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Republic of Iraq Communications and Media Commission: Policy Recommendations Concerning Broadcasting in Iraq

Stanhope Centre for Communications Policy Research

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Abstract

This study was commissioned by the Communications and Media Commission of Iraq (CMC) as part of its efforts to stimulate debate on ways to improve the broadcasting sector in Iraq. The most immediate goal of this document is to describe the current regulatory framework in Iraq and to make policy recommendations for change for use by the CMC, Iraqi policy makers and international and local donors and implementing organizations. This draft is to be presented at a conference on Iraqi media to be funded by the CMC and co-hosted by UNESCO and UNDP, with the support of Official Development Assistance of Japan and the European Union. This conference is to take place at UNESCO headquarters in Paris in January 2007. This document is only a draft, and input is welcome.

A future goal of the study will be to provide a snapshot of the Iraqi broadcasting sector as it is today. A more comprehensive version of this study addressing this aim is being prepared and is to be published by the CMC at a later date. The subsequent draft will take into consideration comments submitted on this draft. It is important to note that the CMC's commissioning and publication of this report does not mean it endorses its content or its recommendations. It remains a working document pending further discussions.

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Republic of Iraq

Communications and Media Commission

Policy Recommendations

Concerning Broadcasting in Iraq

Stanhope Centre for Communications Policy Research

January 2007

Draft Report Commissioned by the Communications and Media Commission of Iraq
(CMC)
for presentation to the International Conference on
Freedom of Expression and Media Development in Iraq
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PART ONE:

THE IRAQI BROADCASTING SECTOR

AND THE REGULATORY ENVIRONMENT IN WHICH IT EXISTS

Forward

This study was commissioned by the Communications and Media Commission of Iraq (CMC) as part of its efforts to stimulate debate on ways to improve the broadcasting sector in Iraq. The most immediate goal of this document is to describe the current regulatory framework in Iraq and to make policy recommendations for change for use by the CMC, Iraqi policy makers and international and local donors and implementing organizations. This draft is to be presented at a conference on Iraqi media to be funded by the CMC and co-hosted by UNESCO and UNDP, with the support of Official Development Assistance of Japan and the European Union. This conference is to take place at UNESCO headquarters in Paris in January 2007. This document is only a draft, and input is welcome.

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The CMC would like to express its gratitude to the Stanhope Centre for undertaking this important study in very challenging circumstances.

I. Introduction

This is a key moment (though in the complexities of recent Iraqi history, almost all moments are significant) to evaluate the developing media environment in Iraq. With the possibilities so finely balanced between the potential for a comprehensive political settlement and the danger of enhanced conflict, the role of the media will be increasingly a matter for public debate. Indeed, one major question for the future will be how a national political settlement affects media structures and media regulation.

This is only one of many challenges facing the Iraqi media as it expands after more than thirty years of state control and censorship. The proliferation of numerous media outlets is a positive development. At the moment, however, a significant number of the new media are controlled by religious and ethnic parties, or powerful religious, political and business leaders who utilize a network of television and radio stations and newspapers, essentially their own "media empires," to advocate particular agendas. This is a somewhat different model for political development from a system that emphasizes objective, "independent" voices and broad and general interests.

This report is primarily designed to give policy advice to the Communications and Media Commission of Iraq (CMC), but it would be blinkered not to take note of the ongoing violence that seriously affects the state of the media. Just recently, gunmen invaded the office of Al Shabbiya and killed eleven of its staff, including its founder, on the eve of its commencement of programming. Violence is its own form of regulation, and, in a context like Iraq, who constitutes the "regulator" in this sense, and what relationship exists to official and semi-official figures is murky at best. At a time when journalists and broadcasters are threatened, where insecurity may predominate, the nuances of official regulation may seem distant and almost insignificant. Yet, even in the midst of instability, the search for the stable proceeds. Institutions, with mandates, exist. And, the manner in which an emerging government relates to the rule of law will be of great importance.

A prerequisite for the advance toward a stable democracy in Iraq is the emergence of a professional and independent media that is able to impart reliable information, foster national debates from a variety of viewpoints, inclusive of Iraq's diverse ethnic and sectarian communities. In a country relatively new to independent media, there are many areas where suggestions can be made for improvements, and this Draft Report seeks to make policy recommendations for the CMC and other stakeholders.

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It is within this setting—which is very briefly set forth here, providing only a glimpse of a number of the many complexities that define and confront Iraq and Iraqi media today—that the challenges to the CMC, and the policy recommendations made here, should be viewed.

II. Brief Introduction to Iraqi Broadcast Media

Iraqi broadcast media have evolved tremendously since the Ba'athist period in Iraq. Elements of the Iraqi media provide venues for Iraqi citizens to call in and vent their problems and opinions of the nation's political and socio-economic development. The media are beginning to serve as a means of furthering participation by a civil society. Iraqi stations, including the publicly-funded Al Iraqiyya, serve a Fourth Estate role of challenging the government for its shortcomings, though the extent this function is performed varies among channels and from time to time. Most channels have social advocacy programs to demonstrate the plight of Iraqi citizens and how the government can alleviate their situation. The Iraqi media increasingly criticizes the government and address issues such as corruption in the government or how various ministries should do more to alleviate poverty and unemployment. Entertainment is emerging on various channels, particularly programs that use humor to help relieve the stresses of Iraq's post-war society, as well as serve as an outlet to criticize the situation and the government itself for the nation's maladies. Indeed, the diversity of opinion in the Iraq media is a positive sign since the fall of the Ba'ath, when there were only five state owned dailies and a single government channel.

The Iraqi media landscape is currently dominated by particular ethno-sectarian and political factions or media personalities. Powerful media are coalescing around ethno-political groups in Iraq who have print, radio and TV media at their disposal. Iraqi Kurdish, Turkmen, Arab Sunni and Arab Shia factions all have their own means of communicating to their ethno-sectarian constituencies in Iraq and abroad in the Iraqi diaspora. Other independent media with no ethno-sectarian affiliation do exist, but do not have access to the funds, or the physical protections, that the political parties can provide. The problem of sectarianism reflected in the Iraqi media poses a challenge for other Iraqi media which seek to reflect the developments in Iraqi society according to international journalistic standards.

This fragmentation along sectarian, ethnic and ideological lines is not problematic in and of itself; indeed, it could be seen to reflect the pluralism viewed as desirable in most media landscapes. It is clear, however, that Iraq's politicians and sectarian groups continue to view the media as a tactical tool, one duty-bound to support the government or the parties or groups that sponsor them. Sectarian divisions are potentially worrisome in a society with increased incidence of violence along ethnic and religious lines, and Iraq seems to be heading down this road more swiftly every day. Care will have to be taken in discouraging Iraq's diverse and representative broadcasters from contributing to this situation.

While freedom of the press is a feature of the industry in Iraq, this freedom has been utilized in ways that stretch an implicit compact that suggests internal standards for professionalism. Media affiliated with political groups do not necessarily practice the principles of free press stated or adopted within their organizations. The current situation has various implications for the nascent Iraqi media and whether it can foster a national Iraqi public sphere.

Various ethno-sectarian media outlets could prove problematic. In terms of quality of journalism, critical and analytic reporting are developing in Iraq, yet at the same time, other media outlets serve as the "stenographers of power," which at this juncture have reserved their use of the "language of hate," but are in a position to employ it in the future. Such an arrangement can only further the gap between Iraq's communities, developing identities along ethno-sectarian lines, and weakening any kind of national belonging. If the security

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situation were to worsen, the political factions would be in the position to use the media as mouthpieces to exacerbate the conflict. So far, these factions have used their media to stress unity among Iraq's communities, but they nevertheless have the potential to instigate conflict with these means if it suits their interests.

As for the independent media, 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. Journalists who are too critical of other factions often have been subjected to blackmail and death threats, if not death itself.

It is obvious from reading current headlines that being a journalist in Iraq is one of the most dangerous professions in the world today. Recent reports of The Committee to Protect Journalists state that 78 Iraqi journalists and 28 news workers have been killed since the war began in 2003. According to a recent New York Times article, "journalists in Iraq face death threats from all sides." The most significant threat comes from the insurgency and religious extremists. In early August 2006, two Iraqi journalists were killed by militants. More recently, the office of the daily newspaper, Al Sabah, was torn apart by a bomb killing at least two people and wounding twenty. In October 2006, gunmen invaded the office of Al Shabbiya and killed eleven of its staff the night before it was to begin programming. Journalists also face attacks by the Iraqi police and other authorities, as well as additional hardships, including low salaries and lack of training.

Although journalist safety and conditions are not the focus of this report, these topics must be addressed whenever the issue of Iraqi media is discussed. We, therefore, asked the International Federation of Journalists (IFJ)—an international association of journalists committed to promoting journalists' unions and protecting the safety and well-being of journalists worldwide (www.ifj.org)—to submit a background paper on these issues (attached as Appendix A). This paper provides an important perspective, that of journalists, and print journalists in particular, working in the difficult and dangerous environment of Iraq. Issues discussed in the paper include existing journalists' unions and efforts to organize them, the state of professionalism, special issues faced by women, and self-regulation. It sets forth a number of conclusions and recommendations.

III. Regulatory Framework for Media in Iraq

   A. Background

Until 2003, the media in Iraq was subject to draconian state control. The government and the state Ba'ath Party tightly controlled and owned all news agencies and broadcast media, and the sole mission of Iraqi News Agency and the Iraqi press was to relay state propaganda. Systematic suppression of any alternative voices was the norm and all indigenous media was the preserve of the state. Iraq's press and broadcasters were controlled through the Ministry of Information, essentially allowing the Ba'ath party to dominate the media landscape. In the aftermath of the 2003 Iraq War, the restrictions placed by the Ba'ath on public discourse literally disappeared overnight and a plethora of newspapers, radio stations, and television networks emerged from the bonds of Saddam's Iraq, free to debate and criticize the fate of their nation.

Laws enacted during that era broadly restrict expression and punished violations harshly. There was no regulation of the media independent of the government, and no legal

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protections for the profession. After the fall of the regime, the regulatory framework had to be built from scratch.

In June 2003, approximately eighty experts, journalists and freedom of expression advocates from around the world, including Iraq and other countries in the region, met in Athens, Greece to discuss how to encourage the development of a free, impartial, professional and independent media in Iraq. The conference adopted a framework document for reform known as the Athens Framework, which was widely endorsed by leading international media development organizations, UNESCO and the European Union. This framework document proposed establishing an independent broadcasting regulator and public service broadcaster and set forth a template for legislation and regulation for doing so.

B. Communications and Media Commission

1. Establishment, Legal Framework, Mandate and Structure

The initial law that established the CMC was drawn up after a long consultative process that lasted for nearly six months and included a wide range of independent international and Iraqi experts. This law, which draws on international conventions and current best practice, was issued by the Coalition Provisional Authority (CPA) as Order 65 on 20 March 2004.[1] After further consultations with civil society and telecommunications and media professionals, the CMC's first three Commissioners and its Chief Executive Officer (CEO) were appointed a month later, with the remaining six Commissioners appointed and Chairperson elected just prior to the handover from the CPA to the Interim Iraqi Government at the end of June 2004. They were all chosen on the basis of their political independence, professional expertise and broad public representation.

Order 65 gives the CMC exclusive authority to license and regulate telecommunications, broadcasting and information services in Iraq and provides that the CMC is an administratively and financially independent agency, subject to limited oversight by the Iraqi parliament. The CMC receives its funding from fees paid by licensees. All funds in excess of the CMC's approved budget, and all fines received by the CMC, are to be transferred to the Iraqi national treasury.

Pursuant to Order 65, the CMC acts through its CEO and is supervised by a nine-member Board of Commissioners who are to meet once a month. The Board is to provide strategic guidance on operational matters and adopt the CMC's codes, rules, regulations and other substantive documents. In addition, the Board is to receive and adopt the CMC's operating budget, which is to be presented to parliament for formal approval. Six members of the Board must be present and vote for quorum rules to be satisfied. At the time of the drafting of this report, there are three vacancies on the Board, which means that the Board has exactly the number of Commissioners required to take formal action. New Board members are nominated by the Prime Minister and approved by a majority of the parliament. Conflict of interest rules apply to all Board members and the CEO, and none may be a political party official or hold public office.

Order 65 requires that the CMC enact rules, regulations and codes applicable to its operations and those of the industries that it regulates, and establishes the framework for a

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[1] Generally speaking, only the aspects of Order 65 relevant to broadcasting and other media (and not telecommunications) will be discussed in this report.

procedure for enforcing them. Under that process, the CMC is responsible for investigating any potential wrongdoing, determining whether a violation has occurred, and imposing any sanctions. Serious cases are referred to the CMC's Hearings Panel, which can convene an open hearing and recommend a ruling and sanctions to the CMC. The Hearings Panel is a five-member specialized panel of lawyers and other relevant professionals who are appointed by the CMC's Board. Less serious cases may be decided by the CMC's CEO.

Decisions of the CMC's CEO or Hearings Panel may be appealed to a three-member specialized panel known as the Appeals Board. One member of the Appeals Board must be a judge, and the other two must be lawyers or other relevant professionals. Members of the initial Appeals Board are to be appointed by the Prime Minister. Subsequent new members are to be appointed by the Minister of Justice. Evidentiary sessions and decisions of the Appeals Board are generally open to the public. To encourage independence from the CMC, members are to be remunerated by the Ministry of Justice.

Order 65 also:

- Requires the CMC to encourage freedom of expression and professionalism of the press by working with the Iraqi press community to develop a code of ethics for the press and, in consultation with the industry and relevant professional journalists' associations, developing a system to implement the code through self-regulation;

- States that the written press shall not require a license to operate within Iraq;

- Charges the CMC with planning, managing, allocating and assigning radio-frequency spectrum and publishing a radio-frequency usage plan for Iraq;

- Charges the CMC with establishing and maintaining a license fee system for both broadcasting and telecommunications;

- Sets forth the sanctions that the CMC can impose and requires that they be proportionate to the offense committed; and

- Requires that the CMC propose a law to replace Order 65. The CMC has prepared a draft to submit to the national legislature (see Part Two, Section II.A.1 for comments on this draft).

2. Rules, Regulations and Codes

The CMC has promulgated a number of rules, regulations and codes, including the following:

- Rules of Procedure (which expand upon the enforcement process set forth in Order 65)

- Licensing Rules

- Spectrum Regulations

- Interim Broadcasting Programme Code of Practice

- Code for Media during Elections

- Guidelines on Accuracy and Balance

- Guidelines on Incitement

- Guidelines for reporting Sensational Events

- Guidelines on Equitable Access

Due to security issues, most of these documents were issued on a temporary or interim basis without first fully consulting the industry.

Order 65 expressly requires that the CMC issue codes of practice in two media-specific areas—broadcasting responsibility and media activities during elections. In July 2004, the CMC enacted an Interim Broadcasting Programme Code of Practice that establishes minimal content restrictions for broadcasters. These restrictions include prohibitions on inciting violence or public disorder, transmitting terrorist messages, and knowingly airing false material.

In December 2004, prior to the commencement of the campaign period for the January 2005 elections, the CMC issued a Code for Media during Elections, which establishes special rules governing media coverage during campaign periods officially announced by the Independent Electoral Commission of Iraq (IECI). The Code purports to respect international best practices and was developed in consultation with Iraqi media outlets, the IECI and international organizations and experts. It requires broadcasters to provide equitable access to political parties, to show balance in news programming, and to air voter education information requested by the IECI. The Code contains additional requirements for Iraq's publicly funded media of the Iraqi Media Network and places upon all media general minimal requirements, such as a media silence period 48 hours before polling, rules on paid political advertising and prohibitions on incitement to violence.

Under the CMC's Rules of Procedure, complaints against media outlets for violating CMC code generally can be initiated by the CMC itself, any member of the public (including media companies), or by the government and are to be resolved through the process described in Section III.B.1. Pursuant to an understanding between the CMC and IECI, complaints against political parties and candidates concerning their misuse of media during elections are to be administered by the IECI.

Both the Interim Broadcasting Programme Code of Practice and the Code on Media during Elections were widely published in Iraqi newspapers when they were issued, and press releases about the codes were issued to international and local press. In order to give the public and media a better idea of how the codes will be applied, the CMC issued four sets of guidelines further explaining them (referenced above). These guidelines were published in Iraqi newspapers as well. Both codes and the guidelines also appear on the CMC's website (www.ncmc-iraq.org).

3. Licensing

    a. Pre-CMC

After the fall of the previous regime, the CPA took over the licensing of broadcasters, and apparently many mistakes were made early on in this process. For instance, broadcasters were reportedly asked to submit sizable non-returnable application fees, whether they received a license or not. In addition, the mechanism through which the CPA initially collected and recorded fees was ad hoc, cash-based and ignored common financial controls. Moreover, some broadcasters received licenses without supplying even the most basic information about their operations, funding, staffing and program schedules.

This process seemed to be driven by the notion that the best way to promote free media would be to give anyone that applied the opportunity to broadcast. While this is a reasonable aim, it led to chaos in the frequency spectrum. The airwaves filled up rapidly, especially in Baghdad and other heavily-populated cities, leading to a situation where a large number of broadcasters conflicted with each other. Faced with interference, some broadcasters moved to a 'clearer' frequency or channel thus interfering with frequency spectrum assigned to others and further contributing to disorder.

In the early part of 2004, leading up to the establishment of the CMC, the Media Development Advisory Team (MDAT) funded by the United Kingdom's Foreign and Commonwealth Office took control of broadcast licensing, and contractors employed by the US State Department and USAID began focusing on telecommunications issues. The MDAT compiled a database of broadcasters, designed an application form and produced a new license, all based on international models. The new license included terms and conditions holding broadcasters accountable for violating license terms.

    b. Licensing under the CMC

After the CMC was established in June 2004, it adopted a multi-phase licensing scheme. During Phase One, the CMC would incorporate the system developed by the MDAT into its interim license procedures, would continue to license those on air based on minimal criteria and would filter out applicants deemed to be unsuitable for technical and financial reasons, and would use the licensing process as a way to gather as much information about broadcasters for use in developing its permanent license policy.

Under this interim regime, broadcasters generally were granted short-term provisional licenses valid for six months. These initial licenses have been renewed and extended since they originally expired. In late 2005, the CMC issued a blanket statement stating that all broadcasters operating under a CMC license could continue to operate beyond the date of expiration. This decision was designed to give the CMC more time to take full stock of the broadcasting sector, consult with the industry and decide what actions to take in any future licensing policy.

The CMC has apparently taken considerable strides in staffing its licensing department. However, the task of contacting and processing all broadcasters across Iraq has proven to be an extremely difficult one. As a result, a number of broadcasters remain unlicensed, and thus are illegally on the air.

The Kurdish media has yet to come under the regulatory umbrella of the CMC. Contrary to legal requirements of Order 65, broadcasters in the Kurdish Region are not, in practice, licensed by the CMC, but rather through the regional authority. Unlike in the rest of Iraq, newspapers in the Kurdish Region are required to have a license.

The CMC currently plans to continue Phase One through 31 December 2006. It then plans to move on to Phase Two, in which it will (a) develop a more detailed body of regulations that address specific problems of broadcasting in Iraq and (b) issue long term licenses to qualifying stations based on competitive criteria.

The CMC's stated goals in licensing are as follows:

- Investigating further licensing and regulatory requirements for religious and political broadcast stations.

- Working with authorities in the Kurdish Region to encourage cooperation and inclusion in national regulatory framework.

- Taking action against unlicensed broadcasters to bring them under regulatory control of the CMC or to close down their operations.

- Supporting the creation of fair and legal commercial media market.

- Stamping out copyright theft and piracy.

- Clearing the current high level of interference between broadcasters.

- Setting standards for advertising on radio and television.

- Allowing for the establishment of national commercial networks through a competitive tender.

- Increasing professional and technical assistance to guide stations in proper operating techniques that minimize interference, providing a minimum technical standard that may be used in the licensing process to exclude unqualified stations.

- Considering fair and equitable license fee structures for long-term licensing.

2. Frequency Planning

The CMC spent considerable energy during its initial months in a jurisdictional conflict with the Ministry of Communications for the right to allocate radio frequency spectrum and license telecommunications operators, despite the fact that Order 65 clearly gives such authority to the CMC. Eventually spectrum allocation was brought into the purview of the CMC. Partially as a result of this struggle, there is frequent interference among stations (most of which is not officially reported to the CMC). For example, some licensed broadcasters have moved frequencies without permission, causing a knock-on effect as they interfere with other broadcasters who are then, in turn, forced to move. For instance, Radio Monte Carlo's previously unlicensed broadcasting had forced six other stations to move frequencies. Other technical interference problems are the result of stations using sub-

standard equipment or operating transmitters incorrectly due to a lack of technical know-how. Moreover, the fact that certain stations have taken on the character of regional networks—not through a competitive process based on quality or audience appeal, but rather through political connections or by commandeering more frequencies without applying for a license—has contributed further to improper frequency crowding and interference.

3. Elections

In connection with the issuance of its Code for Media during Elections in December 2004, the CMC commissioned the production of a thirty-minute film explaining standards for elections coverage and the importance of adhering to them. The film addressed such themes as fair reporting, rumors and falsification, and incitement to violence. The film also included interviews with international experts in elections and campaign coverage, the aim being to bring international expertise to audiences in Iraq, something that would have been very difficult otherwise given the security situation prior to elections. The CMC screened the film at a number of conferences for Iraqi broadcasters prior to the start of the campaign period, and at the joint press conference with the IECI where it presented the Code for Media during Elections. An edited version of the film was produced for screening by Iraqi television stations.

For both the January and December 2005 elections, the CMC's Monitoring and Research Department monitored major media sources to assess the quantity and quality of the coverage of candidates and parties and general adherence to the Code for Media during Elections. The CMC focused primarily on television, both terrestrial and satellite, but monitored some radio and print media as well. In doing so, the CMC looked at the space or time given to the presentation of the parties and relevant political personalities, the manner in which they were portrayed, and the degree to which bias was reflected in coverage. Television monitoring focused on prime-time news programs and special editions of election-related programs and political commentary. In addition, an assessment was made of gender balance in election-related stories. Findings and conclusions were published by the CMC.

Significant effort has gone into building the capacity of the CMC's Monitoring and Research Department, which includes a number of staff members and is headed by a lawyer. For example, prior to the January 2005 elections, members of the department attended a week-long training in media monitoring organized by the BBC World Service Trust in London. This course covered the development of manuals, templates and check-lists for monitoring broadcasters' output as it related to the election campaign and the CMC Code for Media during Elections. During that visit, the team also met with professionals experienced with broadcasting regulation in the UK. In addition, prior to the December 2005 elections, the team attended a week-long training course in Amman where they developed a training methodology and strategy. This was followed up a few weeks later with more training where the team viewed recorded examples of elections coverage and discussed how they might be treated under the CMC Code.

4. Enforcement

The CMC has not received or initiated any complaints under the Interim Broadcasting Programme Code of Practice or the Code on Media during Elections since their promulgation. To date, the CMC has focused largely on monitoring broadcaster compliance, as during the 2005 elections. In addition, it has sent letters to a number of broadcasters for broadcasting on the wrong frequency and broadcasting without a license. Enforcement

beyond sending such correspondence has been difficult, however, especially given other pressing security challenges. Even international broadcasters have been flouting the CMC's licensing rules and ignoring its correspondence. For example, the BBC has not moved to its assigned frequencies despite numerous contacts from the CMC, and Radio Monte Carlo continued to broadcast without a license until very recently.

5. Consultation

The CMC has taken positive steps toward consulting the broadcasters it regulates, gradually increasing its profile and becoming more accessible to broadcasters over the past two years. In its initial months, its consultation activities were limited primarily to holding press conferences, addressing broadcasters at conferences hosted by others, and issuing occasional press releases. Over the past year or so, it has become more interactive with the industry by, for example, hosting a conference for broadcasters in Baghdad and planning a roundtable where broadcasters were invited to discuss such key policy issues as license fees; the categorization of broadcasters into religious, political and community stations; plans for long-term licensing and fee structures; and codes of practice. The CMC has also started publishing a magazine discussing important issues called *Tawasool* for wide distribution. Moreover, it has made efforts in developing and training its public relations department, including through consultancy and training.

6. Overall Regulatory Effectiveness

As the discussion above shows, the CMC has not succeeded fully in fulfilling all of its goals and responsiblities as a national regulator of broadcasting. Attacks by various political entities and the Ministry of Communications have required the CMC to spend considerable time and energy defending its existence and its remit under the law. Additionally, security concerns have meant that efforts to consult with the industry have suffered. Furthermore, due to lack of qualified staff and capacity, the CMC has often been overwhelmed and unable to respond as effectively as required, particularly when faced with competing issues and events in telecommunications and broadcasting at the same time. It is very possible that the CMC, through the long process of developing capacity, may be forgoing the opportunity to demonstrate what an independent agency can do, even in difficult circumstances, to provide legitimate regulations (especially in a conflict environment) and administer them with due process. It is these deficiencies that Part Two of this Draft Report aims to address.

B. Iraqi Media Network

The Iraqi Media Network (IMN) was the consequence of one of the most significant events in the development of the Iraqi media, the dismantling of the Iraqi Ministry of Information and the transformation of its assets into public service media. The IMN now includes include two terrestrial TV channels and the Al Iraqiyya satellite channel, which make up the Al Iraqiyya network, two radio stations, and the Al Sabah newspaper.

1. Establishment, Legal Framework, Structure and Mandate

As with the CMC, the initial law establishing the Iraqi Media Network (IMN), Order 66, was drawn up after a long consultative process and was issued by the CPA on 20 March 2004. It also draws largely on international conventions and current best practice.

Pursuant to Order 66, the IMN is supervised by a nine-member Board of Governors and is managed by a Director General. The Board is charged with protecting the interests of the public and ensuring that the IMN is meeting its public service remit, *i.e.*, that it is entertaining, informing and educating the diverse and various populations in Iraq. The Board is also obligated to serve as a buffer from government influence. Board members must be nominated by the Prime Minister and approved by two-thirds of parliament. A three-member Financial Committee advises the Board on financial issues and must approve all expenditures in excess of 150 million dinar. Conflict of interest rules apply to all Board and Financial Committee members and the Director General, and none may be a political party official or hold public office. Order 66 also states that the IMN may receive funds from any source, including Iraqi government and international grants, advertisers, subscription fees, and taxes.

Order 66 also requires that IMN broadcasters air programs in the variety of languages spoken in Iraq, including Arabic, Kurdish, Assyrian and Turkmen. It requires certain specific types of programming, such as:

- Programs that entertain, inform and educate.

- Programs of news and current affairs.

- Coverage of sporting, religious and cultural activities.

- Children's programming.

- Coverage of national government activities, as determined by the responsible editor.

- Indigenous Iraqi production.

- Programming that facilitates and encourages citizen participation in democratic processes.

- Programming and a programming structure that reflects the diversity of Iraqi society.

- Programming that encourages understanding of issues of gender, age, disability, race, religion, membership in a political group or membership of a minority community in Iraqi society.

Order 66 also generally requires that the IMN do the following:

- Inform the public on all political, economic, social, health, cultural, educational, scientific, religious, ecological, sporting and other developments, events and phenomena in the country and abroad, as well as ensure open and free discussion on all issues of public interest.

- Foster, encourage, and develop all forms of domestic audio-visual creativity that contribute to the development of Iraqi culture, art and entertainment, and to the international representation of the Iraqi cultural identity.

- Broadcast programs intended for members of the Iraqi community outside Iraq.

- Inform and educate the citizens in all aspects of the preservation of cultural heritage.

- Inform and educate the citizens in all aspects of the protection of environment, as well as promote the right of all to a healthy environment.

- Foster and encourage the development of civil society and the rule of law.

The IMN is also required under the law to encourage respect for and promote fundamental human rights and freedoms, including freedom of expression, democratic values and institutions, and the culture of public dialogue; and respect and encourage public understanding of political and religious pluralism. It also must treat impartially all political, economic, social, health, cultural, educational, scientific, ecological and other issues, and not advocate the positions or interests of any particular political, religious, commercial or other party. In doing so, the IMN must ensure the public is aware of different points of view in order to create informed public opinion.

Order 66 further requires that six members of the Board be present and vote for quorum rules to be satisfied. At the time of the drafting of this report, there are four vacancies on the Board, which means that the Board does not have the requisite number to take decisions. From discussions with senior IMN representatives, it is apparent that this paralysis of the Board is significantly preventing the Board from dispensing funds and making key decisions, thus allowing political officials to influence the station and preventing adequate management oversight.

2. Rules, Regulations and Codes

Apparently due to a lack of quorum within the Board of Governors, the IMN has not yet issued any internal rules addressing the Board's procedure or the IMN's management or operations. It reportedly published an internal journalistic code of ethics prior to the December 2005 elections.

C. Other Legal Provisions Affecting Expression and Media

1. Constitution

In a number of ways, the version of the Constitution approved in October 2005 is a positive step forward for freedom of expression and independent regulation. In particular, it names the CMC as one of the independent federal commissions, thus preserving its existence, and states that the CMC is under the purview of the parliament, rather than the government. It also includes basic guarantees—"in a way that does not violate public order and morality"—of "freedom of expression using all means [and] freedom of press, printing, advertisement, media and publication."

2. Iraqi Penal Code

The CMC has conducted a review of Iraqi legislation in effect prior to the June 2004 handover to the Interim Iraqi Government and has determined where such laws violate

international standards for freedom of expression (this review is attached at Appendix B). For example, a number of provisions in Iraq's Penal Code of 1969 punish speech that incites violence or public disorder with life imprisonment. Additionally, paragraph 226 of the Penal Code punishes and person who "publicly insults" government institutions or officials with imprisonment of up to seven years. Paragraphs 433 and 434 of the Penal Code address defamation and insult respectively, and state that these offenses are punishable by detention of up to one year. Under paragraph 433, truth appears to be a defense to any prosecution for defamation of a public official, but what constitutes "truth" has apparently been construed very narrowly by Iraqi courts. In all cases, terms used to define prohibited acts and speech are broad and vague. Paragraphs 226, 433 and 434 of the Penal Code are attached at Appendix C.

Today, three years after the fall of Saddam, journalists are apparently increasingly becoming the targets of government enforcement of the Penal Code provisions punishing defamation and insult. For example, a recent New York Times article reported that three journalists from a small newspaper in southeastern Iraq are being tried, under Article 226, for accusing local officials of corruption. Similarly, journalists working for three different media outlets (not mentioned by name due to fears of reprisal) claim that the government has threatened spurious cases against them under paragraphs 433 and 434. In the Kurdish Region, Suleimaniyah Court recently sentenced a writer for the Hawlati newspaper, Twana Osman, to six months in prison and fined the newspaper 75,000 dinar following the publication of an article stating that the Kurdish Regional Government's Prime Minister had two telephone company employees fired for cutting his phone service after he failed to pay his bill. It is understood, however, that the sentence may have been cancelled and government representatives have promised to advocate for the decriminalization of defamation following pressure from public opinion.

3. CPA Order 14

The introduction of repressive laws continued during the days of the CPA, which attempted to curb speech inciting violence or disorder by enacting Order 14. This order allowed the imposition of severe sanctions, including up to one year in prison or fines of up to US$1,000. Most notoriously it was used to close the newspaper Al Hawza, mouthpiece of the Sadrist movement, which some say was the catalyst for much of the violence that followed.

From the viewpoint of international law and best practices, Order 14 is problematic for a number of reasons, including the following:

- It fails to define "incitement" so that it meets generally-accepted international standards.

- It allows the government to impose sanctions directly on the media.

- It does not establish fair enforcement procedures or guarantee adequate due process protections.

- It includes the sanction of imprisonment.

The CPA subsequently enacted Order 100 to give the Prime Minister, post-handover, the authority to enforce Order 14 and impose sanctions directly against the media. Under

Order 100, the Prime Minister may refer a matter to the CMC for the imposition of additional sanctions, which may include revocation of a license. Although this law has not been enforced since the days of the CPA, the fact that it is still in effect may be leading to self-censorship among journalists.

IV. Human and Institutional Capacity Building

In 2006, a panel of Iraqi journalists told the International Research and Exchanges Board (IReX) that there are few substantial local training opportunities for young and mid-career journalists. Many Iraqi nongovernmental organizations focused on the media are reportedly mismanaged and plagued with cronyism and corruption. The IReX panel explained that although there are journalism courses at the College of Mass Communications of Baghdad University and elsewhere in the country, the faculty's curriculum and equipment have not been significantly updated since the end of government control of the media, and they are struggling to meet the new needs of students preparing for a rapidly changing media sector. Moreover, Baghdad University reportedly has no facilities to train working journalists, as communications facilities and faculty are accessible only by journalism and communications students.

There is at least one active local Iraqi media training institution, known as the Iraqi Journalists' Rights Defense Association (IJRDA). IJRDA was established in 2005 with the goal of raising awareness among Iraqi journalists. It has at least six offices throughout Iraq. IJRDA operates mainly as a local voice to protect journalists and support their goals and occasionally organizes training events for journalists. The IJRDA does not reveal its funding sources.

In the absence of sufficient viable local training facilities, international organizations from places such as the United Kingdom, the United States, Canada, Denmark and the Czech Republic, as well as the US and UK governments and intergovernmental organizations such as UNESCO and UNDP, have provided Iraq with media experts and resources. Some have developed training programs for Iraqi journalists, the vast majority of which are conducted in neighboring countries. The training experience of journalists at Aswat Al Iraq, an independent Iraqi news outlet, might be seen as typical. According to its editor-in-chief, Zuhair Jezairy, the outlet is funded by the UNDP in cooperation with Reuters Foundation. Journalists working for him have been involved with many training courses sponsored by international organizations, including courses run by Reuters in Amman, Jordan and Beirut; a program run by the Canadian Réseau Liberté in Beirut; and a program run by the Danish NGO International Media Support (IMS) in Iraq. IMS has published a comprehensive report of media development efforts by international organizations from 2003 through June 2005. The report can be found on the IMS website's Iraq page at www.i-m-s.dk.

Other civil society organizations in the country are devoted to assisting journalists in other ways. For example, the Journalistic Freedoms Observatory (JFO) (www.jfoiraq.org) claims to be a group of Iraqi journalists who identify, monitor and fight against violations of press freedoms in Iraq. JFO states that it is ready to provide, free of charge, media lawyers and experts to defend journalists, and its website provides contact information for legal consultation. The website also contains information about women in the media and a number of research papers. The sources of JFO's funding are unknown.

The IFJ background paper (attached as Appendix A) contains additional information about capacity-building efforts and needs for Iraqi journalists.

PART TWO:

POLICY

RECOMMENDATIONS

I. <u>Introduction</u>

As we conclude from Part One, the Iraqi broadcasting market has many of the surface characteristics that regulators and planners wish to achieve: pluralism, lack of concentration, relative independence from the state, a regulatory framework designed to encourage independent media, and a regulator that refrains from censorship. But there are definite signs of complications. As Iraq remains a zone of conflict and post-conflict, the tendency for control and stability is great. There is increasing evidence of intervention by the government or at least threats of intervention. With respect to some media, links are being made between insurgents and programming. Because of the uncertainty concerning the overall political settlement, how media will or should be regulated is not yet clear.

Neither the specific surface pluralism nor the actual complexity of the situation was planned or the consequence of a series of intended actions by the CPA, the successor governing authorities or the regulator. Now, there is an opportunity to consider consequences and their relationship to regulation. We turn in this Part Two to recommendations that might be considered by the CMC, parliament, other Iraqi policy makers, and international and local donors and implementing organizations as ways to enhance and improve upon the way the broadcasting sector has developed thus far.

In making such recommendations, we are mindful of the following:

- A regulatory environment that encourages pluralism, experimentation, innovation, and the existence of many voices should be encouraged.

- There is a need for continued monitoring to ensure that a plural media, with stations identified with interests, does not become a vehicle for promoting strife and conflict. This will be a priority if inter-sectarian violence continues to escalate.

- There is a need for care, both in terms of the IMN and the structure of the private broadcasting industry, to ensure that there is a sense of inclusion, so that all sectors feel that they are appropriately represented in the public sphere.

- Iraq is not yet a vibrant market economy, given current elements of conflict, lack of security and uncertainty, but it is a society that could and should develop in a way that supports a strong consumer sector. A media sector should emerge that can easily adjust to a growing commercial market.

- In the near and medium term, a strong public service broadcaster is necessary to reflect societal choices about the structure of Iraq, to reinforce consensus, and to help to define and reinforce an Iraqi national identity (as that is defined through constitutional and other processes). Such a public service broadcaster should reflect traditional international standards for public service broadcasting, as tailored for the Iraqi context.

- Some consequences for the regulatory structure will arise in the political settlement that evolves among the many competing interests within Iraq.

In order to encourage pluralism, to protect the broadcasting sector from ossifying into sectarianism, and to prepare for a more market-oriented economy, policy decisions and other actions could be taken in the following areas:

- The legal framework governing media is due to undergo significant changes.

- The CMC will be reviewing changes in its approach to regulating the broadcasting sector.

- The IMN should be reviewed to determine whether it is fulfilling its public service obligations.

- Other media development efforts might be considered by the CMC, other Iraqi policy makers, and international donors and implementing organizations.

II. Legal Framework

  A. Legislation

    1. New CMC Law Submitted to Parliament

A draft law was submitted to parliament by the CMC earlier this year to replace Order 65. The passage of such a law is a necessary step in legitimacy: Order 65, issued by the CPA, should be supplanted. Having the CMC remit codified through an Iraqi law will enhance the institution in the eyes of the government, the public and the industries the CMC regulates. There is no indication of when this law will be debated. Parliament went into recess on 15th August until after Ramadan, and, at the time of the writing of this report, there are a large number of other laws likely to be considered before the law on the CMC. Stanhope has reviewed the draft, and believes that the following comments should be considered as the law is debated and perhaps revised in parliament:

- It should be made clear that the CMC has sole and exclusive authority over licensing and regulating telecommunications and broadcasting throughout all of Iraq.

- The law should make clear that any regulations, rules or codes passed by the CMC pursuant to Order 65 and licenses issued under Order 65 will remain in force until superseded by the CMC.

- It may be helpful to clarify the role of government (and perhaps specifically the Ministry of Communications) regarding the CMC and broadcasting policy.

- If the CMC is to retain some authority over non-broadcast media (which is normally not the case for independent regulators under international best practices), it should be made clear that its authority over print media and Internet extends only to developing and protecting these industries, rather than licensing and regulating them. It should be explicit that no licenses shall be required to practice journalism or to own or operate a print publication or to set up a website.

- All appointments to the CMC board and other bodies should be approved by a majority of parliament. It is critical that no one branch of the government has excessive control over the CMC.

- Attention should therefore be given to the nomination process and the approval process. For example, one could nominate twice as many members as are needed and rank the choices, with parliament going down the list until the requisite number is chosen. In such a scenario, to fill three vacancies, one would nominate six names. If any of the first three on the list were rejected, the next name on the list would be proposed until three were approved. It may be advisable for the law to require that parliament approve the requisite number from the list (rather than allow it to reject more than half of the names altogether) in order to prevent a delay in the appointment process.

- If the law sets forth quorum requirements, it should require that quorum be satisfied with a minimum number of Board members (somewhere near two-thirds of the total number of possible members is considered best practice), rather than merely a majority of Board members. Otherwise, if there were only a very small number of Board members at any given time (if members have resigned and not yet been replaced, for example), two or three individuals would have significant power.

- Care should be taken not to require too much management by the Board. The legislation should recognize that significant authority should be delegated to CMC staff. For example, it may be advisable to give the CEO the authority to issue some licenses, at least of a certain scale, without Board approval, within guidelines established by the Board (which should include procedures requiring the review and approval of certain CMC staff, including the legal and licensing departments, before a license can be issued). One option would be to define clearly the Board's powers and to keep them appropriately supervisory and then state that the CEO has all powers not reserved to the Board. Powers appropriately reserved to the Board could include establishing and overseeing licensing guidelines and procedures; approving codes, rules and regulations; approving the budget and annual plan and submitting them to parliament for approval; appointing and removing members of the inquiry and complaints committee; appointing and removing the CEO; and supervising the CEO's performance generally. The value of delegation, however, must be balanced against the need for having a check on the CEO's authority and the need for providing the CEO with political cover, particularly in the dangerous environment of Iraq.

- The Appeals Board should be appointed through an external process (perhaps involving the Ministry of Justice or a group of judges), rather than by the CMC Board, in order to preserve the Appeals Board's independence.

- Decisions by the Appeals Board should be able to be appealed to Iraqi courts. We understand that making the CMC the final arbiter in media disputes was an affirmative policy choice based on the realization that (i) current Iraqi criminal law lacks appropriate due process guarantees and (ii) Iraqi courts have little familiarity with the principles of human rights in general, and

freedom of expression in particular, and that as yet, they often do not act fairly and independently. Assessing the extent to which this is correct and determining how the judicial system might be reformed is beyond the scope of this report. We do note, however, that authorizing the CMC to act as final arbiter and make quasi-judicial decisions would almost certainly be seen to violate the Iraqi Constitution, namely Articles 94, 95 and 100 which, respectively, provide: "decisions of the Federal Supreme Court are final and binding for all authorities," "the establishment of special or extraordinary courts is prohibited," and, most significantly, "it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision."

- Penalties should be reasonable and proportionate to the offense, and should escalate in severity (e.g., a violator should be given sufficient warning before moving on to more severe penalties, and revocation should be used only as a last resort). It may be advisable to include the penalty of seizure of equipment and closure as a remedy for persistent unlicensed broadcasters.

- A right of reply should be considered as a potential remedy where there are complaints of insult or particular kinds of defamation, and should reflect international best practices as set forth in Part Two, Section III.F.1.f below.

- The law should require the CMC to consult with the industries it regulates before issuing rules, regulations or codes of practice applicable to them, and should specify that the CMC must consult with the industry to agree upon and adopt public rule making procedures that will guide the process.

- The CMC should be required to keep accurate, publicly available records and maintain a website where it publishes announcements, rules and decisions.

2. Repressive Laws Still in Effect

Certain Saddam-era legislation impairing the right to freedom of expression and CPA Order 14, certain of which are discussed in more detail above in Part One, Sections III.C.1 and 2, should be repealed (particularly where imposing such excessive punishments as imprisonment) and replaced with laws of general application (meaning that they apply to all and do not single out media specifically), in line with international standards, prohibiting defamation, incitement, and hate speech.

Such incitement to violence legislation should, among other things:

- Narrowly define what constitutes incitement to violence;

- Punish only speech that carries a clear and immediate risk of incitement;

- Punish only intentional or reasonably foreseeable incitement;

- Provide that an independent arbiter, e.g., the courts (and not the government), administer complaints in accordance with rules of due process;

- Not include imprisonment as a punishment; and

- Limit imposition of severe sanctions to cases of serious or repeated violations.

Defamation legislation should be as follows:

- It should clearly define what constitutes defamation.

- Liability should be found only where a false statement of fact has been disseminated causing injury to the reputation of the individual or entity bringing the claim, and the alleged defamer was at least negligent.

- Liability for defamation should not be found where the statement was (i) true, (ii) the result of a good faith mistake, (iii) clearly an opinion, (iv) an accurate account of a government statement, or (v) not discovered within a certain period of time of sufficient length, such as three years.

- Public figures and publicly-funded organizations should be required to prove that the alleged defamer acted with intent rather than mere negligence. This is in recognition of the principle that, in order to promote transparency, governments should be subject to greater scrutiny by the media than ordinary members of the public. It also takes into consideration the fact that the government and public figures are less likely than ordinary citizens to need to resort to defamation claims to protect their reputations; rather, they often have or could easily command the attention of the media and thus could attempt to correct misstatements directly in the newspapers and on the airwaves.

- In accordance with international principles, remedies for defamation should be limited to the following: (i) a requirement that a correction to the false statement be published; (ii) compensation for actual damages, defined as provable financial losses resulting from the defamatory statement; and (iii) compensation for non-monetary damage to reputation in serious cases.

B. Constitution

As is mentioned above in Part One, the Constitution approved in October 2005 is a positive step forward for freedom of expression and independent regulation because it contains general protections for expression and the media and because it refers to the CMC by name, thus making its survival more likely. However, the provision giving federal authorities jurisdiction over radio frequency spectrum could be more tightly drafted to ensure that broadcasting and telecommunications are licensed and regulated at the federal, rather than regional, level. Article 110 of the Constitution currently states that "[t]he federal government shall have exclusive authorities in the following matters," and specifies one such authority in point 6 to be, "[r]egulating the policies of broadcast frequencies and mail." We would recommend replacing such language in point 6 with "establishing policies of radio frequency spectrum and mail." We would also recommend adding immediately thereafter in point 6 the following: "The Communications and Media Commission shall have exclusive authority to license and regulate broadcasting and telecommunications in Iraq." This change would make clear that these functions will continue to be performed by an independent body, and namely the CMC, and cannot be usurped by the government or any other authority.

Together, these changes would preserve the concept of independent converged regulation at the federal level, which has significant advantages, including the following:

- <u>Independent Regulation</u>. It has been well established that independent regulation encourages both better services and increased investment. The World Bank, for example, makes the existence of an independent telecommunications regulator one of its core prerequisites for investment. Communications companies will be more likely to invest in Iraq, and provide high-quality services, if the regulatory framework is objective, consistent, and free from direct political control.

- <u>Converged Regulator</u>. Audio-visual programming has traditionally been delivered through conventional terrestrial broadcasting networks, and more recently by satellite, but new technology has broken these monopolies, and programs can now be delivered through a variety of systems such as cable, the Internet and 3G mobile phones. In a number of developed countries, the blurring of the distinction between media and telecommunications technologies has led to the convergence of regulation in the communications field. Iraq has had the opportunity to establish converged regulation from the outset and thus leapfrog countries where existing separate broadcasting and telecommunications regulators must be merged. The CMC is designed to provide an efficient one-stop shop—one agency with one public rule-making process—for the various communications sectors that share similar legal, technical and economic characteristics.

- <u>Federal Level</u>. It is far more efficient to have one central national regulator licensing and regulating communications services, rather than requiring service providers to comply with a number of different and potentially conflicting regional regulatory regimes and forcing them to patch together multiple regional licenses to provide adequate coverage. Radio frequencies that operators use to transmit their services do not end at regional borders, and neither should licenses that grant permission to use them. In recognition of this, the International Telecommunications Union will deal only with national telecommunications regulators and refuses to acknowledge regional or local agencies.

Although we recognize the value of recommending only confined changes to the Constitution, we have summarized other changes that might be suggested if more expansive protections of freedom of expression and media were sought (see Appendix D).

III. CMC

The legal basis for the CMC appears to be well established, and our discussions with policy-makers indicate that there is, generally speaking, broad support among the various branches of government for the concept of independent media regulation. However, as discussed above, the CMC needs to improve its capacity and visibility in order to better serve the public and the broadcasters it regulates. Accordingly, CMC goals could include:

- Safeguarding its legal basis and political support.

- Strengthening its operations (staffing, training, strategy).

- Increasing its efforts at communication and consultation with the industries it regulates, including developing processes to improve compliance. Compliance will not be effective until the CMC has developed workable relationships with the sectors it regulates, to include training of broadcasters on regulatory requirements.

- Focusing more on technology and transmission issues.

- Making incremental and realistic proposals for the reshaping of the media and communications landscape, concentrating operationally on doing what can be achieved within the limitations of Iraq today.

- Improving its regulatory and monitoring framework and bolstering enforcement capabilities.

- Building relationships and sharing information with regulators elsewhere, particularly those working in environments facing similar challenges.

- Perhaps increasing its support for media development efforts to fill voids normally addressed by other institutions and other aspects of society.

A. Legal Basis and Political Support

The CMC could safeguard its legal basis by continuing to advocate for the passage of Iraqi legislation and constitutional amendments, as discussed above in Part Two, Sections II.A and II.B. It could encourage political support by doing any or all of the following:

- The Constitution makes clear that parliament (the Council of Representatives) has oversight over the CMC. The CMC could reach out to relevant parliamentary committees, such as the Committee for Culture, Media and Tourism, to strengthen relations with them and streamline interaction between the CMC and parliament.

- Many of the CMC's difficulties in its initial months were due to constant attacks from various officials outside the CMC. Often, these attacks were not borne out of an intentional desire to repress the media, but rather from a misunderstanding of the fundamental principles of freedom of expression and independent regulation. In order to diminish the likelihood of similar problems in the future, the CMC could engage parliament and other Iraqi

policy makers in dialogue on media practices by, for example, hosting roundtables on important policy issues, or even inviting members of parliament and the government to hear speakers on international best practices.

- One aspect of how the CMC is regarded at home, though by far not the most important, is how it is regarded abroad. Although the CMC will want to be careful not to play exclusively to international audiences while ignoring the constituency and public that pay its bills, it could increase its visibility, ensure its continued existence across governments, obtain valuable support and advice and improve the image of Iraq abroad by continuing to bolster its international status and connections. The CMC can do this by joining more international organizations, attending international forums and engaging international press.

B. Operations

1. Governance and Staffing

   a. Appointing Three Members to the CMC Board

Although the Board of Commissioners of the CMC must have nine members, it now includes only six. Until new Iraqi legislation is passed on this subject, the appointment process in Order 65 must be followed. It requires that the Prime Minister nominate three individuals and submit this list of nominees for approval by a majority of parliament. These individuals:

- Must have senior-level experience in either legal affairs, management, business, regulation, engineering, telecommunications, broadcasting, or journalism and must be of impeccable character;

- Must not hold any executive, legislative or judicial position at any level of government and may not be an official of any political party; and

- Must not have any financial or business relationship with any broadcaster or private telecommunications company.

Having a fully constituted board will make it easier to hold meetings with the requisite quorum of six board members, thus facilitating the decisions that the CMC has ahead of it in coming months. It would be best to make this nomination and appointment process an open one by publishing an advertisement seeking applicants and keeping the vetting and selection process transparent, rather than allowing it to appear that commissioners are chosen based on behind-the-scenes political deals. One way would be for an independent panel of interviewers, including perhaps someone from the regulator, to interview applicants and select nominees (which could be, as discussed above in Part Two, Section II.A.1, twice the number needed). There could be room in the process for government representatives to nominate their own names for the list but they would ideally be required to go through the same interview process as other applicants.

b. Appointing the CMC Appeals Board

Order 65 requires that the Prime Minister make the initial appointments to the CMC's three-member Appeals Board, and these appointments have never been made. Appointment of the Appeals Board would complete the institutional structure through which the CMC administers proceedings, including those involving complaints against the media for violating CMC codes of conduct. Order 65 requires that the Appeals Board be composed of (1) a judge, (2) an attorney with communications regulatory experience, and (3) an individual with professional or business experience in the legal profession or another relevant field. The pool of potential attorneys in Iraq with experience in communications regulation is extremely small. Any subsequent law establishing such requirements should take this into account, perhaps requiring only experience in one of the following fields: communications, competition or public law. If, for whatever reason, Order 65 is to remain in effect for some time, it should be amended to account for this. (For a discussion of the potential unconstitutionality of mandating the Appeals Board to issue final, unappealable decisions, see Part Two, Section II.A.1 above.)

c. Staffing

With its CEO and lower-level staff in place, what the CMC needs now operationally is to find mid-level management, improve organizational effectiveness, and train everyone across the board on how to work in an independent regulatory agency. Within the context of Iraq, where the idea of independent regulation is completely new, this is no easy task. Providing comprehensive staffing and organizational advice is well beyond the scope of this report, and would require significant and long-term assistance from experienced advisors. We have, however, observed that the CMC could benefit from assistance with the following:

- Developing and implementing a management plan setting forth goals and budgets for the next fiscal year.

- Determining staffing requirements to fill departments.

- Developing strategies for and recruiting individuals for key posts, such as a deputy CEO and heads of each of department.

- Defining clearly how responsibilities are to be delegated from senior management to department heads, and from department heads to staff, so that individuals in each position understand the types of decisions they can make on their own.

- Designing, developing and implementing a comprehensive training program for all levels of staff.

- Developing the CMC's planning and budgeting capabilities.

- Enhancing internal communications.

- Defining and creating appropriate mechanisms for effective interdepartmental cooperation, and encouraging working in teams and matrix reporting.

- Developing communications and public information staff and strategies. This communications strategy and plan should incorporate the outreach and consulting efforts discussed below in Part Two, Section III.C. Ideally, the CMC's public relations staff would have responsibility for developing and managing such efforts.

C. Consultation and Compliance Training

The CMC should continue moving in the direction of increased consultation—further increasing its profile, sharing information, and facilitating access by broadcasters and the public—by building on its past consultation efforts (discussed in Part One, Section III.B.5). The CMC might do the following to achieve this:

- Publish notes and guidelines on specific compliance issues.

- Organize training workshops for broadcasters.

- Hold regular roundtables of broadcasters.

- Set up a helpline for broadcasters with compliance questions.

- Develop an advisory board on broadcasting issues, and perhaps working groups on specific issues, made up of those in the industry, policy makers and experts.

- Build up its public relations department, perhaps with the help of expert consultants or the advice of other independent regulators, and use this department to reach out to the public and the CMC's constituency.

- Hold more frequent press events.

- Improve its website by, among other things, posting more documentation and making it more interactive.

- Open offices in areas other than Baghdad.

- Hold forums where input can be sought from the general public and special interest groups (e.g., those devoted to disabled persons, women, children, and consumer issues).

- Set up and advertise an anonymous complaints mechanism for the general public.

- Start a newsgroup providing frequent email blasts of important information.

- Facilitate the development of a professional association of broadcasters as discussed in Part Two, Section V.A.3.

D. Assessing the Media Landscape and Developing Licensing Policy

As is discussed in Part One of this report, two of the most striking characteristics of Iraqi broadcasting are (i) the heavy concentration of media owned by political parties and religious groups, and (ii) that the distribution of this ownership among different groups appears generally to reflect the demographics of the Iraqi population. The CMC will need substantial time to consider how or whether to address the concentration of religious and political broadcasting. Complex issues include the nature of Iraqi media pluralism and the relationship between terrestrial and satellite delivered channels. The situation may change as the commercial broadcast market strengthens and the identity of the IMN becomes more established. In the meantime, the pluralism of Iraq's media scene could serve as a promising means of providing competing input into national and regional debate. The danger exists, however, that in a context of potential civil conflict, media pluralism may lead to intensifying the potential for violent destabilization, and the CMC should continue to monitor sectarian media closely.

In the short term, terrestrial and satellite appear to be the most important technologies for transmission that the CMC must regulate. Cable and internet broadcasting require land-based infrastructure (cable and broadband) that is expensive and easily sabotaged. Internet requires cheap broadband, the development of which may be unlikely due to more pressing infrastructure needs of the country. Due to topography and cost, terrestrial broadcasting will be the most widely available form of broadcasting in Iraq for the foreseeable future.

1. Terrestrial Licensing and Frequency Allocation Policy

a. Short-Term Possibilities

In recognition of the fact that fully assessing the media landscape will take some time, the CMC could decide to leave more far reaching decisions until later and adopt one or more of the following options for licensing terrestrial stations in the short-term:

i. Technical Issues with Frequency Spectrum

Clean Up the Frequency Spectrum Across the Country

In the short-term, the CMC should map the frequency spectrum and determine who is licensed, who is operating on the correct frequency, and who is prevented from doing so because another broadcaster is illegally broadcasting on its assigned frequency. As part of this process, the CMC could:

- Develop a national frequency plan that includes broadcasting, telecommunications and other spectrum.

- Perform analysis of existing frequency allocation.

- Interact with military and security forces and assess spectrum requirements.

- Develop a set of future projects and spectrum needs.

- Develop of databases and records for updating spectrum allocations.

- Participate in international spectrum coordination and ITU conferences.

- Develop standards for signal quality.

- Commission or conduct any other necessary research or engineering studies.

- Consider the application of new technologies, including digital terrestrial, in terms of use of spectrum and study proposals for shared spectrum approaches.

Work with Authorities in the Kurdish Regional Government
to Standardize Technical Requirements and Licensing
Terms and Conditions and De-Conflict Frequency Spectrum

With the Kurdish Regional Government (KRG) stressing independence and assertion of regulatory authority even in such sectors as oil exploration, the power of the CMC will likely continue to be contested there with respect to communications policy. The CMC is more likely to gain authority in the region through soft diplomacy, by holding periodic consultative round tables and perhaps through media development efforts in the region like those discussed in Part Two, Section III.H below. The federal regulator should, consistent with its general approach to light regulation and registration-type licensing, ensure that stations broadcasting within the KRG hold a license from the CMC. Additionally, as the CMC is able to improve its capacity and better serve its constituency outside of the KRG, broadcasters in the region may recognize the value of coming into the CMC's fold and do so voluntarily.

In the short-term, the CMC could focus on developing common standards between the two licensing regimes, rather than attempting to wrestle licensing functions away from authorities in the KRG. In coming months and years, it may not be so important that the CMC does not license broadcasters broadcasting exclusively in the KRG, so long as the same technical and other terms and conditions apply and the CMC can de-conflict the spectrum technically. A compromise could be to obtain agreement from KRG authorities to allow the CMC to intervene technically (regarding spectrum, channels, quality of signal, engineering support) and to incorporate language similar to that in CMC licenses into their own local licenses. This not only would lead to a smoother technical interface between regions and require that all Iraqis have access to broadcasting above a certain quality threshold, but also would facilitate eventual incorporation of the KRG licensing and regulation regime into that of the CMC, and thus make it more likely to happen sometime in the future. An agreement for allocation of licensing authority or cross-licensing would be constructive.

ii. Short-Term Licensing Policy

Issue a Moratorium on Licensing New Stations, While
Bringing All Currently Broadcasting Stations into the System

We would strongly recommend that the CMC make the determination that, at least in the short-term, its primary goal is to bring only stations currently broadcasting into the system in order to find out as much as possible about who is on the air today. Accordingly, it should issue a moratorium on licensing stations not yet on the air, while continuing to work to license those already on the air. The goal of such a moratorium would be to prevent further chaos on the frequency spectrum and focus on gathering information on current broadcasters to use in determining its future licensing policy. This moratorium could be established by drawing a line in the sand as of date X, say, three months' time, which is properly publicized in advance. If unlicensed stations could prove they were broadcasting on

that date, they could apply for a license. If not, they would have to wait until the moratorium is lifted to apply.

Continue with an All-Inclusive Licensing Policy

Alternatively, the CMC could continue to grant short-term temporary licenses to all applicants who meet a certain minimum criteria and comply with CMC codes of conduct and technical requirements. Consistent with the emergence of a market in which "external pluralism" exists (i.e. a large number of channels reflecting different ownerships and viewpoints), the CMC could encourage applicants in areas where additional viewpoints should be represented. It is, however, vital that the CMC's licensing department liaises properly with the monitoring and other departments to ensure that even temporary licenses are not granted to those who will abuse the airwaves. While licensing new stations, the CMC could reserve spectrum for future commercial, educational and community broadcasters.

b. Long-Term Possibilities

i. Long-Term Licensing Policy

In the long-term, the CMC will have to advise whether and how to address ownership by various entities, including foreign investors, political parties (or entities controlled by political parties) and religious entities. Practice in terms of ownership distinctions varies greatly internationally. The political system will undoubtedly decide whether having such an array of stations is desirable and consistent with the growth of democratic processes in Iraq. Some possibilities (varying in degrees of aggressiveness) are as follows:

- Have a policy of external pluralism, i.e., use the licensing policy to ensure that most views are represented and/or that broadcasters as a whole mirror society.

- Have a policy that no new licenses will be awarded to political or religious broadcasters, though that will have the perverse consequence of favoring some such groups over others and driving new groups to broadcasting without a license.

- Monitor and regulate existing religious and/or political broadcasters if their existence is thought overly to bias the political system or heavily skew public discourse. Here it would be useful to consider the varied practice and experience in many other countries.

- Treat religious and political broadcasters like public service broadcasters, by holding them to certain public service requirements. This approach was taken in Bosnia and Herzegovina, where the national regulator went so far as to require each such broadcaster to appoint a board broadly representing the various identities of the population receiving the signal. The composition of each board was subject to the regulator's approval.

- Restrict religious and political broadcasters to a lower level of transmitter power.

- Restrict only political (and not religious) broadcasters in any of the ways described above.

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The CMC could also consider other options and issues for the long-term:

- How to develop competitive criteria on which to award licenses based on purpose, audience, experience, character, technical capabilities, business plan and financial resources.

- Whether to introduce program criteria into licenses, e.g. public service obligations (see discussion at Part Two, Section III.F.1.b below)

- Whether and how to develop a separate class of community broadcasting.

- Whether and how to license based on public auction, where applicants would need to meet only minimum requirements and licenses would be awarded to the highest bidder.

- Whether and how to license based on economic sustainability, refusing to allow new entrants into markets deemed saturated.

- Whether it would be feasible to issue a nationwide terrestrial commercial license.

- Practical issues such as the duration of the licenses (research shows that eight to fifteen years seems to be the norm), fees and fee structures, and application procedures.

ii. Fees

The CMC currently has no long-term policy or schedule in place setting forth the fees charged to licensees. Only a small administrative fee is in place. Coming up with a comprehensive policy could be left for the long-term, once the CMC has had the opportunity to conduct necessary research and consult with the industry. However, a basic license and administrative fee schedule should be sorted out as quickly as possible.

License Fees

In almost every country that licenses its terrestrial broadcasters, the licensee pays the regulatory authority a recurring fee. This fee usually goes towards the costs of regulation, although in some countries it is paid to the government who then funds the regulator directly out of the state budget. Research shows that there are many different examples of fee structures around the world, but that they can broadly be summarized as basing fees on one of the following:

- Option One: Use of spectrum as a factor of the power and output of transmitters;

- Option Two: The coverage area determined through audience reach; or

- Option Three: Percentage of gross annual turnover of the licensee.

Generally speaking, in mature regulatory environments, Option Three is the most favored method (with Ofcom of the United Kingdom, the CRTC of Canada, and the FCC of the United States using it). Research shows that regulators generally charge anywhere from 2.5% up to 4.5% of gross annual turnover. For instance, ComReg in Ireland charges 3.5%.

In emerging democracies where there is little known about the operations of broadcasters other than the information that they include in their applications (which is generally taken at face value by the regulator), the favored choice is Option Two. This is primarily because the use of ATDI or similar software coupled with census information provides the regulator with a "best reasonable guess." This generally goes unchallenged, as broadcasters tend to use the same sort of software to calculate their own reach. This method is used by a number of European nations, and the Bosnian regulator's recent transformation to it has been considered successful.

Option One proves especially accurate where topography is relatively flat (such as in Iraq) and transmitter reach can be easily compared. However, even then, it has drawbacks. For example, a small broadcasting operation in a large city reaching a massive audience and a rural operator reaching a smaller audience would be charged the same fee if using transmitters of similar power. Nonetheless, this type of calculation has been used in some countries as an interim measure where population numbers and gross annual turnover figures are hard to come by or wholly inaccurate.

The CMC should keep in mind that however it determines its fees, the fee schedule should be fair, simple, flexible, and reliable. In addition, international best practices dictate that fees should reflect the underlying cost of administering regulation and no more, and that they should be relevant to operators' activities. In all cases, the regulator must consult widely with the industry and stakeholders to find the best and most relevant option to suit the needs of the market.

Administrative Fees

In addition to recurring license fees, regulators ordinarily charge a small fee for administering applications and other tasks, including substantive changes in license conditions initiated by the licensee and renewals. Such fees should be minimal and proportionate to the amount of administrative effort required to service licenses.

iii. Community Broadcasting

Community broadcasting (especially community radio) can be an important part of the broadcasting landscape due to its unique ability to serve small groups that benefit from having a medium for sharing ideas, but are unlikely to attract advertising or sponsorship. Often regulators give community broadcasters a discount on license fees or waive them altogether. Communities served are sometimes limited to a particular geographic area (such as a village or a group of villages), and often in these situations the community itself owns and manages the station. Such stations can be absolutely critical for facilitating participation in local level governance. Other times, communities comprise special interest groups (such as women or minorities) that are typically underserved by other types of media. It is too early for the CMC to develop a comprehensive policy on community broadcasting (especially considering that this policy should depend largely on how the IMN fulfills its public service remit in the future), so this is something to consider for the long term. However, if the CMC decides to continue issuing licenses to new broadcasters, rather than impose a moratorium, it would be prudent to reserve a limited band of frequency spectrum for this type of broadcasting.

2. Satellite Broadcasting Licensing Policy

The CMC must, in terms of its policy development, come to grips with the high level of use of satellite delivered broadcast signals as compared to programs delivered terrestrially. There are difficult questions of jurisdiction and power especially where channel providers are located outside Iraq and use satellites based outside the state. Some considerations include:

- Technical rules for quality.

- Potential establishment of Iraq specific platform, which might have compulsory carriage of local terrestrial stations, including the IMN, for free or a set fee in order to protect the ability of local stations to attract advertising revenues and provide consumers with local information.

- Extent to which satellite broadcasters are regulated or can be urged voluntarily to comply with CMC rules for content, e.g., compliance with codes of conduct and elections rules.

- Copyright, redistribution and program exclusivity issues.

E. Technology and Transmission

The CMC should be a center for the improvement of the technology of broadcasting in Iraq. It could, for example:

- Consider the feasibility of transitioning to digital terrestrial broadcasting, perhaps through a phased transition starting first in saturated areas such as Baghdad, as was done in Germany where Berlin was the first to change.

- Consideration of an Iraq-specific direct-to-home satellite platform to facilitate universal coverage and potential phasing out of some terrestrial analogue spectrum use.

- Determine other modes for the delivery of multi-channel video including telecommunications, Internet streaming and cable.

- Research and consultation with the industry on other new technologies.

F. Regulation and Compliance

As the CMC becomes more sophisticated and better staffed, it may want to consider more how the increase in information offerings from a variety of sources alters its capacity as a regulator and shifts its role to other modes of serving Iraqi society.

1. Regulatory Modifications

As most of the CMC's regulations, rules and codes and its license terms and conditions were established on a temporary and short-term basis and without public consultation, all should be reviewed and revised with the input of the public and the broadcasting industry through an open and interactive consultative process. Some specific regulatory modifications that might be considered are introduced briefly below. Any changes adopted by the CMC should be made in consultation with the industry and perhaps after

obtaining more comprehensive expert advice. Issues discussed below in subsections a through e could also be considered for broadcast legislation, depending on how responsibility for determining them is apportioned between parliament and the CMC.

a. Local and Independent Production

The establishment of local and independent production has many benefits. For example, increased local production would allow Iraqis to see more programming made by Iraqis specifically for Iraqis, and would bring all of the economic benefits associated with the development of any industry, including increased employment and tax revenues. Increased independent production, i.e., that produced by an individual or company who is independent of any particular broadcaster, would help to ensure that programming overall reflects a wide variety of views and perspectives. The CMC could encourage local and independent production of programming by including a clause in license terms and conditions requiring that stations use their "best efforts" to air certain percentages of content from local producers and independent producers.

b. Public Service Requirements for Commercial Broadcasters

Public service requirements are sometimes included in commercial broadcasting licenses. For example, commercial broadcasters are also often required to broadcast public service messages in times of emergency. Additionally, some regimes require that a certain percentage of commercial broadcasters' programming (perhaps 5% to 10%) be devoted to certain types of programming deemed to be in the public interest such as, for example, news and current affairs programming; cultural programming; children's programming; programming for underserved parts of the population, including, for example, women, the disabled, and specific ethnic groups; programming in minority languages; and voter education information. In some countries, there have been proposals for the establishment of a public service fund that would be available to all private broadcasters who wish to bid to perform public service obligations. Where frequency spectrum is no longer seen to be scarce, or where alternate modes of reaching the public in an unregulated fashion seem readily available, placing public service obligations into license conditions seems increasingly unlikely to work.

c. Monopoly and Cross-Media Ownership

With a country the size of Iraq, an initial wave of competition seems critical for the ultimate success of a diverse media landscape. One way of encouraging pluralism would be to restrict cross-media ownership (e.g., restricting an owner to just one outlet in each type of media, meaning an entity could own television station, one radio station and one newspaper). It also may be a good idea to put limits on the number of broadcast licenses one entity can own, particularly small markets. It likely is too early to address competition law in Iraq, but having effective competition legislation can serve as a complement and backstop to media concentration rules.

d. Copyright

Iraqi copyright legislation, namely Copyright Law No. 3 of 1971, was amended by CPA Order 82 on April 29, 2004, primarily to update it and bring it more in line with international standards. The law as amended expressly includes "works prepared for radio and television." The CMC's Interim Broadcasting Programme Code of Practice refers

specifically to this legislation, as amended, and requires broadcasters to adhere to it and also to comply with "generally accepted international conventions and standards for intellectual property protection." As having an effective legal regime for protecting intellectual property rights is a prerequisite for the building of a mature media industry and attracting foreign investment, the legal framework for copyrights should be reviewed to ensure that copyrights are adequately protected. It would thus be advisable to provide more expansive protections of copyrights in CMC licenses and to develop a code on copyright in consultation broadcasters to address any shortcomings in the current legal framework. Also, the CMC should address copyright compliance in the workshops discussed in Part Two, Section III.F.2 below.

e. Foreign Ownership and International Broadcasters

In the initial round of licensing, recognition was given to broadcast proposals and channels funded, sponsored and operated by foreign governments, particularly members of the Coalition. These stations can play an important role in supplying news and information and also, in some cases, establishing a standard for broadcasting quality. If the CMC maintains a "light hand" approach to licensing, there is no reason that these licenses should be less favorably viewed than any others. On the other hand, the CMC should take care that the distribution of licenses does not appear to favor government-based international broadcasters over others, unless it can state a society-based justification for doing so. The CMC, together with sponsors of these broadcasters, might wish to conduct its own study of viewing habits, arrangements with FM broadcasters, spectrum use and public attitudes towards these channels as a basis for future planning.

If ownership by non-Iraqi persons and entities were to be limited for some reason, however, it would be a good idea to allow foreign ownership of at least a minority percentage of individual media outlets in order to encourage foreign direct investment in the industry and the infusion of know-how that such investment brings. The United States, for example, allows foreign persons to own up to 25% of any individual station.

f. Interim Broadcasting Programme Code of Practice

Generally speaking, the Interim Broadcasting Programme Code of Practice, which was issued immediately after the CMC was established following the handover from the CPA to the Interim Iraqi Government, is a step in the right direction. It makes a clear attempt to comply with international best practices for protecting the freedom of expression, while at the same time preventing the types of speech that may be viewed as unacceptable or dangerous within the context of Iraq. For example, its provisions punish incitement to violence (including advocating terrorism) and require special care in programming involving religious groups and for individual privacy. It also requires accuracy and fairness, and offers aggrieved persons a right of reply. The Code works well as a first attempt to regulate broadcast content without excessive restrictions. However, the Code could be improved upon in a number of ways, including the following:

- The Code should be elaborated upon—perhaps best through the types of guidelines discussed in Part Two, Section III.F.1.i below—to provide better guidance to broadcasters on acceptable programming standards, particularly where issues present too many ambiguities. Such guidance could seek to clarify:

- examples of material that is merely offensive or insulting but does not constitute incitement;

- the meaning of decency and civility;

- that public discussion and debate about religion is permissible;

- what kinds of content violate an individual's privacy and dignity;

- a delineation between acceptable standards for adults and children; and

- what types of speech will violate the ban on statements that advocate terrorism and divert police from their duties.

- The right of reply provision should be redrafted to reflect international best practices. In particular, the Code should set out clearly the narrow circumstances under which the right may be claimed and how it should be exercised. The limitation on claiming a right of reply where other avenues of reaching the public are available should be clarified. The Code should recognize that, where a correction has been given that redresses the harm done, no right of reply should be available. Alternatively, consideration might be given to providing for an enforceable right of correction in the Code as an alternative to the right of reply.

As discussed above, any revisions to the Code should follow consultation with broadcasters.

g. Advertising

The CMC currently has no advertising rules and regulations in place. As the advertising market develops, and competition for advertising revenues increases, it will be important for the CMC to fulfill its remit to protect the public interest by encouraging better self regulation or, if necessary, setting standards for advertising scheduling, amount, frequency and content. The CMC should include these issues in future consultation with the industry and the public.

h. Elections

As is discussed above, the Code for Media during Elections was issued by the CMC immediately prior to the first election and has not been revised since. Some standards in the Code generated a lot of discussion among Iraqi broadcasters and international advisors when they were adopted, such as, for example, the Code's allowance of paid political advertising by candidates and its requirement of "equitable access" (allowing more prominent parties and candidates more coverage) rather than "equal access" (requiring equal time for each party or candidate regardless of their significance in the race) for candidates in broadcast media. The Code also set standards for the printed press during elections, although the CMC has chosen not to regulate print media in other contexts, including with the Interim Broadcasting Programme Code of Practice. The CMC should review the successes and failures of these policies and other provisions of the Code to see if and how they should be changed. For example, the CMC should undertake a consultation to determine whether concepts of "equitable access" apply where there is strong pluralism in broadcast offerings. In addition,

IMN-specific requirements (such as hosting debates and airing free slots for candidates) should be reviewed for effectiveness.

The CMC should increase its profile during future elections. In the past, there was considerable confusion as to who between the CMC and the Independent Electoral Commission of Iraq (IECI) had responsibility for regulating media conduct during elections, despite the fact that Order 65 clearly gave such authority to the CMC. Poorly-drafted IECI regulations and failure of the two agencies fully to coordinate their efforts during elections contributed to this confusion. Accordingly, the CMC should do the following in connection with future elections:

- Well before the next elections, the CMC should review its Code for Media during Elections and any related guidelines as discussed above, through a public consultation process, and make any necessary revisions.

- Well before the next elections, the CMC should begin working with the IECI to encourage it to pass a media regulation more clearly and appropriate defining IECI jurisdiction. A model for such regulation is attached at Appendix E.

- Closer to the next elections, the CMC should publish its Code for Media during Elections widely, perhaps holding a joint press conference with the IECI to announce and explain it immediately prior to the beginning of the campaign period. As the IECI is always highly visible around the time of elections, such coordination will increase the CMC's profile before the public, the industries it regulates and the government.

- During elections, the CMC should strive for better coordination with the IECI in monitoring and enforcing potential violations.

i. Guidelines

The four sets of Guidelines issued by the CMC to complement its Interim Broadcast Programme Code of Practice and Code for Media during Elections should be reviewed to see if they adequately provide the detail, context and examples necessary to assist broadcasters in interpreting these codes. It is our understanding that the CMC's research and monitoring department watched and listened to a number of broadcasters throughout each of Iraq's campaign periods and prepared detailed reports summarizing their findings. Real-life examples from these reports, explaining where content could be deemed to be in violation of CMC codes, should be incorporated into the guidelines to give broadcaster guidance as to how the codes will be interpreted. Perhaps the CMC's research and monitoring department could be charged with developing guidelines for existing and new CMC codes.

j. Rules of Procedure

The CMC's Rules of Procedure were drawn up in its first days of operation, and thus do not reflect its current organizational structure or the breadth of its functions. For example, under both Order 65 (currently in effect) and new legislation that the CMC has proposed, the CMC's Appeals Board has the judicial functions of providing a determination of whether a violation was committed and sanctions for such violations of its codes of conduct (for a discussion on the potential unconstitutionality of having Appeals Board decision be final and

unappealable to Iraqi courts, see Part Two, Section II.A.1). As such, the Rules of Procedure should contain basic protections provided to defendants in court, such as clear evidentiary rules, clarity on the standard of proof, the ability to call witnesses and examine witnesses brought against them, and the right to legal assistance if necessary. In addition, the Rules fail to provide clear guidance as to how the CMC would itself bring claims against those violating its rules, and instead seem to anticipate only third parties bringing adverse actions. Moreover, provisions in the Rules regarding general administration do not appear to reflect current practices. Moreover, many of its provisions seem to apply better to matters involving telecommunications rather than broadcasting issues. Accordingly, the Rules should be reviewed and revised to provide clear procedures covering all aspects of the CMC's operations.

2. Compliance

The CMC could improve compliance by training broadcasters as to how to comply with its codes and regulations. Broadcasters need to be told how the regulator expects them to behave, so that they know what is and what will not be considered acceptable. Even in the United Kingdom, where broadcasting has been regulated for decades, broadcasters generally welcome initiatives by the regulator to give guidance and training on how to comply with its requirements. Workshops could be organized for broadcasters, perhaps with significant input and participation of the research and monitoring department, particularly if it is involved in drafting guidelines. Such workshops could either be held centrally at CMC facilities or at broadcasters' premises. In addition to improving compliance, this would be an excellent way for the CMC to raise its profile and reputation with licensees.

3. Redirect Monitoring Efforts

The CMC should consider its statutory monitoring responsibilities to ensure that the sector *as a whole* contributes to tasks of informing and educating as well as entertaining and that the sector furthers Iraqi creativity. Given the partiality of most broadcasters, the CMC might be advised to spend fewer resources monitoring individual services for impartiality, and more on assessing plurality and access issues across the whole sector, asking whether any significant voices are being unreasonably excluded.

4. Increased Enforcement

As the CMC becomes more sophisticated, finds itself in a more stable political situation, and is better staffed, it will likely want to review its enforcement scope and implementation. One key step that needs to be taken before the CMC can shape a convincing strategy is the further hiring and training of a legal department that can draft correspondence, create files, gather evidence, interpret CMC rules and codes, apply international best practices, and eventually defend CMC positions in open hearings and court. We understand that it is virtually impossible to find local talent with the training and experience necessary to perform these highly-skilled functions. As such, developing a proper legal department will entail focused recruiting efforts and extensive training, possibly requiring the CMC to hire international consultants or send its legal staff abroad for courses or mentoring by a foreign independent regulator. Perhaps a national institute for the training of agency staff (such as that set forth in Part Two, Section V.C.1) could assist in this capacity-building stage.

Once the CMC's legal and other staff are in place, the CMC should renew enforcement efforts by focusing on clear incidents so as to give meaning to the rule of law. If

rules remain in place with no attention to enforcement, the rules will be perceived as a mockery. The CMC could first identify and reach out to stations broadcasting without a license or on the wrong frequency. Enforcing these more clear-cut cases would give staff the experience and confidence needed to enforce more sensitive and factually complicated rules. A reasonable goal could be to have the legal department prepared to handle high-profile and contentious proceedings by the time of the next Iraqi elections.

G. Relationships with Other Regulators

Perhaps among the best advisors that the CMC could have are other independent broadcast regulators. Attending forums where regulators discuss common issues, visiting their offices, sending staff for on-site training, and even developing informal relationships where staff can call or email other regulators with questions or share documents and other information could prove a cost-effective and efficient way to improve the CMC's operational capacity and obtain key policy advice. This is particularly true of regulators operating in environments where similar challenges are faced, such as regulators in other parts of the Middle East or those in other conflict or post-conflict areas.

H. Expanding Media Development Efforts

It may be possible, and even desirable, for the CMC to take a far more active and direct role in media development—perhaps by supporting a number of the initiatives discussed in Part Two, Section V below. Even though the CMC is first and foremost a regulator, and its primary responsibility to broadcasters and the public is to master the nuts-and-bolts of licensing and regulating broadcasters, it has been charged under current law with some extra-regulatory functions touching upon media development. Furthermore, it could be argued that broadcasting and the Iraqi public as a whole would benefit if the CMC were successfully to push a stronger media development agenda and, as a result, create a generation of media professionals and advocates who can move the landscape in a more positive direction.

"Media development" in this context could mean many different things. It could mean reinforcing efforts at professionalization, improved programming, training of station management, or better insights into technology. It could mean improving the role Iraqi media play in the development of the Iraqi economy, by supporting broad-based education programs or interplay between broadcasting and the Internet. It could mean supporting the development of Iraqi film or television production capability.

The CMC may be, even by default, the only organization in Iraq with the remit and budget to contribute to media development in any meaningful way. Sustainable media initiatives involving locally run, long-term programs would be best conceptualized or even implemented by a local player intimately involved with the media such as the CMC. Indeed, international implementers and donors have largely favored short-term projects in Iraq, often opting for one-time training programs held outside of Iraq rather than long-term sustainable activities in the country. Also, in the short term until the CMC can tackle the big, politically sensitive issues such as ownership by political and religious groups, initiating media development efforts may be one of the best ways that it can contribute affirmatively and significantly to the development of a viable commercial broadcasting sector.

There may, however, be significant hurdles to taking this approach. First, with no real revenues currently coming into the CMC from broadcasting license fees, any money spent on

media development efforts from the CMC's budget would have to come from telecommunications revenues. Telecommunications providers are likely to question why their fees are going to fund media, and may call the CMC's legitimacy and integrity into question. Indeed, the European Union has strict guidelines on cross-subsidizing between sectors within the regulator. For instance, in the overall budget considerations for a regulator, it is against EU guidelines for the usually high telecommunications sector fees to bolster normally lower broadcasting fees. In other words, although broadcasting fees are generally lower, they must not be made so low that the telecoms operators are subsidizing the administration of the regulation of broadcasting. The subsidization of media development efforts would likely be viewed as even more suspect. Although there are no similar cross-subsidization restrictions applicable in Iraq, telecommunications providers are likely to be aware of this principle, and violation of it could cause problems for the CMC in the future. Second, if the CMC gets involved in too many extra-regulatory functions, it could be seen as losing its way, particularly given other pressing issues such as sorting out the frequency spectrum and solving its own staffing and capacity problems.

The CMC could choose to bypass or ignore these possible complications, as follows:

- The CMC could support and seek funding for (but not actually fund) special media development projects, working with universities, donors or NGOs within or outside Iraq.

- The CMC could make the policy decision to take a more active role in media development and even use its revenues for these efforts notwithstanding the potential problems, perhaps defining a limited period for such activities. It could argue that this is not the EU; in Iraq, there is no viable advertising market and commercial sector development needs significant assistance. However, if this route is taken, the CMC should advocate that this function is set forth in new legislation on the CMC so that the legal basis for it is clear, and should be aware that there is likely to be significant resistance from the sectors it regulates.

- The CMC could wait until there are sufficient revenues from broadcasting to pay for such activities. Again, this function should be expressed in legislation.

In any case where license fees are to be used to pay for extra-regulatory projects, those who pay the fees should be consulted.

IV. <u>Public Service Broadcaster</u>

A successful and independent IMN wholly fulfilling a public service remit, providing all-things-to-all-Iraqis, is an ambitious goal. Such a system would serve many needs including decreasing the need for a sectarian or party ownership of existing broadcasters—which can ultimately be divisive. We are not yet at the day when the IMN is credited for reporting that is truly balanced, when the IMN has independent and guaranteed revenue streams, and when it is thought effectively to hold the government accountable. It is currently not designed to resist direct and indirect political pressure. A full analysis of whether and how the IMN could become such a more "ideal," efficient, independent, publicly accountable and responsive public service broadcaster is beyond the scope of this report. Perhaps the CMC, the IMN or the Iraqi government could commission a separate comprehensive needs assessment for the IMN. However, below are a few issues that could be considered in such a paper, or by the CMC, the IMN or others in the meantime.

A. <u>Fulfilling its Public Service Obligations</u>

As is discussed above, the IMN, as Iraq's publicly-funded media, has an obligation to inform, educate and entertain Iraq's diverse population in a fair and balanced way. Current law also places significant specific programming and other general public service requirements on the IMN. It would be advisable to review the law to determine whether these obligations make sense within the context of Iraq, and how new legislation might define the role of the IMN.

In the meantime, the IMN could be reviewed to gauge the extent to which it is fulfilling the obligations currently required by Order 66. Perhaps one way to ensure that the IMN is attempting to reach and serve various Iraqi audiences would be to aim for internal pluralism—the inclusion of women and representatives of Iraq's various ethnic, religious and political groups—among members of its board and management and among its reporters and on-air personalities. The hope would be that this internal pluralism would then be reflected in its programming. The IMN could also try to meet these goals by increasing its interaction with the public and improving its responsiveness to it in the following ways:

- Holding regular open forums in various markets where management can address the public and solicit input.

- Holding roundtables with representatives of various populations.

- Consulting with existing citizens' groups (such as the Iraqis for Independent Public Broadcasting which monitored IMN programming during the December 2005 elections) and encouraging the creation of other similar groups.

- Conducting audience surveys, as discussed in Part Two, Section V.A.1.

- Establishing and publicizing a hotline and email address where the public can contact the IMN with complaints, praise or comments about programming.

B. Legislation to Replace CPA Order 66

As with the CMC and Order 65, much suspicion of the IMN and Order 66, which governs it, can be attributed to the fact that Order 66 was developed and imposed by the CPA. In fact, like Order 65, Order 66 generally reflects international best practice. Because of its history, however, it would be a good move to replace Order 66 with an Iraqi law once such a law can be properly addressed by parliament (the language of Order 66 requires that it be replaced by an Iraqi law). A new law could address the following issues:

- The types of programming and services that the IMN should be required to provide to the public. (See the discussions of the IMN's public service obligations in Part One, Section IV.B.1 and Part Two, Section IV.A.)

- There has been substantial confusion as to who—between the IMN Board of Governors and its Financial Committee—has the final say over decisions involving expenditures in excess of 150 million Iraqi dinar. New legislation could either clarify the relative roles of these bodies, or perhaps do away with the Financial Committee altogether. The concept of a Financial Committee was apparently originally introduced not so much as a requirement of good governance, but as a protection for investment by international donors (it included an international representative). Now that there is no international support for the IMN, the relevance of the committee is questionable. If the Financial Committee is disbanded, however, it would be a shame to lose the experience and expertise of the two Iraqi members of the committee, as they have served since the IMN was established, and thus have much-needed experience and provide important continuity. Perhaps one or both of them could advise the Board or eventually be appointed to it.

- The requirement that one Board member be an international should be reconsidered, particularly now that there is no international funding. There are alternative ways to stay in touch with international best practice, such as participation in informal and formal networks and attendance at international conferences and forums.

- It may be a good idea for the law to prohibit the IMN from receiving advertisements or perhaps to limit the amount of advertisements that the IMN can air. As the IMN is subsidized with public funds, important issues are raised about its potential to "crowd out" commercial competitors, especially in the market for advertising. How to determine what actions by the public service broadcaster are "unfair" and which are not is inordinately complex. Certainly, the advertising market is limited, particularly in Iraq, and any advertising revenues taken by the IMN could in theory have been used to support a commercial station. Additionally, it would be advisable to require that the rate card for the public broadcaster, showing the amount it charges for advertisements, be made publicly available. Such requirements could be achieved through the law replacing Order 66, or, alternatively, the CMC could attempt to establish them through the license that the IMN is required to obtain from the CMC under current law.

C. Board, Management and Staff

    1. Board

For months now, the IMN's Board of Governors has had only five members, though the law also requires it to have nine. As six members are necessary for quorum, the board has been unable to make decisions and supervise management effectively. Having additional members appointed to the board is perhaps the most critical issue facing the IMN.

Pursuant to Order 66, the Prime Minister must nominate four new members and submit this list of nominees for approval by a two-thirds vote of parliament. These individuals:

- Must be Iraqi citizens, except for one member who must be a non-Iraqi with international experience in broadcast regulation.

- Must be drawn from Iraqi civil society, represent a cross-section of the viewing public, and be individuals of impeccable character and reputation.

- May not hold any executive, legislative or judicial position, whether appointed or elected, at any level of government, or be an appointed, elected or voluntary official of any political party during their term on the Board.

- Must not be involved in any IMN matter that will affect his or her financial interests or the financial interests of certain related persons or entities.

    2. Senior Management

The effectiveness of senior management could be improved by hiring an executive or executives with senior management experience, perhaps but not necessarily in media, either for key positions at the IMN or to shadow senior managers and provide consultancy advice. Hiring someone at this level, particularly to work in Iraq, would be expensive, but would likely pay off over the long term.

    3. Staff

A common complaint heard from those in senior positions at the IMN is that it is impossible to retain quality staff. The IMN has been paying its staff as civil servants, and thus much below the market salary paid to those in the commercial sector. The IMN has in effect been serving as a human resource pool and training ground, as its hires are often lured away to commercial stations by salaries several times the amount paid by the IMN.

This is due in part to a misunderstanding that the IMN is required by law to tie its wages to the civil servant scheme. In fact, to the contrary, Order 66 expressly excludes IMN employees from the system for civil servant remuneration. The IMN could thus revise its salary structure to bring it more in line with the market at any time. It would be a good idea to make clear in any future legislation governing the IMN that its employees are not salaried as civil servants.

D. <u>Other Issues</u>

- The IMN might consider privatizing its newspaper, *Al Sabah*, in order to focus its efforts on broadcasting.

- Having independent and guaranteed revenue streams is critical to maintaining the independence of any publicly-funded media. The IMN should improve upon and clarify the way it is financed, how it is to receive money from the government, the budgeting process and the funding settlement process.

- The IMN may want to consider expanding the development and management of its terrestrial transmission network so that it could sell its transmission services to the whole broadcasting sector in Iraq. It is understood that the IMN currently leases a portion of its network to another station, and it could lease the network more widely. As the transmission towers currently used by the IMN are in optimal locations for the provision of national coverage, this could have a significant and positive impact on the entire broadcasting sector as well as raise revenue for the IMN.

V. <u>Other Efforts to Enhance the Media Landscape</u>

The possible efforts discussed below could be initiatives of the CMC under an expanded media development remit as discussed above in Part Two, Section III.H, or could be taken on by the Iraqi government, other parts of Iraqi society including civil society organizations, or international implementing organizations and donors.

A. <u>Commercial Sector Development</u>

1. <u>Audience Surveys</u>

Developing a vibrant commercial sector will depend largely upon the development of an advertising market to provide revenues independent from government, political parties and religious groups. Each commercial broadcaster obviously wants to sell as many advertisements as possible while charging as much as advertisers are willing to pay for advertising time. The advertiser's goal is to buy time in programs whose audience contains as many people as possible in the demographics that buy the most of its products.

Advertisers will want to buy more ads and pay more for them if they can be assured that the desired demographic is being reached. Reliable audience research—detailing such factors as age, sex, income, household size, ethnicity, religion, and geographic location of people watching and listening to programs—helps advertisers choose where to spend their money. Commercial broadcasters thus need to have this audience information in order to appropriately market themselves to potential advertisers.

There are very few, if any, Iraqi institutions conducting audience surveys for Iraqi broadcasters. The CMC or others might encourage the development of audience research capacity in any of the following ways:

- Develop the capacity of a department of the CMC to start conducting, and perhaps selling, audience research. Outside consultants could be hired for this capacity building project.

- Encourage the development of such local capacity elsewhere, perhaps at Iraqi universities or companies that conduct similar research.

- Make this a function of a local media institute (see Part Two, Section V.C.1).

- Hold workshops or distribute information to commercial broadcasters as to how to conduct simple but fairly reliable audience research in-house using such methods as diaries, phone interviews and postal surveys.

2. <u>Fund to Support Commercial Stations</u>

The CMC or others could encourage the establishment of a fund to provide private sources of financing for commercial broadcasters. The first of this kind was set up as the Media Development Loan Fund (MDLF) in Prague (www.mdlf.org) to provide low-cost capital, in-depth training and long-term advice and support, including assistance with management training, business plans and accounting. By providing financing and capacity-building as a package, it helps news outlets committed to responsible journalism strengthen their operations and become commercially sustainable. It does not give grants, but rather

operates like a bank, making loans only where it expects them to be repaid. As such, it has not yet approved the provision of loans in Iraq, where security and other risks are too great to meet its criteria.

MDLF has, however, assisted in the establishment of other funds based on the same model, and perhaps this is something that could be replicated for Iraq. Specifically, MDLF helped create the South African Media Development Fund (SAMDEF, whose website is www.samdef.com), which funds media entrepreneurs in the Southern African Development Community with resources from the Open Society Initiative of Southern Africa (OSISA) and Free Voice of the Netherlands. Perhaps international donors and other sources with a particular interest in Iraqi media, who are willing to incur the additional risk associated with investment in Iraq, could set up a fund and develop a set of criteria for financing new commercial media enterprises. More on SAMDEF can be found at Appendix F.

3. Professional Association of Broadcasters

The development of a professional association of broadcasters could be encouraged. Having one group representing the interests of all or a significant group of broadcasters would improve consultation among broadcasters and the CMC and would also provide a forum where broadcasters could discuss common issues. It would also help the industry to reach out with collective strength to other groups, including potential advertisers (such as multinational companies) and to the local, regional and national governments in Iraq.

The National Association of Broadcasters (NAB) in the United States (www.nab.org) could serve as a model. The NAB professes to do the following:

- Promote and protect the interests of radio and television broadcasters in the United States and around the world.

- Serve as broadcasters' voice before all branches of the US government.

- Liaise with international broadcasters and associations.

- Keep members apprised of policy issues, technology and management trends.

- Provide bulletins with news relevant to broadcasters, industry research and legal expertise.

- Provide member stations resources, products and financial services to assist them commercially.

- Help educate policymakers about the realities of radio and television.

- Hold conventions where members can discuss common issues.

4. Other Efforts

Other efforts that could contribute to development of the commercial broadcasting sector might include:

- Marketing the Iraqi broadcasting sector to Iraqi, regional and international venture capitalists and other investors and companies that may have an interest in investing in Iraqi media.

- Sponsoring trade shows in order to bring together, for example, players in the advertising market in various regions and cities, or commercial broadcasters and potential advertisers.

- Holding management training and other workshops providing guidance as to how broadcasters might, for example, staff stations more efficiently and effectively, develop viable business plans, and market themselves to potential advertisers.

B. Encourage Iraqi Production

In addition to the regulatory methods discussed in Part Two, Section III.F.1.a above, the CMC or other policy makers or international donors or implementing organizations could consider other mechanisms that might jump-start the Iraqi programming production industry, such as the following:

- A Content Development Fund, conceptually similar to the Media Loan Development Fund discussed in Part Two, Section V.A.2 above, but providing loans or grants solely for the local production of programming, both for local consumption and for export.

- Increased bi-lateral co-production agreements between local and foreign production companies or local production companies and media companies abroad who want but cannot find locally-produced Iraqi content.

- Direct grants for independent production.

- Sponsoring festivals or other competitions for original Iraqi programming within Iraq or abroad.

C. Human and Institutional Capacity Building

1. Local Comprehensive Training Institution—IMTI

There is a clear consensus among the Iraqi media and communications community that training and other professional support is needed at all levels. Unfortunately, there are no home-grown institutions in Iraq capable of providing focused technical support. A strong independent communications development institution—run by and for Iraqis—is needed to provide broad-based, long-term training, resources and capacity building programs for Iraq's nascent media, broadcasting, telecommunications and regulatory institutions.

The CMC has developed a proposal for the establishment of an Iraqi Media and Telecommunications Training Institute ("IMTI") in Baghdad with regional affiliates, and there appears to be broad-based support across all sectors of broadcasting and telecommunications for such an institute. The IMTI would provide a forum for courses, debates and conferences about important issues. It would have meeting rooms, computers and libraries. It also would serve as a centre for excellence and would strive to improve the

professionalism of all aspects of the media by providing programs to improve technical skills and increase awareness of ethical responsibilities. Goals would include equipping the Iraqi media to better convey reliable facts and support responsible debate and helping the media to better reflect the country's ethnic, religious and political diversity. The IMTI would also devote efforts to conducting research that would be critical to the development of Iraqi media and communications policy.

Donors should consider funding the IMTI, and the CMC should continue to shop it around aggressively. It would provide a much more sustainable, locally-driven and responsive resource than the one-time journalist training programs that have been a primary focus of donors in Iraq over the past few years. The CMC's full proposal for the IMTI is attached as Appendix G.

2. Professional Organizations

a. Journalists' Associations

The IFJ report attached hereto discusses the importance of strong journalists' associations in improving not only professionalism and quality of reporting, but also the conditions journalists face.

b. Broadcast Announcers' Association

Iraqi broadcast announcers could start a professional association to address issues applying only in the broadcasting sector. An example of such a group in another country is the Jordanian Announcers Association (JAA), which, according to a report by IReX, was formed to fill a void in representation for broadcast professionals, who were ineligible to join press or artists' associations. JAA has developed into a professional society, but aspires to become a full-fledged trade union for broadcast professionals. JAA activities include training events, legal defense of journalists, and support for developing professional training programs in local universities.

3. Other Mechanisms

Human and institutional capacity building could also be furthered in the following ways:

- Encouraging the development of communications, media and journalism faculties at Iraqi universities. University studio equipment could be provided or upgraded, and other training and technical support could be provided to modernize the faculty's broadcast training program. Universities could be encouraged to set up student-run radio and/or television stations. Exchange programs could be developed whereby Iraqi academics could spend time at universities abroad.

- Encouraging mid-career training to be provided at existing universities or otherwise. Instruction could include such topics as objective and balanced reporting; conducting investigative reporting and research in hostile environments or situations where it is difficult to obtain information (such as in countries without freedom of information legislation); covering parliamentary, judicial and other government processes; and sector-specific

training to encourage better reporting in areas such as economics, business and health. Specific training could be provided for editors and management.

- Encouraging the development of vocational schools to provide such instruction.

- Translating and publishing books discussing relevant issues such as international best practices and technical know-how.

- Developing a series of training videos and DVDs for easy distribution throughout the country.

- Sponsoring Iraqis to attend programs in communications and media abroad (such as that run by the Programme for Comparative Media Law and Policy at Oxford University (http://pcmlp.socleg.ox.ac.uk/)).