

IRAQ

ILA Country Report

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Legal Framework

Constitutional Protection

The [Iraqi Constitution](#) was adopted by referendum in 2005. In particular, the rights to freedom of expression and privacy are protected by the following provisions:

- Article 17 provides that every individual shall have the right to personal privacy, so long it does not contradict the rights of others and public morals. It goes on to state that the sanctity of the home is inviolable and that a home may not be entered, searched, or put in danger, except by judicial decision, and in accordance with the law.

- Under Article 38, the State guarantees freedom of expression through any means, freedom of the press and the media as well as freedom of assembly and peaceful demonstration in a way that does not violate public order and morality. Article 38 further specifies that freedom of assembly and peaceful demonstration shall be regulated by law.

- Article 39 protects the right to freedom of association.

- Article 40 guarantees the right to freedom of 'communication' and all forms of correspondence free from monitoring, wiretapping or disclosure except where necessary for security reasons and ordered by a court.

- Article 42 guarantees the right to freedom of opinion, conscience and beliefs.

- Article 46 of the Constitution allows restrictions on the right to freedom of expression to be imposed "by law or on the basis of it, and insofar as that limitation or restriction does not violate the essence of the right or freedom".

- Articles 101 and 103 (1&2) stipulate that there shall be a financially and administratively independent "Communication and Media Commission" which will be 'attached' to the Council of Representatives, although its mandate is not specified.

- Article 110(6) provides that regulation of telecommunications (which is to be understood as including broadcasting) will be the exclusive domain of the federal government.

Regulation of Online Content

Under the new Iraqi Constitution all existing laws, including those developed under Saddam Hussein, remain in force unless specifically annulled or amended by the Council of Representatives. Insofar as these laws regulate content, they are equally applicable in the online environment. As a result, a large number of laws that are highly restrictive of fundamental rights and freedoms and inimical to the provisions of the 2005 Constitution are available to silence legitimate criticism of public officials or government practices, including online. The following provisions are especially noteworthy:

The Penal Code

Defamation and libel are criminal offences in Iraq. Under the [Ba'ath-era Penal Code](#), it is a

crime to:

- Insult the Arab community, the Iraqi people (including any part of the population), the national flag or any state emblem (Article 202);

- Publicly insult any public institution or official (Article 226);

- Publicly insult a foreign country, flag or national emblem, or international organisation with an office in Iraq (Article 227);

- Insult a public servant or body in the course of its work (Article 229);

- Attack the creed of a religious minority, or insult a symbol or person which / who is an object of sanctification, worship or reverence (Articles 372(1) and (5));

- Defame another, and if the defamation is published in the media it is considered an aggravating offence (Article 433);

- Insult another, including directing abuse which compromises their honour or status or offends them. Publication of such abuse in the media is an aggravating circumstance (Article 434); or

- Insult a person in a personal meeting, telephone conversation or private letter (Article 435).

In addition, numerous provisions of the Penal Code seek to protect public order, making it a crime to:

- Promote Zionist or Masonic ideologies, including by joining related institutions, or by promoting these ideologies morally or in any other way (Article 201);

- Obtain materials that incite constitutional change or that promote banned ideologies with the aim of publishing them (Article 208);

- Shout or sing in a manner that provokes dissent (Article 214); or

- Possess (with the aim of publication, trade or distribution) materials that disturb public security or tarnish the country's reputation (Article 215).

The Draft Computer Crimes Law

In 2011, the Iraqi government brought forward a controversial [Draft Computer Crimes Law](#). However, the Iraqi Parliament rejected it in 2013. The Draft Law reproduced many of the already existing speech offences under the Criminal Code but adapted to Internet-based communications. In particular, it included various broadly worded restrictions on free expression on the Internet with the purported aims of protecting national security or public morals. For instance:

- Article 3 of the proposed Law provided for life imprisonment for intentionally using computer devices and an information network to undermine the country's "supreme economic, social, political, military, or security interests". This essentially grants law enforcement an incomprehensibly broad power to censor any electronic expression it deems necessary.

- Article 4 criminalised managing a website with the deliberate intent to (1) implement programs or ideas which are disruptive to public order or promote or facilitate their implementation (2) implement terrorist operations under fake names or to facilitate communications with members or leaders of terrorist groups (3) promote terrorist activities and ideologies or to publish information regarding the manufacturing, preparation and implementation of flammable or explosive devices, or any tools or materials used in the planning or execution of terrorist acts.

- Article 6 criminalised the use of computers and information networks with deliberate intent to (1) create chaos in order to weaken the trust of the electronic system of the state (2) provoke or promote armed disobedience, provoke religious or sectarian strife, disturb public order, or harm the reputation of the country ... (4) broadcast or publish false or misleading facts with intent to weaken trust in the electronic financial, trading and monetary systems, or to damage the national economy or the financial trust of the state. This feasibly incorporates any expression that intends to encourage critical discussion of these systems and is a flagrant attempt to limit the right of people in Iraq to engage in political speech.

- Article 21(b) imposed severe custodial and financial penalties on “whoever violates principles, religious, moral, family, or social values ... through information networks or computers.” Again, this is an impermissibly broad content-based restriction that targets a spectrum of innocuous and harmless

expression that the state has no interest in regulating.

- Article 22(2)(b) prohibited the establishment of “Internet websites that promote or encourage pornography or any programs, information, images or videos which breach public modesty and morals.”

- The Draft Law further erodes the rights to freedom of expression and freedom of information by criminalising electronic defamation (Article 22(3)) and by failing to protect the right of journalists to protect their sources (Article 13(1)(c)).

REGULATION OF MEDIA WORKERS

A new law on the [Protection of Journalists](#) was passed in August 2011. It establishes a number of safeguards for freedom of the press. In particular, the purpose of the Law is framed in human rights language; it is to “honor freedom of journalism and expression, to guarantee the rights of Iraqi and journalists and their heirs and to emphasize the importance of their role in establishing in the new Iraq”. The Law no longer requires membership of the Iraqi Journalists’ syndicate in order to qualify for protection as a journalist. It also states that it overrides any conflicting legislation.

Nonetheless, the Law adopts an unduly narrow view of who qualifies as a journalist. For instance, it does not recognize those who have part time jobs as journalists. As a result, bloggers and other ordinary citizens engaging in journalistic activity do not benefit from special legal protection, such as the confidentiality of sources. Moreover, despite the Law’s

claim that it overrides any other legislation, it relies on other legislation to give its provisions meaning. The result is a lack of precision and uncertainty about the scope of protection offered by the Law and the entrenchment of existing deficiencies of Iraqi legislation. The Law further requires that local and foreign media entities working in the Republic of Iraq “commit to signing contracts with journalists working for them according to a form set by the syndicate centrally or through its branch in the region”. This provision therefore establishes a de facto registration scheme, which is unnecessary and also theoretically applies to online news sites.

Finally, the [Publications Law 1968](#), which imposes various restrictions on publications, is still in force. In particular, it requires anyone who publishes to obtain a license and provides that only university-educated Iraqis may serve as editor-in-chief of a publication. While the 1968 law is not presently enforced, it remains on the statute book and could be revived at any moment to stifle legitimate criticism or dissent.

Regulation of Internet Intermediaries

To our knowledge, Internet intermediaries are currently not protected from liability for third-party content. It is unclear what other secondary liability principles might be applicable to them. At the same time, Article 4 of the Draft Computer Crimes Law might be seen as an indication of the Government’s willingness to make Internet intermediaries criminally liable for content produced by others in future legislation. As noted above, Article 4 created an offence of managing a website with the

deliberate intent to implement “ideas which are disruptive to public order” or “promote or facilitate their implementation” or “facilitate communications with members or leaders of terrorist group”. If the law had been passed, Directors of Internet platforms could potentially have been prosecuted simply because such platforms facilitate the dissemination of ideas that the Iraqi government might have disagreed with.

Surveillance and Data Protection

We are not aware of any laws regulating surveillance powers or affording protection to privacy or personal data in Iraq. To the extent that the [Postal Service Act, Telegraph and Telephone Law 1963](#) (with amendments) may confer broad powers on government agencies to regulate telecommunication services, it is highly likely that the Law should be reviewed to protect the right to privacy in the digital environment.

Net Neutrality and Access to the Internet

We are not aware of any specific laws or draft legislation seeking to promote Internet access, for instance in remote areas, or fostering a competitive environment for Internet Service Providers. Equally, the protection of net neutrality does not appear to be under discussion in Iraq.

Country Analysis: Our assessment

Whilst the **Iraqi Constitution** attempts to protect the rights to freedom of expression and privacy comprehensively, the language of key provisions such as Article 38 and 40 remains too vague. In particular, it fails to incorporate the requirements of necessity and proportionality as necessary conditions in order for restrictions on freedom of expression and the right to privacy to be justified.

The speech offences contained in the **Penal Code**, such as criminal defamation and insults to public bodies and religious values, are in breach of international standards on freedom of expression. The use of the criminal law to protect reputation is a serious interference with the right to freedom of expression and practice in many countries demonstrates that reputation and privacy can be adequately protected by civil law. There is growing international agreement that, particularly in transitional democracies, criminal law provisions are not the right response to defamation. Such laws are easily abused and the threat of a prison sentence, large fine or even 'just' a suspended criminal conviction exerts a real chilling effect on speech.

Equally, the public order restrictions in the Penal Code impose illegitimately broad restrictions on the exchange of ideas on matters of public interest such as the need for constitutional change. Meanwhile, the criminalisation of mere possession of material that might tarnish the country's reputation hinders the ability of the media to perform its role in reporting on public interest matters such as the security situation in Iraq. This restriction of all is the more unjustifiable given that, as a matter of principle, it is difficult to see what

reputation a country, as such, has or why it should legitimately warrant protection.

The **Draft Computer Crimes Law** displayed a similar pattern of problems, including:

- Overly broad and vague definitions of crimes, including the violation of "religious, moral, family, or social principles or values" or promoting terrorist "ideas."

- Disproportionately harsh punishments: life imprisonment was imposed for using computers to "harm the reputation" or affect the "unity" of the country; "deal with the enemy" and expose the country to "dangers"; or publish information about human trafficking, or "mind altering substances" and the like.

- Lack of protection for the press, whistleblowers, and others: criminal sanctions were imposed for libel and "insults" of others, without exception.

- Uncertainty and lack of privacy for website operators, ISPs, and citizen users: The Act made ISPs and intermediaries strictly liable for the content of their users, and mandated that data be handed over to authorities on request.

Whilst the rejection of the Draft Computer Crimes Law by the Iraqi Parliament is to be welcomed, any attempt at criminalising computer misuse should be closely in line with international human rights standards in this area, such as the Budapest Cybercrime Convention. In particular, any such law should

¹ See the Declaration of the Iraqi Coalition for Freedom of Expression: <http://www.iraqicivilsociety.org/archives/3176>

not include broad speech offences committed online.¹

The **Law on the Protection of Journalists 2011** is equally problematic. In particular, it fails to protect bloggers and other ordinary citizens engaged in journalist activity. This means that they do not benefit from the protection of the confidentiality of their sources contrary to emerging best practice in this area.

Recommendations

- The provisions of the Constitution dealing with the rights to freedom of expression and privacy should be brought more closely in line with the language of the corresponding articles of the International Covenant on Civil and Political Rights.

- A comprehensive legislative review of the speech offences contained in the Iraqi Penal Code should be undertaken, including the repeal of those provisions which are inconsistent with the new Constitution and international standards on freedom of expression, such as criminal defamation, obscenity and insult laws.

- The Publications Law 1968 should be repealed.

- At a minimum, the Protection of Journalists Law 2011 should be amended so that:

- Bloggers and citizen journalists should benefit from the same protections as traditional journalists.

- Neither of them is subject to registration

schemes in breach of international standards on freedom of expression.

- At a minimum, any legislation criminalizing computer misuse should be in line with the Budapest Cybercrime Convention.

- Internet intermediaries should be given broad immunity for third-party content except where they have intervened in the content at issue.

- The right to privacy should be protected in the digital environment, including by updating surveillance laws in line with international human rights law.

- Iraqi legislation should provide protection for individuals who blow the whistle on public or private wrongdoing in accordance with Iraq's obligations under the UN Convention on Anti-Corruption.

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