

Freedom of Expression in the Kurdistan Region-Iraq

This report is submitted as part of the stakeholders' reports

Universal Periodical Review (UPR) - Kurdistan Region, Iraq

Prepared in accordance with paragraph 15 (a) of the annex

of Human Rights Council resolution 5/1



This report is prepared by Freedom Ambassadors Alliance (FAA) with the support of the following organizations:

1	Peace and Freedom Organization
2	Al Mesalla Organization for Human Resource Development
3	Roshngary Organization for Promoting Democracy
4	Notr Organization for Technology and Research
5	Kurdish Institute for Election
6	Bima Organization for Economic and social rights
7	We work with you Organization

Background

This report is part of a project titled “Promote Freedom of Expression, Association, and Access to Information” prepared by Peace and Freedom Organization supported by Norwegian People’s Aid (NPA) which has been implemented in the Kurdistan Region of Iraq (KRI) and funded by the Swedish International Development Cooperation Agency (Sida) – a government agency in the Swedish Ministry for Foreign Affairs.

The report has been submitted to UN Higher Commissioner for Human Rights (OHCHR) as part of stakeholders’ reports, prepared in cooperation with a number of civil society organizations to promote freedom of expression in KRI.

This report reveals the reality of freedom of expression in KRI in the past few years and demonstrates significant and necessary information about improving the Universal Periodical Review process in Iraq and KRI.

A Review of UPR in the past

In 2014-2015, Iraq approved hundreds of recommendations of Human Rights Council as part of UPR. Among these recommendations, there are the ones concerning freedom of expression to which Iraq has agreed. The recommendations are as follows:

No.	Recommendations
113	Ensuring respect for freedom of expression and thought by means of freedom of the press and safety for journalists.
114	Maintaining the laws which ensure freedom of the press.
116	Investigation in murder and violence against journalists and holding perpetrators responsible.
117	Ensuring and creating a healthy environment for the activities of the journalists and human rights activists and civil society organizations.

The Iraqi government has planned to implement the recommendations. KRI, with the support of UNAMI (United Nations Assistance Mission for Iraq) and civil society organizations, has drafted a plan for implementing the recommendations. The plan, however, has not been

announced formally nor implemented. Generally, freedom of speech and freedom of the press have seen progress neither in Iraq nor in KRI. Also, no rules and regulations have been issued in favour and protection of freedom of expression. On the contrary, the situation has deteriorated as explained below.

First: basic information and measurement framework

i. International commitment to the framework of freedom of speech:

1. Iraq has approved the international agreements and treaties which are relevant to the freedom of expression, particularly international agreements related to civil and political rights.
2. Iraq has not joined the optional protocols related to complaints to international treaties of civil and political rights, which allow the Iraqi and KRI citizens to submit individual complaints against the violations committed against them.
3. The International Conference of Freedom of Expression and Media Development in Iraq was held in Paris on 8-10 January 2007. This conference was organized by the Iraqi National Communications and Media Commission supported by UNESCO in which participated 250 Iraqi, and international journalists as well as members of international press organizations. In the end, the closing statement and recommendations of the international conference were issued. However, most of the recommendations were not implemented afterwards.

ii. The constitutional and legal framework

4. According to the Iraqi constitution, the state guarantees freedom of expression by all means possible. The rights which are included in the framework of freedom of expression are freedom of the press (including publication), rights to peaceable assembly and peaceful demonstrations. These rights are ensured when they do not contradict the social and cultural norms.
5. A number of Iraqi laws which are still valid are a real threat to freedom of speech in general and freedom of the press in particular; for instance, the Iraqi press law -- regarding publication -- article 206 of the year 1968, and some paragraphs of Iraqi Penal Code (Law No. 111 of year 1969). These articles prohibit exercising freedom of expression, without being a pertinent subject to this law. Death sentence and life imprisonment, included in paragraph 200 of the same law, are among the most severe punishments. In KRI, in the majority of journalism-related cases are tried with the Iraqi Penal Code.

6. The constitutional draft bill in KRI was rejected although a committee was formed to review and re-write the constitution. Due to financial instability, the political parties were not able to propose a new draft bill. However, paragraphs 10 and 11 in article 19 protect freedom of expression: paragraph 10 states that everyone has the right to freedom of expression; and freedom of journalism, means of expression and the press should be ensured. However, these rights do not include exercising sacrilege, violence, and promoting hatred amongst the ethnicities in KRI. Paragraph 11 reads: the right to obtaining information should be guaranteed by law.
7. Despite issuing the journalism law No. 35 of the year 2007 in KRI Parliament, there are shortcomings in implementing this law. Therefore, in some cases, the courts resort to Iraqi Penal Code for the trial of the journalists and cases related to journalism.
8. Despite approving the regional plan with regard to human rights by the Iraqi Council of Ministers decision No. 375 of 2011 on 27 September 2011, KRI has not formally issued a regional plan for human rights and promoting freedom of speech.
9. Five years have passed since law No. 11 of 2013 for the rights to access information was issued in KRI Parliament, the law has not been implemented and the right to obtain information is not guaranteed, which is considered as a major restriction upon journalism and freedom of expression.
10. The project of amending the law of assembly and demonstration was voted for in the KRI Parliament, which could ensure the right to peaceful demonstration. However, KRI president rejected the draft bill. The bill has been in the parliament and since then it has not been put to vote again to replace the old law.
11. The laws of frequency and permit for radio and television stations have not been regulated. The only relevant law is No. 1 of 2014 of the Ministry of Culture and Youth which grants a lot of authority to the security forces.

iii. **Establishment framework**

12. The Kurdistan Regional Government (KRG) disbanded the Ministry of Human Rights and has established the Independent Commission for Human Rights. However, the said commission has not been established in accordance with the Paris principles and standards relevant to establishing independent commissions and establishments. Furthermore, the formation of the commission allows a greater authority to employees from the political parties and the majority of the employees are from the Ministry of Human Rights.

iv. Regulations and instructions

13. KRG has not been able to protect the journalists and human rights activists, and promote free expression and right to peaceful demonstration while journalists and activists have repeatedly asked for these rights.
14. The majority of media organizations rely on their budget gained through commercials. However, there is not a transparent and professional policy which regulates distributing the commercials and campaigns from the KRG ministries and commissions. The policy of the parties in authority decides to which media outlet the commercials would go. Meanwhile, a considerable number of independent media organizations have stopped working completely.

Recommendations for basic information and general framework

- Swift action should be taken to issue pertinent laws for freedom of expression, particularly laws related to frequency, and permit of radios and televisions. For this, the Iraqi constitution and the international values and standards should be taken into account.
- All the laws and articles which restrict the freedom of expression, assembly and peaceful demonstration should be revoked.
- The national independent organizations in KRI should have an active role in promoting and enhancing freedom of speech and protecting journalists and human rights activists.
- KRG should adhere to the recommendations of the Paris conference.

Second: consolidation of freedom of expression in practice

i. Coordination with mechanisms in human rights

15. International reports have been issued about violations of freedom of expression in Iraq and KRI; however, KRG and Iraqi Government have not taken necessary action to address the violations, and on the contrary, they have neglected the recommendations.

ii. Adherence to international obligations of freedom of expression

- **Freedom of the press and protection of journalists**

16. In the past few years, journalists in Iraq and KRI have faced various forms of violence; the violence has been part of the circumstances through which the country has gone.
17. Investigative reports of freedom of expression and journalism in KRI mention that there have been 170 acts of violation in 2015, 175 in 2016, 300 in 2017, and 216 in 2018 against the journalists, television channels and activists.
18. Journalists in KRI have faced detention, restriction, ill-treatment, confiscation of equipment, violence and even death. In August 2016, the journalist Widad Hussain was murdered in an act of terrorism.
19. Although the Iraqi constitution guarantees equal rights principles, the journalists often complain about the discrimination they face from the governmental establishments.
20. Despite the attempts to fight corruption in KRI, the journalists who expose the corruption cases face violence and death threats.
21. Journalists face detention, violence, and prohibition during broadcasting from the security forces when they do not approve of the broadcasting nature. Only in the past four years, 800 cases of violation against organizations, activists of freedom of the press and television channels have been recorded.
22. Stopping the broadcast, shutting down and burning the television stations still exist. Under the pretext of not renewing or not having the work permit, broadcast of a number of television channels have been stopped in the last few years by the Ministry of the Interior and the Ministry of Culture and Youth. Only in the first seven months of 2018, broadcast of 14 television channels has been stopped. In 2017, local broadcast of NRT in Erbil, Duhok and Badinan Sat was stopped. On 29th October 2017 NRT office was raided and most of the equipment was vandalised and looted. In 2017 Ashti Radio station was set on fire. In December 2017, a security force in Sulaimani assaulted NRT, NRT Arabic and NRT2 and their broadcast was stopped for a week.
23. Tens of detention cases and fining journalists have been recorded in the past few years.

Recommendations for freedom of the press and protection of journalists

- Investigation results into the murder cases of the journalists should be announced publicly and the perpetrators should be tried.
- Adherence to the international agreements which guarantee freedom of expression, assembly, and peaceful demonstration which have been signed by Iraq.

- Amendment of the laws and articles which restrict journalism and freedom of expression.
- Protection of the journalists should be guaranteed.
- Discrimination practice against journalists and television channels should be ended and equal opportunities should be given to all to exercise their freedom of expression and journalism.

Right to assembly and peaceful demonstration

24. In the past three years, there was a public outcry and criticism in most of the cities and towns in KRI. The protests and civil activities demanded better public services and basic rights. That is despite the fact that some of these protests had a political agenda and were a pressure for the authority and governmental establishments in order to bring a change to the political situation and progress of democracy. Although the activities were generally peaceful, they soon changed to a violent confrontation between the demonstrators and the security forces.
25. To put an end to the protests, the executive (government) has restricted or dispersed demonstrations using security forces, in which weapons were used. Instead of using other methods to disperse the demonstrations, they often resorted to firing guns, that is, despite using violence against the demonstrators by undercover security forces. There have been casualties when both demonstrators and security forces confronted, in which deaths and injuries have been recorded. Moreover, the demonstrators have been sent to courts to sign a declaration letter to take an oath so that they would not take part in protests and demonstrations again.
26. Despite government denying using violence against the protestors, investigations in the violence cases have yielded no positive results.
27. Despite the protests against some articles of the law for organizing demonstrations in KRI, which have been against the principles of freedom of expression, but they won majority votes in the parliament. Therefore, these articles are used against the protestors and demonstration organizers. Relying on these articles, a large number of protestors have been arrested and tried for participating or organizing the demonstrations. Also, last year a large number of activists and demonstrators have been physically tortured.
28. The executive often discriminates in granting permission and treatment of the demonstrations. Although sometimes it has coincided that more than one organizer have asked for demonstration permission in the same or approximate dates or places, only certain people were given permission.

29. The security forces often treat demonstrations and assembly as one. Therefore, they have used the same procedure in treatment with both.

Recommendations for assembly and peaceful demonstrations

- Immediate action should be taken to amend the law for organizing demonstrations. The current draft bill should be discussed and amended so that it meets the international standards and guarantees the right to assembly and demonstration.
- Forming a special force or unit for protection of the demonstrators and civic activities.

Fugitives should be brought to justice and tried

30. There are cases of escaping justice in KRI. The perpetrators of violence against journalists have not been revealed nor have they been tried; for some cases, 5 years have passed.
31. Although in the recommendations of UPR in 2014 it was mentioned “investigation should be made into murder and violence cases against journalists, and perpetrators should be held responsible”, the investigation committees in KRI have gained no positive results in the cases; on the contrary, the violations are still unchecked.
32. Positive steps have not been taken to ensure a safe environment for journalists. The perpetrators have not been brought to justice nor tried. The government establishments which are in charge of safety and security, have not arrested nor brought the perpetrators to trial, are responsible for the murder of the journalists.
33. Escaping justice as a phenomenon has made it easy for the culprits to easily violate against journalists and activists, which is the reason why the violations have continued.
34. The murder cases of Sorani Mama Hama, Sardasht Osman, Kawa Garmiyani along with Widad Hussein (on 13 August 2016 in Duhok) have not been resolved and the real committers have not been exposed.

Recommendations for bringing the fugitives to justice

- Promoting independence of the courts and the judicial system, and training the judges to have a better role in resolving cases of violation against freedom of expression.
- Exposing the perpetrators of murdering journalists and bringing them to trial.

- The government should work towards providing a safe environment for journalism and the press.
- Establishing a special court for journalism and publication.

Right to access information

35. Journalism, for the most part, depends on transparency. If the information is not transparent and hard to access, it will have a direct effect on journalism and media organizations. The government establishments have monopolised the information and only they decide how, when, and through which media outlet they disseminate information. Therefore, this will affect publicising information. Oftentimes, because of not being able to validate a piece of information or news, the media outlets have faced legal proceedings from the government or the political parties, which often result in a penalty for the journalists, be it a fine or imprisonment.
36. Although the right to access information law was issued in KRG parliament in 2013; however, because the instructions regarding the law have not been issued, the law has not been implemented yet.
37. The government establishments have their speakers, but the speakers have not offered much help in giving and disseminating information. Often the establishments do not allow their employees to provide information unless they are officially allowed. In some cases, the directors of the media of the establishments have a close relationship with the top official who has absolute power in how to provide information.
38. There are a lot of observations on the law No. 11 in KRI Parliament in 2013 about right to access information. According to this law, only local citizens have the right to ask for information. In the developed countries everyone has the right to ask for information, except for some certain cases. In accordance with article 5 of the same law, the government establishments should have their own websites and publish information on a regular basis. Five years after issuing this law, the websites of some government establishments are not conducive to providing information to journalists and normal people. Although the government spent a large budget on the electronic government project, it has not been fully implemented.

recommendations for the right to access information

- Government establishments should facilitate in providing information and statistics to journalists, activists and citizens.
- Articles included in the law of the right to access information should be reviewed and amended so that they are compatible with the international standards.
- Revoking or amending the laws which prohibit access to information.

End of the report