

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:

The Mass Media Law was signed into law in 2009, but some articles of the law have yet to be implemented. One section of the law that still needs to be implemented calls for the Ministry of Information and Culture (MoIC) to establish the Mass Media Commission.

Additionally, two members from the journalists' society for the High Council of Media have been appointed by the Minister of Information and Culture. This is illegal according to the Mass Media Law, which call for members of the High Council of Media to be elected through transparent elections.

The Oversight Commission on Media Violations, which was established based on an old version of the media law, is still in place. Because the commission follows the orders and instructions of the Minister of Information and Culture, he refuses to dissolve the commission.

Many sources have expressed concerns to Media Watch about the Minister of Information and Culture's failure to fully implement the Mass Media Law and his limited knowledge of freedom of expression.

It appears as if the MoIC believes that if the Mass Media Commission is established, the Minister's powers over the media will be decreased.

Society can be considered democratic when every citizen has the right for freedom of opinion and expression.

On the other hand, lack of understanding from media violation and assessment of its cases in unprofessional way have caused that a number of these cases to be referred to the judicial and justice institutions and finally have put the journalists into serious challenges.

MoIC is assigned to support freedom of expression and the media, however it is not assigned to censor or limit media activities; but contrary to the context of law, MoIC is going on the road of autarchy, censorship, and illegitimately extending its influence over media.

Considering the current situation in the country, increasing limitation on media is more likely. Current pre-election atmosphere, increasing insecurity in the country and lack of enough support from MoIC, put the media activities into more troubles across the country.

Recent suggestions by the Afghan Ulama council to President Karzai about restricting media activities and its approval by the Afghan cabinet have intensified concerns of journalists and media stakeholders in Afghanistan. Minister Rahin's failure to counter this increasing censorship of the media is a big concern to journalists who see more serious challenges headed their way ahead of the 2014 elections and other key events. Minister Rahin needs to be a strong advocate for freedom of expression and media freedom.

However, he has sided with conservative members of Afghan society, parliament, and government in trying to pressure and silence Afghanistan's independent media.

Afghan journalists have been working hard to fight back. Battling against such confining efforts have been posing by the Afghan government is of key responsibilities of the journalists. Organizing elections to include two members from Afghan journalists' society by the Journalists' federation and its sector institutions have created hopes. The move has made the journalists united and shows that they will have the ability to pressure the state to follow the Constitution and Afghan Mass Media Law and not create their own rules. Thus, it can somehow secure the position of the journalists; but when the Minister of IC refuses the result of the election, this can reflect that he does not want the Media High Council and the Mass Media Commission to be established based on law.

Establishing and improving coordination among media institution can create strong positions for the protection of freedom of expression. This will make those people unsuccessful who will intend to destroy this resistance barrier.

We believe that the first thing is to implement and follow the media law and this is one of the very first missions of the MoIC's minister.

Considering the fact that only few months of the current government's term is remained, at least something that can be done is to establish legal basis and then in the next government, efforts should be put to protect the sphere of the freedom of expression off the daily changes and governments could not limit this value or to dare to remove it.

1. **A journalist is beaten by the national security officers in Baghlan province**
2. **A cameraman is injured during a terroristic attack in Kabul province**
3. **A member of lower house has announced Jihad against the Media**
4. **Kandahar’s police traffic have violently treated Radio Keleed’s staff**
5. **Medias have rejected the decision made by the illegal commission monitoring media violation**
6. **Electing two persons from media and journalists’ society for the representation in the High Council of Media**
7. **Introducing two elected journalists for the High Council of Media**

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1. **A journalist is beaten by the national security officers in Baghlan province**

Ajmal Umari, a journalist working for the private Tanweer TV station in Pul-e-Khumri city of Baghlan province says that he had been beaten by security personnel while he wanted to enter into the hospital and interview a student who was also beaten by the security officers.

“First, the security officers have asked me not to report on the case in which a student was beaten by the security personnel, but when I ignored their initial notice and entered to the hospital and interviewed the student, they attacked me with gun’s rod, beaten me and took away my camera with them”. Mr. Umari told Media Watch during an interview.

Taveer TV’s journalist in response to a question that why the security officers did not want to cover the story said: “An officer and a soldier of National Security Forces wanted to hide the case in which a student was beaten by the national security forces of Baghlan province, as they thought it will defame the popularity of the National Security Department in this province”.

“Security forces have beaten our journalist with barrel of gun and wanted to take him forcedly to their office”, Sher Mohammad Jahish, the director of Tanweer TV station said Media Watch.

Meanwhile, Dr. Mohammad Faisal Sami, member of provincial council in Baghlan province told in an interview with MW that the case of Mr. Umari’s beating who is reporting for a private TV station of Tanveer is a misunderstanding. He added that they investigated the case.

Mr. Faisal said: They have solved the dispute in traditional way and there is not any problem now. Media Watch of Nai office condemns the beating of a journalist working for Tanveer private TV station in Baghlan province and it considers the event as in illegal act.

Security institutions and their personnel need to understand the mission and responsibilities of journalists and media workers. They can not keep journalists from doing their job to reflect the truth.

Beating a school student by a national security staff was a mistake for which a journalist, who wanted to cover the incident, was also beaten. Security personnel put efforts to prevent the broadcast and publish of this news story, which is an illegal act.

Media Watch at Nai office supporting open media in Afghanistan asks security officials in the country to prosecute those involved in the case and uphold justice. They should not allow quiting the voice of people in this province and a free and open space exists for media or become the victims of autarchy and waywardness.

2. A journalist of TOLO TV has been injured in a terrorist attack in Kabul province

Farhad Safi, who works as a reporter and heads Pashto news service of TOLO TV has been seriously injured in the attack targeted Mohammad Moheqiq, leader of the Wahdat Islami political party and member of lower house in Afghan parliament.

The attack happened on 28 of Jawza 1392 near the office of the Independent Commission of Human Rights (HRIC) and it targeted Haji Mohammad Mohaqeq who is member of the lower house, but Farhad Safi also was among the injured persons.

“When I was crossing off the HRIC office and intended to go to my office, an explosion took place. I lost consciousness and when I opened my eyes, I found myself in the hospital,” Farhad Safi told Media Watch of Nai office.

Mr. Safi was very pleased about the support he received from his colleague of TOLO TV and mentioned that his colleagues have visited him many times and showed their readiness for any kind of support and assistance for his treatment.

Meanwhile, Lutfullah Najafi Zada, an official of TOLO TV told MW: Their reporter has been injured in an attack that happened on Pul-e-Surkh area of Kabul province. He emphasized that their efforts for Mr. Safi’s recovery will continue.

In this attack, 3 civilians have been killed and 30 other including Mr. Mohaqeq’s bodyguards have been injured.

During the recent years, a number of reporters and journalists have lost their lives due to terrorist attacks and roadside IEDs. Mr. Jafar Wafa in Laghman province and Mr. Hadi Hamdard in Helmand province have lost their lives due to roadside IEDs.

Taliban attacks have consistently taken lives of many innocent civilians in different parts of the country and journalists are also at risk. Attacks on governmental and non-governmental institutions, suicide attacks, roadside IEDs by Taliban have took lives of thousands of innocent citizens and it has also injured or killed journalists and reporters.

3. Declaring Jihad against the Media ignited serious reactions

After a member of lower house in the parliament declared Jihad against the media, received serious reactions in the house of representatives, from the journalists unions and Nai supporting open media in Afghanistan.

Abdul Satar Khawasi, representative of Parwan province in the lower house, on June 15th, told in the general session: “Against those media who violates Islamic and Cultural values of our people, we announce Jihad”.

After the Minister of Information and Culture called some programs and broadcastings of a number of media against “Islamic value and national interest”, Khawasi, declared Jihad against the media.

Said Makhodoom Rahin was called to present a meeting held on June 15th 2013 and answer to the questions of the representatives about the broadcastings of some media. “Insulting individuals and tribal leaders, airing TV series which are against the national interests and Islamic values and broadcasting naked pictures and videos in some of visual media outlets are considered media violations. Despite issuing warnings, these media continues such violations.” Mr. Rahin told the session.

Minister of Information and Culture, however, did not name any media but told; “paying no respect to human dignity, accusing noble persons and using impolite and insulting words will someday compel the nation to rise against the freedom of expression”.

Abdul Sattar Khawasi, member of the lower house criticized a number of Medias, approved Rahin's words and said: "broadcastings by a number of media organizations are against Islamic and national values and Jihad has to be launched against them".

Khawasi's declaration of Jihad against the media faced serious reactions from a number of representatives in the lower house.

Baktash Siawash, representative of Kabul province in the lower house who opposing Khawasi's words said: "If someone wants announce Jihad, parliament's door is open for them. (He means: They can freely walk out of the parliament doors and go to the mountains, hide there and begin Jihaad). No one can prevent others of conducting Jihad (He means, everyone has the right to conduct Jihaad, other people cannot prevent them of leading or conducting Jihaad against the government or any foreign forces). For example, Mullah Umar hides and lives in mountains, leads and conduct Jihaad from the mountains against the government and foreign forces. Any of our brothers (He means members of the parliament and anyone who works for Afghan government) don't have to misuse and take the benefit from speech freedom tribunes because the tribune is bought with foreign aid. The tribune is made for speech freedom; it is not made to motivate negative reactions. If any representative in the parliament announce Jihad and considers the Jihaad as an obligation against the current system, the money that such representative receive is illegal (haram) for them because this money is provided by the and for the current system". .

Meanwhile, Media Watch (MW) at Nai office considers such announcements misusing Jihad as a tool and it is injustice.

Seddiqullah Tawhidi, head of MW at Nai office supporting open media in Afghanistan, on Jawza 26 told a press conference: " Jihad is an Islamic value and this value should not be used as a tool. If such expressions continue, it will cause self-censorships among Afghan media and it will raise the concerns that the Afghan government, generally, would like to impose censorship which is against the constitution".

Tawhidi warned about the consequences of such expressions and told: "If any types of violence happened to the journalists and reporters, it reason would goes back to Mr. Khawasi's illegal and improper expressions".

Sediqullah Tawhidi added: “Minister of Information and Culture wants to create such an atmosphere among the representatives where he intends to change two articles of Mass Media Law and wants to continue with the current illegal commission which is in place to address media violations.

In this press conference, the head of MW at Nai office told the reporters: “Declaring Jihad against the Media and underestimating the dignity of media staff are obvious insult for this important field. Jihad declaration must be announced by a Mufti, not by a parliament member. If such expressions continue by government officials, it gradually brings censorships and limitations in media activities”. Meanwhile, Fahim Dashti, executive director of the National Union of Afghan Journalists also considered Khawasi’s expressions as an obvious contradiction with the enforced law in the country and told: “Any acts or expressions which are out of the Mass Media span, against the media, are not acceptable”.

A press release which was published by the National Union of Afghan Journalists (ANUJ) says: “National Union of Afghan Journalists announces that no one or no group can take any measures against the regulation of media affairs beyond legal orders of law”.

NUAJ added: “Most of media problems in the country have been created by the Minister of Information and Culture”.

The Union believes that the Minister of Information and Culture uses different tools and has not allowed the implementation of very important articles of the law of Mass Media.

Afghan government and the institutions advocates for open media in Afghanistan consider the freedom of expression as one of key achievements in Afghanistan during the past 12 years.

Although the Minister of Information and Culture has given a month deadline to prevent the activities of some media outlets which they think are airing “insulting broadcasts”, the interference in media activities and declaring Jihad against the media have already provoked concerns among newspaper writers and institutions supporting media in Afghanistan.

4. Traffic police officers have insulted and beaten Radio Kilid’s staff in Kandahar province

A vehicle while carrying staff of Radio Kilid in Kandahar province in the morning of June 10th was stopped by traffic police. After few words exchanged between them, the police officer started beating the

driver and insulting the passengers who were sitting in the vehicle. The vehicle was carrying staff of Radio Kilid including women to the Radio Kilid station in Kandahar city.

Nisar Ahmad Azaad, head of radio Kilid in Kandahar province, in a phone contact, considered the act of police illegal and told: The vehicle which was carrying radio Kilid's staff to the office, has was stopped in Chawk Madad area of Kandahar city by traffic police. The police asked the driver to give them vehicle and driving license but after verbal fight, they have beaten the driver and insulted all the passengers including women were sitting in the vehicle.

A day after the incident, media support institutions in Kandahar province had a press conference at NAI's field office in this province, called the act of police officer illegal, and asked the local authorities to investigate the incident and overhand the perpetrators to the law and justice.

Sami Gheratmal, head of Nai's field office in Kandahar province condemned the police officers' act and called it illegal.

In the press conference, which was held at Nai's field office of Kandahar province, Nisar Ahmad who is heading Radio Kilid station in Kandahar province also attended. He told the reporters: "He defends the rights of his staff who were insulted by the police and until the right of his driver and staff is not restored, he will not keep quit."

A number of reporters in this press conference complained about the lack of access to information and told some local officials in Kandahar province does not provide or make available the information journalists need and it has caused problems for the journalists and reporters in this province.

Jawid Faisal, spokesperson to Kandahar governor, told the reporters that they will follow the case of verbal and physical clash between Traffic Police and the driver and staff of Kilid radio station. He pointed out that one of the reasons for the opening of media center in Kandahar province is to address the problems of journalists and the reporters.

The spokesperson also ensured that they will talk to senior traffic police officials about this case.

This is not the first time that the journalists face violence on behalf of traffic police. In the recent case, a year ago, traffic police in Kabul province have beaten journalists but still those police officers have not been prosecuted or punished.

Media Watch at Nai office supporting open media in Afghanistan condemns the illegal act of the traffic police and requests that the officials at the Ministry of Interior to take action against any police personnel who break the law and abuse journalists. If police personnel stop a driver who does not have a driver's

license or proper car registration, the police officer does not have the right to insult and beat the driver. He is only authorized the right which has been given to him by the law..

Media Watch at Nai office also asks its media colleagues that in order to prevent the increase of violence and execution of law during travelling and using vehicles, try to obey the traffic rules because media staff and journalists are a pattern for other citizens.

. The illegal commission continues its illegal activities.

The illegal commission which overlooks media violations within the Ministry of Information and Cultures (MoIC) has stopped the broadcast of a Turkish TV series called Ifat, which is aired on the private Tolo TV station.

During the session held on Sunday June 23rd 2013 the religious and cultural commission of the Wolesi Jirga asked the Minister of culture and information to attend the session in order to provide more details about his failure to establish the mass media commission and also the issue of banning the broadcast of the Ifat series on TOLO TV station.

The head of the culture and religious commission of lower house in the Parliament Miss, Helia Irshad had called the Minister of Information and Culture (IC) to provide more details on this regard.

The Minister of IC, Dr. Rahin said: “After I was asked in general assembly to bring some changes in media in the country, I asked TOLO TV to stop broadcasting of the Turkish TV series called Ifat. In this TV series, there is an actress that despite having her legal husband, she is trying to have more relationships with other men. I ordered the ban exactly from June 22nd 2013, but the serial can be still seen on TV screens.”

Head of Media Watch (MW) at Nai supporting open media in Afghansitan, Sediqullah Tawhidi during this session said: these kinds of issues should be taken up by a Mass Media commission, which is part of the Mass Media Law. Since the Minters of Information and Culture refuses to establish the commission, TOLO TV can reject the decision.

In the letter which a copy has been received here in Nai indicated: “The commission addressing media complains and violations is illegal and out of executive power and authority.”

In the letter written by Tolo TV station states: The Tolo TV is committed to do any cooperation with honorable Ministry after the annihilation of the above mentioned commission within the Ministry.

The discussion over ban of a Turkish TV series “Ifat” started after the Minister of Culture and Information has been summoned by Wolesi Jirga and the Minister is now using the emotions of the MPs

who criticized some of the TV shows and called some of the shows are against cultural and religious values of Afghanistan.

In this session which had been held in lower house of the parliament, the Minister of Culture and Information has been given a month deadline to regulate the shows of the TVs and name those media who are ignoring the law and regulations

During the session, one of the MP members, Abdul Satar Khaawsi said: Media is misusing freedom of Expression. From his point of view, he has announced a holy war (Jihad) against media in the country and had named all the media outlets as gangsters. At the end of his speech he faced serious reactions by media.

Some responses by Afghan media organizations was that much of the entertainment programs being broadcast in Afghanistan are produced overseas and by foreign production groups. Afghan, private TV stations don't have the capabilities to produce programs in the country and the Ministry of Culture and information does not have a good policy over the issue. The Ministry does not help and support private TV stations in Producing Programs and fill the gaps and stop broadcasting Foreign produced programs in the country.

Afghani made serials and TV series have less viewers comparing with Indian and Turkish serials in the country.

The letter which has been written indicated," Tolo TV has organized its programs to broadcast based on the enforced law and regulations and based on that broadcast its programs, and has paid much respects to the existed law and values of Afghan society and continued broadcasting different programs like training, social, public awareness programs and played important role in growth of Youths talents in the country therefore the Tolo Tv as leading channel expected elites of culture and media to admire and praise the founders of the Tv channel despite of admiring the our Tv channel has received a letter asking to stop broadcasting a serial.

Nai officials have demanded that the supreme court to keep the Minister of Information and Culture from breaking the law and not allow more media to be the victims of few people revenges and beliefs within the Afghanistan system.

The media violence reviewing commission which is currently active within the Ministry of culture and Information has been established based on the law lunched on 2005. It still is active and works illegally.

The members of this commission is made of Governmental institutions, correspondents, supreme court members , Human rights commission and film workers. It is led by the ministry of culture and information.

But based on the mass media law, which has been enforced and approved on July 2009, the following commission must be established on purpose of monitoring over the media activities in the country. However, the Minister of culture and information denies and ignores establishing the committee and trying to use the illegal commission monitoring media violation in order to have more influence and control the media in entire the country kept it active and supports it.

6. Two correspondents elected the members of high media council.

Two correspondents have been selected as members of High media council during an election event held on June 8, 2013. A number of leaders from the media community and the Afghan government were present for meeting.

Five of the correspondents have been nominated for the positions (Hasmatullah Radfar, Nahid Nazari, Ikhpelwal Sapai, Abdullah zada Khinjani and Hakim Mukhtar) among those Abdullah Azada Khinjani the responsible of Private Channel 1 and deputy of safety of correspondents has gained 47 votes and Ikhpelwak sapai the shamashad Tv manager and head of free association of correspondents in Afghanistan has received 39 votes and selected as members of High media Council.

The executive chief of Afghanistan journalists National Union Fahim Dashti during the session said, "the High media council would meet its potential power that two selected members of Afghanistan correspondent society enter in the council."

According to article 41 of mass media law in Afghanistan, from 13 members of high media council 2 of them must be selected from" journalist society", in the article of this law has been written a policy has to be made for selecting the 2 members of and 2 representatives from civil society but the time and policy maker named was not declared.

For the last year the civil societies NGOs have been sending representatives to attend the high media council sessions and have selected and introduced their representatives. Despite these efforts only two members of the union are the members of High media Council.

All supportive institutions for correspondents following some steps have begun to select their representatives in order to achieve the memberships in High media council.

The head of Journalists Union Abdul Hameed Mubariz during the session said, "I m so happy for correspondents that they have selected their own representatives by their own decision independently in High media council based on media law in the country."

The session was held by the participation of Journalists federation which includes the Union National Journalists of Afghanistan, the National journalist and correspondents union, the Afghan Women journalist , the free Journalists of Afghanistan, Safma Afghanistan, Sum Afghanistan, the entire council of Afghanistan journalists , the defendant committee of Afghan Journalist, the safety of Afghanistan correspondents committee and NAI supporting free media in Afghanistan.

The deputy ministry of culture and information Mubariz Rahishidi who attended the session of selecting two correspondents as members in high media council said, " we are happy to see you beside us in Ministry of culture and information."

The selection process was monitored by 3 representatives from independent election commission after selection the process was called transparent and fair one.

After the Minister of culture and information attended Senate session with the presence of representatives for journalists federation promised he would provide facilities for having memberships as representative in selecting journalists in high media council, the supportive institutions sectors of correspondents during a transparent and fair election have selected two correspondents as the members of high media Council.

During past 3years and due to different reasons specially pretending made by the Ministry of culture and information none of the selecting representatives have achieved the memberships honors of high media council but instead the Minister have appointed two persons as representatives of journalist in the following council.

7- Two correspondents who have been honored the memberships of high media council have been officially introduced.

Two correspondents who have been honored the memberships of high media council have been officially introduced to High media Council during a fair and free election by the Journalist federation on June 11, 2013.

The journalist federation of Afghanistan during a session which had been held in NAI office for introducing the correspondents in High media council, have expressed concerns over the pressures over

the media and correspondents by some of the key officials workers in Government of Afghanistan demanded more unions among all local media and correspondents in the country.

In the session which had been held in Nai supporting free media in Afghanistan, a number media directors, well-known correspondents, independent correspondents and supportive institutions sectors attended the participants have supported the goals of Afghanistan Journalists federation by implementing the entire mass media law in the country.

In the session the head of National Afghanistan journalist union Abdul Hameed Mubariz , the former MP Daud Sultanzoy , the Writer Ahmad saiedi, Head of Safma Zia Bumia in Afghanistan, the head of media watch Sediqullah Tawhidi ,the executive head of Afghanistan National Journalist union Fahim Dashti, have talked about the obstacles that the Minister of culture and information have established over media progress and activities in the country have said, that the two correspondents who had been selected as representatives in media society in the country have been officially selected and introduced to high media council.

The executive chief of National Journalist of Afghanistan in the session said,” the policy that we have followed for selecting members of federation was used by civil society in the past already and since one and half year the civil society members have been selected through the same policy and have received the honor memberships of high media council,”Mr. Dashti added that apparently it seems that the selection we have made is not being accepted by the ministry of culture and information.

Also the responsible in Afghanistan journalist federation have said, Ulema council, some key conservatives workers in National Council, Minister of culture and information trying to limit freedom of speech in the country.

Fahim Dashti added, the following groups are trying to divert the freedom of speech and said,” they say that we have to define freedom of speech the concept is as follows, media which are working right now as free will not be able to work no more.”

The executive chief of Afghanistan national Journalist union once again called illegal and against mass media law the existence of media violation and complains commission and said, that the current commission with its measurements trying to cause some challenges for free media activities in the country.

The head of Afghanistan National Journalist union Abdul Hameed Mubariz said,” the Minister of culture and Information wants control media and be the leader what we want is to cut off the hands of Government and its representatives over the media in the country.

The Safma head Zia Bumia was talking about the breaking of the law by the Minister of Culture and information said, the continuation of commission called media violation evaluation is illegal.

Meanwhile a number of correspondents in Herat and Kandahar have also supported the implementation of the Mass Media law and supported the selection of the two correspondents as their representatives in High media Council and it intended that other provincial correspondents would support the implementation of law.

The Regional representative for Nai office Abdul Sami Ghairatmal during a gathering with a number of correspondents in order to support the two selection of correspondents as the members of High media council has said, the Provincial correspondents in Kandahar have confirmed the selection of the two correspondents as members of the High media council

It must be mentioned that the Ministry of culture and information did not accept the two correspondents who have been through a transparent and fair election process held by the Afghanistan Journalist federation and on 30,05,2013 the Ministry of culture and information have held an show –off election and appointed and introduced two governmental workers as the members of high media council.

Amanullah Jahanyar is currently working as work permission letter manager and Farzana Habibi is the head of Journalism Academy of Sciences has been introduced by the Minister of culture and information to High media council as members.

The introduction of the Minister comes after Miss Farzana Habibi earlier has had the memberships of high media council who had been introduced by the Ministry of culture and information.

The two persons who has been introduced to High media council as members by the Ministry practically are not involved with media activities such as correspondents and at the same time they are governmental workers also which is against the policy of mass media law and could not be playing being representatives for a media society where most of them are private ones NAI demanded legally the Minister culture and information to pay respect for legal demands of correspondents and doesn't have the right to ignore the mass media law.

Mass Media Law analyses

Article 5

Everyone has the right to have access and receive the information.

Based on citizens' request, government give the citizens access to information unless the requested information is confidential and its revelation could jeopardize national security and interest and territorial sovereignty and/or impair other individuals' rights.

Analysis

Right of access to information and information openness are key elements for speech freedom. It is a right of human. Some people say open information is oxygen for democracy. Open information and citizens' access to information in some organizations can be available for all; however in some other organizations it cannot be available for all.¹

Right of access to information has extraordinary importance while promoting democracy, strengthening transparent governance and eradicating administrative corruption.

Article 5 of mass media law is stipulated based on article 50 of the Afghan constitution, and by observing the text of article 19 of the Convention on Civil and Political Rights and Universal Declaration of Human Rights. These instruments guarantee the freedom to search and seek for information.

In Afghanistan, there is no law or any established mechanism to ensure the right of access to information for its people.

Article 50 in Afghan constitution guarantees the right of access to information for its citizens. The words "Afghan citizens" is mentioned there. So it linked this right exclusively to Afghans citizens, not to foreign citizens. But Mass media law used the word "everyone" which is more comprehensive than that used by Afghan constitution. This article of Afghan constitution says that the government provides information based on the request from its citizens. To provide information based on the request of the citizens is contrary to the established international principals on freedom of access to information. Additionally, there is another principle which says that the government is not the owner of information; rather it is the trustee for information.

Concerning the right of access to information, there are only two exceptions in the Afghan constitution; which are: **other people's rights and National Security**. Unfortunately, no legal definition is stated for these two exceptions. These exceptions have to be clearly stipulated in the laws. These words are very general and require further interpretations. Furthermore, legislators have not provided any definitions as

well as confidential secrets are not determined yet. No law yet has been drafted for governmental secrets and personal privacy. And a law that could regulate and shape freedom of information is not in place yet. Based on article 50 of Mass Media Law, foreign citizens have no access to this right. Afghan government has to develop specific mechanisms to allow access to information for foreign citizens so that their human rights not to be negated.

According to this law, when a person asks the government administrations for information but the concerned administration does not provide, the capital law or mass media law have not predicated any penalty or punishment. This article (50) does not have enough executive warranty.

Note to mention that the word “Everyone” used in Mass Media Law includes real persons and entities. In addition, it is not limited to residents of a territory; it means the article stipulates that foreign citizens can also request information. However, Afghan constitution confined it to Afghan citizens which shows a clear contradict between this and Mass Media Law. From legal perspective, if any contradicts happen between the constitution and ordinary laws, then of course preference is given to the constitution. In this case, we discuss right of access to information within mass media law; and Afghan constitution is more undemocratic and restrictive.

Internet’s presence is undeniable. Internet is far different of traditional media; using and access to internet, nowadays, is recognized as a human right. This article does not include the right of access to information via internet. There is not explicit statute relating to the right of access to information via the internet.

Attention!

All journalists and media organizations are hereby notified that Mr. Mohammad Qasem Rahmani works with the Media Watch in the capacity of Media Lawyer. Those journalists and/or media outlets that face legal issues in connection with their media related and journalistic activities, or need consultation on performing such activities, may contact him by phone at **0799 830 905** or via email at: m.qasim@nai.org.af.

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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:

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