

Nai Supporting Open Media in Afghanistan



نای حمایت کننده رسانه های آزاد در افغانستان  
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# **MEDIA WATCH REPORT**

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## **Preamble:**

The Afghan Ulema Council has been criticizing the programming of some of the private TV stations in Afghanistan for several years now, but in most cases these reactions have not been based on media laws and so they have not properly investigated or addressed.

Recently, the Afghan Ulema Council published a declaration calling on the Afghan government to shutdown a private TV station and a newspaper for unspecified reasons.

Although this problem was resolved through legal channels, this situation continues to raise concerns that the government of Afghanistan through the Ulema Council is taking action to bring about the first change in Afghan media in order to appease the Taliban and to encourage them to accept the Government's peace-call.

This declaration is a serious warning for all media in the country because it calls on media outlets to avoid criticizing neighboring countries and those in the Islamic world.

This comes at a time when, to the contrary, the Afghan Constitution and Media Laws guarantee journalists' right to report on and feature any matter they wish to investigate or report on. There are no restrictions envisaged or stipulated by this law. Therefore, such declarations are totally against the law, and the media should not be bound to illegal instruction in this matter.

The main problem is that, by making this statement, the Ulema Council has demonstrated that it serves the interests of neighboring countries, especially Iran and Pakistan. These two countries have been involved in the internal affairs of Afghanistan for 30 years now, and the people of Afghanistan believe strongly that the leaders of those countries consistently strive to sabotage the interests of Afghans.

The majority of media houses assert that the government is now trying to pave the way for changes to the media as part of its peace and reconciliation efforts with the Taliban. There is currently enough evidence to believe that such a deal has already been struck and that the Afghan government is negotiating along these lines.

One of the major achievements of the last ten years is the vast presence of media in Afghanistan. If this achievement is sold off, once again the obscured face of despotism will emerge.

Meanwhile, the international community also seems to be less interested in this issue. Rather, it is focusing on "transition" and pulling troops out of Afghanistan. Therefore, it is now the responsibility of journalists to defend human rights values and the fundamental right to freedom of expression.

Afghan media and journalists should not remain silent about the imposition of limitations or censorship on the media. There is a real threat that if today the government or other authority puts a demand that media programs adhere to the discretion of a specific group, it is likely that tomorrow they will order that the news be prepared in favor one or other party or that media are not allowed to criticize state officials.

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### **Afghan Ulema Council Calls for the closure of Tolo TV and 8amDaily**

The Afghan Ulema Council, in its meeting on June 1<sup>st</sup> 2011, criticized the programs of some of the independent media in Afghanistan and called for the closure of *Tolo TV* and *8amDaily*. Part of the declaration issued by the Council reads: "Over the last few years the Afghan Ulema Council has frequently warned about anti-religious and anti-national interests that also prevent national



unity on programs of a number of print and electronic media, especially *Tolo TV*, but no responsible authorities have taken any measures in relation to this matter."

The declaration also criticizes *8am Daily* newspaper, saying "Unfortunately, *8am Daily* in page 3 of its issue number 166 dated May 30<sup>th</sup> 2011, has quoted a human rights activist expressing concerns over the enhancement of religious education for girls and women in Northern Afghanistan which he has considered as a factor for increased social violence and a danger for the security of the country. Expressing its due support for expansion of Islamic education for women and girls, the Afghan Ulema Council condemns this affront in the strongest possible terms and considers it as a sign of animosity against Islam and calls upon the concerned authorities to shutdown this newspaper and prosecute those who have affronted Islam."

Chief Editor of *8am Daily*, Sanjar Suhail, however, dismisses the Ulema Council's claims about the newspaper and says that it is the mandate of *8am* to report with consideration to fairness and balance, whatever happens in the country.

SanjarSuhail added that *8am Daily* prepared a report from a press conference which was also covered by several other media outlets. He assumes that there are certain individuals behind this, who do not dare to confront *8am* directly and so they try to shut it down.

The declaration of the AfghanUlema Council also criticizes *Tolo TV*. It reads: “Recently, the programming of this alien-dependent TV station, which has launched a big campaign funded by the enemies of Islam in order to destroy Islamic thoughts and deviate the young generation, is seriously threatening the borders of our belief and our Islamic and national culture; therefore, the continuation of its programming is not tolerable in any way. We call on the President, with due emphasis and for the last time and say that if he does not close down *Tolo TV*, the Ulema Council will not remain indifferent against the anti-religious and misleading programs of *Tolo TV* and a number of other TV stations that have similar programs.”

After the issuance of the above declaration by the AfghanUlema Council, the Media Violations and Complaints Assessment Commission called an emergency meeting and discussed the issue.

WaheedullahGharwal, member of the Media Violations and Complaints Assessment Commission says that “after discussion and consultation, the members of the Commission decided that *Tolo TV* should stop broadcasting the Turkish TV drama called ‘Forbidden Love’.”

WaheedullahGharwal responded to the declaration of the Afghan Ulema Council about *8amDaily*, saying that “the article published in *8am* and criticized by the Ulema Council was reviewed and discussed in the meeting of the Commission which was also attended by representatives of *8am*. In the end the Commission reached the conclusion that *8am*’s purpose in publishing the article was to call the attention of the concerned officials especially the Ministry of Education to the issue religious education in the northern provinces. Thus, the Media Violations and Complaints Assessment Commission concluded that *8am* has not committed any violation.”

*Tolo TV* and *8am* outlets appreciate the action and decisions of Media Violations and Complaints Assessment Commission and consider it a rightful and timely decision.

Mohammad SeddiqAhmadzada, Chief Editor of *Tolo TV*, who was also summoned to the hearing of the Media Violations and Complaints Assessment Commission, said that as per the advice of the Commission, they will stop the Turkish drama ‘Forbidden Love’ at their earliest ability.

Also, SanjarSuhail, Editor-in-Chief of *8am* considered the decision of the Media Violations and Complaints Assessment Commission a reasonable outcome.

But in answer to the question whether the Ulema Council can interfere in the affairs of media from a legal point of view or not, Dr. Mohammad TaherHashimi professor of law faculty of Kabul University said that “the Ulema Council does not have the authority to issue orders for closure of media outlets. The offending media outlet can only be closed down after a final decision of the court is pronounced.”

Dr.Hashimi says that in Afghanistan, decisions are usually taken in a hurry. He commented that the Ulema Council should point out the violations of the media outlet so that Media Violations and Complaints Assessment Commission can assess the violations and take action accordingly.

Afghanistan’s open and independent media are put under pressure by government agencies and other different entities from time to time. Recently, the Ministry of Hajj and Islamic Affairs also tried to interfere in the affairs of the media and make things difficult for them, but it was met with a strong reaction from journalism advocacy organizations and journalists’ unions.

This is not the first time the AfghanUlema Council has tried to challenge freedom of expression and impose limitations on the work of the media in Afghanistan. This council has also tried several times in the past to convince the government to impose limitations on freedom of

expression and democracy in the country. It is said that most of the members of the Afghan Ulema Council do not believe in freedom of expression and press freedom in Afghanistan.

The Media Watch calls on entities that try to damage freedom of expression and media in Afghanistan to refrain from performing such illegal acts and interfering in the media's affairs. As stated in the Afghan Mass Media Law, when a media outlet commits a violation, the issue is addressed by Media Violations and Complaints Assessment Commission. Except for authorized courts, no other institutions, whether governmental or non-governmental, have the right to interfere in the activities of media or issue orders to close down a media outlet.

### **Reporter of Pajhwok Afghan News Detained in Zabul Province for Three Days**

On June 1<sup>st</sup> 2011, a reporter with *Pajhwok Afghan News*, Besmillah Pashtoonmal was arrested by direct order of the head of appeals prosecutor's office, Abdul Nabi Hamkar. He remained in custody for three days before he was released on bail.

Zabul local authorities said Mr. Pashtoonmal was detained on charges of sending news to *Pajhwok* about the sacking of Mr. Hamkar which was then published on *Pajhwok* website. The news quoted a source from Zabul prosecution department, saying that the head of appeals prosecutor's office was sacked pursuant to public complaints and on charges of administrative corruption. This news infuriated Mr. Hamkar who subsequently imprisoned the reporter.



In a telephone conversation, Besmillah Pashtoonmal explained the story to Media Watch as follows. "Two days after publishing the news on the sacking of the head of appeals prosecution office of Zabul, I learned that he was not sacked. He summoned me to the prosecution office and detained me for three days and two nights."

Objecting to his detention as illegal, Mr. Pashtoonmal told Media Watch that he was "kept in the same cell with criminals and Taliban who were in the prison." He says although he was not mistreated inside the prison, prior to being sent to the prison the prosecutor performed a full interrogation of him.

He said that "the prosecutor filled 15 pages while interrogating me. He asked me questions like who had ordered me to publish this report; what was my aim behind this act and many more questions."

Media Watch tried to contact Zabul Province Prosecution Department regarding this issue but neither the prosecutor in question nor any other officer of that province agreed to speak about the incident.

One of local officials in Zabul province, on condition of anonymity, told the Media Watch that "Zabul local officials tried their best to convince Abdul Nabi Hamkar to act in accordance with law and release Mr. Pashtoonmal, but their efforts failed."

Besmillah Pashtoonmal regarded his detainment by Zabul prosecution office as an action aimed at imposing limitations on press freedom and added that such behavior would have a negative impact on the work of journalists in this province who are already facing numerous problems including threats from the Taliban and armed anti-government forces.

Editor-in-Chief of *Rah-e-Ayenda Weekly*, Dastgir Hujhabr attributed the arrest of Besmillah Pashtoonmal to the personal sense of retaliation of the prosecutor and also asserted that the journalist in question has not considered accuracy when reporting on the sacking of the prosecutor.

Mr. Hujhabr adds: “This act of the prosecutor of Zabul province shows that local officials not only do not observe the laws, but also impose their own will on citizens.”

After hearing about arrest of Mr. Pashtoonmal, the manager of Media Watch contacted the Minister of Information and Culture, Sayed Makhdoom Raheen and requested he take action on this matter. The Minister subsequently contacted Attorney General, Mohammad Ishaq Alko and called on him to give instructions for the release of Besmillah Pashtoonmal. Finally, as a result of this follow up, Besmillah Pashtoonmal was released from detention after three days and two nights.

Officials at Attorney General’s Office also refused to speak about his issue.

The arrest of Besmillah Pashtoonmal by officials of Zabul province comes at a time when journalists and reporters of south-western provinces are seriously concerned about insecurity and the challenges ahead of them, and local officials also add to their problems from time to time. Currently, at least one journalist has left Helmand and is currently living in Kabul following receiving threats from Taliban and powerful individuals. Moreover, there are other journalists in south-western provinces who are sitting at home and are not able to pursue their profession due to threats from the Taliban and powerful individuals.

The Media Watch considers illegal the reaction of the head of appellate prosecutor office of Zabul province against Besmillah Pashtoonmal the reporter of Pajhwok Afghan News, and the continuation of such behavior as an obvious animosity against media and freedom of expression. We hope that government officials will not exceed their authorities and will not resort to such illegal detentions in the future.

### **Reporter and Cameraman of I TV Beaten by Medicine Seller**

Naheed Nazari, a reporter and Mohammad Ismaeel, cameraman with *I TV* were insulted and beaten by a medicine seller in Kabul when they were producing a report on prices of medicine in Kabul city pharmacies.

A delegation was appointed by the Ministry of Public Health to assess the prices and quality of medicines in pharmacies of Kabul city. A team of reporters from *I TV*, who were producing a report on this story, were beaten by a medicine seller from one of the pharmacies of Kabul city and their camera was broken.

Naheed Nazari explains how they were affronted and beaten: “My colleague Mohammad Ismaeel and I wanted to produce a report on prices of medicines in Kabul city for which a delegation was also assigned by the Ministry of Public Health. But a medicine seller whose pharmacy is located in the Shar-e-Naw area of Kabul city affronted and physically assaulted us.”

Ms. Naheed says that after this incident they called the police and pointed out the pharmacy and the person.

Naheed says that after the incident she received several phone calls in which she was threatened and requested to forgive the medicine seller.

Naheed says that the delegation from Ministry of Public Health found several pharmacies selling medicines at expensive prices. The pharmacy where they were beaten was one of them.

However, the medicine seller who had physically assaulted the journalists and the delegation of Ministry of Public Health was released from detention by guarantor after a few days. His case is still being investigated by the prosecution department of the eastern zone of Kabul.

The head of this prosecution office, Mohammad Iqbal Baydar told Media Watch: “Ms. Naheed Nazari forgave the medicine seller and he was freed by guarantor but his case is still under investigation.”

Naheed Nazari also confirmed this.

Media Watch considers violent behavior with journalists illegal and condemns it. Meanwhile, it calls upon the judicial sector to punish the offender in accordance with Afghan law so that others learn a lesson and do not dare to attack or affront a journalist in the future.

Journalists are also advised not to refrain from exercising their rights on such occasions. Forgiveness is a rightful decision but not punishing the offenders may make them more courageous.

### **Reporter of Deutsche Welle Radio Assaulted by Traffic Police**

Sayed Amin Behrad, reporter from the German *Deutsche Welle Radio* claims to have been threatened and physically assaulted by traffic police in Kabul city on June 16<sup>th</sup> 2011.

Although Mr. Behrad admits his traffic violation, he asserts that a breach of traffic law should not be punished by physical attack.

Sayed Amin Behrad says: “Because of an emergency, I drove some 30 meters at the opposite direction in a one way road. A traffic police officer stopped me and wanted me to pay him money. I told him that he could only fine me in accordance

with law by issuing me the fine slip. But our argument became inflamed and the traffic police officer started using abusive language against me and hitting me. During the physical assault, they took 2,000 AFN from my pocket and returned my vehicle registration documents.”

The *Deutsche Welle Radio* reporter added: “When I displayed my journalist ID, they became even more furious. They threw my journalist ID away and continued hitting me.”

General Nooruddin, head of traffic police in the Ministry of Interior, in a phone call dismissed the claim of physical assault by the traffic police and asserted that the journalist had violated the traffic law by driving in the opposite direction on a one-way road. The traffic police fined him which provoked the journalists’ anger.

This is not the first time that journalists have been physically assaulted by traffic police. Prior to this incident, a reporter of *Aina TV* was also beaten by traffic police in Kabul city. At that time, the Ministry of the Interior promised to launch an investigation but the results of the investigation were never announced.

Media Watch considers it illegal for traffic police to physically assault a journalist and calls on government officials to punish the offenders in accordance with Afghan law. Lack of incentive and punishment culture in Afghanistan has resulted in an increase in violations of law.



At the same time, Media Watch encourages all journalists and media activists to observe the common law because working as a journalist does not provide any exemption from legal obligations as an ordinary citizen. In other words, no journalist is above the law.

### **Commemoration of the Third Anniversary of Abdul Samad Rohani's murder**

The third anniversary of the death of *BBC* reporter Abdul Samad Rohani was commemorated on June 8<sup>th</sup> 2011, in his home town Lashkargah, the capital of Helmand province.

A large number of journalists joined Rohani's family members, senior government officials and elites of Helmand province to attend the ceremony. Once again they expressed the need for the government to identify and punish those involved in Rohani's murder.

Aqa Mohammad Qoraishi, who is one of the members of the Helmand Youth Cultural Association and wants Mr. Rohani's murderers arrested, criticized some of the government officials.

"We had this request three years back and we repeat it today", he said. "The request is 'please arrest and punish Mr. Rohani's murderers. Our demand does not address Helmand officials alone. Rather, it addresses all government officials of Afghanistan as well as the international community because they are responsible for finding Mr. Rohani's murderers.'"

The Governor of Helmand, Mohammad Gulab Mangal vowed to make further efforts to arrest the murderers, but he also criticized some of the security officials of Helmand province for lack of cooperation with the Governor's office on the matter and said that they had failed to arrest those who killed Mr. Rohani.

The Governor said that he "would like to make this very clear that arresting the murderers of Mr. Rohani is the job of National Directorate of Security's Crime Investigation Branch and the police who should have given me information in this regard, have never shared any information with me in this regard."

However, Hazrat Mohammad Rohani, brother of the martyred Abdul Samad Rohani says he does not believe in the promises of government officials to arrest the his brother's murders.

He says: "My patience has ended now and I have zero expectation that this government will arrest the murderers of my brother. If I say again today that my brother's murderers should be arrested, it would only be repetitive and nothing more."

"Three years back, this governor (Mohammad Gulab Mangal) set up a commission to identify and arrest the murderers of Abdul Samad Rohani and assured us that the murderers will be punished but nothing has been done so far."

Abdul Samad Rohani, who simultaneously worked for several local and international media outlets, was abducted by unidentified individuals from the capital of Helmand province on June 7<sup>th</sup> 2008 and his dead body with three gunshot wounds was later found at a graveyard in Bolan area close to Lashkargah city. Mr. Rohani's murder became the hot topic among media circles at





the time. Ever since, journalist support organizations including Media Watch along with media outlets have called for the identifying and punishing of the perpetrators of this brutal crime. Meanwhile, journalists continue to face numerous security threats in Helmand province. They receive death threats from the Taliban and powerful individuals. Right now a number of journalists who were working in Helmand have left that province and are living in Kabul after receiving such threats. Furthermore, there are other journalists in Lashkargah city who are confined to their homes and are not able to pursue their profession because the Taliban and terrorists have warned them to either quit journalism or leave Helmand. These journalists refuse to reveal their identity for security reasons.

On the occasion of the third anniversary of Mr. Rohani's murder, Media Watch once again asks the government to pay attention to such cases and punish the perpetrators so that justice is served and journalists can feel safe in Afghanistan.

Lack of attention from the concerned government authorities and not punishing the criminals has brought about a similar destiny to other journalists as well. It should be added that after the murder of Mr. Rohani, six more journalists have also lost their lives on duty in Afghanistan.

### **Conference on Right to Access Information in Kabul**

A conference on the right to access information was held by Afghanistan Media Group supported by Nai Supporting Open Media in Afghanistan, in Safi Landmark Hotel – Kabul.

The conference was attended by the Minister of Information and Culture, a UNESCO representative, representatives of press of office of US embassy, the Deputy Country Director of Internews and a large number of journalists and proprietors of media outlets from both the capital and the provinces.

This conference followed four regional conferences held in Herat, Kandahar, Jalalabad and Mazar-e-Sharif on the same issue and was aimed at drawing conclusions and recommendations from each regional conferences on the issue of access to information.

A member of the Afghan Media Group, Sayed Ali Rezwani addressed the audience and introduced the Afghan Media Group and its functions. He listed the main functions of this group as media empowerment, capacity building and training for the media.

Another speaker was the Minister of Information and Culture, Sayed Makhdoom Raheen. He appreciated the initiative and added that the benefits of such a conference are not limited to solving the problems faced by journalists and an exploration of media related issues occurring in different parts of the country. Rather, he says, it also provides a platform for journalists of different provinces to get to know each other and establish networks and relationships.

Mr. Raheen considered information sharing among the basic rights of humankind as one of the characteristics of the current century.

A representative from *Hewad*, the local TV station in Kandahar also addressed the gathering. He criticized Kandahar local officials for not sharing the required information with journalists.



The Afghan Media Group is an independent coordinating body of media entities in Afghanistan, established during the national conference of Afghan media in 2009 supported by the organisation Open Society of Afghanistan (OSA). It currently has 100 members representing different media outlets from all over the country.

This conference compiled the demands and recommendations of journalists and media managers that had been expressed in the four regional conferences and presented them to the Ministry of Information and Culture as the final document calling for an Afghan Freedom of Information Act.

## **Afghan Mass Media Law Analysis**

### **Article 38:**

A person who is appointed as editor-in-chief shall meet the following requirements:

1. Have a national identification card.
2. Have completed age 21.
3. Holds a professional degree or three years of professional experience.
4. Not been deprived of civil rights by ruling of competent court.

### **Analysis:**

With reference to the Afghan Mass Media Law, an editor-in-chief holds responsibility for all programs in a media outlet which means that some conditions should be considered for editor-in-chief so that he/she can accomplish his/her duties well.

Of course, conditions for the editor-in-chief are tougher than for the proprietor of a mass media outlet, which acknowledges the importance of editor-in-chief position and his/her authority over content.

The conditions envisaged in this law for editor-in-chief of a media outlet are explained as follows:

The first condition is holding a citizenship document of the country. Afghan Mass Media Law allows only Afghan citizens to establish mass media outlets and does not allow foreign citizens to do so. Here the legislator mainly considers political considerations rather than legal justifications, especially on the part of print media that do occupy any frequency – which is a scarce public property. Article 19 of the international declaration of human rights and the convention on civil and political rights use the word “anyone” which give even foreign citizens the right to express themselves in another country by establishing print media.

Setting forth the condition of citizenship document for editor-in-chief, who may not necessarily be the proprietor of the media outlet, is also unjustifiable from a legal viewpoint. Regarding the institutions (set forth in article 27 of Mass Media Law) which should also have editor-in-chief who is not confined to Afghan citizenship; rather, foreign citizens also can establish such institutions. This condition contradicts with article 27 of Mass Media Law.

The second condition is of having reached the age of 21, which complements the third condition; having a professional education certificate or three years of professional experience. Usually professional/higher education up to bachelor degree is completed in age 21 or 22. Also regarding the three years of professional experience, if we count it from age 18 which is the age of full legal competence, and add three years to it, we find out that a person applying for editor-in-chief position should have completed age 21. Note that professional education and professional experience implies journalism and communication in this context because an editor-in-chief

should be familiar with journalistic work and be able to distinguish impermissible programming from permissible programming in accordance with mass media law and principles of journalism, and direct the media outlet towards standardization.

The forth condition is not being deprived of civil rights by the ruling of a competent court. This condition is envisaged to protect the prestige and dignity of a media outlet. Here the legislator has chosen to state that management of a media outlet should not be individuals who have been convicted for crimes and consequently deprived of civil rights in accordance with law. However, in order to prevent misuse by government officials, the legislator has mentioned ‘by ruling of a competent court’ at the end. This means this condition applies only after final verdict of a competent is issued in accordance with law.

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

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