

**IILHR COMMENTS: DRAFT LAW ON COMMUNICATIONS
AND MEDIA COMMISSION**

August 2008

After studying the current draft law on the Communications and Media Commission, 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 clarify the responsibilities of the Commission and the structure of how the Commission is formed (nomination, election, and appointment of members); additionally it is imperative to understand that the basis of an Independent Commission is to have Parliament establish a Commission of experts on a topic, and then to leave the organization of the Commission and its work to the Commission members themselves, thereby allowing them to be truly independent. Much of the organization of the Commission is set forth in this draft law, to have a truly independent commission these organizational components must be determined by the members in Commission's bylaws. On a final note, 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 do contact IILHR for further discussion, information and clarification.

Article 49 – Defining Commission on Media and Communications

- COMMENT: A clear definition of the Commission is needed. Would suggest rephrasing it in more paragraphs for clarity of CMC role in Iraqi society
- SUGGESTION: add language such as:

[(1) The Commission on Media and Communications, hereinafter called the Commission, is a public autonomous federal authority; financially and administratively independent, in connection with (“under control of” seems too strong for an independent commission) the Iraqi Council of Representatives and is the guarantor of the public interest in the field of media communications and services, except newspapers.

(2) The Commission shall enjoy all the rights and responsibilities of its legal personality.]

Article 50 –

- COMMENT: what kind of exemptions or facilities is the federal government providing to public institutions? Such as Tax exemptions, immunity? There is a tendency in Iraq in according privileges to independent bodies to prove their autonomy and non partisanship. Institutions should be serving public interest and responsible to citizens for their actions.
- SUGGESTION: the provision should be more explicit or deleted.

Article 51 – Headquarter of Commission

- COMMENT: suggest rephrasing
- SUGGESTION: rephrasing such as:

[The Commission’s main office is established in Baghdad.

The Commission is authorized to set up offices in any provinces, governorates and regions of Iraq.]

Article 52 – Main authorities of the Commission

- COMMENT: Before defining the main tasks of the Commission, the law should ensure democratic principles and values that its activities are founded on.
- SUGGESTION: add new language such as

[(1) The Commission as the only guarantor of public interest in the field of media communications and services must ensure the expression of pluralism of ideas, opinions and information resources of the public, free competition, fair balance between federal media and communication services and local or regional ones, and promote respect for all of human dignity including but not limited to that of minors, Iraqi culture and language as well as the culture and languages of minority

communities, and provide for the transparency of mass communication as well as their own activities.

- COMMENT: Definition of responsibilities should be completed by adding specific reference to broadcasting licenses of radio and TV programs in Iraq; registering e-mail addresses should be part of the license granted to wireless service providers and not under direct control of any governmental institution, which may raise confidentiality and privacy issues. Another issue is licenses asking for the retransmission of programs which should be added as a task of Commission.

- SUGGESTION: add new language as follows:

[The Commission is the only regulatory authority in the field of media communications and services to issue licenses, grant communications and media frequencies, wireless communication and transmission, internet services, and protect the electronic symbols 9IQ) of the Republic of Iraq used by Iraqi governmental institutions and companies, as stipulated in this Law.]

First & Second:

- COMMENT: Combine paragraphs 1 & 2 and add: to issues licenses and retransmission licenses for all service providers and to issue decisions, instructions, regulations in order to implement the provisions of this Law
- SUGGESTION: change language to reflect the following:
 - [to establish the conditions, procedure and criteria for granting of media, telecommunications or other networking licenses and retransmission licenses for all service providers in Iraq including technical standards based on fair competition

Third:

- COMMENT: In accordance with what instructions? Who is issuing these “instructions”?
- SUGGESTION: Clarify this point.

FOURTH: NO COMMENT

FIFTH: NO COMMENT

SIXTH:

- COMMENT: What sorts of “measures to punish” are being referred to? It is not the place of the commission to punish those who break the law.
- * SUGGESTION: Should change to read that the commission should refer anyone who breaks the law to the appropriate authorities or if only meant to “fine” those who violate the media laws then this needs to be clarified.

* SEVENTH: –

* COMMENT: This is not relevant in the Law.

Should be the responsibility of a Ministry or someone else,
Commission shouldn't be excluded but not necessary to be in the

Law.

–EIGHTH:

- COMMENT: cooperation and coordination in this field is essential for different reasons including military or security ones; may be to develop a strategy or national plan on how to distribute equally, fairly radio-electric frequencies between regions and how to control it to the benefit and security of all people.
- SUGGESTION: add different language as
[To establish a strategy and develop a national plan of using radio-electric frequencies in coordination with all interested governmental bodies, especially with Ministry of Communications, in X month after this Law entered into force and published in the Official Gazette]

NINTH:

- COMMENT: suggest deleting it if new paragraph above is accepted

TENTH:

- COMMENT: this provision is limiting the application of international standards to some of HR treaties or regulations.
- SUGGESTION: add language such as the following:

[To issue and amend procedures, conditions and criteria's for issuing licenses. This should be guided by international norms of Human Rights or of the field of telecommunications stipulated in conventions and treaties ratified by Iraq]

ELEVENTH:

- COMMENT: What is meant by “appropriate actions”? Need to be specific, if the intention is to fine offenders this need to be clear, if refer to judicial/legal authorities this needs to be clear as well.
- SUGGESTION: Clarify and rephrase

[To control the service providers in implementing the parameters of their licenses approved by the Commission and revoke licenses or fine those who do not comply]

TWELFTH: NO COMMENT

THIRTEENTH:

- COMMENT: We do not understand this provision

Article 53 –

FIRST: NO COMMENT

SECOND:

- COMMENT: English is confusing.
- SUGGESTION: clarify: [any provision, use, selling of equipment, devices or services that are not compatible with the technical rules and standards set by the Commission is prohibited]

Article 54 – NO COMMENT

Article 55 –

- SUGGESTION: add language at the end of sentence [... by a joint decision of the Commission and the Central Agency for Standardizing and Quality Control]

Article 56 –

- COMMENT: art. 56 should be following article 61 as it should be stated first how many members are in the Commission, how they are elected or appointed, what is their status, what are the conditions to be member and so on. Art. 56 should be part of Commission's bylaw as it's up to Members (having the expertise in the field) how work is organized to be more efficient
- SUGGESTION: should be following article 61, deleting provision and adding new language such as:

[The Commission draws up its own organization and operating bylaws that shall be approved by the vote of the majority of its members.

The Commission sets up its own structure, including territorial control and monitoring structures that are stipulated in its bylaws, in order to exert its attributions.

The specialized staffs of the Commission are civil servants paid according to the civil service law.]

Article 57

FIRST:

- COMMENT: May be a translation error but need to use the term “commission” and not switch to referring to them as a “council”.
- COMMENT: Not clear who is a devoted member or not devoted member? Are they the permanent members? Could be translation issue. How many members are nominated by PM or ICoR? Another issue is how the subsidies of Commission Members are elected.
- SUGGESTION: rephrase for clarity as

[The Commission is made on up of 9 permanent members and 9 substitute members who are appointed by the Iraqi Council of Representatives for a four year mandate renewable for one more time. The nomination of these members, and their substitutes, should be divided between the Prime Minister and the Iraqi Council of Representatives members] SEE COMMENTS BELOW at Paragraph 3.

SECOND:

- COMMENT: will be the secret ballot on determining who is the Chair and deputy chair of Commission valid in the presence of majority of members of Commission or the majority of members present at the time of the meeting?
- SUGGESTION: add language such as
[... by secret ballot of the majority of members ...]

THIRD:

- COMMENT: there is a gap between chairs and members on privileges. If the Chair is entitled to Minister Rights than the Deputy should enjoy the Deputy Minister and members the immediate official rank's privileges. Advisors are assimilated many times to the position of Minister. Needs clarification.
 - COMMENT: It should be the same treatment for all independent commissions, bodies established according to Constitutional provisions. The same procedure should be applied on nominating candidates for independent Commissions.
 - Example: X number by Parliament, X number by President, x number by Prime Minister. Another paragraph should be included on the procedure followed by the Iraqi Legislature's standing committee in order to hear the candidates and make a notification on their recommendation of acceptance or rejection to the Speaker's Council.
 - SUGGESTION: rephrase and add language as:
 - [A. the Members in the Commission have the position of public office assimilated to the position of Deputy Minister/Advisor, with all legal and financial privileges.
 - B. the Chairperson of the Commission has the position assimilated to a Minister with all legal and financial privileges.
 - C. the Deputy Chairperson enjoys the position and privileges of a Deputy Minister.
- * ADDITIONAL PARAGRAPH FOUR:
- [The proposals assigning the candidates for Commission Membership shall be forwarded to the Speaker of the Iraqi Council of Representatives within 30 days of the present law entering into force.
- The Speaker will forward the proposals to the specialized standing committees in order to hear the candidates.
- Further to the hearing, the specialized standing committees draw up a recommendation which they will present in the plenary session of Iraqi Council of Representatives.
- The candidates shall be approved by the vote of the majority of Members of ICoR.
- The Members of the Commission are the warrantors of the public interest and do not represent the authority of the institution that proposed them.]

Article 58, 59 & 60 – Membership conditions

- COMMENT: Why enumerating mandatory conditions in 3 different articles?
- SUGGESTION: articles 58, 59 and 60 should be included in one articles as suggested below:

[Article

1. Commission Members shall fulfill the following cumulative conditions:
 - i. To be Iraqi citizen
 - ii. To hold at least a primary university degree

- iii. To have experience/expertise in one of the following: legal, administrative, economical affairs or engineering, telecommunication or media
 - iv. To have not be sentenced of moral crimes
2. The position of a member in the Commission is incompatible with any other public or private office, except educational ones if they do not result in conflict of interest.
 3. The members of the Commission may not be members of political parties or other political structures while exerting their mandate.
 4. The members of the Commission or their spouses or first or second degree relatives may not have any direct or indirect involved in any businesses or investments related to communications, media, information technology or any institution representing the interests of people engaged in providing services mentioned by this law.
 5. Article 60 Second - UNCHANGED
 6. Add new language: [If members do have interests as mentioned in paragraph (4) they have to give up the respective positions in a maximum 3 month term from their appointment to the Commission, period in which they are not entitled to vote in the Commissions sessions.]
 7. Article 60 Third - UNCHANGED
 8. Article (59) - UNCHANGED

Article (61) – Revoking Members of the Commission

- COMMENT: what is the revoking procedure for members?
- SUGGESTION: add language such as:
[In case the members are not cumulating conditions stipulated in as suggesting in Article (59) of these comments during their mandate the Commission shall notify the Iraqi Council of Representatives in applying the procedure of revoking the member and appointing one of the substitutes, according to provision of suggested Article (60) of these comments]

Insert Article (56) here. .

Article (62) – Authority of the Commission

- GENERAL COMMENTS: if suggestions are accepted as suggested in Article (56) of these comments, then any reference to Commission structure should be deleted. What about implementation of the present law? Who should issue application norms/regulations?

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- Suggestion: delete terms as “Advisory Committee” or Hearing and Complaints Committee”; complete the list of competencies with a new paragraph on implementation norms of this law.

FIRST & SECOND:

- COMMENT: If suggestions and comments accepted as suggestion in Article 56 of these comments, than all reference on structures of Commission such as Media Advisory Committee or Hearing ad Complaints Committee should be deleted. See more info and suggestion in Articles 64 to70 of these comments. On 1. Is not clear what kind of general policies and annual plan is the law talking about?
- SUGGESTION: clearing language as:
[FIRST to draw up the strategy of covering Iraq’s territory with media and telecommunications services, and annually revise the strategy according to needs;]
[SECOND to adopt the annual National Plan for the Assignment of radio-electric Frequencies according to the national strategic goals;]

THIRD: – NO COMMENT

FOURTH: SUGGESTION: rephrasing such as:

[To issue media transmission licenses;]

FIFTH & SIXTH: NO COMMENT

- SEVENTH:COMMENT: see comments and suggestions on Article (56) and64-70 of these comments

SUGGESTION: paragraph to be deleted

EIGHTH & NINTH: NO COMMENT

TENTH & ELEVENTH:

- COMMENT: annual budget draft, financial and activity reports should be presented in the plenary of the Iraqi Council of Representatives. Approval of reports or budget of Commission should be by the vote of the majority of members of ICoR. What do they mean on “semi-annual reports”? There should be annual activity and financial reports which includes all.
- SUGGESTION: Slight changes in language - instead of “referred” use “presented for adoption” and delete Paragraph 11. As 10. covers the meaning of it.

TWELFTH:

- COMMENT: what kind of contracts of a local nature may the Commission sign? Need clarification. The Commission cannot ask ICoR to join international conventions it’s not the Commissions constitutional responsibility.

THIRTEENTH:

- COMMENT: Recommendations of symposiums or conferences are not binding and the Commission should not be held to implementing the suggestions as they are only suggestions. What does it mean “implementing what is being endorsed by the Commission”? This doesn’t seem appropriate to be included in this law.

- SUGGESTION: Delete

FOURTEENTH: NEW PARAGRAPH:

[To issue decisions on implementing the provisions of the present law respecting basic principles and values included in Article 52]

FIFTENTH: NEW PARAGRAPH:

[To draw up instructions and issue recommendations for the development of activities in the field of media and telecommunications;]

Article (63)

FIRST:

- COMMENT: Provision should provide other means of calling up the meetings of the Commission than only by the Chairperson or Deputy Chairperson as it gives too much power to one person.
- SUGGESTION: should be included the possibility of calling up meetings of the Commission by a certain number of members similar to paragraph 2 adding language as:

[or by a written request of at least three members of the Commission]

SECOND: NO COMMENT

THIRD: – SUGGESTION: of completing it with the following:

[The Commission is authorized to request and receive from media and telecommunications companies (broadcasters and distributors of services) all necessary data, information and documents in order to accomplish its responsibilities, with the obligation of keeping the confidentiality of data which is not of public nature such as the privacy of individuals.]

Article (64) – (70)

- COMMENT: First see comments on article (56) of these comments. Secondly all decisions related to activities of the Commission should be taken by the Commission. Establishing a separate committee (on hearings and complaints) with the authority to act as a justice court and decide matters that should be the competencies of the Commission, is unique and not typical. These provisions set up a committee which will act as a court which they should not be doing and is unconstitutional for them to make these sorts of decisions. This is the most important function of the Commission, Supporting structures, such as a committee, should prepare decisions of the institution, advice and make legal comments but not becoming decision makers.
The Commissions decisions are final and should be appealed by any concerned citizen to an administrative court or another determined part of the justice system.
- SUGGESTION: Analyze the implications of establishing a much more powerful structure than the Commission itself. Leave the choice of organizing its activities

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to the Commission as well as setting up proper procedures to accomplish its goals. Suggest deleting Articles (64) to (70).

Article (71) – Office of Inspector General

- COMMENT: the activity of Inspector General is supposed to be determined by a special law as per Article 103 (2) of the Constitution At the current time this law is a draft that has had its 2nd reading in the ICoR
- SUGGESTION: complete the first sentence of Article with the following language
[... Will be appointed by the Federal Office of Inspector General and will work according to this law and the special law regarding Inspector General's activities]

FIRST: SUGGESTION: adding language [financial records]

SECOND: SUGGESTION: refer periodic report to the Commission and not to the Chairperson

THIRD & FOURTH: NO COMMENT

Article (72) – (74)

- COMMENT: see comments and suggestion on Article (56) of these comments. The specifics of the organization of the Commission or any committees they decide to create should organized in the bylaws and not set forth in this legislation.
- SUGGESTION: delete article and include it in the bylaws

• **SUGGESTIONS:**

NEW ARTICLES:

[Article (xx) –

The Commission should be consulted in the process of defining Iraq's position at international negotiations regarding media and telecommunications and representatives of the Commission may attend such negotiations.]

[Article xx –

The Commission should be consulted regarding all draft laws relating to media and telecommunications]

[Article xx –

The Commission as a guarantor of public interest must publish periodical reports regarding its activities.]

Chapter Ten

Financial Resources

Article (75) –

- COMMENT: As the Commission is a guarantor of public interest in the field of media and telecommunications should be financed by the federal budget too.
- SUGGESTION: adding language such as:
[1. Federal budget]

FIRST – FOURTH: – NO COMMENT

Article (76)

FIRST: SUGGESTION: adding language [the annual draft budget shall be presented to the Iraqi Council of Representatives for approval no later than X date]

SECOND & THIRD: NO COMMENTS

- OTHER COMMENTS: What about the fines that are referred to as financial source of the Commission, they are not mentioned anywhere else in the law. These need to be explained and set forth. What about sanctions? The Commission should have the authority to issue fines in case of misdemeanors for any person for not respecting the provisions of this law.
- SUGGESTION: add a separate chapter on defining acts which may cause serious prejudice upon the public interest, establish sanctions and appropriate fines for any person not respecting the law. Also state that the decisions of the Commission may be appealed and to where, which court these appeals will go.