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Voices: transmitting fact through medium to lived experience: a multimedia exhibition on freedom of expression in Iraq

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VOICES: TRANSMITTING FACT THROUGH MEDIUM

TO LIVED EXPERIENCE

A Multimedia Exhibition on Freedom of Expression in Iraq.

An Exegesis submitted in partial fulfillment of the requirements

for the award of the degree

Master of Arts - Research (Journalism)

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by

Karin Mayer

Faculty of Creative Arts

School of Journalism and Creative Writing

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Certification

I, Karin Mayer, declare that this Exegesis, submitted in partial fulfillment of the requirements for the award of Master of Arts - Research (Journalism) in the Faculty of Creative Arts, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document and the exhibition have not been submitted for qualifications at any other academic institution.

Karin Mayer, 30 January 2013

Abstract

This Exegesis outlines how the multimedia exhibition, *Voices,* will represent the physical constraints and psychological realities in Iraq, under which journalists and civil-society organizations work. The multimedia exhibition on freedom of expression (FOE) in Iraq is contextualized in this Exegesis. Both this Exegesis and the exhibition itself demonstrate that the Iraqi struggle for FOE remains slow and fraught with difficulties. The exhibition and Exegesis aim to show the 'real life' challenges that media workers experience in post-conflict Iraq, set against the contextual backdrop of the "Arab Spring" uprisings in 2011.

<u>Acknowledgments</u>

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Chapter 1

Introduction

Background of *Voices*

This MA-R comprises the exhibition *Voices* and this Exegesis to contextualize and background the exhibition. The multimedia exhibition *Voices* is comprised of photographs and video taken within the International Zone (IZ) in Baghdad during the course of my work in Iraq. *Voices* utilizes audio and visual material, and print, to reflect the energy of the dialogue of the media and activists as they rallied for their constitutional rights to freedom of expression (FOE) and freedom of information (FOI) throughout 2011. This occurred against the backdrop of Iraq's controversially named "Arab Spring" uprisings.

The exhibition represents an intersection of information, between publicly recorded fact concerning policy and politics and the impact of their application on Iraq and various stakeholders. *Voices* also reflects the dislocation of working in the International Zone (IZ), a reality discussed in this Exegesis.

Transmitting the full scope and complexity of the impact of the barriers placed upon FOE and FOI as they stood in Iraq in 2011 is virtually impossible in an exhibition format alone. The remaining chapters of this document explain key aspects of this complexity, and present the main political, social and cultural implications of these constraints. The effects of this attenuation of freedom are also evident in the dialogue between Iraqi media professionals, activists and policy makers.

Naturally, the curtailment of freedom is evident by omission and it is carefully recorded in news clippings, blogs and various pieces of legislation. The exhibition includes excerpts of this data as a collage of the points of view, reactions and actions as they occurred throughout 2011, in an effort to reflect the social dimensions of the discourse.

On another level, *Voices* attempts to mitigate or address inaccurate notions many outsiders, including Australians, may have about Iraq. Australians and other Westerners have a tendency to describe the country in wide brush-strokes, using labels such as 'Islamic', 'fundamental' and 'extreme', seeing Iraq as a place of violence and terrorism, or even as the 'axis of evil'. Discourses from the mainstream media tend to disregard the civil aspects of Iraqi culture and society while

overlooking, or lacking access to, the direct voices of Iraqis (as opposed to those of Western troops) in witnessing their own suffering and dedication to establishing a democratic state and peace that reflects international principles and norms.

Much of this Exegesis, as background, is fact-driven and cannot on its own express the intensity felt by ordinary Iraqi citizens, activists, and media professionals campaigning for their human right to protest and air grievances. It does, however, explain the legislative and political landscape that has shaped the way FOE was applied in Iraq in 2011. FOE was defined as an internationally recognized human right under Article 19 of the United Nations' Universal Declaration of Human Rights (UDHR) as adopted in 1948:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In working to support FOE, we must examine the international conventions and treaties, analyses and reports that adhere to the Universal Declaration of Human Rights and their application.

Imposing such conventions requires consultation with Iraqis while simultaneously gaining a preliminary understanding of contemporary Iraq's unique sociopolitical 'system'.

Scope and limitations of *Voices*: The researcher and the researched

Voices explores the connections between establishment and government policy that encourages free media in Iraq, with the everyday insecurities of journalists. The project draws on direct experience of working within Iraq and specifically with the news media community. I apply this expertise to define and evaluate how patterns within the media, and the environment in which media operates, are working towards or against generally accepted international standards and practices of information accessibility. Although I am not a human rights lawyer or a political analyst, I have been involved in media and human rights issues and the Middle East in various capacities since 1999. This provides a unique perspective for the exhibition's content and potential impact.

I hope that by using an exhibition format, a far more humane understanding of the complexities and after effects of the Iraq war will be evident, and that audiences will walk away with

reverberations of the cries, pleads, and intelligent discourse of Iraqis young and old, women and men, academics and activists, all fighting for their right to express themselves.

Although in this Exegesis and in the multimedia exhibition I have made every effort to present material directly from Iraqi individuals and documents, it is useful to spend a few moments describing my background so as to provide readers with insight into any residual biases or filters evident in this work.

In 2009, I began working for UNESCO, and in January 2010 moved to Amman as a project manager with UNESCO Iraq's Communication and Information Sector in media development, where I was mandated with defending FOE. It was in this UNESCO job that I realized that information equals power. The degree of power depends on the degree of flow of information, how it is transmitted and how accessible it is, and the inevitable impact it will have on a country's constituency. Information availability affects an individual's ability to make informed decisions and to participate actively in democratic decision-making processes.

While conducting the research for this paper, I worked for the United Nations Humanitarian Affairs Sector in Baghdad in the

fields of communication and advocacy, where I applied my

expertise to the development and sustainability of media

pluralism in the developing world.

As a multimedia exhibition, *Voices* aims to bring this experience

from Iraq back to Australia, providing understandings of local

Iraqi participation in fighting for FOE. I hope to provide my

audience with a sense of the intensity and frequency of the

discourse of civil society and media on this topic. This

Exegesis, and the associated *Voices* exhibition, aims to

highlight the importance of local participation in policy change

and the actual effect of government crackdowns on civilians.

Research challenges to the current work include having limited

access to stakeholders outside of the IZ; my inability to speak,

read, or write Arabic (though professional translation was

used); and the fact that I was a white Australian female

researching freedom of expression in a culturally and

politically fractious, post-conflict environment.

With these limitations taken into account, *Voices* also aims to

deconstruct my experience of the various constraints imposed by

factors such as security and the physical and psychological

isolation of working within the United Nations in Iraq. The

exhibition will relate my lived experience in engaging with myriad issues surrounding freedom of expression, as experienced by Iraqi journalists and citizens living on the other side of the T-walls (blast walls).

In addition, *Voices* will include excerpts from a journal I kept beginning on 10 February 2011, marking the dawn of the "Arab Spring" uprisings in Baghdad and other Governorates. This journal includes the equivalent of more than 500 pages of documented human rights violations against media, bloggers and activists (with all identifiable sources removed). In the exhibition, the journal is displayed alongside declassified artifacts collected on US military bases throughout 2010 and prior to the military draw-down in December 2011.

The fragmentation of *Voices* works as a metaphor for the encumbrances that push down upon the people of Iraq. Fragmentation is multiplicity and denotes the difficulties of representation in a jarring, confusing and imploding Iraq.

Rationale for the multimedia exhibition format

Voices is presented as a simulation of a mini-prison (IZ) within the context of a multi-media exhibition. This reconstruction

reflects the security constraints of working in a war zone while giving voice to the Iraqi uprisings as they occurred throughout 2011. *Voices* uses the dialogue present in 2011 in the local Iraqi press, social media platforms, YouTube, twitter, and so on — voices that Western audiences have rarely, if ever, heard.

The purpose of using a multimedia approach for the exhibition is to mirror the local discourse as it was experienced at the time — across various media platforms. This multidimensional approach also supports the exhibition's educational component, as it communicates some of the factual content found in the remaining Chapters of this document (such as political attitudes and trends in the area of civil liberties and media law, and their application) through snippets of conversation, debate and physical documentation. Or, to put it more simply, through the lived experiences of Iraqis as conveyed in the exhibition.

This multi-dimensionality also serves to reflect the key approach of Critical Discourse Analysis (CDA) which, with Participatory Action Research (PAR), frames this work on a theoretical level. 'Linguistic units' existing as isolated examples of discourse, artifacts or trends are not the normative choice in CDA and PAR, instead, 'studying the social phenomena which are necessarily complex' – which contribute to an issue

such as FOE in Iraq – …'require a multi-disciplinary and multi-methical approach (Wodak and Meyer 2008, p.2).'

At the time, there was a sense of great urgency, intelligence and frequency of discourse or 'chatter' surrounding civil rights pertaining in broad to FOE throughout 2011. *Voices* is intended, in part, to unsettle the audience through presenting the new and degraded reality at the close of 2011: the breadth and scope of a seemingly retrograde motion in Iraq in terms of the development of FOE in that region. The liveliness, defiance and the commitment shown by Iraqi bloggers, news media and social activists was not apparent in traditional Western news coverage of events in Iraq during this period, and thus – to the author's knowledge – was not transferred to audiences living and working outside of Iraq, and, the media development profession.

Voices will make accessible and bring to life the conclusions reached in this document in an effort to increase understanding of these issues for an Australian audience largely unfamiliar with and geographically removed from Iraq and its social and political concerns. Subsequent chapters of this Exegesis analyze and document human rights violations, legislative practices, the sociopolitical context, the current state of media practice, and

the role new media and political foment have played in Iraq since 2011.

Rationale for the structure of the Exegesis

This Exegesis is structured to present necessary background and historical information about FOE/FOI in Iraq, insight into recent and current related legislation and legislative action, and — most critically — direct quotes from Iraqi citizens who have expressed themselves at grave risk of punitive actions in their own country.

The topic of FOE/FOI in Iraq today is complicated, fractious, and unfamiliar to many outside the Middle East (or those who study it). In order to describe this environment to readers, the Exegesis begins by providing rationale and important information on theory, method, and related research, and by providing critical information about the historical, political, and social context of the topic of FOE/FOI in Iraq. This is crucial for a contextualization of the approach to realizing *Voices,* as being determined by a very particular set of constraints in which the research was conducted. Furthermore, it is from this background that the implications and nuances of the direct quotes from Iraqis can be contextualized in later sections of the work, in

particular, Chapter Six which focuses on macro-level insecurities faced daily by media professionals.

When the research for this Exegesis began in mid-2010, it was intended to use PAR (Participatory Action Research) as a 'live' and 'consultative' research mechanism in its most fundamental form. And this was made possible through high delivery Internet fibre optics (as laid by the J6 Battalion, USFI) with unrestricted access – facilitating an interactive dialogue between researcher and researched. However, with the uprising that began in January 2011 that marked the "Arab Spring", the already-fragile security situation became even more tenuous. It has steadily unraveled to the point where Iraq now (2013) stands at the brink of civil war – just as it was in 2007 and 2008. Therefore, except for the Internet access, PAR as a method was no longer feasible as community action, dialogue and shared ownership of a research process – all components of PAR – were no longer possible in the dialectical process necessary for fair representation.

Due to the disintegration of security; access to sources through open interview, and the ability to travel outside the IZ, or invite my sources into the UN compound was increasingly fraught with difficulty and at times impossible. There was an imperative

to shift the design of the Exegesis to use the underlying

principles of PAR as a guide, and move the focus from active

engagement to discourse analysis and so mirror the new direction

in which the data would be presented; the new focus now

positioning the viewer as discerning audience to a verbatim,

lived conversation. It was important that the power of language

and representation were made evident by way of discourse

analysis, and that I did not colour the work with simply more of

the usual 'colonialist' rhetoric.

My resolve has always been to present Iraqi civil society in a

sympathetic manner and that I have actively countered Western

notions of 'Iraq', and of the 'Other'. Thus it was essential to

include chapters that explain the context within which freedom

of expression is practiced in Iraq today. In an effort to bring

the Iraq story to the public domain, I have drawn and

extrapolated from all existing texts about FOE in Iraq to

support my own lived observations. Many of these texts are

internal UN and INGO documents, and some exist only off the

record (and are cited as such); these, through this work, are

now accessible to the public.

A significant portion of the background material presented here

offers an analysis of the current legal framework of Iraq as it

relates to freedom of expression and information. Furthermore, I acknowledge the effect of the post-invasion 'hangover' that can be attributed to the CPA (Coalition Provisional Authority) and interim government. The laws analyzed were often sent to me by parliamentary members, or media staff who must remain anonymous. These laws were translated and shared with concerned actors within the international community for analysis and subsequent presentation to the government.

In these analyses, the leading FOE and FOI lawyers were consulted, such as David Banisar, Sejal Parmar (ARTICLE 19) and Toby Mendel (Center for Law and Democracy). Mendel also acts as an additional mentor to my research, and I have consulted with him extensively regarding the analysis of media law presented in this document. Only one draft law presented within this Exegesis has been approved by parliament; the others are awaiting second readings, or are in the process of amendment. Thus it is not possible to present a more detailed and finite analysis and what I present here is complete and correct as of the beginning of 2012.

Throughout this work, I have strived to be vigilant about excising my own voice and minimizing the impact of my own filters. This effort is a central concept of participatory

action research (PAR) methodology, as is its agenda of directing research into emancipatory dialogue; the main aim influencing this project. By deferring to PAR as the heuristic impetus that frames this research, I draw on CDA as its complementary theoretical partner in order to strengthen the unpacking of the relationship between language and power as a direct reflection of the relationship that exists in Iraq between the citizen, the journalist and the gatekeepers of the free flow of information. I am inspired by PAR's underlying goal - to emancipate community and level the playing field between those who are disenfranchised and the structures of power – and did my utmost to liberate the 'voices' of dissenting Iraqi citizens. This was a key methodology and framing mechanism to shape the presentation of my research in this Exegesis and in the multimedia exhibition. I have taken on a political position that overtly defends those whom the power elite in Iraq seek to oppress. For this I make no apology.

Rationale for the research methodologies

Although this research relies on the tenets of participatory action research (PAR) as its central framework, the project is not 'pure' PAR in terms of interactivity and consultation, for two main reasons. First and most importantly, the volatile and

degrading environment in Baghdad precluded my being able to involve Iraqis fully and directly in the design, implementation, or analysis of the research; such involvement – while ideal – could have cost them their freedom or even their lives. Second, this project was influenced by discourse and news media analysts whose theoretical approaches can be seen to be, on principle, most closely aligned with PAR (most notably Habermas, and van Dijk), and the social commentators Said, Fisk and Hass, all of whom address the complex and nuanced landscape of the interrelation between power and the free or democratic flow of information. Moreover, they ask two critical questions: (1) where, in all of this — within the context of the political and physical suppression of freedom of expression and information — does the researcher posit him or herself, and (2) is there an outstanding obligation to subvert impartiality in order to sympathize and defend individuals' fundamental human right to express opinion without retribution? All of this will be discussed in greater detail in Chapter 2.

Theoretical basis for the exhibition's audio-artistic structure

Prior to looking at PAR and CDA in greater detail - in order to understand the aims of the exhibition, its physical construction and its content, - it is helpful to first investigate the structural presentation, the architectural and practical choices I made as informed by art and communications theories that influence its physical form, and intended message. Communication theory, semiotics, and visual sociology all contribute to the goal of understanding the architecture of *Voices'* presentation style. These theories all share a similar narrative, one that implies that content in any medium, when transferred, is inherently imbued with meaning that will be decoded by its audience in certain ways depending on both common (shared) and individual (unique) socio-cultural experiences and background.

While these relative and interrelated theories of communication explain how meanings are created and subsequently deconstructed, PAR looks at the 'action' of how information can be presented to an audience in a way that supports the democratization of knowledge or research. PAR also reflects on — and can be used to frame — what messages or meaning the researcher consciously intends to pass on. While the emancipatory nature of PAR provides a methodology or 'raison d'être' for the research, the

communication theories discussed here inform the way content is managed physically within the exhibition format.

Communication Theory

Communication theory evolved for the critical analysis of art as it became increasingly influenced by the industrial machine age (around the time of the London 1851 Great Exposition), and shortly after that, in what is known as the age of mechanical reproduction. The realms of communication theory and semantics intertwine, one acting as medium and the latter as message.

In both communication theory and semiotic discourse, 'text' can refer to any cultural artifact or object, such as photography, film, sound recordings or typography. Several levels of communication can be identified. The first addresses technical communication and explores the systems we use to encode and decode messages. The second level is semantics, which refers to the precise ways we use language, codes, or symbols to convey intended meaning. The third level addresses to the effectiveness of the message: does the message affect behavior in the intended way (Baldwin & Roberts 2006). Communication theory, like semiotic discourse, suggests that communication is not a process where meaning is passed from one point to another, but rather a

relationship between the production and reading of meaning (Baldwin & Roberts 2006).

Text — in the case of this exhibition, the Iraqi voices presented in juxtaposition to the photographs — is an object. The signs accompanying the exhibit have two levels of meaning, according to semiotic theory. The first is unintended (the text's denotation), and appears at the time that the object is produced or made; the second is the one understood (the text's connotation) at the time that the audience reads it. With photographs, Barthes (1977, p. 19) argues:

> The paradox can then be seen as the co-existence of two messages, the one without a code, the other with a code; structurally, the paradox is clearly not the collusion of a denoted message and a connoted message, it is that here the connoted (or coded) message develops on the basis of a message *without a code*.

Semiotic Theory

In semiotic theory, the signifier is the photograph (or object), and the signified may be the combination of text (byline or caption) and image, with meanings inferred by the reader. Often, what is signified is culturally specific. According to Umberto

Eco (quoted in Baldwin & Roberts 2006, p. 35), 'meaning is determined by social aspects (race, gender, class, etc.)'. This can create misunderstandings, then, if readers arrive from different backgrounds that lead them to interpret material through a different lens.

As film narrative, *Voices* uses the photograph as backdrop and the text as foreground. The relationship between the two — the physical act of curating or organizing the data in relation to each other — will transmit meaning. The intention was to curate *Voices* in a way that deconstructs, or even subverts the meaning, of any signifiers supporting mainstream Western notions of Iraq, its people, or its culture as Orientalized or dehumanized. Instead, in a reflexive way, I hope to show the humanity, vibrancy, intensity, and political engagement of Iraqis in their efforts to challenge the restrictions imposed on them as they exercise the same human rights that we take for granted in Australia. However, as much as I aspire to a completely unbiased, scientific presentation of information, I recognize that meaning ultimately will be created and categorized by the viewer according to multiple cultural and social factors. I accept that different interpretations of understanding are likely to occur.

Baldwin and Roberts (2006, p. 38) take this as a given: 'semiotics recognizes the potential for aberrant reading as a norm rather than an exception', reminding us that 'meaning is created the moment the text is read, not when it is written' — or, as in our case, posted on YouTube or Facebook, tweeted, or released as an official report.

Communication, then, can be seen as an ideological process in the sense that an object's value is decided from within the social and cultural context that produced it. Naturally, communication as an ideological process can be used to justify a certain balance of power, as Baldwin and Roberts (2006, p. 41) noted when discussing Marxism: 'In Marxism, ideology is the process by which ideas and the world views of the dominant social groups are accepted as true', going on to state that societies 'operate within an economic system that serves the purposes of these groups and maintains their dominance'. Teun van Dijk (1995) echoes this view in his discourse on mass communication, outlining the relationship between the structures of power and discourse, and the role of communication in perpetuating cultural and political hegemony. In its simplest expression, information is power — a fact not lost on those in power, who at times take extreme measures to limit everyone else's access to information. This analysis informs the

following chapters of this thesis. It is also the reason why I strove to give a platform for Iraqis, a 'speaker's corner' – to be exhibited to a Western audience - so that their 'voices' can be heard beyond the physical, political, social and security constraints imposed on them in situ in 2011, and to an extent to counter the imposition of our own constraints of understanding due to our tendency to 'brand' the 'other'. The pernicious and undermining nature of 'labeling' and 'blanket stereotyping' will be expanded upon towards the end of this Chapter in the sub-sections that refer to the work of Robert Fisk and Edward Said.

Visual Sociology

Just as the analytical approach of semiotic discourse aims to deconstruct sociopolitical meanings within cultural production systems, visual sociology is a collection of approaches in which researchers use photographs to portray, describe, or analyze social phenomena.

Visual sociology can be broken down into two major approaches. The first, employed in the current project, involves using photographs in the conventional sense of data gathering. In the second approach, visual sociologists study photographs produced by the culture (for instance, images in advertising, newspapers, magazines, or family photo albums), thus exploring the semiotics

or 'sign systems' in a culture or context, or a culture's communication systems. Harper (2001, p. 55) offers a clear distinction between the two approaches by stating that 'some sociologists *take* photographs to study the social world, whereas others *analyze* photographs others have taken in institutionalized occupational settings or in their family lives'. Borrowing Harper's terms, I have *taken* photographs and used various (non-photographic) media sourced from the public domain to record and study the social world of Iraq in 2011, in an attempt to expand the current dialogue among Australians regarding FOE and FOI in contemporary Iraq.

In his explanation of the various modes of sociological research (scientific, phenomenological, narrative, and reflexive), Harper (2001, p. 60) notes:

> The differences between these approaches are partly in the relationship between the researcher and the data. In the scientific mode, the sociologist looks outside his or her experience for data; as a phenomenologist, the sociologist looks within for knowledge. The narrator structures data to analyze social life as social process, and the reflexive sociologist seeks data in the expression of the subject.

All four modes of sociological research are evident in *Voices.* I have collected data from outside my experience in a social science capacity, and structured it into a narrative that describes lived reality only. This has positioned me in relationship to my research. I have endeavored to minimize any personal biases in data selection or presentation, and I have collated and presented the data from the point of view of the researched — the Iraqi voices.

The insights gained from this research process have enabled an examination of public, and private, domain discourse (although the authors remain anonymous) related to the democratization of information and communication in Iraq with a focus on freedom of expression and freedom of information and their implications for related human rights issues. The latter chapters consider the current upheaval in the region, the widespread demonstrations, and the use of new media in facilitating protest.

Initial Primary research approach: participatory action research (PAR)

Initially, this project drew upon participatory action research (PAR), a research approach that strives to acknowledge any advantage or power disparity between the researcher and the

research subjects. Bohane (2007, p. 27) explains that this is accomplished through the application of three guiding assumptions:

> 1) that twenty-first century democracies should empower all citizens and not only a privileged elite, 2) that social science research is almost never morally or politically disinterested, and 3) that maintaining separation between research and practice is inefficient and may in fact lead to false findings.

In an ideal world this research would have continued within a PAR framework, however as Iraq deteriorated into a security nightmare, PAR could no longer be used in its fullest traditional applications, excluding interactions over the Internet. PAR focuses on the center of the community and the voices of the people, and is acutely aware that knowledge and the way the flow of information is managed can form the basis of power structures within a society. It '… reflects questioning about the nature of knowledge and the extent to which knowledge can represent the interests of those in power and reinforce their positions in society' (Habermas 1971).

PAR is particularly useful when a researcher is a professional already embedded in the system being studied, and when operating from a Western vantage point in analyzing FOE and FOI in the ethnically, religiously, and culturally charged setting of Iraq and the surrounding region. Any analysis of the region must take into account the unprecedented suffering and socioeconomic and political instability of post-conflict communities struggling to recover, and PAR's baseline tenet — the active participation of subjects in giving them their own voices rather than studying them from a clinical distance — was central in my aim to be inclusive while removing myself from the position of a prescriptive, 'all knowing' author.

Deferring to PAR was also an attempt to counter the 'top-down' approach and the presumed role of 'international expert' (as an employee of the UN) assessing the rights and wrongs of country-specific socio-political landscapes and determining agendas and delivery of the correct 'aid'. The international response and development agendas relating to freedom of the press as they have occurred in the past in other post-conflict scenarios will be discussed in the case study of Bosnia and Kosovo in Chapter 3. The purpose here (Chapter 3) is to articulate a discussion on the establishment of a free media in a post-conflict society, and, in drawing upon the experiences there in terms of the UN,

UNESCO and other agencies. There are strong similarities in the responses of local media to global intervention that aim to deliberately build up free press as part of 'democratization' and 'reconstruction'.

As a nascent research methodology, PAR developed out of the framework of social psychology in the early 1930s and continued to evolve over subsequent decades. Kemmis and McTaggart (2007, p. 272) discuss the early development of PAR:

> Action research began with an idea attributed to social psychologist Kurt Lewin. It first found expression in the work of the Tavistok Institute of Human Relations in the United Kingdom. … A second generation of action research, building on the British Tradition of action research in organizational development … began in Britain with the Ford Teaching Project directed by John Elliot and Clem Adam.

PAR finally emerged in its current form to make the connection between critical emancipator action research and participatory action research. Kemmis and McTaggart (2007, p. 272) note that this new focus in PAR emerged simultaneously with major social movements:

… in the developing world, including those championed by
Paulo Freire, Orlando Fals Borda, Rajesh Tandon, Anisur
Rahman, and Marja-Liisa Swantz as well as by North American
and British workers in adult education and literacy,
community development, and development studies.

One of the key themes that emerged in PAR — the need for
participatory action researchers to connect their work to
broader social movements — is particularly applicable to the
current project. However, while the research aspired to the
principles of PAR, the reality in Iraq impinged on the research
to the extent that a full PAR action plan was not possible.

Why use PAR as a methodology to frame our understanding of FOE
in Iraq, and why apply PAR to the physical transference of fact
to exhibition? The answer is straightforward: participatory
research is based in social research, social life, and is
attributed to being 'associated with social transformation in
the Third World' (Kemmis & McTaggart 2007, p. 273).

Beyond this, three specific criteria are found in action
research: 'shared ownership of research projects, community-
based analysis of social problems, and an orientation towards
community action' (Kemmis & McTaggart 2007, p. 273). The present

research and the subsequent direction, as outlined in the
Exegesis, had to take a best fit plan to incorporate the third
of these criteria only (community action). The criteria of
shared ownership of the design and community-based analysis were
virtually impossible due to the very grave risks to Iraqis,
coupled with my physical separation from them within the walls
of the IZ.

Community action mirrors the broader social discourse
surrounding FOE in Iraq against the backdrop of the "Arab
Spring" uprisings. According to McTaggart (2002), participation
is necessary in the objectification of experience and the
disciplining of subjectivity. As the researcher, I was in a
privileged position as an international person working in Iraq.
I had the responsibility of engaging with and upholding FOE and
human rights principles, but did so from behind a web of
security protection, kudos, and international clout, all of
which combined effectively to distance me from danger and
hardship, as well as from physical access to Iraqis. I was, to
some degree, physically removed from the challenges faced daily
by Iraqis trying to exercise their constitutional human rights.
It was an uneven playing field on which it would have been easy
for me to act as the expert, editor, and director, offering my

audience elitist and prescriptive definitions of right and wrong.

These tensions are present in any research, but they are made more challenging while living on opposite sides of blast walls, with armed forces on both sides. The PAR approach inspired me to do everything I safely could do to represent any and all communications from Iraqis without editing, filtering, or selecting them in any significant way. For example, in compiling material for the multimedia exhibition, I used all communications from randomly selected sources, but within a linear narrative, and selecting those excerpts I believed would best speak to the audience about the gravity of the reality as I know it to be in Iraq. Ultimately it was an effort to compress time and let the 'chatter' of Iraqis burst through to illustrate the seriousness of the daily challenges and events beyond their control.

Voices embodies the vibrant discourse of Iraqi citizens, whether they are journalists, activists, legislators, or members of civil society. *Voices* showcases these parties as active players in an ongoing sociopolitical process. The exhibition honors the goal of PAR in drawing 'attention to the importance of "data"

and the informed use of relevant literatures in action research'
(McTaggart 2002, p. 5).

Having recognized the logistical limitations encountered in
doing PAR in Baghdad, PAR is nevertheless a highly appropriate
approach for this project. At its core, PAR asserts that
pluralistic ethical discourse should recognize the pre-existing
legitimacy of all people, privileging honor, local laws and
customs, culture, ethnicity, and religious beliefs while
incorporating international law and civil and human rights as
inscribed in covenants and international agreements. As a
participatory or inclusive theory, PAR represents the
theoretical antithesis of the incumbent Iraqi government's
attitude towards the civil rights of the Iraqi people, as this
Exegesis makes clear. Just as the media and civil society in
Iraq are demanding change, the 'aim of participatory action
research is to change the individual and collective practices,
social structures, and social media which maintain
irrationality, injustice, and incoherent and unsatisfactory
forms of existence' (McTaggart 2002, p. 6).

To the greatest extent possible, the uncensored voices of Iraqis
take the foreground in *Voices*. In itself, this reflects the
spirit of FOE while bringing the research directly into a human

context, thereby avoiding the biases, and vilification of the Middle East that is so often found in the Western press. In taking this approach, I hoped to counter such negative impressions and expose the current trend of the incumbent Iraqi government that works to oppress Iraqi voices and so rendering PAR as an impossibility. Bringing truth to the fore, and sharing the voices of all people, is a central task for all journalists; in many cases (Iraq being one), this means focusing on voices rarely heard in mainstream media – the voices of everyday citizens. This is itself a bias and a partiality, albeit one that most journalists are keen to defend, sometimes at immeasurable personal cost.

Other theoretical influences

In addition to the guiding influence of PAR, this project was strengthened by the inclusion of other researchers, including Habermas, McTaggert, van Dijk. Contemporary theorists in discourse analysis such as Jurgen Habermas (1984), Teun van Dijk (1995, 2008), and Robert McTaggart (1997, 2002, and Kemmis & McTaggart 2007) 'unpack' or deconstruct the power relationships inherent in language and power structures. Van Dijk is a leading exponent of what is now recognized as the school of CDA while Habermas is a public sphere and communicative action theorist.

CDA emerged in the 1990s in an effort to differentiate CDA from other forms of Discourse Analysis (DA); as theory designed to produce and convey 'enlightenment' and 'emancipation' (Wodak and Meyer 2008), thus aligning to the underlining principles of PAR. Although, Habermas belongs to the 'Critical Theorists' that emerged from the Frankfurt School, his work is based on the premise that 'social theory should be orientated towards critiquing and changing society as a whole (Wodak and Meyer 2008, p.6)' rather than simply looking to explain it. (Both theorists see language as social practice to be analyzed within the context of how it comes into being and what internal and external factors have framed it.

The content that forms this Exegesis exists as a macro-topic, a meso-analysis. The subject of the disintegration of FOE as it stood in 2011 in Iraq, was affected by a breadth of socio-political factors that are so vast, inter-related, layered – that it is impossible to give the audience a definitive explanation or solution. Instead, I can only present 'fact' and 'discourse' as it was recorded in real time and lay it out in exhibition and exegesis format as a set of anastomotic realities or events. What can be seen as a presentation of excursive 'discourse' described as the 'social discourse' of the time must be presented in a way that shows that the events of 2011 are

shaped by, and in turn shape 'situation(s), institution(s) and social structure(s) (Wodak and Meyer 2008, p.5)'. Similarly to the premises outlined in PAR, CDA recognizes that, 'discourse is socially constitutive as well as socially conditioned – it constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people (Wodak and Meyer 2008, p.6)'. In fact, one of the characteristic principles of CDA – something that I have tried to reflect in the way content is treated in the multi-media exhibition - is that the use of language is seen as 'social practice', which is 'determined by social structure and contributes to stabilizing and changing that structure simultaneously (Woday and Meyer 2008, p.7)'. In essence, both schools of thought, CDA and PAR, together strive to negotiate a necessary, objective space for dialogue between the power-less and power-full, researched and researcher, at the level of the individual, institution and larger ideology.

As I have attempted, and as in PAR, which regards transparency as a fundamental tenet in research practice with regards to the position of the author in relation his or her subject, CDA researchers also make concerted attempts to 'make their own positions and interests explicit while retaining their

respective scientific methodologies and while remaining self-reflective of their own research process' (Wodak and Meyer 2008, p.3). These theorists provide a theoretical framework for this Exegesis and their work informs both an active research approach and the structure of the accompanying exhibition. The politics of representation is best served, where PAR was rendered inadequate in an oppressive and violent Iraq, by CDA and news media analysis which underline discussions focused on 'the relationship between information, power, and democracy in Iraq'.

CDA complements PAR by offering the underlying assertion that power relationships are evident in all forms of linguistic communication. This was one of the central challenges of the current research, and the very challenge that I turned to PAR to help overcome. By leaving the rights of expression (what to say, how and when to say it, and where to communicate it) squarely in the hands of the Iraqis and including their emails, blogs, and so on without editing or filtering them, I endeavored to reflect the PAR approach as accurately as possible without making life any more dangerous than it already was for outspoken Iraqi citizens.

I chose this approach because it seemed to be the one most likely to result in an unbiased, democratic representation or

transfer of information from the domain of factual discourse to its presentation in an exhibition format. An unbiased, democratic presentation of discourse is important not only to counter the audience's preconceptions of Iraq and Iraqis as presented in Western media, but also to observe the researcher's own limitations, as noted earlier.

Despite my efforts to present the data in an impartial manner, it was impossible to extricate myself completely from this highly politicized work without some form of personal bias in defense of those who were the subject of my study. Fisk and Hass, both having focused their work on the Israeli/Palestinian conflict, explain in greater detail the nuanced and complex sets of ethical challenges that arise when empathizing with a subject, and that, at times, history bids us to throw down our 'impartial observer' hat, and take a stand. When internal power structures and totalitarian states mute citizens' voices, when foreign agendas bid us to view conflict or post-conflict scenarios in a certain light, and paint a state and its people as 'rogue' and 'evil', we are obligated to take an editorial slant and defend the human rights of those excluded by the politics of power. This, of course, does not replace more clinical reporting on who, what, when, where, and why, but coexists alongside such journalism.

The notion of blanket stereotypes used by the press with regard to the Middle East would shock few informed readers. In his book, *The Great War for Civilisation: The Conquest of the Middle East,* author Robert Fisk addressed the often polemic and controversial roles of media (and journalists) charged with reflecting reality while simultaneously affecting change. Fisk (2007, pp. 21-22) wrote:

> I suppose, in the end, we journalists try — or should try — to be the first impartial witness to history. If we have any reason for our existence, the least must be our impartial ability to report history as it happens so that no one can say, "We didn't know — no one told us".

> … I think that this [from Israeli journalist Amira Hass] is the best definition of journalism that I have heard: to challenge authority — all authority — especially when government and politicians take us to war, when they have decided to kill, and others will die.

Both discourse analysis and the attenuated PAR were helpful as a framework for attaining these journalistic and egalitarian goals in compiling this Exegesis. PAR assists Western researchers to

mitigate the West's tendency to 'Orientalize' or objectify Iraq, Iraqis and Iraqi culture. Discourse analysis similarly works to unpick texts and expose agendas in journalism and foreign policy.

Edward Said's research also informs this project. In Said's 1978 book, *Orientalism,* he redefined notions of Orientalism, and exposed what he saw as postcolonial rhetoric and false assumptions made by the West particularly regarding the Middle East. In the preface to the 2003 edition, Said reframes the original text in light of the continued generation of 'Orientalist' rhetoric and attitudes, showing how they have been manifested in Western foreign relations policy. He exposes the vilification of the 'other', as fomented by the Western war machine in justifying the occupation of Afghanistan (in 2001) and Iraq (in 2003). Said (2003, p. 13) explains:

> These supreme fictions lend themselves easily to manipulation and the organization of collective passion has never been more evident than in our time, when the mobilizations of fear, hatred, disgust and resurgent self-pride and arrogance — much of it having to do with Islam and Arabs on one side, "we" Westerners on the other — are very large-scale enterprises.

A central idea of *Orientalism* is that Western knowledge about the East is not generated from facts or reality, but from preconceived archetypes that envision all 'Eastern' societies as fundamentally similar to one another, and fundamentally dissimilar to 'Western' societies. This discourse establishes 'the East' as antithetical to 'the West' and so enables a set of discourses that are given legitimacy to colonize and rule.

Said (2003, p. 23) further notes that countering false rubrics about the other, be it 'the West' or 'the East', requires a 'humanism' based on human individuality and agency, and an avoidance of defining others based on 'received ideas' passed down from approved authorities. Consequently, journalistic and foreign policy discourse on Iraq would constantly silence Iraqis and instead give credence and legitimacy to Western business and influence.

Humanism-as-action fits within the PAR framework, which is action oriented, community minded, and focused on seeking and accepting diverse viewpoints. Within his framework of humanism, Said concludes that to counter notions of otherness, texts produced must be read or understood within their historical and cultural contexts. He sees humanism as the 'final resistance we

have against the inhuman practices and injustices that disfigure human history' (2003, p. 23), and is encouraged by the democratizing potential of cyberspace in leveling the playing field and allowing diverse voices to be heard. In Said's words (2003, pp. 23-24):

> [T]he world-wide protests before the war began in Iraq would not have been possible were it not for the existence of alternative communities across the globe, informed by alternative news sources and keenly aware of the environmental, human rights, and libertarian impulses that bind us together in this tiny planet.

Inspired by Said's work, *Voices* attempts to deconstruct or illuminate this same complex, multi-layered issue. *Voices* was created with the intention of representing the Iraqis' discourses exclusively with their own voices, without bias or inference of any stereotype. Indeed, the contributors to the diary are Sunni, Shia, Christian, Turkman, Arab, and Kurd; women and men; young and old; and all are battling for their right to free speech. The guided artist in *Voices* being responsive and selecting with consultation via telephone, email, social media – to represent as fairly as possible the diary – being the assembly of these discourses, on a pedestal, represented under

lights, in public view, honoured.

As Said predicted, new media technologies made not only this research possible, but also the protest movements themselves, as individual citizens shared, sent, and received information about their government and its actions with a global audience. This element lies at the core of this Exegesis, and it is precisely this new media platform that fomented and communicated the Arab Spring uprisings. The Iraqi elites are well aware of the power of this unprecedented freedom of information. At the time of this writing, an Information Crimes Technology draft law is awaiting its second reading by the Iraqi Parliament. As we will see in later chapters, the draft law is so pernicious in nature, with provisions so ill defined, that it has the potential to severely restrict internet usage and the flow of information for most Iraqi citizens. Internet-related crimes are defined arbitrarily, and yet punishments are extreme.

Like Said, Fisk argues for a more humanist and contextualized representation of the Arab and Islamic world. He also calls for active rather than passive reporting, hoping that journalists might be able to shift some ideological paradigms and effect change. Said and Fisk understand that 'Orientalism' persists, through the uncritical use of problematic images and

representation, as the perpetuation of marginalization, exclusion, inequality and negative views of peoples and events. Attempting to counter such stereotypes and producing counter-images and counter-representations can therefore be a highly subversive act. It is in this same spirit that I hope to transfer the reality of Iraq in 2011 to a Western audience, perhaps shifting in some small way its preconceived ideas about Iraq and Arab people overall. It is for this reason that *Voices* was constructed with the aim of removing this 'Western' artist, writer from the story as much as possible so as to let Iraqis speak directly as possible to members of the Western audience.

Rationale for removing the author from the audio-visual testimony

Although many of the uprisings in Iraq in 2011 took place in Baghdad, in Tahrir Square (Freedom Square), and some – as in the Day of Rage on February 25 – were organized to storm the IZ (where I lived and worked), I did not have physical access to all the uprisings nationwide. Nevertheless, I was in constant communication with journalists, bloggers, activists, and human rights watch groups, mostly through e-mail, Facebook, and YouTube uploads. Using social media, I participated in and

reacted as fully as possible to these intense and lively conversations. I witnessed the action from the other side of the T-walls of the IZ as events were relayed to me across various media. While far from ideal, this very real logistical limitation with high rate of delivery broadband and unrestricted access also exemplifies how new media platforms can transmit information effectively and instantaneously across physical barriers such as those in my physically removed and militarily secured compound.

The photographic and video work of *Voices* provides the audiovisual context within which the research was conducted. *Voices* acts as the canvas on which participants' expressions come to life. In a sense, my photographs and video are meaningless: they are not artistic and they do not tell a story, apart from my physical isolation from the action. Instead, they serve as a backdrop. They are structural. They are images of concrete walls, sandbags and Hesco barriers. The diary excerpts and the YouTube 3G phone postings are the voices, the graffiti that appears indiscriminately, randomly, urgently under a need to express. It is these voices, and these images, that will help counter the persistent Orientalism that is maintained through the repetitive distribution of problematic images and other

misrepresentations of Iraqis by those who would work against their best interests.

Roland Barthes (1977) is credited with the notion that the author, as artist in the post-modern age of mechanical reproduction, is dead. In the modern age, the reader — and in this exhibition, the audience — has become the author. To quote Barthes (1977, p. 148):

> We are now beginning to let ourselves be fooled no longer by the arrogant antiphrastical recriminations of good society in favour of the very thing it sets aside, ignores, smothers, or destroys; we know that to give writing its future, it is necessary to overthrow the myth: the birth of the reader must be at the cost of the death of the author.

As the exhibition's creator, I see myself as a conduit of information, collecting it and transmitting it to a public. The collection, organization, and presentation of materials take precedence over the photographic work. The somber vista of photography and video serves as a neutral canvas that gives life to the 'noise', and to the compelling debate and conversation in contemporary Iraq. The photographs or video are merely

architectural depictions of the physical environment that serves as backdrop and context.

The photographic content of this work draws primarily on documentary photography, but with the additional 'text' added (the exhibition as a whole), aligns itself most closely with visual sociology. The photographic element within the exhibition aligns as closely as possible to pure documentation, in which the author's voice is minimized and objectivity or impartiality is maximized; it is a didactic representation of physical reality. Traditionally, documentary photography was tied to exploration and social reform. Although the boundaries of documentary photography and visual sociology can be unclear, documentary photography is more scientific in its approach and prioritizes the recording of what is before the lens for the purposes of social documentation and change, whereas visual sociology focuses on relating a narrative.

In *Voices,* the photographs are documentary photography pure; they are life-sized shots of blast walls. They are pure manifestations, if not black and white reproductions of the physical surroundings. Only when juxtaposed with the text excerpts and the overall information and themes presented do they act as metaphors for the challenges faced by Iraq's

citizens clamoring to have their voices heard. The photographic depictions of the blast walls not only record and recreate the physical constraints; in a subversive way, they also show just how insurmountable the demand for free flows of information is for civilian Iraqis.

Photographic research — the act of taking photographs in a photo-documentarian context — is the enactment of emerging with some understanding. Like all cultural objects, photographs get their meaning from their context. Photographs as discourse, and how they are presented, can define and create labels and categories by drawing boundaries around people and their behaviors. Photographs convey meanings that are culturally specific to the society in which they exist.

Through the inclusion of public discourse in the form of 'text' (which, in semiotic theory, pertains to words, sound, and image), *Voices* endeavors to give a say to the Iraqi people in promulgating their lived challenges to freedom of expression and the physical and psychological repercussions of this struggle on their lives.

Voices aims to remove the denotative meanings inherent in the capturing of information (a photograph, for example), and the

connotative meanings implied in the transfer of information to the reader or audience. To achieve this, the information (text) is presented in a manner reflective of museum exhibits, where material is presented as sourced historical artifacts in a very strict time-line, based on the researcher's 2011 diary. Thus the schedule, not the author (researcher), dictates which voices speak, thus largely and in so doing, attempting to liberate the work from the author's own biases or attachments to certain parts of the subject matter or certain participants. In this way, the audience's experience with the text is more direct and the audience and the subjects are more intimately connected through the use of unedited original communications.

Presentation of the multi-media exhibition, *Voices*

The dialogue and data used in *Voices,* is juxtaposed against a neutral architectural canvas of photographs, with the aim of bringing the voice of Iraqis to the fore. Thus the photographic component adheres to the principles of documentary photography and, with the addition of Iraqi voices, aims towards visual sociology. It strives to maximize impartiality while minimizing the artist's (my) voice within the exhibition.

The aim of the exhibition is to present 'text' from various media in such a way that the audience perceives the information as randomly as possible, without the background photographs holding any inherent meaning. Taken together, the photographs, text, and other data should not create inferred meaning: rather, the ensemble should create arbitrary 'noise' within a space, that serves to break down any stereotypes of Iraq and its culture that may exist in the audience's mind. Although I am keenly aware that I cannot uniformly moderate the resulting or produced meaning to any degree, my goal is to offer a novel multimedia experience.

Accordingly, the exhibition does not feature my photographs as central either to the research or to the assignment of meaning. It is not my goal to use Iraq as a case study of oppression and social injustice, but rather to promote what I consider the more compelling story — the Iraqi experience itself, as lived and expressed by Iraqi citizens and journalists. This is achieved by reinterpreting or 'recolonizing' the facts and presenting them to an audience that would not normally be privy to such a perspective on the knowledge. The exhibition provides an uncensored platform for local Iraqi voices, demonstrating their variety, frequency, and intelligence. It also makes clear the highly politicized discourse of the actors/participants, which

exists against a backdrop of oppression born of war, the political repercussions of U.S. hegemony, post-war Iraq, and the immense suffering of the Iraqi people that is the result not only of the 2003 occupation by the Western alliance but also by the portrayal and recolonisation of Iraq in Western media.

The exhibition, as an adjunct to this Exegesis, requires a reflective appraisal of recently exhumed documentation with a view toward reframing the story through a contemporary 'museum-style' a curatorial aesthetic. I have been vigilant in editing and presenting the magnitude of information available to me in a way that endeavours to maintain impartiality, striving to show every aspect of this multifarious issue. Simultaneously, I have been creating a space for an Australian audience so they might negotiate the complexity of the material without becoming overwhelmed.

For more than two years as UN employee, I lived with the challenges facing the Iraqi media and citizens in respect to freedom of expression and freedom of information. My ultimate hope for *Voices* is that the contributions of these individuals will allow us to reveal the undercurrents, the macro and the micro forces at play on the political and social stages, which serve as the backdrop to this fractious, complex and polarized

issue and the persistent short- and long-term insecurity that plagues journalists in Iraq.

Chapter 2

The relationship between information, power,

and democracy in Iraq

Washing one's hands of the conflict between the powerful and the powerless means to side with the powerful, not to be neutral.

Any situation in which some men prevent others from engaging in the process of inquiry is one of violence … to alienate humans from their own decision making is to change them into objects.

— Paulo Freire, *Pedagogy of the Oppressed*

Iraq in the indices

According to Reporters Without Borders 2011–2012 World Press Freedom Index, Iraq was listed in 152nd position out of 179 countries (Reporters Without Borders 2012). In the Centre for Law and Democracy's Global Right to Information Rating (CLD 2011b), Iraq does not even appear, as it currently has no legislated right to information act.

Although no index is completely bias-free, and most tend toward Western conceptualizations of freedom and democracy, such strikingly low scores are cause enough to warrant concern — and demands a closer analysis — regardless of indices' bias.

According to the Committee to Protect Journalists (CPJ 2012), 151 Iraqi journalists have been killed since 1992. Of the 94 that were murdered, 93 were murdered with impunity.

In his study on mass communication and its relationship to power, van Dijk (1995, p. 10) comments that:

> In order to understand the role of the news media and their messages, one needs to pay detailed attention to the structures and strategies of such discourses and to the ways these relate to institutional arrangements, on the one hand, and to the audience, on the other.

By 'institutional arrangements', van Dijk refers to the news financiers, the politicians, the professionals — in short, the elite powerbrokers. According to van Dijk, we need to acknowledge both the powerbrokers' and the media's capacity to influence or even intentionally manipulate audiences, and define the precise conditions in which this occurs. If the media's

independence is controlled or restricted, the media cannot engage impartially in public or political discourse, and citizens remain uninformed and unable to participate meaningfully in the political process. At times, of course, this situation works to the direct benefit of the powerbrokers: as the case with the construction of the myth of weapons of mass destruction which lead to the unjustified invasion of Iraq by the UK and USA in 2003.

Audiences and media consumers are generally thought of as being influenced by information, but retaining their own opinions and reaching their own conclusions (van Dijk 1995). Control of information or knowledge influences understanding. In Iraq as elsewhere, we should ask: Who are the powerbrokers in these knowledge transactions? Is it the economic elite, the executive authority? Is it the media? Are the media truly independent? Do they serve the interests of political factions? Are they restricted by the reality of economic and political instability — and, if so, how? And, at what level are the institutions that safeguard principles of freedom of expression and the free flow of information independent?

These questions lead to others: At what point in newly emerging democratic states does the news media serve to destabilize the

process, and at what point does it serve to reinforce stability, peace and democracy? What mechanisms need to be in place in order to rebuild professionalism in journalism and eliminate the culture of suspicion? Suspicion and the potential for retribution are usually rampant in newly formed democracies, as they emerge from totalitarian regimes, where public information was heavily censored and controlled. This Exegesis includes some recommendations that are accepted in international contexts such as the United Nations, yet such recommendations are difficult to implement in post-conflict countries – Iraq being just one example.

Habermas (2006) asserts that news media exerts power because it selects, processes, and shapes political discourse and then releases it into the public domain, where it influences citizens. In an environment that supports democratic principles such as free speech, the media can elect to convey information impartially, offering a variety of opinions and perspectives without a prescribed political agenda dominating public discourse. Habermas (2006, p. 419) describes this scenario as follows:

From the viewpoint of democratic legitimacy, media power nevertheless remains "innocent" to the extent that

journalists operate within a functionally specific and self-regulating media system. The relative independence of mass media from the political and the economic systems was a necessary precondition for the rise of what is now called "media society".

For such 'media societies' to function independently, they need the corresponding enabling legislative environment.

Definition of an 'enabling environment'

Media and democracy need each other and prosper only when they develop together. Media professionalism alone will do little to secure — and can do much to destabilize — a fragile new democracy. As Gillette (2006, p. 1) clearly stated:

> In order to exercise generally accepted standards of professional, independent journalism, media needs at least a minimally secure legal and political environment in which to operate — what is now commonly termed in the media development arena as an "enabling environment".

Freedom of the press, and the enabling environment it requires, has a direct relationship on a healthy and functioning

democracy. Likewise, a free press has a positive influence on governance; the development and establishment of stable, rule-based institutional environments; and on economic and social progress (UNESCO 2008). The World Bank has found that there is frequently (although certainly not always — consider China, for example, or even Australia, considered as one of the world's most liberal democracies has a media that lies diminished and constrained) a correlation between countries where war is not a primary objective and the presence of a relatively free press.

The World Bank's voice and accountability indicator is particularly pertinent to press freedom. This indicator envelops areas such as 'perceptions of government accountability, the credibility of political institutions, and civil and political rights, and also measures the ability of citizens to participate in the selection and renewal of governments' (UNESCO 2008, p. 78). Regrettably, with the occupation of Iraq in 2003, the entire civil service, police, and military were dismantled and the interim government made almost no effort to preserve Iraq's infrastructure (e.g., schools, hospitals, and power plants), making human rights advocates' work more difficult, and stalling the development of independent media in Iraq.

Another vital factor related to transparent governance is the relationship between transparent elections, governance, and media, and this will be discussed later in this Exegesis.

The impact of independent media in conflict and post-conflict environments

Before, during, and after a conflict, the news media have enormous potential for impact, which can be positive or negative. Media can be used to foment hatred (as in Rwanda in 1994 and the Balkans during the conflicts in the 1990s), or to provide the impartial news and information a democracy needs in order to function (James 2004). Ronald Koven (cited in James 2004, p. 15) of the World Press Freedom Committee warns against burdening the media with responsibilities above and beyond the primary task of informing:

> Freedom of the press means freedom for the media to set their own agenda. They best perform their task when they are left at liberty to air the debates, tensions and contradictions in society.

Most journalists around the world agree that the profession's primary aim is to strive for the impartial provision of

information. A journalist should not appear to identify with one side over another, or with any individuals or groups, since doing so carries the risk of undermining the journalist's professional integrity. In conflict and post-conflict situations, bias and partiality may threaten the physical safety of the individual or groups in question. Andrew Pudephat (cited in James 2004, p. 24) echoed this sentiment when describing the role of a journalist as neutral, with a duty to explain with balance and fairness. Alongside the argument that in conflict and post-conflict situations a journalist's mission should be to promote peace, one can also argue that local news media have a critical impact — either positive or negative — on the process of reconciliation and long-term conflict management. Take as example Editor, Edison Yongai, who ran the Seiera Leone 'The Point' under a brutal regime and equally violent liberation army.

It is essential that news media be independent — but what does an independent media look like in post-conflict situations, and how does this play out in Iraq? Journalists — whether they are working in a peaceful and stable environment, or during or after a conflict — want to report independently, fairly, and with impartiality. The issue for news media working in conflict and post-conflict environments is that the enabling environment that

allows for independent journalism to thrive is threatened or nonexistent.

Challenges to freedom of expression and information in contemporary Iraq

In working to support FOE in contemporary Iraq, we must look to international conventions and treaties, analyses and reports that define concepts, set standards and protect 'ideals' of human rights and their application. However, even human rights ideals set forth in the Iraqi Constitution or in international treaties signed by Iraq must be viewed in light of the unique sociopolitical context within Iraq today. Because of the lack of scholarly research on the evolving landscape of contemporary Iraqi journalism, the following discussion will rely on first-hand experience working in Iraq and with the media community to evaluate and define how the patterns within Iraq's media scene and its context are working towards or against generally accepted international standards and practices.

The sociopolitical context for media and media-related legislation in Iraq is fraught with challenges. These include but are not limited to Iraq's legacy of authoritarian rule, lack of impartial media outlets, lack of professional capacity,

retaliation against journalists, lack of an effective civil service infrastructure, lack of a 'media society', and a pervasive culture of suspicion.

A legacy of authoritarian rule

The most fundamental challenge to FOE/FOI in Iraq is the threatening nature of information, even in contemporary Iraq. Although Saddam Hussein no longer holds power, vestiges of his authoritarian regime remain apparent; removal of the dictatorship has not ended Iraq's totalitarian practices, as this report and others, such as the report published by Reporters Without Borders Press Freedom Barometer (2013), illuminate. The Freedom Barometer report states that the threat faced by Iraq's journalists (including media workers and social media producers who produce significant amounts of public interest journalism) 'comes above all from the authorities or political figures that block them from gaining access to certain areas. Abusive measures and legal proceedings against newspapers for "defamation" have become commonplace' (Reporters Without Borders 2013).

Working from the premise that information equals power, the accessibility of information can have a deep impact on the ability of a country's constituency to make informed decisions

and actively participate in the decision-making process. Thus, as in Iraq, it is logical for those in power (and those who want to maintain power) to fear both FOE and FOI. This has been true throughout human history.

Christopher Dickey (2011-2012, p. 13) details just how threatening access to information can be to the existence of authoritarian regimes, pointing out the measures Saddam Hussein took to restrict the free circulation of information in Iraq:

> [T]he Gutenberg revolution that transformed Europe in the 15th Century did not arrive in the Ottoman Empire until more than three centuries later … [and until] more recently, Saddam Hussein banned the private ownership of typewriters in Iraq, and kept copying machines under lock and key as if they were weapons of mass destruction.

Although FOE is a recognized right under Article 38 of Iraq's constitution and the country is a signatory to several international conventions outlining the exercise of human rights, in recent years the incumbent government has moved steadily towards the restriction of FOE, FOI, and civil liberties. The space for FOE is shrinking. In Iraq, it seems, law is not enough.

Lack of impartial media outlets

In understanding the challenges facing media and discourse in contemporary Iraq, we must also consider the capacity of Iraq's professional media to be impartial. To quote a senior colleague (who wished to remain anonymous) working on FOE in Iraq, 'Iraq's media is thriving — not independent'. There is little advertising revenue in Iraq; most media outlets are privately funded and some have become mouthpieces of ethno-political factions with the potential to incite violence, increase sectarian divisions and fan the flames of civil war. This occurred not only in Iraq, but the Balkans, Rwanda and this list goes on; countries in which despotic governments have muzzled the free flow in information that any healthy democracy should share.

In post-conflict Iraq, as in post-war Yugoslavia, the media are dominated by ethno-sectarian and political factions. In Iraq prior to 2003, all information was state controlled through five state-owned daily newspapers and one government channel disseminating state propaganda. After the fall of the Hussein regime in 2003, media outlets sprang up virtually overnight to broadcast the voice and opinion of the Kurdish, Turkman, Arab Sunni and Arab Shiite factions, both nationally and to audiences abroad. This expansion had an undeniable impact on the

development of a healthy and diverse media environment in Iraq –
an impact that at first seemed to hold promise, but which
quickly turned sour.

During times of relative peace, ethno-political ownership often
reflected that peace and diversity in the press. However, as the
political situation in Iraq began to disintegrate between 2005
and 2008, media polarization undermined the weakened state's
capacity to govern, and so opened the door for political parties
to reinforce Iraq's sectarian divisions (Albany Associates
2009). Albany Associates (p. 6) notes that, 'independent media
with no ethno-sectarian affiliation do exist, but they lack the
access to funds or physical protection, as they would have under
the protection of a political party'.

Lack of professional capacity
Beyond the challenges posed by repressive legislation pertaining
to FOE and FOI, Iraqi media also suffer from an unintentional
lack of professional capacity. Although the international
community has placed significant emphasis on training Iraqi
media professionals since 2003, Iraq still lacks an updated
university journalism curriculum; the curriculum used by media
departments in higher education was written in the 1960s.
Although UNESCO has recently revised the journalism curriculum

in Iraq, it has yet to be adopted by universities. In addition, of course, many practicing journalists today have come to the profession with insufficient training, and many move from one media outlet to another in search of a better job. The net result is that both veterans and newcomers remain poorly informed of, and ill equipped to follow, international best practices in journalism.

Retaliation against journalists

In spite of these challenges, the current media scene in Iraq is surprisingly pluralistic and lively. Journalists are increasingly outspoken in their criticism of social and political issues, and corruption among government institutions and officials. However, the majority of media outlets are owned by sectarian organizations, which can make it difficult for journalists to gain access to information from other organizations, or to report on those groups in an unbiased manner. Indeed, Albany Associates (2009, p. 7) notes that journalists who have been too outwardly critical have 'often been subjected to blackmail, detention, [or] death itself'.

Currently, media professionals in Iraq are held in the grip of legislation that restricts their freedom to practice their profession with the independence their colleagues enjoy in many

other countries. The independent institutions or media oversight bodies that safeguard these basic freedoms have also come under threat of government control: these include the Communications and Media Commission, the Human Rights Commission, the High Electoral Commission and every level of the judicial system. Reports asserting that the Iraqi government is seeking to restrict freedoms and increase its control over all aspects of civil and political life by controlling access to information are increasingly common.

The International Crisis Group (ICG 2011, p. 2) observes:

> The 2005 constitution and the existing legal framework require a number of institutions — the Board of Supreme Audit, the Integrity Commission, the Inspectors General, parliament and the courts — to monitor government operations. Yet, none of these institutions has been able to assert itself in the face of government interference, intransigence and manipulation, a deficient legal framework, and ongoing threats of violence.

The same report (ICG 2011, p. 2) goes on to state that:

These factors have caused senior officials to resign, including most notably the head of the Integrity Commission on 9 September 2011. Even civil society organisations — confronted by government intimidation in the form of anonymous threats, arrests of political activists, and violence, including police brutality — have proved incapable of placing a check on government. Although the perpetrators have yet to be found, the killing on 9 September 2011 of a prominent journalist and leading organiser of weekly protests against government corruption has contributed to rising fears of the Maliki government's authoritarian streak.

Lack of an effective civil service infrastructure
An additional challenge is Iraq's lack of a functioning civil service infrastructure. Without the infrastructure for effective judiciary, executive and legislative advocacy for human rights protection and FOE — coupled with the necessary skilled personnel on the ground to carry out such work — the development of a free and independent media can only exist in a vacuum.

Lack of a 'media society'
Iraq has yet to create a 'media society' as defined by Habermas. There are a number of challenges to this process, legislation

being key among them. In Iraq today, media-related legislation is still being drafted, and so gives political authority the power to shape how media will operate. Although the government cannot directly influence content, it can influence the way media operates by defining operational parameters through legislation.

Other factors also hinder the development of a media society. For instance, insufficient advertising revenue limits the media's ability to operate independently – another result of most media outlets in Iraq being privately bankrolled by various political factions. Besides offering greater economic stability, being 'in the pocket' of a given political faction provides journalists working in a fractious and violent environment with a degree of protection and security (Albany Associates 2009).

A pervasive culture of suspicion
A culture of suspicion and the potential for retribution prevail in Iraq, oscillating between constitutional authorities (executive, judicial and legislative) and the professional news media. This is endemic in many Arab countries, where heavy-handed state control is the norm, both historically (in Iraq, for example, under Saddam Hussein) and in the present day. In today's Iraq, the public generally views the judiciary as

politicized or corrupt — less so, perhaps, than other
governmental institutions, but politicized or corrupt,
nonetheless.

A lack of access to the courts and a lack of a transparent
system of justice only exacerbates the public's feelings of
distrust. Although Iraq's constitution provides for open court
proceedings, in reality, the courts are relatively inaccessible.
Aside from a generally poor image of the courts and the courts'
inaccessibility, which is undermining the development of
democratic institutions, the lack of accurate information about
the courts has a chilling effect on the citizens' confidence in
asserting their individual rights, paradoxically this includes
the rights of media professionals and the fight against
impunity. Other institutions of government may not have the best
interests of the public at heart, but if there is no justice to
be found in the courts, the resultant feeling is: why bother
fighting?

This culture of suspicion perpetuates itself through a cycle of
non-communication that flies in the face of open justice.
According to one expert (who requested anonymity) with decades
of experience in media development in post-conflict settings,
there is a feeling among the powerbrokers that the media doesn't

know what they are talking about, so there is no point in talking to them. Of course, in most open justice systems, the news media is the channel through which information flows. The closed-minded attitude toward media among powerbrokers in Iraq is apparent in the relationship between most arms of executive or state power and the local media.

Providing media with access to public officials and political representation is one way in which powerbrokers can manage information, while maintaining some semblance of an open justice system. Habermas (2006, p. 419) notes that governments often take a strong stance regarding socially negotiated access to the media, but asserts that:

> [G]overnments usually have no control over how the media then present and interpret their messages, over how political elites or wider publics receive them, or over how they respond to them.

It is worth noting that Habermas was commenting on Western models in which FOE and FOI are widely accepted.

In response to such criticism, the Iraqi Parliament is currently (in 2012) reviewing a draft of the Law of the National Media

Center (NMI draft law), which at first glance appears to establish a press room within the Council of Representatives (COR). This is standard procedure in most countries. However, the draft law seeks to manage the media's access to the COR through an authorization process managed by the prime minister's office. Even more problematic, the draft law would curb access to information further, by restricting direct access to parliamentary proceedings and instead supplying journalists with recordings of hearings via a dedicated broadcast channel. This draft law is one of a raft of media laws currently in front of Parliament (see Chapter 5).

The right regulations and legal framework need to be in place to support a free press, and the economy needs to be strong enough to support a financially sustainable media that is economically independent from any existing powerbrokers with biased, self-serving political agendas. In Iraq, the media is no longer a passive instrument of state control as it was under the former regime. Today, it is very active and certainly pluralistic, yet its independence remains tenuous at best. In his book, *The New Arab Journalist* (2011, p. 227), Lawrence Pintak describes the views of Arab journalists in the post-Saddam Hussein era as follows:

Arab journalists had made clear how important the issue of professionalism was; it was the common denominator to which both Arab and Western journalists aspired, even if the Arab view of the mission of journalism – to create political and social change – diverged from that of many Western journalists.

Chapter 3

An exploration of the establishment of free media in a post-conflict society

In this chapter, my aim is to draw a comparison between the principles used by the international community in another setting and those that might be used to help establish a free media in contemporary Iraq. In the future, this comparative discussion will be enhanced by the publication of additional scholarly research on the topic, but research undertaken by Franque (2009), Gillette (2006), Haselock (2010), James (2004), and Richhiardi (2011) provides an excellent starting point.

The direct relationship between news media regulation and media's effect on emerging democracies in post-conflict environments cannot be ignored. Financial and professional independence of the media, targeted consultative approaches engendering local ownership in decision-making processes, and the application of development structures are all crucial if media is to form the basis of a healthy and functioning democracy (Haselock 2010). In this chapter, we will take a closer look at the role media played in post-conflict Bosnia and

Kosovo, in an exploration of a situation that was, in some ways, parallel to the media environment in Iraq today.

Of course, prior to entering the analysis of news media in post-conflict Bosnia and Kosovo, we should add the requisite disclaimer: Despite the similar challenges that independent media face in post-conflict scenarios, Iraq is not Kosovo. While there are many regulatory and legislative similarities, it is critical to recognize the unique cultural, political, social, economic and historical conditions that exist in any setting and that produce different ways of handling conflict and post-conflict situations in the news media. Nevertheless, a discussion of the similarities is natural and warranted, as it might prove useful in understanding the situation in Iraq today. It is also worth exploring whether the international interventions in Bosnia and Kosovo succeeded in bringing about the development of a truly independent media sector.

International strategies and response

After the disintegration of the Yugoslavian State, the International Interventions and strategies that were implemented in the Balkans did not work and continue to invite criticism. Similar to Iraq, there arose a sudden unfettered media boom.

These new media houses were quick to suffer from factionalized
programming as one of the only means to keep media centers
running on a financial level was through political backing. From
the perspective of safety, employees could also enjoy the
relative security that was offered by the in-house security or
militia groups. Robert Gillette - who tried in 2003 Iraq to work
with the Pentagon and Paul Bremmer of the CPA – was blocked in
his efforts to right the wrongs from the Kosovo experience and
to introduce a new methodology for Iraqis in media development.
Gillette was the media commissioner of Kosovo from 2003 to 2006.
He recounts his experiences in a speech to the European
Evaluation Society (EES) in 2004 (Gillette 2006), stating:

> In Central Europe and the Baltic states, where the rule of
> law quickly took root in the 1990s, early media assistance
> helped jump-start professionalism and provided useful
> business skills that paved the way until private investment
> could take over. American media aid to post-communist
> Europe began during the Reagan presidency as a response to
> the dramatic flowering of new radio and television stations
> and newspapers that began with the collapse of communism in
> 1989 and accelerated with the dissolution of the Soviet
> Union in 1991. Hundreds of new media outlets appeared

almost overnight, initially in the region stretching from
Estonia to Bulgaria, and later from Ukraine to Kyrgyzstan.

Many of these media outlets were owned by sectarian groups and
used to launder money or incite violence and ethnic hatred, all
of which undermined the peace-building process (Gillette 2006).
In general, the West's goal in post-Communist cultures was to
support the transition from authoritarian rule to market-driven
liberal democracies, using three implementation strategies for
news media development: pluralization, regulation, and
professionalism (Franque 2009). These strategies have also been
used in Iraq.

In supporting post-authoritarian states in the move towards
democracy, the international community has worked to build the
capacity of the free press by investing in news media
development. Press Now, the Amsterdam-based NGO, defined media
development as, 'activity undertaken to help media outlets work
according to the professional and ethical standards which are
today expected in, and of, democratic societies', going on to
say, 'media development can include a range of actions directed
at media organizations themselves, or at their political,
economic, legal, and regulatory contexts' (Franque 2009, p. 94).

In Bosnia and Kosovo, international donors and overseers were slow to grasp that even the most professional and politically independent media that already existed would not survive long without an enabling environment to support it, much like Iraq. It took two years and two elections after the Dayton Agreement to grant the so-called 'Bonn Powers' in 1997; when these powers were granted, the Office of the High Representative (OHR) finally held the power to implement the Dayton Agreement with decreased obstruction or interference from local nationalist politicians or factions. With this power, the OHR was able to support the international community's efforts to ensure that globally recognized principles of democracy be built into post-war reconstruction efforts. At the same time, it was able to assert a systematic, positive influence on the process of creating the environment required for independent media to operate, by way of media-development interventions.

As Gillette has stated (2006, p. 1):

> Creating an enabling environment involves establishing an interlocking set of laws, as well as regulatory and educational institutions aimed at protecting journalists; to license and otherwise regulate broadcasting according to democratic principles; and to protect the public from the

worst kinds of journalism, usually through modern civil libel law and, according to the European model, codes of conduct.

The NATO military intervention in Bosnia and Herzegovina in 1995 represented the beginning of a new era of international intervention in the affairs of sovereign states. Simon Haselock (2010, p. 2), an associate of the Programme in Comparative Media Law and Policy at Oxford University, asserts that this was, in part,

… spurred on by the specters of similar atrocities such as [the genocide in] Rwanda, galvanizing the international community to act out of a "responsibility to protect" populations from the atrocities of war, oppression, and disaster.

As evidence of this new attitude towards intervention, Haselock points out that powerful nations of the world have intervened not only in Bosnia and Kosovo, but also in Sierra Leone, Chad, Afghanistan, and Iraq and that '[o]f the 54 UN peacekeeping missions since 1945, 41 began after 1988, with 15 still in play' (Haselock 2010, p. 2). The signing of the Dayton Agreement in 1995 marked the beginning of nation-building in Bosnia — the

largest such effort since the end of World War II. Haselock (2010, p. 3) explains:

> The Office of the High Representative (OHR) confronted the challenge of breaking the political control of the Bosnian media by trying to democratize it in the hope of democratizing Bosnia and by looking at how Western liberal media systems were constructed and regulated …

Three years after the Dayton Agreement was signed, the Madrid Peace Implementation Council declaration of 1998 (PIC Madrid Declaration 1998) articulated the media reform objective for Bosnia as, 'furthering media reform, to promote a free exchange of ideas and opinion'. This was to be accomplished in part by establishing a collaborative public broadcasting corporation that respected the diverse cultural backgrounds across the country.

Haselock (2010, p. 3) indicated that media reform in Bosnia would have three primary objectives: 'the removal of direct party political control from all media'; 'the establishment of a legal and regulatory framework to maintain media standards consistent with Western democratic best practices, ensure media freedom, and raise journalistic and broadcast standards'; and

the 'adoption and full implementation of Western public service standards [by] all public broadcasters'.

The OHR was ready to impose these principles by military force, if necessary, as demonstrated in 1997 in the case of Srpska Radio Televizija Pale, which was at the time controlled by the Bosnian Serb leader Radovan Karadzic (Haselock 2010). The station was seen as fomenting discord and engendering opposition to the imperatives of the Dayton Accord and NATO. Due to its monopoly over the airwaves (no air space was provided to anti-Karadzic parties), the station was also deemed a threat to the planned 'fair' and 'democratic' elections (Haselock 2010). The OHR swiftly persuaded NATO to take down the station's transmission towers and a new cross-entity public broadcasting service, the Open Broadcast Network (OBN), was developed in its stead (Haselock 2010). The OBN came under heavy criticism for being top-heavy with international consultants and for failing to seek out local consultation or representation (Haselock 2010).

In Kosovo in 1999, through UN Security Council Resolution 1224 (UNSCR 1999), the United Nations Interim Administration Mission in Kosovo (UNMIK) was established with Bernard Kouchner as the Special Representative to the Secretary General (SRSG) (Haselock

2010). At the time, the international community was increasingly concerned about the threat of reprisal against Kosovar Albanians by the Kosovo Serb population, and vice-versa. In May 2000, a Serb employee of UNMIK was found murdered after an Albanian newspaper, Dita, published his photograph and personal details in an article accusing him of crimes against the Albanian community (Haselock 2010). The next month, the SRSG shut down the newspaper for eight days on charges of inciting violence, to the consternation of the local press. There were no grounds for appeal.

The Kosovo Journalist's Association, concerned about the 'dangerous precedent' of what it saw as an 'arbitrary decision' limiting the freedom of the press, asked the UN to reconsider its decision (Haselock 2010, p. 5). Haselock (2010, p. 6) agrees that the process by which the decision was made was troubling:

> A normative principle for the regulation of any industry, if it is to be effective and have the cooperation of those who will be affected by it, is to apply a system of due process that is understood by the community.

Similar interventions had been imposed previously in other contexts (in Japan after World War II, and more recently in

Timor, and the Balkans), and were imposed by the Bremer

Administration to similar effect in Occupation Iraq in 2003. For

example, lack of due process was reflected in the way the

Coalition Provisional Authority (CPA) administrated

reconstruction, legislation and development in Iraq. This is

particularly apparent in CPA Order 14, in which grave incitement

to violence could result in the immediate closing of the

offending media outlet. CPA Order 14 has been inherited by

Iraq's Communication and Media Commission, which has at times

applied it in ways controversial enough to attract the attention

of the international media watchdog community.

The role and behaviour of local media

Overall, the international community views a free press as one

of the main achievements of the new Balkan democracies. However,

there are experts who recognize the news media's darker side.

Remzi Lami from the Albanian Media Institute (cited in James

2004, p. 79) stated:

>   The media may have been driving democratization, but they
>
>   have also been an instrument in the hands of nationalist

forces which brought hatred and bloodshed to the region at the end of the twentieth century.

In Serbia, the media tycoons, whose closeness to the new democratic government boosted their growth, were just as close to the previous regime. In 2004, leading media mogul Bogoljub Karic and influential banker Ljubomir Mihajlovic had several key media outlets under their control. Mihajlovic controlled virtually all of the domestic shares in the country's most influential media company, Politika. Karic owned one of the country's two mobile phone companies and the leading Internet provider (James 2004). Zeljko Mitrovic was the owner of Serbia's Pink TV, which broadcast nationally without a license. Frequencies were to have been allocated by a neutral broadcasting council, but the process of nominating council members was carried out in such a way as to breach the government's guidelines for transparency (James 2004).

A similar occurrence happened in Iraq in 2008, when the new Board of Commissioners (BOC) for Iraq's Communications and Media Commission (CMC) was appointed by executive order, casting doubt on the new BOC's neutrality. The draft law for the operational structure and legislated mandate of the CMC, currently under parliamentary review, contains provisions regarding BOC

appointments. Unfortunately, these provisions leave the door open for similar government interference and lack of transparency.

In the Balkans, as elsewhere around the world, journalists have fought for regulation of their field, arguing that such policies and standards are essential for their work to have local and international legitimacy. However, James (2004, p. 79) notes that 'it would seem that this is not enough to prevent the abuse of power, especially in post-conflict or transitional societies'. This relates to the issue of inadequate professionalism; as the Belgrade Media Center (cited in James 2004, p. 78) noted, some journalists lacked 'professionalism and were committing breaches of ethical principles either because they were unaware, or because they assumed this behavior was the status quo'.

The amount of money spent by international donors in media development is breathtaking. According to Gillette (2006, p. 1):

> Since 1990, international donors have spent at least [US] $600 million and probably much more on media training and development in emerging democracies, mostly in Central and

Eastern Europe and the former Soviet Union, and more
recently in Afghanistan and the Middle East.

Gillette (2006, p. 1) defines media development as 'not only
nurturing independent, professional journalists but also
building a legal and institutional environment to protect, to
professionalize and, in carefully limited ways, to regulate
media' — noting that the latter point has been inadequately
addressed in some of the instances where regulation is most
needed.

A March 2011 report from the Center for International Media
Assistance (CIMA) estimated that, 'the US government alone has
spent more than half a billion dollars on media development [in
Iraq] since 2003' (cited in Ricchiardi 2011, p. 4).

Based on his professional experience in Iraq and Afghanistan,
Haselock proposes that effective media development relies not
only on sufficient financial investments, but also on community
consultation and a sense of local 'ownership', a notion that the
international development community seems to have failed to
grasp. It is this ownership that is lacking in many
international media development initiatives. Local ownership is
possible only when all planners and implementers understand and

appreciate 'the context, culture and history of a society and situation' — an understanding that 'requires an approach to communications that places as much emphasis on listening to the local population as transmitting information to it' (Haselock 2010, p. 1).

The remaining chapters of this Exegesis include discussions of the historical context influencing Iraq's current media environment, proposed or existing Iraqi media legislation, and recommendations for the continued development of an enabling environment for media in contemporary Iraq.

Chapter 4

History of the media sector in contemporary Iraq

One of the oldest human cultures, Iraq was the 'cradle of civilization'. It is where the written word first appeared, in the ancient Sumerian city of Uruk, five thousand years ago. Here the first collection of laws, the Code of Hammurabi, was painstakingly carved into stone and clay tablets about 1772 BC. It is claimed that one of the Seven Wonders of the Ancient World, the Hanging Gardens of Babylon, was situated in Iraq.

Fast-forward to the post-2003 reconstruction, a time when many hoped and believed Iraq was poised 'to take its rightful place as a world leader, respected and admired not only for its history and culture, but for its embrace of universally accepted democratic principles' (Framework for Change 2003).

Working towards a free Iraqi press: 2003-2011

By 2003, the citizens of Iraq had lived through more than three decades of war, repression, human rights abuses and poverty. The plan for the reconstruction and development of Iraq's news media was rooted in a vision of a free and united Iraq where the government served the people and was accountable to them. In

this context, the citizens of Iraq would enjoy peace, justice and the rule of law in accordance with the principles of democracy, international law, tolerance and human rights.

This vision, it seemed, could not be realized without free and independent media that reflected the society accurately and without bias and created the space to generate debate.

UNESCO (2008, p. 14) reminds us that a free press must be simultaneously independent and pluralistic; specifically, it must be:

> … independent of governmental, political or economic control or of control of materials essential for its production and dissemination, and pluralistic through the absence of media monopolies and the existence of the greatest number of print, television, radio, and now, new media, to reflect the widest possible range of opinion within that community.

Media independence should always be scrutinized. Insofar as it seeks the respect afforded to professional media, independent news media should also strive to adhere to a set of journalistic standards and principles of good practice that are applicable to

the specific challenges faced by the profession. Historically and currently, this subset of media ethics is widely known to journalists as their professional code of ethics or code of practice. These codes form the foundation of the canons of journalism, and they are applied by media companies, newsrooms, editors and journalists anywhere in the world where freedom of the press is recognized. Variations of such codes exist in different countries and contexts, but there is nearly universal acceptance of the notion that professional journalism should endeavor to provide audiences with information that is accurate and impartial.

Representatives of the professional media in Iraq will argue that they are working to professional codes within their newsrooms. Indeed, since 2010 the United States Institute of Peace (USIP) and UNESCO have worked with Iraqi media to develop user guidelines to help media professionals avoid inciting violence. Iraqi journalists must also abide by the CMC's Code for Media During Elections, which was developed and distributed prior to the 7 March 2010 Council of Representative elections.

These examples, and others, demonstrate that media in Iraq is not completely unregulated. However, there are weaknesses in the institutions responsible for media oversight. Further, there is

a move by the Government of Iraq (GOI) to over-regulate and tightly control the media through various pieces of legislation, thus directly impeding FOE and FOI, as described in the next chapter.

At this juncture, it is important to understand the history of Iraq's complicated media landscape as it developed after the 2003 occupation. Prior to the occupation, the generation of 'news' was largely controlled by the Ministry of Information as state-run media. After the fall of Saddam Hussein's regime in 2003, Ricchiardi (2011, p. 4) notes, Iraqi media underwent a transformation on two fronts:

> One was driven by the Americans who poured in half a billion dollars by most estimates, and the other by the Iraqis themselves driven to a desire for information after having been cut off from the free marketplace of news and ideas.

As in Bosnia and Kosovo, virtually overnight, Iraq's media landscape blossomed into one of the most diverse and unfettered press environments in the Middle East. Privately owned news outlets grew from zero to more than two hundred and, despite formidable chaos over press freedom, Iraqi citizens suddenly had

access to a varied menu of information (Ricchiardi 2011).
Satellite dishes, previously banned under the Ba'athists,
suddenly appeared everywhere. It has been alluded to that the
coalition of the willing helped supply satellite receivers and
certainly helped to unblock un-militarized broadcast channels.

Media regulation, impunity and attacks on journalists:
documented reports

Despite the seeming resurgence of free press and media
proliferation, Reporters Without Borders (2003) issued a report
examining the state of the media in Iraq immediately following
the US invasion. Like other nations that suddenly enjoy
unprecedented freedom after the overthrow of a repressive
regime, Iraq needed to create the mechanisms to establish and
sustain its media. According to the report, the country's
instability made press freedom very precarious:

> Daily lawlessness and instability, the large amount of
> weaponry in people's hands, squabbles between political
> groups and the US and British occupation mean complete
> freedom is not guaranteed for journalists who are
> practicing self-censorship. Criticism and different
> opinions can now be voiced, however. The future of the

> Iraqi media is largely in the hands of the US-British
> Coalition Provisional Authority (CPA) and, to some extent,
> the Iraqi Transitional Governing Council appointed on 13
> July.

Iraq's media sector has been severely affected by the targeting of journalists in abductions, killings, and acts of intimidation; imprisonment and prosecution of journalists doing their job; and restrictions on press activities and FOI. The following chapters unpack the fragile legislative framework that exists in Iraq to protect media freedom and fight impunity; they also explain that although legislation may exist at a national level and Iraq may have ratified international conventions protecting freedom of expression, these will do little to protect media professionals (and their work) on the ground if not implemented faithfully at the executive, legislative and judicial levels.

A record number of media professionals, the majority of them Iraqis, were killed between 2003 and 2008, making it the world's most dangerous place for a journalist at that time. According to the Journalistic Freedoms Observatory (JFO), an Iraqi-based media watchdog, the incidence of violence against working media professionals in Iraq in 2011 doubled (JFO 2011) over the

previous year. Armed groups and unknown assailants killed at least five journalists and one media worker, according to the Committee to Protect Journalists (CPJ 2012). The fact that violent attacks against journalists are worsening is acknowledged in the United Nations General Assembly Human Rights Council's unanimous passage, on 21 September 2012, of resolution A/HRC/21/L6, which was intended to curb such attacks (UNGA 2012).

Despite the glum picture that this paints of media freedom in Iraq, and despite the fact that Iraq is still unstable and remains locked in sectarian disunity, there is tremendous room for improvement — though the road is long, and will remain fraught with obstacles. As Awad and Eaton (2013, p. 4) note, 'The seismic shift in attitudes that the Iraqi media (and Iraq's government) were asked to embrace in the reconstruction (of the country) after Saddam Hussein's fall was always likely to take time'.

The role of the Coalition Provisional Authority

The existing legal framework for news media in Iraq is complex. A comprehensive media law, encompassing diverse aspects of media

legislation does not exist, so the media adhere to a variety of bodies and pieces of legislation.

Iraq is still in the process of legislating media-related laws — laws that, on first glance, give the impression that the country is honoring its human rights obligations by drafting laws dedicated to freedom of expression, media regulation, and internet access. However, upon closer analysis and in comparison to international standards, these pieces of legislation are pernicious and littered with unclear provisions that could open the door to state control. These laws must be made more precise, with all provisions clearly defined, to safeguard against intentional or accidental misinterpretation. Another current and related challenge is the increasing controversy within international and local communities regarding the independence of Iraq's judiciary and thus its capacity to rule effectively on such legislation.

Prior to considering individual statutes and their actual or potential impact (which we will do in the next chapter), it is helpful to understand how Iraq's constitution and legal procedures were developed and implemented by the Coalition Provisional Authority (CPA) under Paul Bremer in 2003.

The CPA was designed to provide a transitional government in Iraq. It was established by the US and its allies after the invasion and in accordance with United Nations Security Council Resolution 1483 (UNSCR 2003). The CPA became the executive, legislative, and judicial authority over the Iraqi government (Iraqi Governing Council) from 21 April 2003 until its dissolution on 28 June 2004.

Two of Paul Bremer's primary objectives as head of the CPA were the dismantling of the Iraqi army and the 'de-Ba'athification' of Iraqi society. To these ends, Bremer and the CPA disbanded the army on 23 May 2003, and two months later, on 22 July 2003, formed the Iraqi Governing Council (the IGC). The IGC consisted mostly of expatriate Iraqis who had fled the country due to persecution under Saddam Hussein's regime.

The IGC functioned under the CPA, and was responsible for appointing interim ministers to Iraq's vacant cabinet positions and representatives to the United Nations. These documents remain highly classified, however, the CPA Orders themselves can be found on line. The CPA with its council in internal ministers, also drafted a temporary constitution — the Transitional Administrative Law (TAL). The IGC signed the TAL on 8 March 2004; it came into effect on 28 June 2004, following the

official transfer of power from the CPA to the sovereign Iraqi
Interim Government. The TAL remained the law of the land until
the formation of the new Iraqi government in May 2006, when the
TAL was superseded by the permanent constitution that had been
approved by referendum on 15 October 2005.

A note on media and broadcasting in Iraqi Kurdistan

In order to have a discussion of media regulation in
contemporary Iraq, a special note must be made of Iraqi
Kurdistan. Iraqi Kurdistan is an autonomous state with its own
central budget and Parliament. Both Iraq Central and Kurdistan
must be included in this exegesis; it is a matter of political
protocol. Although Kurdistan has its own autonomous government
separate from the rest of the country – and the Exegesis focuses
on the Iraqi Governorates ruled by the Central Government -
Kurdistan is part of a constitutional federation within Iraq and
therefore part of the country in many ways. Regulation of
Kurdistan's media and broadcasting does not fall under the
regulation of the CMC, answering instead to the authority of the
Ministry of Culture and Youth and the Kurdish Regional
Government (KRG), which regulates and manages the broadcast
spectrum.

In 2008, the National Assembly of Kurdistan Iraq adopted the
Essential Law of Journalism in Kurdistan. This law stipulates
the guidelines for print media in Kurdistan, but does not
include the radio or television sectors. Despite its limited
scope, the law is considered a relatively liberal one. The
International Media Support report (IMS 2011, p. 28) summarizes
the law's basic tenets as follows:

- A press is free, with no censorship, and with guaranteed
  freedom of speech.
- A journalist has the right to access information of
  interest to citizens and the public.
- A journalist has the right to keep the sources of news and
  information obtained secret, unless the court decides
  otherwise.
- Defamation is punished by fines, and not by detention.

Outwardly, media legislation in the KRG seems less restrictive
and more supportive of FOE, but in its application by
authorities, this is certainly not the case. On 17 February
2011, in the Kurdistan city of Sulaimaniya, anti-KRG
demonstrations marked the beginning of the Arab Spring for Iraq
(Kurd Net 2011). Since then, the Metro Center to Defend
Journalists — a watchdog organization and subsidiary arm of

Iraq's Journalism Freedom Observatory (JFO) — has documented
approximately forty violations against journalists, including
gunshot injuries, arrests and harassment. In 2011, after 62 days
of protest, the Governorate of Sulaimaniya deployed forces in
the city to prevent further demonstrations, and reportedly
occupied the city center. The Security Committee of Sulaimaniya
had placed a ban on all forms of protest as of 18 April 2011.
Thus, despite the KRG's more liberally *perceived* media
legislation, in 2011 it was, in fact, one of the worst regions
in the country in terms of violent attacks against journalists.

The lesson we learn from the Kurdistan case is that, as in
greater Iraq, it is not enough to ratify international treaties
creating dedicated legislation that enables independent media;
the laws must be correctly understood, enacted, and upheld on
the ground.

In 2012, observers (who shall remain anonymous for fear of
reprisal) representing national and international human rights
watchdog groups including the United Nations have noted with
concern that Iraq is drafting and enacting legislation to
replace many of the CPA orders with laws that are more
repressive and less closely aligned with Iraq's constitution. In
the case of media-related legislation, the results have been

problematic: the legislation put forth seems vague and thus dangerously open to interpretation. Although, from external observation, Kurdistan appears to have more progressive legal reforms on the books, International experts have warned that in some instances, the legislation could be seen to function as mechanisms of government control, as we will see in the examination of specific legislation in the next chapter.

The literature on the subject of media freedom in Iraq is limited and is authored and published internally and externally by those human rights watchdog groups with a physical presence on the ground in Iraq. Much of the documentation provided in our discussion is the result of analysis of publically posted legislation as it appears on the Iraq Council of Representatives legislative calendar. It must be understood outright that this calendar is not updated regularly, and only in Arabic. Content will shift overnight to focus on laws taking greater precedence in current, or, to 'fast track' parliamentary proceedings. Laws have been translated and analyzed against the Constitution and international human rights principles as they relate to freedom of expression. Such studies have been developed in consultation with local media freedom NGOs, media workers, Parliamentarians, and lawyers, as well as international experts and international human rights bodies (cited in this thesis). Given the relatively

nascent (10 years, as of 2013) analysis of freedom of press in post-conflict Iraq, all major studies and their outcomes – as made publically available - within this domain have been referenced in the Bibliography of this work, and any information that has been drawn from the private domain has been credited anonymously.

Chapter 5

The regulatory framework for media in Iraq

Legal and policy frameworks relating to the media and press freedoms are a matter of both form and substance. A country may have good laws pertaining to FOE or FOI, but if these laws are not properly implemented or enforced, they do little to support and uphold a healthy, independent media sector. UNESCO (2010, p. 15) notes: '[news media's] function may be hampered by a culture of secrecy and corruption, institutional resistance, or a lack of technical and institutional capacity in the public administration'. This can certainly be said of Iraq.

Respect for human rights and FOE in Iraq improved after the fall of Saddam Hussein. Iraq began to see itself as a leader in the region in regard to human rights and democracy. However, recent times have seen a dangerous trend in which the legal framework (within which these rights would be outlined and enjoyed) are limited, unclear, and manipulated by an increasingly interventionist government.

A 2011 report from the Centre for Law and Democracy (CLD), written by Toby Mendel and commissioned by IREX (an international NGO specializing in media development),

scrutinized five media-related draft laws for their degree of adherence to international standards in regard to FOE. The report concluded that new media-related legislation does not measure up to international standards in two key ways. First, the government has the power 'to either refuse or accept, or obstruct the exercise of' journalistic freedoms and, second, the government has 'failed to honor the internally accepted standard that those bodies regulating media rights must be free to operate without government interference' (CLD 2011a, p. 16). The same report (p. 17) also notes that without complete independence from government control, oversight bodies 'may be pressured into exercising their powers in a way that undermines rather than promotes these [media's] rights'.

Many issues journalists in Iraq currently face fall under the international human rights mandate. Iraq is a signatory to the International Covenant on Civil and Political Rights (ICCPR; UNHCHCR 1966). Furthermore Iraq has participated for the first time in the Universal Periodic Review (UPR), a unique process that involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a state-driven process under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their

countries and to fulfill their human rights obligations. The UPR in Iraq is ongoing and in progress, the first phase ending in 2014.

In accordance with the UPR Iraq 2010 report released on 15 March 2010 (UNHR 2010), 'the Government of Iraq has made an active commitment to legislate for Human Rights and Freedom of Expression in harmonization with International Human Rights standards'. The UPR Iraq 2010 report found those international standards to be reflected in Iraq's constitution, as follows:

The Constitution guarantees freedom of expression in all its forms, together with freedom of the press, printing, advertising, information and publication. The right to freedom of opinion and expression is a fundamental component of the democratization process that has been underway since 2003. There are no restrictions on the use of satellite receivers, mobile telephones and the Internet, or on the establishment of broadcasting stations, the publication of newspapers and magazines, and the importation of foreign press materials. Freedom of the press has become a central feature of the country's political culture following a long period of isolation from the rest of the world.

The report cites the following examples — provided by the current Iraqi government — as supporting evidence:

- The number of Internet subscribers rose from 4,500 before 2003 to 261,000 as of April 2007.
- More than 180 newspapers were published in the first three months after April 2003, including daily and weekly newspapers and 40 magazines and periodicals produced by government institutions.
- A total of 31 terrestrial and satellite broadcasting stations were operating in Iraq as of September 2007.
- There are 80 broadcasting stations operating in the country.
- There are eight independent news agencies in Iraq.
- There are more than 1,100 Iraqi Internet sites.

This major expansion in information and in freedom of opinion and expression is an indicator of the ongoing democratization - process and the drive towards the safeguarding of human rights. It must be noted that Internet sites outside of the IZ did not benefit from high resolution broadband. Many Iraqi took recourse in using smart phones in order to better facilitate their access to one another and to the outside world. When press freedom

comes under fire, human rights are simultaneously threatened. Thus, press freedom is an essential factor to the functioning of a healthy democracy. This notion is commonly held by human rights instruments throughout the world. The linkages between freedom of expression and information, democracy building and human rights are widely argued, as exemplified by the following quote from USAID on the occasion of World Press Freedom Day (USAID 2013):

> Free and open media systems give voice to citizens, truth-test candidates and political parties during elections, inform policy debates in legislatures, investigate corruption, hold public officials accountable, enable democratic governance and facilitate more effective development.

The positive impact of independent media on governance has been measured against specific World Bank indicators such as voice and accountability, political stability and the absence of violence, the quality of regulation, government effectiveness, rule of law, and control of corruption (UNESCO 2008), all of which are essential qualities of a healthy and robust democratic state.

The problem of inadequate and/or ill-advised legislation

Although Iraq has passed various pieces of legislation — up to and including its Constitution --many of these new laws are pernicious, open to (mis)interpretation, and can be read either as supporting human rights or clandestinely acting as an arm of state control over civil society and the media. Key pieces of legislation affecting journalists and the media include the following articles of the Iraqi Constitution:

- Article 38 guarantees freedom of expression through all means; freedom of press, printing, advertisement, media and publication, and the freedom of assembly and peaceful demonstration. Article 38 adds that these freedoms should not violate public order and morality.
- Article 39 protects the right to freedom of association.
- Article 40 guarantees the right of communication and forms of correspondence.
- Article 42 guarantees the right to freedom of opinion.
- Article 44 states: 'There is no restriction on practicing any of the rights and freedoms stated in this Constitution unless by law or according to a law on condition that the restriction would not harm the essence of the rights of freedom'.

These rights all align with Article 19 of the Universal Declaration of Human Rights (UDHR) adopted in 1948, which states that all human beings should have the right to express their opinions and exchange ideas freely and without interference or repercussions in any media, anywhere in the world. In 1966, Article 19 of the ICCPR reasserted the importance of this same right.

In the Arab world, UNESCO's (January 1996) Declaration of the Seminar on Promoting Independent and Pluralistic Arab Media, more commonly known as the Declaration of Sana'a, outlines the basic FOE principles that must be fulfilled in order to establish a free and pluralistic media. The Declaration was adopted at UNESCO's General Conference in November 1997, and endorsed by all Arab states. The Declaration of Sana'a asserted that a free press is essential to a democratic society. It stressed the need for state broadcasters to be editorially independent from the government, and for journalists to run media outlets themselves, in order to promote plurality.

Having FOE and FOI laws 'on the books' is a good start, but as we have already seen, those laws need to be upheld and enforced consistently and impartially in order for them to serve their

best purpose. This is not the legal environment we find in Iraq today. In fact, the basis of law in Iraq is still the 1969 Penal Code, a criminal law inherited from the Saddam Hussein era (Iraq Penal Code 1969). Under the 1969 Penal Code, speech that incites violence or public disorder can be punished — with life imprisonment. Paragraph 226 concerns anyone who 'publicly insults' government institutions or officials, and allows such people to be imprisoned for up to seven years. Paragraphs 433 and 434 address defamation and insult, either one of which can be punished by detention lasting up to one year. In paragraph 433, truth appears to be a defense to any prosecution of this type, but its definition is only loosely defined. Lawsuits against journalists and media are a daily practice, and so is impunity when it comes to violations of journalists' safety at all levels, up to and including murder.

Similarly, the articles of the Constitution noted earlier in this section — the ones that sound so full of promise — are littered with potholes:

- Article 38 guarantees freedom of expression so long as it does not violate public order and morality, but the article fails to define what 'violating public order and morality' means.

- Article 39 protects the right to freedom of association, but the incumbent Government routinely attacks civilians protesting against Maliki's rule. Moreover, the Freedom of Expression, Assembly and Peaceful Protest draft law — as it exists in its current form — would allow the government to track protest organizers and participants and who associates with whom, and for what purposes; and to threaten and/or take swift retaliatory action against anyone deemed 'suspicious'. This could also be interpreted as anyone acting against the interests of the government. This will be discussed in further detail in the following sections.

- Article 40 guarantees the right of communication and forms of correspondence, but the draft law on Media and Telecommunications (Internet) is excessively restrictive and the fines it allows are severe, and it does not comply with international norms or standards of best practice.

- Article 42 guarantees the right to freedom of opinion, but 'freedom of opinion' is punishable severely if it is seen to 'insult' the State.

- Article 44 states that the rights granted by the Constitution should not be restricted unless such restriction would not harm the essence of the rights of freedom. This is problematically vague and allows too-broad

restrictions on FOE and other rights. Under international

law, restrictions are required to be necessary to protect

one of a limited list of specific interests such as defined

within internationally recognized principles of 'public

harm' tests.

In addition to outdated laws enacted under Saddam Hussein, the
laws put in place by the CPA can also be used to restrict
freedom of expression. According to Haselock (2010),

In 2003, due to security concerns of the coalition forces,

the CPA anti-incitement order, CPA Order 14 [Prohibited

Media Activity], was enacted prior to the arrival of the

Media Development Advisory Team (MDAT), and meant that the

administrator, Paul Bremer, could close down media outlets

by fiat and without due process.

In fact, CPA Order 14 has been misused to shut down media
houses, giving the designated authority the power to enforce the
order and impose sanctions directly against the media. CPA Order
14 prohibits media organizations from distributing (through
broadcast, publication, reprinting, or syndicating) any material
that incites violence against any individual or group; incites
civil disorder, rioting, or property damage; incites violence

against the CPA; advocates changes to Iraq's borders by violent means; or that advocates for the return of the Ba'ath Party to power or makes statements on behalf of the Ba'ath Party.

The CMC, which has been steadily losing its authority to the Iraqi government, used CPA Order 14 to close the popular satellite channel Al Baghdadiya on 1 November 2010, claiming that it had aided terrorists when the Assyrian Christian church of Sayidat al-Najat (Our Lady of Salvation) was stormed by members of Islamic State of Iraq, a local Al Qaeda branch. This took place as an estimated eighty people attended mass. While holding the worshippers hostage, the militants spoke with Al Baghdadiya via telephone and voiced their demands on the air. Two of the station's employees were charged with inciting violence and arrested under the anti-terrorism law.

An alternative viewpoint has been offered regarding the closure of Al Baghdadiya; *New York Times* reporters John Leland and Khalid D. Ali (2010) informed their readers that the channel also hosted a popular morning show where angry Iraqis could air their frustrations and grievances with the government. Al Baghdadiya had been targeted by terrorists previously, and its studios had been bombed earlier that year. In Iraq, it seems,

media outlets such as Al Baghdadiya must reckon with threats both from terrorists and the authorities.

The Communications and Media Commission

Iraq's independent media regulator, the Communications and Media Commission (CMC), was established in June 2004. It is currently operating under the legal provisions of Coalition Provisional Authority Order 65, until superseding communications legislation is passed. The CMC has exclusive authority to license and regulate telecommunications, broadcasting and information technology services in Iraq.

The CMC is an independent regulator and, as such, is not tied to any government administration; thus reducing the likelihood of political interference in broadcast media and communications, while they are overseen by the CMC. The CMC and other independent commissions, under Article 103, paragraphs 1 and 2 of the Iraqi Constitution, are considered independent administratively and financially, but are to be ruled by law and seen as existing within the framework of the Iraqi Parliament (Iraqi Constitution). An example is the formation of Parliamentary Committees to appoint board members in a

transparent manner and in a way that is representative of the political and ethnic groups in Iraq.

Although it was intended to operate as an independent and converged regulator, the CMC's authority has weakened due to a lack of institutional stability and become less independent over time as governmental committees exercised control. In 2008, the current Board of Commissioners was appointed by executive order, creating a power vacuum under a weakened CEO (Albany Associates 2009). In 2010, after eighteen months with no leadership, a new board and CEO were appointed. During the eighteen-month interim, all substantive licensing, regulation, and policy decisions were postponed until the new senior management structure was in place. This brought the CMC's day-to-day regulatory activities to a virtual standstill, allowing an unregulated communications and media sector to expand unchecked. For example, until a few years ago, the CMC provided broadcast licenses to practically any media outlet that wanted to register, as there were minimal criteria for licensing. As a result, the airwaves rapidly became congested. Even after a transition period for the newly installed CMC management, the CMC has not yet regained control of broadcasting licenses and is still operating under CPA Order 65.

There has been a significant legislative push by the Iraqi government to control the independent commissions and place them under one of the three governmental branches (legislative, executive, or judicial). At the beginning of 2011, the CMC was weakened further when, after being petitioned by the incumbent government, the Supreme Court made a ruling that threatened to place the control of all independent commissions under executive authority. In response to the controversial Supreme Court ruling, Sabah Saadi, an independent MP and former head of Iraq's anti-corruption watchdog group, the Integrity Commission, stated: 'the Iraqi people should publicly demonstrate against this if the decision is pushed through. Putting all the powers in one pair of hands will bring us another regime like Saddam Hussein's' (cited in Latif & Sands 2011). The CMC's role as an independent regulator is clearly under threat.

In October 2011, the CMC suffered another leadership vacuum when CEO Dr. Burhan Shawi resigned. Since that time, the CMC has been run by an acting head nominated from the CMC's Board of Commissioners. This is an unfortunate example of how even a fairly good law (CPA Order 65), must be supported by best practices concerning the recruitment and retention of top-level managers.

Draft Law on Media and Telecommunications

The COR is currently considering legislation to regulate the CMC under Iraqi law; this draft Law on Media and Telecommunications is known more commonly as the CMC Draft Law. The legislation currently under consideration would have a detrimental effect on the independence of the CMC and its ability to carry out its core mandate. Based on information from the CMC, it appears the COR is either unaware of, or unconcerned with, the CMC's function and importance as an independent regulatory body and its historic position in the region. The incumbent government is making a push to transfer the CMC's authority over media regulation to the Iraqi Media Network (IMN), a state-owned public broadcaster. The government is also making a push to transfer the CMC's authority over telecommunications (Iraq's largest revenue generator after oil) to the Ministry of Communication.

To some degree, the problems with the new CMC are due to the delay in forming the new Iraqi government. The CMC has received some assistance on telecommunications issues, and elections assistance from United Nations agencies, but currently there is no mechanism for quick assistance to the new management of the

CMC on such matters as understanding and implementing its role as the licensor and regulator of broadcasting in Iraq.

The CMC faced a Parliamentary hearing in November 2012, and as it stands, the CMC draft law (replacing CPA Order 65) is on hold. The IMN, which still operates under CPA Order 66, is not considered an independent state broadcaster, as it was set up to be; instead, it is viewed as a government broadcaster. The President of the IMN has the authority to determine the articles, rules, and instruments by which it operates. In light of this, the CMC is loath to move forward in its formal operationalization under Iraqi law until the issue of IMN's independence is resolved.

There is a pressing need to raise awareness and understanding among all stakeholders about the importance of the CMC as an independent and converged regulator. In addition, key policymakers and stakeholders need assistance in drafting legislation regarding the CMC's authority that is aligned with international best practices. In particularly urgent need of clarification are:

- the roles of government, especially the Ministry of Communications

- the roles of the Iraqi Media Network and the CMC regarding broadcast policy and regulation

- the CMC's role in reference to its original mandate (as outlined in CPA Order 65) and the consolidation of the CMCs responsibilities, and

- the CMC's status as an independent regulatory body within the current legislative, legal, and political landscape of Iraq in 2011 and beyond.

Not only is legislation perceptibly threatened by the possibility of government control of the CMC's work, even the oversight bodies in charge of monitoring regulation and human rights have been targeted in efforts to undermine their independence.

According to the Centre for Law and Democracy (CLD 2011a, pp. 18-19), 'the draft CMC law currently before the parliament illustrates the failure to ensure that regulatory bodies are sufficiently insulated from government control'. The key oversight body established within this draft law is the Board of Trustees of the CMC. Article 11 of the draft law provides for nine full-time board members to be nominated by the cabinet and appointed by the parliament.

This complete lack of consultation with civil society or media stakeholders in the exclusive nomination process is problematic. Best practice would dictate that board members be appointed through a transparent process or voted in by the public. The CLD (2011, p. 19) warns that this 'poses a direct threat of interference, when appointments should either be made directly by the parliament or through some other means that ensures greater transparency and involvement from outside actors'.

The need for independent broadcast regulators finds strong support internationally, and this was emphasized in the 2003 Joint Declaration adopted on 18 December 2003 of the (then) three specialized mandates for the protection of freedom of expression: the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression. The OSCE (2003) stated:

> All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members

which is transparent, allows for public input, and is not
controlled by any political party.

According to Article 18 of the draft CMC law, the general
manager or CEO of the CMC is to be recommended by the board and
appointed by parliament, thus opening the door for political
interference.

Other articles of this law are also problematic, as they pose
restrictions on content or contain poorly defined provisions
that give control of censorship to those who may have an
interest in limiting press freedom. For example, the CLD (2011,
p. 14) notes:

Article 2 (5) lists as one of the aims of the law to protect
individuals against defamation, backed up by Article 2 (10),
which aims to promote the effective mechanisms of self-
censorship through Article 34 (1), which designates the CMC
Media Consultants Department for developing the media policy
framework to promote self-censorship.

Disturbingly, as Article 26 of the draft law states:

If the general manager has sufficient reasons to believe that

any of the media broadcasting telecommunications operations

pose a threat to public health or regulations he has the

right to immediately suspend it with the approval of the

board of trustees, until the hearings and complaints

department rapidly reviews this matter.

To which the CLD (2011, p. 14) responds:

It is not the role of media to provide a parallel system for

addressing defamation; this should be done through civil law

and the power of the general manager to suspend a media

outlet, even if for a relatively short amount of time, is

draconian and unnecessary.

Another important element in unpacking the relationship between

media and democracy, and between information and power, in

nascent democracies such as Iraq, lies in the media's ability to

report on elections in an informed and transparent manner. The

Independent High Electoral Commission (Iraq) was first

established in 2004 as the Independent Election Commission of

Iraq (IECI) by CPA Order 92. The IECI was the exclusive

electoral authority in Iraq.

In 2007, the IECI was renamed the IHEC, in accordance with Law 11 (2007) of the Council of Representatives (COR). The IHEC is a professional, independent and neutral commission subject to COR oversight like the CMC. The IHEC has the exclusive authority to announce, implement and deliver regulations, rules and procedures related to referenda and elections. The IHEC is responsible for ensuring that Iraqi citizens can participate in decision-making processes through their elected representatives and for the peaceful delegation of authority.

The authority of the CMC and the IHEC overlaps during election campaigns and vote-counting periods. The CMC regulates media, while the IHEC regulates coverage and activity of candidates and political parties. Thus, coordination is required between both commissions. The media learn how to report on elections and related issues impartially and professionally by using both the CMC and IHEC Code of Conduct for Media During Elections.

In this regard, improvements are needed in the following areas of coordination:

- Enhancing the capacity, knowledge and expertise of the IHEC in media relations and the CMC as it relates to IHEC during electoral periods.

- Promoting dialogue and partnerships between the IHEC, the CMC and the media.
- Raising Iraqi media's awareness of electoral issues and improving its capacity to analyse and report on electoral events, processes and results in a professional and impartial manner.
- Promoting appropriate and equitable public access to information on electoral processes and campaigns.
- Supporting development and implementation of the legal framework relating to media coverage of elections.
- Clarifying distinct roles between the CMC and IHEC, rather than continuing with the current overlap.

While challenges remain, there have been some recent bright spots. Notable among these were the 2009 Provincial Council elections and 2010 Parliamentary Elections, which were remarkable for the low levels of violence that accompanied the vote. According to the Committee to Protect Journalists and the Iraqi Nonviolence Group, there were only a handful of incidents of violence directed against media professionals reporting these elections. Naturally, vigilance is still required, as the media is one of the central institutions of electoral processes and attacks on the media while reporting impartially on elections is an attack on the legitimacy of the process itself.

The 2009 and 2010 elections were also noted for the innovative public outreach campaigns launched by the IHEC — using new media: the IHEC website, blogs, SMS, and YouTube as well as traditional radio, TV, and print media. Commentators agreed that the 2009 and 2010 elections witnessed unprecedented and intensive media debates on critical issues related to minority rights, the Status of Forces Agreement, electoral quotas for women, and other topics. While this can be attributable to many factors — including subsiding levels of violence, increased access to convergent technology and a growing professionalism of the mass media — it is also fair to say that the electoral institutions' increased capacity to engage with each other, and this researcher, meant that citizens were able to access information about the electoral process and those institutions more easily, and factored that information into the decisions they made at the polls.

The CMC played an important role in monitoring election-related content during the critical campaign period as well as in the run-up to and aftermath of the announcement of election results. Dialogue between the CMC and the IHEC was initiated, which ultimately led to the two commissions jointly updating the 2005 Code of Conduct for the Media During Elections. The

transformation of Iraq into a stable democracy must include many more such demonstrations of the country's respect and recognition of the importance of free media, especially during crucial and sensitive periods such as elections.

Draft Journalist Protection Law and the Journalist Rights Law

The United Nations Country Teams' *Iraq Briefing Book* (2011, p. 77) cited 'weak professional associations or understanding of self-regulatory mechanisms or practices' as being a 'key issue' posing 'a threat to the health of an independent Iraqi media sector'. In particular, the report cited 'the support given to the draft Journalist Protection Law (JPL)', which it defined (p. 77) as follows:

> [The draft JPL] is a retrogressive act that could potentially undermine the professionalism and independence of the media sector, and whose introduction by the Iraqi Journalists Syndicate in 2009 led to widespread mobilization among media professionals for a fuller debate on their sector.

The draft JPL had made several appearances over the previous few years, and represented more of a threat to freedom of the press

than a useful piece of legislation addressing the basic protection needs of reporters.

In early to mid-April, 2011, UNESCO was informed that there was pressure within the COR to pass the JPL and that it would be reviewed during a parliamentary conference on 30 April 2011. Toby Mendel (of the Centre for Law and Democracy) and Sejal Parmer (of ARTICLE 19), both experts on international media law, helped draft the recommendations for the JPL. Their comments and analyses were translated into Arabic and presented at the conference.

The translated analyses of the JPL were distributed to media, media advocacy groups, civil society parties, and to members of parliament. Awareness-raising meetings were held in Iraq, sometimes attended by this researcher, and the third reading of the JPL subsequently stalled. Meanwhile, UNESCO continued to raise awareness regarding the inherent dangers of the draft JPL to journalists' independence, if the law was passed without alterations.

Both ARTICLE 19's and the Center for Law and Democracy's (CLD) analyses were highly critical of the draft JPL. UNESCO had officially expressed its concerns about the law to the Iraqi

government, recognizing that the process was fundamentally an Iraqi one, but also one that should be conducted with a full range of opinions and analyses available in order for Parliament to make an informed decision.

The CLD's most serious issue with the proposed legislation was that it would vest the Iraqi Journalists Syndicate with the exclusive power to determine who could be defined as a journalist (CLD 2011c). This would place pressure on journalists to join the Syndicate, contrary to their rights to freedom of expression and association. The CLD argued that the benefits allocated by the JPL should 'accrue to anyone who regularly disseminates information of public interest, regardless of their organizational or institutional affiliations' (CLD 2011c, p. 3).

Another concern was that the law narrowly defines a journalist as someone who works full-time, effectively excluding part-time journalists, bloggers and other individuals involved in disseminating news. Although the law does offer journalists compensation in cases of death or injury, among other benefits, it falls short by narrowly defining who would be covered.

The law suffers from additional ambiguity in stating that media groups must register 'under the law', but does not specify which

law is meant. It goes on to say that journalists have the 'right

to obtain information, news, statements, and statistics … within

the limits of the law', but again fails to indicate any specific

law. The ambiguities here create unnecessary barriers in

accessing information.

The CLD (2011, p. 2) made its conclusion clear:

> Although many of the provisions in the draft law appear to
>
> be for the benefit of journalists, the real underlying
>
> rationale is to safeguard the flow of information to the
>
> public. In other words, if the free flow of information and
>
> ideas from journalists and others who disseminate
>
> information in the public interest is not protected,
>
> everyone will suffer.

Another danger is that the JPL could be used to discriminate

against other journalism associations. The CLD (2011, p. 2) had

another serious concern about the law as drafted:

> [T]he law serves to elevate the Journalists Syndicate to a
>
> mandatory membership body, since no journalist will wish to
>
> be denied the very significant benefits that membership
>
> brings, and [the draft law] is thus a breach of the right

to freedom of association, as well as the right to freedom of expression.

The Syndicate itself has been the source of some controversy, apparently having aligned itself within the last few years to Prime Minister Maliki's government, which has been heavily criticized for being too authoritarian. The CLD proposed that the entire approach in drafting this law be reevaluated, especially regarding the law's rigid strategies for dealing with crimes against journalists, its limits on access to information, and its unduly broad grounds for refusing access.

The JPL was passed on 9 August 2011 as the Journalist Rights Law (JRL). Provisions regarding the definition of 'journalist' as a media professional licensed by the Syndicate were omitted. Nonetheless, the law remains deeply flawed, and media advocacy groups are contesting its constitutional legality.

For example, on 24 January 2012, the Committee to Protect Journalists released a report (CPJ 2012) stating that the JRL falls short of international standards and should be repealed. This was in response to the Iraqi media advocacy group, the Society for Defending Press Freedom, challenging the law in the Federal Supreme Court of Iraq on 23 January 2012, on the grounds

that the law further serves to undermine press freedom above and beyond existing laws in Iraq; these pre-existing laws include the 1968 Publications Law, which allows journalists to be imprisoned for up to seven years for insulting the government, and the 1969 Penal Code, which criminalizes defamation.

Currently, all three laws (the 1968 Publications Law, the 1969 Penal Code, and the JRL) are applicable to journalists in Iraq. Further criticism comes from Mohamed Abdel Dayem, CPJ's Middle East and North Africa program coordinator, who believes the law 'fails to protect journalists' and that '[w]hat the government has done is pile one badly written law on top of at least two older, restrictive laws. The result is a legal nightmare for journalists' (cited in CPJ 2012). Likewise, Oday Hatem, president of the Society for Defending Press Freedom said, 'If Iraq wants to afford journalists rights, they should amend the existing laws, not keep the old ones from Saddam's era and add new ones that provide no added value' (cited in CPJ 2012).

According to the CPJ's January 2012 report, although the law had been in effect for several months, it apparently offered little protection for journalists. On 24 January 2012, the CPJ reported that on Thursday, 19 January 2012:

Ali al-Fayad, a reporter for the daily Al-Zaman in the
Wasit governorate in central Iraq, was released after being
detained for five days without a judicial warrant, an
action that [Article 10 of] the law allegedly prevents …
The journalist was told he was detained for writing about
the termination of police officers' jobs in Wassit.

**Draft Law on Freedom of Expression, Assembly, and Peaceful
Protest**

The Universal Declaration of Human Rights (UDHR), adopted by the
United Nations General Assembly in 1948, protects the rights to
freedom of expression and assembly. The International Covenant
on Civil and Political Rights (ICCPR), a legally binding treaty,
was ratified by Iraq on 25 January 1971. The ICCPR guarantees
freedom of expression in Article 19, and freedom of assembly in
Article 21.

Article 38 of the Iraqi Constitution indicates that:

The state guarantees in a way that does not violate public
order and morality: A. Freedom of expression, through all
means. B. Freedom of press, printing, advertisement, media

and publication. C. Freedom of assembly and peaceful

demonstration. This shall be regulated by law.

In its current form, the Draft Law on Freedom of Expression,

Assembly, and Peaceful Protest imposes undue restrictions on

freedom of assembly, including complex and unreasonable

requirements for prior authorization of assemblies that is

inconsistent with international law. It also includes a number

of broad and vague content restrictions, which go beyond what is

permitted under international law. This law was drafted in order

to replace CPA Order 19, which reads as follows:

> Concerned by the exploitation of demonstrations by persons
>
> intent on inciting violence against the Iraqi people, the
>
> CPA and Coalition Forces, noting that the provisions of the
>
> Third Edition of the 1969 Iraqi Penal Code, Part Two,
>
> Chapter Two, at paragraphs 220 to 222 unreasonably restrict
>
> the right to freedom of expression and the right of
>
> peaceful assembly, determined to remove the unacceptable
>
> restrictions on human rights of the former Iraqi Ba'ath
>
> Party regime, and to promote the freedom of the Iraqi
>
> people to demonstrate in a peaceful and orderly manner.

As noted previously, freedom of expression is guaranteed in Article 19 of the UDHR, and Article 20 (1) states: 'Everyone has the right to freedom of peaceful assembly and association' (UDHR 1948). These rights are also protected in other international and regional human rights instruments, such as the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR), and the African Charter on Human and Peoples' Rights (ACHPR). International law recognizes that freedom of assembly is not absolute, but places clear and strict conditions on the restrictions of these rights.

If restrictions are unclear, as in the case of the Freedom of Expression draft law currently in front of the Iraq Parliament, the CLD (2011, p. 6) warns that they may be interpreted in a way that:

> … gives them different meanings, and which for the authorities may act as an invitation to abuse, or seek to apply them in situations which bear no relation to the law, or to the legitimate aim sought to be protected.

Best practice dictates that 'harm' tests be considered in order to assess the relevance or necessity of imposing restrictions (as clearly outlined in Articles 19 through 22 of the ICCPR),

and that any restrictions must take into consideration several factors: 'laws meet certain criteria of clarity and accessibility to the public; restrictions must not be arbitrary, must be rationally connected to the objective they seek to promote, must impair rights as little as possible, and must be proportionate to a legitimate aim'(CLD 2011a, p. 7).

The current draft law on freedom of expression, assembly, and peaceful demonstration is limited in its very definition of freedom of expression in reference to public morals. Article 8 (4) of the law states:

> It is permitted for the participants of a public assembly
> to raise banners, chant slogans, and give statements to
> media outlets on the condition that they do not disrupt the
> public order or public morals.

Although a ruling by the European Court of Human Rights has no official value in Iraq, the ECHR (cited in CLD 2011a, p. 11) takes issue with this view, stating:

> Freedom of Expression constitutes one of the essential
> foundations of [a democratic society] … [It] is applicable
> not only to information or ideas that are favorably

received … but also to those which offend, shock, or

disturb the State or any other sector of the population.

Not surprisingly, the CLD (2011, p. 10) sides with the European Court of Human Rights on this point:

[R]eference to, and restrictions imposed to safeguard, public morals must go beyond insulting people and should look at what constitutes an overall harm to society, whilst at the same time recognizing that public morals of a society are multifarious in nature affected and contained within a diversity of social and cultural traditions.

In addition to the characteristically troubling lack of clear definitions of terms such as 'public morals', 'public modesty' and 'social values', there are other serious problems with this law. Perhaps the gravest of these is the overt restriction on public protest, which in the law's current form require authorization from special state-run bodies. This is detailed in the first four paragraphs of Article 7 of the Draft Law on Freedom of Expression, Assembly, and Peaceful Protest, which reads as follows:

1. Citizens have the right to hold public assemblies after obtaining prior authorization from the head of the administrative unit at least five (5) days prior to the event. The request shall include the topic of the assembly, its purpose, and its place and time and the names of the organizing committee.

2. The organizing committee mentioned in the (first) item of this article shall consist of a president and at least two other members. If the members of the committee are not identified, the names included in the request form shall be considered the de facto members of the organizing committee. The organizing committee shall be responsible for properly managing the assembly, fulfilling its obligations as prescribed by the law, and protecting the assembly in coordination with the relevant entities.

3. If the head of the administrative unit refuses the request to hold a public assembly, the president of the organizing committee has the right to appeal to the court with the relevant jurisdiction. The court shall adjudicate the matter urgently.

4. Organizers of the assembly or one of the applicants must be informed of the decision of rejection according to the third item of this Article at least twenty four (24) hours

prior to the time of the assembly. The process of informing

shall take place according to the methods specified by law.

Article 7 establishes the right of citizens to have a public assembly and Article 10 (1) gives citizens the right to demonstrate, but they must first obtain authorization via an authorization form from the unspecified 'head of the administrative unit' at least 5 days prior to the planned demonstration. The law does not stipulate who will make up this administrative unit, or how officials will be nominated and appointed to the unit.

The fact that this law requires authorization in advance, for any type of public assembly, contravenes accepted international standards. The Guidelines on Freedom of Peaceful Assembly — commonly referred to as the Venice Commission Guidelines (OSCE/ODIHR 2010) — are respected internationally and state that: 'those wishing to assemble should not be required to obtain permission to do so', and further state that: 'it is not necessary under international human rights law for domestic legislation to require advance notification of an assembly' (cited in CLD 2011a, p. 18). Although the Venice Commission Guidelines exist outside of the Iraqi context, they nonetheless

serve as useful examples of internationally accepted rights standards.

Draft Law on Information Technology Crimes (Internet)

At the time of the Exegesis' original iteration (2012), the Draft Law on Information Technology Crimes (Internet) was of great concern to Iraqi citizen journalists and International Freedom of Expression Rights groups. It was strongly contested by lobbyist groups, and appeals were made to the Iraqi Government to amend the law. In 2013, after significant agitation by Iraqi Civil Society Groups, the draft law was taken off the legislative calendar to be re-drafted at a later date.

As with the draft law for freedom of expression, the provisions in the Information Technology Crimes draft law are ill-defined and lack clarity, thus leaving the door open for misinterpretation and/or intentional manipulation. In addition to this, the penalties for supposed breaches are unusually severe when compared to internationally accepted best practice, such as those described in the Berne Copyright Convention, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and the World Intellectual Property Office (WIPO) Copyright Treaty.

Once again, the question of public good or moral rights is inadequately defined regarding the dissemination of sensitive materials. In Article 22(2)(a), managing or assisting the establishment of a website that promotes or encourages pornography or any programs, information, images or videos that breach 'public modesty and morals' will incur fines of up to 30 million Iraqi dinars (approximately US$25,750 in late 2012) and imprisonment for up to three years (CLD 2011a, p. 10).

In a similar vein, Article 21(3) stipulates that anyone who violates the principles, 'religious, moral, family, or social values', or personal privacy through the use of computers in any way (with no discrimination between e-mailing, blogging, posting on social media sites, etc.) shall be punished by imprisonment for not less than a year and a fine of between 2 million and 5 million Iraqi dinars (US$1,717 to US$4,292 in late 2012).

However, Article 4 of the Information Technology Crimes law imposes some of the most serious penalties of all, a most severe attenuation of journalism. Article 4 states:

A penalty of life imprisonment and a fine of not less than twenty-five million Iraqi dinars and not more than fifty

million Iraqi dinars shall be sentenced on whoever establishes or manages a website with deliberate intent to commit one of the following acts:

1. Implement programs or ideas which are disruptive to public order or promote or facilitate their implementation.

2. Implement terrorist operations under fake names or facilitate communication with members or leaders of terrorist groups.

3. Promote terrorist activities and ideologies or publish information regarding the manufacture, preparation, and implementation of flammable or explosive devices or any tools or materials used in the planning or execution of terrorist acts.

For a stark reminder of the extreme nature of these fines alone — not to mention life imprisonment — it is helpful to note that the average annual income in Iraq is roughly US$3,300.

Addressing terrorism and security, and thus public disorder and incitement to public disorder, are clearly within the rights of states and of great importance to Iraq, but are not clearly defined in this law in the manner expected by international standards. Furthermore, the CLD (2011, p. 12) argues:

[The] prohibited acts in this law exceed what is normally understood as terrorism and inciting public disorder and include undermining the constitution, jeopardizing national interests, sending threatening or insulting messages or fabricated news, promoting terrorist ideologies (as opposed to terrorism per se), and publishing information about the manufacture of tools or materials used in terrorist acts. … Promoting terrorism ideologies is not the same thing as inciting actual terrorism … Finally, publishing information relating to the manufacture of tools used in terrorism is also not legitimate. … Terrorists by and large use tools that are used for many other purposes, some of which are perfectly innocuous, such as computers, and others of which are, if not innocuous, certainly not under a cloak of secrecy, such as guns.

But the Information Technology Crimes draft law has some even more absurd restrictions regarding content. Pursuant to Article 6(2), a penalty of temporary or life imprisonment and a fine of not less than twenty-five million Iraqi dinars and not more than fifty million Iraqi dinars shall be sentenced on whoever uses computers and information networks with deliberate intent to provoke or promote armed disobedience, or threaten to do so,

provoke religious or sectarian strife, disturb public order, or harm the reputation of the country.

As the CLD (2011, p. 15) points out, 'It is widely recognized that States as such do not have reputations, and to impose penalties on their behalf for ruining their reputations is not considered valid', and goes on to argue that in fact states, government bodies, and all types of public authorities should be prohibited from bringing any such defamation claims against citizens.

The same extreme punishments are called for in Article 6(4), which is equally offensive to the notion of free speech. Article 6(4) reads as follows, prohibiting:

> … the broadcasting of false or misleading facts with intent to weaken trust in the electronic financial system or electronic trading and monetary currencies and the likes, or to damage the national economy or the financial trust of the state.

The CLD (2011, p. 15) responds:

> Content such as this is par for the course for any financial

or investigative reporter practicing in a country that supports a free press. Furthermore the crime is not rendered legitimate by the requirement that the news be false … [and] conditioning crimes by reference to falsity does not bring them into conformity with the right to freedom of expression. Even the very best journalists make mistakes, in part due to the need to report in a timely fashion in the public interest, and it is simply not appropriate to criminalize this behavior.

These are only some of the problems within the Information Technology Crimes draft law when analyzed against international best practice. What would be of great significance to Iraq, and what would have a great positive impact on the legislative framework through which FOE can be exercised and regulated in accordance with international best practice, would be the introduction of a Right to Information Act. Furthermore, this would help curb the pre-existing culture of mutual suspicion between public bodies and the media.

Right to Information and Right to Privacy Acts

Legislated access to information should be the right of every Iraqi citizen, and is one of the critical foundations for the

development of a healthy and functioning democracy. The Iraqi constitution ratified in 2005 clearly confirms that the people are the source of authority. Articles 38, 39, 40, 42 and 44 of the Iraqi constitution guarantee freedom of opinion and speech as rights and freedoms without which a democratic society cannot emerge or sustain itself. A principal feature of a functioning legal framework, which supports an independent media sector and the public's right to know, is legislated freedom of information allowing the people access to public documents created in the course of doing the people's business.

There is far more at stake here than a mere journalistic tool: The Iraqi economy will not rest on oil, but on diversification. The World Bank considers access to information a key factor in a strong economy, a consideration for foreign investment, and a bulwark against corruption. Iraq still lacks the legal mechanism that guarantees the citizens' right to have access to information, even when such information concerns the interests of citizens (such as public sector contracts, bids, development, and reconstruction programs). The citizens, in addition to media workers, want access to information, yet in the absence of a binding legal text granting it, they are confronted with bureaucratic procedures and measures that are often subject to personal desires to conceal information under various pretexts

(public ethics, higher interests, national security, and other elastic terms that wrongly restrict the public's right to know).

Corruption consumes a huge share of Iraq's resources, delaying reconstruction projects and slowing development. Transparency International (2013) estimates that US$800 million are transferred out of Iraq every week, and in 2012 Iraq ranked eighth out of 173 countries monitored in the 2012 Corruption Perceptions Index. The same report quotes a former Iraqi minister as saying, 'Corruption today is worse than ever. It's a disaster' (Transparency International 2013). Iraq's economy will never reach its full potential and its people will never have the opportunity to fulfill their aspirations if the government does not actively embrace basic principles such as the right to information and the right to privacy.

It is generally agreed that Right to Information (RTI) and Right to Privacy (RTP) acts are related tools that help individuals make governments accountable. In addition to the right to information as substantiated through international law, the right to privacy is similarly considered as a human right in a modern information society. At an international level, the modern privacy benchmark can be found in the 1948 Universal

Declaration of Human Rights, which specifically protected

territorial and communications privacy. Article 12 states:

> No one should be subjected to arbitrary interference with
> his privacy, family, home or correspondence, nor to attacks
> on his honour or reputation. Everyone has the right to the
> protection of the law against such interferences or
> attacks.

This derives from the right of freedom of expression to seek and

receive information. RTI acts generally refer to the right of

the individual seeking information from public bodies. The right

to information is 'requisite for the very existence of

democracy' (OAS 2003, cited in Banisar 2011, p. 5). 'Democracy

is based on the consent of the citizens, and that consent turns

on the government informing citizens about its activities and

right to participate' (Banisar 2011, p. 5).

RTP laws guarantee that individuals will control the collection

of, access to, and use of personal information about themselves.

This information may be held by governments and private bodies

alike. Definitions of privacy vary in different countries and

are be influenced by past experiences and the collective

cultural understanding. Banisar (2011, p. 8) explains:

The legal right to privacy is covered in nearly every

national constitution and in most human rights treaties, or

may be covered in a nation's criminal and civil rights code

in outlining the restriction of use of personal

information.

Banisar (2011, p. 6) notes, 'Today, nearly 90 countries have

adopted a national law or regulation that sets out specific

rights and duties for facilitating access to information'.

RTI and RTP acts are complementary, not contradictory, yet there

is no simple way of balancing the two. Doing so requires clear

definitions in legislation, guidelines, techniques, and

oversight systems. Banisar (2011, p. 33) says it is critical

'that governments take acute care when drafting the laws to

ensure that access to information and data protection laws have

compatible definitions of personal information' as well as

adopting 'appropriate public interest tests that allow for the

careful balancing of the two rights'. He also notes that the

proper institutional structures need to be created to 'balance

these rights and ensure that data protection and right to

information officials work together even if they represent

different bodies' (Banisar 2011, p. 33).

Efforts have been made to draft an RTI act for Iraq. In December 2010, Iraqi legislators, public officials, civil society and media advocacy groups convened in Beirut for a three-day conference. They were to discuss the current status of RTI legislation in Iraq, and an initial first draft was produced. The workshop was organized by the United Nations Development Programme (UNDP) in collaboration with ARTICLE 19. Participants from Iraq were joined by international experts in the fields of media law and FOI. Discussion topics included current legal protection of the right to information in Iraq, the impact of Iraqi media law on this protection, and the creation of Iraq's draft RTI law. The objectives of this workshop were to promote the adoption of an RTI law in Iraq that meets international standards, highlight the strengths and weaknesses of domestic RTI laws and assess the strengths and weaknesses of the proposed legislation on RTI, share good practices and comparative experiences from other countries, and identify the key implementation issues that will need to be addressed when an RTI law is adopted in Iraq.

While writing this exegesis, I received a private communication by email, stating that although efforts have been made since December 2010 among civil society and media advocacy groups

working on various draft versions of Iraq's RTI law, no

definitive version exists to be presented to the Parliament for

discussion and approval.

Chapter 6

Journalists and journalism in contemporary Iraq:

a state of fundamental insecurity

The exponential increase in Internet use in contemporary Iraq has greatly expanded the ability of individuals, groups, and others to enhance their freedom of expression. It has also ushered in an era of unprecedented opportunity for government surveillance of communications between countless groups and individuals — often at the expense of those individuals' and groups' safety and security.

The decentralization of information brought by the Internet has empowered citizens, including the researcher, to access information, express themselves, and participate in public debate more than ever before. Even in places such as Iraq, where Internet penetration rates are relatively low, but growing exponentially, citizens are using mobile phones to send information via text messages, images, and video clips. By micro-blogging via mobile phones and other Internet-compatible tools, political dissidents living under repressive regimes have been able to tell the outside world exactly what is happening in their countries, in real time.

During the course of the research, I compiled the equivalent of more than 500 pages of communications from Iraqis. The following excerpts (presented as originally written) are representative of the decentralization of information and the newly widespread ability of average people to share their views with relative ease (although not always without repercussions).

The high speed and unrestricted Internet access available to this research, by way of the UNESCO Internet access, meant that all sorts of communiqués, including video, arrived for discourse analysis and citation.

Dear Karin,

Well... sorry to shock you with the bitter reality that nobody does pay attention or even cares for such a dangerous problem... not even the IJS [Iraqi Journalism Syndicate]... nor the union... and that the main reason behind X's assassination was this issue... he was the man in charge in the IJS 3 years ago and he was to be killed when he started to call for more freedom and rights for the Iraqi journalists. generally, unions, leagues, and other institutions work according to the principal of fear, money and benefit... and all this goes in the same trend that the

Iraqi political face is moving since those institutions

work for one purpose ... money.

(e-mail, 10 February 2011)

To Iraqi Government

Please allow us to explain our needs

If you will use violence with us

I think, you will lost you people in the future

Please let's talk about our condition.

Iraqi Citizen.

(Facebook, 23 February 2011)

Yesterday I was beaten by Iraqi security forces, and they

broke my camera, then arrested me, and I stayed until today

at noon when they released me. It was very bad day.

(Facebook, 25 February 2011)

Further to our conversation yesterday regarding attacks on

the press, I spoke to three journalists, including X, X's

correspondent, and a friend. She reported that her driver

was beaten and her photographer roughed up by

police/military. She also relayed a disturbing story where

thugs were allowed to attack with knives a group of peace

activists who were holding a sit-in. I say "allowed" as the

thugs passed through a line of riot police to enter the

area where activists were gathered and no one intervened

during the attack. Several people were stabbed. There is

more on this at:

http://www.hrw.org/en/news/2011/02/25/iraq-open-immediate-

inquiry-protester-deaths.

(e-mail, 28 February 2011)

It has been reported to me that Internet providers are

being shut down in various provinces throughout Iraq in

order to quash the networking and communication concerning

the organization of protests. Can this be in any way

further confirmed?

(e-mail, 4 March 2011)

We are the journalists and media workers who sign below

announce our boycott to the activities of the general

commander and Baghdad operation till they offer their

official apology with clear guarantee to never do again

what had happen in 25 of February 2011 and what did before

that from abusing performances against media covering to

the demonstration and arresting our colleagues who work in

different media fields after that. We call all the sides

who ordered to prevent, arresting and beaten the journalist

to send them to Iraqi judicial because what had happen in 25 of February was against the freedom of opinion, free speech, values of freedom and democracy and that will prepare to produce a new dictatorship.

(e-mail, 6 March 2011)

To the President of Iraq Republic

To the President of Iraqi Parliament

Greeting

we condemns in our name and the name of all the civil society activists and Iraqi bloggers and on behalf of every Iraqi citizen who tries to exercise his the rights within Iraqi constitution, which went out to vote for under the threats of terrorism, we raise your condemnation of the ongoing attacks against demonstrators in tahreer Square and the failure of troops to secure their safety, but on the contrary troops supported the infiltrators who tries to sabotage the demonstrations.

Today one of the founding member of our site and civil society activists and free Iraqi citizen suffered brutal attack and was severely beaten in front of the eyes of army troops without your security forces try to move, is this our new and this democracy that we fight for it?

http://www.iraqistreets.com/archives/3569

(Facebook, 23 April 2011)

Throughout the Arab Spring uprisings, it became evident that the use of new media had become a force to be reckoned with, and that such new mechanisms for sharing information had the power to mobilize people so they might demand civil and human rights: to the extent of toppling governments and holding individuals, even corporations, to account. The wide use of social media, even new journalism practice and the accessibility of 'new media', were at the heart of this mass mobilization throughout the Arab region, and indeed the world. As K. Anderson (2011-2012, p. 74) observed:

> In the Middle East and North Africa, in Spain and Greece and New York, social media and smart phones did not replace face-to-face social bonds and confrontation but helped enable and turbo-charge them, allowing protesters to mobilize more nimbly and communicate with one another in the wider world more effectively than ever before.

The darker side of 'free' communication

Although the enhanced ability to communicate across borders and other boundaries was a welcome development for most citizens, it

came at a particularly high cost to professional journalists. As a result of the demonstrations in Iraq and throughout the region, the international community witnessed countless human rights violations targeted at journalists, bloggers, and civil rights activists who were threatened, beaten, tortured, or even killed; made to sign false confessions; or who had their equipment destroyed or offices ransacked.

This is the darker side of social media: it gives rise to the possibility of authoritarian regimes observing and repressing its use, and punishing its users. The Information Technology Crimes Law, as written in its current draft form, poses a real threat to FOE rights for all Iraqi citizens, especially journalists who make obtaining and sharing information their life's work. Kenneth Roth (2012, p. 15), whose article *Time to abandon the autocrats and embrace rights* opened the 2012 Human Rights Watch Report, believes that 'strong global standards are needed to better protect the freedom of privacy of Internet users'. Under the current draft law, governments could essentially spy on Internet users and then penalize those they define as 'activists' (individuals who have criticized the constitution, for example).

In Iraq, thousands of protestors and activists took to the streets in February 2011 to ask their government to provide better services and end corruption. Protestors were often targeted, either by the destruction of equipment such as cameras and mobile phones or with threats of physical harm. As we will see in the next section, journalists were not spared in these attacks. This harassment was documented in the Human Rights Watch report released on 22 January 2012 (HRW 2012, p. 560):

On February 21 [2011], Iraqi police stood by as dozens of assailants, some wielding knives and clubs, stabbed and beat at least 20 protesters intending to camp in Tahrir Square in Baghdad, the capital. During nationwide demonstrations on February 25, security forces killed at least 12 protesters across the country and injured more than 100. Baghdad security forces beat unarmed journalists and protesters that day, smashing cameras and confiscating memory cards.

Journalists as intentional targets of repression

A second report, released by Reporters Without Borders (2012) several days after the Human Rights Watch report (HRW 2012), documented the perilous nature of reporting in Iraq, noting that

Iraq's rank in the global Press Freedom Index dropped in 2011, after having made remarkable progress in 2009 and 2010. (The rankings in those prior three years included Kurdistan, a region that had for many years offered a refuge for journalists escaping violence in the centre and the south.) This annual report ranks countries in order of how freely and safely journalists are able to practice their profession; in 2011 Iraq fell precipitously from position 130 to position 152.

According to the report (Reporters Without Borders 2012, p. 13):

> [J]ournalists are very often the target of violence by the security forces, whether at demonstrations Tahrir Square in Baghdad, or in Iraqi Kurdistan, a region that had, for many years, offered refuge for journalists.

The organization cited a variety of factors in support of this claim, including increased incidents of the murder of journalists, most notably Hadi Al-Mahdi, who was shot in the head in his house in Karrada on 8 September 2011 — the night before protests against financial and administrative corruption and lack of services in Iraq. Mahdi, a journalist, was also a theatre director and a prominent protest organizer who publicly

criticized the corruption of government and absence of social justice.

The negative reports from Human Rights Watch and Reporters Without Borders were reinforced when the International Crisis Group (ICG 2011) cited the inefficiency, independence, and corruption inherent within the state as major contributors to Iraq's lawlessness and violence. In the days leading up to 25 February 2011, security forces, military officers, and armed guards across the country attempted to intimidate would-be demonstrators by violently attacking (and in one instance killing) participants in 'warm-up' demonstrations, enforcing a 'no-drive' zone though Baghdad, and raiding the office of the Journalistic Freedom Observatory — a non-governmental media advocacy group.

In spite of these violent pre-emptive attacks, the demonstrations that began on 25 February involved thousands of protestors in nearly twenty cities, and journalists shared news of the attacks instantaneously via social media, in spite of the additional risk of doing so. The protestors destroyed a number of government offices and forced the resignation of several public officials. The protestors' actions, reported in real time

by journalists on the ground, caught — and held — the world's attention.

Prime Minister Maliki responded almost immediately, as the ICG (2011, pp. 6-8) explains:

> [On] 27 February, Maliki announced a 100-day deadline on the government to improve service delivery and reduce corruption. When the 100-day deadline passed, the government engaged in a campaign to silence its critics, while it continued to shirk its commitments on governance. Although poorly attended, the weekly demonstrations in Baghdad's Tahrir Square met with a violent response on 10 June when pro-government thugs armed with sticks and knives attacked protesters. This regime-supported action — police stood by idly during the attack — carried the unmistakable threat of continued violence against dissent. Moreover, during a televised session, the council of ministers reported on improvements in service delivery during the previous 100 days, but what was supposed to be an occasion to celebrate success became an airing of frustrations, with ministers shouted down by the prime minister.

The Reporters Without Borders analysis (2012, p. 1) very clearly indicated that those countries that respect human rights and the principles of FOE ranked highest, and that this 'serves as a reminder that media independence can only be maintained in strong democracies, and that democracy needs media freedom'.

On 22 April 2011 at 2:20 pm local time, I received the following e-mail from a protestor and blogger (spelling and punctuation original):

> The details of April 22 attack in Tahreer S.q
>
> It wasn't the first of its kind there was many before in Baghdad and all over Iraq the security forces and the government wants to end the demonstrations in any way (attacking the protesters one of them)… and attacking the journalists to keep them away from saying the truth.
>
> I was as usual posting the news from Tahreer Sq in Baghdad when some young men come to me and ask me about my phone (Galaxy Tab: its new kind of phones make it easy to connect to the social media websites) after that they toke the phone from me and hits me I struggled with them and toke back my phone. But they become more than 9 persons so I run to (Aluma) Garden trying to not making them steal my phone

again...But they are many so I stay down on the ground holding my phone...

So they come around me and start hit me using their hands and foots during that I start bleeding and I almost fainted and while they hitting me I saw the security forces prevented the protesters from helping me and watching the gang while they hitting me. And I couldn't take it so they toke the phone from me ...and then they run away from Tahreer Sq...

We told the security forces that they stole the phone go catch them but they don't care ...they helped them to run away from Tahreer Sq and under the eyes of the commander of the security forces ...and I wasn't the only one they hit friends of mine was trying to help me ...

I went with the NGOs activist [name provided in original] to the officer and we told them what they did (sending security forces wearing civilian clothes between the protesters) is a very bad behavior from the government and your aim is to silence the protesters and his answer was it's not my call.

What happened today gave me one lesson there are no such thing called CHANGE or REFORMING THE REJEM without sacrifices to speak the truth about what is happening in

Iraq ...

Is this the new democracy of the new Iraq ...its democracy full of blood? ...aiming to silence the youth and the press from saying the truth

what I'm saying now I have god to protect me and I will be there in Tahreer Sq next Friday posting the news ..
and to my friends who was really good friends to me thank you so much and be proud for being an Iraqi and be patient and don't go to the ways that the bad people wants you to go to ...don't use the violence languages ....and it will be always peaceful demonstrations in Iraq
And here is a big smile from me to you

UNESCO's global questions regarding social media

In response to the increase of information and communications technology (ICT) use throughout the world, especially as a tool for sharing information in defiance of repressive regimes, as part of World Press Freedom Day 2011 UNESCO posed the following globally applicable questions:

- What are the legal and human rights implications of social networks on freedom of expression, privacy, and personal data protection?
- How can we protect bloggers' and users' right to freedom of expression on the Internet and social networks?
- How can we find applicable standards and legislation and share good practices on privacy protection?
- What is the role of Internet service providers/web hosting companies? Are they neutral bystanders? And how should we treat the conflict of jurisdiction created by the trans-border nature of the web and social networks?
- What effects does the new convergence of media have on the enabling environment for freedom of expression?

While these questions are applicable to citizens of Iraq, or anywhere for that matter, and they assume even greater importance when applied to journalists – professionals are currently taking grave personal risks in order simply to perform their jobs. UNESCO's questions must be addressed in light of journalists as well as citizens if we are to overcome the fundamental insecurity of journalists – and journalism itself – in Iraq today.

Chapter 7

Free media in Iraq: observations and recommendations for overcoming everyday insecurity for journalists

The lack of a free media in Iraq lies at the root of the fundamental everyday insecurity journalists there face. As noted previously (Reporters Without Borders 2012), media independence and a strong democracy are mutually dependent. Today, Iraq has neither. A discourse from communiqués received in this research have revealed: the restraints on journalism, the curtailment of the free flow of information and the diminishing right to exercise freedom of expression are being increased by government and corporations alike.

Critical challenges in brief

Living in Iraq from 2010 through 2012, I witnessed firsthand many of the most critical issues currently threatening independent media in Iraq. The most fundamental of these is the utter lack of security that defines the life of Iraq's journalists. To be a journalist in Iraq today, as we have seen, is to be the target of government surveillance and acts of censorship and repression that range from inconvenient to lethal.

Another aspect of journalists' insecurity stems from the culture of impunity enjoyed by government officials, politicians, and other people in power. With only fledgling journalism laws in place, none of which reflect global best practice, and outdated media regulation practices, journalists in Iraq have virtually none of the protection and support enjoyed by their peers elsewhere in the world. When journalists in Iraq become victims of unjust practices, there is a harrowing shortage of human rights laws in place to keep their circumstances from spiraling downward.

The lack of independence of the media sector is another challenge to journalists' ability to conduct their business in a safe, fair environment. Iraq's media sector suffers from a lack of advertising revenue. Most media houses have no choice but to be bankrolled for financial dependence by political parties or factions. This can also afford them a degree of political and security protection. This financial dependency adversely affects media workers' ability to investigate their own political party, and creates a tendency to report with a pro-party stance. As Albany Associates (2009 p. 6) note:

Journalists face the challenge of reporting on other parties critically. Those journalists face difficulties getting information from politicians who are more inclined to give access to their own media affiliated with their own organizations.

A final, fundamental challenge to journalists' security is the fact that many Iraqi-educated journalists today received a professional education that was inadequate and outdated, both in terms of content and equipment. There is an urgent need for a revised journalism curriculum for higher education and up-to-date equipment for media labs in Iraqi journalism departments in higher education. Such sweeping changes to the curriculum are essential to building journalistic professionalism in Iraq. UNESCO's revised higher education curriculum, created with full stakeholder participation and launched on 3 May 2012, provides a useful jumping-off point.

Opportunities for post-conflict interventions

Despite these significant challenges, there is real reason for hope. Iraq is rich in diversity; it enjoys a multi-party system and the intelligence to foster a dialogue with the media and human rights advocacy groups. The international community and

donors should support such opportunities for positive change, while keeping in mind three key points. The first of these is the suggestion that Iraqi media development adopt a far more consultative approach, with significant stakeholder buy-in, to assist policymakers, parliamentarians, civil society organizations (CSOs), local experts, women and youth by providing support and expertise. Additionally, ingrained, sustainable frameworks will need to work from the bottom up (linking small-town journalists to larger media centers) to create a meaningful sense of local ownership and sustainability. Finally, all development models originating outside of Iraq (as the majority of them will) should be evaluated for their applicability to the Iraqi context rather than applied unilaterally from other post-conflict settings.

Creating self-regulation and an independent media sector

Similarly, a review of current media legislation and human rights policy informs the three fundamental recommendations. First, any new Iraqi media legislation must reflect international best practices. Second, all legislation must be created in a transparent manner. Finally, legislation should support local task forces (such as specially designated independent oversight bodies made up of a youth parliament,

women, members of civil society, and local experts and academics) responsible for acting as oversight bodies, which should function as entities independent of any governmental or political interference or control. Currently, oversight bodies are generally appointed by parliamentary committees in Iraq.

With specific regards to the CMC draft law (CPA Order 65) currently being reviewed by the COR, I strongly recommend (and have worked towards) organizing a parliamentary hearing under the auspices of the United Nations Services and Culture Committees. The key aims of this meeting would be to:

- Raise awareness among key policymakers and stakeholders of the importance of an independent and converged regulator in Iraq.
- Support stakeholders in offering expert advice regarding international best practices of media regulation.
- Support stakeholders in offering expert advice on the limitations and positive outcomes of any suggestions offered at the meeting.
- Build key policymakers' and stakeholders' capacity to draft legislation (regarding the CMC's authority and mandate) aligned with international best practices.

- Encourage stakeholders to clarify the respective roles of the government, the Ministry of Communications (MOC), the Iraq Media Network (IMN), and the CMC regarding broadcast policy and regulation.

- Clarify the CMC's original mandate as outlined in CPA Order 65, with the aim of consolidating the CMCs responsibility and function as an independent regulatory body within Iraq's current legislative, legal, and political landscape.

- Assist stakeholders in nominating and electing a diverse, representative task force of meeting participants to continue discussing media regulation in Iraq and collaborate on drafting regulations as appropriate.

Overcoming the challenges of safety and professional impunity, access to information, and sustainable media growth

As we have seen, there are many challenges to providing a secure professional environment for journalists in Iraq. In spite of what at times seems like an endless list of hurdles to overcome, there are clear steps that can be taken to improve the ability of journalists to practice their profession, and to maximize the potential for media growth in Iraq over time. As a starting point, all journalists and human rights workers would benefit

from improved policy and safety training – and so would members of the Iraqi Bar Association and Judiciary. Likewise, Iraq could build capacity and increase support of journalists by building an educated judiciary regarding civil and political rights, the right to information, and media law. An educated judiciary, in turn, is more likely to support truly independent oversight bodies. Overt media advocacy and support of transparent judicial, executive, and legislative branches of government will also serve to mitigate the culture of suspicion in Iraq.

Sustainable development of the media sector hinges on creating and implementing sustainable business models and creating revenue through private-sector development. This is a sweeping statement regarding investment in business that can only be maximized under the conditions outlined earlier. In brief, it requires stability and security, lack of corruption, transparency and RTI, the promotion of regional and international markets and investors, and the development of an advertising market that supports independence and a healthy media market based on the consumer rather than on sectarian control.

Another facet of creating a sustainable media environment hinges on improved training for journalists. We have already discussed

the need for an updated curriculum in schools of journalism; beyond that, we would be wise to focus on building the investigative-journalism capacity of targeted groups within specific fields of expertise over an extended period of time. Depth of expertise could be developed by training selected media professionals over time, rather than spending resources on ad-hoc training in an ever-changing and unstable media environment. This targeted approach is more cost-effective than striving for advanced training that is simultaneously broad and deep. Similarly, the greatest educational impact will be realized by a focus on improving overall journalistic skills and knowledge through the Training of Trainers (ToT), as they are the gatekeepers who edit the stories and ultimately control the content in the newsroom.

Of course, capacity building extends beyond the newsroom. Training and supporting media advocacy groups and civil society in developing proposals and budgets for donor funding, and advocating with local executive, legal, and judicial branches and the international community is also strongly advised.

Needs assessment is another area in which positive changes could be made. There is a need for consultation with local groups and individuals to assess the actual needs of media practitioners

and the beneficiaries of media, as well as with the faculty at
all media colleges and other sources of higher education in
journalism with the specific goal of outfitting them with up-to-
date technology.

Finally, there are many ways to improve RTI/FOI in Iraq,
including developing and legislating a Right to Information Act
in accordance with international best practice; this would also
help support and protect the nascent culture of investigative
journalism in Iraq. Similarly, the right to information and
freedom of information for civil society and journalists alike
would be supported by the development, legislation, and
implementation of a full, free, public archival and retrieval
system.

Lastly, the efforts of the media, civil society, authorities,
and the international community could be coordinated and
enhanced through the creation of a globally accessible 'gateway'
or 'platform'. This would act as a vehicle for practitioners to
share experiences, tools, mandates, and in particular, lessons
learned.

Developing a sustainable, locally owned Iraqi media that respects diversity and human rights

If Iraq is ever going to fall in line with the international media community, it needs to focus on fostering sustainable media development and a sense of local ownership of media in Iraq, within a context that respects and protects internationally recognized human rights. A fundamental task in this regard will be ensuring that all members of parliament, employees of the Iraqi government, members of the Iraqi Bar Association, and leaders of key institutions (banks, educational organizations, and cultural or community groups) maintain up-to-date, thorough training on media law and civil and human rights as an expected professional requirement. These parties' active participation in these issues should be encouraged in numerous ways, including through specialized task forces charged with monitoring policy and human rights violations. In a similar vein, great care should be taken to ensure existing oversight bodies (the CMC, the Human Rights Commission, and the High Electoral Commission) maintain their independence from the executive or judicial branches of government.

In developing a sustainable free media, special attention should be given to diversity of participants as well as sponsors. To

this end, efforts should be made to increase civil-society

participation, especially of women, youth and other vulnerable

communities, in democratic processes related to media,

elections, human rights, and civil liberties. Diversity of all

types (religious, gender, political, etc.) should also be

enhanced at all levels and in all positions within media

organizations.

One way to address both aspects of diversity would be to

establish and maintain community centers with radio and media

facilities in all Governorates of Iraq, with a special focus on

women, youth, and minority groups. The primary function of these

centers would be to foster dialogue and the sharing of

information regarding elections, social issues, politics and

other critical concerns. These centers should be managed and

maintained by locally based media professionals, CSOs, and

should remain open between elections, to ensure the

sustainability of the centers and emphasize Iraq's support for

regular public discussion of elections and other socio-

politically and culturally 'newsworthy' issues.

In addition, public-sector modernization is needed in creating a

market that supports media self-reliance and independence, and

efforts should be made to build the capacity for media outlet

management, and to support media managers in identifying and securing diverse, sustainable, and independent funding sources.

Developing a code of conduct for media during elections

Our last consideration is essential to protecting the security of journalists across Iraq: the need for an official Code of Conduct for media during and around elections. Ensuring Iraqi elections follow standardized and internationally accepted reporting practices must be a top priority. The Code of Conduct should be developed in coordination with the IHEC, the CMC, and the media itself. It must include a detailed guide on media incitement, stipulate that all candidates shall have equal air time, and provide a clear definition of the 'silence period' during which media stop broadcasting campaign-related news immediately (24 to 48 hours) prior to an election.

All of these efforts will move Iraq immeasurably closer to a sustainable free media in which it can take pride. The tasks outlined above would complement the revisions necessary to strengthen regulatory frameworks relating to Article 19 (FOE and FOI) and pre-existing laws such as the Publication Law and Penal Code.

Beyond initiating amendments to what are often described as 'tyrannical' pre-existing laws, a discerning eye should be thrown over *all* areas of legislation alluding to 'media' or 'freedom of expression' (not merely the more obvious laws, such as those detailed in Chapter 5). An example of this is the draft Terrorism Law, in which one finds large tracts of provisions that hold media in the grip of legislation that targets, suppresses, or restricts the freedom to practice their profession with the independence enjoyed by their colleagues in other countries.

The aforementioned challenges – and certainly others, as well – permeate every aspect of Iraq's current media environment. They must be addressed individually but simultaneously viewed through a holistic lens in order to remove the multilayered threats to the everyday security of journalists working in contemporary Iraq.

Chapter 8

Conclusion

As this Exegesis has made clear, there is room for improvement not only in establishing a free media in Iraq, but first in creating the enabling environment a free and independent media requires. Iraq's current post-conflict environment and its legacy of a totalitarian regime pose undeniable challenges to this process. Among the most pervasive of these are the fundamental insecurities faced by journalists, including but not limited to threats, imprisonment, torture, and death. Furthermore, I hope this Exegesis and the accompanying exhibition have made it clear to the audience that, despite the extreme obstacles to FOE in Iraq, the energy and bravery of those exercising these rights is remarkable.

Although Saddam Hussein is no longer in power, his influence remains evident in the government's attitude toward FOE and FOI laws and practices, and in the notion that woefully inadequate and/or outdated laws are somehow still applicable or useful in contemporary Iraq. For example, as detailed in Chapter 5, a number of conceptually important draft laws have been presented, including the Draft Law on Media and Telecommunications, the

Draft Law on Freedom of Expression, Assembly and Peaceful

Protest, and the Draft Law on Information Technology Crimes.

While the actual content of these draft laws is gravely and

fundamentally flawed, the laws might serve as placeholders (if

nothing else) for improved versions written by teams of better-

qualified people who have a sincere interest in investing in FOE

and FOI in Iraq. These teams would certainly include legal

experts; they would benefit as well from the input of

journalists and journalism scholars from throughout the region

and around the world.

Likewise, with the exponential increase in the use of social

media by everyday citizens and professional journalists alike,

the writing is on the wall: time is quickly running out for

those powerbrokers who would cling to a rapidly disappearing era

in which information only existed in hard copy and was therefore

relatively easy to control. The number of users of cell phones,

text messages, camera phones (still and video), and social media

— and the almost incalculably larger number of individual

communications — will soon render such control of content

virtually impossible, regardless of what archaic, oppressive, or

inadequate laws are on the books. Strategic powerbrokers would

be wise to get out in front and lead this inevitable

technological wave, rather than stand on the beach cursing it until it sweeps them out to sea.

In November of 2012, UNESCO called on all United Nations bodies and international partners to participate in renewed efforts to defend FOE, designating Iraq as one of five focus countries most in need of international intervention. The global implementation strategy for 2013-2014 outlined in the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (UNESCO 2012) calls for a united front in defending FOE as an internationally recognized human right. The strategy outlined in this UN plan stresses the need for local participation and advocacy as well as global, international action in redesigning the oppressive legal framework that threatens the security of journalists and citizens in Iraq today. The only way such a strategy can succeed is through participation and action at all levels of society, from the grassroots community to the institutions that uphold and safeguard the rule of law.

In addition to this approach, additional academic research (likely in the form of a PhD dissertation) would enhance our understanding of the situation I observed over two years on the ground in Iraq. Topics for further research include:

1. An in-depth analysis that reflects in detail the ways in which macro-level issues around the legal framework governing the formation of an independent media in Iraq are directly related to the micro-level issues around the personal safety of journalists in Iraq. This analysis will require additional research in Iraq. It is a worthwhile yet problematic area to analyze – due to issues of access and security – as accurate statistics are not freely available.

2. An in-depth application of CDA in looking at FOE in Iraq and the inter-linked repercussions shaping public discourse and social action between the individual, the social and the institution (legal, political and military) and the impact that this has at both micro and macro-level on civil liberties and security associated with FOE.

3. An in-depth comparative analysis, which reflects in detail the ways in which macro-level issues around the legal framework governing the formation of an independent media in post-conflict situations outside of Iraq, are directly related to the micro-level issues around the personal safety of journalists in those settings.

   a. Examining scenarios with similar socio-political links as Iraq (such as Kosovo) where sectarian media control in conflict and post-conflict settings remains a major challenge to media independence.

b. Widening the analysis to look at global legal

frameworks as they pertain to media law and regulation

and their impact on journalists in situ.

4. An in-depth study of global examples of post-war

reconstruction efforts and interventions as they pertain to

fostering media freedom and measuring their success rates.

5. Finally, taking the research to a global level of analysis

to explore whether the development of press freedom in

post-conflict scenarios has a direct impact or link on

democracy building. This global analysis should take into

account the current international trend of diminishing

access to information and right to privacy in first world

democracies as imposed by both democratically elected

governments and corporations.

Despite the substantive challenges that make Iraqi media

professionals' work both difficult and dangerous, there are

other, very real reasons for hope — reasons that lie in the

rapidly expanding knowledge and experience base of the Iraqi

people, civil society and policy makers and in their willingness

to challenge a system that has oppressed them for years.

Awad and Eaton (2013, p. 4) reiterate this belief:

… the Iraqi media landscape of 2013 may not be the free,
plural and professional fourth estate that many in the West
had envisaged in 2003, but it has real strengths – as well
as weaknesses – which reflect the reality and complexity of
modern Iraq.

The Iraqis' spirit of bravery, sense of justice, and dedication
to fighting for those rights that are enjoyed by journalists and
citizens throughout much of the world is what, ultimately, might
prove to be the most powerful weapon of all in their struggle.

Perhaps, to quote Peter Finch's character in the Academy Award
winning film, *Network* (Lumet 1976), Iraqi citizens and
journalists are simply 'as mad as hell, and [they are] not going
to take this anymore'. When these convictions are coupled with
the intellectual and logistical support of the international
community of journalists and legal teams experienced in
establishing internationally relevant and acceptable FOE and FOI
laws in post-conflicts settings, it seems the state of FOE and
FOI in Iraq can only improve.

The observations and suggestions made here are intended to build
on a process already underway and being carried out — not only
in conference rooms and board rooms, but online and in the

streets of Iraq — by committed journalists and supportive professionals from the international community, and by countless Iraqi citizens whose devotion to a better future is matched only by their bravery in the struggle.

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