



New Iraqi Constitution

Suggested Provisions on Freedom of Expression

July 2005

The following constitutional drafting provisions have been prepared by ARTICLE 19 as input to the process of developing the new Iraqi Constitution and as part of a workshop on the constitution organized by UNESCO. They are based on international and comparative standards, as adapted to the Iraqi context, and are intended to provide guidance and advice to Iraqis in general, and the Constitution Drafting Committee in particular, as to how to protect the fundamental right to freedom of expression. These provisions have been prepared in consultation with Simon Haselock's Media Development Advisory Team, which has been advising on media issues in Iraq since April 2003.

A. Freedom of Expression

Section 1 General Guarantee of Freedom of Expression and Information

- (1) Everyone has the right to hold opinions without interference.
- (2) Everyone has the right to freedom of expression. This right shall include: -
 - (a) freedom to seek, receive and impart information and ideas of all kinds and regardless of frontiers;
 - (b) freedom of the press and other communications media;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (3) The right to freedom of expression shall include the right to access: -
 - (a) any information held by or on behalf of a public body or body that undertakes a public function; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any right.
- (4) The right provided for in subsection (2) may only be subject to such restrictions as are provided by law and are strictly necessary and proportionate in a democratic society: -
 - (a) for the protection of national security, public order, public health or morals;
 - (b) for the prevention of crime; or
 - (c) for respect of the rights or reputations of others;provided that no restriction may violate the essence of these rights.
- (5) The right provided for in subsection (2) shall not be restricted by indirect means, such as through control over the media, or harassment of or attacks on those who have exercised these rights.

(6) National legislation must be enacted to give effect to the right provided for in subsection (3) within two years of the date on which this Constitution takes effect.

Section 2 Elements of Freedom of Expression

- (1) Prior censorship shall not be allowed other than in the case of material intended for public entertainment and then only for the purpose of protecting children.
- (2) Neither the establishment of a media outlet nor the practise of journalism shall be subject to prior permission.
- (3) Journalists have a right to refuse to disclose the identity of individuals who have provided them with information on a confidential basis.

Section 3 Media Independence

- (1) The government shall respect media independence and shall not interfere with or otherwise attempt to control the editorial, managerial or personnel decisions of any media.
- (2) All public media shall be put under the direction of an independent board of governors and shall have a clear mandate to promote the public interest, including through politically impartial reporting, and the government shall not attempt to interfere with the editorial independence of these media in any way, including through control over funding.
- (3) Notwithstanding subsection (2) of section 2, a licensing system may be established for the broadcast media, provided that such licensing: -
 - (a) is conducted by an independent regulatory authority that is adequately protected against political interference and government manipulation; and
 - (b) has as its primary aim the regulation of broadcasting in the public interest, to ensure fairness and a diversity of views broadly representing Iraqi society.
- (4) The government shall respect the independence of the authority established in subsection (3) and shall not interfere with or otherwise attempt to control it or its licensing decisions.

B. Related Provisions

Preamble

Iraq is a founding and active member of the League of Arab States and abides by its pacts and covenants. Iraq is also a founding and active member of the United Nations Organization and abides by rules and standards, including the *Universal Declaration of Human Rights*. The Government shall respect these principles in all fields and areas, and at all times.

Section on Freedom of Assembly

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions.
- (2) The right provided for in subsection (1) may only be subject to such restrictions as are provided by law and are strictly necessary and proportionate in a democratic society: -

- (a) for the protection of national security, public order, public health or morals;
- (b) for the prevention of crime; or
- (c) for respect of the rights of others.

Section on the Implementation of Human Rights

- (1) The rights guaranteed in this Constitution shall apply directly and any court may apply them as such.
- (2) Duly ratified international treaties guaranteeing human rights or fundamental freedoms shall be part of the domestic legal system and shall have priority over ordinary legislation.