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Iraq's Information Crimes Law

Badly Written Provisions and Draconian Punishments
Violate Due Process and Free Speech



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Summary

Iraq's government is in the process of enacting what it refers to as an Information Crimes Law to regulate the use of information networks, computers, and other electronic devices and systems. The proposed law had its first reading before Iraq's Council of Representatives on July 27, 2011; a second reading is expected as early as July 2012. As currently drafted, the proposed legislation violates international standards protecting due process, freedom of speech, and freedom of association.

The proposed law states, in article 2, that it aims "to provide legal protection for the legitimate use of computers and information networks, and punish those who commit acts that constitute encroachment on the rights of their users." In particular, the law provides penalties for the use of computers in connection with various prohibited activities, such as financial fraud and misappropriation (article 7), money laundering (article 10), network disruptions (article 14), illicit monitoring (articles 15(1)(b) and 16), and intellectual property violations (article 21). However, the law is not narrowly targeted; rather, its vague provisions would criminalize the use of computers in connection with a wide range of broadly defined activities, many of which are presently unregulated, without reference to any specific criteria. In allowing Iraqi authorities to penalize individuals in this manner, several provisions of the law appear to conflict with international law and the Iraqi constitution, and if enacted would constitute serious curtailments of the right of Iraqis to freedom of expression and association.

For example, article 3 of the proposed law sets a term of life imprisonment and a large fine against any person who intentionally uses computer devices and an information network for the purpose of: "undermining the independence, unity, or safety of the country, or its supreme economic, political, military, or security interests," or "participating, negotiating, promoting, contracting with, or dealing with a hostile entity in any way with the purpose of disrupting security and public order or endangering the country." Article 6 could provide for life imprisonment and a large fine against any person who uses computer devices and an information network for the purpose of "inflaming sectarian tensions or strife; disturbing security and the public order; or defaming the country;" or "publishing or broadcasting false or misleading events for the purpose of weakening confidence in the electronic financial system, electronic commercial or financial documents, or similar things,

or damaging the national economy and financial confidence in the state.” Article 21 sets a minimum one-year prison term for “any person who encroaches on any religious, moral, family, or social values or principles or the sanctity of private life using an information network or computer devices in any shape or form.” Article 22 provides for a prison sentence and fine “against any person who ... creates, administers, or helps to create a site on an information network that promotes or incites to licentiousness and obscenity or any programs, information, photographs, or films that infringe on probity or public morals or advocate or propagate such things.”

Given the vagueness and breadth of these provisions, as well as the severity of the punishment for the violations, authorities could use the law to punish any expression that they claim constitutes a threat to some governmental, religious, or social interest, or to deter legitimate criticisms of or peaceful challenges to governmental or religious officials or policies.

Moreover, the government is introducing the law as the use of internet and social media by journalists and civic and human rights activists has become increasingly important in Iraq, especially in the wake of the uprisings across the Arab world. Given the key role of information technology, devices, and networks in journalism and the dissemination of information and opinions, the proposed law poses a severe threat to independent media, whistleblowers, and peaceful activists.

The proposed Information Crimes Law is part of a broader pattern of restrictions on fundamental freedoms in Iraq, particularly freedom of expression, association, and assembly. In May 2011, the Council of Ministers approved a draft of the Law on Freedom of Expression of Opinion, Assembly, and Peaceful Demonstration, which contains provisions that would criminalize peaceful speech, with penalties of up to 10 years in prison.

Since February 2011, Human Rights Watch has documented often violent attacks by Iraqi security forces and gangs, apparently acting with the support of the Iraqi government, against peaceful demonstrators demanding human rights, better services, and an end to corruption. During nationwide demonstrations on February 25, 2011, for example, security forces killed at least 12 protesters across the country and injured more than 100. Iraqi security forces beat unarmed journalists and protesters that day, smashing cameras and confiscating memory cards. On June 10 in Baghdad, government-backed gangs armed with

wooden planks, knives, iron pipes, and other weapons beat and stabbed peaceful protesters and sexually molested female demonstrators as security forces stood by and watched, sometimes laughing at the victims.

Given this backdrop, the draft Information Crimes Law appears to be part of a broad effort to suppress peaceful dissent by criminalizing legitimate activities involving information sharing and networking. Iraq's Council of Representatives should insist that the government significantly revise the proposed Information Crimes Law to conform to the requirements of international law, and the council should reject its passage into law in its present form. Without substantial revision, the proposed legislation would sharply undercut both freedom of expression and association.

Recommendations

To Iraq's Council of Representatives

- Do not pass the Information Crimes Law until the Government of Iraq modifies the proposed legislation to:
 - (a) Conform to international standards by identifying any prohibited conduct with sufficient specificity, particularly in articles 3, 6, 21, and 22, such that Iraqi citizens will know in advance what conduct is prohibited and subject to punishment;
 - (b) Comply with international human rights law protecting freedom of expression by (1) clearly identifying any prohibited types of expression, (2) clearly identifying the legitimate threat presented by such expressions, and (3) requiring, in any individual case, that any punishment (up to the maximum provided) be proportional to the harm caused by the expression; and
 - (c) Comply with international human rights law protecting freedom of association by (1) clearly identifying any prohibited organizations, entities, or activities, and (2) clearly identifying the legitimate threat presented by such organizations, entities, or activities, and (3) ensuring any legal restriction on freedom of association is proportional, in terms of scope, time limitation, and criminal punishment to the harm caused.

To the Government of Iraq

- Suspend and then amend penal and civil code provisions and other legislation and regulations to remove or precisely define, in line with international standards of freedom of expression and association, any vaguely expressed restrictions, and to remove excessive penalties on journalists, activists and others, including imprisonment and excessive fines, especially for minor infractions;
- Ensure a speedy, transparent, and fair investigation and prosecution of assaults by security forces and others against journalists and activists, and direct all security forces to end the use of force to intimidate, harass, arrest, assault, or otherwise prevent Iraqis from demonstrating peacefully and journalists from doing their work; and
- Direct government agencies to stop filing politically motivated lawsuits against journalists and their publications.

I. Violations of Fundamental Due Process Standards

Several provisions of the proposed Information Crimes Law, including some providing for the harshest prison sentences, violate international standards on due process because they fail to provide meaningful notice or guidance to Iraqi citizens, and to journalists and members of organizations operating in Iraq, as to what constitutes criminal behavior.

Among other things, the law threatens life imprisonment and large fines for those found guilty of “inflaming sectarian tensions or strife;” “defaming the country;” “[u]ndermining the independence, unity, or safety of the country, or its supreme economic, political, military, or security interests;” or “[p]ublishing or broadcasting false or misleading events for the purpose of weakening confidence in the electronic financial system, electronic commercial or financial documents, or similar things, or damaging the national economy and financial confidence in the state.”¹ The law also imposes imprisonment and a fine on anyone who “encroaches on any religious, moral, family, or social values or principles,” or “[c]reates, administers, or helps to create ... any programs, information, photographs, or films that infringe on probity or public morals or advocate or propagate such things.”²

These provisions do not prohibit any specific conduct; instead, they rely on vague characterizations whose applications government officials will decide in hindsight without reference to any particular criteria that would guide conduct in advance of any prosecution under the law. Particularly in light of the current political instability in Iraq, it is, to a large extent, impossible to know what might qualify as a transgression. Practically speaking, these provisions would mean that a person could be threatened with life imprisonment for conduct that he or she had no ability to discern in advance would be considered criminal. As a result, the current draft of the law threatens Iraqis and others, including journalists, with arbitrary arrest and detention, and, as discussed below, would deter Iraqis from fully engaging in legitimate, peaceful activities that they fear could subject them to punishment according to this law. If it does not revise these provisions and articulate specific activities that are prohibited, Iraq’s Council of Representatives would empower officials to act

¹ Proposed Information Crimes Law, arts. 6(1), 3(1)(a), 6(3).

² Ibid., arts. 21(3), 22(2)(a).

arbitrarily, and to exercise their authority in a discriminatory fashion against particular individuals or groups.³

Legal Standards

The proposed Information Crimes Law appears to violate articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and article 14 of the revised Arab Charter on Human Rights concerning due process, both of which protect rights to liberty and due process.⁴

Under these provisions of international law, Iraq must provide individuals with procedural and substantive guarantees against arbitrary arrest, detention, conviction, or punishment. The United Nations Human Rights Committee, the body of independent experts charged with interpreting the ICCPR and assessing state compliance with it, has explained that for a law not to be arbitrary it “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.”⁵ Accordingly, overly vague laws which fail to guide either individual or official conduct are antithetical to due process and violate the provisions of international law cited above.⁶ Citizens must know in advance what specific kinds of conduct could subject them to punishment, and based on what criteria.⁷

³ See Section II, “Indications of Potential Abuses,” p.10; and Section III, “Indications of Potential Abuses,” p. 13.

⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Article 9 of the ICCPR provides that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”; Arab Charter on Human Rights, adopted by the Council of the League of Arab States on May 22, 2004, U.N. Doc. CHR/NONE/2004/40/Rev.1, entered into force March 15, 2008. Article 14 of the Arab Charter provides, in relevant part, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”

⁵ United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (July 21, 2011), para. 25 (“General Comment No. 34”); see also *Sunday Times v. U.K.*, 30 Eur. Ct. H.R. (ser. A), 2 Eur. H.R. Rep. 245 (1979) (noting a law must be “formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail”).

⁶ See, for example, International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Stakic* (ICTY-97-24-T), Judgment of July 31, 2003, paras. 719-724, (striking “other inhumane acts” count for vagueness); European Court of Human Rights, *Malone v. United Kingdom*, 82 Eur. Ct. H.R. (ser. A), 7 Eur. H.R. Rep. 14 (1984) (noting a law “must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference”).

⁷ See, for example, General Comment No. 34, para. 25.

II. Violations of the Right to Freedom of Expression

While both international law and the Iraqi constitution recognize that limited and clearly specified restrictions on freedom of expression may be justified,⁸ certain provisions of the proposed Information Crimes Law do not satisfy any of the criteria that restrictions on freedom of expression must meet to comply with international and Iraqi law: adequate specification by law (that is, the restriction must be “provided by law”); for a legitimate aim (as set out in the ICCPR); proportionality and necessity; and preservation of the “essence” of the freedom. For example, the Proposed Information Crimes Law prohibits, and harshly punishes, the communication of expressions that “[u]ndermin[e] the independence, unity, or safety of the country, or its supreme economic, political, military, or security interests;” or that encroach “on any religious, moral, family, or social values or principles.”⁹

In order for a restriction to be “provided by law,” as that concept is understood within international law, it must satisfy the general due process standards discussed above. That is, it “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly” and it “may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”¹⁰ As discussed, various provisions of the proposed Information Crimes Law depend on such overly vague and contentious classifications that they do not meet this threshold standard. Indeed, it appears obvious that the intent behind such provisions is not to define an offense in advance but to give government officials unfettered discretion to make retrospective judgments as to whether they can punish an electronic communication or activity. Accordingly, attempts to enforce such provisions of the draft law would not satisfy the “provided by law” requirement within the meaning of Article 19(3) of the ICCPR and would not be “by a law or on the basis of a law” as required by Article 46 of the Iraqi constitution.

⁸ ICCPR, art 19(3); Iraqi constitution, art. 46.

⁹ Proposed Information Crimes Law, arts. 3(1)(a), 21(3).

¹⁰ General Comment No. 34, para. 25; see also United Nations Human Rights Committee, “Concluding Observations of the Human Rights Committee: Cambodia,” U.N. Doc. CCPR/C/79/Add.108 (July 27, 1999), para. 18 (a law prohibiting publications based on vague criteria such as “causing harm to political stability” is incompatible with ICCPR art. 19(3)); *Kim v. South Korea*, U.N. Doc. CCPR/C/64/D/574/1994 (1999), para. 12.4 (conviction for distributing pro-North Korean literature breached ICCPR art. 19 because the alleged threat to national security was entirely nonspecific and vague).

Given the vagueness and breadth of the above-noted provisions, as well as the severity of the punishment for any violation of such provisions, it is clear that the law is not proportional or designed to address a specific threat. Rather, officials could use the law to suppress any expression that they claim, based on their personal judgment and potentially improper motivation, constitutes a “threat” to some governmental, religious, or social interest.¹¹ As such, they could determine that innumerable categories of expression, including political expression, could (after the fact) fall within the law’s prohibitions. Indeed, anyone who criticizes or challenges a governmental or religious official, department, agency, or policy, or who supports a minority party, organization, or news or opinion medium that criticizes or challenges some aspect of the government or of some protected non-governmental institution or practice, could be prosecuted under the law.

Given that the provisions of the draft law could be applied to almost any manner of expression that is electronically communicated, rather than just to specifically defined criminal conduct to protect a specific and important public interest, such provisions cannot be characterized as necessary. Moreover, embedded in the law is a disturbing, and illegal, premise that the expression of a politically or morally unpopular idea – no matter how disconnected that expression may be from a specific criminal or terrorist act – is itself something criminal.¹² That premise contravenes well-established principles as to what restrictions on expression may be necessary pursuant to international law; indeed, it is never necessary or permissible to prohibit media outlets, publishers, journalists, websites, or other means of information dissemination from publishing material “solely on the basis that it may be critical of the government or the political social system espoused by the government,” or to penalize them for doing so.¹³

The proposed law is problematic also because international norms that allow limited restrictions on freedom of expression do not permit such restrictions for the protection of

¹¹ The Human Rights Committee has expressed particular concern with laws that purport to prohibit the expression of “terrorist” ideas, and has noted that clear definitions are essential in this context. See General Comment No. 34, para. 46. Notably, the law’s general prohibition on “promoting terrorist acts or ideas” (art. 4(2)) does not provide a definition of these terms.

¹² See, for example, Proposed Information Crimes Law, art. 3(1)(a) (prohibiting the undermining of Iraq’s political interests), art. 6(1) (prohibiting the inflammation of sectarian tensions and the defamation of the country), and art. 21(3) (prohibiting the encroachment of any religious, moral, family, or social values). These provisions are so vaguely worded that they could readily be applied to basic political expression.

¹³ General Comment No. 34, paras. 42-43.

abstract entities such as religions, beliefs, ideas, or symbols.¹⁴ International law specifically prohibits restrictions on speech based on its damaging or defamatory effects to religions or beliefs.¹⁵ The right to freedom of expression includes the right to challenge entrenched norms, doctrines, and beliefs.¹⁶

The freedom to criticize existing policies or governments, to call for changes in policies and governments, and to express support for unpopular political, religious, or social ideas is at the core of freedom of expression. These are precisely the exercises of expression most in need of protection.¹⁷ The proposed Information Crimes Law could criminalize many forms of political, religious, and social advocacy, speech, and expression, and thus plainly infringes upon the essence of freedom of expression.

Indications of Potential Abuses

Concerns that Iraqi officials would use the law to suppress legitimate and essential kinds of expression are based on recent and current government behavior. Over the past few years, officials have filed legal actions against journalists who have published articles critical of certain officials or practices, such as articles criticizing alleged nepotism in the

¹⁴ See ARTICLE 19, “Iraq: Draft Law on Freedom of Expression, Assembly, and Peaceful Protest,” July 14, 2011, <http://www.article19.org/data/files/medialibrary/2266/11-07-14-LEGAL-iraq.pdf> (accessed March 2, 2012), paras. 35-36; see also General Comment No. 34, para. 48 (noting that laws restricting freedom of expression in respect of religions, beliefs, ideas, or symbols are not acceptable where they may “prevent or punish legitimate criticism of religious leaders or reasoned commentary on tenets of faith”).

¹⁵ See International Mechanisms for Promoting Freedom of Expression, “Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation,” December 10, 2008, available at <http://www.osce.org/fom/35639> (accessed March 2, 2012) (“The concept of ‘defamation of religions’ does not accord with international standards regarding defamation, which refer to the protection of the reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own.”); UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Frank La Rue, A/HRC/14/23, April 20, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf> (accessed March 2, 2012), para. 84:

[D]efamation laws may not be used to protect abstract or subjective notions or concepts, such as the State, national symbols, national identity, cultures, schools of thought, religions, ideologies or political doctrines. This is consistent with the view, sustained by the Special Rapporteur, that international human rights law protects individuals and groups of people, not abstract notions or institutions that are subject to scrutiny, comment or criticism.

See also General Comment No. 34, para. 11 (noting freedom of expression “includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and *religious discourse*”) (emphasis added) and para 48 (noting it is impermissible for prohibitions on freedom of expression “to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith”).

¹⁶ See, for example, *Handyside v. United Kingdom*, 7 December 1976, 1 EHRR 737, para. 49.

¹⁷ *Ibid.*, para. 20 (“The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint.”).

Prime Minister's Office and perceived autocratic practices in the Iraqi government.¹⁸ And in early February 2012, the parliamentarian Haidar al-Mulla reported that prosecutors were seeking to charge him with insulting Iraq's judiciary for questioning its independence from the government of Prime Minister al-Maliki.¹⁹ Given the willingness of officials to use defamation suits and even the threat of prosecution to intimidate and threaten those who peacefully challenge or criticize them, there is good reason for concern that the proposed Information Crimes Law would add to the restrictive environment surrounding the freedom of expression in Iraq, and further deter Iraqis from exercising that right.²⁰

Legal Standards

As discussed, the proposed Information Crimes Law appears to violate provisions of the ICCPR and the Iraqi constitution that protect freedom of expression.²¹

International law requires that states respect their citizens' right to freedom of expression, including the "freedom to seek, receive and impart information and ideas of all kinds,

¹⁸ See Human Rights Watch, *Iraq: At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion*, February 2011, <http://www.hrw.org/node/95605/section/5> (reporting a sharp increase in defamation suits by Iraqi government or party officials against journalists in 2010); see also Committee to Protect Journalists, "Attacks on the Press 2009: Iraq," February 16, 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-iraq.php> (accessed March 2, 2012).

¹⁹ See Mohamad Ali Harissi, "Judge wants Iraqiya MP's immunity lifted," Agence France-Presse, February 5, 2012, <http://www.google.com/hostednews/afp/article/ALeqM5hDP-Ly3o2DkivLpL7Um7sciTvU2Q?docId=CNG.56odb9496881b830cd81321b1814191e.461> (accessed March 2, 2012).

²⁰ See *Iraq: At a Crossroads* (reporting that Iraqi officials have used a variety of vaguely worded provisions of the Iraqi civil and penal codes to pursue those who have criticized them, and that judges have enormous discretion in determining what expressions violate such laws and how to punish such expressions).

²¹ Article 19 of the ICCPR provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 38 of the Iraqi constitution provides, in relevant part:

The State shall guarantee in a way that does not violate public order and morality:

- A. Freedom of expression using all means.
- B. Freedom of press, printing, advertisement, media and publication.

Article 46 of the Iraqi constitution provides:

Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.

regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [their] choice.”²² Indeed, the preamble to the Universal Declaration of Human Rights (UDHR) sets as one of its primary objectives “a world in which human beings shall enjoy freedom of speech and belief.”²³ Protected expression includes political expression.²⁴

Pursuant to international law, the right to freedom of expression can be restricted only as provided by law and where such restriction is necessary “(1) for respect of the rights or reputations of others or (2) for the protection of national security or of public order ... or of public health or morals.”²⁵ The UN Human Rights Committee has emphasized that any restriction on free expression “must conform to the strict tests of necessity and proportionality.”²⁶ This means, among other things, that the restriction must be “the least intrusive” means of mitigating a particular threat.²⁷ In its application, a restriction must be construed narrowly and must not be used to undermine large categories of speech or expression.²⁸ Any enforcement action properly requires a state authority to demonstrate “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken.”²⁹

Iraq’s constitution similarly provides that each individual “shall have the freedom of thought, conscience, and belief,” that individuals are guaranteed protection from “intellectual, political and religious coercion,” and that freedom of expression and freedom of the press are guaranteed to the extent “public order and morality” are not violated.³⁰ The constitution also provides that any limitation or restriction on freedom of expression must be provided by law and must not “violate the essence” of the freedom.³¹

²² ICCPR, art. 19(2); UDHR, art. 19.

²³ UDHR preamble.

²⁴ See, for example, *Mpandanjila et al. v. Zaire*, U.N. Doc. Supp. No. 40 (A/41/40) (1986), para. 9 (arbitrary arrest and detention, conviction, imprisonment, and banishment for sending an open protest letter and negotiating to form a new political party violated ICCPR art. 19, among others).

²⁵ ICCPR, art. 19(3).

²⁶ General Comment No. 34, para. 22.

²⁷ *Ibid.*, para 34.

²⁸ United Nations Human Rights Committee, “Concluding Observations of the Human Rights Committee: United States of America,” U.N. Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006).

²⁹ General Comment No. 34, para. 35.

³⁰ Iraq Constitution, arts. 42, 37, 38.

³¹ *Ibid.*, art. 46.

III. Violations of the Right to Freedom of Association

Article 3 of the proposed Information Crimes Law provides for life imprisonment for those who use computers and have dealings of almost any sort with any “hostile entity” for the purpose of “upsetting security and public order or endangering the country.”³² This provision could be the basis for prosecuting anyone who has any involvement with an organization or movement that, because it is critical of the government or government policies, is deemed “hostile.” Officials may regard nearly any organization, including opposition political parties, as “hostile.”

Other provisions of the proposed law, including the provisions prohibiting the use of computers to undermine the unity of Iraq, to undermine Iraq’s political or economic interests, or to inflame sectarian tensions, could also be used to target organizations and their members, and would infringe on the right to freedom of association to the extent that mere participation (involving the use of a computer or information network, which is becoming increasingly common to both formal and informal organizations) in the targeted organizations would be considered a violation of such provisions.³³

Therefore, the proposed law could readily be used to imprison the members of any association of which any given government disapproved and effectively ban such association. Given this, and for the reasons discussed in the previous section, (a) the law is too broad and vague to qualify, under either the ICCPR or the Iraqi constitution, as a law that properly provides for a restriction of the freedom of association; (b) the law is not a “necessary” restriction of the freedom of association under international law; and (c) the law infringes on the “essence” of Iraqis’ freedom of association.

Indications of Potential Abuse

Concerns that Iraqi officials would use the law to suppress freedom of association are justified because of ongoing repressive acts by the Iraqi authorities to stifle dissent, including attacks against NGOs and political organizations. On March 6, 2011, security forces controlled by Prime Minister al-Maliki ordered the Iraqi Communist Party and the

³² Proposed Information Crimes Law, art. 3(1).

³³ Ibid., arts. 3(1); 3(1)(a); 6(1).

Iraqi Nation Party to shut their offices after the two political parties led demonstrations in Baghdad.³⁴ In April, security forces arrested without warrants three activists working for the Federation of Workers' Councils and Unions for their involvement in the protests. A year later, one of the activists is still reported as missing.³⁵ On May 28, 2011 soldiers raided the Baghdad office of the nongovernmental organization *Ayna Haqqi* ("Where is My Right") and arrested 11 of the group's activists without a warrant. Four were released the next day; the remaining seven were detained until June 3.³⁶

Legal Standards

The proposed Information Crimes Law appears to violate provisions of the ICCPR, the Arab Charter, and the Iraqi constitution that protect freedom of association.³⁷

International law imposes a duty on states to respect the rights of citizens to demonstrate peacefully, including against their governments. Specifically, the ICCPR recognizes "the right of peaceful assembly."³⁸ As such, state parties must guarantee "the right to freedom of association with others, including the right to form and join trade unions for the

³⁴ Michael Schmidt and Jack Healy, "Iraq Shuts Offices of Protest Organizers," *New York Times*, May 7, 2011, <http://www.nytimes.com/2011/03/08/world/middleeast/08iraq.html> (accessed June 5, 2012).

³⁵ United Nations Assistance Mission in Iraq (UNAMI), "Report on Human Rights in Iraq: 2011," <http://unami.unmissions.org/LinkClick.aspx?fileticket=uGUYVCu7UBs%3D&tabid=2790&language=en-US> (accessed June 5, 2012), pp. 21-22.

³⁶ *Ibid.*

³⁷ Article 22 of the ICCPR states:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Article 24 of the Arab Charter provides, in relevant part:

Every citizen has a right to:

1. Freedom of political activity.

....

5. Form associations with others and to join associations.
6. Freedom of peaceful assembly and association.
7. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a society that respects freedom and human rights, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 39 of the Iraqi constitution provides, in relevant part:

First: The freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law.

³⁸ ICCPR, art. 21; UDHR, art. 20.

protection of [one's] interests.”³⁹ The ICCPR does allow for restrictions on these freedoms, but only as provided by law and as necessary “in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”⁴⁰ Further, Iraq’s constitution states that “[t]he freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law.”⁴¹

³⁹ ICCPR, art. 22.

⁴⁰ Ibid., arts. 21 and 22(2).

⁴¹ Iraq Constitution, art. 39.

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Iraq's Information Crimes Law

Badly Written Provisions and Draconian Punishments Violate Due Process and Free Speech

Iraq's parliament is in the process of enacting an "Information Crimes Law" to regulate the use of information networks, computers, and other electronic devices and systems. The draft law includes vague provisions that would allow Iraqi authorities to deter legitimate criticisms of or peaceful challenges to governmental or religious officials or policies. As such, the law is part of a broad effort by authorities to suppress peaceful dissent by criminalizing legitimate information sharing and networking activities.



An Iraqi man uses the internet at a cyber cafe in Baghdad on October 6, 2007.

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