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Council

RIGHTS AND FREEDOMS IN IRAQ

REPORT SUBMITTED BY THE COALITION OF
FREEDOMS IN IRAQ TO THE UN HUMAN RIGHTS
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Introduction:

Iraqi society has witnessed during the last four years many significant changes, where the former regime was highly controlling all sects of society life through the suppression of fundamental rights and freedoms by the special security and intelligence agencies.

And while Iraqi society did not know the real participation in the political life, economic and cultural life, under the former regime adding to this the economical fall down caused by wars, which made life more difficult for citizens because of poor flow of oil supplies and poor public services in the country... This situation continued even after the fall of the dictatorship, which led to an increased sense that the new federal government, whether appointed or elected have not been able to meet the needs of the Iraqi people.

after the parliamentarian elections and establishing of permanent constitution in 2005 Iraqis were able to build new institutions of the state, that constitutionally include much rights and freedoms for the Iraqi people, but the question of citizens and civil society organizations is **(To what extend these rights and freedoms will be implemented or translated into real practices)**

The political process continues during (2006 to 2009) despite the difficulties in Iraq, and we in COF coalition of freedoms¹ continued observing and monitoring of human rights violations especially fundamental rights and freedoms in Iraq.

Therefore, our report specifically addresses the rights and freedoms stated in the ICCPR International Covenant on Civil and Political Rights² with focus on public freedoms.

¹ Below list of partner NGOs in the coalition.

LIMITATIONS OF RIGHTS AND FREEDOMS.

Since 2006, limitations and restrictions cases continued on the rights and freedoms by the Iraqi government and contentious implementation of emergency law in some Iraqi provinces under the expedience of security situation and arresting a lot of citizens in detention centers without judicial proceedings and this is an absolute violation of the right that can not be restricted which is "The right to a fair trial", and also restricting the right of movement and action, the right of access to information, and a lot of restrictions on rights and fundamental freedoms.

Iraqi government bases on a constitutional defect found in article 46 of the Iraqi Constitution to restrict rights and freedoms, article 46 states: *((Restricting or limiting any of the freedoms and liberties stated in this constitution may only happen by, or according to, law and as long as this restriction or limitation does not undermine the essence of the right or freedom))*

The problem:

- In the Iraqi constitution, the formulation of the limitations clause which is article 46 seeks to protect rights from being violated by robust regulatory legislation by insisting that no such law could violate the 'essence' of the right.
- The problem is that this formulation is now subjected to stinging criticism because it is contrary to the ICCPR- article 4 and also contradicts with the international human rights standards, Iraqi constitution grants rights and freedoms to Iraqi citizens in more than thirty articles, but then the constitution robs all these rights and freedoms in one article which enables the parliament or the government to restrict these rights and freedoms without adequate conditions.
- Put simply, protecting the essence of a right is not always what is required of a limitation. Sometimes a limitation must remove the essence of a right, but for a purpose, or a class of persons, or for time, or subject to certain procedural guarantees.
- The second problem with the 'essence' test is that it may be difficult to establish what the 'essence' of a right is.
- A consideration of the Iraqi constitution reveals that:
 - There is no list of non-derogable rights.
 - There is no limitation or framework within which the emergency measures can be assessed or limited by reference to their necessity or the rationality of their purpose: e.g., the text does not specify the conditions for the declaration; or the purposes for which emergency measures maybe promulgated.
- **Guarantees to protect rights against restriction mechanism.**

² Iraq has ratified ICCPR in 1976.

In order to protect human rights from being violated by regulations that restricts rights and freedoms, the European Court of Human Rights and the Canadian Supreme Court and Constitutional Court of South Africa (along with the related constitutional and international instruments) have preferred the following guarantees : --

1 – Presence of logical link between the restriction and the damage we want to prevent, to justify the restriction of the right.

2 - Test of proportionality which requires no restriction on the right only to the extent that is "necessary" to protect the public interest or to prevent greater damages.

3 – Setup values or criteria can be tested by the restriction, as appropriate.

Recommendation:

- Amending the article 46 of Iraqi constitution.

Alternative proposed article ((The rights under this constitution can not be limited only in terms of a law and to the extent that the limitation is necessary in a democratic society based on human rights taking into account the nature of the right, the importance of the purpose of the limitation, the nature of the limitation, the extent and duration of limitation, and less restricted means to achieve its purpose))³

DISBELIEVING INDICTMENT DUE TO FREEDOM OF THOUGHTS, RELIGION AND ALTERATION OF FAITH.

The international covenant of the civil and political rights and in article (18) ensures the freedom of thoughts , conscience and religion , and as the article is clear in terms of structure and content especially regarding the freedom of thoughts and religion so it is considered as one of the major elements to build a society that is identified as an educated and thoughts matured based on a fact that the human being enjoys a natural right to be free to believe and there is no power that can control the way that the human being thinks in a way that ensures the creativity and continuity of the human being ,and based on a fact that the religions are considered as intellectual and spiritual approaches then for the human being to have the freedom to adopt the religion that will exist the harmony and peace in life without pressuring or repressing the human being to adopt an intellectual approach or religion rather than another .

in the reality of Iraq ,the problem is occurred starting from the legislations reaching the procedures (from the identity to disbelieving indictment).

The identity in Iraq :

³ The alternate article been submitted by COF to constitutional review committee officially in 2007 by signatures of 162 Iraqi NGOs.

1- Iraq witnessed conflicts on religious , sectarian , nationalism ,race and political basis in the years between 2006 to 2009, and the experiences proved that as much the identity is narrowed to the mentioned identities the base of conflict and the negative diversity is to be existed , and from this point the first spark of conflict and losing the national identity is to start.

2-The modern Iraqi experience went through such conflicts , the major element in those conflicts was lack of national belonging of the Iraqi citizen due to the inclination of the Iraqi people identities to be more sectarian ,religious and race identities more than being national identities that achieves the Iraqi population interest in all its diversities and adaptations which will then achieve stability ,coexisting and development in Iraq , this is in one hand , in the other hand the absence of the political regime and the political will for the state to achieve the national identity for the Iraqi citizen which requires legislating laws and regulations which is to limit the narrow ditching and account who contributes in this ditching through executive regulations and procedures coming from this political will in Iraq.

3- Based on this fact and other facts the civil society associations believes that one of the major reasons of conflict is that the political regime and the legislations in Iraq adopts policies that are created due to sectarian ,religious and race basis. This negatively effected and as a logical result the legislations and regulations which touches the citizen lives , interests and their national belonging , for an example on that , the sectarian and race division in the main three presidential committees in Iraq , (the presidential committee is contained from the president (Kurdish) , the two deputies (one Shia ,one Sunni)), and the same for the parliament presidential committee and the council of ministers committee) ,even in what is called the independent committees like the independent higher commissioner for elections in Iraq as the board members are divided sectarian and upon race basis.

Problem :

One of the procedures that need to be reviewed and reformed is existing the (religion) in the Iraqi civilian identity , and arguing constitutionally upon the nationalism approach ,so it is believed by the civil society associations that identifying the citizens religion or if the state recognizes the Iraqi citizen religion through the most important civilian identity card which is existed to interpret the nationalism it is believed that it is illegal and contrasting with the federal constitution of Iraq and plus not necessary , while the Iraq state does not distinguish between the citizens upon religious basis according to the constitution , so it is not seen as a necessary action but opposite to that , it has become a dangerous issue as it has caused killing and displacement of thousands of citizens that belong to religious minorities in Iraq and by armed groups which most of it are related to political parties and religious associations which represent the legislation and executive authorities that practiced violence against the citizens .

Addition to that , the civil society associations recognized a religious distinguishing by having the state providing places for praying for a specific religious group in the public divisions and departments which has employees from different religious minorities and not providing praying places for the other religious minorities , beside the existence to serve the citizens from all minorities and other intellectual approaches as long as they are Iraqis .

Disbelieving indictment based on identity :

Iraq was and still one of the major victims of disbelieving indictment , it had multi curves like religious disbelieving indictment , political ,sectarian and race , after the explosion of the (Askareen shrinks)⁴ in the 22nd of February 2006 which led to disbelieving indictment and killing of thousands of citizens based on identity.

The raised point here is the religious disbelieving indictment which is related to the civilian identity card which appears the religion identity of the citizen which will make the citizen able to be a disbelieving indictment victim , addition to that the vital statistics law which bounds the citizen in terms of mixed marriages , the surprising issue is that the state and its political regime is combating disbelieving indictment in one hand and in another hand practicing it against the citizens and this is another contrast with what the government and decision makers are stating that they are to protect and ensure the freedoms and particularly freedom of thought and faith , an example on that is that the Iraqi citizen and when thinking to adopt another religion will face disbelieving indictment due to the interpretation of the religious associations and will be considered as an (apostate) or abusing the religious laws and according to the religious associations the punishment is either by killing or acing disbelieving indictment , the official associations of the state are not taking any actions to protect the citizens in such cases and do not provide any guarantees for those whom alternate their faiths .

This opened the doors for random interpretations which are practiced by armed groups related to religious and political associations many of them are related to the government and the state to practice violence and commit crimes against the citizens upon thoughts adoption basis.

Recommendations :

- 1- Reviewing the existence of the (religion) in the Iraqi civilian identity card and removing it .**
- 2- Legislating a civilian law that ensures the freedom from different religions to have mixed marriages and securing their rights according to the law and with no distinguishing upon religious basis.**
- 3- Removing the praying spaces in the public and governmental divisions and departments considering the public divisions not representing a religion rather than another and doesn't provide service for citizens of a religion rather than another.**

THE REALITY OF THE IRAQI MEDIA AND WAYS TO IMPROVE IT.

According to Article 19 of the International Covenant of Civil and Political Rights ((everyone has the right to freedom of expression)) Of course, any talk on freedom of expression and media can not be addressed in isolation from the overall situation of society, Iraq after it was under the totalitarian rule in which the Iraqi media was a

⁴ According to IOM report 1,600,000 persons internally displaced due to this incident.

photocopy of president's speeches, After 2003 there was a wave of unrestrained freedom of media with lack of necessary tools to regulate these freedoms.

This unrestrained media freedoms resulted in conflicting directions among journalists, and on the other hand other directions and ideologies of political parties and potential radicalism that led to nearly 296 journalists were victims of this conflict. Thus murdering of head of journalists syndicate was the most significant tragedy of media in Iraq, followed by the attack on the present captain of journalists earlier this year.

More than 78 attacks targeted journalists during the first six months of 2009, even guards of government officials have attacked journalists for many times starting from Prime ministers guards till the guards of trade minister under Maliky's government.

The first six months of 2009, witnessed murdering of 4 journalists and the cause of the journalist (Ahmed Abdul Hussein), who published an article on Alzawia bank and its complications, indicate that the Iraqi government does not know the law or the Constitution when it is exposed by the media, and it practices the most severe pressure and attacks against media as noted above, whether it is right as in the case of the Ministry of Commerce, or wrong in the diction as for the issue of bank Alzawia.

In this context, the government, and to a lesser extent the judiciary authority, and a much lesser extent the legislative authority, are disabling media from accessing their information even sometimes, but the essential problem is the absence of legislation that protects the right of press access to information.

The government usually uses media when it wants make propaganda for the "serious achievements of the government", but when media seeks to detect failure or corruption of the government it treated as enemy!.

Despite the fact that the civilized world recognizes the nature of the serious work of the press, that its closest to the flames of fire continuously, but always the security authorities army and police are bridling the press without considering freedom of press as stated in the Constitution.

Recommendations:

From this standpoint, in Iraq there is critical need for:

1. Amending the article 38 of the constitution in a way that guarantees the right of media access to information and dissemination without obstacles of a variety of pretexts, especially the national security pretexts.
2. Issuing of the "journalists protection law" after the necessary amendments to the draft submitted by the Iraqi Journalists Syndicate, without delays and justifications that the draft law is not perfect.
3. The new law should clearly include preventing police and security agencies to attack journalists or making obstacles for press work, and identifying clear penalties for hindered from security services or armed forces.
4. Eradication of deposits of the totalitarian media that is functioning only as propaganda tool for the government, and promoting the spirit of state media,

which covers even attitudes of the opposition, but fairly and objectively, taking care to stay away from the incitement of ethnic or national intolerance or extremism.

5. Ensure that contracts of journalists are not linked to the mood of the government or the owner of the media press, but rather resort to the labor standards of the International Media, and the involvement of the journalist's Syndicate in the organization of journalists contracts, which should provide a appropriate resource for them and does not make them subject to the bribery of government officials or private interests.
6. Adoption of media charter by all political and social blocks that ensures journalist's personal safety as a representative of public opinion and not a tool of any party.

THE RIGHT TO FREEDOM OF ASSOCIATION AND ASSEMBLY.

It is generally recognized around the world today that the right of assembly and association is one of the fundamental human rights. These rights are protected by international charters such as the United Nations' 1948 *Universal Declaration of Human Rights* (UDHR)- Article 20 and International Covenant for Civil and Political Rights (ICCPR) article 22.

In Iraq today there are two regulations for civil society, applicable depending upon the location in which the CSO is registered:

1. **Coalition Provisional Authority (CPA) Order Number 45.** Issued by the CPA in 2003 on authority of UN Security Council Decisions 1483 and 1511, this law — also known as “Bremer’s order”— is applicable in the center and south regions of Iraq. More specifically, it applies in all Iraqi governorates, except Erbil, Duhok, and Sulaimaniya (the Kurdistan region) — as is the case with most Iraqi laws and regulations that are not included in the exclusive powers of the federal authorities.
2. **Kurdish National Assembly (KNA) Law Number 15.** Issued by the KNA on October 24, 2001, this law is applicable in the entire Kurdistan region which means Erbil, Duhok and Sulaimania governorates. It is often referred to as the “Kurdistani NGOs law.”

Despite the different organization and terminology used by the regulations mentioned above, both of them are very similar in substance because both of them endorse strong governmental control of civil society. Several provisions of these laws are disliked by Iraqi CSOs, including the mandatory registration / licensing rules, the fact that the registering agency is controlled by the government, the rules in place for foreign CSOs in Iraq, the detailed intervention of these regulations in internal CSO management issues, provisions legalizing governmental monitoring of the finances and accounts of CSOs, and other deficiencies. Beyond simple dislike, these

regulations prevent civil society from fulfilling its potential role in the reconstruction and rehabilitation of Iraq.

Generally, the most important legal problems of NGOs in Iraq can be summarized to the following points:

1. **Registration of NGOs:** according to Iraqi laws that are in force currently the registration of non-governmental organizations is mandatory. Even the regulations do not recognize the right of informal civil society groups. And those groups (non-registered officially) forbidden to work or engage in activities without obtaining a pre-license from the State. Moreover, the registration procedures are complex and require to meet many difficult requirements, which make the process of registration of new civil society organization is extremely difficult or almost impossible.
2. **Registration authority:** the responsible authority of registration of civil society organizations for most of Iraq is the Office of assisting NGOs, which is part of Council of Ministers (in Kurdistan region is the Ministry of the Interior in the Kurdistan Regional Government). But, because of the history of governmental control over civil society in this part of the world in addition to the relatively poor relationship between the government and civil society in Iraq, the question that arises is (why NGOs registration authority should be government agency?) in other words why should NGOs register under government agencies? this opens the door for government to intervene and control the civil society
3. **Financing of NGOs:** The question of how CSOs can be financed in Iraq today has no satisfactory answer. Many CSOs receive funding exclusively from the government and thus consider themselves essentially arms of the government; others are funded exclusively by political parties and thus consider themselves political organs. Most CSOs do not have sufficiently diverse funding sources to feel that they are truly independent. Furthermore, in parts of Iraq such as the Kurdistan region, where the government is providing funding to CSOs, money is unfairly directed toward those groups whose founders have personal relations with individuals in the government or the relevant department. In the end, there is no real legal framework for financing civil society.
4. **Negative interference of the government and political parties in NGOs issues.** The independence of civil society is at stake in Iraq, where government interventions in the details of civil society issues and try to control civil society, on the other hand many political parties are working to impose their ideological agenda on civil society which is totally different than civil society's objective. Current laws do not set any standards for the protection of the independence of civil society in Iraq.
5. **Foreign organizations in Iraq:** Current regulations in Iraq create many obstacles and put many restrictions on foreign CSOs working in Iraq, but because civil society is so new in this country, local CSOs are in need of international and foreign support. Existing laws do not protect the existence and operation of foreign organizations in Iraq but on the contrary they make obstacles for them, briefly the presence and operation of foreign NGOs in Iraq depends on personal relations of those NGOs with related officials in Iraq.

Recommendation:

* Issuing a new law for NGOs in a way that finds solutions for the problems mentioned above.

ELECTIONS

According to Article 25 of the International Covenant on Civil and Political Rights, each citizen, without discrimination, has the right to participate in the management of public affairs. That should happen either directly or through freely chosen representatives. In addition every citizen has the right to elect and be elected at genuine periodic elections by universal suffrage and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the voters, and to have access, on general terms of equality with others, to public service in her country.

The situation in Iraq:

Iraq held three important electoral events in 2005. Those have been organized by the Independent Electoral Commission in Iraq, which have been empowered to conduct electoral activities during the transitional period.

The House of Representatives had approved a law the Independent High Electoral Commission for elections (IHEC) in January 23, 2007, which has become through the law a permanent entity. The IHEC become authorized conduct electoral activities in Iraq.

The work of IHEC continued in conducting the provincial elections in 31/1/2009 and presidential elections and the parliament of Kurdistan. In addition it will conduct the elections for district councils, counties that will take place 6 months after the provincial elections.

It is important to provide effective ways to assist in the coordination of work between IHEC and civil society organizations on several levels to give coherence and direction. This will allow them to enhance the possibilities of democracy that go beyond sectarian boundaries.

Depending on the basic foundations of the integrity of the election process, which was emphasized in the Iraqi constitution, Shams Network for Monitoring Elections⁵ has identified several observations in its report, including: the elections must be general, direct and confidential.

The Problem:

Several points have been identified as obstacles that affect the integrity of the electoral process in the council elections in the governorates and the Kurdistan Region and should be taken into consideration and think about it seriously. In the case of failure to find solutions to these points, the voter cannot be for him to break the cycle of doubt about the process, the most important of these obstacles are:

- Despite the fact that IHEC had taken action to prevent organized fraud those procedures are enough to prevent organized fraud and interference in the affairs IHEC. This happened as a result of several factors, the most important of which is governing party affiliation of the members of the polling stations and the precedence of that on the professional side.
- The failure of implementation of the legal rules, regulations, procedures and

⁵ www.sun-network.org

instructions of IHEC literally. This had led to the non-attendance at time and lack of commitment to the timetable and the election date. According to international standards the voter must be aware of all the procedures of the electoral process and has full information and long before the Election Date. In addition IHEC should be able to declare their action plan and work schedules for different stakeholders (political entities, media organizations etc.). Furthermore IHEC have to put an end to the continuous extension of deadlines. The latter has to fix the problem of voters' registration, the repeat of the name of the voter and the inability of many voters to not know where to vote. All that is a shared responsibility between IHEC and other stakeholders in the electoral process, However IHEC shoulders the main responsibility of adopting the easiest ways of providing the voter with the necessary information on the voters' registration renewal and anything related to the Election Day (ED).

- The electoral experience of the provincial elections in Iraq and the Kurdistan Region had showed that IHEC had failed in controlling the special electoral process of the special ballot dedicated to the vote of the police and internal security forces, defense, hospitals, and prisons. This is particularly true with regard to prevent repetitive voting.

There are problems with the disclosure of information in part of IHEC. There is a lot of information which remained secret that still need to be disclosed. IHEC needs to treat the information that it has more transparently especially those related to complaints and results of the elections.

- The observations of our monitors had showed Weak training preparation of many of the employees of IHEC, representatives of political parties, media and foreign and local monitors. All those need more training with regard to both the quantity and quality of the trainings in order to gain more experience. This is necessary especially around the procedures and instructions of IHEC. The latter has to rely more on the private sector and Iraqi universities to resolve this problem.

Recommendations:

1. Accelerate the implementation of the general population census that will prove the number of voters and their inhabitant areas. This would be necessary to ensure the best appropriate division of the distribution of voters, and to ensure that no citizen is disenfranchised from her right to vote. Otherwise the latter will happen as a result of the current shortcomings of the electoral registration. Such a move can be done through taking advantage from the electoral techniques used in developed countries, such as issuing the voters registration card or smart cards.

2. Expedite the issuance of the Political Party Law which regulates the sources of funding, and obliged them to abide by the instructions of IHEC. This is especially necessary for preventing the use of state property for the benefit of any party which is competing in the elections.

3. Ensure a higher efficiency to all employees of IHEC, both at management levels, or maintaining neutrality, or courage in immediate termination of any irregularity by any party including the prominent ones once they occur. This is particularly necessary for ensuring high standards of the training function of IHEC as well as the quality of materials and requirements of the electoral process and their conformity with the specifications that has been selected by IHEC itself to avoid recurrence of inability of IHEC to conform to predetermined standards.

4. The distribution of the voter registration forms on the parties involved in the electoral process to confirm the name of the voter during the election. That we'll go

advance the process a step further to prevent fraud and systematic control of turnout and to ensure that multiple voting will not occur. This has been practiced successfully in Lebanon. There is need to accelerate the announcement of the vote results in the shortest period time after the closure of the ballot boxes, in order to avoid doubts about the integrity of tabulation and counting of votes and announcement of the results by polling stations.

5. Paying attention to complaints on violation and to hold the violating parties accountable to impose significant penalties for deterrence.

6. Cancelling the special ballot and make the arrangement so that the police and security forces vote with the staff of the polling stations on ED. The persons residing in hospitals and prisons should vote on ED through mobile teams.

7. Ensure the right of monitors. In this regard IHEC should expand the rights of monitors to ensure the integrity of the electoral process and give all the information to the observing networks, particularly the instructions and procedures in addition to other systems that should be published on the website of the Office. In addition, educational seminars should be held for citizens in order to clarify the mechanism of the election, especially in villages and rural areas. Organizations, civil society actors should be supported in order to raise awareness and urge citizens to participate in the electoral process.

PARTNER NGOS OF COALITION OF FREEDOMS:

Kurdish Human Rights Watch, Public Aid Organization, Kurdistan Youth Empowerment Organization, Kirkuk social and cultural association, Vin Organization for child protection, gender studies center, Human Rights trainers league, Yalla Shabab league, Students association for human rights, Women rehabilitation institute, women for peace association, Babil center for for human rights, Iraqi women and child association, Women human rights center, Al-Rafidain association for human rights, future women for development organization, Al-Fajr Al-Jadid organization, disables rights association, Kurdish Women forum.