



HUMAN
RIGHTS
WATCH

“We Might Call You in at Any Time”

Free Speech Under Threat in Iraq



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Summary

Authorities are continuing to use vaguely worded laws in places throughout Iraq, including in the Kurdistan Region of Iraq, that allow prosecutors to bring criminal charges for opinions they object to. Authorities in areas controlled both by the federal government and the Kurdistan Regional Government (KRG) are using prosecutions under these laws to intimidate and in some cases silence journalists, activists, and other dissenting voices.

Recent violations of the right of Iraqis to freedom of expression are particularly relevant in the light of protests that broke out across central and southern Iraq in October 2019. The protests, focused on government corruption, economic conditions, and abuse by security forces have crossed sectarian divisions, taking place in both Shia and Sunni communities. Security forces have used excessive force, including firing live ammunition at protesters, to suppress the protests, killing at least 544 people and wounding at least an additional 24,000 between October 2019 and March 2020. Authorities have also ordered the closure of a dozen television and radio stations. The outbreak of Covid-19 and subsequent government measures to minimize the spread of the virus in March 2020 brought an end to the 2019 protest movement.

Before 2003, then-President Saddam Hussein's government maintained a stranglehold over all of Iraq's institutions, including the media, and did not allow criticism of either Hussein's family or top officials. After the US-led military intervention overthrew Saddam Hussein in 2003, some democratic governance structures were established, but free speech failed to flourish. Between 2017 and 2019, the period covered by this report, Iraq was a hostile environment for those wanting to criticize the government and armed groups like the Popular Mobilization Forces (PMF or *Hashad*, armed forces formally under the prime minister's command).

A range of laws from before as well as after the end of the Saddam Hussein era in 2003 have empowered authorities to take legal action against their critics, using defamation and incitement provisions in the Penal Code and other laws. For this report, we examined a total of 33 cases. In 17 of these cases, authorities detained and charged individuals under the laws examined below. In four of these 17 cases, authorities later dropped the charges and released the detainees. In a further 16 cases examined by Human Rights Watch,

authorities detained individuals but released them without charging them at all. Of the 33 total cases examined for the report, 13 were linked to individuals covering and supporting protest activities and seven cases were linked to individuals writing about state corruption in mainstream or social media.

Iraq's Penal Code, which dates back to 1969, with minor amendments made over the years, including some in 2008, enshrines numerous vague defamation crimes which restrict freedom of expression such as insulting "the Arab community" or any government official, regardless of whether a statement is true.

For example, over a course of 15 months between June 2016 and September 2017, prosecutors charged Ammar al-Khazaali, a 30-year-old social activist from al-Qadissiya governorate, 14 times on a range of mostly defamation-related Penal Code charges for "insulting" public officials. Courts dismissed all charges either because of a lack of evidence or because the plaintiff withdrew the complaint.

Although few individuals have served prison time on defamation charges, the criminal process itself can act as a punishment. Al-Ghazali and others told Human Rights Watch they thought public officials brought repeated legal suits, even though they knew these cases would likely get dismissed, as a method of intimidation. "The constant arrests, being handcuffed in front of people I know, it was all very emotionally exhausting and sometimes brought me to tears," he said. "I am spending money on lawyers constantly, my family and friends are constantly worried about me, and they continue to target me."

Hemin Mamand is a freelance journalist in the Kurdistan Region. His lawyer told Human Rights Watch that on March 23, 2020, Mamand posted on his Facebook page that if the KRG continued to withhold the salaries of public servants while implementing a Covid-19 related lockdown, people would likely go out to protest despite the lockdown. The next night, police officers arrested Mamand at his home, his lawyer said. They released him 13 days later but rearrested him 24 hours later, on April 5, after he posted on Facebook that the police had arrested him without presenting an arrest warrant or identifying themselves. Authorities charged Mamand under article 2 of the Kurdistan Region's Law to Prevent the Misuse of Telecommunications Equipment for encouraging people to break the lockdown and also for defaming the police under article 433 of the Penal Code.

Corruption has been one of the major issues in the mass protests that erupted in October 2019. Human Rights Watch interviewed seven journalists and activists who came under attack because of their work documenting and reporting on corrupt practices.

Haitham Sulaiman, 48, is a protest movement organizer in Muthana governorate who on April 6, 2020 in a Facebook post called on the Muthana governor to investigate allegations of corruption within the health department and for a sit-in. A day later, Sulaiman said, Ministry of Interior intelligence officers came to his home while he was out and warned his family that he should stop writing about corruption. On April 10, four men in civilian dress arrested him and took him to the Muthana intelligence office where they beat him and forced him to sign a document stating that the Iraqi protest movement had been bankrolled by the United States, he said. Authorities later charged him under the Penal Code for willfully sharing false or biased information that endangered public security. At the time of writing he was still being charged.

While in most of the cases examined in this report authorities have relied on the Penal Code, they have also invoked other laws and regulations to limit free speech. For example, in 2014, the Communications and Media Commission (CMC), a “financially and administratively independent institution” linked to the parliament, issued “mandatory” guidelines to regulate the media “during the war on terror,” which were updated and renamed the “Media Broadcasting Rules” in 2019 and are still in place today. Human Rights Watch was unable to determine any legal basis for the CMC’s guidelines or other actions taken by the CMC.

Section 2, article 1 of the guidelines forbids the media from broadcasting or publishing material that promotes the Baath party, promotes illegal acts, “may be interpreted as being against the security forces,” includes a statement from an opposition armed group or an interview with one of its members, targets the democratic process, or provokes conflict between parties or tribes or within society.

While Human Rights Watch has not been able to determine whether the authorities have used the CMC guidelines to bring complaints against specific journalists, following the start of the protests authorities ordered the closure of eight television and four radio stations for three months for allegedly violating media licensing rules based on the CMC guidelines and issued warnings to five other broadcasters over their coverage of the

protests. In October 2019, unidentified armed men raided and damaged the offices of three news outlets, apparently to impede their broadcasting of the protests.

In early April 2020, the CMC suspended Reuters' license for three months and fined it 25 million IQD (US\$21,000) for an article it published on April 2 alleging that the number of confirmed Covid-19 cases in the country was much higher than official statistics were stating. Authorities lifted the suspension on April 19.

Reporting on abuses by the security forces is especially risky. In June 2018, "Khalil," 29, a journalist at a privately-owned satellite news channel, reported on a press conference in which relatives of a local journalist claimed that unknown armed men had abducted him. The relatives called on the authorities to do more to secure his release. Four days after covering the press conference, Khalil said police came to his home at 4 a.m. and arrested him. In a subsequent interrogation, they accused him of publishing false accusations against the security forces by reporting on the press conference. A judge told him he was being charged with defamation of security forces under article 434 of the Penal Code. A few days later, authorities transferred him to another court in Anbar where a judge informed him that the provincial council was bringing additional charges against him under article 433 of the Penal Code, also for defaming security forces, and for inciting violence against them. The judge ordered Khalil released after he provided financial security for his temporary release but both cases were still pending at the time of writing. This case also illustrates the use of Penal Code provisions that criminalize inciting the commission of a crime even "if such incitement has no effect." The code does not define the threshold for incitement.

Authorities have also relied on provisions of the Penal Code not directly related to expression to silence individuals, including illegal entry into a military zone, endangering national security, and damaging public property.

The draft Information Technology Crimes Law, introduced by two parliamentary committees to parliament on January 12, 2019, could further undermine the right to freedom of expression in Iraq. Several articles of the draft would criminalize the use of computers in connection with a wide range of broadly defined activities, many of which are presently unregulated. For example, article 3 sets a term of life imprisonment and a large fine for any person who intentionally uses computer devices and an information network for the

purpose of: “undermining the independence, unity, or safety of the country, or its supreme economic, political, military, or security interests,” or “participating, negotiating, promoting, contracting with, or dealing with a hostile entity in any way with the purpose of disrupting security and public order or endangering the country.”

Kurdistan regional authorities are also using laws in force in the Kurdistan Region of Iraq to curb free speech, including the Law to Prevent the Misuse of Telecommunications Equipment. Article 2 of this law authorizes imprisonment and fines for, among other things, misusing cell phones and email (or more broadly the internet) to: threaten someone, use profanities, spread misinformation, disclose private conversations or share images counter to the public’s values, or take any other action that might harm someone’s integrity or honor or motivate a crime or an immoral act, or share private information even if true. The law does not define any of the terms in the article, nor does it provide any details on licensing or permission processes.

“Ibrahim,” 40, live-streamed a demonstration on the morning of January 26, 2019 in the Kurdistan town of Shiladze, 100 kilometers northeast of Dohuk, where people were protesting against Turkish airstrikes that had reportedly killed at least six civilians in airstrikes the previous week. Authorities arrested and charged him for attending the demonstration under Penal Code article 156, which criminalizes violating “the independence of the state or its unity” or national security, and article 229, for threatening an official. The judge dismissed the charges and authorities released him after 29 days in custody. The prosecution also charged him under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment for filming the protest on his phone without “permission.” This charge was pending at the time of writing. The prosecution did not make clear from whom Ibrahim should have obtained permission.

Those interviewed for this report who had been criminally charged felt that the prosecutions were an effort by authorities to intimidate critics. Eleven individuals interviewed said they did not hear from the prosecution for extended periods, leaving them unsure of whether the cases against them were still active. Authorities bog people down with expensive and time-consuming legal suits, sometimes left pending for years, so as to intimidate them into silence, they said. One said, “When the Asayish [Kurdish security forces] released me after I paid a fee on March 10, 2019, they told me, ‘We might call you in at any time.’”

One of those interviewed by Human Rights Watch was forced to sign a confession while in detention, while another three were pressured to do so but refused. Security forces forced two individuals to sign pledges not to criticize the government again, while in another two cases, the individuals refused to sign the pledge and security forces still released them. Of those interviewed, 11 said security forces had ill-treated them at the time of arrest or once in detention.

International human rights law allows for restrictions on freedom of expression to protect the reputations of others, but such restrictions must be necessary and narrowly drawn. Human Rights Watch believes that criminal penalties are always a disproportionate punishment for alleged reputational harm.

All 14 journalists and four of the activists interviewed said because of their work or activism they regularly received threats, usually from anonymous sources by phone or over social media, and sometimes from security forces or government officials. For some, the threats instilled fear and disrupted their daily lives.

Journalist Amanj Bakir, 31, said that in November 2019, the Asayish arrested and held him for 24 hours without charge for an article he wrote about Turkish airstrikes in the Kurdistan Region, and only released him after forcing him to sign a document promising not to write further about the airstrikes. Later that same month, he said, the Asayish detained him for another 24 hours without charge. “During the interrogation they said they had arrested me because I continued to write about Turkish military operations in Kurdistan even though they had told me to stop,” he said.

In March, Bakir posted a piece on Facebook about growing tensions between the Kurdistan Democratic Party (KDP), the Patriotic Union of Kurdistan (PUK) and the PKK (Kurdistan Workers’ Party), but took it down after an anonymous caller phoned his uncle and said, “If Amanj doesn’t stop talking about this topic, he will be disappeared.” Most recently, on March 19, the day after he published an article on Goran’s Sbeiy News website about alleged Turkish plans to establish a new military outpost in the Kurdistan Region, he said, “I received a call from an unknown number, a man, who told me ‘You had been warned in the past and your time is running out. We will find a solution for you.’”

Bakir said that the arrests and threats have taken a toll on him. “My psychological situation is unstable. I am constantly worried about my immediate and extended family and myself. I know that my children are at risk, I have put them in an uncertain future. I don’t want to be the reason that someone I love gets hurt. But at the same time, I still want to work as a journalist.”

Some victims of attacks and threats said they contacted the authorities to no avail. “Bashar,” 53, a businessman from Samawa city in Muthana governorate, said that in early 2017, a contact leaked him some documents demonstrating that a local government official linked to a political party was involved in a kidnap-for-ransom ring. He said he gave the documents to the Integrity Commission. A week later, the local official called him into his office and told him, “We have silenced other activists, so what do you want?” The official “then offered me money, trips, but I refused.” On April 6, 2017, Bashar said, two armed men in green uniforms that he could not identify jumped out of a car about 500 meters from his house and forced him into the car. Over the next 14 days they interrogated him in three different locations about whom he got the documents from and threatened that if he did not retract the complaint, they would get 30 people to open criminal complaints against him.

Three days after they released him, he decided to go to court to report the incident. The investigative judge questioned him about the incident. He continued,

Then the head of the court walked in and said he didn’t believe my story. Why would they release me if they let me see their faces, he said. I told him maybe they live in Iran or are powerful and don’t care. After that, I sensed the investigative judge was less interested in my case and I haven’t heard anything since. Someone linked to the National Wisdom Movement told me that I might need to leave the country, so now I have left.

Human Rights Watch calls on the Iraqi parliament to repeal the criminal defamation articles in the Penal Code and replace them with civil defamation penalties. It should amend laws and penal code articles that limit free speech in ways that are inconsistent with international law. Iraqi federal authorities and the Kurdistan Regional Government should direct all security forces to end intimidation, harassment, arrest, and assault of

journalists and others for exercising their right to free expression. They should investigate all credible allegations from individuals who are threatened or attacked by government employees or non-state actors and take measures to protect them.

Recommendations

To the Iraqi Federal and Kurdistan Regional Authorities:

- Pending legislative amendments, suspend enforcement of penal code articles and other legislation and regulations that include vague articles that violate internationally protected free speech;
- Ensure timely, transparent, and fair investigations of complaints regarding assaults and threats against journalists and activists stemming from their criticism of security forces, public officials, or government policies;
- Direct all security forces to end intimidation, harassment, arrest, or assault punishments of journalists and others for exercising their right to free expression;
- Direct government officials to stop filing spurious or politically-motivated lawsuits against journalists and publications as well as activists including any case where persons are criminally investigated or prosecuted simply for criticizing public figures or institutions.

To the Government of Iraq Legislative Authorities:

- Repeal the Communications and Media Commission's "Media Broadcasting Rules" refrain from endorsing any decisions taken by the CMC that amount to licensing of journalists;
- Remove crimes of defamation or insult from the Penal Code, and categorize them as civil offenses, with sufficient specificity to identify prohibited conduct;
- Amend penal code articles on incitement so that the crimes are identified with sufficient specificity that persons will know in advance what conduct is prohibited and subject to punishment, and ensure any legal restrictions on freedom of expression are necessary and proportionate to the harm caused;
- Amend the draft Information Technology Crimes Law to identify prohibited conduct with sufficient specificity, particularly in articles 3, 6, 21, and 22, such that persons will know in advance what conduct is prohibited and subject to punishment, identify any prohibited expression, and identify prohibited organizations, entities, or activities.

To the Kurdistan Regional Government Legislative Authorities:

- Amend the Press Law of the Kurdistan Region to provide clear guidelines identifying what prohibited speech authorities may block, and ensure that restrictions are in line with international free expression standards.
- Amend the Law to Prevent the Misuse of Telecommunications Equipment in the Kurdistan Region so that the terms “terror,” “morals,” and “public morals,” are identified with sufficient specificity, and that restrictions do not infringe on internationally protected free speech.

Methodology

For this report, Human Rights Watch interviewed 21 activists and 14 journalists who suffered attacks, ranging from threats to arrests and criminal charges, for things they said or wrote criticizing the government. Researchers also interviewed the lawyer of two individuals in detention at the time of the interview and who could not be interviewed themselves. In this report we refer to people as activists based on their own use of the term (ناشط مدني) to highlight their public criticism against corruption and other social issues through involvement in civil society, over social media channels, or in other public fora.

Human Rights Watch conducted the interviews between February 2018 and April 2020 and contacted interviewees for updates in late March and early April 2020. Where available, researchers reviewed court and other official documents relating to court proceedings. Researchers analyzed relevant Iraqi laws, in consultation with members of parliament and Iraqi lawyers, in order to ensure correct interpretation.

Researchers consulted with local and international nongovernmental organizations that have documented threats, criminal proceedings, and other efforts to stifle the free speech of activists, journalists, and others. They also consulted with local lawyers and other legal experts on free expression issues.

Human Rights Watch researchers conducted most interviews in person, but in some cases did so remotely in Arabic, English, or Kurdish. Researchers informed all interviewees about the purpose and voluntary nature of the interviews, the ways in which they would use the information, and obtained consent from all interviewees, who understood they would receive no compensation for their participation. For reasons of personal security, Human Rights Watch has withheld the names and identifying information of most of the individuals featured in the report at their request.

Human Rights Watch maintains a dialogue with the Iraqi government and Kurdistan Regional Government and is grateful for the cooperation we received to assess the facts presented in this report and any resulting recommendations. On April 29, Human Rights Watch wrote to the Iraqi government and Kurdistan Regional Government soliciting information regarding the cases documented in the report. While the authorities in

Baghdad did not respond by the time of publication, the Kurdistan Regional Government responded on May 20 in a “preliminary” manner, stating that the KRG “is committed to the preservation of journalists’ rights” and would follow-up with more information.

I. International Standards on Freedom of Expression

The right to freedom of expression, along with the rights to association and peaceful assembly, are protected under international human rights law and customary law and include the right to access and exchange information. These rights are not only important liberties in themselves, but they are crucial for helping to ensure that all other rights—civil, political, economic, social, and cultural—are accessible to all persons.¹

The right to free expression can be found in several widely ratified international human rights conventions, notably the International Covenant on Civil and Political Rights (ICCPR).² The ICCPR, in article 19(3), permits governments to impose restrictions or limitations on freedom of expression only if such restrictions are provided by law and are necessary to protect the rights or reputations of others, and for the protection of national security, public order, public health, or morals.³

The UN Human Rights Committee, the independent expert body that monitors state compliance with the ICCPR, in its General Comment No. 34 on the right to freedom of expression, states that restrictions on free expression should be constructed and

¹ The UN Human Rights Committee has stressed the importance of freedom of expression in a democracy: “[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. [C]itizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.” UN Human Rights Committee, Decision: Gauthier v. Canada, Communication No. 633/1995, U.N. Doc. CCPR/C/65/D/633/1995, May 5, 1999, <http://www1.umn.edu/humanrts/undocs/session65/view633.htm> (accessed March 18, 2014), para. 13.4.

² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

³ ICCPR, art. 19(3). The same three-part test has been applied by, among others, the African Court of Human and Peoples’ Rights to cases under article 9 of the African Charter on Human and Peoples’ Rights, see, e.g., *Lohe Issa Konate v. Burkina Faso*, Application no. 004/2013, December 5, 2014, <http://www.african-court.org/en/images/documents/Judgment/Konate%20Judgment%20Engl.pdf> (accessed June 17, 2015); the European Court of Human Rights to cases under article 10 of the ECHR, see, e.g., *Goodwin v. United Kingdom*, [GC] (No. 17488/90), 22 EHRR 123 (1996), paras. 28-37, the Canadian Supreme Court to cases under the Canadian Charter of Rights and Freedoms, see, e.g., *R. v. Oakes*, [1986] 1 SCR 103, 138-139, and the Kenyan High Court, Constitutional and Human Rights division, to cases under the Kenyan Constitution, see, e.g., *Coalition for Reform and Democracy v. Republic of Kenya*, Petitions 628 and 630 of 2014 and 12 of 2015 (consolidated), February 23, 2015, <http://kenyalaw.org/caselaw/cases/view/106083/> (accessed June 23, 2015); UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, GE.11-45331 (2011), <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed July 2, 2019).

interpreted narrowly and that the restrictions “may not put in jeopardy the right itself.”⁴ A government may impose restrictions only if they are prescribed by legislation and meet the standard of being “necessary in a democratic society.” This implies that the limitation must respond to a pressing public need and be compatible with the basic democratic values of pluralism and tolerance. “Necessary” restrictions must also be proportionate, that is, balanced against the specific need for the restriction.

The committee also states that “restrictions must not be overbroad.”⁵ A restriction should be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.⁶ Restrictions on freedom of expression to protect national security “are permissible only in serious cases of political or military threat to the entire nation.”⁷ Since restrictions based on national security grounds have the potential to severely undermine freedom of expression, “particularly strict requirements must be placed on the necessity (proportionality) of a given statutory restriction.”⁸

The UN Human Rights Committee in General Comment 34 also held that “harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation” of the covenant, which Iraq ratified in 1971.⁹ The committee has stated its disapproval of laws that criminalize insulting the head of state or national symbols. It has made clear that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the covenant upon uninhibited expression is particularly high.”¹⁰

⁴ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, GE.11-45331 (2011), <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed July 2, 2019).

⁵ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, GE.11-45331 (2011), <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed July 2, 2019), para. 34.

⁶ *Ibid.*, para. 25; see also, European Court of Human Rights, *Sunday Times v. United Kingdom*, Judgment of 26 April 1979, Series A, no. 30, [www.coe.int, ECHR 1, para. 49](http://www.coe.int/t/ECHR/1/para_49.htm).

⁷ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rhein, Germany: N.P. Engel, 2d ed. 1993), pp. 463-64.

⁸ *Ibid.*, pp. 465-66.

⁹ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, GE.11-45331 (2011), <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed July 2, 2019), para. 9.

¹⁰ *Ibid.*, para. 38.

The UN Special Rapporteur on freedom of opinion and expression has written that countries should take particular care to ensure that defamation laws—civil or criminal—“should never be used to prevent criticism of government” and “should reflect the principle that public figures are required to tolerate a greater degree of criticism than private citizens.”¹¹

One international effort to address freedom of expression (and freedom of religion) is the Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. The plan, the outcome of an initiative by the UN Office of the High Commissioner for Human Rights (OHCHR) to clarify the scope of state obligations under Article 20 of the ICCPR, urges that prohibitions on “incitement” be reserved for the most extreme cases, and require specific safeguards to prevent their abuse.¹²

The Rabat Plan of Action voiced concern about countries where the “legislation that prohibits incitement to hatred uses variable terminology and is often inconsistent with article 20 of the ICCPR. The broader the definition of incitement to hatred is in domestic legislation, the more it opens the door for arbitrary application of these laws.”¹³

One conclusion of the Rabat Plan of Action states:

Article 20 ICCPR requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such a threshold needs to be read in consonance with article 19 of the ICCPR. Indeed, the three-part test for restrictions (legality, proportionality and necessity) also applies to incitement cases, i.e. such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies,

¹¹ Civil and Political Rights, Report of the Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Mr. Abid Hussain, GE.99-10766 (E), January 29, 1999, <https://undocs.org/en/E/CN.4/1999/64> (accessed July 2, 2019), para. 28 (a, b).

¹² Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence, October 5, 2012, para. 17, 19, <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx> (accessed April 20, 2020).

¹³ *Ibid.*, para. 15.

among other things, that restrictions: are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measures available; are not overly broad, in that they do not restrict speech in a wide or untargeted way; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorize.¹⁴

The plan urges governments to ensure that their laws are “guided by express reference to article 20 of the ICCPR... and should consider including robust definitions of key terms like hatred, discrimination, violence, hostility, among others.”¹⁵ Robust definitions would make it more difficult to brand speech as illegal incitement to discrimination merely because it advocates on behalf of a particular group or people within society.

¹⁴ Ibid., para. 18. See also Article 19, “Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred, Work in Progress; A study prepared for the regional expert meeting on article 20, Organized by the Office of the High Commissioner for Human Rights, Vienna, February 8-9, 2010,” <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP7Callamard.pdf> (accessed April 20, 2020).

¹⁵ Ibid., para. 21.

II. Laws Pertaining to Free Expression in Iraq

Article 38 of the Iraqi constitution guarantees freedom of expression and peaceful assembly only so long as it does not violate “public order” or “morality.” However, it does not provide clear definitions of either term or require the state to show that the limitation on free speech is necessary and proportionate:

The State shall guarantee in a way that does not violate public order and morality: a) freedom of expression using all means; b) freedom of press, printing, advertisement, media and publication; c) freedom of assembly and peaceful demonstration, and this shall be regulated by law.

The constitution allows for the limitation of free expression rights “by law” in a manner that does not “violate the essence of the right or freedom.” However, at least eight Iraqi laws, regulations, and proposed laws, as well as at least five laws in place in the Kurdistan Region of Iraq, allow authorities to impose excessive restrictions on the right to freedoms of expression or to not adequately respect these rights, due to their vague and overly broad articles, in violation both of the constitutional limitation and of international law.¹⁶

One of the most problematic areas of Iraqi law as it relates to free expression is the criminalization of defamation. Laws that allow imprisonment as punishment for criticism of individuals or government officials are incompatible with Iraq’s international obligation to protect freedom of expression. Such laws are a disproportionate and unnecessary response to the need to protect reputations, and they chill the exercise of freedom of expression. In addition, “libel,” “defamation,” and “insult” are not well-defined in Iraqi law, and such broadly worded articles have been used to quell criticism of the actions or policies of government officials.

In addition, Iraq’s Penal Code criminalizes incitement in various forms, including inciting violence and the commission of a crime, without providing definitions or further information that would allow people to determine what behavior is criminalized. The ICCPR allows for certain restrictions on expression, including in response to “incitement to

¹⁶ Constitution of Iraq, <https://bit.ly/39mvFn4> (accessed July 2, 2019), art. 46.

discrimination, hostility or violence.” But any laws restricting freedom of expression must comply with the principle of legal certainty, in that they are sufficiently clear and precise to ensure people are able to reasonably foresee the consequences of their actions and regulate their conduct in relation to the law. Governments can impose restrictions only to the extent that they are a proportionate and necessary response to protect the interest at stake.

Penal Code (Law no. 111/1969)

The Iraqi Penal Code, which dates back to 1969, before Iraq’s current constitution was drafted in 2005, includes many articles that appear to violate free expression protections and are not compatible with the constitution. For instance, articles 202, 225, 226, 227 and 229 criminalize speech that “insults” the “Arab community or the Iraqi people or any section of the population or the national flag or the State emblem,” as well as any government body or individual or “a foreign state or any international organization having an office in Iraq or that country’s Head of State or its representative in Iraq or its flag or national emblem.”¹⁷ Article 372 criminalizes expressing views that insult “a symbol or a person who constitutes an object of sanctification, worship or reverence to a religious minority,” or expression that imitates a “religious ceremony or celebration with intent to deceive.”¹⁸

Article 210 and 211 of the Penal Code criminalize the act of “willfully broadcast[ing] false or biased information, statements or rumors or disseminat[ing] propaganda which, by its nature, endangers the public security, spreads panic among the population and disturbs the public peace,” or “publish[ing] by any means false information or fake or forged documents or documents falsely attributed to others which, by their nature, endanger the public security or disturb the public peace.”¹⁹

¹⁷ Penal Code, No. 111 of 1969, arts. 202 with a sentence of up to 10 years, 225 with a sentence of up to seven years, 226 with a sentence of up to seven years or a fine, 227 with a sentence of up to two years and a fine of up to 1 million IQD (US\$833) and 229 with an unspecified period in detention or a fine of up to 1 million IQD (\$833).

¹⁸ Ibid, art. 372 (5, 6) with a sentence of up to three years or a fine of up to 1 million IQD (\$833).

¹⁹ Ibid, art. 210 and 211 with an unspecified period in detention and a fine of up to 1 million IQD (\$833).

Article 212 criminalizes inciting “by any means of publication” the commission of a crime which endangers public security even “if such incitement has no effect.”²⁰ Article 403 criminalizes producing, possessing, obtaining, or translating any written, pictorial, or visual content that “violates the public integrity or decency with intent to exploit or distribute such material.”²¹ Iraqi law does not define what would constitute a violation of “public integrity or decency.”

Article 433 criminalizes defamation, defined as “the imputation to another in public of a particular matter which if true, would expose such person to punishment or cause him to be scorned by society.”²² It carries a sentence of up to one year and/or a fine but if the targeted person is a public official, charges will be dropped if the alleged defamer can prove the truth of his or her statements. Article 434 criminalizes insulting someone, defined as “the imputation to another of something dishonorable or disrespectful or the hurting of his feelings even though it does not include an imputation to him of a particular matter.”²³

Because of the vague terms used, and the lack of clear definitions provided in the Penal Code, these articles have been used to criminalize lawful critiques of existing policies or officials, calling for political change, or expressing a range of other opinions including on religion.

Use of Penal Code in Freedom of Expression Cases

Charged with Violating Article 210

Haitham Sulaiman, 48, is a protest movement organizer in Muthana governorate. On April 6, 2020, he said on his Facebook that he called on the Muthana governor to investigate allegations of corruption within the health department after learning that it was overcharging for paper protective masks, at US\$18 a mask and for a sit-in.²⁴ The next day, he told Human Rights Watch, four Ministry of Interior intelligence officers came to his home

²⁰ Ibid, art. 212 with an unspecified period in detention.

²¹ Ibid, art. 403 with a sentence of up to two years and a fine of up to 1 million IQD (\$833).

²² Ibid, art. 433 with an unspecified period in detention and/or an undefined fine.

²³ Ibid, art. 434 with a sentence of up to one year and/or a fine of up to 1 million IQD (\$833).

²⁴ Human Rights Watch telephone interview with Haitham Sulaiman, Muthana, April 20, 2020.

while he was out and warned his family that he should stop writing about corruption. He later posted on Facebook that the intelligence officers had no right to have gone to his home. On April 10, he said, he was coming home in the afternoon when four men in civilian dress arrested him and took him to the Muthana intelligence office. He said they blindfolded, handcuffed, and beat him, including his genitals. “While they were doing this, one officer accused me of hating Iran and then demanded that I sign a paper stating that the protesters and Bassem Khashan [see below] were on the payroll of the United States. I signed with my finger in the end.” On April 11, he said, they brought him before a judge who told him authorities were charging him under article 210 of the Penal Code, without allowing him a lawyer present, and released him after he paid a fee, pending charges.²⁵

Charged with Violating Article 226

Bassem Khashan, 50, is an anti-corruption activist from Muthana governorate in southern Iraq. He said that in 2015 he submitted a report to the Integrity Commission about a deal in which the governorate’s local health department purchased hospital beds from Turkey for IQD 156 million (US\$130,000) according to invoices he was leaked when the real value, he said, was IQD 10 million (US\$8,300) based on his own research and communications with the company.²⁶ Khashan criticized the lack of action of the Integrity Commission, Iraq’s governmental corruption watchdog, in a May 1, 2017 comment on his Facebook page entitled, “Provincial Council: ranges between corrupt, coward and useless.” In the comment, he accused the commission of “cooking my report over a slow fire.” The head of the Integrity Commission lodged a criminal complaint against him in September 2017 under article 226 of the Penal Code, which criminalizes the public insult of a government body. Khashan’s lawyer said that, based on his concerns over political influence being exerted over local judges, he requested that the case be transferred to a different court. On January 16, 2018 the Federal Appeals Court denied the request and, without warning, the lawyer said, police arrested Khashan and brought him to court on February 6, 2018 despite his request for a delay to allow him more time to prepare a defense. The judge sentenced Khashan to three years in prison for defaming the Integrity Commission.

²⁵ Human Rights Watch telephone interview with Haitham Sulaiman, Muthana, April 20, 2020.

²⁶ Human Rights Watch telephone interview with lawyer of Bassem Khashan (name withheld), Diwaniya, February 13, 2018; Human Rights Watch telephone interview with Bassem Khashan, Diwaniya, March 22, 2020.

This was not the first time authorities had charged Khashan with defamation. In March 2015, the Muthana Provincial Council brought charges under article 226 against him for accusing the provincial council of corruption over social media in November 2014. Charges were dismissed because of a three-month statute of limitations, but the provincial council appealed the decision. The Central Criminal Court in Baghdad ruled in January 2017 that the charges were valid but forgiven under Iraq's 2016 Amnesty Law. The provincial council appealed that decision. The Federal Appeals Court sided with the council and sent the case back to the Muthana Investigative Court, where again on February 6, 2018, the same day he was convicted in the Integrity Commission case, the judge convicted him and sentenced him to an additional three years. He was released on February 27, 2018, after the Federal Appeals Court acquitted him of both charges on appeal.

Charged with Violating Articles 229 & 433

Ammar al-Khazaali, 30, from al-Qadissiya governorate in southern Iraq, is an activist engaged in efforts to improve conditions for the poor.²⁷ Since June 2016, he said, officials including the head of the provincial council, the council's security committee, the director of a sub-district in the governorate capital Diwaniya, and eight police officers along with a journalist have filed a total of 14 defamation charges against him. Court documents reviewed by Human Rights Watch showed that judges dismissed all the criminal complaints against him because of a lack of evidence or the plaintiff withdrawing the complaint.

Al-Ghazali said that at the March 4, 2017 opening ceremony for a new government building in Diwaniya for which he had helped to fundraise, he and a friend yelled out that "officials and their guards are losers and officials and their guards are thieves" because authorities had not funded the reconstruction themselves. On March 5, three policemen present at the ceremony brought a complaint against him under article 229 for insulting public officials "in the execution of their duties." A judge dismissed the case at a trial on October 3, 2017, finding that al-Ghazali's call did not target a specific individual. Another security officer from the Civil Status Directorate filed separate complaint based on the same incident, also under article 229. The security officer dropped the complaint at a trial on April 9, 2017.

²⁷ Human Rights Watch telephone interview with Ammar al-Khazaali, Muthana, February 13, 2018.

The president of the provincial council and the head of the security committee of the provincial council brought a defamation complaint against al-Ghazali under article 433 based on the same incident, but dropped the case at trial on June 20, 2017. “All these criminal complaints have definitely affected my psychological state,” al-Ghazali said.

The constant arrests, being handcuffed in front of people I know, it was all very emotionally exhausting and sometimes brought me to tears. They have defamed my reputation, I have lost my job [because of time he had to take off to attend court hearings], I am spending money on lawyers constantly, my family and friends are constantly worried about me, and they continue to target me.

Al-Ghazali also said that a journalist brought a complaint against him and six other activists under article 4 of the Anti-Terrorism Law after one of al-Ghazali’s friends accused the journalist of being corrupt on Facebook.²⁸ Al-Ghazali and some friends then commented positively about the post. According to court documents, the journalist claimed that the group had threatened him on Facebook and at his office. The judge dropped the charges due to lack of evidence.

A September 2017 complaint against al-Ghazali, based on an incident from more than a year earlier, exhibits the extent of intimidation that critics of the government can face. An unidentified individual broke into a police officer’s private vehicle and stole some money, according to court documents. The policeman lodged a complaint at the time without naming any suspects, but in September 2017 he accused al-Ghazali, stating he had located a witness, another policeman, who claimed to have seen al-Ghazali carry out the criminal act. The policeman later withdrew the complaint.

Charged with Violating Article 403

Hussam al-Ka'abai, 32, a journalist with *NRT News* in Najaf city, said that on the evening of March 7, 2019, officers of the National Security Service (NSS), an intelligence agency reporting to Iraq’s prime minister, arrested him without providing a reason and took him to

²⁸ Anti-Terrorism Law, No. 13 of 2005; Human Rights Watch telephone interview with Ammar al-Khazaali, Muthana, February 13, 2018.

their local office before transferring him to a nearby police station.²⁹ There, policemen told him the national head of the NSS had made a criminal complaint against him under article 403 for criticizing an NSS officer on Facebook. Al-Ka'abai told Human Rights Watch that after the NSS had sent text messages to Najaf residents on certain security issues, including one message with a typographical error, he posted that the NSS should get its spelling right. Two days later a judge released al-Ka'abai after dismissing the charges against him. However, the same judge told him that the dean of the Girls College of Education at the University of Kufa had also brought a complaint against him under article 403 in response to an article he wrote in 2016 in which he alleged that the dean had sought to award a construction contract to a company even though the company had asked for far more money than other companies tendering for the bid. As a result of the article, the College had refused to greenlight the contract. Al-Ka'abai said that this article led to an investigation that got the dean fired. Once she heard about al-Ka'abai's 2019 arrest, she brought her complaint. The case was still pending at the time of writing.

Charged with Violating Article 433

In a 2017 story, "Hasan," 27, a reporter for *Al-Ahad TV* in Samawa, a city in southern Iraq, reported the case of a woman who had lost her baby at birth, allegedly, she said, because of serious medical negligence by the doctor.³⁰ The doctor and the Iraqi Medical Association lodged a criminal complaint against Hasan in August 2017 for defaming the doctor under article 433 of the Penal Code. A judge acquitted Hasan in December 2019, finding a lack of evidence.

Charged with Violating Articles 433 & 434

"Khalil," 29, a journalist at a privately owned satellite channel, said that in December 2017 Anbar authorities closed the channel's Anbar office after it broadcast a piece alleging that the Anbar governor and other officials were planning to rig upcoming elections. The

²⁹ *NRT News* is owned by Shaswar Abdulwahid Qadir, the leader of the New Generation Movement political party within the Kurdistan Region of Iraq. Despite its political links, it is a well-respected outlet. Human Rights Watch telephone interview with journalist, Najaf, March 11, 2019.

³⁰ *Al-Ahad TV* is a station linked to the PMF group *Asa'ib Ahl al-Haq*; "Iraq's Al-Anbar Governor orders TV station to close," Committee To Protect Journalists, December 18, 2017, <https://cpj.org/2017/12/iraqs-al-anbar-governor-orders-tv-station-to-close.php> (accessed March 26, 2020); Human Rights Watch telephone interview with reporter (name withheld), Samawa, August 31, 2019.

authorities justified the closure on the grounds that the outlet was operating without a permit.³¹ Despite this, Khalil kept working for the outlet, he said, and in June 2018, he covered a press conference in which relatives of a local journalist claimed that unknown armed men had abducted him and called on authorities to do more to secure his release. Four days later Khalil said police came to his home at 4 a.m. and arrested him. In a subsequent interrogation they accused him of publishing false accusations against the security forces by covering the press conference. A judge told him he was being charged with defamation of security forces under article 434 of the Penal Code. Several days later, authorities transferred him to another court in Anbar where a judge informed him that the provincial council was bringing additional charges against him under article 433 of the Penal Code, also for defaming security forces, and for inciting violence against them. Khalil was released after he provided financial security for his temporary release but both cases were still pending at the time of writing.

Charged for Violation of Article 434

“Omar,” 29, a journalist with *Dijlah TV*, said he was covering a Baghdad demonstration in August 2018 calling for less US interference in Iraq and filmed an interview with a woman who raised concerns about other foreign interference, including from Iran.³² A man in civilian dress, who Omar later found out was a member of Asa'ib Ahl al-Haqq, a unit within the Popular Mobilization Forces (PMF), approached him and told him to stop filming the woman. The man then yelled at the woman for criticizing Iran's role. *Dijlah TV* posted a clip showing the altercation, after which the man's extended family demanded that Omar participate in a tribal negotiation to address the fact that Omar had “defamed” him. Omar refused to participate, and on August 30, 2018 police arrested him at his home on defamation charges under article 434. Omar said the judge released him a day later once he provided financial security for his temporary release, and he later was able to use personal connections to get the charges dropped. More recently, in March 2019, police arrested Omar and his cameraman at a hospital for illegally filming as they were walking to the administrator's office to ask for permission to film. They had not filmed anything yet,

³¹ Human Rights Watch telephone interview with journalist (name withheld), Anbar, March 11, 2019.

³² *Dijlah TV*, based in Jordan, is linked to Iraqi politician Muhammad Karbouli, a member of parliament from Anbar. Human Rights Watch interview with journalist (name withheld), Baghdad, March 11, 2019.

he said. Authorities released them after seven hours following the intervention of several members of parliament, Omar said.

In July 2018, Hasan Sabah Muhammad, 28, a journalist for an outlet in Basra, published a report alleging that the head of the Basra port had given a local judge a car worth about US\$8,000 as a gift.³³ He said that a day after the report appeared, Basra police came to his house to arrest him. Muhammad was not present but later contacted the police and asked why they wanted to arrest him. He said they told him he was being charged under article 434 of the Penal Code for a video he posted on social media over a year earlier about Basra airport taxis overcharging passengers, but Muhammad believed it was because of the story about the car gift. The case was still pending at the time of writing. “My life and my family’s life are at risk but what should I do? Should I stop working as a journalist?” he asked.

Charged under Article 240

Authorities have also relied on provisions of the Penal Code not related to expression to silence individuals, including illegal entry of a military zone, endangering national security, and damaging public property.

Aso Ahmed Saeed, a journalist for *NRT NEWS* in Kirkuk, in territories disputed between Baghdad and the Kurdistan Regional Government, said that he traveled to the mixed Kurdish and Arab village of Balkana, 50 kilometers north of Kirkuk, on May 14, 2019, after hearing that a group of Arabs had attacked the village and were kicking the Kurdish residents out of their homes.³⁴ He said that he and two colleagues arrived at the village at around 1:30 p.m. to see families in tears. A soldier from the Iraqi army’s 14th division approached them and said that they were not allowed to film in the area until his commander arrived. He took their cameras and phones and told them to stay in their car.

Saeed said,

The commander came and told us we were not allowed to report in the area

³³ Human Rights Watch interview with journalist (name withheld), Basra, August 20, 2019.

³⁴ Human Right Watch telephone interview with Aso Ahmed Saeed, Kirkuk, May 20, 2019.

and had to leave. They gave us our cameras and phones back, but about 10 minutes into our drive back to Kirkuk, a military vehicle on the road stopped us and forced us to follow them to a military base in the area. There another commander took our identity cards, cameras and phones, and brought in a military intelligence officer to interrogate us about why we were there. Then, he forced us into a military vehicle and took us back to Balkana village, where soldiers were in the process of arresting 12 Arabs who they said had attacked the village. They tried to put them in the same vehicle as us and I said, “You can’t put us in a car with criminals,” but the intelligence officer kicked me in the back. My colleague told him he could not hit a journalist, and then he kicked my friend.

The army then drove the journalists to a police station 25 kilometers away, where police interrogated Saeed and his team about their presence in the area once again, before they finally released them but told them to appear in court the next day. The prosecution charged them under article 240 of the Penal Code for entering a “military zone.”³⁵ Article 240 penalizes anyone who contravenes an order issued by an official. The judge dropped the charges, saying the military had not announced that the area was a military zone and that he would call in the commander for questioning. Saeed did not know if any military personnel were sanctioned in any way for the incident.

Charged under Article 156

“Muhammad,” 22, a Basra protester, said that on August 22, 2018, at around 8:30 p.m., during a period of ongoing protests, he was at the Basra train station with fellow protesters.³⁶ They got into an argument with a station employee, and as the argument escalated, Muhammad and his friends started loudly expressing their frustration at how corrupt Basra’s political parties were, in their estimation. Muhammad said police arrived and took him to a room in the station, where they slapped and punched him. One said, “You are talking about the political parties! Today I will show you [the power of the] parties. I will kill you today,” before taking him to a nearby police station. After hearing of his arrest, he said, protesters gathered at the train station calling for his release, which led

³⁵ Penal Code, No. 111 of 1969, art. 240 with a sentence of up to six months or a fine of up to 100 IQD (\$0.08).

³⁶ Human Rights Watch interview with protester (name withheld), Basra, October 18, 2018.

to clashes between protesters and security forces, during which time some of the station's windows were shattered.

In the meantime, Muhammad said, police took his statement regarding the argument at the train station, took him to see a judge, and then released him after he provided financial security for his temporary release at midnight. He went to court on October 8, where the judge told him he was charged with harassing a government employee, under article 156 of the Penal Code for violating “the independence of the state or its unity” or national security, crimes punishable by death.³⁷ The second charge was for damaging public property, under article 197. The judge said Muhammad was responsible for the damage caused by the protesters petitioning for his release at the train station.³⁸ “He also demanded that I tell him which protesters had been behind the burning of some political party offices damaged earlier during the protests,” Muhammad said. The judge sent Muhammad to prison where he remained until he provided financial security for his temporary release on October 15. The case was still open as of September 2019 and since then Human Rights Watch has been unable to reach Muhammad but heard he may have been again detained.

Communications and Media Commission (CMC) Guidelines

Article 103 of Iraq's constitution established the Communications and Media Commission (CMC), the regulatory body for broadcasting and telecommunications, as a “financially and administratively independent institution” linked to the parliament, with members appointed by the prime minister and approved by a majority of parliament.³⁹ On June 18, 2014, the CMC issued “mandatory” guidelines to regulate media “during the war on terror.”⁴⁰ The guidelines, which were updated in May 2019 and renamed the “Media

³⁷ Penal Code, No. 111 of 1969, art. 156.

³⁸ Ibid, art. 197, with a sentence of up to life in prison, or death.

³⁹ Constitution of Iraq, art. 103; “Republic of Iraq Communications and Media Commission Policy Recommendations Concerning Broadcasting in Iraq,” Stanhope Centre for Communications Policy Research, January 2007, https://repository.upenn.edu/cgi/viewcontent.cgi?article=1016&context=cgcs_publications (accessed April 23, 2020).

⁴⁰ “The Communication and Media Commission Guidelines for the Management of Iraqi Mass Media During the War on Terror,” Human Rights Watch news release, July 2, 2014, <https://www.hrw.org/news/2014/07/02/communication-and-media-commission-guidelines-management-iraqi-mass-media-during-war>.

Broadcasting Rules”, restrict freedom of the press to the point of requiring pro-government coverage.⁴¹

Section 2, article 1 of the guidelines forbids the media from broadcasting or publishing material that promotes the Baath party, promotes illegal acts, “may be interpreted as being against the security forces,” includes a statement from an opposition armed group or an interview with one of its members, targets the democratic process, or provokes conflict between parties or tribes or within society.

In the context of the protests that began in October 2019, on November 12 the CMC ordered the closure of eight television broadcasters and four radio stations for three months for allegedly violating media licensing rules as outlined in the guidelines, and issued a warning to five other broadcasters over their coverage of the protests.⁴²

In April 2020, the CMC suspended Reuters’ license for three months and fined it 25 million IQD (US\$21,000) for an article it published on April 2 alleging that the number of confirmed Covid-19 cases in the country was much higher than official statistics were stating.⁴³ The CMC in its statement accused Reuters of relying on vague and untrue sources to fabricate news about Covid-19 in Iraq and of endangering public safety and hindering the government’s efforts to prevent the spread of the virus.⁴⁴ Authorities lifted the suspension on April 19.⁴⁵

Human Rights Watch was unable to determine any legal basis upholding the CMC’s guidelines or other actions taken by the CMC. In April 2014, a senior CMC official admitted

⁴¹ Iraq Communications and Media Commission, “List of Media Broadcasting Rules,” 2019, on file with Human Rights Watch.

⁴² “Iraq media regulator orders closure of 12 broadcast news outlets,” Committee To Protect Journalists, November 25, 2019, <https://cpj.org/2019/11/iraq-media-regulator-orders-closure-of-12-broadcas.php> (accessed March 26, 2020); “Iraq to close nine TV stations for ‘inciting violence’,” Arab News, November 23, 2019, https://www.arabnews.com/node/1588756/middle-east_ (accessed March 26, 2020).

⁴³ “Iraq has confirmed thousands more COVID-19 cases than reported, medics say,” Reuters, April 2, 2020, <https://www.reuters.com/article/us-health-coronavirus-iraq/iraq-has-confirmed-thousands-more-covid-19-cases-than-reported-medics-say-idUSKBN21K2GQ> (accessed April 5, 2020).

⁴⁴ “The Media Authority decided to suspend the license of the Reuters office for three months and fined it 25 million dinars,” Al-Sumaria, April 2, 2020, bit.ly/2W74Gax (accessed April 5, 2020).

⁴⁵ “Iraq lifts suspension of Reuters licence,” Reuters, April 19, 2020, <https://www.reuters.com/article/us-iraq-reuters/iraq-lifts-suspension-of-reuters-licence-idUSKBN2210LB> (accessed on April 20, 2020)

to Human Rights Watch that the CMC had no legal basis for suspending ten media outlets.⁴⁶ As such, decisions by the CMC are arbitrary and unlawful.

In its General Comment No. 34 on the right to freedom of expression, the United Nations Human Rights Committee clarified that general state systems of registration or licensing of journalists are incompatible with freedom of expression.⁴⁷ There may need to be allocations of bandwidth for broadcast media, but these should not amount to licensing of media, and no other media, including online or print, needs such allocation.⁴⁸

Proposed Laws

Information Technology Crimes Bill (2019)

The Council of Ministers proposed a draft cybercrime law to parliament in 2011. It was not passed at the time, but a near-identical draft law on information technology crimes was reintroduced by two parliamentary committees to parliament and had its first reading on January 12, 2019.⁴⁹

The proposed law states, in article 2, that it aims “to provide legal protection for the legitimate use of computers and information networks, and punish those who commit acts that constitute encroachment on the rights of their users.”⁵⁰ The law provides penalties for the use of computers in connection with various prohibited activities, such as financial fraud and misappropriation (article 7), money laundering (article 10), network disruptions (article 14), illicit monitoring (articles 15(1)(b) and 16), and intellectual property violations (article 21).⁵¹

⁴⁶ Human Rights Watch, *World Report 2014*, Iraq chapter, 2014), <https://www.hrw.org/world-report/2014/country-chapters/iraq>.

⁴⁷ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, GE.11-45331 (2011), <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed July 2, 2019), paras. 39 and 44.

⁴⁸ Letter from Human Rights Watch to the Communication and Media Commission of Iraq, April 12, 2010, <https://www.hrw.org/news/2010/04/12/letter-communication-and-media-commission-iraq>.

⁴⁹ “Today Baghdad publishes draft Law on Information Technology Crimes,” *BAGHDAD TODAY NEWS*, January 12, 2019, <https://baghdadtoday.news/news/71431/بغداد-اليوم-تتشر-نص-مشرو> (accessed on September 12, 2019).

⁵⁰ Information Technology Crimes Bill, 2019, on file with Human Rights Watch, art. 2.

⁵¹ Information Technology Crimes Bill, 2019.

The law is not narrowly targeted; rather, several articles would criminalize the use of computers in connection with a wide range of broadly defined activities, many of which are presently unregulated, without reference to any specific criteria. These articles appear to conflict with international law and the Iraqi constitution, and if enacted would constitute serious curtailments of the right to freedom of expression and association.

For example, article 3 sets a term of up to life imprisonment and a large fine for any person who intentionally uses computer devices and the World Wide Web for the purpose of: “undermining the independence, unity, or safety of the country, or its supreme economic, political, military, or security interests,” or “participating, negotiating, promoting, contracting with, or dealing with a hostile entity in any way with the purpose of disrupting security and public order or endangering the country.”⁵² Article 6 would allow for life imprisonment and a large fine against any person who uses computer devices and an information network for the purpose of “inflaming sectarian tensions or strife; disturbing security and the public order; or defaming the country;” or “publishing or broadcasting false or misleading events for the purpose of weakening confidence in the electronic financial system, electronic commercial or financial documents, or similar things, or damaging the national economy and financial confidence in the state.”⁵³ Article 21 sets a minimum one-year prison term for “any person who encroaches on any religious, moral, family, or social values or principles or the sanctity of private life using an information network or computer devices in any shape or form.”⁵⁴ Article 22 provides for a prison sentence and fine “against any person who ... creates, administers, or helps to create a site on an information network that promotes or incites to licentiousness and obscenity or any programs, information, photographs, or films that infringe on probity or public morals or advocate or propagate such things.”⁵⁵

Given the vagueness and breadth of these articles, as well as the severity of the punishment for the violations, if this bill becomes law authorities could use it to punish any expression that they claim constitutes a threat to some governmental, religious, or

⁵² Information Technology Crimes Bill, 2019, art. 3.

⁵³ Information Technology Crimes Bill, 2019, art. 6.

⁵⁴ Information Technology Crimes Bill, 2019, art. 21.

⁵⁵ Information Technology Crimes Bill, 2019, art. 22.

social interest, or to deter legitimate criticisms of, or peaceful challenges to, government or religious officials or policies.

Given the key role of information technology, electronic devices, and networks in journalism and the dissemination of information and opinions, the proposed law would pose a severe threat to independent media, whistleblowers, and peaceful activists. In addition, the proposed law criminalizes the “promotion of terrorist acts” without defining these acts or what constitutes “promotion.”⁵⁶ Terrorism is not clearly defined in Iraqi law and judges have condemned people to death or life sentences merely for having worked in a hospital during a time it was under Islamic State (ISIS) control, for example, or for having transported water to ISIS fighters on the frontline against their will.⁵⁷

The bill is currently pending before parliament.

⁵⁶ Information Technology Crimes Bill, 2019, art. 4 (2).

⁵⁷ Human Rights Watch, *Flawed Justice: Accountability for ISIS Crimes in Iraq* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq>.

III. Laws Pertaining to Freedom of Expression in Kurdistan Region of Iraq

Penal Code (Law no. 111/1969), as Applied in the Kurdistan Region

Badal Abdulbaqi Abu Baker, 54, a schoolteacher in Dohuk, said that on the afternoon of January 27, 2019 officers of the Kurdish security forces known as the Asayish arrested him from his home, alleging he had participated in protests the day before.⁵⁸ He said they brought him to the Asayish Directorate in Dohuk where officers accused him of working against the government and told him to “leave the Kurdistan Region if he was not happy.” Officers brought him before an investigative judge after four days, who told him he was being charged under article 156 of the Penal Code, which criminalizes violating “the independence of the state or its unity” or national security of the Kurdistan Region. He told the judge he had not attended the protest, but the judge ignored this. Asayish officers then took him to Zirka Prison in Dohuk. They released him after 17 more days, once he promised in writing not to engage in any “anti-government political activity.” He said the charges were still pending as far as he knew, which would allow the authorities to arrest him immediately if they caught him participating in another protest or critical speech.

“Aziz,” 41, a lawyer working for the Democracy and Human Rights Development Centre, a civil society organization in Sulaymaniyah, said that in 2015, after his organization wrote a report about a range of due process violations in the context of criminal prosecutions, the head of the criminal court in Sulaymaniyah opened a criminal complaint under article 433 of the Penal Code against the employees of the organization, including Aziz, for defaming court officials.⁵⁹ The organization published another report in which it criticized the court’s sanctioning of gender discrimination, with judges considering witness testimony of one man to equal that of two women, a custom not in Iraqi law but based on traditional Islamic Sharia practice. The head of the criminal court then lodged a second criminal complaint under article 433 for defaming court officials. A judge dismissed both complaints in late 2018/early 2019.

⁵⁸ Human Rights Watch interview with schoolteacher (name withheld), Dohuk, April 7, 2019.

⁵⁹ Human Rights Watch interview with lawyer (name withheld), Sulaymaniyah, June 17, 2019.

Law to Prevent the Misuse of Telecommunications Equipment in the Kurdistan Region (no. 6/2008)

Article 2 of the Kurdistan Region's Law to Prevent the Misuse of Telecommunications Equipment authorizes imprisonment and fines for, among other things, misusing cell phones and email (or more broadly the internet) to: threaten someone, use profanities, spread misinformation, disclose private conversations or share images counter to the public's values, or take any other action that might harm someone's integrity or honor or motivate a crime or an immoral act, or share private information even if true.⁶⁰ The law does not define any of the terms in the article, nor does it provide any details on licensing or permission processes.

"Hardan," 30, is a policeman in Zakho.⁶¹ His brother said that on June 22, 2019 police arrested Hardan out of the blue without providing a reason, but he was able to escape from the station. He surrendered to the Asayish, the security service of the Kurdistan Regional Government, two days later, and after 10 days his brother was able to visit him. Hardan told his brother he had seen a judge, who told him that a Facebook page whose administrator also had the first name of Hardan included posts critical of the government.⁶² Hardan insisted he had nothing to do with the page. The judge said he was charging Hardan under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment. Hardan told his brother during one visit that during an interrogation an Asayish officer tortured him with electricity. Hardan provided financial security for his temporary release and was released in December 2019 but charges were still pending at the time of writing.

Rebwar Kakai, the director of *NRT NEWS*'s Erbil office, said that on January 16, 2019, he arrived at his office to find police there, who arrested him without providing a reason.⁶³ They brought him to a nearby police station, he said, where a policeman first told him he

⁶⁰ Kurdistan Region's Law to Prevent the Misuse of Telecommunications Equipment, 2008, <http://techeye.org/browse/38740> (accessed March 26, 2020), art. 2.

⁶¹ Human Rights Watch interview with policeman (name withheld), Zakho, August 10, 2019.

⁶² "Zakho is my Spirit" (زاخو رحمانه) Facebook group, <https://www.facebook.com/436857993822667/posts/504003430441456?sfns=mo> (accessed April 5, 2020).

⁶³ Human Rights Watch interview with Rebwar Kakai, Erbil, March 17, 2019.

was accused of threatening someone using his cellphone. An hour later, he said, the policeman told him he was instead wanted for a report *NRT* had broadcast in September 2018 on corruption allegations linked to two pharmaceutical companies owned by senior political figures in the Kurdistan Region. Kakai said that at court a judge told him he was being charged under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment based on a complaint by the owner of one of the companies. A judge later acquitted him, but the prosecution then brought the same charges against the director of *NRT* news for the same report.

On the morning of January 26, 2019 dozens of demonstrators gathered in the town of Shiladze, 100 kilometers northeast of Dohuk, to protest Turkish airstrikes that had reportedly killed at least six civilians the previous week, according to five of the protesters.⁶⁴ They said that family members of the victims and protesters marched two kilometers to the perimeter of a Turkish military base outside the nearby town of Sirye. According to the protesters, Turkish forces opened fire and a stray bullet killed a child in the crowd, after which protesters attacked the base and burned four large halls, four tanks, an ambulance, and a main office building. They said that four soldiers and 13 protesters were injured.

Human Rights Watch interviewed six people the Asayish arrested for their alleged participation in the protests, including the five mentioned above. Most were released without charge, but “Ibrahim,” 40, who had been live-streaming the protest on Facebook, said security forces arrested him at a hotel in Erbil at 3 a.m. on January 27. They took him to the Asayish headquarters in Erbil and from there transferred him to Dohuk.⁶⁵ He said that officers interrogated him there, insulting and beating him while he was blindfolded.

They held me for three hours in there, hitting and slapping me all the time, while yelling that I needed to confess that I had links to the PKK [Kurdistan Workers’ Party]. I kept denying that and asking them to let me call my family to tell them I was arrested, but they refused. At the end of the interrogation they made me put my thumb print on a piece of paper. I don’t know what it says because I was blindfolded.

⁶⁴ “Protesters storm Turkish base after civilian deaths in airstrikes,” *Rudaw*, January 26, 2019, <http://www.rudaw.net/english/kurdistan/260120192> (accessed September 9, 2019); Human Rights Watch interview with five protesters (names withheld), Dohuk, April 7, 2019.

⁶⁵ Human Rights Watch interview with protester (name withheld), Dohuk, April 7, 2019.

Ibrahim said that after seeing a judge, the Asayish transferred him to Shiladze police station.⁶⁶ Authorities charged him under Penal Code article 156, which criminalizes violating “the independence of the state or its unity” or national security, and article 229, for threatening an official. The judge dismissed the charges and authorities released him after 29 days in custody. Ibrahim said the prosecution also charged him under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment (no. 6/2008) for filming the protest on his phone without “permission” and that this charge was still pending. The prosecution did not make clear who he should have obtained permission from, and he said this was the first time he had heard about a charge on this basis.

Goran Daibky is the lawyer of Hemin Mamand, a freelance journalist in the Kurdistan Region. Daibky told Human Rights Watch that on March 23, Mamand posted on his Facebook page that if the Covid-19-related lockdown across the Kurdistan region persisted and the KRG continued to withhold the salaries of public servants, something the government has been doing for years, people would likely break the rules.⁶⁷ Daibky said the next night, police officers arrested Mamand at his home. They detained him for 13 days before releasing him upon payment of a fee, but arrested him again 24 hours later on April 5, after he posted on Facebook that the police had arrested him without presenting an arrest warrant or identifying themselves. Authorities charged Mamand under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment for encouraging people to break the lockdown and for defaming the police under article 433 of the Penal Code. Daibky said authorities had not allowed him to visit Mamand because Covid-19 measures prevented prison visits, and that they had only allowed Mamand one telephone call to call Daibky between April 5 and 20. Authorities released him after he paid a fee, pending charges, on April 26.⁶⁸

On May 20, 2020 Dr. Dindar Zebari, the regional government's coordinator for international advocacy, informed Human Rights Watch in a written response that according to the Kurdistan Journalists Syndicate, three cases against journalists had been prosecuted in 2019 under the Law to Prevent the Misuse of Telecommunications Equipment: Azad Osman

⁶⁶ Human Rights Watch interview with protester (name withheld), Dohuk, April 7, 2019.

⁶⁷ Human Rights Watch telephone interview with Goran Daibky, lawyer, Erbil, April 20, 2020;

⁶⁸ “Journalist Hemin Mamand released on bail after spending month in jail,” NRT, April 26, 2020 <http://www.nrttv.com/EN/News.aspx?id=20926&MapID=1> (accessed April 28, 2020).

Muhamad, the Director of Deng Radio, Ahmad Mustafa, NRT correspondent, and as a group, Mohammed Rauf, Fazil Hama, Rafaat, Namiq Rasul, Nyaz Abdullah, Hemin Mamand, Rzgar Kochar from Draw Media. He said that in all three cases, the journalists had been charged and in the cases of Muhamad and Mustafa had been convicted already, but that none remained in prison.

Press Law of the Kurdistan Region (no. 35/2007)

The Kurdistan Region's Press Law guarantees freedom of expression and publication but contains articles which allow the authorities to restrict these freedoms.

The law authorizes fines for journalists and editors-in-chief of outlets found to be “sowing malice and fostering hatred, discord and disagreement among the components of society,” “insulting religious beliefs or denigrating their rituals,” or “insulting and offending the religious symbols and sanctuaries of any religion or sect.”⁶⁹ The law does not define “sowing malice,” “fostering hatred” or “insulting beliefs,” opening the door for authorities to use the articles to limit free expression.

Shawan Muhammad Mahmoud, 55, a journalist with the news outlet *Spee Media* in Erbil, said that in September 2018 he published a secretly-obtained copy of a document from the Public Prosecution Service of Erbil forbidding judges from giving statements to the press.⁷⁰ “The document was not public and so the attorney general claimed it was fake once we published it and opened a criminal complaint against me in October under the Press Law,” he said. Mahmoud said police called him in for questioning in December 2018 and that the case was still pending against him as of January 2020.

⁶⁹ Kurdistan Region Press Law, 2008, <http://gjpi.org/wp-content/uploads/2009/01/press-law-in-the-kurdistan-region.pdf> (accessed March 26, 2020), art. 9 (1).

⁷⁰ *Spee Media* is a private outlet broadcast since 2013 out of Sulaimaniyah, in the Kurdistan Region of Iraq. Human Rights Watch interview with journalist, April 23, 2019.

IV. Threats, Attacks, and Failure to Investigate

All 14 journalists and four of the activists interviewed for this report in Iraq, including in the Kurdistan Region, said because of their work or activism, they regularly received threats, usually from anonymous sources by phone or over social media, and sometimes from security forces or government officials. For some the threats instilled fear and disrupted their daily lives.

In one example, “Alan,” 27, a reporter, and “Mustafa,” 25, a cameraman, both working for *KNN* news station, broadly affiliated with the Patriotic Union of Kurdistan (one of the Kurdistan Region of Iraq’s ruling parties), went on a reporting trip on October 18, 2018 to the town of Domiz in Sinjar region because of rumors that the Popular Mobilization Forces (PMF) units in control of the area had given Yezidi families notice to evacuate the area within 24 hours after an incident between Sunni Arab and Yezidi armed groups.⁷¹ They said they arrived at about 10 a.m. and saw families loading their belongings into cars. Alan said that as he was interviewing an old man two cars pulled up. Nine armed men got out and demanded that they visit their commander together, ignoring Alan’s press pass.

Alan said the men drove them to a nearby building with a sign that read “Ansar al-Haja/Saraya al-Salam.”⁷² Alan recognized photographs of Grand Ayatollah Ali al-Sistani and of Ayatollah Khomeini on the wall in one office. A man they called a commander interrogated them about why they were in the area, and another man accused them of writing critically about the PMF. They said the armed men then drove them to another location about 30 minutes away and put them in a bathroom where they slapped, punched, and kicked them, saying, “You are not allowed speak about the PMF.” Finally, they drove them back to Domiz and released them at about 7 p.m., Alan and Mustafa both said.

“Amal,” 47, an activist, said that she has been protesting against corruption in Basra since 2015, openly criticizing a range of political parties in videos she posted on social media

⁷¹ Human Rights Watch interview with reporter and cameraman (name withheld), Dohuk, October 23, 2018.

⁷² In 2014, Shia cleric and political leader Moqtada al-Sadr called for the formation of Saraya al-Salam to protect Shia shrines from attacks by the Islamic State.

and participating in protests in July and August 2018.⁷³ In late August 2018, Amal said, from a window at home she saw three masked armed men open fire on her house. She left the city with her family and returned three weeks later. Three days after she returned, she said, a masked armed man came to her home and told her, “If you don’t take your children and go somewhere else, they will kill you all.” She asked who “they” were, and he replied, “You were criticizing political parties, your name is on the list and they will come after you.” Amal left her home the next day and has been on the move ever since. “I don’t go to work, and my four kids don’t go to school because they are afraid that someone will find them and hurt them,” she said. “I plan to renew my passport and then flee to Turkey and on to Europe.” She left Iraq on December 31, 2018.

“Nuri,” 46, a cameraman for *Alhurra TV*, said that on July 22, 2018 he was filming a protest in Diwaniya against corruption and for improved services when demonstrators stormed the office of Al-Fadhila, a religious political party.⁷⁴ Policemen started pushing the crowds back and two policemen tried to take away Nuri’s camera. When he resisted, they dragged him into the building and started punching him in the head and back. Nuri said a few protesters who saw the policemen dragging him inside were able to rescue him, after which he fled.

A journalist at a Mosul news outlet, *Al-Mawsleya*, Zayad Samidaia, 52, said the then-governor of Mosul in January 2019 ordered security forces to limit journalists’ access to Mosul’s Old City, an area noted for its lack of rehabilitation since the end of military operations against the Islamic State (ISIS) there in June 2017.⁷⁵ Samidaia ignored the order but on January 22, 2018, policemen caught him and his colleagues and when he admitted that he did not have a permit letter from the governor, asked him to come to a nearby police station. At the station an officer said Samidaia had to sign a document promising not to cover the Old City again or he would be arrested. He refused to sign. He had his team spend the next seven hours at the police station, before police transferred them to police headquarters in Mosul, where they met with the governor, head of the provincial council,

⁷³ Human Rights Watch interview with activist (name withheld), Basra, November 8, 2018

⁷⁴ *Alhurra TV* is a United States funded TV station. Human Rights Watch telephone interview with cameraman, Diwaniya, March 11, 2019.

⁷⁵ Human Rights Watch telephone interview with Zayad Samidaia, Mosul, May 13, 2019. Security forces have repeatedly prevented Human Rights Watch and media outlets from filming in the Old City.

and chief of police. “The governor started blaming us for targeting him in the media, saying we only ever reported on him,” he said. “Finally, after that he released us.”

Four victims of attacks and threats said they contacted the authorities, but to no avail.

“Shawqi,” 40, reports on corruption by public authorities on Facebook and passes on his reports to the Integrity Commission. In 2016, he lodged a successful corruption complaint against the water resources minister in court.⁷⁶ He said on the afternoon of April 1, 2018, three men in civilian dress attacked him on the street in his hometown of Diwaniya, beating him so badly he ended up in hospital. He filed a criminal complaint, and police obtained CCTV footage of the men beating him, but until now have made no arrests he said.

In May 2019, Shawqi led protests against local authorities who, he said, had expropriated land registered as agricultural and distributed it to provincial council members as residential property. He said that the protests led the Ministry of Municipalities and Public Works to intervene to stop local authorities from doing this. About an hour after he got home on the night of May 23, an unknown attacker (or attackers) blew up his car—an action he believed to be in retaliation for his activism. He said police and firefighters arrived after about two hours to investigate the incident. Two days later, he said, the media spokesperson of the Diwaniya police department told him the police knew who had destroyed his car but gave no details and stopped answering his calls. Shawqi requested the Ministry of Interior’s Inspector General to investigate, but has heard nothing since.

The *Al-Ahad TV* reporter in Samawa, “Hasan,” said that in January 2019 he reported on alleged corruption within a local government body.⁷⁷ “Seven days after the report ran, I woke up to find the words ‘marked for death’ graffitied on my wall.⁷⁸ Two weeks later I got a call from an unknown number and a voice said, ‘We will lynch you,’ before hanging up. I went to the police and made a complaint, but they haven’t done anything. I am worried that something will happen to me, and no one can help save me.”

⁷⁶ Human Rights Watch interview with anti-corruption activist (name withheld), Diwaniya, June 12, 2019.

⁷⁷ Human Rights Watch telephone interview with reporter (name withheld), Samawa, August 31, 2019.

⁷⁸ The phrase “marked for death” is a phrase tribes in southern Iraq commonly use when they want a person to be killed and are calling for the person’s death.

Hasan Sabah Muhammad, 28, a journalist for *I NEWS*, a private media outlet in Basra, and later *Dijlah TV*, published a report in July 2018 on corruption in the Border Port Commission, and a day later armed men opened fire on his house near midnight.⁷⁹ He said that his brother, who had been home at the time, filed a complaint, but police never followed up. Later that month, the head of the Basra Operations Command, which reports to both the Iraqi prime minister and minister of defense, and integrates a range of security and military forces, wrote a letter to *Dijlah TV*, which Muhammad saw a copy of, prohibiting him from working as a journalist in Basra. Muhammad started working again once the commander was replaced, in October 2018.

“Bashar,” 53, a businessman from Samawa city in Muthana governorate, said that in early 2017, a contact leaked him some documents demonstrating that a local government official, linked to a political party, was involved in a kidnap-for-ransom ring. He said he gave the documents to the Integrity Commission. A week later the local official called him into his office and told him, “We have silenced other activists, so what do you want?” The official “then offered me money, trips, but I refused,” he said. On April 6, 2017, Bashar said, two armed men in green uniforms that he could not identify jumped out of a car about 500 meters from his house and forced him into the car. Over the next 14 days, they held him in three different locations, where they interrogated him about who he got the documents from and threatened that if he did not retract the complaint they would get 30 people to open criminal complaints against him. They also demanded his Facebook password and beat him when he did not share it.

They finally released him in a valley near Najaf, after driving three hours, and he had to make his way home. He went to court three days later. The investigative judge there questioned him about the incident. He continued,

Then the head of the court walked in and said he didn’t believe my story. Why would they release me if they let me see their faces, he said. I told him maybe they live in Iran or are powerful and don’t care. After that, I sensed the investigative judge was less interested in my case and I haven’t heard

⁷⁹ Human Rights Watch interview with journalist (name withheld), Basra, August 20, 2019.

anything since. Someone linked to the [political party] told me that I might need to leave the country, so now I have left.

Amanj Bakir, 31, is a journalist who writes for outlets linked to Goran, an opposition political party in the Kurdistan Region. He told Human Rights Watch that over the last 11 years he has received many threats, and in November 2019 the Asayish arrested and held him for 24 hours without charge.⁸⁰ Bakir said they did so because of an article he wrote about Turkish airstrikes in the Kurdistan Region, and only released him after forcing him to sign a document promising not to write further about the airstrikes. Later that same month, he said, the Asayish detained him for another 24 hours without charge. “During the interrogation they said they had arrested me because I continued to write about Turkish military operations in Kurdistan even though they had told me to stop,” he said. He said that in December the Asayish arrested him again at the site of a Turkish airstrike that he had been covering but released him after two hours because of personal connections.

On March 6, Bakir posted a piece on Facebook about growing tensions between the Kurdistan Democratic Party (KDP), the Patriotic Union of Kurdistan (PUK), and PKK (Kurdistan Workers’ Party), but took it down after an anonymous caller phoned his uncle and said, “If Amanj didn’t stop talking about this topic, he will be disappeared.”⁸¹ Most recently, on March 19, the day after he published an article on Goran’s Sbey News website about alleged Turkish plans to establish a new military outpost in the Kurdistan Region. He said, “I received a call from an unknown number, a man, who told me ‘You had been warned in the past and your time is running out. We will find a solution for you.’” He said he has gotten more warnings like that passed on from other family members since then.

Bakir said that the arrests and threats have taken a toll on him. “My psychological situation is unstable. I am constantly worried about my immediate and extended family and myself. I know that my children are at risk, I have put them in an uncertain future. I don’t want to be the reason that someone I love gets hurt. But at the same time, I still want to work as a journalist.”

⁸⁰ Human Rights Watch telephone interview with Amanj Bakir, Erbil, April 11, 2020.

⁸¹ Ibid.

Acknowledgements

This report was researched and written by Belkis Wille, a senior researcher in the Crisis and Conflict Division. Joe Stork, deputy Middle East and North Africa director, edited the report. Clive Baldwin, senior legal advisor, provided legal review. Tom Porteous, deputy program director, provided programmatic review.

Crisis and Conflict associate Madeline de Figueiredo, photography and publications coordinator Travis Carr, Jose Martinez, senior coordinator, and Fitzroy Hepkins, administrative manager, prepared the report for publication.

Human Rights Watch interns Nader Durgham, Raad Halaby, and Sharaf Hussein provided research assistance and other support.

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James Ross, Legal and Policy Director
Joe Saunders, Deputy Program Director

Annex I

April 29, 2020

H.E. Muhammad al-Hakim
Minister of Foreign Affairs
Baghdad, Iraq

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Upcoming Human Rights Watch Report on Freedom of Expression in Iraq

His Excellency,

Thank you for your continued assistance to Human Rights Watch. We very much appreciate your team's willingness to maintain an open line of communication to discuss human rights challenges in Iraq and recommendations for how to overcome them. We are particularly grateful for your willingness to engage with the findings of our human rights investigations and to provide your input and information.

We write now to request information in connection with research that Human Rights Watch has carried out on freedom of expression in Iraq, which we plan to publish in June 2020. I am writing to seek your response to several questions, set out below. In the interests of thorough and objective reporting, we would appreciate it if you could provide us with a reply by May 20, 2020 so that we can reflect your views and comments in our forthcoming report.

For this upcoming report, Human Rights Watch has examined the ways in which authorities have taken legal action against their critics, using vaguely worded defamation and incitement provisions in the Penal Code and other laws. We examined a total of 33 cases brought against journalists and activists between 2016 and 2020. In 17 of these cases authorities detained and charged individuals. In four of these 17 cases, authorities later dropped the charges and released the detainees. In a further 16 cases examined by Human Rights Watch, authorities detained individuals but released them without charge. Of the 33 cases examined for the report, 13 were linked to individuals covering and supporting protest activities and seven cases were linked to individuals writing about state corruption in mainstream or social media.

Although few individuals have served prison time on defamation charges, the criminal process itself can act as a punishment and intimidation, they said. Interviewees told Human Rights Watch they thought public officials brought repeated legal suits for this purpose even though they knew these cases would likely get dismissed.

While in most of the cases we examined authorities relied on the Penal Code, they have also invoked the Communications and Media Commission's "mandatory" guidelines to regulate the media "during the war on terror."

We also have concerns about the potential passage of the Information Technology Crimes Bill, were the text to remain as drafted in 2019.

All 14 journalists and four of the activists interviewed said that because of their work or activism, they regularly received threats, usually from anonymous sources by phone or over social media, and sometimes from members of security forces or government officials. For some the threats instilled fear and disrupted their daily lives. Some victims of attacks and threats said they contacted the authorities to no avail.

Based on those considerations, we would appreciate receiving your responses to the following questions:

1. How many people have been charged under the following Penal Code provisions between 2017 and 2020, and can you please share basic details about each case including the charges, the fact pattern, and the sentence given: articles 156, 202, 210, 212, 225, 226, 227, 229, 240, 372, 403, 433, 434?
2. What legal basis underpins enforcement of the Communications and Media Commission's "mandatory" guidelines to regulate the media?
3. What legal basis underpins enforcement of the Communications and Media Commission's licensing decisions?
4. Please list the individuals and outlets that have been sanctioned by the Communications and Media Commission. Please include what kind of action was taken and the reasons .
5. Does the government plan to request parliament to pass the Information Technology Crimes Bill? If so, please share with Human Rights Watch the most up-to-date draft that the government supports.
6. Please detail any specific measures the government has taken to limit attacks on government critics who come under attack solely for exercising their right to free expression, whether from private individuals or government representatives or institutions.

Please direct your response and any questions to my colleague, Senior Crisis & Conflict Researcher Belkis Wille, via email or phone at [REDACTED] or [REDACTED].

Sincerely,

Adam Coogle
Deputy Director
Middle East and North Africa
Human Rights Watch

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Joe Saunders, Deputy Program Director

Annex II

April 29, 2020

Dr. Dindar Zebari

KRG Coordinator for International Advocacy
Kurdistan Regional Government

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Upcoming Human Rights Watch Report on Freedom of Expression in Iraq

Dear Dr. Zebari,

Thank you for your continued assistance to Human Rights Watch. We very much appreciate your team's willingness to maintain an open line of communication with Human Rights Watch to discuss human rights challenges and recommendations for how to overcome them. We are particularly grateful for your willingness to engage with the findings of our human rights investigations and to provide your input and information.

We write to request information in connection with research that Human Rights Watch has carried out on freedom of expression in Iraq, which we plan to publish in June 2020. I am writing to seek your response to several questions, set out below. In the interests of thorough and objective reporting, we would appreciate it if you could provide us with a reply by May 20, 2020 so that we can reflect your views and comments in our forthcoming report.

For this upcoming report, Human Rights Watch has examined the way in which authorities have taken legal action against their critics, using vaguely worded defamation and incitement provisions in the Penal Code and other laws. We examined a total of 33 cases brought against journalists and activists between 2016 and 2020. Seven of these cases took place in the Kurdistan Region of Iraq.

Although few individuals have served prison time on defamation charges, the criminal process itself can act as a punishment, they said. Interviewees told Human Rights Watch they thought public officials brought repeated legal suits, even though they knew these cases would likely get dismissed, as a method of intimidation.

While in most of the cases we examined KRG authorities have relied on the Penal Code, they have also invoked provisions of the Kurdistan Region's Law to Prevent the Misuse of Telecommunications Equipment and the Kurdistan Region's Press Law.

Based on those considerations, we would appreciate receiving your responses to the following questions:

1. How many people have been charged in the Kurdistan Region of Iraq under the following Penal Code provisions between 2017 and 2020, and can you please share basic details about each case with us, including the charges, the fact pattern, and the sentence given: articles 156, 202, 210, 212, 225, 226, 227, 229, 240, 372, 403, 433, 434?
2. How many people have been charged under the Kurdistan Region's Law to Prevent the Misuse of Telecommunications Equipment between 2017 and 2020? Please share basic details about each case including the charges, the fact pattern, and the sentence given.
3. How many people have been charged under the Kurdistan Region's Press Law between 2017 and 2020? Please share basic details about each case including the charges, the fact pattern, and the sentence given.
4. Please detail any specific measures the Kurdistan Regional Government has taken to limit attacks on government critics who come under attack, whether from private individuals or government representatives or institutions.

Please direct your response and any questions to my colleague Senior Crisis & Conflict Researcher Belkis Wille via email or phone at [REDACTED] or [REDACTED].

Yours sincerely,

Adam Coogle
Deputy Director
Middle East and North Africa
Human Rights Watch

Annex III

From: Dindar Zebari <[REDACTED]>
Sent: 20 May 2020 08:58
To: Belkis Wille <[REDACTED]>
Subject: Re: Request for information linked to new report on Freedom of Speech

Dear Ms. Belkis,

I hope this email finds you well and safe.

Practicing journalism in the Kurdistan Region is sorted out by law. As indicated by Law No. 35 of 2007, a journalist can be held in custody just by an order from the court, in corresponding with an endorsement from the Kurdistan Journalists Syndicate. In instances of maligning, spreading violence, vandalism, Iraqi Penal Code No. 111 of 1969 will be executed.

As you may already know, the social-distancing lockdown judicial authorities has been recently lifted in a precautionary manner. The directorates and departments under the jurisdiction of the judicial branch are gradually re-operating now following the successful containment of Coronavirus outbreak in the Kurdistan Region. In fact, most of them are still under lockdown. The criteria you presented in the inquiry require precise data organized and interpreted by legal experts in the judiciary-a process which is by enlarge painstaking and demands a lot of time. Nevertheless, in consultation with the judicial authorities and in coordination with the Kurdistan Journalists Syndicate, we are illustrating the following responses for the questions you presented in a preliminary way. We will update you once the cases are sorted out according to the laws you set forth.

According to the Kurdistan Journalists Syndicate, three journalists have been prosecuted on the basis of the Law of Bad Use of Electronic Devices in 2019: Azad Osman Muhamad, the Director of Deng Radio, was jailed by the Garmyan court as he published a report in 2015. After some hours of staying in detention, he was released by a warranty. A week later, a trial was held as he was prosecuted by the Law of Bad Using of Electronic Devices. He was sentenced but was released in a short while. Ahmad Mustafa, NRT correspondent, reportage about a patient's death in one of the hospitals of Erbil, the Doctors Syndicate complained against him in the court. He was arrested. He was punished by the Law of Bad Usages of the Electronic Devices. Then, he was released on bail. Finally, Mohammed Rauf, Fazil Hama, Rafaaf, Namiq Rasul, Nyaz Abdullah, Hemn Mamand, Rzgar Kochar from Draw Media, After publishing a reportage in Draw media about the killing of a Turkish diplomat in Erbil, there was a complaint against them in Erbil court. They were arrested by the Law of Bad Usages of Electronic Devices. Then released on bail.

On January 15, 2020, the Deputy of Kurdistan Regional Government's Prime Minister (Qubad Talabany) presided a meeting, where Mr. Mohammed M. Saeed, the Minister of Culture, the representative of judiciary, attorney general, Kurdistan Journalists Syndicate, Metro Center and Dr. Saman Fawzi, who is a specialist in this field, and Mr. Majeed Salih, the consultant of Parliament, Azad Othman, Manager of Deng Radio. This was an important meeting and all

showed eagerness to the rule of law, especially the Prime Minister, who reiterated that, the cases of journalists have to be dealt with distinctly, and the prison is not place of the journalists, it is better refuge to soft answer with the cases of the thought and viewpoints at the courts.

It is evident to a good extent that KRG is committed to the preservation of journalists' rights. The current data shows a clear tendency in this direction. Kurdistan Journalists Syndicate emphasized that tendency too in their last report. KRG endorses journalism principles and conceives them as the cornerstones of democratic practices.

As we mentioned earlier, the process of sorting out cases according to the laws requires a legal consensus between the judges and an immense data-processing of the cases in the governorates and municipalities. We have sent the request in this regard to the relevant judicial authorities. We will share the answers with you as soon as they arrive, so you can rely on them for your future reports.

Attached are the 2017 and 2018 data of Kurdistan Region court cases (Kurdish version).

Sincerely,

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Dr. Dindar Zebari
KRG International Advocacy Coordinator
Council of Ministers

Annex IV

Number of pending and closed cases in Kurdistan Region courts from 01/02/2017 to 12/31/2017

Labor Court		Personal Status Court		Civil Status Court		Investigative Court		Juvenile Court		Misdemeanors Court		Criminal Court		Appalled Court		Court Name	
Lawsuits		Lawits		Lawsuits		Lawsuits		Lawsuits		Lawsuits		Lawsuits		Lawsuits			
Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending		
103	148	7667	9333	0	0	27169	32059	618	769	5698	6443	1766	2758	470	537	Appeal	Erbil
														1043	1044	Appeal	
156	251	8993	11775	0	0	37361	60165	532	1014	6008	13406	1168	2508	266	225	Appeal	Sulaimani
														700	700	Appeal	
																Appeal	Kirkuk/ Garmian
																Appeal	
124	124	2994	2077	0	0	20390	21762	813	813	7075	7114	1290	1429	171	172	Appeal	Duhok
														781	781	Appeal	
383	523	19654	24185	0	0	94920	123986	1963	2596	18781	26963	4324	6695	3431	3569	Total	

Domestic Violence Court (Investigative)		Domestic Violence Court (Primary)		Personal Affairs Court		Primary Court	
Lawsuits		Lawsuits		Lawsuits		Lawsuits	
Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending
1439	3600	89	107	45	55	5261	7167
2326	3777	93	234	9	11	4819	7927
1910	2188	185	224	224	224	2589	2729
5665	9565	526	288	288	300	13669	18823

Number of pending and closed cases in Kurdistan Region courts from 01/02/2018 to 12/31/2018

Labor Court		Personal Status Court		Civil Status Court		Investigative Court		Juvenile Court		Misdemeanors Court		Criminal court		Appalled court		Court Name	
Lawsuits		Lawsuits		Lawsuits		Lawsuits		Lawsuits		Lawsuits		Lawsuits		Lawsuits			
Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending		
93	164	8515	10494	0	0	28905	33139	677	718	4085	4730	1853	2756	204	467	Appeal	Erbil
														711	1042	Appeal	
62	163	8687	11918	0	0	48858	68996	708	895	9854	12155	1589	2572	202	381	Appeal	Sulaimani
														626	660	Appeal	
97	100	3186	3269	0	0	28188	29338	527	527	6990	7007	1117	1128	128	131	Appeal	Duhok
														783	783	Appeal	
252	427	20388	25681	0	0	105951	131473	1912	2140	20929	23892	4559	6456			Total	

Domestic Violence Court (Investigative)		Domestic Violence Court (Primary)		Personal Affairs Court		Primary Court	
Lawsuits		Lawsuits		Lawsuits		Lawsuits	
Closed	Pending	Closed	Pending	Closed	Pending	Closed	Pending
3133	3404	125	156	43	62	5257	7332
1714	3584	108	193	3	4	5554	8086
2509	2827	282	283	220	226	3774	3957
7356	9815	515	632	226	292	14585	19375

“We Might Call You in at Any Time”

Free Speech Under Threat in Iraq

Iraqi authorities including in the Kurdistan Region of Iraq use vaguely worded laws with provisions on incitement and defamation that allow prosecutors to bring criminal charges for speech and opinions. Violations of the right to freedom of expression are particularly relevant in the light of protests that broke out across central and southern Iraq starting in October 2019. In this report, Human Rights Watch documents 33 cases between 2016 and 2020 in which authorities in areas controlled by the federal government and the Kurdistan Regional Government (KRG) have arrested, brought charges against, and sentenced journalists, activists, and other dissenting voices under these legal provisions. Thirteen of these cases involved individuals covering or supporting protest activities. Seven cases involved individuals writing in mainstream or social media about state corruption, a major concern motivating protesters in 2019 and 2020. Iraq’s parliament should amend laws and penal code articles that limit free speech in ways that are inconsistent with international law. Iraqi federal authorities and the Kurdistan Regional Government should direct security forces to end intimidation, harassment, and assault as well as arrests of journalists and others for exercising their right to free expression.



A woman holds up a banner during an anti-government protest in Baghdad in February 2020 saying “The pen is our weapon, the book is our shield, the thought is our power.”

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