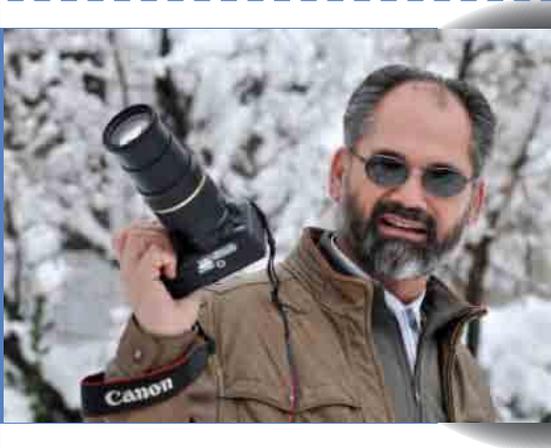




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# Media Watch Report

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Sediqullah Tawhidi Media Watch Director and Media Analyst

0700279176-0777868270

tauhidi@nai.org.af



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# Media Watch Report

The current issue of Media Watch newsletter covers the following topics:

- A court in Kabul sentenced a photojournalist to prison
- A local TV Station in Herat claimed that individuals associated with local powerbrokers attacked its office
- Police in Herat beat two journalists
- Journalists in Herat protested lack of access to information and planned a long stay before the governor's office
- Claims made that police beat a journalist in Kabul
- Senior directors of Afghanistan's media called on the President to reject the amended Mass Media Law
- Media and journalists' cases of violation have not been reviewed by the Mass Media Commission
- Journalists and district governors in Khost province pledged to establish close coordination between the two groups



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Freedom of speech in Afghanistan faced challenges and problems in February 2015. A photojournalist was convicted in an unfair trial and sentenced to six months in jail. Najibullah Mosafer, one of the founders of photojournalism in Afghanistan, took a picture of female students' parade in the Education Feast eight years ago. Then he sold the picture to an advertisement company. Later, the company manipulated the picture and published it as an advertisement for a telecommunication company. The journalist had committed no flaws in the entire process. But a court in Kabul sentenced him to six month in jail. The journalist's trial cannot be justified legally and further has problems in form and content.

On the other hand, police beat a journalist in Herat province while, in a separate incident, individuals affiliated to a local powerbroker stormed into a private TV station breaking the glasses and equipment there. Yet in another development, Herat journalists protested lack of access to information in a gathering before the provincial governor's office.

In a gathering in Kabul, senior directors of many open media outlets asked the President to refuse signing into law the Mass Media Law which was recently amended by the Parliament. Afghanistan's then Minister of Information and Culture, Dr. Said Makhdoom Rahin, had proposed to the Parliament amendments to the Mass Media Law to provide a lawful coverage for its unlawful actions. The House of Representatives, in a hurried and preplanned decision, approved the then Minister's proposed amendments.

In another development, the Office of the Attorney General summoned the chief editor of a daily paper for publishing an article. Nai Supporting Open Media in Afghanistan believes that such a decision is in violation with effective laws and asked the Office of the Attorney General to respect the Law with regards to the cases of media and journalists. The Mass Media Law of Afghanistan indicates that whenever the country's media commit violations, they should be first reviewed by the Mass Media Commission. Then if the Commission finds criminal signs, it will refer the criminal case to the Office of the Attorney General. Therefore, the current case should be first referred to the Mass Media Commission for initial review.

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### **A court in Kabul sentenced a photojournalist to six months in prison**

Mr. Najibullah Mosafer, founder of Chashm-e-Sewom Photojournalism Center and photo editor at Killid and Mursal magazines, was sentenced to six months in prison by court in Kabul on February 22, 2015. He is now serving his term in Pul-e-Charkhi prison.

Mr. Mosafer took a picture of female students' parade in Ghazi Stadium in Kabul eight years ago. The photo illustrated two young girls who were leading the parade with a basketball logo. He sold the picture to Honar-e-Haftom Production Company. The latter manipulated the picture and used it in an advertisement for Etesalat Telecommunication Company.

Publishing the picture in an Etesalat advertisement drew reactions from the persons who were illustrated in the picture. They petitioned and then a preliminary court fined Mr. Mosafer and sentenced him to six months in prison.

Mr. Mosafer's colleagues told Media Watch at Nai Supporting Open Media in Afghanistan that they do not know the court's reason behind his imprisonment sentence.

Reza Saahel, a colleague of Mr. Mosafer, said that since Honar-e-Haftom Production manipulated the picture, they should have been tried and sentenced, not Mr. Mosafer who sold the original picture to them.

Royesh, another colleague of Mr. Mosafer, told Media Watch that efforts were underway to release Mr. Mosafer from prison and that they asked various organizations to join and help in their efforts.

Yet another colleague of Mr. Mosafer, Reza Yamak, told Media Watch that every professional photojournalist has the right to take pictures in public spaces without any work limitations.

However, Mr. Yamak added, when a photojournalist violates individuals' private space, then it can be considered a crime.

Mohammad Qasem Rahmani, legal adviser to Nai Supporting Open Media in Afghanistan, says that taking pictures in public spaces and selling such pictures bear no legal problems and cannot be considered criminal activities.

The referral of this case to the court based on Article 130 of the Constitution shows that the attorney has not found any provision in the penal code to base the accusations on.

Mr. Rahmani said that according to the principle of criminal and penal law, the law determines the criminal nature of an action as well as the appropriate punishment to the criminal action. To determine an action's

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criminal nature and the pertaining punishment based on Article 130 of the Constitution is against the rules of penal rights.

Mr. Rahmani added that the form of the trial in this case was problematic: “Such trials in absentia are in violation to a fair trial; in this case, the action of the accused, Mr. Mosafer, has not been [determined by law as] a crime. So he should not have been tried in the first place.”

Meanwhile, Farzana Wahedi, another photojournalist, told Media Watch that continuation of detaining and trying photojournalists will negatively impact the work of younger photojournalists.

Since taking pictures is one of many duties of the journalists, Nai Supporting Open Media in Afghanistan calls on the Supreme Court of the Islamic Republic of Afghanistan to revise the case based on Article 34 of the Constitution.

### **A local TV Station in Herat claimed that individuals associated with local powerbrokers attacked its office**

Officials at Naab local TV station in Herat claimed that individuals affiliated to local powerbrokers attacked their office and broke its glasses as well as equipment on February 16, 2015.

Maqsood Herawi, director of Naab TV station, told Media Watch that the attackers have beaten the guards and staffs of the TV station who have been defending the Station’s property. He called it an attack on the freedom of speech and added: “they have breached the privacy of Naab TV station office and caused damages including beating of their staff and destruction of their equipment.”

Meanwhile, Nazir Yaarzada, who introduced himself as the landlord of the property rented by Naab TV station, said that they have not paid their rents for the past seven months and when his brother went to the TV station’s office to ask for the monthly rent, he was beaten and injured by the guards and staffs of the TV station.

But Mr. Herawi, director of Naab TV station, called the attack as preplanned and said that mentioning of the monthly rent is all but a pretext.

He added that Naab TV station has produced and broadcast exclusive programs on a variety of subjects which have certainly damaged the interests of the local powerbrokers who have reacted with such an attack.

Herat Police has detained a Naab-TV staff in connection with this incident.

Nai Supporting Open Media in Afghanistan condemns the attack on Naab TV station and calls on Herat Police to investigate the incident in depth and share their findings with media and public.





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Abdulmujeeb Khawatgar, Executive Director of Nai Supporting Open Media in Afghanistan, said: “The civil rights of the Naab-TV staff, who has been detained by the police, should be regarded in full. He should not have been detained without a justified reason.”

Effective laws of the Islamic Republic of Afghanistan are explicit about the protection of legal entities including media institutions from any attack. Those individuals who act in violation of the laws of the country should be identified and punished.

The State of Afghanistan is obliged to seriously protect media entities and legally pursue the violators of the law.

### **Police in Herat beat two journalists**

Said Ilias Moosawi, a cameraman for local Isteqlaal TV station, and Jamshed Hakkaak, a journalist for Asia TV in Herat, were separately crossing with their motorbikes a street in Herat city when police stopped them and beat them on February 6, 2015.

After being beat by police, Mr. Moosawi was also detained for half an hour.

Police beat these journalists a day after the city’s military council banned driving motorbikes in the city in a statement issued the night before.

Mr. Moosawi said that police beat him when he wanted to film their violent behavior toward motor bikers.

He told Media Watch: “When I began to film police’s violent behavior, they asked for my camera. I refused to give it to them. Then they began to beat me and detained me for half an hour.

Mr. Moosawi said that a great number of Herat citizens were unaware of Herat local administration’s statement that was broadcast by the National TV because of the lower rate of the latter’s viewership. They should have broadcast their statement through Herat’s local media to reach more citizens and help avoid such incidents.

Jamshed Hakkaak, a journalist for Asia local TV station in Herat, faced the same problem as Mr. Moosawi did on the same day. Police beat him severely. His published pictures in social media showed bloody injuries on his face and head and drew strong responses.

Mr. Hakkaak claimed in his interview with Media Watch that once police knew that he was a journalist, they started to make up excuses to beat him.

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Mr. Hakkaak said that when he suggested to the police that it was better if they had broadcast their statement through Herat local media, they got angry and began to insult him. When he said it was unnecessary to insult, one police officer held his hands in his back and another one started to hit him with his baton in the face and head.

Mr. Hakkaak described the incident to the Media Watch as follows: “When I told them that should stop insulting me because I did not commit any crime, one police officer held my hands in my back and another one started to hit me with his baton in the face and head.

Mr. Hakkaak did not reject the likelihood that the police might have deliberately targeted and beat him. He said that he has recently produced and broadcast reports and important topics from abductions to the increase in insecurity in Herat City. They may have left the police unhappy and the latter may therefore chose to beat him. Both journalists said that they did not know the reasons behind their beating by the police. “I wish the police officers who beat us had told us once about the reasons behind their action,” said Mr. Hakkaak.

Herat administration officials condemned the violent acts of the police and vowed to refer the police violators to the judicial entities.

Herat provincial caretaker, Aseeluddin Jaami, explained to Media Watch the reason behind the ban imposed on motorbike riding in the city: Since most incidents of abduction and assassination in the city involved motorbikes, the administration decided to register all motorbikes in the traffic office.

Nai Supporting Open Media in Afghanistan strongly condemns violence against journalists in Herat Province and calls on the Ministry of Interior to identify and punish the violating police officers in accordance with laws of the country.

Abdulmujeeb Khalwatgar, Executive Director of Nai Supporting Open Media in Afghanistan, said in a press conference held at Nai two days after the incidents: Beating journalists, regardless of their causes, is considered violence against journalists which is defined in the country’s penal code as a crime.

Mr. Khalwatgar added that the incidence of violence against journalists, including those happened in Herat City, has recently increased. If the trend continues and the government of Afghanistan does not tackle the challenge more effectively, then people of Afghanistan may lose one of their greatest achievements in recent years: their freedom of speech .

In response to the Nai press conference and statement, the Ministry of Interior Affairs announced its readiness in reducing the incidence of violence against journalists.

Referring to the close relations between Ministry of Interior Affairs and Nai Supporting Open Media in Af-

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ghanistan, Sediq Sediqi, the spokesperson for the Ministry of Interior, said that they will begin investigating both incidents. He also called on journalists to be more cooperative with police during their reporting activities. He demanded for further coordination between police and journalists.

Mr. Khalwatgar, Executive Director of Nai Supporting Open Media in Afghanistan, is optimistic that the incidence of violence against journalists caused by the police will decrease in the future. He believes that selection of a decisive and managerial figure such as Mr. Oloomi as the Minister of Interior will directly impact an effective reduction in incidence of such events.

The violent incidences against journalists in Herat happened against a backdrop of security deterioration across the city: Chair murders, abductions, and armed robbery have caused grave concerns for Herat citizens.

In a measure to reduce the incidence of insecurity in the city, authorities in Herat's local administration decided to impose a ban on motorbike traffic across the city. This unfortunately caused violence by the police against journalists and other citizens.

In a released statement, Nai Supporting Open Media in Afghanistan strongly condemned violence against journalists, particularly the beating of the two journalists by the police in Herat city. It demanded from the Ministry of Interior to punish the violators.

The Nai statement reads: "Police is the enforcer of the law. It should conduct its duties with utmost professionalism and behave with high morale towards citizens. The fact that some police officers abuse their authority and misbehave with public, damages the reputation of police and questions rule of law in the society."

Nai Supporting Open Media in Afghanistan believes that under the current security conditions in the country, journalists need police's cooperation more than ever. Whenever police turns to a source of insecurity, then it makes it even harder for journalists to properly work.

It is worth to mention that journalists in Herat do not suffer from physical violence but they also face legal violence denied access to information. A group of Herati journalists have protested before the governor's office to alter this.

The Law of Access to Information is now effective. The government must take necessary measures to enforce it so that the journalists can properly work and provide credible information to the public, and the latter enjoy one of its fundamental rights, the right of access to information, in full.

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## **Journalists in Herat protested lack of access to information and planned a long stay before the governor's office**

A group of journalists in Herat City gathered before the governor's office on January 29, 2015 and protested against denied access to information and violence against journalists. They demanded immediate solutions to both problems.

The Law of Access to Information was approved by the Parliament on June 30, 2015 and signed by the President on November 30, 2014 and was later published in the Official Gazette. The Law has been effective ever since, but a number of government officials still violate it and refuse to provide information to journalists.

Journalists and media managers in Herat called denied access to information and violence against journalists as two most serious challenges for freedom of speech. In their recent protesting gathering they urged Herat local government administration to solve their problems.

Some local media managers in Herat province accused government officials of holding a double standard when it comes whom to give access to information: They are not willing to provide local media with first-hand information whereas renowned national and international media face fewer challenges in accessing information. Tawaab Mobarez, News Director at Asia local TV station in Herat, told Media Watch that the reason behind the journalists' recent protest was lack of access to information. "Unfortunately, security and legal organs behave with double standard toward media providing some with information and denying others to access information. Herat local media have recently faced many challenges in gathering information," said Mr. Mobarez.

Mr. Mobarez added that although the government officials promised to address their demands, previous experiences show that their promises never go further than empty words. He vowed, however, that this time they will not stop their advocacy until the breakers of the law and the perpetrators of violence against journalists are punished.

But in an inclusive interview with Media Watch, the caretaker of Herat, Asiluddin Jaami, assured that he did not suffice in words and would prove his words in action.

The caretaker of Herat called the recent events of violence against journalists as unjustifiable and vowed that he will solve their problems so that they do not face any violence in Herat and be able to get access to information in the coming future.

The protesting journalists issued a six-point statement at the end of their gathering and urged the National Unity Government to consider these important points.

A part of the statement reads: "Media as the most important vehicle for spreading information across the coun-

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try carry a critical duty and responsibility. As our country today needs reforms in various areas, media can play an effective and positive role through providing constructive and healthy criticisms to facilitate the reforms' process. If voices are silences and pens are broken, truth will remain untold and public trust will be breached.” The statement also mentions of the responsibilities of journalists and media including in particular anti-corruption, anti-bullying and revelation of violations of rule of law. It linked the society's progress to freedom of speech.

In another part, the statement calls on the media and freedom of speech advocacy organizations to condemn unlawful actions committed toward journalists by some police officers and focus their advocacy activities on solving this problem.

Point three of the statement asks participants to seriously continue their civil protests through media until the violators of law have been punished.

Nai Supporting Open Media in Afghanistan supports the protest of Herati journalists and media entities and demands from the state of Afghanistan to immediately address their problems.

Abdulmujeeb Khalwatgar, Executive Director of Nai Supporting Open Media in Afghanistan, said in a press conference that was held in Nai's office at the same day when protests took place: The state is obliged by Article 50 of the Constitution to respect citizen's right of access to information.

Media Watch at Nai demands from Herat local administration to immediately provide any requested information to the journalists in accordance to the Constitution and the Law of Access to Information. They should strictly refrain from using a double standard in provision of information to the journalists.

### **Claims made that police beat a journalist in Kabul**

Ehsanullah Zadran, director of Media Link and Radio Nin FM in Khost, claimed that he was beaten by traffic police in Chaharrahi Zambaq in Kabul on January 18, 2015.

Mr. Zadran said that he had not committed any violation when traffic police stopped his vehicle. I went to attend my meeting and came back to get my vehicle in half an hour. The traffic police did not allow me to do so. They took it to Shahrak [Park].

To solve the problem, Mr. Zadran said, he called a Khost representative in the Parliament and asked for his cooperation. But the traffic police officer insulted him on the phone and called all representatives as rapsallions. Mr. Zadran added that he showed the traffic police officers his press card and told them not to abuse their au-

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thority to beat people, but they did not pay attention and continued beating him.

Mr. Zadran said that the day after the incident, he petitioned to the Kabul Police Headquarters and demanded legal pursuit of his case.

He added that the administration should suspend the duties of such an individual who has previously had registered criminal file at the Office of the Attorney General.

Mr. Zadran also said that the same traffic police officer still threatened him. “Whenever I pass the same street, the same traffic police officer threatens me and keeps telling me that last time he had beat me with his kicks but next time he will shoot me with his pistol,” added Mr. Zadran.

He asks for his rehabilitation and asked the Office of Attorney General to imprison those officers who beat him. Meanwhile in an interview with Media Watch, Assadullah, Traffic Director of the respective district, confirmed the incident but refused to provide further details.

Nai Supporting Open Media in Afghanistan condemns the incident and demands from the Traffic Administration to prevent their officers from abusing their authorities and harming the citizens.

Enforcement of laws is among the duties of this Administration. While their officers are responsible for regulating traffic on streets and roads, but they are not allowed to enforce rules and laws through committing violence. Resorting to violence is not a right strategy to enforce laws and regulations. It will damage the reputation of Traffic Administration. Therefore, they should revise their approach to enforce laws and refer their violating officers to the judicial authorities.

### **Senior directors of Afghanistan’s media called on the President to reject the amended Mass Media Law**

In a meeting at Nai Supporting Open Media in Afghanistan, a number of directors of open media in the country repeatedly called on the President to refuse signing of the newly approved Mass Media Law.

They expressed their particular concerns on the falling of the chairmanship of the Mass Media Commission to the Minister of Information and Culture and called it in violation to the Constitution.

Participants in the meeting discussed the amendments newly brought into the Mass Media Law in the Parliament on their Januar-28 session, and called it in violation of Afghanistan’s Constitution. These journalists believed that if the President signs the Parliament’s newly amended and approved Mass Media Law, then it will hurt freedom of speech in Afghanistan and will cause further problems for journalists.

Recently, the former Minister of Information and Culture decided to legalize a Commission for Assessment of Media Violations, which was retained against the provisions of the Mass Media Law. In order to do so, he

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proposed amendments to the provisions of the current Mass Media Law with regards to the Mass Media Commission and introduced the Minister himself as the Chair of the latter commission.

He sent his proposal to the Parliament. The House of Representatives approved the amendments but the Senate rejected them. A bicameral delegation was then appointed to address the issue which failed to reach a conclusion. Ultimately, the House of Representatives re-approved the amendments on January 28, 2015.

According to the approved amendments, the Minister of Information and Culture is appointed as the Chair of the Mass Media Commission. The President's signing of the approved amendments into law will take away the independence of the Commission and will bring it under governmental influence. This is in violation of the Article 34 of the Constitution which protects freedom of speech from any violation.

### **Media and journalists' cases of violation have not been reviewed by the Mass Media Commission**

Based on the Article 43 of the Mass Media Law, the authority to initially review media violations is granted to the Mass Media Commission. Whenever a petition in relation to media conducts is made to any office, including the Office of the Attorney General, according to the mentioned article, it should be directed to the Mass Media Commission for initial review.

Recently a petition was filed at the Office of the Attorney General concerning a media outlet (which requested to remain anonymous in this report). Nai Supporting Open Media in Afghanistan believes that initial investigation of such a case at the Office of the Attorney General is unlawful and asked for the case to be addressed through lawful channels.

Nai sent a letter to the Office of the Attorney General and copied the Ministry of Information and Culture too. The letter demanded that the case should be addressed through the Mass Media Commission. Fortunately, the Office of the Attorney General referred the case to the mentioned Commission allowing the case to be pursued through the lawful channels. Also in coordination with the Presidential Palace, the Office of the Attorney General ordered all its affiliated branches that –from now on- they should refer all media-related cases to the Mass Media Commission.

Nai Supporting Open Media in Afghanistan supports rule of law in society and particularly in the media sector. Therefore, whenever media entities violate the law, their cases should be legally pursued in accordance with provisions of the Mass Media Law and other effective laws.

Article 43 of the Mass Media Law explicitly states that whenever a media entity commits violations, the Mass Media Commission will address the petitioner's complaints. If the Commission finds criminal elements involved in the case, then it will refer the case to the legal organs.

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## **Journalists and district governors in Khost province pledged to establish close coordination between the two groups**

A workshop held in Khost City on February 2, 2015 to improve joint work and cooperation between journalists and district governors of Khost Province. Both groups promised to increase their efforts to further coordination and joint work between them.

Participants to the workshop included Khost caretaker, Abduljabaar Naimi, religious Ulema, tribal elders, all district governors of Khost Province, and representatives from national and international media.

Journalists and directors of media entities and governmental officials vowed to jointly work with each other to further coordination among themselves for the public interests.

Media vowed that they will refrain from broadcasting reports that may cause public concern and disruption. Khost governmental officials vowed that from now on they will expand their relationship with media and will quickly respond to their calls for provision of information. Mobarez Zadran, the spokesperson for the office of the governor, told participants: A firm coordination among journalists and administrative and security staffs in Khost province already exists. This workshop was held to further strengthen this coordination.

The spokesperson added: Such workshops are essential to take the problems and challenges of residents of Khost districts to the officials as well as to inform the former about the working and achievement of district governors.

Afsar Saadeq, Director of “De Heelo Karavan” local radio station called the workshop as very important and valuable and told Media Watch: Holding such workshops are very productive in coordinating and solving of citizen’s as well as media problems.

Mr. Saadeq added that as one important result of the workshop, three days after it was held, a group of religious Ulema participated in a live radio program and directly heard people’s problems and responded to them.

On the other hand, Abdulhai Zazai, district governor of Baak, believed that such workshops are very important in reminding governmental officials, media and journalists of their duties and responsibilities.

District governor of Baak added: Journalists and media can play a fundamental and important role in progress and development of the society. Since they reflect the problems existed in the society and bridge citizens with the state, they should be supported and provided with information.

It is worth mentioning that journalists all across the country face serious problems in accessing information and despite the President’s signature into law of the Access to Information Law, journalists still continue to face such problems in various parts of the country.

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### **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](mailto:m.qasim@nai.org.af).

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

Mohammad Saber Fahim

Media Watch Senior reporter

Cell# +93 (0) 700-266-727 [saber.fahim@nai.org.af](mailto:saber.fahim@nai.org.af) - [saberf4@gmail.com](mailto:saberf4@gmail.com)

Nasir Ahmad Noori

Media Watch reporter

Cell# +93 (0) 787-201-915 [nasir.noori@nai.org.af](mailto:nasir.noori@nai.org.af) - [nasirnoori92@yahoo.com](mailto:nasirnoori92@yahoo.com)

To obtain a soft copy of the report, please visit the following link: <http://www.nai.org.af/Media-watch.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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