



International PEN Submission on Freedom of Expression in Afghanistan

Universal Periodic Review Process

November 2008

International PEN, the world association writers welcomes this opportunity to comment on the status of protection of freedom of expression in Afghanistan to the Universal Periodic Review.

PEN has had long standing concerns about breaches of Article 19 and other articles under the International Covenant on Civil and Political Rights (ICCPR) in Afghanistan. Article 34 of the Afghan constitution provides every Afghan with the right to freedom of speech. However, PEN is concerned that the exercise of this right is compromised by ongoing challenges posed by governmental and non-governmental forces as described below.

1) Weak judicial system and persecution of journalists

In large parts of Afghanistan no formal judicial system is in place and only tribal and other traditional forms of justice are practiced. Yet, even where a formal justice system operates, basic rights of due process and fundamental freedoms are often not respected, in violation of ICCPR Articles 9 (freedom from arbitrary detention) and Article 14 (right to fair trial) and to which Afghanistan is a signatory. This is demonstrated by cases that PEN has followed over the last year.

Most high profile of these is that of one journalist who received a death sentence in early 2008 for the alleged crime of 'blasphemy'. The trial was reportedly held behind closed doors, and the accused had no legal representation. Kabul Appeal Court hearings were adjourned four times after opening on 18 May 2008 until a ruling was finally handed down on 21 October 2008 commuting the sentence to 20 years in prison, but upholding the conviction of 'blasphemy'. PEN is particularly concerned that despite repeated calls by PEN and other international organizations for President Karzai's intervention, as of November 2008, the President has remained silent on the matter.

PEN is also following the case of a publisher and a journalist recently sentenced to five and twenty years respectively under an Article of the Afghan constitution that rendered Sharia law applicable to the case. PEN is also investigating claims that the writer of a

letter critical of the government was detained and sentenced to one year in prison. These cases violate ICCPR Article 19 (freedom of expression) as well as Article 34 of the Afghan Constitution.

2) Intimidation, violence and killings of journalists

According to organizations such as the Committee to Protect Journalists, the Afghan government, including the National Security Directorate is responsible for at least 23 of 45 occurrences of intimidation, violence, or arrest of journalists between May 2007 and May 2008. Furthermore, the government has failed to stem recent attacks on journalists by failing to investigate and prosecute those responsible. Such a situation of impunity will only reverse the hard-won democratic gains of a free press in Afghanistan.

There were instances of insurgents and the Taliban intimidating journalists to influence reporting. Violence stemming from political instability continues to jeopardize free reporting by both the local and international press, with reporters suffering physical attacks, and three murders of journalists directly linked to their reporting since 2005.

3) Censorship

The power exerted by warlords in a large part of the Afghan territory makes it nearly impossible for journalists to report on sensitive subjects such as local corruption, drug trafficking, violence against women and other matters of concern to the Afghan people. The majority of journalists exercise a form of self-censorship in order to protect themselves and their families. In addition, in many instances local and national government have prevented journalists from obtaining the information they need to write credible reports, thus creating a de-facto situation of censorship by closing off certain topics for public discussion. Coupled with the existence of 'blasphemy' laws, the scope of censorship in Afghanistan is extremely wide.

4) Media Law

The Afghan parliament approved a media bill on 31 August 2008 that PEN hopes will help foster the development of a free and democratic media in the area. However, PEN remains concerned that certain terms such as 'national interests' and 'religious interests' remain undefined and could be broadly interpreted to limit freedom of expression. It is our hope that these terms will be reviewed and modified accordingly before President Karzai signs the bill into law.

PEN also remains concerned by the amount of power that the Minister of Culture and Youth retains over the media sector. According to analysts, the Minister has suggested in the past that freedom of expression is an 'imported and worthless phenomenon'.¹ PEN expresses the hope that these attitudes no longer prevail.

¹ MPs say Afghan government's move to restrict media will boomerang
Jul 31, 2008 (BBC Monitoring via COMTEX) --

Recommendations:

The Afghan Government is called upon to:

- **Uphold the ICCPR, in particular**
 - **Article 9 (freedom from arbitrary detention),**
 - **Article 14 (right to fair trial), and**
 - **Article 19 (right to freedom of expression);**

- **Conduct full and proper investigations into attacks upon and the killings of journalists by non-state actors, bringing any person found responsible to justice and thus allaying concerns that such crimes are carried out with impunity;**

- **Take all measures to end direct and indirect censorship in Afghanistan, allowing the free flow of information and ideas.**