Pakistan's power costs have risen in recent months due to currency devaluation, which means that the cost of operating data centers in the country would be significantly higher than in other jurisdictions.

For these reasons, it is important for policymakers to pursue policies that account for the intended and unintended consequences of their choices, especially those of onerous requirements that undermine the vibrancy and potential of the domestic technology ecosystem.

Outdated laws—sometimes at odds with how a modern economy operates—paired with poor implementation reinforce negative perceptions about the ease of doing business in Pakistan. A convoluted judicial system, in which cases can go on for years, if not decades, further compounds problems faced by private-sector participants. The lack of a holistic national policy framework for the technology sector means that ad hoc measures become the norm, rather than the exception. As such, it is vital for policymakers to more transparently engage with key stakeholders, including civil-society members and private-sector actors. This engagement must focus on addressing concerns with regard to social media rules, data protection and localization, censorship, and curbs on free expression on the Internet through arbitrary bans, with a particular focus on improving ease of doing business in the country's Internet economy.

These steps are especially important given today's economic realities in Pakistan, as the country is struggling to attract inflows of foreign investment. Pakistani policymakers must also reconsider their argument that because countries like India are forcing global technology compa-

nies to comply with their domestic laws—many of which impose onerous compliance costs and curb free expression—Pakistan can do the same.

While companies comply with regulations that impose onerous compliance costs on their operations in India, the scale of the Indian market is exponentially different than that of Pakistan; in a competitive world, investors might be willing to pay higher compliance costs to access larger markets. Given its size and the ongoing economic crisis in the country, Pakistan should follow policies that proactively reduce costs and improve ease of doing business. Copycat legislation that forces data localization or other compliance actions from global companies will only force them to stall their proposed investment and expansion in Pakistan.

Policymakers must also put in place rules and procedures that limit arbitrary actions, including bans without due process. By curbing these arbitrary actions and instead complying with digital-speech laws with international human-rights standards, Pakistan can provide some certainty to private and civil-society actors that due process will be followed prior to taking down content, forcing compliance, or blocking websites, apps, and companies from operating in the country.

Finally, Pakistan will require legislation to protect data, guard citizens against bad actors on the Internet, and foster an environment that enables greater investment and growth in the economy. At the same time, allowing for free expression on the Internet while protecting citizens from hate speech and online harm is also going to be vital. The most effective way to develop policies and legislate on these topics is through an inclusive and collaborative process.

If policymakers continue to take a confrontational path to legislation and policymaking in the coming months, Pakistan's digital economy will only suffer, leading to suboptimal outcomes for a digitally savvy, globally connected, and competitive population. Such outcomes will only weaken Pakistan's economy, its democracy, and its society.

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