

**Contribution to the Universal Periodic Review Mechanism
Seventh session of the Working Group of the Universal Periodic Review**

**A joint submission on the Republic of Iraq by International PEN*, the
International Publishers' Association* and Index on Censorship**

*** NGO in Consultative Status with ECOSOC**

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Introduction

Index on Censorship, on behalf of the submitters, welcomes the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the situation for freedom of expression in the Republic of Iraq, with which it has been concerned for a number of years.

In common with all advocates of freedom of expression rights, Index on Censorship has always strongly supported efforts by the Iraqi media, Iraqi advocacy groups, professional organisations and Iraqi government and parliament to develop a national media and communication policy that promotes freedom of expression, respect for free and sustainable media and free access to information in line with internationally recognised standards.

Such a policy is entirely consistent with obligations under the national provisions of Articles 36 and 38 of the Permanent Constitution of Iraq, which requires the State to guarantee freedom of expression through all means: freedom of the press, printing, broadcast, advertisements and freedom of communication via the internet and other digital means.

It is also consistent with Iraq's obligations under Article 19 of the Universal Declaration of Human Rights, which provides that "everyone has the right to freedom of expression and that this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and regardless of frontiers".

Freedom of expression requires there to be independent and pluralistic media which are able to report free from governmental, political or economic control. At a time of increasing sectarian conflict in Iraq, a free and professional media can also provide a vital forum for dialogue and an essential source of information.

In that context, Index on Censorship makes two specific recommendations to the Office of the High Commissioner for inclusion in its own submission to the seventh session of the Working Group of the Universal Periodic Review.

Recommendation One: Preservation of independent media regulation in Iraq

Article 102 of the Iraqi constitution established the Communications and Media Commission (CMC), the regulatory body for both broadcasting and telecommunications, as a “financially and administratively independent institution” and specifies that it shall be “attached to” the Council of Representatives.

The CMC, which is one of only a few public bodies referenced by name in the Iraqi constitution, was established in accordance with international best practice, and the legal and regulatory framework associated with it is considered to be the most progressive in the Middle East.

As has been noted by international experts, this constitutional enshrining of the structural independence of a regulatory body for the media, and one which is accountable to parliament rather than a ministry, is a major step forward in the establishment of democratic institutions in the region and for the protection of the right to freedom of expression.¹

The Iraqi media must be permitted to operate independently from government control. Such independence is essential to guarantee the public’s access to a wide range of opinions on matters of public interest and reinforces the media’s role as public watchdog. An independent regulatory body is essential to this activity.

However, Index on Censorship believes that the Iraqi government must take greater steps to endorse and enhance the CMC’s mandate, functions and powers. Article 102 is ambiguous in places, and does not clearly define the CMC’s area of authority, leaving it open to legislators to redefine it through later legislation.

Ever since it was founded the CMC has faced challenges from factions within government, including a bid to establish a Higher Media Council to take charge of much of the CMC’s constitutionally mandated duties.

Bids to draft and enact laws to regulate the work of the regulator appear intended to divide jurisdiction over telecommunications and internet regulation and add higher tiers of authority over the CMC. Separate and conflicting broadcast and print media regulatory systems have been introduced in Kurdistan, in contravention of the CMC’s nationwide regulatory mandate.

Similarly, Article 109 confirms the CMC’s exclusive role to oversee broadcast frequency regulation, but again there is lack of affirmation of the CMC’s authority over all broadcast regulatory matters, which is clearly the intent of Article 102.

The Iraqi government should encourage a bipartisan approach through the Council of Representatives and win public political support to give the CMC the legal basis to match its constitutional foundation.

It should reiterate that the constitution gives the Council of Representatives oversight over the CMC and foster direct links between the CMC and relevant parliamentary committees.

As UNESCO and UNDP have asserted: “The independent regulation of the communication sector in Iraq should be encouraged, and the Iraqi National Communication and Media Commission

(INCMC) should continue to function as an independent body with exclusive authority to license public media broadcasters and regulate their work.”¹

The CMC has a key role to play in the development of Iraqi media, which remains an essential part of all current reconstruction and development strategies for Iraq. This includes the strengthening of media training and research institutions in Iraq and introducing measures to encourage greater understanding of the principles of independent regulation of the media.

- **Index on Censorship, International PEN and the International Publishers’ Association recommend that the Iraqi government continues to actively support the Iraqi Communications and Media Commission (CMC) as the country’s constitutionally mandated independent regulatory body for broadcasting and telecommunications.**

Recommendation Two: Reform of Iraqi media legislation to international standards

The unique situation in Iraq warrants special attention. Since the beginning of 1992 to date of this submission, more journalists (139) have been killed in Iraq than in any other country. Ensuring the safety of all journalists in Iraq, including ending impunity and setting up independent investigations into attacks, should be given the highest priority, in accordance with Security Council Resolution 1738 of 2006.

But recent efforts to address this issue indicate a lack of appropriate understanding of international standards and the value of making new laws comply with them. This is the case even where there is a genuinely positive intention to defend freedom of expression and fundamental human rights in Iraq.

The tabling of a draft bill to introduce a Journalists’ Protection Law in Iraq raises several issues that indicate a lack of proper appreciation of international standards.

For example, Article 6 of the draft law requires the state to establish an “effective capability to protect journalists and media outlets, and to investigate the crimes to which they are subjected” and Article 7 states: “The security agencies are to conduct immediate investigations in the case of any journalist being subjected to any kind of threat or harm, and to make every effort to punish the perpetrators”.

“Security agencies” – which could cover anything from intelligence agencies, to military special forces through to one of the many private security firms currently operating in Iraq – would be given an inappropriate key role in investigations into attacks on journalists and to “punish the perpetrators”.

It is the duty of the police to conduct independent, impartial and effective investigations into attacks or threats on journalists – or indeed any citizen. The duty of punishment lies with a competent, independent and impartial judicial system to conduct fair and public hearings to determine properly and promptly the guilt or innocence of the accused, and in the case of the former, the sentences according to Iraqi law.

As welcome as the intention to protect media workers in Iraq may be, rather than make provision for a special unit of the security agency officers to investigate threats against the media and punish

¹ UNESCO, UNDP & Iraqi CMC, "International Conference on Freedom of Expression and Media Development in Iraq: Towards a Free, Pluralistic and Vibrant Media in Iraq." Paris, January 2007

offenders, the Iraqi government should ensure that the criminal justice system - police, prosecutors, defence lawyers and courts - is properly resourced to conduct independent and impartial investigations into crimes committed against journalists, indeed any Iraqi citizen.

In a combination of badly worded text and indifference to international standards, the draft law has the contradictory effect of proposing methodologies of detention of journalists rather than reinforcing fundamental rights of journalists as Iraqi citizens under international human rights law, specifically that no one may be detained for reasons other than those in accordance with national legislation.

For example, Article 8 of the draft law states: "Journalists are permitted to carry out their work without interference on the part of the security forces unless there *is legitimate justification* (our italics)." No Iraqi journalist - again indeed, no Iraqi citizen - should be subject to arbitrary arrest, detention or otherwise deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

Again in contradiction both with international standards and the stated intent of the law to "protect" journalists, the draft lays claim to exclusive authority over journalists in the conduct of their work (Article 15), when other existing national legislation, including employment law, and international conventions to which Iraq is a signatory, are equally relevant to the protection of journalists in Iraq.

Index on Censorship understands that the proposed journalism protection bill is only one of a raft of proposed bills expected to go to the Council of Representatives in 2009-10.

They include an Iraqi Media Network (IMN) law to create Iraqi legislation to replace the occupation era CPA Order 66 that founded the state media group and a Communication and Media Commission law to succeed CPA Order 65. It is feared that the new laws may contain conditions weakening IMN's public service broadcast identity and, as above, weaken the constitutionally mandated role of the ICMC as an independent regulator.

There are other proposed laws reported to be in the pipeline, including a law to establish an Iraqi Network Media Centre, a new body to review media activity and its compliance with the law, but also to collect and share media market data, and a Ministry of Communication law which would require all ISPs to run services through a government-controlled 'portal'.

Based on the approach taken with the Journalists' Protection Law, we are concerned that these drafts will also fail to take account of international standards of drafting and, despite good intentions actually damage freedom of expression rights in Iraq, and in consequence breach Iraq's obligations under international conventions.

In common with UNESCO and UNDP, we recommend that any Iraqi laws which violate freedom of expression or infringe the right of the media to pursue its work with complete freedom should be abrogated, and that all Iraqi laws relating to the media or to freedom of expression and publication should comply with international best practices in that regard.

"Legal frameworks provide a structural character that point to the future. We must develop these structures as part of a long-term vision for reconciliation and development. (M)edia law must be connected to long-term thinking in Iraq."²

² Mogens Schmidt, UNESCO's Deputy-Assistant Director-General for Communication and Information.

It would be further advisable that there is a suspension of all tabling of media laws until the CMC has organised a full review of all media legislation, including CPA Orders 14, 65, 66 and the Ba'ath era laws.

- **Index on Censorship, International PEN and the International Publishers' Association recommend that media law reform in Iraq should pay closer attention to international standards if the potential of its independent media and regulatory systems is not to be handicapped rather than enhanced by new laws that are vague in scope and open to abuse.**

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