

Security Concerns in Iraq Increase Media Regulation

Ali Al Dabbagh - Senior Associate - Litigation

a.aldabbagh@tamimi.com - Baghdad

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A. The legal framework for media in Iraq.

Article 38 of the current Iraqi constitution guarantees ‘freedom of expression’ and ‘freedom of press’. However, as necessary in constitutional language, public order and morality limit this protection. The current constitution marked a shift in policy for Iraq and real change followed with many publishers and broadcasters operating in Iraq today. Nevertheless, we need to cover scattered pieces of Iraqi legislation to give an accurate picture of media regulations. Limitations on freedom of expression exist in both legacy laws and in new measures introduced after 2003. For instance, the Iraqi Penal Code (Law No. 111 of 1969) contains a number of sanctions, which, even though likely to find support from the public in Iraq, can be abused to improperly restrict freedom of expression. I will cover two groups of sanctions: for defamation and for preservation of public order.

Criminal sanctions for defamation

- 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 organization 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 honor or status, or offends them. Publication of such abuse in the media is an aggravating circumstance (Article 434);
- insult a person in a personal meeting, telephone conversation, or private letter (Article 435).

Criminal sanctions for preserving public order

- promote Zionist or Masonic ideologies, including by joining related institutions, or by promoting these ideologies morally or in any other way (Article 201);
- shout or sing in a manner that provokes dissent (Article 214);
- possess (with the aim of publication, trade, or distribution) materials that disturb public security or tarnish the country’s reputation (Article 215).

The sanctions listed above can cause problems for freedom of expression because they contain language that is too broad for criminal law. This is because criminal law carries with it penalties that make it too

strong of a tool, and, thus, is inappropriate to achieve certain legitimate policy objectives, like protecting reputation or preserving public order, as it can be used to threaten or intimidate dissenting voices. Luckily, Iraqi courts are not overly enthusiastic in applying said criminal sanctions and a reading of the case law shows that civil treatment is more prevalent. In 2011, the Iraqi parliament passed Law No. 61 to protect journalists' rights. The law provided for some benefits but did not address criminal sanctions that intersect with freedom of expression. In 2014, the then new Prime Minister Haider al-Abadi issued an order withdrawing all pending government cases against journalists and other media outlets. However, government entities initiated a number of new cases in 2015, and, currently, Penal Code sanctions remain on the books with varied degrees of application.

B. Media regulation by the Communication and Media Commission

The body responsible for regulating the media in Iraq is the Communication and Media Commission ('CMC'), an independent government entity established by the Coalition Provisional Authority ('CPA') under Order No 65. The CMC is responsible for granting licences to media broadcasters, such as TV and radio, as well as other communication service providers, such as cell phone operators and Internet service providers.

The CMC released a new code of professional practice in 2014; the applicable code of professional conduct is 22 pages long and covers the following areas, in the proportions below:

- Incitement to violence or hatred (4 pages);
- Morals and public policy (2 pages);
- False material (2 pages);
- Accuracy, integrity and transparency in reporting information (4 pages);
- Privacy (2 pages);
- Religious programs (1 page);
- Defamation (0.5 pages); and
- Commercials (0.5 pages).

Increased activity by the CMC due to concerns over national security and civil peace

While the CMC is structurally independent, it does echo broader government policy. The current atmosphere in Iraq caused the CMC to step up its regulation of broadcast media in response to deteriorating security. Terrorist organizations rely heavily on media coverage to spread their ideologies; this creates a critical tension between security concerns and protecting freedom of expression. For example, the CMC used the code of professional conduct to revoke broadcast licences of notable TV channels broadcasting in Iraq in 2014, prior to ISIS takeover of Mosul, for their critical coverage of the unrest that proceeded the collapse of the security forces. The current CMC attitude is expected to continue at least until it is satisfied that enough stability is reached post insurgency to relax its regulation.