

Nai Supporting Open Media in Afghanistan



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

MEDIA WATCH REPORT

Volume: 75
August: 2011

Sediqullah Tawhidi
Media Watch Project Manager
Cell# +93 (0) 700 279 176
tauhidi@nai.org.af

Preamble:

The right to access information is a fundamental right of citizens as stipulated in Afghanistan's Constitution and the Afghan mass media law.

Although the mass media law states a separate law needs to be implemented to regulate the right to access information, it has still not been implemented by relevant authorities.

Two years ago the civil society and human rights network held symposiums in different regions of Afghanistan and prepared the first draft of a freedom of information act. Last year, the Ministry of Information and Culture prepared its own draft law and then established a commission to reconcile both versions.

However, this law has still not been sent to the national assembly. In the absence of freedom to information legislation, government officials sometimes refuse to divulge information and offenders are not punished.

Information is part of the intellectual property rights of citizens, and no one has the right to impede the flow of information, unless restricted by law.

Despite the provisions of the law, many government institutions today have recruited spokespersons, which restricts journalists' access to other institutional personnel.

For example, university students and professors are not allowed to talk to media inside the university campuses, and they have to obtain prior permission from the Ministry of Education. Similar restrictions are in place for other media sources. Since the government cannot impose direct restrictions on media, it implements indirect control.

These problems highlight the critical necessity of a freedom to information law.

The draft laws contain good points, which obligate government officials to share information, and also prescribe punishment for those who violate the law's provisions.

The punishment prescribed by law can serve to compel all officials, regardless of their grade or rank, to divulge information that the public has the right to know.

We call attention to the Ministry of Information and Culture to this matter, and would appreciate immediate action to send the bill to parliament for approval.

Journalists should also lobby legitimate channels to ensure this law is approved by parliament.

Consequently, without a freedom of information law in place, the mass media law will also not be fully implemented.

Media topics covered in this report:

- **Police violence against journalists in Herat province**
- **Media claims of insults by the Head of the Appellate Prosecution Department in Takhar province**
- **Journalists complain about the lack of access to information**
- **New TV channel is launched in Kabul**
- **Afghan Mass Media Law Analysis**

Police violence against journalists in Herat province

Pajhwok news agency photographer in Herat province, Mawladad Yaqubi, EPA photographer Jalil Ahmad Rezaee, and Associated Press photographer Hoshang Hashimi all claim to have been insulted, and in some instances beaten, by Herat police on different occasions.

Pajhwok's Mawladad Yaqubi says police physically assaulted him and also broke his equipment on 26 August 2011 while he was photographing a blast scene at the Herat Police Headquarter's gates.

In a phone conversation with the Media Watch, he says "After I heard that an explosion had taken place near Herat police headquarters building, I went over there. When I arrived, the police stopped me. I showed them my journalist identification, and one of them allowed me to get inside. As I walked ahead, I was suddenly attacked from behind and I fell on the ground. When I got up, they told me that I was not allowed inside. When I asked why, they said that they allowed only those they liked, and would not allow those they did not like."

According to Mr. Yaqubi, he was also stopped by the same police officer when he returned from the blast scene. He was taken to the police headquarters, but released after a couple minutes.

EPA photographer Jalil Ahmad Rezaee, who was also mistreated by police, also witnessed police's behavior with Mr. Yaqubi. He says, "I was the first to arrive in the scene. I also received a harsh behavior from police. Later I saw that a policeman was having an argument with the Pajhwok photographer. I went to help resolve the quarrel, but again the police misbehaved. They told us they could do whatever they wanted, and that who we are was not important for them."

Mr. Rezaee attests that police prevented the Pajhwok photographer to do his job. He adds that the police threatened both of them, pointing a gun at them and using abusive language.

Later in a press conference, the Herat police chief appeared before journalists and extended apologies for the police officers' behavior with Pajhwok photographer.

However, photographer Mawladad Yaqubi considers the police chief's apology 'ineffective' and says, "I will not be the last journalist physically assaulted by police. In order to address this issue, police should be trained well and then be allowed to perform duty."

Jalil Ahmad Rezaee, a photographer for Reuters News Agency, also complains about the inappropriate behavior of police. He says, "Sometime back, residents of Kruk district of Herat province had planned a demonstration, and I travelled to that district along with some other journalists. When I took a photo of a group of police, they were infuriated. They deleted all the photos from my camera using force and abusive words."

Another journalist in Herat Province, Hoshang Hashimi, also complains about the police. He works for Radio Deutsche Welle as correspondent, and for Associated Press as a photographer. He says, "Whenever an explosion, a suicide bombing or another incident happens; or an international guest pays a visit to this province, police treat journalists impolitely and insult them."

He describes the most recent case of violence by police he had experienced. "There was an explosion near Munar area of Herat province on 20 August, 2011, and I was trying to take photos of the site, but I faced police violence. When I asked the police not to treat journalists like this, he said we have several cases with the Human Rights Commission, but no one can harm us in any way."

Hoshang Hashimi describes the situation of journalists in the western zone as concerning. He says journalists cannot go to areas controlled by the Taliban and they face police violence in the areas controlled by the government.

The Media Watch tried to discuss the issue of police with officials at the Ministry of Interior. MoI spokesman Seddiq Seddiqi admits the weaknesses and problems in police force, and says they are in contact with provincial police chiefs on daily basis to address this issue.

However, the MoI spokesman says that in incidents such as explosions or suicide attacks, police are deeply focused on protecting citizens' lives and so if they restrict journalists' activities, their aim is to protect them as well. "During a terrorist attack police forces do their level best to minimize the harm to public. In some cases when people do not leave the scene after frequent requests, our police are obliged to use force to push them back because the area is cordoned and there is a high possibility of a subsequent explosion or another terrorist activity. But this never means that we are restricting journalists' access to such areas."

Mr. Seddiqi admits that in some cases police act selectively; namely, they treat some journalists well and others violently. However, he stressed that Ministry of Interior frequently talks with provincial police chiefs to get this issue addressed.

The Media Watch condemns violence against journalists in the strongest possible terms, especially the physical assault of journalists by the police, and believes that such actions by the police force, as law enforcement agents and supporters of public order, brings shame to a government that claims to be supporter of democracy and freedom of expression.

Ten years have passed since the new regime came into power with billions of dollars spent on police education and capacity building, but despite all the expense and the efforts of international trainers, the Afghan police still have no idea about citizens' rights and their own professional obligations.

Once again the Media Watch calls upon the responsible authorities to pay extra caution in recruiting soldiers and avoid recruiting those who have no respect for human rights.

Media claims of insults by the head of the Appellate Prosecution Department in Takhar province

Shafiq Poya, a reporter for Hamsada radio station in Takhar Province, claims to have been insulted and threatened by Wazir Jalali, head of the appellate prosecution department.

Mr. Poya says Jalali mistreats all journalists in the province, and does not share information with them.

Mr. Poya adds that Jalali insulted him in public, blaming him for not having knowledge of journalism profession. Poya says: "The head of Takhar appellate prosecution office uses these words as a pretext to avoid giving interview to me. He has misbehaved with journalists in this province several times, has insulted me two times, and says you are not in a position to ask me for interview."

Mr. Poya believes the reason why the head prosecutor insulted him was the question he had asked about the case of a person who claimed his wife was married to another person, and was accusing the prosecutor of Yangi Qala district of Takhar province and some other powerful figures of that district of being involved. Poya says after he asked the question, the head prosecutor was infuriated and affronted him.

Poya adds, "The person who claims that his wife has been married to another person, also claimed that prosecutors of Takhar province have detained individuals who have no links to this matter."

Jalali dismisses Mr. Poya's claim and says that he only asked the journalist why balance is not considered in news broadcast by TV stations. This comes at a time when Shafiq Poya works for radio station and not for TV station. Also, Jalali considers the matter 'a misunderstanding' and assures all journalists that Takhar's prosecution department is at the service of all people, especially journalists.

The Media Watch strongly condemns the insulting and threatening of journalists by government officials as an immoral and illegal act. Such actions by government officials have only increased the divide between the public and the state.

The Media Watch believes that journalists can ask government officials any question about matters that have an impact on public life, and that is necessary for the public to know. According to Afghanistan's Constitution, each official is bound to respond to journalists' questions. Additionally, the Media Watch is of the opinion that all offenders should be punished in accordance with the law.

Journalists complain about the lack of access to information

Following the collapse of the Taliban and establishment of the current administration, which respects the principles of democracy and freedom of expression, Afghan journalists have complained about the lack of access to information since the early years of the new regime. But despite the civil critiques and protests of journalists, the government has no policy changes on information sharing with citizens over the past ten years.

In a recent case, a journalist, on condition of anonymity, gave the Media Watch a call criticizing Ministry of Public Health (MoPH). According to this journalist, the publications department of MoPH denies information requests to this journalist frequently.

The journalist says, "For two days I have been asking MoPH to provide me with statistics on women's self immolation in Afghanistan but the ministry spokesperson has been ignoring my request on different pretexts."

The journalist adds, "If you ask MoPH to provide you with ordinary information such as data about campaign on polio vaccination and other ministerial activities, they give us the information easily, but if we ask for important and fundamental information, they make pretexts and eventually refuse to give the information requested."

But this claim is rejected by MoPH spokesman Rahman Oghli Kargar as baseless, and adds that some types of information takes time to be collected and then shared with media in full.

Describing MoPH-related information as complicated and statistical, the MoPH spokesperson also criticizes some journalists for giving too short notices for some complex information requested. He further asserted that it is too difficult to prepare such complicated information on short notice.

It is worth mentioning that MoPH is not the sole government agency criticized for not giving information to journalists; other government institutions also neglect their responsibility of sharing information with media, and in some cases even refuse to give information.

Reporter of Killid radio station, Sunnatullah Temor, complains that officials of prosecution department of Takhar province refuse to share required information with journalists in many cases: “It has been one week that I visited Takhar’s prosecution department to obtain information I need to include in my report on Takhar prison, but after one full week the head prosecutor of Takhar appellate prosecution department rejected my request saying they have received a letter from Attorney General’s Office instructing them not to talk to media.”

But Wazir Jalali, head of appellate prosecution department of Takhar province, refutes the media claims and says that some journalists demand information about cases that are under investigation, and that the law does not allow them to share details of cases with journalists before a final court ruling: “A case cannot be completed in two or three days. No ruling can be made unless all comprehensive investigations are carried out. This comes when journalists come to us on the very first day expecting us to give them detailed information.”

“We know what type of information we can ask government officials for,” says Sunnatullah Temor, who also adds that he has never asked government officials for information classified or otherwise banned by law.

Temor says they face difficulties when the media approaches government officials for their reaction to an unfavorable story about them, in order to balance the story. He also complains about the secretary to the Takhar police chief, who does not take journalists’ phone calls. Sunnatullah says recently when he wanted to have the secretary confirm a security-related incident to complete an article, the secretary insulted and threatened him.

However, Khair Mohammad Temor, police chief of Takhar province, says that police enjoy friendly relations with journalists and pledge to be in service of journalists. “Journalists serve Afghanistan in their own way and we need them. We have always provided them with information they ask for except for cases where we have been on duty beyond Kokcha, or in the cases where they seek information about NATO operations. In other cases, our relationship with journalists is totally a friendly relationship.”

The police chief of Takhar province expressed a readiness to support journalists and added that if any misunderstanding occurs he is ready to resolve it.

At the same time, columnist of Nukhost Weekly, Jawid Rostapoor, has the following complaint about government officials. “Unfortunately Afghan journalists have suffered from this problem for several years in the past. The majority of spokespersons and press officers of ministries and other government agencies do not attend journalists’ phone calls, do not answer their questions, and spin the story; thus, refusing to provide journalists with information needed for their stories.”

Mr. Rostapoor believes that the reason behind spokespeople blocking journalists is their lack of understanding about reporting. He says some government officials think that journalists are their rivals and that journalists would compromise their work. “Government officials think that journalists want to challenge and defame them. They use press conferences as a propaganda tool and they do not appreciate the value of the work of journalists.”

However, Chief Editor of Rah-e-Ayenda publication, Mr. Dastgir Huzhabr, believes that the government’s failure and lack of achievement is the reason why government spokespeople elude journalists.

Huzhabr says: “A clear reason for government officials to elude journalists is that they do not have any achievements and they are failing in all areas. They do not have a clear action plan and have had zero achievement in serving the public. Thus, it is crystal clear that they have nothing to say and therefore they do not want to face journalists.”

Moreover, Mr. Hozhabr says that the lack of freedom of information legislation is another reason that gives government officials confidence to reject journalists’ requests for information.

In Mr. Hozhabr’s opinion, in absence of such a law, government officials think they are immune from prosecution and that they will not be put on trial.

The Media Watch considers access to information as a fundamental right of citizens, and calls on government to make information available to journalists.

Sharing information with media helps communicate government’s performance with public and bridge the gap between government and public.

Distance between government and citizens undermines development programs and keeps government from doing its job properly.

In Afghanistan, where relations between the government and public are already delicate, such behavior of government officials further deteriorates it.

New TV channel is launched in Kabul

Maiwand TV station began a test transmission on 15 August 2011 and will soon start its actual programming, say officials from Maiwand TV.

Feroz Mandozai, editor-in-chief of Maiwand TV station, says, “Maiwand is a commercial TV station funded by a businessman. It will broadcast educational, entertainment, news and religious programs.”

Mr. Mandozai anticipates the official work of the TV station will start in three months, and news and political shows will constitute the main programs of the TV station.

With more than 25 TV stations currently in Kabul, citizens have certain expectations that need to be met by TV station owners if they want to succeed.

Hameedullah Seddiqi, a Kabul citizen, wants TV station managers to allocate more airtime for education programs in their schedule. He says: “Foreign TV dramas, currently occupying most of airtime on TV channels, are of no use for the people of Afghanistan; rather, they are offending.”

Sameha is another Kabul citizen who says the people of Afghanistan are currently in the utmost need of education. Another resident, Mohammad Ahmadi, agrees. He believes that TV stations with “high goals” – meaning educational programs - can be of great help to the society.

Maiwand TV stations joins the already 50 estimated TV stations operating across Afghanistan. In answer to the question how Maiwand TV will be able to compete with so many TV stations, Feroz Mandozai says, “Undoubtedly, media outlets are on the rise in Afghanistan making competition tougher than ever. We will also try to pursue a sound competition to establish our position among other media outlets.”

The Media Watch welcomes Maiwand TV station to media family and calls upon its staff to provide programming that viewers will most need.

Mass Media Law Analysis

Article 40:

The Editor-in-Chief is obligated to observe the right of critics, and those criticized, in print and electronic media.

Analysis

Freedom of expression, as a political right, is an important component of a democratic government. It is the cornerstone of all other fundamental human rights. In absence of the right to freedom of expression, other human rights, especially civil and political rights, will also lose their meaning. The right to criticize falls under the right of freedom of expression.

The right to be critical should be relevant in all cultural, political, economical, social and religious aspects of life. Article 34 of Afghan Constitution and article 19 of the Convention on Civil and Political Rights clearly indicates that the right to criticize, as a component of freedom of expression, has a very large scope. Democracy-based systems should accommodate criticism and learn from it to improve on their weaknesses.

The right to criticize promotes a culture of dialogue in society, facilitates the tolerance of new thoughts, and the notion of change. The right to criticism drives change, and leads towards forward mobility and flexibility. Criticism needs to be based constructively on facts and evidence, and should be well deliberated beforehand. Because if criticism is based on prejudice, traditional superstitious beliefs, bias, fanaticism and religious or tribal discrimination, it will bring about a negative outcome and potential civil crises.

In a democratic society, the government needs to be open to constructive criticism, and red flag the issues people are concerned about; and work towards self-improvement. Legislators recognize the right to be critical, and media outlets are authorized to criticize the government, private sector and civil society in accordance with law.

Article 34 of Afghan Constitution and Article 6 of Afghanistan Mass Media Law implies that the law not only recognizes the right to criticism but also obliges the government to protect the media outlet and journalists that make critical comments. Also, Article 7 (5) of Afghan Mass Media Law stipulates that the right to respond shall not apply to the reports from the sessions of National Assembly and open trials unless the reports from the sessions mentioned above are transposed by media in a way that harms the interests of natural or legal persons including the state.

The abovementioned article (Article 40) requires media to equally respect the rights of both the critic and the criticized. However, this article is not void of technical errors from a legislative viewpoint.

First, if the purpose of the legislator is to protect the rights of the critic and the criticized, as mentioned in Article 6 for the media, and the right to defend those criticized, there would be no need for this article as it would be an unnecessary repetition of the same provision.

Second, if the purpose of the legislator is to introduce more rights in addition to the aforementioned rights, then those rights should be explained explicitly rather than confusing media and journalists. Good legislation is clear and concise.

Third, the critic and the criticized should be defined clearly because a broad definition of 'the criticized' would also encompass the government. The more the government is open for criticism, the more citizens will be encouraged to bring up issues. Inclusion of such an article in media law sometimes provides the government with a leverage to illegally pressure media, and damage freedom of expression, the right to criticize and democratic values in a society.

For more information on Media Watch project please contact our team at:

Mohammad Saber Fahim
Media Watch Senior reporter
saber.fahim@nai.org.af
saberf4@gmail.com

Cell# +93 (0) 700-266-727

In case you face any kind of legal problem, you may contact our legal advisor, Mr. Mohammad Qasem Rahmani
0093 799 830 905
Or Email at: m.qasim@nai.org.af

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.*
2. *Copy right is reserved for Nai Supporting Open Media in Afghanistan,*