Policy Paper on Draft Protection of Journalists and Media Professionals Bill, 2020

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Acknowledgements
Pakistan has a poor track record of press freedom with high levels of impunity in crimes against the media. This report presents an analysis of the current measures taken in Pakistan regarding safety of journalists as well as a discussion of international examples. The main focus of the report is on the draft Protection of Journalists and Media Professionals Bill, 2020. The report breaks down the various elements of the draft Bill and presents an analysis of the effectiveness of its sections as well as ways in which it can be improved. The report also includes summaries of recommendations put forward by national stakeholders regarding various aspects of the Bill.

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The contents of this document are the sole responsibility of Pakistan Press Foundation and can under no circumstances be regarded as reflecting the position of the European Union, partners of CIME or of participants of consultative meetings held to formulate recommendations on the draft Protection of Journalists and Media Professionals Bill, 2020.

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About CIME: The project intends to enhance the protection and promotion of freedom of expression and the right of access to information in Pakistan. In connection with these fundamental rights, the project will increase the availability of knowledge about policy trends, raise awareness about policy gaps and practical challenges that limit effective use of the rights, build capacity of civil society stakeholders to be responsive to risks and violations, and develop support networks for stakeholders that require assistance. CIME will work with journalists, lawyers, human rights defenders, and policymakers to contribute towards ensuring public access to information and freedom of expression in accordance with national laws and international agreements. Project activities include research, training, advocacy, threat documentation, legal support, and the development of alliances and referral mechanisms.

About Pakistan Press Foundation: PPF consistently monitors the state of the Pakistani news media, with a special focus on threats and acts of violence and censorship against journalists and media organisations. Its reports include details of investigations of journalists’ murders, physical assaults, and abductions among other types of violence and intimidation. PPF will continue its threat documentation under the proposed action, and create a digital network during the implementation for reporting of violations of freedom of expression and instances of violence against journalists from all over Pakistan. PPF also runs an investigative reporting fellowship and associated journalism training workshops. The action will continue PPF’s previous capacity building actions by allowing it to provide holistic safety training to journalists and threat documentation training to journalist bodies including press clubs and trade unions of journalists. PPF will continue its threat documentation under the proposed action, and create a digital network during the implementation for reporting of violations of freedom of expression and instances of violence against journalists from all over Pakistan.
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Acronyms

ACHPR African Commission on Human and Peoples' Rights
BIA Security Information Agency, Serbia
CERREM Committee on Evaluation of Risk and Recommendation of Measures or Comité de Evaluación de Riesgo y Recomendación de Medidas, Colombia
CICIG International Commission Against Impunity in Guatemala
CPJ Committee to Protect Journalists, United States
CPJMP Commission for the Protection of Journalists and Media Professionals, Pakistan
FEADLE Special Prosecutor for Crimes Against Freedom of Expression, Mexico
FEICI Special Prosecutor's Office Against Impunity, Guatemala
GVP Preliminary Assessment Group or Grupo de Valoración Preliminar, Colombia
HRCP Human Rights Commission of Pakistan
IDEI International Day to End Impunity for Crimes against Journalists
OAS Organization of American States
OSCE Organization for Security and Co-operation in Europe
PFUJ Pakistan Federal Union of Journalists
PPF Pakistan Press Foundation
SDGs Sustainable Development Goals
SEGOB Human Rights Unit of the Ministry of the Interior or Secretaría de Gobernación
UN United Nations
UNP National Protection Unit, The Colombia
Introduction

Freedom of expression is one of the most cherished of all human rights, valued both in its own right and due to its key role in helping to ensure respect for all other rights. As the United Nations General Assembly declared at its very first session in 1946:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.1

However, the very importance of free speech means that there will always be those who wish to control or limit it for one reason or another. Governments and powerful people may be unhappy with being held to account, those engaged in wrongdoing normally do not wish to be shown up and criminals clearly do not want their actions to be exposed.

Powerful social actors can use a variety of means to try to control speech, ranging from using and abusing unduly harsh laws limiting what may be communicated, governments and perhaps others taking advantage of systems of media regulation which allow for control over the media and big businesses and the wealthy using their financial power to control media reporting in various ways, such as through advertising or purchasing media outlets.

Another means of control which has become more prevalent over the last 20 years or so is physical attacks on journalists and others exercising their right to freedom of expression, with a view to silencing them. The special international mandates on freedom of expression at the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the African Commission on Human and Peoples’ Rights (ACHPR) referred to this in their 2000 Joint Declaration as ‘censorship by killing’.2

At the heart of this terrible phenomenon are people and organisations which specifically threaten to or actually carry out attacks on individuals because of the statements they have disseminated publicly, with the goal of preventing them and others from continuing to make those statements. While the numbers, for example of murders, are horrific, they tell only a small part of the picture since there are likely to be numerous attacks and threats for each killing, and each such action casts a large shadow, exerting a chilling effect on the expressive activities of even individuals who have not been subjected to direct measures.

One of the organisations which tracks the most serious attacks, namely those that result in death (i.e. murders), at least for journalists and media workers, is the United States-based Committee to Protect Journalists (CPJ). Their figures are lower than those of some of the other groups which track this, mainly because they focus on 'motive confirmed' killings, i.e. where the death was directly linked to the work of the individual. It is clear that motive confirmed killings are by far the most serious, inasmuch as they are perpetrated with the specific goal of trying to promote censorship.

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1 Resolution 59(1), 14 December 1946.
2 See the Joint Declaration of the special international mandates on freedom of expression of 30 November 2000. The mandates have adopted a joint Declaration annually since 1999 and all of these Joint Declarations are available at: http://www.osce.org/fom/66176.
CPJ’s figures show that the numbers of deaths per year, from among journalists and media workers (i.e. not including others who may have been subject to these measures), has not dropped below 21 per year for the last twenty years (i.e. 2000 to 2019 inclusive), with an average number of deaths per year during that period of 58 people. As Table 1 shows, there does not appear to be any discernable trend in the figures going back to 1992. The scope of the problem is also broad and includes countries from every region of the world.

Table 1: Journalists and Media Workers Killed by Year

![Number of Confirmed Motive Killings](image)

A key associated problem is that impunity for these crimes, in the sense that also no one has been punished for them, is incredibly high. According to CPJ, from among the 876 journalists globally who were murdered between 1992 and 2020, always complete impunity remains the result, even today, i.e. many years after most of these crimes were committed, in 712 cases, or 81% of all cases.

Pakistan is among the more serious countries in terms of both killings of journalists and media workers and failures to bring those responsible for these murders to justice. According to PPF, 75 journalists and media workers were killed in Pakistan between 2002 and 2020. And the country can claim the unfortunate accolade of being one of seven countries to have appeared in CPJ’s Impunity Index, which lists the worst countries in terms of impunity, for all of the 12 years that the Index has been published. These attacks are, in one sense, ordinary crimes, just as a murder or another physical attack on any person would be.

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3 The data is available at: [https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&type%5B%5D=Media%20Worker&start_year=1992&end_year=2020&group_by=year](https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&type%5B%5D=Media%20Worker&start_year=1992&end_year=2020&group_by=year).

4 See CPJ’s statistical tables at: [https://cpj.org/killed/](https://cpj.org/killed/).

5 CPJ’s top 20 countries for killings since 1992 includes countries from Africa, Asia, Eastern Europe, Latin America and the Middle East. See [https://cpj.org/killed/](https://cpj.org/killed/).


However, their import is far more serious than ordinary crimes due to the specific motivation for these crimes, namely to stop the public dissemination of statements, inevitably about matters of public importance, whether it be corruption, organized crime or something else. This idea was captured well in the preamble of the 2012 Joint Declaration on Crimes Against Freedom of Expression, adopted by the special international mandates on freedom of expression at the UN, OSCE, OAS and African Commission, which stated:

Noting that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society (‘censorship by killing’), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas. 8

The world has not stood by idly in the face of this frontal assault on freedom of expression. Section 1 of this report outlines actions that have been taken at both the international and national levels. One of the key types of actions that can be undertaken at the national level is to create an official national safety mechanism with dedicated responsibilities to put in place measures to address this problem. This is only one of many possible responses to crimes against freedom of expression but countries like Pakistan, where the problem is very serious, need to consider such mechanisms if they are going to be able to address the problem effectively. How to create an effective mechanism, with a focus on the legal framework, is the primary focus of this report.

Civil society organisations, media associations and media outlets in Pakistan have put in place a number of different measures to respond to this critical problem, perhaps more than in any other country. These are described in more detail in section 2 of this report. At the same time, there is only so much that can be done at the unofficial level, particularly in terms of addressing the problem of impunity, which requires action of an official nature (investigations, prosecutions and, ultimately, convictions before the courts). A number of bills on this issue have been prepared by a range of different both official and unofficial actors. Recently, the Federal Ministry of Human Rights has prepared a draft of the Protection of Journalists and Media Professionals Bill, 2020, with the aim of moving forward on this issue at an official level. 9

This report starts out by outlining the main international and national responses to the problem of crimes against freedom of expression. The former focuses on some of the leading statements made and measures taken by inter-governmental bodies, as well as the key relevant international standards. The latter describes briefly some of the leading official national safety mechanisms that have been developed in different countries to respond to this problem. The following section looks more deeply at the various measures that have been put in place so far in Pakistan.

The following several sections of the report all focus generally on key issues to be considered when putting in place an official national mechanism to address safety concerns (a safety mechanism). The first of these looks at issues relating to the focus and scope of a mechanism, such as who it should cover and

9 The Bill was originally prepared by the Federal Ministry of Human Rights and it was then placed before the Federal Cabinet in early 2020.
whether it should focus mainly on prosecution-side measures (i.e. to address impunity) or also protection and perhaps also prevention-side measures. The next discusses the importance and how to involve civil society and media organisations in a safety mechanism. The following three sections focus, respectively, on the key considerations to take into account in relation to each of the different types of issues that a mechanism might cover, sometimes referred to as the Three Ps, namely prosecution, protection and prevention. The last section in this part of the report focuses on a number of residual factors (i.e. those not already addressed in previous sections) to consider regarding the institutional design of a mechanism, such as independence, funding and where to locate it.

Each of the sections on issues to be considered when establishing an official national safety mechanism will cover the approach taken to those issues in the Protection of Journalists and Media Professionals Bill, 2020 (Bill). The final section of the report will then provide additional comments on the Bill, namely comments that were not addressed in the earlier sections.
I. International and National Responses

The international community has taken a number of steps to address the serious threat posed by crimes against freedom of expression, acting both at the international and national levels.

### I.1 International Responses

In 1997, UNESCO’s 29th General Conference adopted Resolution 29, calling on the Director-General "to condemn assassination and any physical violence against journalists as a crime against society, since this curtails freedom of expression and, as a consequence, the other rights and freedoms set forth in international human rights instruments". Since that time, the Director-General has requested information from a Member State every time there is a serious allegation of a killing of a journalist, including about judicial follow-up to these cases. Several of the declarations adopted at the UNESCO annual conferences held each year on World Press Freedom Day, 3 May have also highlighted the problem of killings of journalists.

An important UNESCO-led but UN-wide initiative in this area was the adoption of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (UN Plan or Plan of Action), which was endorsed by the UN Chief Executives Board, the highest level coordination mechanism in the UN system, in 2012. The Plan sets out a number of principles governing action in this area, as well as a number of proposed actions for UN bodies. While the main focus of the Plan of Action is on UN action, paragraph 5.6 does call on the UN to assist Member States to develop "mechanisms guaranteeing freedom of expression and information, including, for example, requirements that States effectively investigate and prosecute crimes against freedom of expression".

In 2013, the United Nations General Assembly adopted Resolution 68/163, which proclaimed 2 November as International Day to End Impunity for Crimes against Journalists (IDEI). The date was chosen in commemoration of the assassination of two French journalists in Mali on 2 November 2013. The Resolution urged Member States, among other things, "to ensure accountability through the conduct

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14 See https://en.unesco.org/day/endimpunity/about-idei.
of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies”.\textsuperscript{15}

Under international law, it is recognised that States need not only to refrain from restricting or interfering with freedom of expression (so-called negative obligations), but also to take positive measures to ensure the enjoyment in practice of this right (positive obligations). Investigating and prosecuting crimes which are motivated by a desire to shut someone up is recognised as one of the positive obligations of States to protect freedom of expression. A very clear statement of States' obligations in this area is found in the 2000 Joint Declaration of the special international mandates on freedom of expression: States are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.\textsuperscript{16}

The 2012 Joint Declaration on Crimes Against Freedom of Expression adopted by the special international mandates on freedom of expression focuses entirely on this issue.\textsuperscript{17} It establishes a number of relevant principles and then focuses on States' obligations to prevent attacks from occurring in the first place, to protect individuals who are at risk due to statements they have disseminated, to conduct independent, speedy and effective investigations when attacks do take place, and, in appropriate cases, to provide redress to victims. International humanitarian law also establishes certain formal legal State obligations in this area, which are found in the Geneva Conventions and their Additional Protocols.\textsuperscript{18}

Various UN bodies have adopted important resolutions on this issue. These include, among others: a series of UN General Assembly resolutions, most recently Resolution 74/157 on The Safety of Journalists

\textsuperscript{15} Note 15, para. 5.


\textsuperscript{17} See note 10.


The Sustainable Development Goals (SDGs), adopted in 2015, also address this issue very directly. Sustainable Development Goal Target 16.10 calls on States to “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”. One of the two approved Indicators for this target is “Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months”. States are expected to make progress in achieving the SDGs over the 15-year period from 2015 to 2030.

I.2 National Responses

This part of the report contains a very general overview of the key approaches of a few of the leading national safety mechanisms which exist at the national level. It is not intended to provide detail on how they run but, rather, just to provide a bit of background information to help inform discussions on how to move forward in Pakistan. More detailed information on these systems is provided, as relevant, in other parts of the report.

As noted above, a variety of measures can be taken at the national level depending on the severity and nature of the crimes against freedom of expression that are being committed locally. Some examples of these include legislative reform, monitoring, training and the provision by media companies of protective equipment. However, the focus here is on the idea of developing formal mechanisms to promote safety for those who are targeted for exercising their right to freedom of expression. In practice, the safety mechanisms that exist tend to focus on either or both of prosecution and protection (and sometimes prevention as a lower tier area of focus).

At a minimum, every country should have put in place a system to enable it to track crimes against freedom of expression, including so as to be able to report on this as part of the SDGs. The more

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22 The SDGs are available in various languages at: https://sustainabledevelopment.un.org/post2015/transformingourworld.

23 The Indicators are available in various languages at: https://unstats.un.org/sdgs/indicators/indicators-list/.
specialised safety mechanisms that are the focus on this report are needed only in countries with higher rates of serious attacks. This was addressed in the 2012 Joint Declaration of the special international mandates on freedom of expression, which called for the creation of safety mechanisms, "where there is an ongoing and serious risk of crimes against freedom of expression". Clearly, Pakistan meets these conditions.

It should be noted that, although the number of official safety mechanisms around the world is growing, this remains a new field of endeavour and lessons are still very much being learned as to what contributes to success. We are also learning that this is one area where what works is particularly dependent on local circumstances. We can, however, say with some confidence that putting in place an official safety mechanism often makes a big difference, depending on the focus, in the two main areas addressed by these systems, namely promoting prosecutions and providing protection. The current literature contains important critiques of the different mechanisms but also widespread acceptance that they do improve safety. The example of Colombia provides some anecdotal evidence of this. In 2015, Colombia was removed from CPJ’s Impunity Index, after having been there every year since it was first launched in 2008. Colombia’s safety mechanism is credited with playing an important role in the country’s success in this area.

Some of the more established and well-known safety mechanisms are those found in Mexico and Colombia, and there are also mechanisms in a number of other countries, including Afghanistan, Guatemala, Honduras, Nepal and Serbia. The situation in Mexico is complicated, with a number of different mechanisms, some focusing on protection and others on prosecution. In Colombia, the dominant focus has been on protection. Unlike in Mexico, the Colombian system does not focus mainly on journalists or even freedom of expression. Rather, the theoretical underpinning of the system is the protection of the right to pursue a profession, protected in the Colombian Constitution, and the mechanism protects a wide range of professionals in addition to journalists, such as judges and teachers.

The more recent Honduran system also focuses on protection while in Guatemala the focus is again not exclusively on journalists, or those who have been targeted for exercising their right to freedom of expression, but, rather, on those affected by the activity of illegal security organisations. The Serbian mechanism, in contrast, focuses exclusively on investigating the killings of three journalists. In Afghanistan, as in Mexico, the focus is on prosecutions and, within that, journalists.

A very new system has just been put in place in Nepal which it may be useful for Pakistan to consider more carefully given both its proximity to Pakistan and the fact that it was based on a careful study of the successes and failures of other systems. A unique feature of this system is that it was developed


\[25\] The formal Directive for Establishing Safety Mechanism for Protecting Freedom of Expression was adopted in April 2019 but the actual Mechanism has not yet been put into operation. 28 Constitution of Nepal, Article 249(1).
within the auspices of the National Human Rights Commission, which included this as a priority commitment in its 2015-2020 Strategic Plan. In terms of focus, the mandate of the mechanism is broad, focusing on all three Ps, namely prosecution, protection and prevention. This lines up with the broad general mandate of the Commission, which covers the "respect, protection and promotion of human rights and their effective implementation". The Commission’s mandate is also somewhat unique inasmuch as it has the power both to investigate crimes involving abuses of human rights directly and effectively to require the prosecutor to bring criminal cases in relation to those crimes.

The mechanism has three main organs. At the top is a Direction Committee, which supervises the work. This is comprised of two representatives of the Commission, to serve, respectively, as Chair and Secretary of the mechanism, the Joint Secretary of the Law and Human Rights Promotion Department in the Office of the Prime Minister, the Deputy Inspector General of the Nepal Police, two members nominated by the Federation of Nepali Journalists, the main journalists' association, and one member nominated by the Nepal Bar Association.

Underneath this is the main operational unit, the Task Force, comprising five members, two from the Commission and one each nominated by the Federation of Nepali Journalists, the Nepal Bar Association and the NGO Federation, the main alliance of civil society organisations. Finally, there is the Rapid Response Network, a network of individuals located all over the country who receive specialised training and from which Rapid Response Teams of at least three people will be created on an ad hoc basis to provide rapid responses when incidents covered by the mechanism (i.e. crimes against freedom of expression) take place.

The mechanism has a wide range of powers, including to conduct inquiries and investigations (using the full powers of the Commission when it does so), to gather evidence and protect witnesses, and to make recommendations to the Commission regarding protection and/or remedial measures (it is them up to the Commission to provide them). The latter covers a number of different elements, including the provision of basic safety equipment, police protection, access to a helpline, relocation, rescue, training, professional support and psychological counselling. There is also provision for rapid (interim) provision of protection measures. In addition to calling for prosecutions, the mechanism can undertake reconciliation and mediation.

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Constitution of Nepal, Article 249(1).
II. Measures Taken so far in Pakistan

The measures taken so far in Pakistan to promote freedom of expression can be divided into the following categories: the constitutional, legal and institutional framework, laws regarding harassment of women through the media and online, laws regarding freedom of expression online and the existence of a policy, national plan or strategy on safety of journalists. The latter can be divided into the federal and provincial levels. This section of the report also highlights laws that have acted as limits to free expression instead of encouraging it.

Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) in 2010. Overall, however, the situation for the rights to freedom of expression and media freedom in Pakistan has not improved significantly since that time.

II.1 Constitutional, Legal and Institutional Framework

Article 19 of the Constitution of Pakistan guarantees freedom of expression, stipulating: "Every 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 the law in the interest 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".

Article 19 of the Constitution deviates from the threshold for permissible limitations on the right to freedom of expression set out in Article 19(3) of the ICCPR. Among other things, Article 19(3) does not recognise restrictions aiming to protect interests such as religion, decency or foreign policy. Moreover, the absence of any requirement that restrictions must be "necessary" to protect a legitimate interest, such as national security or public order, is of concern, although in practice the courts have interpreted the constitutional requirement that restrictions be "reasonable" in a similar fashion.

In 2010, Article 19A was added to Pakistan's Constitution guaranteeing the right to information (RTI).27 A new federal RTI law was adopted in 2018 but progress in implementing it has been slow. Sindh, Khyber Pakhtunkhwa, and Punjab provinces have all adopted stronger RTI laws starting in 2013, Balochistan still has its Freedom of Information Act 2005, which essentially mirrors the very weak 2002 federal law.

II.2 Harassment of Women in Media and Online

The government has failed to ensure the implementation of pro women laws, including the minimum protections offered by the Protection Against Sexual Harassment Women at Workplace Act 2010. As a result, very few media outlets have implemented the Act. Although Pakistan has made commitments to combat violence and discrimination against women generally and at the workplace, as well as to adopt legislation to protect women against violence and discrimination more broadly, sexual and gender-based harassment and threats faced by women journalists and media workers remain a significant problem.

II.3 Freedom of Expression Online

The situation for freedom of expression online has deteriorated significantly in recent years despite government commitments to address these concerns.

The Pakistan Telecommunications Act 1996 serves as the basis for much online censorship of political and social content, often in the guise of protecting national security. This includes generic blocking and filtering, DNS tampering and directives to ISPs to limit content, all without judicial authorisation or oversight. The Act also provides for extensive powers of surveillance and the power to shut down telecommunications systems entirely.

In a report submitted to the Supreme Court in January 2016, the Pakistan Telecommunication Authority (PTA) stated that it had blocked about 84,000 websites containing objectionable content while a list of 400,000 obscene websites were circulated to Internet Service Providers for purposes of blocking at the domain level. PTA has also blocked 937 Uniform Resource Locators (URLs) and 10 websites of banned organisations for abuse of the Internet and social media. Numerous blogs have also been blocked without due process. The suspension of Internet and mobile services during times of political unrest has also been a frequent occurrence, often justified on broad grounds ostensibly related to national security.

Prevention of Electronic Crimes Act 2016

On 11 August 2016, Parliament passed the Prevention of Electronic Crimes Act (PECA) 2016, with potentially severe chilling effects on online freedom of opinion and expression. The law was passed without significant input from civil society stakeholders and the process was characterised by a general lack of transparency. The prioritisation of security over civil liberties in the law is very problematic and given rise for demands for the law to be repealed or reformed.

Vague definitions and broadly framed offences allow for wide interpretation of the rules. The PECA extends the already considerable power of the PTA to remove or block access to information and to issue guidelines to ISPs to do the same. Section 34 provides the PTA with broad powers to restrict access to any information it considers to be against "the interests of the glory of Islam", the "integrity, security or defense of Pakistan", "public order, decency or morality", or relating to contempt of court or commission of or incitement to an offence.

In addition to many of these aims not being legitimate under Article 19 of the ICCPR, there are no safeguards in the form of an appeal mechanism or the right to judicial review of such decisions. The
power to issue directives to ISPs is also broadened “in the interest of preventing any offence” (section 45). These directives provide additional layer of obligations and it is a criminal offence to violate them. PECA contains troubling details that may have the effect of criminalising encryption tools and technology used by individuals for remaining anonymous online (sections 13 and 16). PECA also allows creates opportunities for expanded surveillance through measures such as mandatory mass data retention (section 29), mandatory SIM card registration (section 15), granting of broad powers to law enforcement to demand decryption of information without proper judicial oversight (section 32), and the sharing of information obtained through the Act with foreign governments, also without judicial oversight (section 39).

In March 2017, the government launched a media campaign cautioning people to exercise self-restraint in their online activities and warning them of the penalties that are in place under legislation in Pakistan.

II.4 Existence of a Policy, National Plan or Strategy on the Safety of Journalists

On 15 January 2019, then Federal Information and Broadcasting Minister, Fawad Chaudhry, announced that his ministry was planning to present a bill in the National Assembly for protection of journalists. Chaudhry said that the Ministry was trying to work on the development of a media technology school in Pakistan and a journalist protection act, similar to the legislation in place in Khyber Pakhtunkhwa. He also added that his ministry was working on providing health insurance to working journalists and was committed to safeguarding interests of journalists in Pakistan.

In February 2020, the federal cabinet stopped short of giving formal approval to a draft bill prepared by the Ministry of Human Rights to "promote and effectively ensure the independence, impartiality, safety and freedom of expression of journalists and media professionals". The cabinet instead gave its "in principle" approval to club it with an earlier bill prepared by the information ministry.

On November 9, 2020 Shireen Mazari said a final meeting between the human rights ministry and the information ministry had been held and the Bill had been finalised with additional inputs suggested by a joint subcommittee. She said that it would be sent to the Cabinet Committee for Disposal of Legislative Cases (CCLC) in the week and added that the Cabinet had "approved it in principle already". This was not done by the Cabinet.
III. Issues Relating to Focus and Scope

An initial and foundational issue to consider when setting up an official safety mechanism is the scope of the mechanism in terms of the issues it covers - i.e. from among the three Ps - in terms of who it covers - which might be just journalists or a broader set of actors - and in terms of the types of incidents it covers - such as physical attacks, psychological measures and legal cases. Decisions on these issues will help drive decisions regarding the institutional design of and legal framework for the system.

II.1 Scope in Terms of the Three Ps

In terms of issues covered, there will, almost inevitably, be a temptation to define the mandate of any safety mechanism broadly for two main reasons. First, if a safety mechanism is being created, it is efficient to take advantage of its concentrated expertise, resources and representative power to cover all safety challenges. This would normally include all three Ps but may even extend beyond that to wider safety initiatives, such as assisting in the formulation of, or at least commenting on, policy and legal reforms.

Second, in terms of need, the two main issues covered by safety mechanisms, prosecution and protection, often go hand-in-hand. If the system of prosecution for these crimes is failing, this will almost always create a need for protection, since the impunity generated by the prosecution failure will spur on more attacks. It is possible for there to be a need for protection even if the system for prosecution is effective but, normally, at least over time, effective prosecutions lead to a decrease in attacks in the first place, and thereby less need for protection.

At the same time, defining the mandate of a safety mechanism broadly may result in resources being spread too thinly. There are always resource constraints and it may be better to focus attention on only one or another of the main priorities, so as to ensure that this is done well and that the needed expertise is indeed developed.

When considering scope, another key factor to take into account is that every country already has an official system for addressing prosecution-side measures, namely the administration of justice involving the police, prosecutors, judges and so on. The existence of the default prosecution system for crimes against freedom of expression clearly needs to be taken into account if a safety mechanism is going to address this issue. In addition, if there is a need here, i.e. if those responsible for attacks on freedom of expression are not being brought to justice (successfully prosecuted), that represents a form of systemic failure for the administration of justice.

On the other hand, most countries do not have general systems of protection in place, at least not until a specific need for them arises (i.e. once targeted attacks on freedom of expression start to become more common). There may well be, as in Pakistan, various civil society-based initiatives in this area. But, where an official safety mechanism is established to address this, it will in most cases be a new initiative in this space.

Pakistan is certainly in need of measures to address all three Ps. As noted above, it has remained on CPJ’s Impunity Index for all of the 12 years that Index has existed. While there are some systems to provide support and protection for the victims of these crimes, adding official measures to this would certainly be helpful. Similarly, while there are a number of initiatives in Pakistan to help on the prevention
At the heart of the Protection of Journalists and Media Professionals Bill, 2020 is the creation of the Commission for the Protection of Journalists and Media Professionals (CPJMP).28

According to section 17(1)(a) of the Bill, a main function of the Commission is to inquire into complaints about various actions against journalists or failures of public servants in relation to such actions. The steps that may be taken by the Commission upon completing such an inquiry are not made clear in the Bill, which is obviously a serious shortcoming, but the Commission appears to be focused on prosecution.

This is supported by other language in the Bill. For example, section 10 focuses on prosecution, calling for attacks to be reported to the Commission and calling generally for the Commission to take steps to ensure accountability for attacks by investigating and ensuring that prosecutions take place and remedies are provided. Section 11 also makes general calls for the government to develop strategies to combat impunity.

A serious problem here is that no guidance is provided as to how the Commission is expected to collaborate with the default prosecution-side actors - specifically the police and the prosecutorial service - when taking action in this area. In order to address the issue of collaboration with prosecution-side actors, there was need to grant the Commission the power to summon officials, heads of agencies and others responsible for taking action in this area. Furthermore, granting the Commission contempt of court power in order to ensure a response was also recommended.

The Bill does also refer to both protection and, to a limited extent, prevention. Thus, sections 7 and 8 call on the government to take steps to protect journalists or to ensure that journalists are protected against, variously, "abuse, violence and exploitation" and "harassment", with the latter being defined, in line with the Protection against Harassment of Women at the Workplace Act, 2010, as sexual harassment.

Section 9 requires media owners to provide adequate training and insurance to journalists, which could be seen either as a form of protection or in a more general light as a prevention strategy.

Ultimately, however, the Bill mixes up, either explicitly or implicitly, prosecution and the provision of protection in all of these provisions. For example, section 7(3), covering "abuse, violence and exploitation", calls on the Commission to "investigate and prosecute" these acts, but also to "take appropriate measures under law to provide protection ... in the manner prescribed under this Act". In fact, though, the Bill does not appear to make any specific provisions or prescriptions regarding protection, such that the powers and scope of action of the Commission in this regard remains undefined (see the more detailed

28 See Parts V and VI of the Bill.
discussions of this below in the section on Protection).

The Bill is limited in terms of prevention. Section 17(1)(a)(ii) refers to failures of civil servants to "prevent" violations, but this would appear to mean in the narrower sense of preventing a crime, as opposed to the more general social prevention measures that references to "prevention" in this report refer to.

More thought is required to be given to the scope of the mechanism in terms of the three Ps. If the intention is indeed to cover all three, this should be clearly defined in the mandate of the Commission and its responsibilities and powers in relation to each one should be defined far more precisely and clearly. This is addressed in more detail below in the sections focusing on each of the three Ps.

II.2 Scope in Terms of Actors

Various approaches can be taken in a safety mechanism to the scope of coverage in terms of actors or people. One option is to focus on the media. Within this, a mechanism might focus on just traditional journalists, on others who engage in journalistic activities (which might be defined more or less broadly so as to include bloggers and potentially even citizen journalists or those spreading information via social media platforms), on those who support the work of journalists, such as cameramen and drivers, and/or on media outlets as such.

There are serious problems, given the advent of digital means of communication, to focus only on journalists working for traditional or legacy media, even if this also covers support workers. Among other things, this would require the system to define what this is in the first place, which would be controversial. Why, for example, should a blogger who attracts a daily audience of 10,000 readers not be protected against attacks when a journalist working for a local newspaper with a daily circulation of just 5,000 (and potentially far less for the stories produced by the journalist) be covered.

A broader focus could be on human rights defenders, which is understood to cover journalists. Of course, in this case, it would still only cover attacks on human rights defenders based on their exercise of the right to freedom of expression. The Honduran protection mechanism covers human rights defenders as well as journalists, social communicators and legal practitioners.

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29 See, for example, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), UN General Assembly Resolution 53/144, 8 March 1999. Available in different languages at: https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Translation.aspx.

expression. Although, in most countries, the majority of such crimes do target journalists, there is a growing incidence of such crimes being perpetrated on other people, such as authors of books and individuals working for civil society organisations.

The main benefit of a broader approach is that it focuses directly on the underlying social interest which is being protected, namely freedom of expression. This provides a strong social and indeed human rights justification for the mechanism, which is lacking where it focuses only on one profession, no matter how important that profession is in making freedom of expression a reality. A concern with a broader approach is that it might cover a very wide range of people, thereby stretching scarce resources. However, the very fact that the mechanism would only be engaged, in practice, in light of a crime against someone, or a risk thereof, for statements they had disseminated would act as a very important limiting constraint. To narrow the focus further, engaging the mechanism might be conditioned on having engaged in public interest communications or the mass or widespread dissemination of information to the public. This would, for example, filter out personal disputes (such as conflicts among Facebook friends and family matters).

The Bill purports to focus on "journalists and media professionals". Despite the pedigree of this focus, which even appears in the title of the Bill, there are several, somewhat random, references to "reporters", which is not defined, for example in sections 7, 8 and 17(1)(a), all referred to above. These references should clearly be removed.

There are also problems with the definition of a "journalist". First, this covers anyone "regularly engaged" by a media outlet, which would cover anyone who was employed by a media outlet in any capacity, regardless of whether or not it related to the collection or dissemination of information (such as cleaning staff).

Second, it refers, somewhat confusingly, to "a newspaper, magazine, news website or other news broadcast medium". Presumably the final reference is intended to cover broadcasters which carry news, but this is an awkward way to phrase that. Then, while it is clear that the intent is to limit the scope to media which carry news, this is not specifically applied to magazines, and not all of them produce news. Third, it refers separately to freelancers, although they would be covered under the category of "regularly engaged".

The definition of a "media professional" is more precise and does not suffer from the flaws found in the definition of a "journalist". It may be noted, however, that since it covers anyone "regularly or professionally engaged in the dissemination of information to the public via any means of mass communication" it would cover bloggers and even a lot of social media users (indeed, anyone who regularly posted messages for general public consumption, such as on Twitter). This is essentially in line with the thrust of the comments above, suggesting that a broader focus on freedom of expression should be employed. It would be useful to make it more explicit that the intended scope of the mechanism is freedom of expression rather than some narrower conception of a journalist.

II.3 Focus in Terms of Types of Incidents Covered

A core focus of all of the safety mechanisms is on attacks, including those which result in death, which would also cover included offences such as aiding and abetting an attack, an attempted attack, threatening
to attack someone, conspiring to attack someone, inciting others to launch an attack and so on. In most cases, it will be appropriate to define attacks broadly, for example to include sexual assaults and other crimes of a sexual nature.

Careful thought needs to be given to whether and, if so how far, to cover more psychological measures, taking into account that, almost by definition, these also involve expressive activities (and hence need to meet the standards for restrictions on freedom of expression). Clearly, at least on the prosecution side, the mechanism should not go beyond actions which are already criminal in nature (since these are the only actions for which someone might be prosecuted). Threats to attack someone, recommended to be included above, are crimes in most countries. Other possible areas here might be harassment, subject to being defined sufficiently narrowly, and sexual harassment, again defined appropriately.

Very careful thought needs to be given as to whether it makes sense to go beyond that, at least for a prosecution-side mechanism. In some cases, mechanisms also cover legal actions such as illegitimate official arrests, detentions, prosecutions and/or other measures (such as deportation or seizure of equipment or property). The problem with this is that, unlike the other actions described above, these are not usually crimes (although some of them may constitute crimes depending on all of the circumstances). In any case, the legal system usually already provides for reasonably reliable means to contest these sorts of actions (of course depending on factors such as the rule of law and independence of the judiciary).

A mechanism could theoretically apply more broadly, i.e. beyond criminal actions, in the context of protection measures. Obviously protection should ideally be engaged before a crime has actually been committed, i.e. a risk of a crime being perpetrated is enough. But that does not go to the scope of coverage of the mechanism but, instead, the point at which its measures are triggered. The issue here is whether a mechanism should offer protection against a risk of actions which are not criminal, such as wrongfully firing someone or other breaches of labour relations rules. This needs to be considered in light of all of the local circumstances. However, the primary purpose of a safety mechanism is not to address labour relations issues, even where these do impact on freedom of expression - such as the extent to which a journalist may be required to have stories published in his or her name which he or she does not really believe in, due to the editorial slant of a media outlet - but to address threats to freedom of expression that essentially revolve around the idea of intimidation.

In this area, as well, the Bill is far from being as clear and precise as it should be. At several places it employs vague concepts which it fails to define. For example, section 3(1) says no journalist should be subjected to "ill-treatment", section 3(4) calls for journalists to be protected against "other methods of coercion", section 3(5) refers to "intimidation" and "targeting", section 5(1) refers to "arbitrary restrictions on" or "undue interference with" the ability of journalists to "perform their work independently",

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31 In Canada, for example, harassment is defined as, without lawful authority and with intent to harass, causing another person to "fear for their safety" by, among other things, repeatedly following, communicating with or threatening them. See section 264 of the Criminal Code, R.S.C., 1985, c. C-46. Available at: https://laws-lois.justice.gc.ca/eng/acts/c-46/section-264.html.

32 Note that there is a difference between sexual harassment for purposes of labour relations, which is not what is being discussed here, and criminal sexual harassment, which is the issue here. The former is, for fairly obvious reasons, much broader than the latter.
Section 7(1) refers to "all forms of abuse ... and exploitation", and section 7(2) refers to "intolerant behaviour". All of these are problematic inasmuch as they prohibit and/or call for the prosecution of those responsible for these undefined forms of potentially expressive behaviour. As noted above, it is not the role of a safety mechanism to create new crimes. If it does, it certainly needs to make sure they meet the standards for restrictions on freedom of expression, which include the restriction being defined clearly.

Section 8 covers protection against sexual harassment. While this is appropriate, the definition of "harassment" is taken from the Protection against Harassment of Women at the Workplace Act, 2010 and, as such, is essentially a labour relations provision. As noted above, careful thought needs to be given to whether this is appropriate for a safety mechanism. In this case, it would not appear to serve any purpose since all the Bill would do would be to engage the measures that already apply under Harassment of Women at the Workplace Act, 2010 (i.e. it would not in any way extend protection and so would not appear to serve any additional use).

II.4 Geographic Scope

A safety mechanism could potentially cover different geographic areas, such as the entire country or only a sub-national entity, such as a province. In the context of Pakistan, while the Bill under discussion here is federal in scope, other bills that have been prepared on this issue were designed to be applied at the provincial level. There are certainly pros and cons to each approach. It may be easier to achieve success at the provincial level, at least in some provinces, and this approach may mean that the mechanism operates in closer proximity to the underlying situation.

On the other hand, a national mechanism has the advantage of covering the whole country, thus allowing for greater resources to be allocated to it and ensuring that everyone in the country is protected. It may also be that at least some safety issues are, by their very nature, national in nature (such as where a journalist was attacked for exposing national level corruption or other wrongdoing). In practice, most of the existing mechanisms operate at the national level.

With regards to the inclusion of the provinces in the process, consultations with stakeholders raised questions about the location of the Commission. Stakeholders believed that it was important to determine whether the Commission will have one central bureau or whether there will be provincial offices as well.

This is particularly the case here, given that sections 5(2) and (3) of the Bill actually reiterate the standards which should apply to any restriction on freedom of expression.
IV. Engaging Civil Society and the Media

It is important to engage civil society and the media, either directly or through civil society organisations representing the media, in the work of a safety mechanism. Indeed, experience with existing safety mechanisms demonstrates that involving these actors is essential to success. There are a number of reasons for this. First, safety mechanisms need to take advantage of the strengths, capacity and relationships of civil society to bolster their effectiveness. Among other things, their networks can be invaluable to the outreach work of a mechanism. Second, if civil society is left out, it may oppose or undermine the mechanism, again reducing its ability to operate effectively. Third, engaging civil society has often proven important in terms of the need to create trust and buy-in among victims, who may be suspicious of the work of an official mechanism. Finally, and closely related, involving civil society, and particularly groups representing victims, is a pre-requisite to ensuring that the work of a mechanism takes into account and responds appropriately to the needs of those victims.

Engagement is a broad concept and this may be achieved in many different ways. In some cases, civil society actors are incorporated formally into safety mechanisms, such as by being represented on its oversight or other decision-making bodies or by helping delivering downstream work. In other cases, although civil society actors remain outside of a mechanism, there may be special arrangements for consulting with them or otherwise securing their cooperation. As an example, in some cases journalists’ associations have agreements with mechanisms whereby they provide early warnings about attacks or protection needs. Such agreements may be more or less formal in nature.

The media sector is another key stakeholder which can provide important support for a safety mechanism. Media outlets may also have formal responsibilities, for example to provide training or safety equipment. Significantly, the UN Plan of Action calls on both media outlets and media associations to provide "safety training courses, health care and life insurance, access to social protection and adequate remuneration". There are clear synergies here in terms of ensuring coordination with, and perhaps monitoring by, a safety mechanism. Media and communications training bodies also have an important role to play in terms of training, whether by offering dedicated safety courses or by integrating safety modules into more general courses. Training bodies for police, prosecutors and judges also have a role to play in providing appropriate training to these actors.

The approach taken to this issue in the Bill is to incorporate civil society actors directly as members of the Commission. Indeed, five of the seven members come from civil society. However, four of these are nominated by just one organisation, namely the Pakistan Federal Union of Journalists, while one

34 See note 14, para. 5.22.
35 As an example of this, UNESCO has provided extensive training to judges on freedom of expression, including on safety and other freedom of expression issues. See: https://en.unesco.org/news/more-3000-judicial-operators-debating-freedom-expression-unesco-and-its-allies.
more is nominated by the National Press Club. Given the enormous diversity of civil society in Pakistan, including many groups working on freedom of expression, on media freedom and even specifically on safety issues, this seems far too narrow.

Members of the civil society and organisations beyond just PFUJ and the National Press Club should also be included. Representatives from the National Commission of Human Rights, Pakistan Information Commission, National Commission on Status of Women, Human Rights Commission of Pakistan, and Pakistan Bar Council as well as representatives of the Pakistan Federal Union of Journalists, Council of Pakistan Newspaper Editors, All Pakistan Newspaper Society and Pakistan Broadcasters Association should be included in the Commission.
V. Prosecution/Impunity

V.1 Relationship with Existing Justice Actors

In many ways, addressing prosecution needs is the most difficult task of a safety mechanism. This flows from a number of considerations relating to criminal cases, which prosecution-side measures, by definition, involve. Human rights principles, in particular the presumption of innocence, properly erect barriers to the State securing criminal convictions, so as to limit mistaken and politically motivated convictions. In many countries, overall conviction rates for assaults and even murders are relatively low. Crimes against freedom of expression are inherently difficult to solve given that they are often perpetrated by sophisticated actors who are skilled at hiding their participation in the offence. In some cases, the individuals who physically perpetrate the criminal act may be found and prosecuted while the masterminds behind them are not, which clearly fails to solve the problem. Where there are general rule of law problems, such as the possibility of paying judges to influence case outcomes, these are almost inevitably heightened in these sorts of cases, given the significant interests involved.

Where a country is suffering from high rates of impunity in relation to crimes against freedom of expression, this, by its very nature, as has been pointed out, somehow represents a failure of the administration of justice system, whatever the specific reason for the problem is. Such systemic failures are almost always very difficult to resolve. The design of the safety mechanism needs to be done in a way that will somehow address the current shortcomings. If a key problem is that it is easy to buy off judges, the approach for a safety mechanism would somehow need to address that, for example by creating a specialised court with more independent and professional judges to try these cases.

Another complication here is that prosecuting and especially investigating crimes requires highly specialised knowledge, experience and equipment. It is extremely difficult to replicate this within a new body under a safety mechanism. This is further complicated by the fact that the existing administration of justice system will retain default responsibilities in terms of criminal investigations and prosecutions. It is not easy just to strip off a certain category of case from them. Imagine, for example, that an investigation is started on the assumption that it involves a crime against freedom of expression but, in the course of the investigation, it is found to be simply a family dispute. What would happen with the case if the investigate had originally been under the jurisdiction of a separate body under a safety mechanism?

There may also be constitutional provisions or arrangements that need to be respected. For example, in federal States jurisdiction over criminal matters or the power to try criminal cases may vest in the provinces or states. This was a major factor inhibiting the effectiveness of the (national) impunity mechanism in Mexico until the Constitution was amended to resolve it.36

Some countries limit the power to initiate prosecutions in criminal cases to certain actors, such as the Attorney General. This is the case, for example, in Guatemala, so that the mechanism can only provide investigative support to the Attorney General, who retains the power to initiate

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36 See Natalia Torres, footnote 26, pp. 23-24. Regarding the constitutional amendment, see Mexico: Constitution amended, federal authorities given powers to prosecute crimes against free expression, 14 June 2012. Available at: https://www.refworld.org/docid/4fe2c954433.html.
and pursue prosecutions. It is also the default position in Nepal but there the courts have held that when the National Human Rights Commission, where the mechanism is housed, forwards a human rights case to the Attorney General, the latter must proceed to prosecute the case, essentially negating the constitutional rule.

As a result of all of these factors, very careful consideration needs to be given to how the prosecution role under a safety mechanism relates to the wider administration of justice system. Close collaboration with administration of justice actors - including the police, judges, prosecutorial services and the Attorney General, and potentially others - is needed for several reasons. These include avoiding overlap and duplication, respecting core constitutional and institutional arrangements, and avoiding competition and potentially even conflict. Collaborating with these actors inside the mechanism will also almost always be efficient, due to the fact that they have considerable powers and expertise, and to the cost and difficulty of duplicating these in a parallel structure.

In light of this, it is perhaps not surprising that, in all of the existing safety mechanisms, and particularly those that address prosecutions, official actors play a very important, even dominant, role. In Mexico, for example, the prosecution mechanism, the Special Prosecutor for Crimes Against Freedom of Expression (FEADLE), is part of the Attorney General's office. Even the International Commission Against Impunity in Guatemala (CICIG), a formally independent body created through an agreement between the United Nations and the government of Guatemala, works very closely with the Special Prosecutor's Office Against Impunity (FECI), which has the exclusive power to bring cases. In Nepal, the mechanism was created by and is essentially housed in the National Human Rights Commission, an independent body, but it involves the law and human rights department of the Office of the Prime Minister and a very senior police officer in the top governing body, the Direction Committee.

One option which has potential, depending on all of the circumstances, is the idea of creating a new governing body, such as a board or steering committee, to oversee and give direction to the work of the safety mechanism, but to task existing police and prosecutorial services with undertaking the actual work. For example, in Serbia, the Commission that oversaw the investigations of journalists' murders was made up of representatives of journalists, of the Ministry of Internal Affairs and of the Security Information Agency (BIA, the national security body), but the actual investigations were undertaken by mixed teams of police and representatives of the security services.

The Serbian example also highlights another option, which is to tweak the existing arrangements so as to provide for more high-powered investigations in these cases. In that case, this involved the creation

37 Ibid., p. 77.
38 The focus there was on the murders of just three journalists, namely Dada Vujasinovic, Slavko Curuvija and Milan Pantic.
of mixed policy-security service investigatory teams. In Mexico, similarly, existing arrangements were essentially tweaked with more powers being allocated to central prosecution authorities to address crimes against freedom of expression, in part because of problems of corruption and weak capacity among local police forces. In Guatemala, while the national prosecutorial service retains control over prosecutions, support has been provided for investigations through the creation of a parallel investigatory body.

V.2 Independent and Speedy

As noted above, in their 2012 Joint Declaration, the special international mandates on freedom of expression called for investigations to be “independent, speedy and effective”. In principle, all criminal investigations and prosecutions are independent, or at least impartial, and this is of particular importance in cases of crimes against freedom of expression given that they often involve powerful social players. Where State actors are involved in attacks, this independent can be threatened, especially if senior officials or politicians are involved. Independence can be even more at risk where individuals working for the administration of justice, such as the police, are involved. Independence issues may also be raised where the target of the attacks has been issuing public statements about the administration of justice system, even if the latter is not directly involved in the attacks. It is, therefore, worth thinking about the idea of a special approach, perhaps a particularly robust investigation unit, to deal with investigations where these conditions are in play (such as where there is some evidence that an official might have been involved in an attack).

The most sensitive issue when it comes to speed is the need to secure evidence on a timely basis to prevent it either being destroyed, lost or just forgotten. At the same time, it can be difficult to secure evidence quickly. This needs to be done in a professional manner, or the evidence may not be admissible in court, for example. In the Nepal mechanism, quick reaction teams, whose members have been trained, will be deployed to sites to identify and protect evidence, but actual collection will be done by members of the Commission, which has a mandate to do this, and the police. Of course there is also a need to ensure rapid reporting of cases to investigatory bodies, to help ensure that the latter may be mobilised quickly.

V.3 Law Reform

A number of law reforms may also be needed to support efforts on the prosecution side in the context of crimes against freedom of expression. Four main initiatives should be considered here:

i) Statute of Limitations

Periods of limitation, or the time limit within which charges or cases must be brought, where they apply, tend to be longer for certain more serious crimes and, in many countries, more serious crimes, such as murder, have no statute of limitations. This suggests that it is reasonable to extend any applicable statute of limitations for crimes against freedom of expression as compared to their ‘regular’ criminal counterparts,

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Note 10.
based on the idea that the motivation for these crimes makes them far more serious.

ii) Penalties

In some countries, heavier maximum penalties apply to certain crimes based on the reasons which motivated them. For example, penalties for assault may be increased where the assault was motivated by racial hatred. The same reasoning applies to crimes against freedom of expression, where heavier penalties should also be considered.

iii) Civil Redress

In some countries, it is possible to bring civil claims for damages resulting from crimes whether or not a criminal case has been brought, or even if a criminal case has not been successful. This is important for a number of reasons. First, the heavy burden of proof in criminal cases, which is "beyond all reasonable doubt", means that it may not be easy to secure a conviction whereas it is easier to succeed in a civil case, where the burden is merely "on the balance of probabilities" (i.e. more likely than not or 50%).

Second, there may be barriers to lodging a criminal case, including that the State may need to approve this or undertake the prosecution itself. Where this is not already the case, the law should be amended so as to allow for civil claims in cases involving crimes against freedom of expression.

iv) Criminal Redress

In some countries, there are strict separations between criminal and civil cases, so that even where someone is convicted, one may only obtain damages (as opposed to punishments such as fines or prison terms being imposed on the accused) by bringing an entirely separate civil proceeding. If this is not already possible, the law should be amended to provide for compensation to be awarded to victims following successful criminal convictions. This avoids the need to pursue a costly and time consuming parallel civil case.

It is significant that UNESCO’s Resolution 29, adopted over 20 years ago in 1997, called for the first and third of these recommendations to be implemented.

V.4 Comments on the Bill

One of the key points flowing from the above is the need for clear coordination between any new prosecution-side measures through a safety mechanism, whatever form they may take, and the existing administration of justice system. This is one of the areas where the Bill performs very weakly and indeed, refers in a very general way in a few places to parallel prosecutorial activities by the government.

41 The famous case of OJ Simpson, who was accused of murdering his ex-wife and a friend, is illustrative here. Simpson was found to be not guilty in the criminal trial but he lost in the civil trial and was ordered to pay damages of $25 million.

42 Note 12, para. 2.
and the Commission without providing for any system or means of coordination. Section 3 sets out five areas of action for the government and then indicates that if the Commission is aware of any breach of the first one, it shall report this to the government and recommend remedial measures. That is clear. However, section 7(1) calls on the government to take "all steps" to protect journalists against certain actions, while section 7(3) says that when the Commission receives a report of such actions having taken place, it shall "take appropriate measures under law" to protect the concerned journalist(s). No means is provided to coordinate these measures. Section 10(2) calls on the Commission again to take "appropriate steps to ensure accountability" for certain actions by investigating them, while section 10(3) calls on the Commission to ensure that perpetrators are "prosecuted" and that the victims have access to "effective remedies". Again, no system of coordination with the administration of justice, which would normally look after this, is provided for.

It may be noted that the Commission is largely made up of independent members, with one ex officio representative from the Ministry of Human Rights. While this may allow for some coordination with the government, it does not seem remotely robust enough given the challenges that are likely in this regard. This may be contrasted with the approach in Nepal, where a senior police officer, as well as the Office of the Prime Minister, are directly represented on the highest body of the safety mechanism.

The Bill fails to put in place any of the law reform measures highlighted above. In order to ensure coordination with the existing administration of the justice system, those who play a role in this system need to be involved in the Commission. Beyond just the Ministry of Human Rights, main duty bearers should be part of the Commission. Members of the Ministry of Interior, Ministry of Information and Broadcasting, a representative of the Prime Minister's Office etc should also be included as members of the Commission.

This same ideal should be extended to the appointment of the chairperson. The panel of experts for appointment of the chairperson should not exclusively be nominated by the Ministry of Human Rights. The panel of experts selected should include members of bar associations, human rights activists, journalist organisations etc. Alternatively, the Commission itself could suggest a chairperson. An advisory committee could be formed that will determine what cases should be covered by the Commission. The advisory committee should consist of highly credible individuals who are best suited to make these decisions. If, for example, the advisory committee reports a case, it must be essential to register a First Information Report (FIR) into the incident.

The Commission should be made an informing body so that when an investigation is started, all relevant agencies with the power of arrest, would be required to inform the Commission about what is happening. In order to improve accountability the Commission should have a website where updates and status of various journalists' cases can be viewed such as whether a criminal complaints have been registered. The need for a website should clearly states the rules, contact as well as other information of its functioning should be developed and regularly updated.

VI. Protection

VI.1 Available Measures

A proper protection system needs to define what sorts of protection measures are available and to put in place a procedure for assessing claims of a need for protection, for deciding on what protection measures are to be allocated and for proceeding to provide those measures.

It terms of what measures are to be available, a balance needs to be struck between offering measures that are effective in enhancing protection and being realistic taking into account the resources that are likely to be available and likely demand for them (i.e. how many people are likely to need protection).
and the Commission without providing for any system or means of coordination.

Section 3 sets out five areas of action for the government and then indicates that if the Commission is aware of any breach of the first one, it shall report this to the government and recommend remedial measures. That is clear. However, section 7(1) calls on the government to take "all steps" to protect journalists against certain actions, while section 7(3) says that when the Commission receives a report of such actions having taken place, it shall "take appropriate measures under law" to protect the concerned journalist(s). No means is provided to coordinate these measures. Section 10(2) calls on the Commission again to take "appropriate steps to ensure accountability" for certain actions by investigating them, while section 10(3) calls on the Commission to ensure that perpetrators are "prosecuted" and that the victims have access to "effective remedies". Again, no system of coordination with the administration of justice, which would normally look after this, is provided for.

It may be noted that the Commission is largely made up of independent members, with one ex officio representative from the Ministry of Human Rights. While this may allow for some coordination with the government, it does not seem remotely robust enough given the challenges that are likely in this regard. This may be contrasted with the approach in Nepal, where a senior police officer, as well as the Office of the Prime Minister, are directly represented on the highest body of the safety mechanism.

The Bill fails to put in place any of the law reform measures highlighted above.

In order to ensure coordination with the existing administration of the justice system, those who play a role in this system need to be involved in the Commission. Beyond just the Ministry of Human Rights, main duty bearers should be part of the Commission. Members of the Ministry of Interior, Ministry of Information and Broadcasting, a representative of the Prime Minister's Office etc should also be included as members of the Commission.

This same ideal should be extended to the appointment of the chairperson. The panel of experts for appointment of the chairperson should not exclusively be nominated by the Ministry of Human Rights. The panel of experts selected should include members of bar associations, human rights activists, journalist organisations etc. Alternatively, the Commission itself could suggest a chairperson.

An advisory committee could be formed that will determine what cases should be covered by the Commission. The advisory committee should consist of highly credible individuals who are best suited to make these decisions. If, for example, the advisory committee reports a case, it must be essential to register a First Information Report (FIR) into the incident.

The Commission should be made an informing body so that when an investigation is started, all relevant agencies with the power of arrest, would be required to inform the Commission about what is happening.

In order to improve accountability the Commission should have a website where updates and status of various journalists’ cases can be viewed such as whether a criminal complaints have been registered. The need for a website should clearly states the rules, contact as well as other information of its functioning should be developed and regularly updated.
VI. Protection

VI.1 Available Measures

A proper protection system needs to define what sorts of protection measures are available and to put in place a procedure for assessing claims of a need for protection, for deciding on what protection measures are to be allocated and for proceeding to provide those measures.

It terms of what measures are to be available, a balance needs to be struck between offering measures that are effective in enhancing protection and being realistic taking into account the resources that are likely to be available and likely demand for them (i.e. how many people are likely to need protection). The Colombian National Protection Unit (UNP) has been lauded for having a broad range of protection measures, up to and including the allocation of armoured vehicles, but it is very costly to operate. The Italian system offers similarly strong protection measures, but it is also very costly. While protection measures are ideally applied before a crime takes place, so as to thwart the crime, they may also be applied afterwards, with the aim of preventing any further crimes.

The following describes some of the specific protection measures that have been offered by different safety mechanisms:

- Relocation of an individual at risk, whether temporarily or permanently, for example using a system of safe houses, which may, in extreme cases, involve providing the person with a new identity.
- Providing individuals with different types of safety equipment such as panic buttons, alarms, protective vests, satellite phones or even, again in extreme cases, armoured cars.
- Providing individuals with training on how to protect themselves more effectively.
- Offering bodyguard protection, whether these are officials (such as police officers) or private bodyguards.
- Providing hotlines and other communications systems.
- Having the police monitor and visit locations where individuals at risk work or live.
- Providing emerging high tech tools.

Support might also be provided after a crime has been committed to address and mitigate its effects although this is not, strictly speaking, protection. Options here include medical services, both physical and psychological, and assistance to mitigate the impact of any harm suffered (such as help with daily needs in case of an injury). Another potential form of support could be the provision of compensation to those who have suffered injuries or worse. Normally, this would be expected to be financial.

43 According to news reports, the whole system, which provides protection to a number of different groups deemed to be at risk, costs well over USD 200 million per year to operate. See Alina Dieste, “High price of keeping Colombians alive”, 14 November 2014. Available at: http://news.yahoo.com/high-price-keeping-colombians-alive-041525106.html. See also Eduardo Bertoni, footnote 13, p. 22.

44 Law, No. 133/2002, establishing the Italian system, and its related Decree, are available at: http://www.camera.it/parlam/leggi/021331.htm#decreto.

45 See, for example, http://pfotech.globalmouth.com/gpsbracelet/ gps-tracking-bracelet-proposed-at unesco-to-safeguard-journalists/.
compensation, for victims or their families, but it could potentially also include other options (such as the provision of alternative employment).

VI.2 Structure and Related Issues

Above, it was noted that official bodies are usually incorporated into safety mechanisms which offer prosecution-side support, and this is also the case with protection systems. Thus, in Nepal, the dual prosecution-protection mechanism is located within the National Human Rights Commission. The UNP in Colombia is an independent body, but it has close links to the Ministry of the Interior, inasmuch as the latter chairs its Management Board. In Mexico, the Human Rights Unit of the Ministry of the Interior (Secretaría de Gobernación or SEGOB) again chairs the Governing Board of the protection mechanism. In Honduras as well, the protection mechanism, the National System for the Protection of Human Rights Defenders, is a new, specialised body, but its 'governing body' is the Department of Human Rights, Justice, Interior and Decentralization of the Ministry of the Interior. These approaches somehow parallel the approach for prosecution-side safety mechanisms, whereby a new governing structure is set up, which allows for the engagement of a wider set of actors, but which relies in important ways on pre-existing official bodies for operational matters.

While it is good practice to describe clearly the protection measures which are available in the foundational documents of a mechanism, specific decisions regarding risk assessment (i.e. whether the person actually needs protection) and the allocation of specific protection measures will need to be done on a case-by-case basis taking into account the specific circumstances. To ensure that the system is applied fairly and predictably, some system or procedure for doing this needs to be agreed upon and, preferably, fixed in the documents setting up the mechanism or at least formal internal working documents adopted by the mechanism. Furthermore, the victim should have some say in the allocation of protection measures. For example, having a bodyguard to accompany someone at risk may not be operationally feasible for a journalist.

Some mechanisms rely on a separate body to assess risk and allocate measures. In Colombia, for example, the Committee on Evaluation of Risk and Recommendation of Measures (CERREM or Comité de Evaluación de Riesgo y Recomendación de Medidas), assesses risk and assigns protection measures, which are then provided in practice by UNP. CERREM includes four representatives from the professional group associated with the individual being assessed, so as to ensure that the assessment respects the working realities of that group. A preliminary screening is done by the Preliminary Assessment Group (GVP or Grupo de Valoración Preliminar).

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46 See Article 19 of the Decree, footnote 32.

47 This is based on the fact that this mechanism provides protection for a wide range of very different types of professions, including journalists but also judges, majors and so on.

Some thought should also be given to how far protection measures might extend. For example, threats to an individual may also impact family members, work colleagues and even the very workplace. Ideally, this should also be spelt out in formal documents, whether those creating the mechanism or formal internal working documents adopted by the mechanism, to ensure fair and consistent allocation of protection measures.

It may be necessary to allocate protection measures on an urgent basis, where someone faces an imminent threat. The regular assessment process may not be very well suited to this, since it may involve a closer examination of the situation, which takes time. If so, a procedure for making rapid decisions in urgent cases should be put in place. A procedure for graduating individuals out of the system when protection is no longer required is also needed, probably involving regular review of cases.

One of the greatest challenges in relation to protection is ensuring a constant and reliable flow of information to the mechanism about protection needs or risks of crimes occurring. Every system needs to enable a self-reporting approach but a more active monitoring approach can be useful to supplement this. In Nepal, for example, the key civil society partners - the Federation of Nepali Journalists, the Nepal Bar Association and the NGO Federation - all have broad networks across the country which helps facilitate active monitoring of this. Indeed, that was one of the reasons they were included in the mechanism in the first place.

**VI.3 Comments on the Bill**

The Bill does not appear to extend to protection in the sense that it is being discussed here, namely exceptional allocation of protection measures to support those that are at risk to help ensure that crimes are not in fact perpetrated against them. It refers to "protection" in a number of clauses, such as sections 3(4) and (6), 4(2), 7(1) and (3), and 8(1) and (3). However, these appear to be general references to protection of the law against certain types of actions rather than more practical protection measures, although this is not entirely clear. The functions of the Commission, as described in section 17, apply only after a person is aggrieved, while sections 19 and 20 also apply only after a complaint about a specific action has been lodged.

It is, of course, up to local stakeholders to determine whether or not and, if so to what extent, the safety mechanism should address the need for protection. If this is intended, then far more detail will be needed to be added to the Bill to establish a system for this.

When it comes to protection, the Commission appears to be given a lot of responsibilities but not a lot of power to ensure remedial action. The Bill doesn’t make any specific provisions or prescriptions regarding protections and the powers and scope of action of the Commission in this regard remains undefined.

It is thus essential that the Commission should be empowered to summon all the heads of relevant agencies as well as police officials in order to ensure that it can actually lead to protection of journalists. The benefits of this are twofold: 1) it can lead to better safety for journalists in specific cases and to more progress into investigation into crimes against journalists 2) it may also act as a buffer in preventing such acts from taking place and encourage officials to ensure that the media is provided with the protection they require.
The Commission should possess the equivalent of contempt of court powers to summon an official who doesn't show up.

It is also essential to include protection in the online space in all protection mechanisms. Online media professionals, particularly female journalists face threats and abuse online and the Bill should provide safety in the online sphere as well.
VII. Prevention

Prevention is a much broader concept than protection. Whereas the latter applies to a specific individual, or potentially a media outlet, who is specifically at risk, the former refers to wider social measures to lower the overall risk of crimes against freedom of expression being committed. This is not really addressed in the Bill, although section 9, requiring media owners to provide adequate training and insurance to journalists, could be seen as a prevention strategy.

Societies can employ a wide range of prevention strategies and responsibility for many of these, including those mentioned in the previous paragraph, fall outside of the normal mandate of a safety mechanism. At the same time, it is probably useful to allocate a general responsibility in the area of prevention to a safety mechanism, so as to take advantage of its general expertise and leadership on this issue. As part of this, a mechanism might engage in activities such as building public awareness and condemning any attacks that do take place. If there is any evidence that official actors might have been involved in an attack, having the mechanism raise this issue at a senior political level could be helpful.

As mentioned earlier, giving the Commission the power to summon officials and heads of agencies can help in not just protection and prosecution but also in prevention of certain attacks on the media. It builds a system of accountability and ensures that those who are involved as well as those who are responsible for ensuring the safety of the media are held to account.
VIII. Additional Comments on the Bill

This section of the report provides comments on aspects of the Bill that have not already been addressed above. The first part provides more general comments on the approach and style of the Bill, the second part provides comments on specific arrangements in the Bill and the third part addresses a few technical issues.

VII.1 General Comments

VII.1.1 Broad and Vague Provisions

One of the most serious problems with the Bill is its lack of precision, or what could be called a strategy, around how to address the challenge of crimes against freedom of expression. In some cases, such as section 11(2), the Bill places a very general obligation on the government, stipulating that it should "develop and implement strategies for combating impunity" rather than actually developing and putting in place a legal framework for those strategies through the Bill. This is, at least, preferable to many other provisions, which simply create an open responsibility for the government to achieve an objective, such as section 3(1), which calls on the government to ensure that no journalist or media professional is "subjected to ill treatment".

It is arguably better to create these sorts of legal obligations than to do nothing. At least with these provisions, one could theoretically go to court and argue that the government had failed to do what it was required. It is, however, unclear how a court might interpret these very general obligations. For section 11(2), a court could at least verify that the government did have a strategy, and some further rather general guidance is provided in the sub-sections there (such as that the government should conduct monitoring, coordinate between governments and engage journalists in the process). But it would be quite difficult for it to go much further, given the absence of any indication in the Bill as to what might be included in the strategy or what it might look like. Even this option is not available for section 3(1) which, furthermore, places an impossible burden on government since no government can ensure that no breaches of the law take place.

Beyond sections 3(1) and 11(2), other sections which suffer from placing very general obligations on the government are:

- Section 3(4): "ensure that effective measures are taken to protect journalists and media professionals against forced or involuntary disappearances, kidnapping, abduction or other methods of coercion".
- Section 4(2): "protect all journalists and media professionals from unlawful or arbitrary interferences with their right to privacy".
- Section 7(1): "take all steps to protect journalists and media professionals from all forms of abuse, violence and exploitation".
- Section 11(1): "No threatening, coercive, abusive or violent act, committed against journalists or media professionals, shall be exempt from immediate and effective investigation and prosecution."

The Bill similarly places a few very undefined obligations on the Commission. For example, pursuant to section 7(3) it shall "take all necessary actions to investigate and prosecute such acts of abuse, violence
or intolerant behaviour, and to take appropriate measures under law to provide protection to the concerned journalist”. No indication of how it might do that is given. Furthermore, while the powers of the Commission to investigate matters are set out clearly in sections 19 and 20, the Bill does not allocate any remedial powers (i.e. powers to order any actor to take steps to resolve or mitigate or compensate for any harm or prohibited action) to the Commission. In particular, it does not have any express powers to prosecute actions, order others to prosecute actions or even to provide protection. Section 10(2) suffers from the same flaw, calling on the Commission to "ensure that all perpetrators are prosecuted and simultaneously ensure that the aggrieved journalists have access to adequate and effective remedies" while failing to allocate it any powers actually to do this.

Better practice laws creating safety mechanisms are much more detailed and precise as to who is responsible for doing what and how they are supposed to do it. This is addressed in more detail below under Rules Governing the Commission.

The problem of vague provisions in the Bill has already been noted but bears repetition. The government and Commission are called upon to take various steps to prevent a large number of actions deemed to be harmful to journalists. But many of these are not defined. Examples of this include: section 3(1), referring to “ill treatment”; section 3(4), referring to “other means of coercion”; section 3(5), referring to “fear of persecution or targeting”; section 7(1), referring to “abuse” and “exploitation”; section 7(2), referring to “intolerant behaviour”; and sections 10(1) and 11(1), referring to “threatening, coercive, abusive ... manner”. None of these terms are defined or could be deemed to have a clear meaning of their own. This may be contrasted with section 8, addressing "harassment", which is clearly defined in section 2(f).

In many cases, the Bill calls for prosecution for these actions. This is entirely inappropriate not only because these terms are too vague to sustain criminal actions but also because a safety law is simply not the right place to create new criminal offences. Section 17(1)(a)(ii) goes even further, calling on the Commission to inquire into negligence by a public servant in preventing these violations. As a result, not only is the scope of the violations entirely unclear, but a broad and general responsibility seems to have been created for all public servants to actively prevent these violations.

In some places, the provisions in the Bill appear to take on a constitutional demeanour, even though they are just contained in a piece of ordinary legislation. The most obvious example of this is section 5, sub-section (1) of which prohibits unlawful or arbitrary restrictions on the ability of journalists to do their work independently. Sections 5(2) and (3), for their part, seek to set general standards for restrictions on freedom of expression overall. It is not clear why these provisions have been included in a piece of legislation that purports to be about safety. In any case, Article 19 of the Constitution of Pakistan already sets the parameters for restrictions on freedom of speech. Other provisions which suffer from this are section 3(2), protecting the rights to life and security (already protected by Article 9 of the Constitution) and section 4(1), protecting the right to privacy (already partially protected by Article 14 of the Constitution).

VII.1.2 Rules Governing the Commission

A number of the provisions governing the work of the Commission could be improved. In some cases, the flow of responsibilities of the Commission is not set out well. For example, pursuant to section 17(1)(a), the Commission is tasked with inquiring into various matters but then nothing else appears to
flow from this. Otherwise, provisions setting out responsibilities for the Commission are scattered throughout the Bill. While this is not, formally speaking, a problem, it would reflect far better practice for these responsibilities to be brought together.

As noted above, in terms of remedial action, the Commission only has responsibilities but no powers. Behind this is another problem, namely that not enough thought has been given to the structures and systems that should be employed to actually improve safety, both on the prosecution and prevention sides.

On prosecution, simply tasking various bodies, including the government, which is already responsible for this, with undertaking the investigation and prosecution of crimes against freedom of expression will not change anything. What is needed is a specific means to improve the way these tasks are undertaken. As has been noted above, the main options for this would be to grant an oversight body (i.e. the Commission) clear powers to oversee the performance of these tasks and/or to create new units or structures, probably within the existing police and prosecutorial services, to undertake these tasks. On the prevention side, what is needed is to set up a specific regime for this, setting out at least a framework of options and procedures, presumably to be overseen by the Commission. The Bill does neither of these things.

In terms of the core business of establishing the Commission, the Bill is also missing a number of elements. The initial provision establishing it needs to give it a specific form and powers, such as a body corporate with the power to sue and be sued and so on. The Bill is silent as to how the Commission is to be funded, other than section 16 setting out a framework of rules on the salaries of members. There are no rules on how the Commission should deal with conflicts of interest. The rules on meetings, in section 18, are insufficiently developed lacking, for example, even a provision on the calling of meetings. While section 18(1) says that the Commission shall regulate its own procedures, the core rules relating to meetings need to be set out in the primary legislation, so as to avoid the possibility of abuse, for example by the Chairperson.

In terms of independence, the overweighting of the power of the PFUJ, which nominates more than one-half of the members, has already been mentioned. Another problem is the manner of appointment of the Chairperson which, in accordance with section 13, is subject to undue government control. Specifically, the Ministry of Human Rights nominates a panel of experts which then submits a list of three names to the Federal Government (presumably in practice the President), which then appoints one of them as Chairperson. It would be preferable to give some non-government actors, such as the bar association and civil society organisations, the power to nominate members of the panel of experts.

The rules on removal of members also probably do not make sense. These are taken from Article 209 of the Constitution, which establishes the Judicial Council, including setting out the procedures for removal of judges. While this is certainly robust from an independence point of view, it is tailored to the judicial role and will likely not work effectively for a body like the Commission.

**Recommendations:**

- Instead of imposing very general obligations on the government and Commission, the safety law should create specific structures, responsibilities and powers, along with tailored systems in
which to exercise them, in the key areas it seeks to address, namely prosecution and possibly also prevention.

- The safety law should not seek to create new criminal prohibitions. Instead, it should apply only to already established crimes which are used to undermine freedom of expression and focus on the prevention and prosecution of those crimes.
- To the extent that otherwise unclear terms are used in the safety law, these should be clearly defined in the section on definitions.
- The provisions in the Bill that seek to duplicate constitutional guarantees should be removed.
- The tasks of the Commission should be brought together and should all describe precisely what the Commission is to do in a logical flow. The Commission should have appropriate powers in relation to any responsibilities it has in terms of remedial measures.
- The provisions on the Commission in the Bill should be supplemented with provisions on its core structure and powers, its sources of funding, how it should address conflicts of interest, and a more developed framework for the holding of meetings.
- Independent bodies should also nominate members to the panel of experts which nominates individuals as Chairperson. A system for removing members of the Commission which is more tailored to its nature as an administrative body, and not a court, should replace the current system.

Regarding the functions and management of the Commission, the Bill should provide the commission with powers to formulate rules, which will make the structure more effective. There is also no information regarding the funding of the Commission. Therefore, the provision of a rules and regulations section will permit the Commission members to make these decisions.

Section 7 gives the Commission responsibilities but not a lot of power to ensure remedial action. The Bill does not make any specific provisions or prescriptions regarding protection, and the powers and scope of action of the Commission in this regard remains undefined. The Commission should be empowered to summon all concerned authorities from heads of agencies to police officials, in order to ensure that it is effective in ensuring the protection of journalists. Secondly, the Commission should have the equivalent of contempt of court powers if someone does not provide necessary information.

**VII.2 Specific Comments**

The definition of a "media owner" in section 2(i) is both too narrow and too broad. It covers only "the owner" of a media house and the other entities, but better practice is to include anyone who has a controlling share in these entities. It is too broad inasmuch as it extends far beyond media, even on a broad understanding of that term, to include any agency which, among other things, collects and disseminates photographs and graphics through any means of communication. This would cover advertising agencies, photography studios and even graphic design companies.

Similarly, the definition of sources in section 2(j) is too broad, covering, in addition to human sources, any book, publication or organisation upon which a journalist relies to report. The purpose of defining a source is to offer protection for the confidentiality of that source. This clearly does not apply to a book or publication and even extending it to an organisation is pushing the boundaries of the concept.

On the other hand, when it comes to protecting sources, this should cover not only direct disclosures of the source's name, but also information which would enable the indirect identification of the source
The rules on protecting sources are found in sections 4(3) and (4) of the Bill. The first unfortunately links the right to privacy with the right to protect sources, even though they are fundamentally different concepts. The second calls for the right to protect the confidentiality of sources to be safeguarded by law. But this does not make sense. The Bill, if adopted, would be a law so it should just set out directly the rules on protection of sources (i.e. that a journalist may refuse to provide information or evidence to any court or official where this would expose a source). The right to privacy should be expanded and should include the online sphere as well. Journalists should be entitled to privacy and protection of sources in the online sphere. The evidence that journalists gather should be protected in its entirety.

Section 6 prohibits journalists from disseminating information they know to be "false or untrue". The Bill does not set out any penalty for breach of this provision (or indeed any other provision), so it is unclear if it is intended to be civil, criminal or administrative in nature. In any case, under international law, blanket prohibitions on disseminating false statements are not legitimate. As the special international mandates on freedom of expression stated in their 2017 following Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda: "General prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news" or "non-objective information", are incompatible with international standards for restrictions on freedom of expression, as set out in paragraph 1(a), and should be abolished". Better practice in this area is for such issues to be dealt with as a matter of professionalism, for example through self-regulation, rather than by law. There is no need for this section in the Bill. This is a Bill pertaining to the safety of journalists and media professionals. There is a media code of conduct which can be followed by the media community and there is no need for this provision.

Section 8 addresses protection against harassment, calling on the government to ensure that journalists are protected against harassment and allowing those who have been harassed to report this to the Federal Ombudsman, who shall then investigate, prosecute and provide protection. However, the Harassment Against Women at Workplace Act, 2010 already provides for a comprehensive regime for addressing this problem, which the Bill simply piggybacks on top of. As such, section 8 would not appear to be relevant or useful in any way.

Section 11(3) calls on the government to “implement best practices provided for in the United Nations Plan of Action on Safety of Journalists and the Issue of Impunity”. However, the Plan of Action is directed at UN actors, not States. As a result, this instruction does not make any sense.

Finally, the Bill fails to provide for a system for the government and Commission to adopt rules and regulations. This is needed to allow for matters which have not been elaborated upon in detail in the Bill to be further developed and for any gaps and lacunae to be addressed.

Recommendations:

- The definition of a “media owner” should cover anyone who owns a controlling share in a media outlet but the latter should not include entities which merely distribute photographs or graphics.

The protection of sources should be limited to human sources but it should include a right not to provide any information which would allow for the identification of the source. The references to sources in sections 4(3) and (4) should be replaced with a direct set of rules providing for the protection of sources.

- Section 6, prohibiting the dissemination of "false or untrue" statements, should be removed.
- Section 8, providing for protection against sexual harassment, should be removed.
- Section 11(3), calling on the government to implement the UN Plan of Action, should be removed.
- Provisions empowering the government and Commission, respectively, to adopt rules and regulations should be added.

VII.3 Technical Comments

There are a few technical flaws in the Bill, as follows:

- Sections 7(2) and 8(2) both include a sentence fragment - namely "information concerning such act shall be" - which does not make sense and should be removed.
- Section 12(2)(i) calls for the Chairperson to have, among other things, "demonstrable knowledge of, or practical experience in, matters relating to law, justice ... ". Given that the Chairperson will be a retired Judge of the Supreme Court, this is clearly redundant.
- Sections 16-18 refer to an "Independent Commission" but no such entity is found in the definitions section. Rather, section 2(b) defines the "Commission" as the Commission for the Protection of Journalists and Media Professionals. All references to an "Independent Commission" should be replaced with references to the "Commission".
- Section 17(1) indicates that the Commission "shall perform all or any of the following functions". Given that there are only two or three such functions, depending on how you classify them, it would make sense to require the Commission to perform them all.
Conclusion

The problem of what has been coined "crimes against freedom of expression" by the special international mandates on freedom of expression, or crimes which are perpetrated with the aim of silencing journalists and others who are reporting in the public interest, is a major and widespread threat to the free flow of information and ideas in society. While the actions covered by this expression are already crimes, they are far more serious than ordinary crimes due to their underlying motivation and the fact that they represent attacks on everyone and indeed democracy itself, rather than just the immediate victims. In many countries, this problem is further exacerbated by the high levels of impunity that accompany these crimes.

Pakistan is far from immune to this problem as evidenced, for example, by the large number of murders of journalists and media workers since 1992 and the prevailing climate of impunity for those crimes.

Under international law, States have a positive obligation to address this problem. The nature of this obligation varies, depending on the prevalence of the underlying problem, but it at least requires States to allocate due resources and attention to ensuring that these crimes are investigated properly and that the perpetrators are brought to justice. Where the problem is more widespread, as in Pakistan, it also involves an obligation to provide protection to those at risk, so as to reduce the chance that crimes will in fact be committed against them.

The world has not stood by idly in the face of this profound threat to freedom of expression. At the international level, among other things, numerous statements condemning these crimes have been adopted, 2 November has been designated as International Day to End Impunity for Crimes against Journalists and the UN Plan of Action on the Safety of Journalists and the Issue of Impunity has been adopted to guide UN action in this space. Much has also happened at the national level. For countries facing higher levels of these crimes, one of the more effective steps is to put in place a safety mechanism, and this has been done in a growing number of countries.

Most of these safety mechanisms address one or both of two key needs in terms of combating crimes against freedom of expression, namely bringing those responsible to justice (prosecution) and measures to protect those who are at risk. A third need which some mechanisms also address is steps to prevent these crimes in the first place. Some safety mechanisms focus only on journalists and media workers although, even in this case, better practice is to define this community broadly. The trend, however, is to protect a wider range of actors, such as human rights defenders (which includes journalists) or even anyone who is targeted for publishing information in the public interest, which is really the underlying goal of a safety mechanism. A third focus issue is the scope of a mechanism in terms of the types of incidents covered. For a mechanism focusing on prosecutions this needs, almost by definition, to be actions which are already crimes and, specifically, those committed with the intent of silencing someone. Theoretically, the scope could be wider on the protection side, although this is rare in practice.

The Federal Ministry of Information and Broadcasting has prepared a Protection of Journalists and Media Professionals Bill, 2020 to create a safety mechanism for Pakistan, namely the Commission for the Protection of Journalists and Media Professionals. The Bill is not entirely clear as to its scope, although it appears to focus mainly on prosecution-side activities. Although it does refer to protection in various places, it fails to put in place any specific system for such protection, which should be
reconsidered. Although the name focuses on journalists, in fact the definitions are quite broad, covering anyone regularly engaged in the dissemination of information to the public. Assuming this is the intention, consideration could be given to amending the name so that it will be clearer to the public who exactly is covered. Unfortunately, the Bill is very unclear as to the types of incidents it covers. It uses undefined and unclear terms to refer to a wide range of actions against targets, most of which do not seem to be established crimes, while it fails to refer more generically to crimes, and to their motivation, which is precisely what makes these crimes so harmful.

Experience from around the world has demonstrated the great importance of engaging civil society in the work of a safety mechanism for various reasons, including to lend their support to it, to bolster its credibility and to ensure that it is properly connected to the people it intends to serve. The Bill hardwires civil society into the membership of the Commission. However, this is limited to two organisations which directly represent journalists, one of which nominates more than one-half of the members of the Commission. Given the enormous breadth of civil society in Pakistan, as well as the fact that the mechanism reaches out far beyond the members of these two organisations, this should be reconsidered.

It is widely accepted that addressing impunity or improving prosecution-side activities is very challenging. Among other things, this requires fixing a current problem, since impunity somehow represents a failure of the administration of justice, while at the same time it is very challenging to create entirely new actors to undertake these functions (i.e. investigating, prosecuting and judging criminal cases). A particular challenge here is securing evidence quickly. One solution that has been successful in some countries is to create a new oversight body (i.e. commission) for existing actors, often under joint management of those existing actors and new, civil society actors. Another solution has been to create dedicated or more empowered units within existing administration of justice units, especially the police, to prosecute these crimes. Some countries have used a combination of these approaches. The Bill is unclear on how this will work, in many cases calling on both the government and the Commission to ensure prosecutions. More thought is needed here about how to create specific structures and systems that can be effective in this area, beyond just reiterating existing obligations (since the government is already required to prosecute crimes).

It is good practice, when creating a safety mechanism, also to put in place certain law reform measures. These include, where they are not already in place, extending the statute of limitations and increasing the penalties for crimes against freedom of expression, enabling civil cases to be brought for these crimes and allowing for civil redress (compensation) to be ordered as part of a criminal trial. None of these measures are provided for in the Bill.

In terms of protection-side measures, it is important for the governing instrument to set out the types of protection that may be provided, which will in practice (i.e. in terms of the allocation of specific measures to an individual) also depend on resources. Many safety mechanisms put in place a special procedure for assessing whether someone is at risk, given that this is the key to unlocking the allocation of protection measures. Other issues that might be considered under this part are how far measures may go (for example in terms of family members, work colleagues and so on), whether to create a special procedure for urgent measures and how to maintain a steady and reliable flow of information about those at risk. As noted above, the Bill does not include any specifics when it comes to protection and, indeed, it is not even clear that it covers protection in the sense in which that term is being used here.
Beyond the issues addressed above, overall the Bill does not seem to project a clear vision when it comes to the role to be played by the Commission and how the systems being put in place will, as a practical matter, enhance safety. Ultimately, this is what a safety mechanism is supposed to do. Many of the responsibilities, as described in the Bill, for both the government and the Commission are very vague and these are accompanied by a number of almost quasi-constitutional statements. Of course it is still useful to set up a mechanism in this way, but it would be far preferable to create a clear and specific mandate for the mechanism.

Beyond this, there are a number of ways in which the rules governing the Commission should be tightened up. Several of the core rules that one would expect to find in any law establishing a new administrative body - such as above how meetings are called or how the body is funded - are missing. The Commission has strong powers to investigate complaints but the Bill does not appear to give it any powers to resolve matters following an investigation (just responsibilities to do so). The Bill could also be improved in a number of other ways. Among other things, this is not the place to create additional obligations for journalists, and especially not to prohibit the dissemination of false news, which is not legitimate according to international law. The regime governing sources needs to be clarified (i.e. by setting out the actual rules in this area). And the Bill fails to grant the government and Commission, respectively, the power to adopt rules and regulations to facilitate implementation.

Many civil society actors in Pakistan, along with a number of politicians and officials, have been calling on the government to put in place a safety mechanism to protect freedom of expression. It is, therefore, extremely welcome that this now appears to be moving forward. The Bill that has been drafted reflects a clear intention to put in place a strong and effective safety mechanism. With a few tweaks, it should be able to do just that.