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The Mechanisms of Deteriorating Civil Liberties in Iraq



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Executive Summary

Recent years have witnessed particularly high, and rising, levels of attacks on journalists, protest organizers and other key independent opinion-shapers in Iraq. This has occurred despite the concurrent overall decrease in violence in the country. In light of this trend, this report seeks to clarify weaknesses in current practices and legislation regarding civil liberties in Iraq in general, and the freedoms of expression and assembly, particularly for their targeting. It also notes the destabilization of the balance of powers which this trend both reflects and to which it contributes. With these aims, the report reviews nine key laws, four orders, as well as the administrative-security mechanism and institutions employed in their implementation, supported by statistics and case studies.

Its findings indicate:

1. Iraq is at a dangerous juncture in the formation of its legal framework on civil liberties. The last two years have witnessed the use of existing laws to repress valid, peaceful protest/expression. In the same period, five new draft laws that reference and reinforce current weaknesses in the legislation were also put forward. Four of these drafts could be voted into law within months or even weeks. One was passed in 2011.
2. The decline in overall violence and civilian murder rates since 2007 contrasted strongly with the rise in murders, legal and physical harassment of key defenders and practitioners of freedom of expression and assembly.
3. These are two indicators, among a number, which demonstrate that defenders of civil liberties are targeted for their work, and in no way merely the victims of overall high rates of crime and war violence.
4. The peaks of both recent rises in attacks targeting defenders of civil liberties, and the proposition of illiberal new draft laws, corresponds with the initiation of the notable Iraqi protest movement demanding improved services in 2010, extending through the peak of the stronger and broader Iraqi Spring protest movement demanding reform of the government in 2011.
5. A variety of excessive restrictions are repeated across several laws, indicating a pattern of repeated attempts to limit the scope of expression by the executive and legislature.
6. As such, a worrying trend has emerged where among the key mechanisms employed to stifle opposition are the creation and selective use of legislation by the executive branch of the Iraqi government and its special relationship with its security services.

These conclusions lead to a number of recommendations elaborating the principle that any restriction on civil liberties must be proportionate to a legitimate aim, such as that of maintaining the public order.

Most notably:

1. Legislation must be clarified to distinguish incitement to violence or terrorism from the critical functions of discussion, discourse and reporting on state and security matters.
2. Legislation should specifically and clearly place the burden on the state authority to show that the action taken is in response to a major, likely, and imminent threat to the public safety. The state and its administrators should not have the power to invoke defamation law. This is because the danger of restricting legitimate criticism of the state to serve the national interest outweighs the threat. Where libel is a tort it should be a civil rather than criminal one.
3. Special protections (legal exceptions) should be made for whistleblowers, i.e. people that expose or share the private information of a person or institution for the public health/interest.
4. Security services and administrative bureaus should not be allowed to take such extremely invasive actions as the exposure of journalistic sources, raids, seizure or destruction of materials such as cameras, or closure of media outlets without due process, i.e. at minimum a warrant issued by a court. Such sensitive offices should furthermore be under parliamentary oversight, as demanded by the constitution, and not run by acting ministers selected through personal appointment as some are now.



Legal Insecurity – Legal Harassment Statistics

Laws used by the Iraqi government to muzzle practitioners of free speech and assembly include Saddam-era regulations, orders of the Coalition Provisional Authority (CPA), and orders/legislation of the current Iraqi government. In particular the refusal of licenses for protest and bringing of lawsuits against media outlets have been favored legal tools to silence criticism of ruling parties and politicians.

For example from the beginning of 2010 to May 2011, more than 187 lawsuits were filed by authorities against reporters. Such lawsuits can result in exorbitant fines, expropriation of equipment, and even the closure of media institutions. In numerous circumstances such harsh punitive actions, such as stopping protests or raiding and destroying the materials of journalistic or civil society organizations have been permitted by authorities under the law and/or relevant orders without reference to the courts. In these ways the law may thus paradoxically be employed to circumvent due process.

The cause is twofold. First, loopholes in the key legislation both old and new, allow broad leeway for the arbitrary use of 'security'-related legislation against peaceful practitioners of freedom of expression. Second, there is a lack of political will to employ the liberal elements of existent laws or to demand that security forces bring those who commit crimes against practitioners of free speech to justice.

The lack of political will is itself encouraged by the lack of a viable opposition in or outside the parliament which allows the executive to grow stronger.

The political opposition has numbers (for example sufficient seats to be a viable opposition in parliament) but does not have the chemistry to overcome the differences in parties' programs. Some strong civil society groups and movements such as the Iraqi Spring have come to the floor. However, as a whole, Iraqi Civil Society continues to suffer from restrictions by foreign powers, in addition to the challenges intrinsic to rebuilding in the wake of decades of war and sever constriction.



Legal Insecurity – Current Laws and Usage

Iraq's Constitution and international agreements to which Iraq is party protect civil liberties broadly, and particularly freedom of expression and assembly.

The Iraqi Constitution enshrines the freedom of "assembly and peacefully protest", and the "freedom of expression", including "freedom of the press, printing, advertisement, media and publishing", unless threatening the "public order and morality" (Article 38). Likewise, Iraq is a signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR). Article 19.2 of the ICCPR entitles "everyone the freedom of expression" including "the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The text further specifies that any restriction on this right, the "freedom of peacefully assembly" (Article 21) or "freedom of association" (Article 22.1), must be strictly necessary to preserve the interests of "national security or public safety, public order, the protection of public health or morals" (Articles 19.3.B, 21, 22) or in the case of association and assembly "the protection of the rights and freedoms of others" (Article 21, 22.2).

In order to comply with Iraq's constitutional and international legal obligations particular laws should clearly demonstrate that limitations on freedoms are

in the defense of the public against a serious, likely and imminent danger to public safety. Anything less constitutes a disproportionate limitation of and/or sanction upon those protected freedoms. However many pieces of in-force legislation written under the last three administrations of Iraq (the Ba'athist Administration, the Coalition Provisional Authority, and the current republic) do not meet that standard. The still in-force Ba'athist Era Iraqi Criminal Code No. 111 (of 1969 revised) not only makes illegal, but also criminalizes and unduly harshly punishes, varieties of expression valid under the Iraqi Constitution and/or ICCPR. Promoting, publicizing or commenting on certain subjects may receive punishments up to and including life imprisonment and the death penalty. Despite the state's strict anti-Ba'ath position, this law has remained in effect due in part to the fact that the state is a broad apparatus and the legislature often cannot organize a quorum to discuss the small agenda it sets for itself each term. Hence, most legislative reform in general has been delayed. This is one of many cases. Under this code, it is a criminal offence to insult the Arab Nation, the Iraqi people, the national flag or state institutions and emblems (Article 404, up to 15 years for the foun-

dation of an organization to do this in or outside of Iraq, Article 202 up to 10 years in prison for committing the crime personally, Article 208 and 209: 7 years for publishing materials related to or directly or indirectly promoting this crime), the president or his legate (Article 225, up to 7 years in prison), public institutions including the Iraqi Council of Representatives and courts (Article 226, up to 7 years in prison), an Iraqi government employee in the course of their duties (Article 331, up to three years in prison) as well as the beliefs, symbols or persons involved in religion (Article 372, up to 3 years in prison), or the honor of any person (Article 434, up to 1 year imprisonment). The dissemination of false news aimed contrary to the public interest (Article 210) is punishable by prison with no temporal specification. Defamation is thus punishable under criminal as well as civil law. Where defamation is validly illegal it should be a civil, rather than criminal tort. The excessively broad conception of defamation is used to silence legitimate criticism of Iraqi authorities, in contradiction of rights guaranteed by the above outlined international agreements and Iraq's own constitution, for example:

- In Basra on 7 August 2010, a police commander sued journalists of al-Sharqiya and al-Fayha Satellite News Channels for libel when they reported improvised explosive devices as the cause of a deadly explosion in the province. He insisted that the blasts had been caused by a generator accident, which indeed turned out to be an IED.
- In Wassit, the Wassit Provincial Council and the President of Wassit Appeal Court sued the editor of al-Sada Newspaper, Sajjad Salim al-Fatlawi, for defamation and slander after he had criticized the executive and judicial authorities in Wassit, and acquired on September 6th a warrant for his arrest as a result.

CPA Order No. 14 of 2003 "Prohibited Media Activity" allows the government to bar any act deemed "broadcasting, publishing, or attempting to broadcast or publish" (Section 5.1) "incitement to civil disorder" (Section 2.b). Media organizations described as violators face "detention, arrest, prosecution," and "if convicted, fine of up to USD 1,000". The previous and continued use of the order suggest that its vague language does not sufficiently define what would constitute a violation or demand a clear link to an imminent danger, nor does it in any way reference the need for a warrant. Reporting on a security event by quoting or showing video of such speech, even without making any reference to supporting this view, has on a number of occasions resulted in punishment under such heading. The Order therefore can be arbitrarily used to shut down political opponents. This continues to be true even after the invalidation of some of its more egregious sections, over which implementing authority was given exclusively to the now dissolved CPA in the order.

Furthermore, since the content of CPA Order 14 now also falls under the category of anti-terrorism legislation such as the Iraqi Counter Terrorism Law No. 13 of 2005, it can be executed under Iraqi law without a previous warrant, making it even more dangerous. Moreover, while legally a court decision must be issued within 24 hours after the raid or arrest (Iraqi Criminal Code Article 19.13), in practice even this minor balance is often disregarded.

- Following an attack on Sayidat al-Nejat church where al-Baghdadiya Satellite News broadcast the demands of the hostage takers, on November 1st 2010 Iraqi police raided al-Baghdadiya's Baghdad offices, confiscating and destroying broadcast equipment, stopped the station's broadcast, arrested a switchboard operator and producer, the latter of which was held for months, and



closed the station. However, doubts were raised if the motivation for the channel closure was the reporting from the church attack or their popular call-in shows discussing corruption. When al-Baghdadiya employees requested a person claiming to be from the Iraqi Communications and Media Commission (CMC) accompanying the raid to show proof of identity, he refused reportedly saying "I am above the law." Furthermore the case was not registered in a court of law within 24 hours of the raid, as demanded by the law even under anti-terrorism legislation.

- On 28 February 2010, police and army personnel stormed three printing houses in Baghdad (Maghrib, Janoob, and Kawtha) and confiscated a booklet called "Where Iraq's Money Went." The printing houses were closed, and six people were arrested and detained at an unidentified location under the allegation that the printing houses were publishing seditious material.

CPA Order No. 19 "Freedom of Assembly" of 2003 rightly starts by acknowledging the injustices of and specifically canceling Articles 220 and 222 of the 1969 Iraqi Criminal Code and claims this as its justification for the Order as a whole (Preamble, Section 2). However, it goes on to put new and different restrictions on the freedom in question: for example making "the disturbance of traffic" plausible cause for banning a protest and attempting to hold one during "peak traffic hours" a nearly definite one for doing so (Section 1.2.a-c, Section 5). Section 3.1 bans any two protests in one municipality occurring on one day. It likewise demands acquisition of a permit. This permit is applied for by indicating the names and addresses of all organizers for any protest (Section 4). Authorities may limit the number of participants or ban the protest altogether. In any case the order makes unlawful any protest lasting more than

4 hours (Section 3.3). Even "wearing non-traditional facial covering" at a gathering is a prohibited activity (Section 6.1.e). By contrast a notification of authorities at most should be sufficient to allow law enforcement officers to protect the public order and certainly to reroute traffic. Each of these clauses thus lacks the necessary qualification regarding the gravity, immediacy and likelihood of the occurrence of a danger to the public safety to justify the restrictions on such a critical freedom. Unfortunately many of these weaknesses are repeated in the new draft law on assembly put forward by the current government which will replace CPA Order 19 if it passes its second and final reading in the Iraqi Parliament currently scheduled for this year.

The 2007 Law of Journalism in Kurdistan in theory represents a positive step, since it decriminalizes press offences. However, the law and decriminalization is limited to print media. Press offences therein (Chapter 5 Article 9) lack clear definition. Fines prescribed in this legislation (Chapter 5 Article 9.1-2) are exorbitant in comparison to a journalist's income: a journalist or his editor may be fined between 1-5 million dinars, i.e. \$850 to \$4,200, and their publication 5-20 million dinars, i.e. \$4,200 to \$17,000. Moreover the KRG Parliament's attempt to make negative amendments to the draft proposed by the Kurdistan Journalists' Syndicate in 2007, later dropped as a result of media pressure, indicating the true legal outlook of many of the Kurdish parliamentarians who claim to support the more liberal 2007 code.

Regardless, older illiberal legislation, such as the Iraqi Criminal Code, described above, can and is often used by politicians to supersede more liberal laws. The harsher legislation is employed by the highest levels of officials nominally supportive of promulgating the more liberal legislation, like the 2007 Kurdish Journalism Law, in the first place.

- One of the two ruling parties of the Kurdish Regional Government (KRG), the KDP, filed three lawsuits on August 2nd, 2010 for defamation against the Roznama newspaper, its editor-in-chief, and one author, after the paper accused the KDP and PUK of benefitting from oil smuggling.

- The President of the KRG and head of the KDP, Massoud Barzani, filed complaints using the Iraqi Criminal Procedure Code against Lvin magazine in November 2010 as well as Hawlati and Awene the same year.

- The KDP general secretary, Fazil Mirani, filed a lawsuit against the magazine Rega for 35 million Iraqi dinars (\$29,500) for a report in which it was suggested that the KDP's security force could have been involved in the murder of journalist Sardasht Othman in May 2010, discussed in detail below. Since the suit was brought under the Iraqi Civil Code rather than the KRG Journalism Law of 2007, the plaintiff was able to acquire a fine of over double the maximum fine under the new law.

- The editor of the weekly Awene, received seven court summonses in one week in December 2010. The summons was the result of complaints filed by Naliya, a company whose owners allegedly have close ties with the second of the KRG's two main ruling parties (the PUK). The charges were brought after the paper suggested that official safety regulations had not been followed in one of the company's building developments following a fire in the Soma Hotel on the night of 16 July 2010 which resulted in the deaths of 27 people.



The executive in Erbil and Baghdad have both required the licensing of protests within the last two years.

In the summer of 2010 thousands of Iraqis took to the streets to protest the chronic lack of government services in general, and electricity shortages in particular. In response, the prime minister's office ordered the Ministry of the Interior to start demanding permits for protests. Along with the order apparently also came instructions to refuse permits for demonstrations about power shortages, one of the most emotive topics of protest being raised at the time. In consequence, on the 25th of June 2010, the Interior Ministry issued regulations requiring protest organizers to get the "written approval of both the minister of interior and the provincial governor" and then submit an application to the relevant police department, not less than 72 hours before any planned protest. Likewise legislation passed by the KRG on November 3rd, 2010 demands the submission of an application for authorization at least 48 hours in advance. In the case of the orders from Baghdad the lack of specified criteria for approving or denying permits effectively gave the government unlimited powers to limit the right of peaceful assembly.

The KRG law requiring protest licensing in theory only gives authorities discretion in deciding whether to approve a protest on the basis of whether "the protest will damage the system or public decency" (Article 3 Paragraph C). In practice "the system" has been interpreted as KDP-PUK rule, leading to much broader usage against political opponents. Such onerous regulations regarding the licensing of protests and the vague definition of criteria for denial of licensing leave the door open to arbitrary implementation. Indeed, the government at Baghdad and Erbil has refused to authorize numerous requests for peaceful public demonstrations in following months, with no explanation. While for several months after February 17th, the first day of protest,

when the first demonstration was organized, there were nearly daily sit-ins in Sulaymaniyah's central Sara Square, attempts to stage protests in Erbil failed because organizers were denied authorization and then violently dispersed when they attempted to protest anyway. CPA Order No. 13, like the PM's order, demands the licensing of protests. Licensing, however, should not occur under any circumstances because notification for very large pre-planned protests is sufficient for law enforcement to protect the public order and exceptions for any notification regime should be made for spontaneous protests which are a fully legitimate manner of expression and assembly.

Likewise **licensing regulations not passed through the legislature also apply de facto to satellite and other forms of film reporting** on protests and security incidents. The Iraqi NGO, Marsid al-Huriyat al-Suhafiya (the Journalism Freedom Observatory) notes in its annual report covering up to May 2012, that "carrying a camera in Iraq... is treated by security authorities with the same level of suspicion as carrying a weapon." It "requires security and military pre-approval" and is nearly impossible to do in an efficient and timely manner given that carrying a camera must be approved by a different set of security authorities in each city or district crossed through. Indeed the existence of such illiberal, excessive and extra-legal demands for information and authorization have been so normalized in the system that they are openly discussed by the highest ranks of the security services. For example the acting head of the Ministry of the Interior recently stated that "freedom of the press may pose a threat to national security. Journalists should no longer publish any news related to killings or arrests without the approval of the Interior Ministry."

The 2011 Law of Journalists' Rights passed by the

Iraqi Council of Representatives on August 9th, 2011 puts forward a number of positive measures in comparison with the previous legislation in theory. Article 4.2 of the 2011 Laws of Journalists' Rights guarantees the unqualified right of journalists to maintain the confidentiality of their sources. Likewise, Article 6.2 protects the right of journalists to participate in public gatherings (like the popular protests from which they were often banned during 2011-2012). The law also bans authorities from questioning or investigating a journalist on a crime related to his work, preventing publication, or confiscating materials without a judicial decision (Articles 10.1 and 15 respectively). A journalist has the right to request the presence of the head of the Journalists Syndicate, a union under government supervision considered very close to the Prime Minister, or his own news organization during questioning (Article 10.3). Moreover on a material level, there are provisions for monetary compensation in the form of a moderate salary or pension for injury or death during the course of executing journalistic duties, and a mandate for medical treatment in the former case free of charge (Articles 11, 12).

However many worrying loopholes remain in the final version of the law even after the Parliament's revision of the draft proposed by the Council of Ministers. Article 1.1 defines a journalist as a person "engaged in full-time journalistic activities." Article 1.3 specifies that the articles of the law refer only to Iraqi nationals. As a result of Articles 1.1 and 1.3 a range of media professionals, such as photo-journalists, camera persons and other workers integral to journalistic reporting, as well as part-time reporters can be excluded from the protections of the legislation. By definition all foreign journalists/media professionals are definitively excluded, leaving them with no legal status. Article 13 demands the deposit of the contracts of all local and foreign journalists operat-

ing in Iraq with the Journalists Syndicate. Such information demands amount to de facto registration, raising concerns in a country where journalists often take extreme measures to protect their personal information and affiliations for reasons of the most basic personal safety from government and non-governmental threats, and because the legitimacy of the union is disputed by many journalists in Iraq. A draft version of the law specified in Article 19 that the 1968 Publications Code which allowed, for example, seven years imprisonment for publically insulting the state, would be voided by the passage of the new legislation. In the passed version of the legislation, the wording of the new Article 19 states that the new Journalists Rights Law supersedes all previous legislation. This would be an even more positive development. However it is de facto nullified since nine provisions for key rights in the 2011 legislation are qualified by the phrase "in accordance with the law" or its equivalent, therefore calling into force all the pre-existing illiberal laws, which Article 19 of the 2011 Journalists' Rights Law claims to override. A clearly worded new legislation would override an old law. However, the new law states that it overrides previous legislation and aims to correct it but it does not in fact correct the old problems because of its loop-holes. For example, Article 4.1, guarantees journalists "the right to obtain information, news data and statistics" but "in accordance" with a domestic law which does not actually provide for a general right to information. The rights of investigation, acquisition of information from official sources, and publication of information, are guaranteed only so long as they are not "contrary to the provisions of the law" (Article 5.2, 6.1, 8). The prohibition of authorities from forcing a journalist "to disclose the tools of his trade" is qualified by the clause "unless such a prohibition is contrary to the provisions of the law" (Article 7). Thus the 2011 Journalists' Rights Law in fact entrenches and is subject to

the limitations and harsh punishments of pre-existing illiberal legislations – the possibility to punish valid criticism of the state under the criminal libel clauses of the Iraqi Criminal Code of 1969, arbitrarily implement the anti-terrorism clauses and CPA order No.13, etc. This has happened repeatedly and continues to occur as the examples throughout this document illustrate.

These qualifications and loopholes have led many journalism advocates to point out that the new law is stronger on material compensation for journalists, than professional rights. Material concessions, such as promising to supply financial compensation to persons wounded or killed in the line of duty provide good PR for the government at a menial political cost, while making little progress on preventing abuses to human rights defenders.

In sum, new in-force legislation (such as the 2007 Law of Journalism in Kurdistan and the 2011 Law of Journalists' Rights) has both loopholes and positive features. Until now, existing liberal laws have often been disregarded by authorities. Older laws, new unilateral executive orders, or misused terrorism-related regulations can – and as the cases and statistics in the rest of the report will demonstrate are – employed to supersede liberal elements of new legislation, international agreements to which Iraq is a signatory, and the principles expounded upon in the Iraqi Constitution.



Legal Insecurity – Dangerous Draft Laws

A Dangerous Juncture in Defining the Legal Framework of Civil Liberties in Iraq

The current trend of legislation on freedom of expression does not necessarily represent an improvement over past jurisprudence. In the past two years, five key pieces of legislation have been proposed that will define some of the most fundamental frameworks protecting civil liberties in Iraq. The controversial national journalism law already passed in August 2011. Yet each repeats, references and entrenches weaknesses of pre-existing illiberal legislation dating from the Ba'athist administration and the Coalition Provisional Authority. Each suffers from a combination of dangerous ellipsis of or direct contradiction to the principles outlined in Iraq's Constitution and the ICCPR.

Almost every article of **Draft Law on Freedom of Expression, Gathering and Peaceful Protest**, is inconsistent with the Constitution and/or ICCPR. Firstly the draft limits the rights which it is intended to protect by defining "freedom of expression" and the "right to information" each as the right "of the citizen" only, without mention of the rights of any other categories of persons (Articles 1.1, 1.2). The rights of non-nationals to express their opinion, seek information from the Iraqi state, or engage in gatherings in Iraq are therefore entirely unprotected in this draft, although they should be protected according to Article 19.2 of the ICCPR which protects these rights for "all people".

According to the draft, the only legal "public gathering" is a licensed (Article 7) demonstration (Article 1.5), after 7am and before 10pm (Articles 8.3 and 10.2), which may not be carried out in a public street (Article 8.2). These geographic and temporal limitations prima facie exclude the rights to engage in a strike or sit-in despite the fact that these activities neither threaten the public order nor morality, in and of themselves. Therefore their prima facie exclusion is in contradiction to the Constitution and ICCPR. Rather than being elided and their component parts banned, rights like sit-ins and strikes should be specifically mentioned in the definition of a legal 'public gathering' in Article 1 and not contradicted in following articles elaborating thereupon. Article 7.1 specifies that a public gathering must acquire the

approval of "the head of the relevant security unit five days before its occurrence". The application includes the names of "the committee of no less than three people" who are made personally responsible (Article 7.2) for the organization of the gathering, and its adherence to its stated purpose, timing, and location, which are likewise required in the application (Article 7.1). The 'relevant security unit' is left undefined and therefore open to opportunistic arbitrary implementation. Likewise, demanding a license for all public gatherings places an unnecessary burden on the right to assemble, as did Ba'athist security mechanisms, CPA Order No. 19, regulations of the prime minister via the national Interior Ministry of 2010 and the KRG Law regarding licensing of protests of the same year before it. So too does making

its organizers personally responsible for any changes in program. Moreover the law does not clearly describe the reasons for which protest permits might be denied. An announcement of the intention to hold a public assembly should be sufficient for security authorities to maintain the public order and morals.

The ability to access information and carry out research, like the right to publish its results, are fundamental pre-requisites to the full exercise of freedom of expression. Article 3.1 takes the important step of discussing "the foundation of an open database of information for the masses" by "the ministries and departments not tied to ministries". However the formulation of the article must be binding rather than discretionary to have any practical utility. Likewise it would be strengthened by explicit reference to "all institutions of the state" and the specification of the authorities to be held responsible if this does not occur. Article 3.3 allows an appeal regarding the denial of information only through the High Commission of Human Rights. Even disregarding some activists' doubts of the neutrality of that particular Commission at the current time, providing for a means of judicial (rather than purely administrative) appeal is essential to sufficiently protect a right of the importance of access to information. This could be done by allowing an appeal directly through the judicial system in addition or requiring the Commission to respond within a defined period of time, such as three days, and allowing a judicial appeal to the decision of the Commission through the courts in the case of a negative answer. Article 4 rightly protects the right to engage in experiments for the purpose of scientific research and publish the results of this research. However the right to research and publish research is thus limited exclusively to the hard sciences, with no mention of and therefore no protection for research or publication in the humanities or

social sciences which are equally integral fields of expression and therefore represents a major gap in the legislation.

The **Draft Communications and Media Commission (CMC) Law** problematically gives the authority the right to close a media outlet if the General Manager of the CPC has "sufficient reasons to believe" that the outlet poses "a threat to regulations." The draft law does not reference a due process in the courts, or any threshold for the seriousness, likelihood, or immediacy of the threat posed (Article 26). Under no circumstances should such a strong sanction be permitted for such a vaguely defined crime, and certainly not without reference to a just process through the judiciary. The legislation furthermore imposes government licensing of journalists as well as media outlets, while providing little information on the criteria used for giving or denying such licenses. It gives the CMC the power to cancel licenses after first-time minor violations of the licensing terms, without any graduation of punishment in proportion to threat. There is no transparent path to appeal should an application be denied, nor a definite timeline governing the CMC's obligations to respond during the application or appeals process. It requires that all individual journalists and all equipment be registered by the CMC. The clause is particularly worrying in light of the recent history of journalist murders in Iraq, targeted because of sectarian or work affiliations. As a result many have gone to great lengths to conceal their profession for fear of reprisal. The compilation and circulation of lists thereof represents a real threat to their safety.

Iraq's Information Technology Crimes Draft Law, regarding internet use, passed reading by the Council of Ministers in 2011, and stands for a reading and vote in the Parliament to become binding legislation in mid-2012. Like the law on journalism which was

recently passed and the draft one on assembly, the draft internet legislation problematically criminalizes defamation, and particularly "insult" of the state/state authorities. An overly broad definition of defamation threatens basic valid and necessary criticism of policy makers and policy. According to the draft law, persons who use the internet "to attribute terms, images, sounds or any other means that include ... insult to the others" are subject to imprisonment of up to two years and a fine of 3-5 million Iraqi Dinars (Article 22.3). Life imprisonment is the punishment for those who use the internet to "harm the reputation of the country" (Article 6.1). Life imprisonment is also the sanction for "publishing or broadcasting misleading events for the purpose of weakening confidence in the electronic financial system, electronic commercial or financial documents, or similar things, or damaging ... financial confidence in the state" (Article 6.3). Defamation should be a civil issue. Even where defamation is a civil tort, the State should be excluded altogether from the entities whose "reputations" may be its object, since the need to criticize the state is such an important corner-stone to a healthy democracy. The way they are currently written, Articles 6.1-3 thus can effectively prohibit any mere discussion, much less criticism, of the economic, financial and administrative systems of the state. Convincing, fact-based, critical discussion by its very nature "weakens confidence" in the current system in a way that a state authority promoting the system or policy in question sees as misleading, at least in the short run, for the purpose of promoting reform thereof. Likewise Article 22.3 via its broad understanding of "insult" could cover such innocuous materials as political cartoons of authorities or sardonic articles regarding their actions.



Like the defamation clauses, the definitions of 'security' related technology crimes too suffer from excessive scope. This in turn threatens the space for reporting on, and critically re-evaluating, state policy in the security field. Any penalization of promotion or discussion of ideas, even regarding national security must be qualified by standards of the seriousness, imminence, and likelihood of the threat they pose to public security on the ground. Many articles in the law do not. "Setting up or managing a website with intent to promote or facilitate the implementation of ideas which are disruptive to public order" (Article 4.1), "publishing information regarding the preparation and implementation of flammable or explosive devices" (Article 4.3) or "publishing information about using mind altering substances (Article 5.2) are all unqualified. The equivalent of Articles 4.1-2 has been used against journalists reporting the incidence of a terrorist attack for example. This legislation would likewise allow legal harassment of a journalist simply reporting on a drug use problem in a particular area should an excuse to penalize a journalistic critic of a politician be desired. Indeed in the draft internet law these vaguely defined acts are not only criminalized but also punishable with extremely harsh sanctions. Punitive sanctions provided for by the law include life imprisonment and between 25 and 50 million Iraqi Dinars (between \$16,000 and \$32,000, more than 10 times the average Iraqi's income). The penalty is thus grossly disproportionate to the threat.

The internet draft law also lacks other necessary protections for whistleblowers in both the private and public sectors. Articles 7-9 prohibit the interception of financial data, just as Article 19.1.a prohibits the publication of illegally received materials. These articles should be qualified by a clause permitting such publication if in the public interest. One example might be an anonymous email to a journalist re-

garding the fraudulent but also private banking activities of a public servant or information acquired by a leak from the staff of a private company of a public health threat. Currently these varieties of 'crimes' in the legislation face perpetrators with fines of up to 10 million Iraqi Dinars and 10 years imprisonment. This constitutes a dangerous deterrent to necessary reporting in the public interest.

Meanwhile total access to individuals' private information by authorities is permitted without any form of due process in the draft. For example, "declining to provide information or data to the ...administrative authorities" is criminalized, without demanding that authorities provide either a cause or a warrant (Article 18). Article 13 provides similar permissions to "security authorities and bodies responsible for issuing licenses." This would allow for example, any state authority to demand that news media reveal their sources without even providing a reason.

According to Article 29 in a legal court proceeding, "the court may decide to confiscate or damage the tools, equipment, software and devices used in the commission of the crimes stipulated in this act" without any standard for the gravity, likelihood or imminence of the threat. The article thus would include the destruction of the laptop of a journalist accused of insulting a state authority and all the related or unrelated information contained within. The article likewise denies basic principles of due process by allowing the destruction of pertinent evidence before a judgment is passed and/or and the appeal process exhausted.

The law's provisions additionally mean that many important forms of new media could simply be banned altogether from use in Iraq, since the law fails to differentiate between users and service providers. For example, a Youtube or Facebook could

conceivably be shut down if one of their users posted once about an as yet unapproved generic drug.

Given Iraqis' recent experience with extremely high levels of violence, it is understandable that lawmakers seek to strongly punish incitement to violence. However legislation must be clarified to distinguish incitement from the critical function of discussion and discourse on security, administrative and economic matters.



Legal Insecurity – Monitoring Institutions

As has been the case with the laws, institutions have been established with the apparent express mission to protect rights when practical use of the mandate to protect civil liberties is restricted.

20 Although its mandate covers all human rights abuses in Iraq, the Iraqi **Ministry of Human Rights** has, to date, primarily focused on recording the abuses of the Ba'athist Administration. The investigation of the crimes of the previous administration of the country is certainly necessary and commendable for any national Iraqi human rights body. However the investigation of the past should not occur in the place or at the expense of the investigation of human rights abuses occurring on the watch of the current government. This is particularly true when the current government is also accused of having a significant role in these abuses, as detailed in this report. When the work of the Ministry is thus constricted it is unsurprising that it should come under criticism for following an agenda which is seen as simply that of the ruling coalition and party, both of which the head of the Ministry of Human Rights, like the Prime Minister, is a member. The impression of the non-independence of the Ministry is furthered by the actions of its ranking members who have publically denigrated the principles of pressing current human rights issues that they are supposed to be upholding. When the Minister of Human Rights was invited to participate in a conference for defenders

of free speech attempting the formation of a federation thereof in late 2011 to respond to rising violence targeting such persons, he reportedly encouraged them, for example, not to protest in general, calling protests an “un-nationalist” activity.

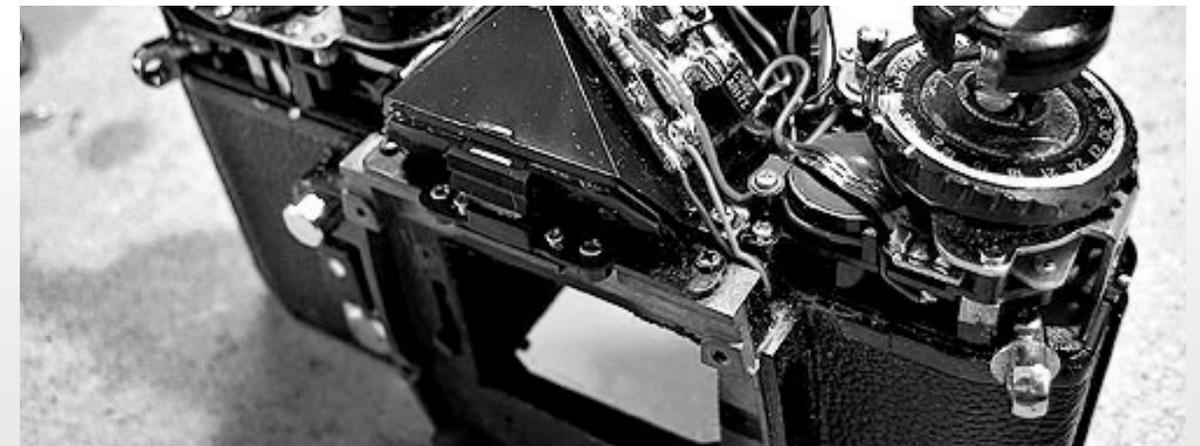
The foundation of an Iraqi **Independent High Commission for Human Rights** was mandated in the Iraqi Constitution of 2005, but its 11 founding members were not selected until the 5th of April 2012. It is hoped, by activists, that the Commission's members, who are not to be allowed to be members of a political party, will be more independent than those of its predecessor the Ministry of Human Rights.

The Iraqi Communications and Media Commission (CMC) was set up under the Coalition Provisional Authority Order No. 65 with a mandate “to protect public safety and consumer welfare...” in affairs pertaining to broadcasting, largely to administer broadcast frequencies and other technical issues. Regulation of the industry was specifically subject to the demand that “regulation in this context should provide for the fullest exercise of freedom of expression, as defined by the International Covenant of

Civil and Political Rights, and encourage pluralism and diverse political debate” (CPA Order No. 65, Preamble). Moreover its founding document specifically indicates that “the written press shall not require a license to operate within Iraq” (Section 5, 2(h)). Nevertheless in January 2010 the CMC overstepped its mandate, drafting legislation which would impose government licensing of journalists as well as media outlets, while providing little information on the criteria used for giving or denying such licenses no graduation of punishment, and government powers to demand the exposure of journalists' sources, among other problematic elements of the legislation. CMC representatives furthermore made it clear that media organizations would have to reveal confidential sources if they sought to challenge any determination made by the agency that information published was inaccurate or inflammatory.

- In July 2012 the CMC flexed its muscles by declaring that it would close 44 media outlets for licensing delays. The targets were to include such major satellite news outlets as BBC, al-Baghdadiya, al-Sharqiya, and radio outlets such as Radio Sawa, Monte Carlo Radio, and al-Murabid. The action was to be taken with no reference to the courts, and would apparently have been carried out had not the Ministry of Culture intervened following public outcry, postponing the shut-downs. The incident was largely read later as an administrative issue rather than targeted attempt to restrict the media, and the media outlets in question did continue running. However it illustrates the danger of the lack of gradation of punishments, which lead to the real possibility of the nearly overnight shut down of a vast number of Iraq's most important news outlets.

Likewise a special court was established on July 11th 2010 to deal with media related cases housed in the al-Rusafa Appeals Court complex in Baghdad. This directly contradicts Article 95 of the Iraqi Constitution which forbids the establishment of special or extraordinary courts, although so far its rulings have not shown politicization.



Physical Insecurity

Attacks by Uniformed Members of the Security Services/Officials

May 2010 – May 2011 witnessed a 55% rise in attacks on journalists over the preceding year. This followed the same pattern as the notable increase in the number of lawsuits brought against journalists from 2010 to 2011. The main cause for the dramatic rise in physical and legal attacks on practitioners of free speech was the government repression of the protest movement known as the Iraqi Spring. The following decline in attacks in the year leading up to May 2012 does not necessarily represent an improvement but rather more likely bears witness to the efficacy of the crackdown upon the Iraqi Spring's valid peaceful attempts to organize.

The Iraqi Spring emerged in the first quarter of 2011. In February 2011 tens of thousands of Iraqis took to the streets to protest the lack of services, unemployment, and endemic corruption. In the Kurdish Region anti-corruption demands particularly focused on the politico-economic monopoly of the two ruling parties (the KDP and PUK). As such it built on previous, smaller spates of protests based on the same issues in 2010. During 2010 increases in general security from the height of the civil war had made street protest possible. The security improvement had also made the excuses of politicians that the lack of development was related to the security situation, rather than incompetence or corruption, less credible. The Iraqi Spring built on these existing domestic currents of protest. It also obtained new momentum from popular protest in Tunisia and Egypt. By late February the corrupt rulers of both of those countries had been removed as a result of massive peaceful popular protest. This provided an inspiring example to Iraqis. It provided an equally disconcerting one for officials, although Iraqi Spring protests largely did not demand regime change like its Tunisian and Egyptian counterparts, but rather regime reform.



The peak of attacks on practitioners of free speech coincided with the peak of protests when thousands took to the streets in all 18 of Iraq's provinces, in February. During nationwide protests on February 25th alone, Iraqi security forces under the supervision of Baghdad killed at least twelve protesters across the country and injured more than 100 according to Human Rights Watch (although some activists themselves put the figure lower) assaulting unarmed journalists and protesters, and removing documentation materials. That month dozens of journalists were particularly targeted. In addition to having their tools of reporting documentation confiscated and their cameras smashed, the latter were variously assaulted, arrested, hooded, beaten, electro-shocked and threatened with summary execution by uniformed members of the Iraqi and Kurdish security services, for their coverage of protests. In all, UNAMI estimates that 33 people were killed and over 277 persons injured in relation to demonstrations at their height from February to June 2011. Where the protesters at maximum threw stones, although they did on few occasions attempt to approach government buildings with the intent of entry, the use of force even lethal force has on some occasions been found excessive.

Protesters, journalists, academics and rights defenders in the Kurdish Region, often praised for being "the other Iraq," were no better spared. The security forces of the KRG opened fire on protesters, arrested organizers and banned unlicensed demonstrations. From February 17th to April 11th 2011 in the KRG clashes with security forces killed at least seven civilians and injured more than 250 demonstrators in the KRG, while dozens more were injured, detained or tortured.

In both the north and south, protest organizers and press covering the protests and stories of corruption

in conjunction, have been specifically singled out for retribution by officials using uniformed security forces. In addition to the journalists noted, there are at least five known cases in which NGOs and two in which political organizations were targeted in operations by the security services (all but one by the Baghdad Special Command) for their role in the 2011 protests during that year. The brutality of treatment, at times up to and including electro-shock by uniformed members of the security services led one victim, the poet and journalist Hossam al-Serrai to comment, "they treated us like one would treat members of al-Qaeda, not a group of journalists."

- An activist involved in organizing demonstrations in Baghdad February 13th, 2011, Oday al-Zaidy, was asked with a group of other protesters in al-Firdaus Square by armed forces to move the protest to a different location. After agreeing to travel in an army vehicle to view the alternative location, he was driven some distance, ordered out of the vehicle by the commanding officer who then drove away, while men in plain clothes forced al-Zaidy into another vehicle, where he was blindfolded and beaten, then driven to an unknown location where he was held for five days and beaten with batons and shocked with electric prods, for which he required hospitalization for two days following release.

- While covering protests in Sulaymaniyah February 19th 2011, Sabah Nuri, a reporter of Radio Now was beaten by members of the peshmerga and police, who also removed his camera.

- On February 23rd 2011, one of the most influential local Iraqi journalistic freedoms watchdogs had their offices raided by 30 armed individuals wearing military uniform in Baghdad, during the course of which the organizations' computers,

external drives, lists of journalists working with the organization and paper archives were expropriated, and the walls and helmets upon which the word “press” was emblazoned filled with bullets.

- The same day, Ayn, an election monitoring NGO Network based in Karrada Baghdad was attacked by a joint army and police unit.

- An activist involved in organizing demonstrations in Baghdad February 24th, 2011, 'Abdel-Jabbar Shaloub Hammadi, was arrested in the street in Baghdad by armed police, beaten, blindfolded and transported to a police building in al-Baladiyat district where he was suspended from the ceiling by his wrists, with his legs and arms tied together, and had icy water thrown over him, after five days transferred to the Intelligence Department in Sahat al-Nussur district in Baghdad, and finally released without charge March 8th 2011.

- While covering protests in Baghdad February 25th, 2011 along the Bridge of the Republic, 11 journalists and cameramen were arrested. Among them were two reporters (Idris Jawad, Sinan Adnan) and a cameraman (Safaa Hatim) from al-Sumeria News who were beaten by Iraqi security forces who also tied their hands and put hoods on their heads.

- Four more reporters who had also been covering the thousands of protesters who came out in Tahrir Square in Baghdad February 25th were removed from a restaurant later that evening. The editor of al-Sabah Ali al-Samarrai, al-Mada journalist Ali Abd al-Sada, as well as the journalists Hessam al-Sarra and Hadi al-Mehdi were beaten in the restaurant by the Iraqi security services and

then removed to a police station where they were beaten with clubs, electro-shocked, threatened with rape, then released without charge the same week.

- On February 25th, Iraqi security forces forced entry into the offices of the Diyar Satellite News Channel as a result of their live broadcast of popular protests against the lack of services in Baghdad, arrested 14 persons working there and destroyed broadcast equipment, taking the channel off the air for 3 days.

- Other demonstrators taking part in February Baghdad demonstrations who refused to give their personal information fearing reprisals indicated that after being arrested they were accused of being members of the Ba'ath, and that before release were forced to make written statements swearing that they would not participate in future demonstrations.

- Likewise during protests in Karbala February 25th security services beat unarmed protesters. Among them was a Reuters cameraman, Mushtaq Muhammed, who was taken to the hospital as a result of nearly lethal head wounds given him by security services, who also destroyed his camera.

- In Najaf, riot police beat Afaq Satellite News reporter 'Ali al-Najafi and al-Salam TV cameraman Tareq al-Turfi and appropriated their footage of the events.

- While covering protests in Basrah February 25th reporters from al-Ayn News Agency and Radio Dijla were attacked by police.

- In Kalar, Sulaymaniyah, on February 25th, a peshmerga attack on a journalist from Iawina

News ((during his coverage of protests there sent him to the hospital. In the same area, a reporter and cameraman from KNN Satellite News, Sangar Hamid and Pishtiwan Ahmad said that peshmerga forces shot at them to force them to leave the scene of protest, in addition to beating the journalists and forcibly removing their cameras.

- While covering protests in Said Sadiq city, Sulaymaniyah, on February 26th, 2011, two journalists of the KNN satellite channel were beaten by the Kurdish secret police, known as the asaesh.

- After speaking at one of the protests in Sulaymaniyah, on February 27th, 2011 where he criticized the corruption of the ruling parties, Kamran Ali Khwaraham was met later in the evening at his house by PUK peshmerga in military uniform. Although they responded negatively when he inquired if they had an arrest warrant, he was forcibly removed from his home anyway. Khwaraham

was beaten and held in a room for three days and then released with a warning never again to participate in such demonstrations. After returning to demonstrations March 29th, 2011 he was arrested and taken to asaesh headquarters where he was held for 5 days.

- While reporting on protests taking place in Sulaymaniyah City, the asaesh attacked the news crew of Jeter News, beating the crew and destroying their cameras March 1st, 2011.

- Reporter Assad Muhammed and cameraman Sangar Hameed, were forcibly removed from in front of their offices at Speda TV by members of the asaesh, and beaten in the asaesh headquarters without explanation March 3rd, 2011.

- While covering protests in Basrah, on March 4th 2011, riot police of the Interior Ministry beat provincial journalists syndicate president Hayder al-Mansouri, AP cameraman Nabil al-Hourani,



al-'Alem Satellite News cameraman Muhammed al-Rasid, and Baghdad News reporter Shihab Ahmed. The beating was so intense they had to be treated in the emergency room of a nearby hospital following their release.

- On March 6th, the Baghdad Operations Command forcibly evacuated the premises of the Iraqi Communist Party and the Iraqi National Party, apparently in relation to support for demonstrations.
- While covering protests in Garmian on March 9th, 2011 a journalists and cameraman of KNN Satellite News were arrested by the asaesh and threatened with being shot if they continued their coverage of the protests.

- The same day in the same area, a reporter of Radio Sot al-Ithad al-Islami was arrested and beaten with rifle ends. The police stated this was for his participation in local protests. Likewise, a reporter of Speda Sarkawt Salam was abducted by the asaesh in a market, beaten and released in a location outside the city.

- Broken ribs were the result of an attack by police on a reporter of KNN, Zana Ali, and reporter of Levin Journal, Solar Mohammed, in Sayd Sadiq on March 15th, 2011.

- While covering student protests in Erbil, on April 4th, 2011, Niyaz Abdullah, a member of the administrative board of the Iraqi journalists rights NGO, Marsid al-Huriyat al-Suhafiya, was forcibly removed from the protest area, preventing her from covering the event, and taken for questioning in a police station. Previously she had been threatened with rape by persons in plain clothes when attempting to cover February 25th demonstrations with a clearly visible press badge.

- In early April three NGO activists working with the Federation of Workers' Councils and Unions in Iraq were arrested, without warrants, apparently for their participation in protests. Only two of the three had been released at the time of reporting. The operation was carried out by the Baghdad Operations Command.

- On the 28th of May, eleven activists working for the organization Ayna Haqqi (Where is My Right) were arrested without warrant, taken blindfolded to the Baghdad Operations Command Division 11, Brigade 43 Headquarters and then transferred to the al-Muthanna military detention facility. Four were released the following day, the remaining seven were detained until June 3rd.

- While covering demonstration in Baghdad, on July 22nd, 2011, Saad Allah al-Khaledi was beaten and threatened with summary execution.

Uniformed security forces have also violently attacked journalists while attempting news coverage of elections, explosions and other events that might indicate the incompetence or corruption of officials, although not with the frequency and intensity of attacks on journalists during the protest movement.

- Security forces attacked an al-Baghdadiya TV crew July 17th, 2010 injuring a soundman and destroying their generator.

- While covering an explosion July 28th, 2010 Haidar Abid Hassan, a cameraman for Salaheddin TV was detained and beaten by security forces in Tikrit.

- On August 27th, 2010 while raiding the home of Haider Hassoon al-Faza'a, the head of the Iraqi

Press Agency, in Baghdad's al-Sha'ab neighborhood, policemen injured his wife and other family members.

- While covering the election process, on 7 March 2010, the Director of the Iraqi Media News Agency was shot at by the Iraqi military at a checkpoint in the Baghdad neighborhood of Sha'ab.

Many cases of the physical obstruction of the work of prominent defenders of civil liberties and practitioners of free speech and/or assembly by authorities happen without reference to the judicial system at all. All of the eleven raids of media organization and nine cases of media institution closure by authorities which occurred between 05/2010-05/2011 were undertaken without a previous court order. The five known cases of NGO and two political organizations targeted in operations by the security services in connection with their role in protests in the calendar year 2011 were likewise carried out without warrants. Moreover, it does not appear that there has been any state investigation into the violations of the security services in connection to persons and organizations involved in peaceful protest, further severely obscuring due process.



Physical Insecurity

Attacks Sanctioned by Authorities

The uniformed security services and political authorities have been directly engaged in physical infractions upon the rights of practitioners of free speech, as outlined above. They have also indirectly sanctioned crimes committed against practitioners of free speech, and served as accessories, by not intervening when such violence is carried out in front of them.

- Protesters in Tahrir Square in Baghdad were attacked by unidentified assailants with knives and sticks, on February 20th, 2011. Security forces had withdrawn from the area shortly before the attack.
- On February 21st, 2011 dozens of men, some with long planks of wood and some with knives, attacked and beat some 50 protesters in Tahrir Square, Baghdad as well.
- Likewise security service personnel, present en masse and by whom all persons entering the square had to pass a pat-down, stood by when participants in pro-government rallies from Dawa, the party of the Prime Minister specifically, beat, stabbed and sexually molested peaceful activists protesting the lack of service provision by the current government on June 10th, 2011.
- While covering student protests in Erbil, in front of the Education Ministry, a KNN Satellite News crew was attacked and their camera destroyed by persons in plain clothes, in front of uniformed police, who did not make any attempt to protect them.
- Following student planning to stage demonstrations and sit-ins in support of protesters in Sulaymaniyah on February 23rd 2011, members of the Kurdistan Students' Union (KSU), affiliated to the ruling KDP, warned students living on campus that they had to leave the university and go home the following day. The KSU hired buses to take the students to their homes outside Erbil and told the students that if they did not depart they would be locked in their rooms without water or electricity. All universities in Erbil were closed the following day and remained so, many for months following, despite the fact that when some professors contacted the Ministry of Higher Education to ask why the universities were being closed the first day of the closure, they were told that the Ministry was not aware of the decision.
- Threats against academics, journalists and protest organizers, promising to cut out their tongues, rape or simply "danger" if they do not stop their activities are also not infrequent with some cases where callers identify themselves as supporters of one of the ruling parties, such as the KDP.

Iraq remains one of the countries with the most unsolved murders of journalists in the world. The fact that not a single one of more than 93 journalists' murders committed in the past decade has been solved, indicates serious negligence, if not deliberate neglect and/or outright complicity, on the part of the government or parties within it.

Even in a number of cases of journalists' murders by armed persons not wearing any government uniform, the complicity of parties participating in the government itself has been suspected.

- In Erbil, May 2010 the freelance journalist Zardasht Othman was kidnapped from in front of his university in broad daylight in front of at least half a dozen soldiers from the well-trained Zerevani unit of the Kurdish peshmerga which guard the gate at all times, tortured, and shot to death. The assassination came after months of threatening phone calls following his writing of a satirically critical piece about the current President of the Iraqi Kurdistan Region and the leader of the Kurdistan Democratic Party Massoud Barzani. The official report of the same authorities regarding his murder four months later, extended a mere 430 words in length. It never revealed the persons participating on the investigating committee. Furthermore it made the improbable claim that avowed secularist Othman had previously worked with the Islamist insurgent group Ansar al-Islam and had been killed by them for refusing a particular last mission. Finally, while the committee also claimed that they had arrested a suspect in the case, no public trial for any suspect followed. The unlikely claims of the report as well as the opaque manner in which it was conducted therefore weaken the case of authorities, rather than strengthen it.

• After the broadcasting of rare footage of KRG police firing on protesters in Sulaymaniyah in specific, and weeks of criticism of the regional ruling coalition in general, on February 20th 2011 Naliya, the KRG's first independent satellite news station, was broken into by 50 unknown armed persons and its three-story headquarters set afire.

• During coverage of anti-government protests in Sulaymaniyah February 25th, persons in plain clothes attacked and removed the filming equipment of Shwan Sidiq. The same occurred to the journalist Ori Othman after he shot footage of members of the PUK beating a youth participating in the protests.

• While participating in a protest in Sulaymaniyah, Pishtawan Abdullah, was asked by persons not wearing any uniform to re-cover his shirt which read "no to corruption yes to social justice." When he refused to comply, they beat him in front of police officers who stood by. The young men who were beating him then transferred him to an official Asaesh office where he was held for 24 hours, beaten and kicked for around a quarter of his time in their custody.

• After engaging in organization activities for February 25th demonstrations in Erbil, Fatima Ahmed was met at her home by plainclothes armed individuals who threatened to rape her and videotape the rape if she did not cease her protest organization activities.

• While covering events in front of the Kurdish Parliamentary building, on March 21st, a reporter and crew of KNN were accosted and kidnapped by persons in plainclothes and beaten, as well as having their cameras, mobile phones, and TV vehicle removed. They were then transferred by

those same persons to the custody of a Kurdish police station in al-Najda where the entirety of their footage was erased.

- Body guards of a Diyala provincial council member Sajid Abd al-Amir forcibly removed the provincial editor of al-Sabah Newspaper, Hady al-Anbaki from the atrium of the provincial council building where he was conducting an interview with the head of the Diyala Provincial Council's Security Committee, July 25th. He was then beaten and his camera destroyed in a car outside.



Targeted Victims, Not Casualties of General Violence

General rates of civilian deaths decreased every year since 2007 to a tenth of civil war highs by the end of 2011. By contrast, the rate of killing of journalists has increased every year in the same period, doubling from 2008 to the end of 2011. Moreover, of the more than 259 journalists, and persons who directly assist reporters in the field (such as cameramen or sound crews), who died from 2003 to the beginning of 2011, 192 died in target attacks by unknown armed persons. By contrast, only 43 died because they were located at the site of an explosion, 22 by the fire of U.S. Army units, and 2 by the fire of Iraqi army units. This means that, by the most conservative estimate, the overwhelming majority of journalists who are killed (3 out of every 4), meet their fate in targeted individual attacks resulting from their personal work, not general violence from acts of war. This is equally true of 2011.

- On the 17th of February and 3rd of March 2011, two journalists were shot dead in Mosul. One was Hilal al-Ahmedi, an experienced journalist and former head of Ninawa Provincial Government's Communication and Media Department, who had been fired from his position for writing articles exposing corruption and cronyism.

- On April 3rd, an announcer of Salah ad-Din Satellite TV channel was killed by a sticky bomb placed under his vehicle.

- On April 8th, human rights activist Abed Farhan Thiyab and Taha Hameed, director of the Iraqi satellite news channel al-Massar TV, were also killed by gunmen in Baghdad.

- On the 21st of June, Alwan al-Ghorabi of Afaq news agency was killed by a bomb in Diwaniya while on assignment there. The bomb exploded among a group of reporters in front of an office of the provincial authorities where they had been invited by those authorities.

- On September 8th, Hadi Mahdi, journalist and

human rights activist was shot in his home in Baghdad a day after he had met with other activists to plan a protest in Baghdad.

Journalists are also subject to kidnapping, which, in a majority of cases, leads to their death. Of the 64 journalists kidnapped since 2003, apart the majority, who were killed, 14 remain missing. Thus the overwhelming majority of journalists kidnapped are killed (targeted political motive) rather than released for payment (financial motive) – just as the overwhelming majority of journalists' killings are due to assassinations (personal targeting), rather than in cross-fire (arbitrary war violence).

These indicators show that Iraq is, and has been, one of the most dangerous countries in the world for journalists, not because of the generally high levels of violence and criminality, but rather for their critical work in bringing information to the public.

This targeting occurs in a context of egregious negligence by authorities in their duty to investigate such crimes and bring perpetrators to justice, if not active facilitation thereof. The Iraqi executive, both

in Baghdad and Erbil, has not only sat by while such infractions on the rights of practitioners and defenders of free speech occur, it has been a leader in committing them and entrenching the legal loopholes that allow them to occur in the first place.



Special Relation of the Executive to the Security Services

The executive offices based in Baghdad and Erbil are directly responsible for the deterioration of freedoms witnessed between 2010 and 2011 in their capacity as law makers, law users, and heads of security with supra-constitutional powers.

As law makers they have passed dubious laws attempting to restrict freedom of expression, contradicting the principles laid out in the constitution and international agreements to which Iraq is a party. As law administrators, they have filed, and continue to file, lawsuits using old laws even after the passage of more liberal legislation which they claim to support, as discussed above. In parallel, there has been a conscious attempt by the executive to assume for itself positions of power over the uniformed security services with privileges greater than those assigned by the constitution.

Indeed the trend has been towards the exertion of a monopoly over the various branches of the existing armed services and police. In the KRG, the security forces -- military (peshmerga) and police (asaesh) -- are still largely the domain of the two ruling parties in the region, the KDP in Erbil and PUK in Sulaymaniyah. In Baghdad, the Prime Minister had direct authority over **all three branches of the uniformed armed services**, for nearly a year after December 2010. These are represented by the Ministry of the Interior, the Ministry of Defense, and the Ministry of National Security. To date al-Maliki continues to hold

these positions through personally-appointed allies without the due process of parliamentary vote. The parliamentary process dictates that ministers must be approved by a quota of parliamentarians, with a quorum thereof present. Al-Maliki is the temporary head of the Interior Ministry with his ally, Adnan al-Asadi, as the "Senior Deputy Interior Minister" since October 2011. The Prime Minister was likewise the head of the Ministry of Defense until he finally appointed Saadun al-Dulaymi to Acting Minister of Defense in August 2011, again without parliamentary confirmation. Another fellow member of the Prime Minister's Dawa party, Falih al-Fayyad heads the last of the three sovereign security ministries as National Security Advisor, also by Prime Ministerial appointment. Ten months since the formation of the rest of the cabinet (November 2010) and a year and a half after parliamentary elections (March 2010), all three of Iraq's most sensitive security portfolios still await permanent ministers because of al-Maliki's veto on all proposed candidates. Thus all three 'temporary' ministerial appointments represent the circumvention of the parliamentary process and a unilateral assertion of authority by al-Maliki over security decision-making.

The Office of the Prime Minister under Nuri al-Maliki also has full formal authority over the controversial Counter-Terrorism Service (CTS). The CTS is funded directly by the Prime Minister's office and is unaffiliated with any ministry. Therefore even in the event of the three ministerial security portfolios going to non-allies of the Prime Minister, this institution will remain solely under his personal authority, and outside of parliamentary supervision. The CTS has recently been accused by independent international NGOs of possessing secret torture facilities used against terrorism suspects with the assistance of the Army's 56th Brigade. Promises of Parliament to oversee the closure of the facilities resulting from the reports have not been implemented, raising further questions about political will to right patterns of institutionalized violations of due process.

Since the special relation between the executive offices in Baghdad and Erbil respectively, and their security forces grants the executives powers exceeding those provided for by the precepts of the constitution, it makes them particularly responsible for security breaches against peaceful practitioners of freedom of speech and assembly, by and in front of the security forces, government and party authorities, and uninvestigated by them.

*"There is a desire to control the state. There is a move towards dictatorship simply by emptying the mechanisms of democracy of meaning. But I don't think it would reach a dictatorship in its traditional form...I'd call it a democratized dictatorship, a democratorship."
Former Dawa party member, July 2011*



Conclusion

Unbalancing the Balance of Powers

Civil liberties in Iraq are constricted by serious threats to the physical and legal security of their practitioners. Contrary to popular belief, many of these threats do not derive from the security situation in general, which has been improving for civilians. Rather, they are to a large part intimately intertwined with the deliberate policy of the Iraqi executives, which are based in Baghdad and Erbil.

The Iraqi executive is clearly not the only problem or party constricting key civil liberties such as freedoms of expression and assembly. Threats are posed to practitioners and defenders of freedom of expression, in various degrees, from all sides: foreign armed forces, local armed forces, militias loyal to political parties serving in government and those entirely outside of the political process, and common criminals targeting professionals for monetary gain.

However, a disturbing pattern has emerged where the executive branch of government, both in Baghdad and the KRG, has proposed legislation constricting such freedoms in the wake of protest, rather than seeking ways to reform. Liberalizing elements of legislation, when passed are not implemented. To the contrary legal harassment of, and direct physical attacks on, practitioners and defenders of freedom of speech are increasing. There have been clear and indeed quite successful attempts by the Iraqi executive in Baghdad and Erbil to monopolize their respective security services. Moreover, there is evidence of serious negligence and outright complicity, on the part

of government officials regarding legal harassment, physical attacks, and even murders, of practitioners and defenders of freedom of expression, by persons in and outside of the uniformed security services. These infractions represent successful attempts to circumvent the Constitution, the parliamentary process, and thus the balance of powers key to democratic process.

Finally, the incidents show strikingly similar vectors towards increasing rather decreasing constrictions on media freedom in both the KRG and Baghdad. For years, the Kurdish authorities have portrayed Iraqi Kurdistan as "the Other Iraq", where security, freedom of expression, economic development, and democracy are on track. Yet a geographical breakdown of attacks recorded by NCCI indicates that 1/3 of attacks on defenders of civil liberties in the last year were committed in the KRG, although the three provinces of the Kurdish Region represent only 1/6 of Iraq's provinces, tarnishing that claim, though outright murders in the KRG are far fewer than in the center and South of the country.

Recommendations

The writing, revision and implementation of legislation should clearly place the burden on the state to show that limitations on freedoms are in the defense of the public against a major, likely and imminent threat against public safety – not against an expression of opinion or reporting regarding or discussing even a violent act/ideology.

• **New legislation and government media regulation bodies must be monitored to see that they coincide with the principles of civil liberties, notably the freedoms of expression and assembly, enshrined in Iraq's constitution and the international agreements to which it is signatory:** This includes the four draft laws awaiting vote, the special court established July 11th 2010 to deal with media related cases, the CMC, the Human Rights Commission, and the Journalists' Syndicate. New legislations should clearly encompass the right to access information as well as demanding pro-active unilateral steps to publish information on activities regularly even if it is not specifically requested.

• **Existing legislation should be amended:** notably reform of Iraq's criminal defamation laws – the Iraqi Criminal Code of 1969, the CPA codes and the recent journalism law etc. Through this and other legislation, the idea of defamation should be de-criminalized, and where it regards the state and its servants removed entirely. Conceptions of "security threats" notably terrorism should be clearly defined. Understandings including undermining the constitution, or promoting terrorist ideologies (as opposed to terrorism per se) should be considered for removal from texts.

• **The uniformed security services and the special armed organizations which are explicitly and permanently under the control of the Office of the Prime Minister should be returned to parliamentary oversight.** This means the uniformed security services, the three sovereign security ministries, and the Combating Terror Services.

• These armed forces as well as the police and their commanding officers should be made accountable for infractions (excessive use of force, harassment and raids without warrant etc.) committed directly by them, but also for non-investigation and non-intervention against party and/or insurgent attacks on persons attempting to enjoy their civil liberties.

Journalistic Freedoms Observatory, May 2011

Iraqi Constitution (Arabic)

ICCPR (English)

Anyone who promotes Zionism or Masonism is punished by a death sentence (Article 202).

Iraqi Constitution (Arabic Version)

In all, according to the Iraqi Criminal Code it is a criminal offence to insult the Iraqi people, national flag or state institutions and emblems (Article 202), to insult the President or his legate (Article 225); to insult public institutions (courts, parliament etc) (Article 226); a foreign State, or national emblems or flags or an international organization operating in Iraq (Article 227); to insult a public servant in the execution of his or her duties (Article 229); to insult the beliefs, symbols or persons involved in religion (Article 372); to insult a person which attacks their honor or is offensive (Article 434), an offence which is aggravated if printed or published by the media. There are a range of other protected interests, such as the disclosure of official secrets (Article 178) or the dissemination of false rumors or news or propaganda aimed at disturbing public peace and security or is contrary to the public interest (Article 210), or publishing material that violates public morals or decency (Article 403). CPA Order 14 (2003) amended the above provisions to include a prohibition on the publication of material aimed at inciting violence, civil disorder, rioting, malicious damage to property, or advocating the rehabilitation of the Ba'ath Party.

CPA Order No. 7 "the Penal Code" cancels "201-219, offenses against the internal security of the state.

d) Part Two, Chapter Three, Section One, Paragraphs 223-224; 226-228, offenses against public authorities.

e) Part Two, Chapter Three, Section Two, Paragraph 229, offense of insulting a public official" (CPA Order No. 7, Section 2.2.c). However it is unclear that this cancelation was completely implemented.

UNAMI, May 2011, p. 48-49

UNAMI, May 2011, p. 48-49

The Order had permitted the "use [of] all the capabilities available...for the purpose of detecting prohibited activities under this order" (Section 3.1 referring to the now dissolved CPA) and "on-site inspections of Iraqi media organizations without notice...and to seize any prohibited materials...and seal off any operating premises" (Section 3.2) while specifically banning an compensation therefore. However the authority specified to carry out the procedures in Section 3 is specified as the CPA Administrator only making them now invalid by nature since the CPA no longer exists. Under Section 5 Penalties Article 2 likewise states that "The Administer [i.e. of the CPA] may, in [sic] his discretion, withdraw the license, close the operation, confiscate the property, and seal the premises of any media organization found to be in breach of this Order (Section 5.2).

UNAMI, May 2011, p. 37

UNAMI, May 2011,

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer" 2011, p.6 pp.5

UNAMI, May 2011, p. 48-49

from "the Approving Authorities" (in this case the "Force Commander or a Divisional or Brigade Commander" of the dissolved Coalition forces invalidating the article since the departure of the last of these forces in December 2011)

UNAMI, May 2011, p. 50

UNAMI, May 2011, p. 50

UNAMI, May 2011, p. 50

UNAMI, May 2011, p. 51

UNAMI, May 2011, p. 51

Human Rights Watch, 21 April 2011 p.4 pp.1

Human Rights Watch, 21 April 2011

Human Rights Watch, 17 September 2010

Human Rights Watch, 21 April 2011

Amnesty International, April 2011, p. 10

Marsid al-Huriyat al-Suhafiya, May 2012, p.4 pp.3

Adnan al-Asadi, 31 July 2011, cited by Marsid al-Huriyat al-Suhafiya, May 2012, p.3 pp.2

Article 19, 14 September 2011, p.2 of 5

2009 Draft of the Journalism Law

Accepted by the Council of Ministers, on May 16th, 2011 and now in the Council of Representatives, HRW Unpublished Report, 13 June 2011, acquired by NCCI's Baghdad Office

Report of the Center for Law and Democracy, December 2011, p.14

HRW, 10 April 2011

Article 19, April 2012, p3

For analysis see Article 19, 14 April 2012; text of the draft law found in the English p. 18-28 and Arabic, p.26-38

Head of Mission, NCCI Erbil Coordination Meeting, 2011

Aswat al-Iraq, 2012

CPA Order No. 65, 20 March 2004

Committee to Protect Journalists, 4 February 2011

Al-Hayat, 25 June 2012; Al-Sumeria News, 25 June 2012

Iraqi Constitution (Arabic Version)

UNAMI, May 2011, p. 49

Attacks included (91) cases of physical assault with beating by security forces and the Iraqi army (67) cases of arrested (69) the cases of obstruction of journalistic coverage (49) cases of prevention of journalistic coverage, (56) other or combined attacks (11) raids of media organization including destruction of records and or equipment without court order (9) cases of media institution closure by authorities without court order (8) armed attacks on journalists and institutions media by unknown armed persons (12) killings of reporters via targeted IEDs or silencer enhanced weapons. Marsid al-Huriyat al-Suhafiya, "Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer" 2011, p.1-2pp.1

Journalistic Freedoms Observatory, May 2011

Marsid al-Huriyat al-Suhafiya, May 2012

Human Rights Watch, 11 April 2011

CIMA Report, March 2011, p.5;

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Shuhada' al-Sahafa 258," 2011

UNAMI Report on Human Rights in Iraq: 2011, p. 21

IWPR, 20 June 2011

Human Rights Watch, 11 April 2011

Amnesty International, April 2011, p.10

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer" 2011, p.8 pp. 14

Amnesty International, April 2011, p.7

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer" 2011, p.8 pp. 6

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer" 2011, p. 2 pp. 3

RSF, 24 February 2011

Amnesty International, April 2011, p.7

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer" 2011, p. 8 pp. 8

Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory),"Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakat

Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p. 9 pp. 1
Amnesty International, April 2011, p.7
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak
Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p.2 pp. 6
Amnesty International, April 2011, p.8
Amnesty International, April 2011, p.8
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak
Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p. 9 pp. 4
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak
Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p. 9 pp. 4
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak
Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p. 9 pp. 5
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak
Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p. 9 pp. 8
Amnesty International, April 2011, p. 13
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak
Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p. 7 pp. 3
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UNAMI Report on Human Rights in Iraq: 2011, p. 21-22
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Tasil Aala Mustawayatiha munthu Amaliyat al-Tagheer” 2011, p.2pp.2
UNAMI Report on Human Rights in Iraq: 2011, p. 21
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Niqash, 05 July 2011
Marsid al-Huriyat al-Suhafiya (Journalistic Freedoms Observatory), “Ghiyab Sibh Tam lihuriyat al-Sahafa wa al-Intihakak

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IWPR, 20 June 2011
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According to Reporters sans frontières: 4 in 2009, 5 in 2010, and 7 in 2011, while UNAMI puts the figure for 2011 at 10.
See: RSF Iraq figures for 2006-2010 (cited in the UNAMI Human Rights in Iraq Report for 2010, p.24); RSF Iraq figures for
2011, with names; UNAMI figures cited in the UNAMI Human Rights in Iraq Report for 2011, p. 22, no names to back up
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those non-targeted acts of war where journalists were accidental casualties. Statistic of the Marsid al-Huriyat al-Suhafiya
(Journalistic Freedoms Observatory), “Shuhada’ al-Sahafa 258,” 2011, p.2
6 out of 7 journalists killed died by targeted assassination (4 shot alone, 1 the only victim of a car bomb attached to his
car, 1 the victim of a car bomb apparently targeting a group of journalists), 1 in cross-fire (an insurgent attack on a govern-
ment building) UNAMI Report on Human Rights in Iraq: 2011, p. 22 citing information from Reporters sans frontiers, 2011;
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