

Dictatorship Redux? Iraq's Freedom of Speech Under Threat

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Brief Analysis

Time and again, the professional institutions and legal protections allegedly afforded to Iraqi journalists are failing them.

While politicians continue to warn against the risks and subversiveness of Ba'athist rhetoric, they are quite happy to leverage the ancient regime's repressive legal framework still in place, which ensures they can silence political rivals at will. Sections from the 1969 penal code that sought to defend the totalitarian Ba'athist party and its government apparatuses from criticism are still often used by thin-skinned politicians that target political rivals, silence critics, and stifle citizen-led accountability.

The current media repression aligns with the Iraqi aphorism that 2003 struck down one Saddam only to see a thousand Saddams replace him. While it was once clear what lines critics could not cross in public, it is now unpredictable what media figures, analysts, and activists can and cannot say without risk of retribution. Some have focused in recent months on the waning freedom of speech in the Kurdistan Region (https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/Freedom-of-Expression-in-the-Kurdistan-Region_En.pdf)—but the same can be said, selectively, about federal Iraq as well. Whether a speaker will fall afoul of the unwritten tripwires for prosecution is highly dependent on five dimensions: the political weight of the person they criticize, how thin-skinned that person is, their preference for legal prosecution versus personal intimidation, the size of the audience the critic has, and the seriousness of the criticism leveled against their opponent.

Reforming the penal code is, in theory, straightforward—with parliament able to amend the code at will, or with the judiciary striking down articles if their constitutionality were adequately challenged. However, these two routes are fully obstructed. In recent months (and over the years), the Iraqi judiciary has become far more engaged in politics and, despite seeking the political spotlight, fearful of the public criticism that a public persona inevitably draws. Even if a case was brought to the Federal Supreme Court (FSC) that sought to strike down the sections of the penal code that infringe upon freedom of speech and/or are vestiges of Ba'athist totalitarianism, it is highly unlikely they would do so given the protection those sections provide. For parliament, amending laws is routine, but it seems impossible to believe that 165 MPs would seek to remove sections of the penal code that allow them to persecute political rivals and outspoken activists alike.

With these internal routes blocked, an alternative is needed. In some countries, external pressures from diaspora activists have been able to rouse support from the street and demand change in similarly repressive laws. But in the Iraqi context, the broad

discrediting of “the diaspora” in the wake of their poor and self-interested advice to Western governments just before the invasion of Iraq has hindered these communities’ ability to influence domestic politics. In a related vein, many in Iraqi leadership and on the street see diaspora and dual-citizen politicians as estranged from the situation, reducing the possibility that they could create change. Combined with the reality that even the most successful advocacy campaigns would still come up against the two governmental pathways noted earlier begs the question: how can real change ever occur? The conventional wisdom of reformists sweeping into power at the behest of a frustrated electorate is a (dimly) possible alternative—but eight months after an election that was lauded as a game-changer, it is harder to see such a shift in Iraq’s future.

In early June, prominent Iraqi writer and journalist Sarmad al-Taei—already in pseudo-exile in Erbil since the Maliki years due to the former prime minister’s harassment and arrest warrants in response to Al-Taei’s outspoken criticism of government formation—was targeted yet again by the judiciary authority for his political comments. On the al-Muhaid (“Unbiased”) show, he **criticized** ([https://www.youtube.com/watch?v= 4WF_ZrwfJA](https://www.youtube.com/watch?v=4WF_ZrwfJA)) the High Judicial Council (HJC) and Chief Justice Faiq Zeidan himself for their political interference throughout this government formation period. He also studiously avoided speaking about the FSC—implying that it was superfluous given Zeidan’s control over the institution. Ever the revolutionary, al-Taei pushed further—saying that the flood of civic activism and desire for real political change could not be held back by anyone...including Iran’s Supreme Leader Ali Khamenei, the Iranian Revolutionary Guard Corps (IRGC), or the deceased Maj. General Qassem Soleimani (likely a reference to the militias he formerly commanded).

Authorities following through on the arrest warrant they issued for al-Taei is unlikely (unless he re-enters federally controlled areas), but the damage is done for the hundreds of journalists and media figures who just signed **a statement of warning** (<https://docs.google.com/forms/d/e/1FAIpQLSdpMS4N8sZHBjODDE5kpF9K6nJ9Z7gxrMAUKxDfMEGxUDGbmA/viewform>) about freedom of expression in Iraq—they now believe they could be next. The June 3 “In Defense of Freedom of Expression” statement, with its more than 2,000 signatories still growing, is likely the initiative of prominent journalists. Its signatories seek to defend Iraqis’ freedom of speech, calling on government institutions—especially the judiciary—to respect the constitutionally-guaranteed right to speak freely and criticizing the use of highly subjective language in various legal complaints. The statement reprimands officials for efforts to limit public commentary, declaring that their job is to serve their constituents, not police their thoughts. Yet it appears that the arrest warrant for Al-Taei is the closest journalists will get to an official response.

Journalists’ fears are well-founded, given the mercurial nature of their prosecution (and persecution). The **ongoing defamation case** (<https://www.hrw.org/news/2022/03/10/drop-complaint-against-iraq-human-rights-commission-member>) against former Human Rights Commissioner Ali al-Bayati for his comments on allegations of torture against government detainees has made headlines and led to his self-imposed exile. The **case** (<https://ultrairaq.ultrasawt.com/%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D9%8A%D8%B7%D9%84%D9%82-%D8%B3%D8%B1%D8%A7%D8%AD-%D8%A3%D8%AD%D9%85%D8%AF-%D9%85%D9%84%D8%A7-%D8%B7%D9%84%D8%A7%D9%84-%D9%88%D8%A5%D9%8A%D8%A7%D8%AF-%D8%A7%D9%84%D8%B7%D8%A7%D8%A6%D9%8A/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%B9%D8%B1%D8%A7%D9%82/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1?scroll=1>) against commentator Ahmed Mulla Talal for bringing an actor to portray a corrupt army general was ultimately dismissed—though he defiantly refused to apologize to the Ministry of Defense.

By no means are these freedom of speech cases solely the purview of those in prominent positions—others targeted include the Salah al-Din-based activist **Yazid al-Hasoon** (<https://ultrairaq.ultrasawt.com/%D9%85%D8%AD%D8%A7%D9%81%D8%B8-%D8%B5%D9%84%D8%A7%D8%AD-%D8%A7%D9%84%D8%AF%D9%8A%D9%86-%D9%8A%D8%AA%D9%86%D8%A7%D8%B2%D9%84-%D8%B9%D9%86-%D8%A7%D9%84%D8%AF%D8%B9%D9%88%D9%89-%D8%B6%D8%AF-%D8%A7%D9%84%D9%86%D8%A7%D8%B4%D8%B7-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%88%D9%85-%D8%A8%D8%A7%D9%84%D8%B3%D8%AC%D9%86-%D9%8A%D8%B2%D9%8A%D8%AF-%D8%A7%D9%84%D8%AD%D8%B3%D9%88%D9%86/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%B9%D8%B1%D8%A7%D9%82/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1?scroll=1>), who was targeted by the governor for social media criticism (though the governor later dropped the lawsuit), and Saleh al-Hamadani who was similarly targeted after reposting an **old Facebook** (<https://www.nasnews.com/view.php?cat=83462>) post that Sadrist supporters interpreted as an insult to the family of Muqtada al-Sadr. This incident resulted in his dismissal from the state-owned Iraqi

Media Network. Dozens more cases like these could be listed—and in each instance, the outcome is dependent on a calculation of the five dimensions discussed above, leaving the outcomes anything but clear.

Despite journalists' clear frustration with the current situation in Iraq, as voiced in their recent statement, the professional institutions designed to protect them remain as inadequate as the legal protections afforded to them. Notably, in April, Moyed al-Lami was **re-elected** (<https://www.rudawarabia.net/arabic/middleeast/iraq/160420227>) for a fourth term as president of the Iraqi Journalists Syndicate with 77 percent of the vote. With such a wide margin of support, his reelection could suggest that journalists are comfortable with the status quo, and that there aren't major issues with **freedom of speech** (https://twitter.com/hashtag/FreedomOfSpeech?src=hashtag_click) in Iraq. But as the abovecases demonstrate, the reality is quite the opposite—raising the question: why did 1,184 journalists vote to keep al-Lami as their representative?

In many other countries, professionals rely upon journalists' syndicates to defend them in cases of government overreach. In Iraq, the reality is different; the fact that more journalists signed the informal warning statement than al-Lami did votes suggests that many journalists and media figures do not view the Syndicate as their defender. The sad reality of Iraqi syndicates is that they serve as yet one more defender of the status quo—indeed, the Journalists Syndicate has made only perfunctory statements about freedom of speech without actually defending those accused using these draconian Saddam-era penal code articles.

Iraqi journalists have few defenders they can rely upon. That they continue to do their work and push for greater freedoms is a testament to their courage. Yet their safety will not be assured unless better legal and informal frameworks are in place, a possibility that is unfortunately not likely in today's Iraq. ❖

RECOMMENDED

ARTICLES & TESTIMONY

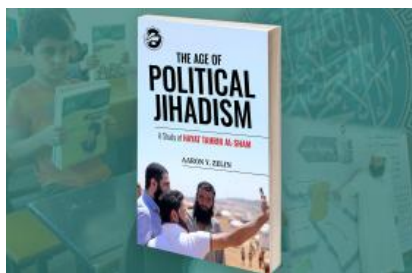
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