

Nai Supporting Open Media in Afghanistan



نای حمایت کننده رسانه های آزاد در افغانستان  
Nai Supporting Open Media in Afghanistan

# **MEDIA WATCH REPORT**

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## **Preamble:**

### **Media Watch Report #80**

Having strong legal support for journalists and the media is one of the dire needs of media in Afghanistan at this time.

In many of media cases, judges and prosecutors adopt an approach against journalists as if they are dealing with a criminal case. As freedom of expression and press freedom are relatively new concepts in Afghanistan, journalist rights are not fully appreciated by the Afghan judicial sector. In the case of some of these lawsuits, the courts issued verdicts that show their lack of understanding of the right to freedom of opinion and expression.

Having professional defense lawyers with profound knowledge of media affairs and international best practice is of paramount importance to the current situation. Recently, Afghan journalists have been fortunate enough to enjoy the services of such experienced defense lawyers.

Lack of necessary defense of journalists' cases resulted in verdicts by courts that were described as 'unfair'. Defending a journalist or media outlet in court requires specialized knowledge in this area so that the defense lawyer can defend his/her client in a proper way before the court.

Moreover, the contracts of journalists and other media workers are not compliant with the labor law, and in many cases are known to be contrary to the provisions of human rights. Therefore, journalists should be provided with consultation of experienced defense lawyers before signing such contracts.

Furthermore, legal consultation should be sought before drafting laws in support of media and journalists so that the laws themselves do not pose challenge to freedom of expression and press freedom.

On the other hand, the 80 cases of violence against journalists in 2011, a 35% increase compared to 2010, has given rise to serious concerns among Afghan journalists. The increase in the rate of violence against journalists has been caused by several reasons including insecurity, the pro-Taliban mentality among a number of powerful individuals and a lack of consideration of journalists' cases by state institutions, including the judiciary.

In a country where legal and administrative institutions are functional for ten years now, a lack of prosecution of the perpetrators of violence is unjustifiable.

On average, 3 journalists/media workers are killed and dozens are beaten in Afghanistan every year. However, no significant safety measures are adopted by the relevant authorities.

Another concern is the initiation of peace talks with the Taliban which is ultimately an anti-free speech movement. When the Afghan government, which proclaims itself as the oversight and implementation body of the constitution, has no clear commitment for furthering freedom of expression and press freedom, then definitely the Taliban, who want to govern the country in medieval style, will pay no tribute to these values.

Afghan media has passed a ten-year journey and are now in a critical situation, badly in need of support. If they will not receive support at this point, undoubtedly all the development and progress will be wasted.

It is now the time for freedom of expression and press freedom support bodies as well as human rights activists to join hands in defending this achievement. Perhaps politicians will agree with any deal to achieve their goals, but the civil society organizations should not allow autocracy to once again rule the country.

A return to autocracy, indeed, is an injustice to the oppressed people of this country whether it is imposed by the government or by extremist or terrorist groups. Therefore, media and journalists

need to form a better coalition this year otherwise this problem will deteriorate as the year 2014 comes closer and the refractory and fundamentalist group will suffocate voices of the people in their throats once again.

The following have been addressed in this report:

- 1. Two-Day Detainment of a Journalist in Zabul Province**
- 2. Pajhwok Reporter Wounded in Explosion in Jalalabad**
- 3. Media and Journalists' Defense Lawyers' Committee Established**
- 4. Journalists' Concerns over Increased Violence against Media**
- 5. Journalists Make Financial Contribution to Injured Journalist in Herat Province**
- 6. Launch of New Print Publications in Kabul**
- 7. Analysis of Mass Media Law of Afghanistan**

### **Two-Day Detainment of a Journalist in Zabul Province**

On January 1<sup>st</sup> 2012, Pajhwok Afghan News Reporter in Zabul Province Besmillah Pashtoonmal was detained for the second time and was released by guarantor after two days.

Apparently, the reason for his detainment was his personal animosity with a local resident which ultimately led to physical clash. However, Mr. Pashtoonmal asserts that he was detained as a result of personal grudge of the head of Appellate Prosecution Department of Zabul Province arising from the news about termination of Abdul Hadi Hamkar, the Head of Zabul Appellate Prosecution Department, published by Pajhwok News Agency some seven months ago.

Mr. Pashtoonmal says all this is merely a pretext because, according to him, he had a verbal and then a physical clash with a local resident two years ago at which time, despite the fact that the other party had acquitted him, his case was forwarded to court. The court had convicted and sentenced him to a fine which he had paid.

This time too, a default trial was held in the absence of Mr. Pashtoonmal and sentenced him to six months imprisonment.

Mr. Pashtoonmal said, "Seven months back, the primary court fine me 3000 AFN, which I paid, and the prosecutor also announced that he was satisfied. But one week ago (as of the date of this interview), the prosecutor sent my case to court again without notifying me and the court made a default judgment, without summoning me, and sentenced me to six months imprisonment. This happens when all my contact details including my phone number, my guarantor's phone number, my office address and home address are available in my file which could easily use to call me for inquiry."

Mr. Pashtoonmal is of the opinion that the actions of Zabul Prosecution Department originate from the personal grudge of the Head of Zabul Appellate Prosecution Department and says: "In fact, he (head of Appellate Prosecution Department of Zabul province) cannot tolerate open media in this province and always creates problems to journalists in an attempt to silence the voice of people in Zabul Province."

However, Mr. Abdul Hadi Hamkar, Head of Zabul Appellate Prosecution Department, dismissed Mr. Pashtoonmal's claim of personal grudge and said the ruling was made by court and not by the prosecution department.

Mr. Hamkar says there have been no malicious intentions and the courts of Zabul Province are only ensuring compliance with law.

Mr. Hamkar added: "Pashtoonmal is not satisfied with the verdict of the appellate court. Therefore, his case is referred to the Supreme Court."

Director of Pajhwok Afghan News, Mr. Danish Karokhel, expresses concerns over increased pressure on their reporter in Zabul Province and says: "From the very beginning Pajhwok management tried to find out whether Mr. Pashtoonmal's case is a criminal or a media related case? As a result of the investigation it became known that the prosecutor misuses his official authority and puts pressure on the Pajhwok reporter by different pretexts every now and again."

Mr. Karokhel added that some time back their reporter had a physical clash with a friend of the prosecutor. Therefore the prosecutor tries to threaten both Pajhwok and its reporter in this way.

Mr. Karokhel attributes the threatening of Pajhwok reporter to tribal and party related issues that are prevalent in that province. He says: "When the Pajhwok reporter sends news, the prosecutor, who enjoys broad support, thinks that the news is against him and is driven by his opponents' intentions, provoking our journalist." Mr. Karokhel, however, emphasizes that their reporter in Zabul Province is fully familiar with principles of journalism and that Pajhwok will never allow him to write for or against any individual or group.

Around seven months back, on 11, June, 2011, Mr. Pashtoonmal was detained for three days before he was released by guarantor.

Mr. Pashtoonmal says that it is very difficult to do your job as a journalist in Zabul Province because some officials of that province do not believe in freedom of expressions. In particular, he cannot publish critical stories.

Media Watch considers the recent actions of Zabul court sentencing Pajhwok reporter to six months imprisonment unfair and also regards his two-day detention against the law.

A trial would be called 'fair' when the accused is present and is given the right to defense. This has not been the case with Besmillah Pashtoonmal while he is a reliable person. How can the court proceed with a default judgment in Pashtoonmal's absence and then issue a verdict about him to be arrested? The Media Watch calls on the Supreme Court to handle Mr. Pashtoonmal's case fairly and in accordance with the law in the appeal phase and nullify the unlawful performance.

### **Pajhwok Reporter Wounded in Explosion in Jalalabad**

Babrak Amirzada, photographer and cameraman of Pajhwok Afghan News, was wounded in the head in an explosion in Jalalabad on January 10, 2012.

After getting wounded, Babrak Amirzada was taken to hospital by police and his colleagues while he was unconscious. A few hours after becoming conscious, he explained the incident to the Media Watch by phone: "The first explosion took place in a store in Jalalabad city. I went there to take pictures of the damages and devastation when the second explosion took place which wounded seven including myself."

He added: "The explosion was so powerful that I went completely unconscious. When I became conscious, I found myself in the hospital."

On the other hand, some journalists and media workers complain about inattention of media proprietors. They say in the events where a journalists or media worker is harmed or killed on duty, media proprietors do not support them financially or otherwise.



But, Director of Pajhwok Afghan News Mr. Danish Karokhel says Pajhwok has a special budget for such purposes. So, when a reporter or cameraman of Pajhwok Afghan News is harmed on duty, they receive financial assistance and a contribution towards their treatment.

Mr. Karokhel says as soon as they received information that their photographer in Jalalabad was wounded, they instantly contacted their other staff member in Jalalabad and through him they covered all expenses the wounded staff needed.

Insecurity and incidents pose challenges to journalists' work in Afghanistan and raise concerns among journalists.

Babrak Amirzada says: "Undoubtedly, explosions and other security threats have emerged as a problem undermining journalistic work in this province."

Media Watch also expresses concerns over the increased insecurity and continuation of war in Afghanistan and calls on all journalists to be cautious of their safety. No story is worth the life of a journalist. Therefore, journalists should take caution while doing their job and not sacrifice themselves for a news story. On the other hand, the law enforcement bodies should also bear in mind that they are responsible for the safety of journalists and that they should try to ensure journalists' safety by any possible means.

### **Afghanistan Independent Bar Association Establishes Media Committee**

For the first time a Media Committee was established under the Afghanistan Independent Bar Association mandated to protect and support Afghan journalists.

The committee has been established by technical assistance of Nai Supporting Open Media in Afghanistan and Internews and is comprised of 50

skillful and expert defense lawyers. These defense lawyers have received specialized training on media, Afghan mass media law and journalists' affairs.

Rohullah Qarizada, Head of the Afghanistan Independent Bar Association, addressing a press conference held on establishment of this committee, said: "From this moment on, if a journalist or any media worker is attacked, humiliated or accused of an offense anywhere in Afghanistan, the Afghanistan Bar Association, through this committee, will appoint defense lawyers for them who will defend their rights free of charge."



The Head of the Afghanistan Bar Association also said that these defense lawyers have gone through a three-month training program with assistance of Nai Supporting Open Media in Afghanistan and are familiar with modern defense techniques.

Before this, when journalists were accused of media violations, they would be introduced to judicial entities through the Media Violations and Complaints Assessment Commission and the judicial entities would treat them like other criminals.

Din Mohammad Mubarez Rashidi, Deputy Information and Culture Minister/publications, who had also attended the press conference, expressed happiness over the establishment of the committee to protect journalists' rights under Afghanistan Bar Association and said: "These measures will prove effective when a special court for journalists will also be established by the Afghan Judiciary."

The Deputy Minister for Information and Culture asserted that due to a lack of such media expert defense lawyers in the past, the cases of several journalists were not handled correctly and the court dealt with their cases a lot harsher than what the actual nature of their cases was. He hoped that journalists' cases be handled by special prosecutors and judges.

Seddiqullah Tauhidi, Manager of Media Watch at Nai Supporting Open Media in Afghanistan, expressed happiness over the establishment of this committee and said that journalists' problems have increased alongside the increase in media activities. According to the Media Watch Manager, although the Media Violations and Complaints Assessment Commission is there, whenever senior government officials have got involved in a dispute with media, they have taken action directly through the Attorney General's Office and police. He hoped that with the establishment of this committee the graph of journalists' problems will decline.

Meanwhile, the Head of Afghan National Journalists Union Abdul Hameed Mubarez, who had attended the opening ceremony of this committee, said: "Journalists are facing lots of problems in Afghanistan. So far the cases of journalists murdered over the last ten years have not been considered by judicial institutions." He underscored that even still Afghan journalists are facing numerous problems. Journalists have issues with Afghan law enforcement bodies, international security assistance forces in Afghanistan and powerful individuals. He appreciated the establishment of this committee and considered it a valuable step in the favor of Afghan journalist family.

Journalists and media workers welcome the establishment of this committee and the fact that henceforth media defense lawyers will be defending them before courts free of charge.

Reporter of channel 3, Jamshid Mohmand agrees with the establishment of this committee which will be defending journalists' rights in courts, and considers it a dire need for journalists.

In answer to the question why Afghanistan Bar Association agreed to defend journalists' rights free of charge, Abdul Bashir Bakhshi, member of Afghanistan Bar Association, says: "Since journalists and media are among the vulnerable groups who frequently experience violence, in order to help institutionalize the culture of freedom of expression in the country, Afghanistan Bar Association decided to defend journalists' and media rights in courts for free."

The Media Committee of the Afghanistan Bar Association has a chairperson, deputy chairperson and secretary. These posts were respectively occupied by Mohammad Karim Amirzoi, Mofeed Mashal and Bahaduri as a result of free elections.

According to its statute, the committee works along the following lines:

- 1) Support the implementation of the constitution, media law and other Afghan laws.
- 2) Defend the rights of journalists, media workers, and the communication and information technology sector.

- 3) Conduct training on media legal matters.
- 4) Enhance specialized knowledge of defense lawyers on national and international standards of media rights.
- 5) Provide recommendations and viewpoints, draft and amend laws and policies pertinent to the media.
- 6) Establish coordination and communication with national and international organizations through the Afghanistan Bar Association.

The Media Watch considers the establishment of the Media Committee under the Afghanistan Bar Association an important step for delivering journalists' rights, and calls upon all journalists and media outlets to contact the Media Committee of the Afghanistan Bar Association in case they face any problems in the future, so that they can enjoy the free services provided by this committee.

### **Journalists' Concerns over Increased Violence against media**

After Media Watch published its annual report citing a 38% increase in incidents against media in Afghanistan, journalists from various parts of Afghanistan say they are concerned about this and sometimes commit self-censorship for these reasons.

The report records 80 cases that include 3 cases of murder, 6 cases of injury, 2 cases of abduction, 33 cases of physical assault, 15 cases of verbal assault and 21 cases of threats against journalists.

Of the abovementioned 80 cases, 49 have been committed by government officials, 9 by the Taliban, 4 by international troops in Afghanistan, and 18 by unidentified individuals.

Director of the Kandahar-based Hewad TV station Noorullah Noori lists three sources of problems in Kandahar: armed government opposition, drug smugglers and administrative corruption. He says journalists are threatened by the above mentioned sources every now and again.

According to Mr. Noori, increased violence against journalists and media has substantially undermined the free dissemination of information.

This comes at a time when journalists in Kunar Province complain about the presence of armed government opposition groups in the eastern provinces and consider them dangerous for journalists in those provinces.

Shekib Sanin, manager of Zala community radio in Kunar Province, told Media Watch: "Journalists in Kunar Province constantly have fears, which is why they cannot travel to remote areas to cover stories."

Mr. Sanin added: "Journalists fear anti-government elements the most because they have proven in the past that they have no mercy for people especially journalists; rather, they threaten, kidnap, beat and even behead journalists."

Meanwhile, journalists in the western zone are also facing challenges and are complaining from increased violence against journalists.

Khalil Amiri, Head of Journalists Support Center in Herat Province, classifies the perpetrators of violence against journalists in three categories: armed opposition groups, law enforcement bodies and international forces in Afghanistan who commit violence against journalists from time to time.

Mr. Amiri says: “Although there is freedom of expression in some provinces of the country, freedom of expression has never been ensured in Afghanistan in a proper way.”

Also, Mr. Amiri complained of some organizations that ‘claim to be supporting journalists’ and says they only use journalists’ names to receive projects and funding.

He stressed that Media Watch has been providing practical support to journalists at all times.

However, in the north-east region, where journalists have complained about an aggravated security situation, especially in Kunduz and Takhar provinces, are now more optimistic about their future because of the recent improvement in the security situation of the abovementioned provinces, especially Kunduz.

Rahmatullah Hamnawa, a journalist in Kunduz Province, is hopeful that in 2012 the rate of violence against journalists will decrease in the north-east zone because he believes that there has been a drop in the rate of security challenges in those provinces in the last three months (at the time of the interview).

However, journalists are concerned that with the security transition process underway, the security situation will deteriorate. Mr. Hamnawa says this will largely depend on the capabilities of Afghan forces as to what extent they can meet expectations of people and journalists in ensuring their life and job security.

Sefatullah Zahedi, Reporter of Salam Watandar in Helmand Province, expresses serious concerns over transition of security responsibilities to Afghan forces.

He says perhaps with international security forces pulling out of provinces and districts the Taliban will have more chances of carrying out terrorist attacks and threatening journalists.

Mr. Zahedi says even currently journalists are threatened by various parties in Helmand Province. They become victims of violence by police every now and then, and when they complain to senior officials about this, their complaints are ignored.

According to Sefatullah Zahedi, journalists receive threats not only from the Taliban but also from drug dealers and land grabbers.

He reveals that journalists are resorting to self-censorship and as a result they cannot undertake reporting properly and without fear. Mr. Zahedi also believes that a number of government officials who have links with land grabbers and drugs smuggling are also a threat for journalists.

Daud Ahmadi, Helmand Governor Spokesman, assures journalists that security transition will not cause any problems for journalists and residents of Helmand Province. He called on journalists of Helmand Province to prepare themselves for this process (transition of security responsibilities to Afghan forces) and trust the Afghan forces.

Mr. Ahmadi said: “We cannot remain dependent on foreign troops forever; therefore, we should support this process.”

He also assured journalists in Helmand Province that Afghan security forces are now more professional and familiar with human rights matters more than any time in the past; thus, henceforth no journalist or ordinary citizens of Helmand Province will become victims of violence by police anymore.

There are many solutions for these issues facing journalists. Noorullah Noori, Manager of Hewad Local TV Station, says: “The solution for preventing violence against journalists in Afghanistan is establishing a responsive and corruption free administration because journalists are members of this society and without establishment of a regular administration in Afghanistan and suppression of drug smugglers the safety of journalists can never be guaranteed.”

Media Watch calls on government officials to understand journalists’ concerns and provide them with convincing answers.



According to the Afghan Constitution, the state is responsible for protecting Afghan nationals; thus, since journalists are also Afghan citizens, ensuring life and job security of journalists is the responsibility of the state.

### **Journalists Make Financial Contribution to Injured Journalist in Herat Province**

In an unprecedented initiative, journalists made a financial contribution to their colleague who was injured in a car accident in Herat Province thus paving the way for his treatment in India as his treatment was not possible in Afghanistan.

Facilitated by Herat Journalists' Support Center, this initiative garnered acclaim all over.

Khalil Amiri, Head of Herat Journalists' Support Center, says: "Shekib Shams, Reporter of Sahar Community Radio and Salam Watandar, who was injured in a car accident three days ago, cannot afford his treatment outside the country. Since his treatment was not possible inside Afghanistan, the Afghan journalists, Herat Journalists' Support Center, media outlets and a number of spokespersons of government officials made financial contributions which added up to a total of 5000 USD. The money was given to Mr. Shams which he will spend for treatment in India."

Mr. Amiri added: "Actually Herat journalists were considering the establishment of a trust fund for such emergency cases; however, due to different reasons the mentioned trust fund was not established. But, given the incident that happened to this journalist, and since the concept of financial assistance was already in place, journalists were able to collect money quickly and give it to the journalist's family."

Storai Karimi, Reporter of Radio Azadi in Herat Province, said about journalists' contribution to Shekib Shams: "When a journalist is in need of help, other journalists are obliged to help him/her."

Meanwhile, the injured journalist Shekib Shams, who has hurt his back in the accident, expressed gratitude for the contribution of fellow journalists and called it an unforgettable action. Mr. Shams says although this money does not cover his entire treatment expenses it is very much appreciated.

Media Watch appreciates this initiative taken by journalists especially in Herat Province. This action demonstrates journalists' unity – what journalists need more than anything else.

If journalists are united, they can serve the country better and disseminate important matters that they can't disseminate individually.

It is worth mentioning that Nai Supporting Open Media in Afghanistan also contributed 10,000 AFN to the mentioned journalist.

### **The First Issue of Seemurgh Literary and Arts Weekly Printed**

The first issue of Seemurgh Weekly, which is a literary/artistic publication, was printed in Kabul on 21 January 2012 in four pages, all inclusive of literary and artistic topics.

Mahmood Jahfari, Editor-in-Chief of Seemurgh Weekly, described the purpose of establishing this weekly as a response to the requests of the literary figures and artists for a bridge connecting the literary scene and artists in Afghanistan.

According to the editor-in-chief, this weekly will not normally publish political and news items; however, if there will be a connection between art and politics, it will not deny publishing such topics.

According to the chief editor, Seemurgh Weekly is funded by volunteer donations.

Media Watch supports the establishment of Seemurgh Weekly and considers it a valuable step towards media development in the country.

The democratic values of a society can be strengthened when plurality of media is in place and each class of the society has their own media outlets. Just as people hold different opinions, they need different media outlets as well.

### **The First Issue of Tak Weekly Published**

The first issue of Tak Weekly was published with the motto “A weekly from the liberal generation”, in eight pages in Kabul on 4 January 2012.

Chief Editor of Tak Weekly Yasin Khamosh told Media Watch in an interview that their publication will not be dependent on any party.

According to Mr. Khamosh, Tak Weekly will be publishing in eight pages and will be reflecting the pain and miseries of all Afghans with a focus on reform in different perspectives.

The Chief Editor adds that the cover page will contain pictures, table of contents and current local and international affairs in addition to news.

Page two will be dedicated to political topics, page three will have international topics, page four will be called ‘the society’ and the rest of the pages will contain the remainder of topics from previous pages.

Mr. Khamosh says they will try to address the entire Afghan nation so that Tak Weekly ultimately finds a broad reader-base in the country.

Tak Weekly joins the Afghan print media family at a time when more than 70 weeklies and tens of dailies and other publications are already functioning. Some of these publications are on hold due to lack of funding, low literacy level of the people and lack of public interest in newspaper reading coupled with security challenges.

Media Watch hopes Tak Weekly will overcome the existing challenges and shine in the sky of Afghan media.

### **Afghan Mass Media Law Analysis**

#### **Article 45:**

Production, reproduction, printing and publishing of the following reports and material in mass media, and agencies mentioned in article (27) of this law are not permissible:

1. Works and materials that are contrary to the principles and provisions of the holy religion of Islam.
2. Works and materials which are offensive to other religions and sects.
3. Works and materials which are defamatory, insulting and offensive to the real or legal persons.
4. Works and materials which are considered libelous/defamatory to real and legal persons, and cause damage to their personality and credibility.
5. Works and materials which are contrary to the Constitution and are considered crime by the Penal Code.
6. Publicizing and dissemination (promoting) of religions other than the holy religion of Islam.
7. Disclosure of identity and broadcasting of pictures of the victims of violence and rape in a way to damage their social dignity.
8. Works and material that harm psychological security and moral wellbeing of people, especially children and adolescent.

### **Analysis:**

Among the elements of press freedom is identification and determination of media crimes. In other words, the Media Law should clearly list the works and materials that are considered crimes and which are supposed to be avoided by media. This enables media to organize their activities accordingly and avoid crossing the line. Also, by legal standards it is a requirement that media crimes should be mentioned clearly and precisely in Media Law.

The above article draws the line which should not be crossed by media outlets and organizations mentioned in article 27.

Paragraph 1 of this article touches upon the ban on publishing/broadcasting of works and materials that are contrary to the principles and provisions of the holy religion of Islam, or commission of apostasy by media outlets. The word 'provision' seems redundant in this article because numerous provisions are available in regard to any topic based on Fatwas and individual legal reasoning by Islamic jurists. Moreover, the debate of 'provisions' in Islamic law is a marginal matter. It might be sufficient just to say since Afghanistan is an Islamic country, works and materials that are contrary to the general principles of Islam, and which are banned unanimously by all Islamic jurists, should be avoided.

Paragraph 2 speaks about the impermissibility of works and materials which are offensive to other religions and sects. It is worth mentioning that paragraph 1 also applies to the provision of paragraph 2 because Islam orders its followers to show respect for other religions and sects and that they should not be affronted. Also, article 20 of the International Convention on Civil and Political Rights prohibits any incitation of animosity against or insulting of other religions. However, here a distinction should be made between insult and criticism.

Paragraphs 3 and 4 prohibit the crimes of defamation and insulting each of which has its own criminal characteristics and particular elements. However, there is no such crime as defamation and insult in the Afghan Penal Code; rather, these two crimes are rephrased as Qazaf and Dashnam (defamation and abuse respectively) in that law. Paragraph 3 uses the terms defamatory, insulting and offensive. Here the terms 'defamatory' and 'offensive' are redundant because the term 'insulting' is more commonly used and covers the meaning of both mentioned terms. Paragraph 4 mentions defamation. It seems that the legislator has not provided a correct and professional definition for 'defamation'. From a legal standpoint, the term 'defamation' is defined as "...attribution of a certain incidence to someone else by one of the "public" means, such that if it were true, the accused would have been punished."

Paragraph 6 prohibits production, reproduction, printing and publishing of works and materials which are contrary to the Constitution and are considered a crime by the Penal Code. Here the legislator has tried to make his job easy by refraining from specifying and determining the limits of media crimes in this law. Although, the Penal Code has been enacted when a totalitarian regime was ruling over the country, the legislator has linked the condition 'contrary to Constitution' with the condition 'contrary to Penal Code' with the conjunction "and" to consider them as the two necessary preconditions for a work or material to be regarded as a crime but they have not taken into consideration the fact that this paragraph can be misused against media outlets. Therefore, it is necessary that all prohibited works and materials should be clearly listed in the Media Law, and not be referenced to other laws.

Paragraph 6 is, indeed, the explanation of paragraph 1 in different words because publicizing and promoting of religions other than the holy religion of Islam is against the provisions of Islam, thus this paragraph is redundant.

Paragraph 7 prohibits disclosure of identity and broadcasting of pictures of the victims of violence and rape in a way to damage their social dignity. This paragraph is on par with international laws. Individual's privacy should be considered in such cases as mentioned in paragraph 7 to avoid its negative consequences.

Paragraph 8 stipulates that works and material that harm psychological security and moral wellbeing of people, especially children and adolescent are prohibited. In this paragraph, the legislator has tried to prevent media and other organizations mentioned in article 27, from broadcasting/publishing of unethical and obscene pictures and videos but they have failed to write it down professionally and have used the phrase 'psychological security'. This phrase has no definition in Afghan laws and is therefore open for misinterpretations. Therefore, this phrase should be omitted from this paragraph.

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To obtain a soft copy of the report, please visit the following link: <http://www.nai.org.af/Mediawatch.htm>

### ***Note:***

1. *To maintain confidentiality and to protect sources it was not possible for Nai Supporting Open Media in Afghanistan to corroborate the incidents by carrying out additional investigations.*
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