



Pakistan: Note on the Proposed Mandate and Scope of the Pakistan Media Regulatory Authority

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Introduction

This Note analyses the document “Proposed Mandate and Scope of the PMRA” (PMRA Policy), prepared by the government of Pakistan late in 2018. This document is in the form of a brief overview white paper regarding the establishment of a new regulator – the Pakistan Media Regulatory Authority (PMRA) – for Pakistan, as well as for the regulatory regime it will oversee. The Note provides brief comments on the strengths and weaknesses of the PMRA Policy from the perspective of international law, and especially the guarantee of the right to freedom of expression.

General Comments

To some extent, the PMRA Policy appears to be aimed at improving and especially streamlining the regulation of the media in Pakistan. Thus, the second part of the document, which highlights how current systems will be transformed under the new approach, claims to be focused on streamlining and making it easier to fulfil the legal and operational formalities for operating a newspaper.

At the same time, the document fails to address the main problems with the current system, one of which is that you need a licence to operate a newspaper. Indeed, it appears to exacerbate these problems by extending the regulatory regime beyond

newspapers and broadcasters to include “digital/social media in Pakistan” (see the sections of this Note on “Categories of licenses” and “Power of the Authority to issue licenses”). Under international law, licensing is not considered legitimate for the print media and even systems of registration for this sector are looked upon with suspicion. There is no warrant for attempting to extend licensing to digital media.

The provisions relating to the actual establishment of the PMRA are fairly general in nature and so leave much to be determined by any actual law that is prepared which puts it into effect. However, it is already clear that it will not be an independent body in the sense in which that is meant under international law, i.e. not merely a formally autonomous body but a body which is structurally independent of government. This runs directly counter to clear international law rules in this area.

The quality of the PMRA Policy also leaves some issues unclear. There are, among other things, a number of technical errors. For example, the section “Tenure of members” refers to “ex officio members” even though such members do not appear to be envisaged. The section “Members of the authority” refers to fees and expenses being provided for each meeting, even though many of the members are full-time (and so should not get paid an additional fee for attending a meeting).

Scope

According to the section “Functions of the Authority”, PMRA is to be responsible for “regulating the establishment and operation of local, foreign electronic, print and digital/social media in Pakistan.” While there is nothing formally wrong with allocating such a broad mandate to an (independent) body, it runs counter to the practice in the vast majority of countries, where regulation of the print and broadcast sectors falls under different regimes and, as relevant, bodies, and where regulation of digital media is either done entirely separately or attaches only to the digital operations of legacy media. There is good reason for this because these are very different media sectors, which require very different types of treatment. Lumping them together under one regulator can lead to a one-size-fits-all approach to regulation, which is inappropriate.

When it comes to geographic scope, it is possible to read the term ‘foreign’ in the mandate of PMRA as extending only to broadcasters (electronic media) or to all types of media. In the modern world, it is extremely difficult for States to regulate even foreign broadcasting let alone foreign print media, which may be obtained over the Internet. When it comes to foreign digital media, very limited options are open to States. They may seek to regulate the use, by their citizens, of these media but they simply cannot regulate these media directly. As Pakistan knows from its own experience with YouTube, all it can do is to block entirely access to these forms of media, at great social and political cost and, even then, it is relatively simple for citizens with even basic technical knowhow to get around such bans.

Independence

The section of the PMRA Policy entitled “Establishment of the Authority” makes it clear that it will be a formally autonomous body corporate, while the section “Members of the Authority” makes it clear that it will consist of a Chairman and an “appropriate” number of other members. The Chair will be appointed by the Federal Government, three other members will be appointed by the Federal Government to head the electronic, print and digital divisions, while the four provincial governments will appoint one further member each. There is no provision for the involvement of any other actors, including civil society. As such, in essence, the body will be entirely appointed by government, with the Federal Government appointing one-half of the members, including the chair. This completely fails to protect the independence of the Authority. The Federal Government also has the power to “establish Councils of Complaints”, with no indication of how this will happen or any suggestion of limits on the government’s powers to control the Councils.

There are at least some conditions on members, namely that they have a “masters or professional degree” and at least 20 years of expertise in a relevant field. The latter is far too long since someone with 10-15 years of experience could be sufficiently experienced to undertake this task. According to the section “Tenure of members”, members are eligible for reappointment, with apparently no limit being placed on this. Removal of members by the “Government of Pakistan” is also envisaged, among other things on highly discretionary grounds such as “moral turpitude” and even “conduct unbecoming of a gentleman”, whatever that may mean.

According to the section “Power of the Federal Government to issue directives”, the Federal Government has the power to set policy for the sector. This is appropriate. However, when a question arises as to whether a matter is or is not one of policy, “the decision of the Federal Government shall be final.” This is entirely inappropriate; such questions should be decided by the courts according to established criteria.

Content Issues

Content is one of the areas where the PMRA Policy is most unclear. It includes a few direct statements on content issues, for example under “Functions of the Authority”, where it refers to the idea of making media “more responsive to the issues and concerns of the society” and “free in dissemination of fair and accurate news”. The same section refers to the idea that an Ethical Code of Practice for all three media sectors (electronic, print and digital) will be “laid down in the Schedule to the PMRA Act”. Later, in the section “Power of the Authority to issue licenses”, the PMRA Policy refers to the idea that the Authority “shall devise a Code of Conduct for regulating” again all three types of media. Then, under “Arbitration and Complaints Redressal Mechanism”, it states that the Federal Government will “establish Councils of Complaints” in various locations. These Councils will entertain complaints from the public and recommend any “appropriate action of censure, fine against” a media to

the Authority, “for violation of any provision of this Act, the Code of Conduct for electronic and digital media and the Code of Ethics for print media.”

As a first point, clearly this system needs to be clarified. In particular, it needs to be quite clear whether there is to be one code for all media or separate codes and who is responsible for applying the code(s).

Second, as a matter of practice, it makes very little sense to have one code for all three media sectors. They are entirely different in their styles and modes of operation and, in almost every country, different professional standards apply to the different sectors. Once again, care needs to be taken in applying codes to digital media. There are several reasons for this. It is very difficult to apply any such codes from within Pakistan, many social media already have their own codes and very different considerations apply to these forms of communication which, unlike legacy media, mostly do not involve professional journalists. While there is a strong temptation to try to impose standards on these forms of communication, in light of the high volume of socially problematical content they carry, in fact it is very difficult indeed to find an appropriate way to regulate them which also respects freedom of expression.

Third, any code for the media should not be set out in the law or a schedule to it but should be developed in close consultation with media actors and other interested stakeholders. Codes need to be flexible and able to be amended as needed over time to reflect changes in social values and the situation of the media.

Fourth, from an institutional point of view, careful thought should be given to who entertains complaints. For the print media, at least, the body should envisage extensive involvement of the media sector, in a form of co-regulation rather than simply being appointed by the government. As noted above, all bodies with regulatory powers over the media need to be independent and this is particularly important for a complaints system which involves content issues.

Recommendations:

- Robust consultations with interested stakeholders should be held before Pakistan moves forward with any proposals to change the system for regulating the media.
- If Pakistan is going to reform its regulatory system for the media, it should go beyond merely creating new institutions with new mandates and should address key substantive flaws with the system, such as the requirement for newspapers to be licensed.
- A strong commitment should be made to ensure that any regulatory body is strictly independent of government, as well as the media sector(s) that it is responsible for regulating.
- The PMRA Policy should be reviewed so as to address technical flaws and inconsistencies, leading to a tighter and clearer document.

- The idea of bringing the print and broadcast media under the purview of a single regulatory should be reconsidered and careful thought should be given to how to address digital/social media.
- The scope of the mandate of PMRA in terms of foreign media should be clarified and its mandate should at least not extend to foreign digital/social media.
- The independence of the Authority (and the Councils) should be far better protected through the appointments process, which is currently entirely controlled by different levels of government and dominated by the Federal Government.
- The conditions on members, in particular the requirement of 20 years of experience, should be relaxed and members should be limited to two periods of appointment.
- Far more objective and appropriate grounds for removal of members should be provided for, along with a clear procedure for this which protects the rights of members and prevents political interference.
- The courts, rather than the Federal Government, should have final say over whether a matter is or is not one of policy.
- The approach to regulating content in the media proposed by the PMRA Policy should be clarified.
- Different codes of conduct should be created for the print and broadcast media and careful thought should be given to whether and if so how to address these issues in the digital media.
- Any codes should not be set out in the law itself but should be left to be developed by the oversight body, in close consultation with media actors and other interested stakeholders.
- At least for the print media, the institutional structure for complaints should reflect a co-regulatory approach, with significant media involvement.