



Mr. Usama Al-Nujaifi  
Speaker of the Iraqi Parliament  
Baghdad, Iraq

Paris, 10 May 2011

Dear Mr. Speaker,

The press freedom organization Reporters Without Borders would like to draw your attention to the bill on the protection of journalists which the government recently submitted to you and which came before the Parliament for its first reading on 28 March.

We would like, first of all, to stress that Iraq has made considerable progress as regards media freedom since Saddam Hussein's removal. There is now real media pluralism and the press is able to express itself with a freedom that was inconceivable 10 years ago. Journalists have paid a high price for this freedom. The gains must be defended.

We are aware of the difficulties and obstacles that the Iraqi authorities have encountered in their efforts to establish a new system based on the universal values of democracy and human rights. It is important that they should clearly affirm their commitment to civil liberties, especially media freedom. The entire Arab world has been seized by democratic fervour, by a strong desire for change. Iraq can play an important role in the media domain, by adopting legislation that guarantees free speech and press freedom.

We welcome the fact that the Iraqi authorities want to improve protection for journalists. Nonetheless, the bill currently before Parliament contains new problems that run counter to the desired goal. The adoption of such a bill would pose a real danger for media freedom in Iraq.

An initial bill was introduced in 2009 at the initiative of the Union of Iraqi Journalists, in cooperation with the Association for the Defence of Journalists' Rights. Reporters Without Borders communicated its concerns about this bill to the parliamentary speaker in August 2009, when it had just been ratified by the Cabinet pending its adoption by Parliament.

Reporters Without Borders is of the view that such a law is not necessary inasmuch as the paramount need is to reinforce the constitutional and legal provisions that already exist in Iraq. As a first step, certain concepts in the Iraqi constitution, including the right

of access to information and the principle of freedom of expression, need to be positively reaffirmed.

To affirm the right of journalists to do investigative reporting, legislation must establish a mechanism that protects the confidentiality of their sources, must ensure the right of access to information in a specific law for this purpose, must establish moderate and proportionate sanctions (and not prison sentences) for abuses of freedom of expression, and must define the restrictions, which must be no more than what is necessary, legitimate and proportionate to the goal sought.

A proper labour code is also needed, one covering all Iraqi citizens and foreign residents working in Iraq. It is only on the basis of such a code that the rules specifically governing the work of journalists can be defined. And it is only on the basis of such a code that work contracts for local and international media could be drafted (article 15). Disputes about a labour contract (article 16) would be settled on the basis of the labour code. The intervention of the Union of Journalists does not seem necessary as matters relating to the right to work should be decided by a competent tribunal.

The copy of the bill that Reporters Without Borders has received also suffers from the following disturbing shortcomings and imprecisions:

#### Lack of definitions and certain essential concepts

\* The definition of the concept of journalist (article 1)

Article 1 does not define the journalist's function.

\* The definition of the concept of protection (article 2)

Article 2 does not define the concept of "protection."

#### Dangers posed by certain provisions; possibility of arbitrary implementation due to the vagueness of certain terms

\* The need to be a member of the Union of Journalists in order to be protected by the law (article 1, subsection 2)

We cannot endorse identifying the function of "journalist" with membership of the Union of Journalists. This conditions the title of "journalist" on membership of a union without any reference to the role that the journalist plays. No conditions should be placed on the ability to exercise freedom of expression and information. A journalist can be defined as someone whose regular and main activity is gathering and imparting information.

Many international instruments such as the Universal Declaration of Human Rights of 10 December 1948 (article 23 ) defend the "right to join trade unions" without making membership obligatory. There are two elements to the principle of trade union freedom – the voluntary nature of membership and ability to choose which union you join.

The obligatory nature of membership of the Union of Journalists is all the more shocking given that many journalists in Iraq dispute this union's legitimacy.

If protection is granted only to journalists, it would mean that media contributors, bloggers and all other people who help to inform the public would not be able to benefit from the law's protection.

\* The need to inform the Union of Journalists about any legal action brought against a journalist in connection with their work (article 10)

This provision violates the provisions of the Iraqi constitution, which stresses that each person is free (article 39 II). This provision also gives the union a judicial function without any specific basis or justification.

\* Article 4's provision for accessing sources of information, data and statistics "as allowed by the law"

Conditioning access on other legal provisions renders it very illusory. This article's recognition of the right to "preserve the confidentiality of news sources" is positive but too vague. It is regrettable that the protection of the confidentiality of sources is just mentioned in passing in an article on another subject. This provision guarantees no protection whatsoever.

\* Article 6's guarantee of access to information "as long as divulging the content is not against the public interest and is not contrary to legal provisions"

Without defining the concept of public interest, this provision annuls the positive affirmation of the right of access to information. There is a great danger that people will use this article to ban the publication of certain information. This risk is all the greater as it mentions no procedure or method of appeal in the event that the authorities refuse to release requested documents.

\* The imprecision of article 7's attempt to protect the "journalist's tools"

To really protect journalists' equipment and material, the code of criminal procedure must include provisions about searches and seizure of material, and provide for sanctions when the confidentiality of journalists' sources is violated. The exceptions to this protection must be really exceptional and subject to control by an independent judge. By allowing for exceptions to this protection "within the framework of the law," article 7 reduces the protection to nothing.

\* Article 8's dangerous confusion of news reporting and opinion

Also, the statement in article 8 that there are news reports and opinions that violate the law and others that are compatible with the law is redundant. What is fundamental is the

need for the law to strictly define the cases in which a journalist can be deemed to have violated the law. This article provides absolutely no protection.

Reporters Without Borders also regards some articles as unnecessary:

Such is the case with article 5's statement that "the journalist has the right to refrain from drafting or preparing press documents that are contrary to his own beliefs and journalistic opinions." This is perfectly obvious. There is no need to mention it.

The same goes for the provisions for protecting journalists in cases of physical attack. It is obviously desirable that anyone deliberately attacking journalists in the course of their work (article 9) should be prosecuted, but such a provision can be added to the 1969 criminal code. There is no need for an additional article just to affirm the need to protect journalists. Articles 11 and 12 are definitely not needed either. The police must do their work whether the victim of the crime is a journalist or an ordinary citizen.

Finally, we think the provisions regarding free medical care (article 14 of this draft) should also be deleted. All citizens who have been injured in a terrorist act should receive free medical attention, not just journalists. This article violates the principle of equality of Iraqi citizens as enshrined in 39 II of the Iraqi constitution.

For all of the above reasons, we believe that adoption of this bill would run counter to the Iraqi government's desire to reinforce media freedom. There is even a danger that it will give a false impression of wanting to provide better protection for journalists and respond to the growing climate of violence for the media when its actual impact will prove to be quite the opposite of its declared intention.

We stand ready to discuss these points further with you.

Sincerely,



Jean-François Julliard  
Reporters Without Borders secretary-general

cc:

Dr. Ali Al-Shalah, President of the Parliament's Culture and Media Commission

Mr. Baha Araji, President of the Parliament's Legal Commission

Mr. Jalal Talabani, President of the Republic

Mr. Nouri Al-Maliki, Prime Minister

General Secretariat of the Iraqi government