

**IILHR COMMENTS: FREEDOM OF EXPRESSION
DRAFT LAW APRIL 2009**

After studying the current freedom of expression draft law, IILHR has compiled comments into this paper for your review.

In summary, the main areas of concern and comment include the following: the need to follow international standards; the need to clearly and narrowly define restrictions to the freedom of expression; and the need to repeal provisions or laws of the former regime undermining freedom of expression, access to information held by public authorities and the rights and obligations of journalists. Additionally, financial analysis and implications should be included in every draft law, review and suggestion of financial implementation into the annual or future budget needs to be addressed in a separate article. Further review and suggestions are set out in this paper.

Please contact IILHR for further discussion, information and clarification.

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COMMENT: Need to reference the constitutional article which this law is from should be referenced.

SUGGESTION: Add language such as the following:

[In accordance with Article 38 of Iraq's Constitution, the state shall guarantee freedom of expression.]

GENERAL COMMENTS:

- As the present draft law focuses on more than one complex issue such as freedom of expression and freedom of assembly, it is advisable to develop each in separate chapters or draft a separate law on each topic, including a part related to press and journalists;
- Exploration of other topics, such as access to information by any citizen, increased transparency in Iraqi decision-making, definition of state secrets, a Code of conduct for journalists. Providing for the protection of these specific things, possible through a package of democratic laws, is necessary in order to implement a full and non-restricted right of that every Iraqi citizen is to free to express their opinions;
- Suggestions can be made on how to divide law in several chapters trying to cover all aspects of each freedom in a more organized and easy to follow manner, not necessarily excluding the option of separating topic in two or more different laws.

CHAPTER I – General provisions

COMMENT: General provisions should introduce two new articles one defining the scope of the law and the second defining terms used by law as suggested below:

SUGGESTION:

New Article:

The present law shall regulate freedom of expression, freedom of press, freedom of assembly and right to peaceful demonstrations of Iraqi citizens according to the provisions of the Constitution of Iraq and International conventions Iraq is part of.

New Article: Definitions

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The following terms and expressions used in this Law have the following meanings, unless otherwise indicated:

Person

Group of people

Institution

Press

Media

National Security

Public order

Public health

Morals

Censorship

Monopolization of media

Violating reputation of individuals

Hate speech

Security forces

Authority

Fiscal harm

Moral harm

Compensation

.....

Article 1:

Text of draft law:

Article One:

The liberty of expression means the right to express thoughts, ideas, belief or a specific situation to one person or a group of people either by writing or speech or photography or peaceful demonstration or meeting or by holding-still or by any other means of expressions.

COMMENT: Definition of freedom of expression should mirror that of the international definitions and standards.

SUGGESTION: To study definitions of international covenants and treaties and redraft definition to reflect them.

As Article 19 of the Universal Declaration of Human Rights :

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[“Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”]

Or Article 19 of the International Covenant on Civil and Political Rights:

[“(2) Everyone shall have the right to freedom of expression; this right shall include 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”]

Suggested redraft of Article 1:

Any person or group of people or institution has the right to freedom of expression. The liberty of expression means the right to express thoughts, ideas, belief or a specific situation to one person or a group of people either by writing or orally or visually or any other media or peaceful demonstration or meeting or by holding-still or by any other means of expressions.

Article 2:

Text of draft law:

Article Two:

First:

Every person or group has the right to express themselves according to Article one.

Second:

The liberty of expression is stipulated on not affecting others freedom or being comprehended of contravention with the interior or exterior security situation of the country or violating general welfare and the code of conduct.

Third:

The liberty of expression is organized by law and should never be restricted unless by a judicial order.

First: NO COMMENT

Second:

COMMENT: Could be clearer (not sure if this is just translation confusion or text in Arabic is also not as clear); should reflect international standards as well.

SUGGESTION: Look to international covenants, treaties, etc for ways to clarify article and change to reflect the provisions of Art. 19:

Article 19 of the International Covenant on Civil and Political Rights:

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["(3) The exercise of the rights provided in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals."]

Third:

COMMENT: Very broad. For what reasons can a judicial order be issued?

What justifications are needed?

SUGGESTION: Clarify, again look at international documents and

Standards:

Article 19 of the International Covenant on Civil and Political Rights:

["(3) The exercise of the rights provided in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals."]

Suggested redraft of Article 2:

First:

Every person or group has the right to express themselves according to Article one.

Second:

The liberty of expression as stipulated by the present law should not affect freedoms or reputation of individuals or groups, national security or public order, or public health or morals.

Third:

The liberty of expression is protected by law and should not be restricted unless by a judicial order according to provisions of the Second Paragraph of Article Two.

CHAPTER II – Freedom of expression and media

Article 3:

Text of draft law:

Article three:

First:

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The State is responsible on the person's right in liberty of expression without violating principles set forth in the constitution.

Second:

The State is responsible on the freedom of journalism, press, distribution and advertisement and publication by all different means of the media.

First

COMMENT: This provision should affirm the state's responsibility to respect and protect the freedom of expression according to international standards.

Second

NO COMMENT

Suggested redraft of Article 3:

First:

The State is responsible for respecting and protecting the person's, group's or institution's right to freedom of expression in agreement with the principles set forth by Iraq's Constitution and international treaties signed and ratified by Iraq.

Second:

The State is responsible for respecting and protecting the freedom of journalism, press, distribution and advertisement and publication by all different means of the media.

New Third paragraph:

Censorship of the press and other mass media is not permitted.

New Fourth Paragraph:

Monopolisation of the press and other mass media is not permitted.

Article 4:

Text of draft law:

Article four:

The expression of thoughts should not be inclusive of mischief to others morally or financially or incitation to violence or terrorism or encouraging it or degradation of other religions and well based beliefs.

COMMENT: Very broad and not clearly formulated article. What is the definition of "mischief to others morally" and "incitation to violence or terrorism"? Leaves it open to interpretation which could lead to unfair restrictions on the freedom of expression.

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SUGGESTION: Further clarify the definitions of such circumstances described. Restrictions to the freedom of expression must be clear and within accurately defined standards.

Include new Articles on:

- information not allowed to be published as: in criminal cases publication of materials violating presumption of innocence or which will hinder the proper course of judicial procedures;
- right to privacy has to be respected (as personal mail (emails), phone conversations or other messages without the person's consent), using mass media in interfering in one's personal life should be included too;
- publishing information injuring honor and dignity of people should be defined;
- information on state of health of people should be prohibited; publishing information considered state secret should be prohibited and defined what is state secret.

Article 5:

Text of draft law:

Article five:

The right to publication is guaranteed in all fields of notion, education, politics and religion on condition of not comprehending the well fare of the society and people's rights or intersecting with the general organization and code of conduct in the country.

COMMENT: Very broad. What is the definition of "general organization and code of conduct in the country"? This needs to be clearly and accurately defined or eliminated; otherwise the restriction of the freedom of expression is at the discretion of what conduct the judge sees as acceptable.

SUGGESTION: Define the code of conduct that is referred to. This must be clear, precise, and accurate to the norms of Iraqi society and leave no room for confusion. Or delete all reference to a code of conduct.

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Suggested redraft of Article 5:

Article five:

First:

The right to publication is guaranteed in all fields of notion (thought?), education, politics and religion on condition of not violating public order and morality as defined in Article Four of this law.

Second:

Persons whose reputation, honor or moral standing have been harmed by a false publication in any media may seek compensation by money, correction or apology or an order stopping publication by a complaint to the court under Chapter Two of the Civil Code, Law No. 40 of 1951 as amended. The person seeking compensation or judicial order must prove that the publication was false for the court to award compensation or order stopping publication.

Three:

Articles 81, 82, 83, 180, 201, 202, 208, 210, 214, 215, 225, 226, 227, 228, 305, 433, 434, 435, 437, and 438 of the Penal Code, Law No. 111 of 1969 and Laws No. 14 and 19 (CPA Orders) of 2003 are repealed. Defamation and insult shall not be subject to criminal penalties but will be subject to lawsuit for civil damages.

Four:

Violations of copyright, trademark and patent are subject to legal action in accordance with the laws governing copyright, trademark and patent rights.

Article Six:

Text of draft law:

Article six:

Licensed media are not to be shut down or suspended or having their journals or press confiscated without a judicial order.

COMMENT: Media should not have to be registered to be protected. All who act as part of the media should have all rights to the freedom of expression and that should not be conditioned on being registered anywhere. Also this article is vague – again see Article 2(3) regarding “judicial order”

SUGGESTION: Remove the word “Licensed” so it reads:

[Media are not to be shut down or suspended or have their journals or press publications confiscated...]

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and further clarify under what specific circumstances a judicial order can be issued.

SUGGESTION:

- Include an Article on retraction of false information published by mass media
- Include another article on secrecy of the source of information (revealing only by court order)
- Include provision on Liability and compensation for injury; on when the mass media is not held responsible for the dissemination of false information (such as they used official state documents, announcements/documents of political parties of public organizations, agencies; or publications of official persons)
- Include a chapter on the rights and obligations of journalists:
 - defining who is a journalist (person who gathers, compiles, edits or prepares materials for mass media, and employed/contracted or perform work by any other agreement for mass media, or who is member of Journalist Union or accredited by it);
 - rights as to gather, disseminate information; free access to public institutions, socially significant events; to refuse to prepare or publish materials conflicting his or her views; to retry his or her signature from material prior to publication if its content was distorted after editing)
 - obligations as to provide true information, inform the editor if submitted materials affects official or state secrets protected by law, refuse to perform tasks violating the law, respect privacy of persons, interests of any institution or organization, respect the secrecy of sources at request;
- Include an Article on accreditation process of journalists (as journalists and with public institutions, of foreign journalists and reasons for suspending accreditation)

Suggested redraft of Article 6:

Article six:

First:

Media are not to be shut down or suspended or having their journals or press confiscated without a judicial order in accordance with Article Four of this law or the laws protecting copyrights, trademarks and patents.

Second: No licensing or permits shall be required for media other than ordinary registration as a company, trader, foundation or nongovernmental organization in order to gain legal personality under Article 47 of the Civil Code, Law No.40 of 1951. Journalists shall be independent and shall not be required to be licensed or join any syndicate.
Third: Law No. 5 of 1999, Law No. 178 of 1969 as amended by Law No. 164 of 1977 and Law No. 98 of 1988 are repealed. The Iraqi Journalists' Syndicate shall be given status and legal personality as nongovernmental organization or syndicate according to the law.

CHAPTER III – Freedom of assembly and demonstrations

COMMENT: Freedom of assembly is a complex and wide topic and should cover definitions (meeting of citizens, demonstrations, parades, religious parades and so on); authorities involved (local, provincial, regional, federal) including their responsibilities, authorization process, legal way of appeal in case of refusal, impact on community and environment, security issues, define restrictions (as state emergency).

SUGGESTION: draft a separate chapter on freedom of assembly or a separate law to fully cover the topic.

Article Seven:

Text of draft law:

Article Seven:

First:

Citizens have the right to have their meetings in private places without prior approval from the general authority.

Second:

Meeting members have the right to raise slogans, signboards or making declarations to the media on condition of not being inclusive of sedition to violence or hatred.

First

COMMENT: Citizens' right to meet should not be subject to any approval (prior or at anytime); further they should not need any state authorities' approval to meet general.

SUGGESTION: Remove the word "prior" and replace the word "general"

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with “state”

Second

COMMENT: Overbroad. What exactly is meant by “not being inclusive of Sedition to violence or hatred”? How is this measured and determined? Again, leaves the possibility of the restriction on the freedom of expression at risk of being abused.

SUGGESTION: Delete the second paragraph, it is redundant of other Articles in this law

Suggested redraft of Article 7:

Article seven:

First:

Citizens have the right to have their meetings in private or group property without approval from the state.

Article Eight:

Text of draft law:

Article eight:

Peaceful demonstration or meetings or holding-still in public is conditioned by submitting a prior notice to the affiliated authority inclusive of the reasons for demonstration or the meeting or the holding-still and its place and time.

COMMENT: Question – required prior notice to be submitted to the affiliated authority, but is approval then required or just notice? If approval is needed, there need to be clear guidelines as to why the affiliated authority could deny the approval.

SUGGESTION: Remove “meetings” from this article; add into the article whether approval is needed and if so, why this approval could be denied.

Suggested redraft of Article 8:

Demonstrations in public parks, streets and squares are conditioned on obtaining a permit from the general municipal or police authority holding authority over the use of public streets or public parks for parades. No permit shall be denied on the basis of disagreement with the subject of the

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demonstration, but only on the grounds of time of day or substantial interference with the flow of vehicular or pedestrian traffic.

New Paragraph - should be included on the process of requesting authorization on different level of government (minimum conditions requested by authorities in charge), see my comments at the introduction of Chapter III.

Article Nine:

Text of draft law:

Article nine:

Security and police force are responsible on keeping general order and behaviors and protecting Protestants (protesters?) or gathering people or ones who are holding-still (sit-ins, rallies?) as long as their intention is peaceful.

COMMENT: define security forces, when and how they can interfere and stop demonstrations (only for security reasons or else?)

Suggested redraft of Article 9:

Security and police forces are responsible for protecting demonstrators and the public and maintaining public order, and not for enforcing the content of speeches and messages of signs, unless the content of the speeches or messages violates public order or morality as defined by Article Four of this law according to the provision of this law.

Article Ten:

Text of draft law:

Article Ten:

Weapons of any kind are prohibited of being carried while protesting or meeting or holding-still.

COMMENT: The use of the word “meeting” again is confusing. If citizens are meeting on private property, the carrying of a weapon should be subject to the laws of the state relating to carrying a weapon and not in this law. The sense of this article is that it is meant to relate to protests and demonstrations, need to clarify. Further, the term “weapons of any kind” is vague. Are small pocket knives, pens, wrenches and poles for signs included? Also, should off-duty police and other persons lawfully carrying firearms be prohibited from possessing their firearms at meetings on private property?

SUGGESTION: Clarify that this prohibition of weapons is specifically relating to protests and demonstrations, and is limited to firearms, explosives and fireworks.

Suggested redraft of Article 10:

Firearms, explosives and fireworks are prohibited from being carried at public demonstrations unless permitted by a permit obtained from the police . Violations shall be punished as a violation of the firearms law, Law No. 151 of 1968 as amended.

CHAPTER IV: Legal limitations of freedom of expression and assembly

Article Eleven:

Text of draft law:

Article Eleven:

It is permitted on exceptional circumstances like war or at the announcement of a state of Emergency in the country to impose some restrictions on all means of the execution of liberty of expression or on peaceful demonstration without confiscating it on condition of lifting these restrictions when reasons of which exist no more.

COMMENT: Excessively broad restrictions regarding protecting national security and maintain public order should be drafted with precision and directed to actual and legitimate threats only. Look to international documents and procedures. The International Covenant on Civil and Political Rights states that restrictions must have a legitimate objective and the restriction must be necessary to secure that objective. This means

there must be a *pressing social need* for the restriction, that the justification must be *relevant and sufficient* and the restriction must be proportionate to the goal pursued. Also look to the Johannesburg Principles which outlines specific guidelines to determine whether concern for national security merits a restriction on the freedom of expression.

SUGGESTION: study international standards and craft a precise and narrowly defined exception regarding restricting the freedom of expression due to national security and public order concerns.

- The Johannesburg Principles sets out guidelines about how to determine whether the danger is imminent enough to justify restrictions on the freedom of expression. According to Principles 15 and 16, expression may be considered a threat to national security only if a government can demonstrate that:
 - (1) The expression is intended to incite imminent violence;
 - (2) it is likely to incite such violence; and
 - (3) There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Suggested redraft of Article 11:

Article Eleven:

It is permitted on the legal declaration of war or a state of emergency pursuant to Article 61 (Ninth) of the Constitution for the state to impose restrictions on the publication of military or security information and on public peaceful demonstrations without confiscating totally the freedom of expression. All restrictions shall be required to protect the security of the democratic state and be lifted upon expiration of the state of emergency or war.

Article Twelve:

Text of draft law:

Article twelve:

First:

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Whoever is under any fiscal or moral harm as a result of practicing liberty of expression according to this law, has the right of compensation if there was a reason.

Second:

Without the transgression of provision of clause (first) of this article any party harmed, has the right to file a complaint in front of the sovereign commission of human rights.

First

COMMENT: Vague. How do you measure “moral harm”? What does it mean at the end of the article when it says there is right to compensation “if there was reason” (again, this could be translation confusion, but it is unclear on what that means – what type of reasons needed for compensation?). Additionally, where does this compensation come from? Where would one go to seek this compensation? A specific court, commission, ministry? Also need to consider this during the budget process.

SUGGESTION: Clarify language and which body these claims are referred to.

Second

COMMENT: The Human Rights Commission is not yet implemented, need to name a body that can take on this responsibility until the Human Rights Commission is established and also need to ensure that this function is covered in the Human Rights Commission legislation so that they will be able to perform this function. Also, what remedies can come from filing such a complaint, the article as it is now only gives the right to file a complaint and there is no reference regarding the provisions of remedies. Keep in mind that criminal penalties for violations of freedom of expression are not generally in line with international standards and that the remedy/penalty should be consistent with the violation.

SUGGESTION: Identify a body which can handle these complaints until the Human Rights Commission is functioning – must make sure this is considered in their budget. Set forth what remedies can be given for such complaints.

Suggested redraft of Article 12:

Article Twelve:

First:

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Whoever is under any fiscal or moral harm as a result of practicing liberty of expression according to this law, has the right of compensation if there was an injury to the person's body, freedom, property or reputation otherwise compensable under Chapter Two, the Civil Code, Law No. 40 of 1951 as amended.

Second:

Without the transgression of provision of clause (first) of this article any party harmed, has the right to file a complaint in front of the independent Commission of Human Rights or designated body and the proper court.

Article Thirteen:

Text of draft law:

Article thirteen:

This law shall inter into force from the date of its publication in the Official Gazette.

NO COMMENT

“Justifying reasons”

Text of draft law:

Justifying reasons

For the reason of organizing the freedom of expression by its entire means and ensuring its legitimate and constitutional guarantees this law has been legislated.

Suggested redraft of “Justifying reasons:”

Justifying reasons

For the reason of protecting the freedom of expression as guaranteed by Chapter Two of the Constitution by its entire means and ensuring its legitimate and constitutional guarantees this law has been legislated.