

This item is the archived peer-reviewed author-version of:

Regulatory capture in a transitional democracy : media laws in the Kurdistan region of Iraq

Reference:

Faris Jiyan, Maesele Pieter, Smets Kevin.- Regulatory capture in a transitional democracy : media laws in the Kurdistan region of Iraq
Communication law and policy - ISSN 1081-1680 - (2023), p. 1-26
Full text (Publisher's DOI): <https://doi.org/10.1080/10811680.2023.2241449>
To cite this reference: <https://hdl.handle.net/10067/2039610151162165141>

This is the post-print version of the following citation:

Faris J., Maesele P., and Smets K. (2023) Regulatory capture in transitional democracies: media law in the Kurdistan Region of Iraq. *Communication Law and Policy*. Online first: <https://doi.org/10.1080/10811680.2023.2241449>

Please do not cite this version.

Regulatory Capture in a Transitional Democracy: Media laws in the Kurdistan Region of Iraq

JIYAN FARIS (corresponding author: Jiyan.faris@uantwerpen.be)
University of Antwerp, Belgium & Echo, Vrije Universiteit Brussel, Belgium

PIETER MAESELE
University of Antwerp, Belgium

KEVIN SMETS
Echo, Vrije Universiteit Brussel, Belgium

Abstract

This paper focuses on a particular aspect of media capture by examining how the Kurdistan Region of Iraq's media regulatory authorities and governmental bureaucracy use both formal and informal instruments and practices at their disposal to regulate press freedom. It reports on the findings of a mixed methods approach: A qualitative document analysis of media regulations (such as laws, bills and guidelines) was combined with 20 in-depth semi-structured interviews with both state officials involved in media regulatory authorities and journalists, media managers and editors-in-chief (N = 20). The findings show deliberate shortcomings

in the contents of the laws as a result of pressure from the ruling political parties. In addition, they reveal the existence of informal structures and practices to control formal media regulations through patronage relationships and clientelism. We conclude by discussing the implications of these results with regard to the state of the regulatory chaos occurring within an unstable political environment. This includes imprecise laws and, the irregular and unpredictable enforcement of media laws that are restricting journalists to discern the boundary between legal and illegal. As such, the findings provide key insights on the different dimensions of regulatory capture in transitional democracies more broadly.

Keywords

Media capture, Media laws, Informal practices, Patronage linkage, Political parties, Kurdistan Region of Iraq.

Following the collapse of authoritarian regimes, existing laws and regulations are generally seen to be amended, and new ones adopted, by the newly formed governments, purportedly to realize the following expectations: the protection of human rights and freedom of speech, a fair distribution of state resources, media transparency and accountability, freedom of access to information, and many more. However, the practical realities of these “transitional democracies” often defy these expectations.¹ For example, previous studies have raised a number of concerns

¹ See Katrin Voltmer, *The media in transitional democracies*, (2013); Jan Zielonka, *Media and politics in new democracies: Europe in a comparative perspective*, (2015); Matt J. Duffy & Mariam, *Arab Defamation Laws: A Comparative Analysis of Libel and Slander in the Middle East*, 22 *Commun. Law Policy*. 189, 211 (2017).

about de facto government control over positions within media authorities and councils, with a negative influence on press freedom as a result.²

Similarly, following the collapse of Saddam Hussein's regime in 2003, the Kurdistan Regional Government (KRG) in Iraq implemented new media regulations and policies separately from the Iraqi central government, with the professed aim to foster media freedom and provide a democratic environment for journalists. However, previous research has criticized media regulations in the Kurdistan Region of Iraq (KRI) as mere "laws on paper," due to their lack of practical activation and poor implementation.³

In the context of transitional democracies, several media scholars have relied on media capture theory to emphasize the overlap of interests between the state, political parties, business, media organizations and other social actors, with the state at the center of this dynamic.⁴ Media capture refers to "a situation in which governments or vested interests networked with politics control the media."⁵ From a regulatory perspective, these studies have emphasized how the state uses its supervisory power to punish critical media and reward government-friendly ones. The aim of this paper is to expand this line of research by providing an answer to the following question: How is press freedom guaranteed and regulated in the KRI, especially in relation to how media regulatory authorities and governmental bureaucracy apply the various formal and informal instruments at their disposal?

² See Katrin Voltmer, *Supra*.

³ See Mohammedali Yaseen Taha, *Media and Politics in Kurdistan* 21-22, (2020).

⁴ See Anya Schiffrin. *In the service of power: Media capture and threat to democracy*, (2017). https://www.cima.ned.org/wpcontent/uploads/2017/08/CIMA_MediaCaptureBookF1.pdf.

⁵ See Anya Schiffrin, *Introduction to Special Issue on media capture*, 19 *Journalism*. 1033–1042 (2018).

To address this question, we conceptualized media capture in terms of the hierarchy of media regulatory bodies; the content of media regulations and laws in the KRI; and the implementation of media laws in the KRI. To answer this question, a mixed methods approach was used. First, we conducted a qualitative document analysis of media regulations drafted and legislated by the KRG, aiming to investigate how their contents support (or do not support) media freedom. Second, we undertook semi-structured interviews with media professionals (journalists, editors, media managers), and with state actors involved in media regulatory authorities (ministries, parliament), to investigate their experiences with the contents of these laws as well as their implementation.

In the next section, the literature on media capture is discussed to provide insight into the political reality of the regulatory context in transitional democracies. Subsequently, an overview of media regulation in the KRI is presented. In the methodology section, the details regarding data collection, selection and analysis are discussed, before presenting the findings in the following section. We conclude the paper by discussing the main points that can be taken from the study and make a number of recommendations for future research.

Media Capture: From the Regulatory Perspective

Media capture theory conceptualizes the process whereby media outlets are controlled by powerful elites through their symbiotic, clientelist and patrimonial linkages.⁶ Studies have researched media

⁶ See Andrew Finkel, *Captured News Media the Case of Turkey*, (Oct, 2015), <https://www.cima.ned.org/wp-content/uploads/2015/10/CIMA-Captured-News-Media-The-Case-of-Turkey.pdf>.

capture from various perspectives, such as: 1) economic aspects: the biased allocation of government subsidies, for instance toward friendly news organizations (the ‘carrot-and-stick approach’);⁷ 2) symbiotic relationships: direct and indirect relationships between journalists and governments (bribes);⁸ and 3) the regulatory environment: the use of the governmental power of inspection over media professionals.⁹ These practices have been found in media systems characterized by strong – often authoritarian - state interference in public service broadcasting (PSB) and high political parallelism combined with weak rational authority (also referred to as clientelism).¹⁰ This was the case for societies undergoing a democratic transition, for instance, in Central and South-Eastern Europe, Latin America, South Asia and the Middle East. In this paper, our aim is to continue and expand existing work regarding the regulatory environment. The literature on media regulations in transitional democracies has put forward different scenarios in which media can be controlled through regulations, such as hierarchy, the contents of media laws, and their implementation.

Hierarchy

Hierarchy refers to the infiltration of the overseeing institutions within the regulatory environment of the media, concerning the state actors involved in those institutions where regulations are formulated, issued and implemented. In this regard, previous research in transitional democracies

⁷ See Don Podesta, *Soft Censorship: How Governments Around the Globe Use Money to Manipulate the Media*, (Jan, 2008), https://www.cima.ned.org/wp-content/uploads/2015/01/CIMA-Soft_Censorship-Report.pdf; See Anya Schiffrin, *supra*; See Servet Yanatma, *Advertising and Media Capture in Turkey: How Does the State Emerge as the Largest Advertiser with the Rise of Competitive Authoritarianism?*, 22 ISO4, (May, 2021).

⁸ See Grondahl Larsen, et al., *Journalist Safety and Self-Censorship*, (2021).

⁹ See Roxane Farmanfarmanian, et al., *The Turkish Media Structure in Judicial and Political Context: An Illustration of Values and Status Negotiation*. 27 Middle East Crit. 111-125 (2018).

¹⁰ See Daniel C. Hallin & Paolo Mancini, *Comparing media systems beyond the Western world*. (2012).

has shown how media can be controlled through a hierarchy of regulations and laws that are being applied in either formal or informal ways.¹¹ This hierarchy is always based on a high level of political control in institutions where media regulations are drafted and implemented.

While it has been found that independent regulatory authorities and policymakers may support media pluralism and freedom of speech, political parties can be a major threat to the independence of such media regulations. For example, Bajomi-Lazar (2015, 2018) examined how dominant political parties control media by colonizing state resources and occupying influential positions in media regulatory authorities.¹² These tactics enable political parties to use their supermajority to change media laws and force the adoption of new regulations to serve their interests.

Thus, control over media regulatory authorities offers political leaders various opportunities to intervene, such as engaging in party patronage, where parties might offer well-paying jobs to their supporters, such as journalists, activists, and private media owners, in exchange for future services. This mechanism of control occurs when newly established parties in transitional democracies are underdeveloped, with limited membership and lower levels of loyalty, and are poorly embedded in society. In contrast, if a wide range of actors with diverse political backgrounds are involved in regulatory authorities, this can help shield the process from political and commercial interference.

In the context of media regulatory environments in Central and Eastern Europe, it has been shown how the consolidation of power in media regulatory authorities might be shifted to the

¹¹ See Peter Bajomi-Lazar, *Party colonization of the media in Central and Eastern Europe*. (2015); Peter Bajomi-Lazar, *Media in third-wave democracies. Southern and Central Eastern Europe in a comparative perspective*. (2017).

¹² *Id.*

hands of particular state actors at specific moments. For example, directly after the collapse of dictatorial regimes, lawmakers may utilize their own positions in drafting, redrafting and amending media laws in favor of their political allegiance, as the case of media regulations in Hungary, Poland, and post-Soviet Ukraine, etc. In such contexts, research has shown different examples of how media laws are controlled by the head of state and ministers on the one hand, and how they are managed by instrumentalized and politicized governmental institutions.¹³

Contents of media laws

Previous studies have shown that legislators might use particular policies as sanctioning instruments – “legal weapons” - to restrict freedom of expression in transitional democracies. These policies can be implemented using two forms of media regulation. First, the contents of media laws may be vaguely defined; for example, in relation to anti-terrorism legislation, national security, the penal code, or defamation. This may include a lack of clear definitions of terms such as “insults,” “symbolism” (such as religious and national symbols), “defamation,” “fake news,” “hate speech,” and “national values”, as is the case in Russia, Turkey, and Nigeria.¹⁴ For instance, in the context of Turkey, research has confirmed that authorities use media laws (or specific articles), or more general laws under “status negotiation” – meaning that the content of the law is flexible (the content being negotiable among powerful officials), to sue journalists and prevent them from reporting critically on a government’s policies or on state actors engaged in corrupt practices.

¹³ Natalya Ryabinska. *Media capture in post-communist Ukraine*. 61 *Problems of Post-Communism*. 46 –60, (2014); Peter Bajomi-Lazar, *supra note*, 2017.

¹⁴ See Duffy & Alkazemi, *Supra not* 192; See Grondahl Larsen, *Supra not* 13.

For example, journalists might be criminally charged under anti-terrorism or national security laws by being accused of spreading propaganda, supporting terrorist organizations (thus posing a danger to national security), or even of being involved in trying to overthrow the government.¹⁵ In addition, research has shown that defamation laws may be used to penalize journalists for critical reports on state bodies. Calling a president, a “dictator” or calling the ruling party “corrupt” might be considered an attack on national values and/or religious sanctity promoted by political parties.

In a report on freedom of expression in Iraq, Freedom House (2017) demonstrated that the drafting of imprecise laws has been used by authorities as a coercive strategy under the guise of formal regulations to silence adversarial and critical voices that challenge authorities in the news media.¹⁶ In this respect, previous research has revealed that legislators create laws that contain “negotiable phrases” that allow them to control the work of journalists.¹⁷ For example, laws allowing access to information have been established in most transitional democracies; however, at the same time, media laws allow governments to withhold information using specifically vague phrases such as “under certain circumstances” or “causing fear among the people.” Journalists are subjected to pervasive discrimination by ruling authorities through the use of these ambiguous phrases. In Nigeria, research has found that online and social media are under significant pressure

¹⁵ See José Luis Benítez, *Journalism and Self-censorship in the insecure democracies of Central America*, in JOURNALIST SAFETY AND SELF-CENSORSHIP 15, 13-29 (Grondahl Larsen ed., 2021); Farmanfarmaian et al., *Supra note* 122.

¹⁶ See Freedom in the world 2020: Iraq, Freedom House. (2020). *Freedom in the world 2020: Iraq*. <https://freedomhouse.org/country/iraq/freedom-world/2020>.

¹⁷ See Olunifesi A. Suraj, *Online Surveillance and the repressive Press Council Bill 2018: A two-pronged approach to media self-censorship in Nigeria*, in JOURNALIST SAFETY AND SELF-CENSORSHIP 84, 80-100 (Grondahl Larsen ed., 2021); Farmanfarmaian et al., *Supra note* 117.

due to digital surveillance by government intelligence agencies.¹⁸ By utilizing vague legal language in repressive telecommunication laws (e.g., snoopers and gag laws), surveillance regimes have criminalized dozens of digital journalists and thus encouraged self-censorship. In such a context, research has shown that these vague laws have led journalists to become extremely fearful and cautious, and this has generated a culture of “forced silence” under “chilling surveillance.”¹⁹

Second, the lack of legislation related to media transparency and accountability is another mechanism used by authorities to control media in transitional democracies.²⁰ For example, in several countries in Latin America and Central and Eastern Europe, research has shown that not implementing a public procurement law is an effective legislative move allowing authorities to control government advertising, subsidies and subscriptions.²¹ Such a law would regulate state advertising and prevent governments from using public advertisements to punish critical voices and reward friendly news media (by favoring their advertisements). These studies have also argued that the nonexistence of anti-trust laws in transitional democracies has fortified cross-media ownership and monopolies of media ownership, which limits diversity and plurality within media systems.²² When there are no regulations or laws on the distribution of state resources, such as frequency, advertising, and media licenses, corruption is stimulated and a competition to prove loyalty in the media market begins. In addition, this creates an atmosphere in which privileges are

¹⁸ See Sadia Jamil, *Increasing Accountability Using Data Journalism: Challenges for the Pakistani Journalists*, 15 *Journalism Pract.* 19-40, (2021).

¹⁹ Olunifesi A. Suraj, *supra note* at 81.

²⁰ See Rasmus Kleis Nielsen et al., *What Can Be Done? Digital Media Policy Options for Strengthening European Democracy*, Reuters Institute Reuters Institute for the Study of Journalism, (2019), https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-11/What_Can_Be_Done_FINAL.pdf.

²¹ See Don Podesta, *supra note* 13.

²² See Maciej Bernatt and Alison Jones, *Populism and public procurement: An EU response to increased corruption and collusion risks in Hungary and Poland*, *Yearbook of European Law*. 1–37, (2023).

given to ruling parties, who build patronage networks that serve their political and economic interests.²³

Implementation of media laws

Taking the above-mentioned factors into consideration, research has also demonstrated that the independence of the judiciary is unattainable when the presence of ruling parties is intensified in the legal system as well as in the police and security forces, as the case of media in Pakistan and Iraq.²⁴ This phenomenon often occurs in the context of a culture of impunity for crimes committed against journalists.²⁵ For instance, in the context of Iraqi Kurdistan, media laws are described as mere “laws on paper” and journalists can be deprived of protection from bureaucrats and powerful office holders who seek to silence critical voices. In such situations, research has revealed that courts do not adhere to press law when dealing with cases from journalists; instead they use penal codes under pressure from the authorities.²⁶

In addition, journalists have expressed concern about the informal collaboration between journalists’ unions and judicial councils.²⁷ In the case of Pakistan’s journalists, Jamil (2021), for example, reported that critical journalists were subjected to pervasive levels of discrimination by bureaucrats, denied access to public data, and were excluded, or prevented, from attending official

²³ See Eleanor M. Fox, *Antitrust and Democracy: How Markets Protect Democracy, Democracy Protects Markets, and Illiberal Politics Threatens to Hijack Both*, *Leg. Issues Econ.* 317-328, (2019).

²⁴ See Farmanfarmaian et al., *Supra* note at 119.

²⁵ See Jiyan Faris, et al., *Media Capture and Journalism as Emotional Labor: How Do Media Professionals Manage Bureaucratic Violence in the Kurdistan Region of Iraq?* *Journalism Studies*, <https://www.tandfonline.com/doi/abs/10.1080/1461670X.2023.2185077?journalCode=rjos20>; Sadia Jamil, *Culture of impunity and safety of journalists: Is safe journalism a distant dream in Pakistan?* *The Journal World of Media*. 51- 67, (2019).

²⁶ See Taha, *supra* note 99.

²⁷ See Taha, *supra* note 99; Hataw Hama Saleh Hussein, “The role of news media in supporting democracy in Kurdistan Region” (Ph.D. diss., Nottingham Trent University 2018), 153; Taha, *Supra* not 109.

events. Another fear among journalists is the strategy of “negligence,” especially by courts.²⁸ Cases of violent acts against journalists, for example, have been labeled “under investigation” for years, with no final outcome, including cases of the murder of journalists that go unpunished. This often happens when journalists report on critical news linked to powerful state actors. Richter (2008) elaborated on a type of informal order implemented by authorities called “telephone censorship” in the context of post-Soviet countries. This kind of order refers to government authorities circulating informal guidance to editors-in-chief through telephone calls. This occurs often in the context of the abuse of regulatory functions within public service broadcasting bodies (both inspection and distribution), with journalists being threatened while practicing their watchdog journalism.²⁹

An Overview of Media Regulations in the Kurdistan Region of Iraq (KRI)

Overall, little academic research has been conducted on media regulations in the KRI (for exceptions, see: Hussein, 2018; Taha, 2020).³⁰ This overview of the KRI’s media regulatory environment has been based on multiple sources of information, such as previous academic studies, NGO reports, official records and news reporting itself.

In Iraq, the media adhered to legislation such as the 1968 Publication Law (No. 206) and the 1969 Penal Code Law (Criminal Laws, No. 111).³¹ According to these laws (Articles 81-84,

²⁸ See Sadia Jamil, *supra note*, 2012; Hataw Hama Saleh Hussein, *supra note* 149-156.

²⁹ See Andrei Richter, *Post-Soviet Perspective on Censorship and Freedom of the Media: An Overview*. 70 *Int. Commun. Gaz.* 308, 307-324, (2008).

³⁰ See Hussein, *supra note* 142-162; See Taha, *supra note* 58-64.

³¹ Iraqi Publication Laws, No. 206, (1969); Iraqi Penal Code, No.111, (1969), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&pisn=57206&p_country=IRQ&p_count=232&p_classification=01.04&p_classification=5.

433-434), editors and journalists were considered criminals if they published content criticizing the government.³² The editor-in-chief of a newspaper would be considered the original perpetrator of any “crimes” committed, because they were responsible for what was published in their newspaper, including critical news about the government, for example, insulting government officials.³³ As the KRI is a part of Iraq, it followed these regulations until 1991.³⁴

However, following the Gulf War in 1991, which led to Kurdish autonomy, the KRG established its own regional laws to regulate the press.³⁵ In the period between 1991 and 2003, a number of laws related to journalism were established by the Kurdistan Parliament in Iraq, . These laws include: Press Law No. 10/1993, the Law on Political Parties No. 17/1993, Kurdistan Journalists Syndicate Law No. 4/1998, and the Journalists Retirement Law No. 13/2001. These laws were proposed and drafted by the KRG’s Ministry of Culture and Youth (MCY) and passed by the Kurdistan Parliament. The MCY was considered the primary authority overseeing these laws, including their implementation.³⁶

The contents of these laws were meant to guarantee media independence and freedom of expression (Articles 2 and 14), as well as press licensing without control (Article 5), and the protection of journalists’ rights (Article 7),³⁷ and the right to every political party to own and

³² See Taha, *Supra note 99*.

³³ See Taha, *supra note 59*.

³⁴ *Id.*

³⁵ See Hussein, *supra not 142-162*; See Taha, *supra note 60-63*.

³⁶ See Taha, *supra note 60-63*.

³⁷ See The Law of Journalism in the Kurdistan Region in Iraq, No.35, (2007), <https://presidency.gov.krd/krp/docs/PressLaw-KRI.pdf>.

establish media (Article 13).³⁸ However, there was still political censorship of the press which led to the media being labeled as “partisan.”³⁹

Indeed, after the Gulf War in 1991, the KRI was controlled by two political parties: The Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). The media was an integral part of the political system, with most media outlets directly controlled by the parties. Furthermore, they quickly established their own media outlets that became mouthpieces for propaganda. Two years later, the KRI fell into a civil war between KDP and PUK (1994–1998). The war resulted in a two-way division of the Kurdistan regional administration, with KDP controlling the province of Erbil and PUK controlling Sulaymaniyah. During this period, press laws were instrumentalized by both political parties as political weapons, while each party established their own media council and authority.

Following the collapse of Saddam Hussein’s regime in 2003, multiple political parties (as shown in Table 1), as well as dozens of media outlets were established.⁴⁰ According to data published in 2017 by the Kurdish Journalists Syndicate (KJS), approximately 867 newspapers and magazines, 160 TV satellite channels and more than 75 radio stations.⁴¹ Previous research has categorized these media outlets into three types: those directly controlled by different political groups (“partisan media”), those that operate independently of political groups (“independent media”), and finally, media outlets that profile themselves as independent but are indirectly funded

³⁸ See Political Parties Laws in the Kurdistan Region in Iraq, No. 17, (1993), <https://www.parliament.krd/english/parliament-activities/legislation/1993/>

³⁹ Hussein, *Supra not 158-162*.

⁴⁰ See Jiyān Faris et al., *Newspaper Advertising in a Nontransparent Media Market: The Case of Iraqi Kurdistan (2014–2018)*, 15 Int. J. Commun. 1393–1413, (2021).

⁴¹ *Id.*

by high-ranking officials (“shadow media”).⁴² It is with respect to this context that this study investigates the extent to which media regulatory bodies reflect political diversity in the KRI. In this regard, as has been described by Natali (2010), non-transparency, party affiliation, clientelism and hidden institutionalized influences have been the predominant characteristics of all administrations in the KRG, while organizational procedures have remained associated with practices of nepotism.⁴³ This situation has kept most of the public sector in party-based affiliations.

[insert table 1]

Following the removal of the Ba'ath regime by the U.S.-led coalition in Iraq in 2003, the Kurds, as one of the major opposition groups, participated in rebuilding the so-called "new Iraq ". In the period between June 2004 and May 2005, the representatives of different ethnic and religious groups took part in a committee to draft a new Iraqi constitution, and this new constitution became a foundation of all legislations and the political system in Iraq. According to this new Iraqi constitution, the KRI is considered as a federal autonomous regional government. Consequently, all laws and regulations passed by the Kurdistan National Assembly are considered valid legislation, and the KRG obtained the authority to amend, refuse, and accept any laws passed by the Iraqi Council of Representations.⁴⁴ Thus, between 2003 and 2022, the KRG drafted several new media-related laws and regulations, separately from the Iraqi central government (as shown in Table 2). The KRG aimed to support media freedom through these laws, with KRG’s legislators declaring that the Kurdistan Parliament intended to pass softer media laws “protecting journalists’

⁴² See Hussein, *Supra not* 111-128.

⁴³ See Denise Natali, *The Kurdish Quasi-State: Development and Dependency in Post- Gulf War Iraq*, (Syracuse University Press. 2010).

⁴⁴ See Taha, *supra note* 60-61.

rights, abolishing jail terms for offences such as defamation” and “increasing freedom and removing punishments.”⁴⁵ In addition, it was also announced that “the current media laws meet the demands of journalists,” particularly with respect to comparing the KRG’s media laws with the Iraqi central government’s.⁴⁶

For example, the KJS proposed a draft law to the Kurdistan Parliament, which replaced the existing press laws with a broader law called the “Press Law” in 2007.⁴⁷ This law consists of fourteen articles in five chapters and only covers print media. There are no laws to regulate audiovisual media due to disputes about this between the KRG and the Federal Government of Iraq (FGI). The FGI did not approve laws proposed by the KRG that would have allowed it to directly regulate audiovisual media and radio frequencies.⁴⁸ Nevertheless, in 2014, the KRG’s MCY created some guidelines for audiovisual media and radio frequencies; thus, in practice, the MCY acts as a supervisory authority in cooperation with the Ministry of Transport and Communications, overseeing these “rules” or set of regulations for audiovisual media.⁴⁹

[insert table 2]

⁴⁵ See Radio Free Europe (RFE) and Radio Liberty (RL), *Iraqi Kurdish Parliament Passes Softer Media Law*, (Sept. 2008), https://www.rferl.org/a/Iraqi_Kurdish_Parliament_Passes_Softer_Media_Law/1247515.html.

⁴⁶ Kurdistan Region of Iraq, Ministry of Culture and Youth in the Kurdistan, *Guidelines for Audiovisual Media: Instructions for regulating frequency spectrum and licensing radio and television stations*, (Erbil, Ministry of Culture and Youth, 2014), at 31.

⁴⁷ See Taha, *supra* note 63.

⁴⁸ Personal communication with a high-ranking official within executive authority of the Kurdistan region in Iraq (KRG) (August. 6, 2019).

⁴⁹ Ministry of Culture and Youth in the Kurdistan, *supra* note 31.

The Kurdistan Parliament also created the Right to Access Information Law (No. 11/2013), which enables citizens of the region to exercise a right to obtain information from public institutions.⁵⁰ According to its makers, the provisions of this law are intended to support the principles of transparency and effective participation, to consolidate the democratic process, and to provide a better climate for freedom of expression and publication⁵¹. In 2019, the Kurdistan Parliament also passed the first Commercial Advertising Law, which ensures that advertising is fair and honest, has a sense of responsibility to society, and encourages fair competition in the market⁵². In 2020, the latest media-related law to be drafted and proposed was the Bill Reorganizing Digital Media. This law is still under discussion by the parliament and has not yet been passed. It has also received severe criticism from journalists and media workers concerning how the digital media laws might restrict their freedom of expression.⁵³

To date, no study has been published about the contents of the media-related laws drafted by the KRG, enquiring about how these support the journalistic profession or media transparency; However, some sources have focused on their implementation. For example, Hussein (2018) indicated that courts try journalists who are critical of the government under different laws (such as defamation articles or anti-terrorism law)⁵⁴. Taha (2020) raised questions about the lack of activation of media-related laws such as the Right to Access Information Law and described the

⁵⁰ See Law of the Rights to Access Information in the Kurdistan Region, Iraq, No.11, (2013), <https://www.parliament.krd/english/parliament-activities/legislation/2013/>.

⁵¹ See Law of the Rights to Access Information in the Kurdistan Region of Iraq, No.11, (2013), <https://www.parliament.krd/english/parliament-activities/legislation/2013/>.

⁵² See Commercial Advertising Law in the Kurdistan Region of Iraq, No.4, (2019), <https://www.parliament.krd/english/parliament-activities/legislation/2019/>.

⁵³ See Zhelwan Z. Wali, *Kurdish parliament's digital media regulation bill blurs boundaries of expression, opponents say*, Rudaw, (August 17, 2021), <https://www.rudaw.net/english/kurdistan/17082020> .

⁵⁴ See Hussein, *supra note* 144.

press laws as “laws on paper.”⁵⁵ Moreover, the United Nations High Commissioner for Human Rights and the United Nations Assistance Mission for Iraq has highlighted serious problems regarding the arrest of journalists without a warrant, or journalists being detained without a court order.⁵⁶

There is still much that needs to be explored. A key question is how press freedom is guaranteed and regulated, especially in relation to how media regulatory authorities and governmental bureaucracy apply the various formal and informal instruments at their disposal. This matter is addressed below through an analysis of the hierarchy within media regulatory authorities, the contents of media laws and regulation as well as their implementation of media regulations, in terms of the government’s different apparatuses, praxes and policies.

Methodology

A mixed methods approach was used to address the research questions, including a qualitative document analysis and in-depth interviews. The document analysis of previous and existing media regulations in the KRI presented a large amount of data that allowed a comparison of changes made before and after the fall of the former regime in 2003. These data cover issues related to freedom of expression for journalists, formal instruments of control, media licenses, and measures to ensure transparency and accountability in the media market. The in-depth interviews added insights from media professionals, including journalists, editors, managers and from high-ranking

⁵⁵ See Taha, *supra* note 99.

⁵⁶ See Hevi Khalid, *Freedom of Expression in the Kurdistan Region of Iraq*, United Nations Assistance Mission for Iraq Office of the United Nations High Commissioner for Human Rights, (December, 2020), <https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/Freedom-of-Expression-in-the-Kurdistan-Regionen.pdf>.

state officials involved in media regulation, covering issues such as their experiences with the contents of media laws, the actors and institutions involved in media regulatory authorities, and the implementation of media laws and rules. To allow for data triangulation, the multiple data sources were structured in a systematic way, as shown in Figure 1.

[insert figure 1]

Document analysis

We selected and analyzed a number of government documents based on their relevance and significance, such as media laws that are currently in force to regulate journalistic work and media organizations. The documents include the media laws, bills and instructions drafted by the KRG as mentioned above in Table 1: The Press Law (No. 35/2007), the Right to Access Information Law (No. 11/2013), Media Regulations for Audiovisual Media (2014), Commercial Advertising Law (No. 4/2019) and the Bill Reorganizing Digital Media (2020). In addition, we included media laws drafted by the FGI: for example, the Journalist Protection Law (No. 21/2011), Iraq's Constitution of 2005 and the Audiovisual Media Regulations of 2014 by the Iraqi Communication and Media Commission (CMC).

These documents were collected from their websites (the Kurdistan Parliament and the CMC Directorate, Iraq), except for the Media Regulations for Audiovisual Media drafted by the MCY, which the first author collected in person at the MCY in Erbil on August 8, 2019. The documents were either in Arabic or Kurdish, and some have also been published in English (this included the Press Law, 2007; Iraq's Constitution of 2005). All documents were thematically

coded by the researcher and translated into English.⁵⁷ In total, the various documents amounted to 164 pages.

Since there is currently no available information about the actors and institutions involved in media regulatory bodies, in first instance this analysis allowed us to trace and reveal two institutions and three actors directly involved in media regulations.

In addition, while there is an ambiguity in the structure of media ownership, the financing of media outlets and the distribution of advertising.⁵⁸ The document analysis drew conclusions concerning the extent to which media laws ensure transparency and accountability in the media market. Moreover, we observed that there are two types of media laws enforced in the KRI – press laws and audiovisual laws – to regulate media organizations and journalistic work. Here, the document analysis allowed us to identify contradictions and conflicts between these two laws, such as issues related to journalists' rights.

Accordingly, we generated multiple framing codes, including direct governmental control, political diversity, court independence, MCY control, KJS control, unclearly defined concepts, conflict of orders, funding issues, ownership transparency, distribution of resources, and negligence and exclusion of laws. This analysis allowed us to create rich interview guidelines and helped us to select the most relevant interviewees, in terms of their functions, roles and positions in the media regulatory landscape.

Semi-structured in-depth interviews

⁵⁷ See Klaus Bruhn Jensen. Handbook of Media and Communication Research: Qualitative and Quantitative, Methodologies, (Routledge, 2002).

⁵⁸ See Hussein, *supra* note 142-162.

Two categories of interviewees were selected for this study: media professionals and high-ranking state officials from media regulatory bodies.

First, we selected twelve media professionals (numbered 1 to 12), who included editors, journalists and managers from several media outlets within the three types of media organizations (independent, partisan and shadow media).⁵⁹ Second, we interviewed eight high-ranking state officials (numbered 13 to 20) from media regulatory bodies, who were directly involved in drafting and implementing media laws and regulations. Interviewees were selected and addressed based on the snowball sampling technique. This technique has been used in qualitative research where the targeted interviewees are hard to reach, unknown and/or hidden.⁶⁰ In such a context, it is considered an effective method to enlarge the sample size and attain high-quality data.⁶¹

The researcher started the interviews by asking an open demographic question, for instance, information about the interviewee's resume. In this part of the interview, the researcher obtained important data about the political affiliation of the officials. We found that interviewees often combined multiple jobs. In addition to their journalistic work, they had positions as lawyers, university lecturers, members of parliament, human rights activists, entrepreneurs, civil servants or party cadres.

In selecting the interviewees, we also considered the political situation, such as the concentration of power across the different provinces. For example, according to the parliamentary election results of 2013 and 2018, KDP is the dominant party in the provinces of Erbil and Duhok, and Movement for Change and PUK are the dominant parties in Sulaymaniyah (Taha, 2020).⁶²

⁵⁹ *Id.*, 111-138

⁶⁰ Jean Faugier & Mary Sargeant, *Sampling hard to reach populations*, 26 *J. Adv. Nurs.* 790-797, (Oct. 1997).

⁶¹ *Id.*

⁶² See Hawre Hasan Hama et al., *Political Parties and the Political System in Iraqi Kurdistan*, 56. *J. Asian Afr. Stud.* 754-773 (2021).

Face-to-face interviews were conducted across the three provinces, in the period between July 15 and August 28, 2019.

The interviews were conducted in one of two Kurdish dialects: Sorani is the main dialect in Sulaymaniyah and Erbil, while Badani is spoken in Duhok. Therefore, the interview guidelines and questions were translated into both dialects. The average length of each interview was approximately one hour and twenty minutes. The contents of the interviews were transcribed and translated into English by the first author.

Qualitative thematic coding was also used to analyze the interviews, focusing on the interviewees' experiences with media regulations and their perceptions of existing media laws.⁶³ The interviewees' responses expanded our knowledge on the issues identified during the initial analysis of the documents. New codes emerged from the analysis of the interviews which did not fit into the pre-existing coding frame, such as their experiences related to direct/indirect forms of control. These codes include: Corruption and patronage linkages, "elastic paragraphs" within media laws, the activation of laws, unofficial orders, the intervention of external actors and party control, which will be explained below.

Interview landscape

This study is potentially sensitive due to the topic itself and the general political situation in the KRI. The first author was faced with several challenges while conducting the interviews. The first one was finding the target interviewees, especially those actors involved in media regulatory bodies. Moreover, the interviewees who were asked to recommend another person for interview did not want their names to be revealed. Some were also hesitant to participate at all or preferred

⁶³ See Jensen, *supra not.*

to keep the interview secret. Others canceled at the last minute due to new instructions from the prime minister, who announced on July 10, 2019 that “any worker who exposes information that has a negative impact on their organization [...] will be punished” (Personal communication, July 23, 2019).

Second, the majority of the interviewees chose to be interviewed in public places such as a coffee shop or restaurant far from their workplace. This made it harder for the researcher to hear the interviewees, due to the level of background noise. A number of interviewees chose to be interviewed in their offices, which were located in political organizations or government institutions, where access to the building required passing through a checkpoint controlled by security guards. The researcher overcame these obstacles by using her valid employee identification cards at these checkpoints, from both her local affiliation from both of her local (Duhok Polytechnic University) and foreign/international university (University of Antwerp) affiliation.

Third, to access some high-ranking officials in the media regulatory bodies, we had to seek official approval from their senior manager; for instance, vice-ministers, chairs, governors, and heads of political organizations. However, some interviewees avoided informing their managers and preferred to hold the interviews in secret, choosing a place and time that suited them.

Furthermore, the topics of the interviews are also quite sensitive, such as transparency and accountability, patronage, corruption, freedom of expression, court independence, and so on. During the interviews, the interviewees attempted to provide a range of information; however, they were also found to restrict themselves. They used various techniques to present their views indirectly, for instance, some interviewees were using hypothetical examples or metaphors, presenting facts by referring to documents, moments of silence, or recounting stories concerning

their experiences while practicing their profession. Some interviewees used pronouns (they, their, them) instead of direct names when referring to their senior manager or high-ranking politicians, or they used indirect and vague phrases and titles, such as “high context culture,” or “the two ruling parties” to refer to the major political parties, or the “high-ranking officials above us” to refer to their administrators, chairperson or head.

In many cases, the high-ranking officials responded to our questions aggressively and in a loud voice (shouting, banging the table), or they replied to our questions angrily, for example, saying “What do you mean?”; “This is a dangerous question”; “Be careful with such sensitive questions”; and “Asking these questions is not good for you.” These situations usually occurred when we confronted high-ranking officials with journalists’ views on media regulations, such as their concerns about the lack of an independent court, arbitrary arrests and extrajudicial detention. However, this also occurred when we referred to gaps in the contents of media laws, such as issues related to transparency in funding and the distribution of government advertising. Some of these interviewees used a “reverse question.” For example, instead of answering a question, it was reversed by asking that same question back to the questioner (the first author). Such a technique was often used by the interviewees to avoid responding to particular questions, or said directly: “I have no answer to this question. If you want answers, go and ask [name redacted] this question”.

All the above-mentioned factors and challenges may have affected the findings to some extent, contributing to some lack of depth in responses. However, we tried to overcome the challenges in various ways. The first author was able to draw from her pre-existing network, as she previously worked as a journalism lecturer who supervised student internships within several media organizations. In addition, as suggested above, we gave the interviewees the opportunity to choose the interview location so they would feel safe and comfortable. The interviewees were also

guaranteed confidentiality and anonymity. Furthermore, the use of a consent form by an international university was generally interpreted as a sign of credibility. Moreover, during the interviews, the first author avoided making any references to particular political actors and political views. And finally the interview questions were based on secondary resources, which is often motivated by providing a transparent source (such as news media, law content, previous academic studies, official statements). For example, the questioner (first author) was using phrases, such as “according to”, as ‘reported by’ or ‘as stated by,’ referring to an opinion or an argument which was not the first author’s opinion. This preparation created an atmosphere in which the interviewees were focused on a third party (the sources of the questions), rather than engaging in a confrontation with the first author, who acted as a listener and showed respect to each interviewee, avoiding interruptions.

Findings

The results of the document and interview analyzes clarify who is involved in media regulation in the KRI and show how media are regulated through formal and informal instruments, involving various aspects related to bureaucratic practices, government policies, control by political parties and legal regulatory gaps, among others. Below, these aspects are discussed in terms of the 1) independence, 2) uncertainties, and 3) transparency and accountability of media laws.

Independence

Our findings show that there are multiple organizations involved in the hierarchy of media regulation. First, there are those institutions that are openly (and formally) involved: the executive and legislative authorities of the KRG, as shown in Figure 2.

[insert figure 2]

The document analysis showed that the MCY represents the executive authority for Audiovisual Media.⁶⁴ As executive authority, it is responsible for the drafting and implementation of the Audiovisual Media regulations, including frequencies, granting media licenses, distributing advertising and public funding. The interviews revealed that the MCY created a committee for audiovisual media rules and invited officials (top leaders of multiple offices within state bodies) (as shown in Table 3).⁶⁵ Remarkably, the Ministry of Justice and the Prime Minister's Directorate fall under the executive authority of the MCY.⁶⁶

The document analysis also showed that the legislative authority drafted the Press Law, the Bill Reorganizing Digital Media, the Right to Access Information Law and the Commercial Advertising Law.⁶⁷ However, interviews revealed that the supervision of the implementation of these laws is controlled by two institutions: 1) the directorate of the MCY is supervising the implementation of the Right to Access Information and the Advertising laws, 2) and the KJS is responsible for supervising the implementation of the Press Law and the Bill Reorganizing Digital Media.⁶⁸

⁶⁴ Ministry of Culture and Youth in the Kurdistan, *supra* note 1-31.

⁶⁵ Interviewee No. 15, interview by author, Erbil-Iraq, (August 5, 2019 at 17: 30).

⁶⁶ *Id.*

⁶⁷ *See* The Law of Journalism in the Kurdistan Region in Iraq, No.35, (2007); *See* Commercial Advertising Law in the Kurdistan Region of Iraq, No.4, (2019); Law of the Rights to Access Information in the Kurdistan Region, Iraq, No.11, (2013); Bill 76, Digital Media Law drafted by the Kurdistan Parliament, Iraq on March 8, 2020, Erbil-Iraq, (passed by the KRG Parliament on July 21, 2020).

⁶⁸ Interviewee No. 14, interview by author, Erbil-Iraq (August 6, 2019 13:56); Interviewee No. 17, interview by author, Erbil-Iraq, (August 5, 2019 at 13:18).

In addition, the interviews revealed that there are two other institutions that indirectly or informally play a key role in media regulatory bodies and which are especially involved in supervising the implementation of media laws. These institutions are: 1) the Ministry of Interior, from which the executive authority of the KRG must obtain permission for issues related to the granting of media licenses, for establishing media companies, etc.; and 2) the Consultative Council of the KRG, or the “Fatwa,” which is an authority that has the right to interfere with the contents of media laws and make “some changes,” and also has the right to interpret the contents of the laws on the basis of new “concepts”.⁶⁹ More precisely, it has the power to give advisory opinions when there are no laws to regulate journalistic work (such as for digital media).⁷⁰

Media capture theorists argue that political parties might gain control of media by occupying influential positions within media regulatory bodies and public service broadcasting. Such tactics enable political parties to use their positions to draft and implement media law, and force the adoption of particular regulations.⁷¹ Indeed, our interviewees (media professionals and lawmakers) were strongly supporting this argument: there were concerns about the lack of independence of the institutions and actors involved in media regulatory bodies. The concerns were mostly about the strong links between state actors within the MCY and their political organizations. The interviewees referred especially to the two major parties:

All governmental officials with high-ranking positions within the state obtained their position through their ties with political parties. Their political leaders chose them

⁶⁹ Interviewee No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

⁷⁰ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56)

⁷¹ Bajomi- Lazar, *supra note*, 2013.

specifically to take such governmental positions, so they offer maximum loyalty to their parties.⁷² (No. 4)

Interestingly, based on the interviews, we found that the majority of state officials involved in the committee established by the MCY hold a high position within their political organizations: they are known as the “advanced cadre”.⁷³ From a total of eight officials, we learned that five belonged to KDP and two to PUK. Moreover, the interviewees emphasized that a number of academics also participate in this committee, as well as an official from the Directorate of the Ministry of Justice (Court) (i.e. a judge); however, there was no further information about the profiles of these actors.

[Insert table 3]

The high-ranking officials stated that despite their position as a party cadre, they could balance their role as a state actor with their party’s goal of serving the public.⁷⁴ Nevertheless, the data show that power struggles between the parties is paramount and unavoidable: a “conflict of interest is inevitable”.⁷⁵ There is also a high probability that officials may colonize state bodies in the interest of their parties, as mentioned by the interviewees. With regard to this, one interviewee (No. 17) from the MCY said:

⁷² Interviewee No.4, Interview by author, Duhok-KRI (July 23, 2019, 10:30).

⁷³ In-depth interviews by author with state-actors involved in the committee established by the MCY in the KRI (July & August 2019).

⁷⁴ Interviewee No.17, interview by author, Erbil-Iraq, (August 5, 2019 at 13:18).

⁷⁵ Interviewee No.17, interview by author, Erbil-KRI, (August 5, 2019 at 13:18); Interview No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

As members of KDP, our political concept has grown on some principles, and those principles serve both the government and our political goals, which is to serve the public [...] and our party leaders advise us to serve the country. But I have to be honest, because of the strong conflicts and strong competition among political parties, we always have problems with an overlap of interests between political parties and the government.⁷⁶

A number of interviewees described the MCY as a “political apparatus” and as “unprofessional,” because it functions under continuous pressure from the two ruling political parties, the Ministry of Interior and/or some powerful politicians outside of the media regulatory bodies.⁷⁷ As interviewee No. 2 reported:

The MCY does not have enough resources to regulate media organizations because of their limited knowledge and their limited power. It is also a weak ministry and it works under the pressure of two of our political parties, plus their orders must be approved by the Ministry of Interior or by an important politician. In the last three decades, there has been extra pressure if, for instance, the minister is from PUK, the vice-minister from KDP, or vice versa.⁷⁸

In addition, there was a sense of anxiety among the interviewees, due to the strong relationship between the KJS and the two parties. Apparently, the KJS has its own local directorates in the three provinces. In theory, the document analysis found that the Press Law (2007) indicated that

⁷⁶ Interviewee No.17, interview by author, Erbil-KRI (August 5, 2019 at 13:18).

⁷⁷ Interviewee No.2, interview by author, Duhok-KRI (July 28, 2019 at 18:15).

⁷⁸ Interviewee No.2, interview by author, Duhok-KRI (July 28, 2019 at 18:15).

the KJS's directors must be elected by journalists.⁷⁹ However, the interviewees highlighted that, in reality, these directorates are managed by experienced journalists who belong to the two parties, based on agreements between them. Regarding this aspect, one interviewee (No. 1) clarified:

The general chair of the KJS has been held by KDP since the 1990s. The position of KJS director in Duhok is only for KDP, the person who comes after is from PUK, then the members who come after them are from the other minorities such as the Christian party, while there is no place for Islamic parties at all; not even for unimportant positions. This is an agreement between two parties about the hierarchy of positions in the KJS. In Sulaymaniyah, it is the same, but an opposite system, with the director of the journalist syndicate a PUK cadre, then KDP cadre comes next, then one member from the Christian party, then other minorities. But in Erbil the case is different, as it is the capital of the KRI. There PUK and KDP have agreed to swap the position between each party every two years.⁸⁰

While our data showed that the Ministry of Justice joined the committee created by the MCY, our interviewees confirmed that the authorities have further expanded their control over the judiciary, with both the MCY and the high court working together indirectly to control critical journalists. For example, by accusing them of violating press laws, which could then lead to their extrajudicial detention. Moreover, the judicial system is controlled by either of the two parties depending on the province (KDP in Erbil and Duhok, and PUK in Sulaymaniyah). Accordingly, this power division between the two parties in the media regulatory bodies has directly affected journalists' perspectives on freedom of expression. As one interviewee (No. 8) stated:

⁷⁹ See The Law of Journalism in the Kurdistan Region in Iraq, No.35, (2007)

⁸⁰ Interviewee No.1, interview by author, Duhok-KRI (July 21, 2019 at 10:20).

Sometimes journalists face legal problems with influential politicians, not officials. In these cases, the government authorities attack journalists without considering that this is a kind of persecution with no prior investigation. But this depends where the politicians come from, whether from Erbil, Sulaymaniyah or Duhok. For instance, if I live in Sulaymaniyah and write critical reports about KDP, I have full freedom, and PUK will support me and protect me in their area, and vice versa, but KDP's authorities in Erbil are stronger than PUK's; sometimes both parties attack one journalist, especially if this journalist is from the opposition party "New Generation."⁸¹

In this regard, other interviewees also reported a lack of independence, as well as the bias and dysfunction of the court.⁸² They especially referred to pressure on the court from the MCY in relation to issues such as the implementation of laws (fair investigations by the court). Concerning this aspect, one interviewee (No. 8) explained that their concerns increased when they learned that the two parties admitted that there was a lack of "court independence" due to political pressure:

We can look back at the events of February 16, 2018, when people took to the streets and demonstrated in Sulaymaniyah demanding their salaries. The offices and headquarters of political parties were burned; the KDP office in Sulaymaniyah was burned. The court in Sulaymaniyah directly issued an order to put all groups involved in this incident in jail. On that night, Fadel Mirani, the KDP's politburo and spokesperson, declared on TV that "they

⁸¹ Interviewee No. 8, interview by author, Sulaymaniyah –KRI (August 21, 2019 at 17:50).

⁸² Interviewee No. 10, interview by author, Sulaymaniyah –KRI (August 21, 2019 at 10:35); Interviewee No.4, Interview by author, Duhok-KRI (July 23, 2019, 10:30); Interviewee No.6, Interview by author, Duhok-KRI (August 3, 2019, 16:25).

cannot trust the court in Sulaymaniyah, and they have to transfer this group to Erbil and address their case in our court in Erbil.” Just imagine, KDP is the main ruling party in Kurdistan and their spokesperson says that they cannot trust the court in Sulaymaniyah. So how can journalists trust the court in Erbil?⁸³

We conducted further investigation of this issue of independence with high-ranking officials from media regulatory bodies. Some expressed dissatisfaction about the pressure on the members of the MCY committee coming from the ruling parties when it comes to unpaid taxes or unissued licenses, through their control of the court and the police.⁸⁴ As one interviewee (No. 15) stated:

We do not send journalists who work for the two major ruling parties to the court or to report about the media organization that they belong to when they breach the laws, because the courts are under their control [...]. Some media owners breached laws by, for instance, establishing media companies without a media license. As I was holding a position as a [removed for anonymity], I sent them letters to apply for a media license and pay their taxes and they did not respond to my request. Then, I reported them to police. The police station ignored the reports and contacted me to inform me to stop sending them such reports.⁸⁵

At the same time, some other high-ranking officials considered that it was impossible to have independent courts in Middle Eastern countries, not only in the KRI. They mentioned other

⁸³ Interviewee No. 8, interview by author, Sulaymaniyah –KRI (August 21, 2019 at 17:50).

⁸⁴ Interviewee No. 15, interview by author, Erbil-Iraq, (August 5, 2019 at 17: 30); Interviewee No. 14, interview by author, Erbil-Iraq (August 6, 2019 13:56).

⁸⁵ Interviewee No. 15, interview by author, Erbil-Iraq, (August 5, 2019 at 17: 30).

countries as a benchmark for this phenomenon. One interviewee from the executive authority indicated that:

Even in the US, the court is not independent, and you can see that there are rich tycoons involved in politics in the US, and you can see that in most cases the court is dominated by the Democratic Party in the US. Another example is Turkey. Over the course of Turkish history of the past 400 years, its constitutions were controlled by the Ottoman sultan, and now by a dominant ruling party (AKP). There is strong interference by political parties in the court, and we have to accept the fact that we live in a region where our neighbors are Turkey, Iran, Syria; and Kurdistan is a recently established region in which it is very normal for the court to not be independent.⁸⁶

Furthermore, our document analysis showed that members of the opposition party “Movement for Change” (Goran) sided with the two ruling parties when media laws were being drafted in parliament.⁸⁷ However, undemocratic views were expressed by some interviewees from the executive authority, who described the legislative authority as entailing the “interference of opposition parties,”⁸⁸ as well as being “chaotic” and a “threat to democracy.”⁸⁹

Apparently, they were concerned that the legislative authority might offer more freedom for journalists. Some members of the executive authority suggested that all media regulations (both

⁸⁶ Interviewee No.17, interview by author, Erbil-KRI (August 5, 2019 at 13:18).

⁸⁷ The Law of Journalism in the Kurdistan Region in Iraq, No.35, (2007).

⁸⁸ Interview No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

⁸⁹ Interviewee No.17, interview by author, Erbil-KRI (August 5, 2019 at 13:18).

drafting and implementation) should be solely under government control (such as the executive authority).⁹⁰ As one interviewee (No. 19) stated:

We [the executive authority of the KRG] have to visit all political groups and present our problems to them, inform them that we need to amend all media laws, and the parliament has to stop their intervention. Especially with regard to the journalistic profession, we have to control journalists and their attitudes.⁹¹

Our data showed that the position of the KJS is not obvious when it comes to its independence. According to the document analysis (Press Law), the KJS was established in accordance with Law No. (40) of 1998 and amended by Law (40) of 2004, in the Parliament of Kurdistan (by legislative authority), and the KJS is a member of the International Federation of Journalists (IFJ).⁹² At the same time, our data showed that the KJS presents itself as a semi-governmental institution and has strong connections with other governmental institutions, as well as with non-governmental organizations working to protect journalists. For example, one interviewee (No. 14) mentioned that there is some “needling between the KJS and the government, the problem is this link is not clear yet, and our problem is that we see there is huge pressure on the MCY from our two major political parties.”⁹³ In addition, our data showed that the president of the KJS is a member of the committee established by the MCY, representing the KJS.⁹⁴ However, several interviewees argued that the “president of the KJS is completely affiliated to the KDP.” In particular, this was clear for

⁹⁰ Interview No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20)

⁹¹ *Id.*

⁹² The Law of Journalism in the KRI, No.35, (2007).

⁹³ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56).

⁹⁴ Interviewee No. 15, interview by author, Erbil-Iraq, (August 5, 2019 at 17: 30).

the interviewees after they found that “the KJS's president was elected as a member of the Iraqi parliament for the KDP in 2018.”⁹⁵

Nevertheless, top officials from the MCY considered that the KJS was not completely loyal, as they found that the KJS sometimes attempted to protect journalists' rights according to the Press Law (2007) – as indeed, the KJS is responsible for supervising the implementation of the Press Law.⁹⁶ Therefore, the MCY did not want the Press Law (for printed media) to be implemented and supervised by the KJS.⁹⁷ It became apparent that the MCY wanted to take over the role of the KJS. In this respect, one interviewee (No. 19) said:

The Ministry of Culture and Youth has to be responsible for all media regulations. I do not agree with the Kurdistan Journalists Syndicate regulating the Press Law; we need to amend the Press Law and make a lot of changes.⁹⁸

The struggle between the KJS and MCY within the executive authority will be further discussed below.

Uncertainties

Previous research has shown that authorities in transitional democracies may use vaguely defined laws as sanctioning instruments to restrict freedom of expression and silence adversarial or critical

⁹⁵ Interviewee No.1, interview by author, Duhok-KRI (July 21, 2019 at 10:20); Interviewee No. 4, interview by author, Erbil-Iraq, (August 4, 2019 16:45); Interviewee No. 8, interview by author, Sulaymaniyah –KRI (August 21, 2019 at 17:50); Interviewee No.6, Interview by author, Duhok-KRI (August 3, 2019, 16:25).

⁹⁶ Interviewee No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

⁹⁷ Interviewee No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20); Interviewee No.17, interview by author, Erbil-KRI (August 5, 2019 at 13:18).

⁹⁸ Interviewee No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

voices in the context of a partisan justice system.⁹⁹ The combination of document analysis and interviews provided further explanation regarding the uncertain and volatile media laws and their impact on journalistic work, and how this problem is leading journalists to self-censorship in the KRI. Here, we use the term “uncertainty” to denote the ambiguous and uncertain situation in terms of media regulation, which is reflected in “unclearly defined concepts,” “elastic paragraphs,” “conflict of orders” from multiple institutions involved in media regulation, as well as in the lack of activation of media laws. These aspects of uncertainty will be further explained below.

First, our study found “unclearly defined concepts” to be a major challenge faced by journalists and editors when practicing their profession. For example, we found that, according to the Press Law (2007) (Article 9, Nos. 1, 2, 3, 4), journalists and editors can receive heavy fines of up IQD 20 million, if their published work “shows malice,” “insults religious beliefs,” “insults and offends religious symbols, sanctity of any religion or sect” and “reveals anything related to the secrets of individuals, even if true.”¹⁰⁰ Second, in this regard, interviewees, such as journalists and editors revealed that these phrases have been used by authorities as “elastic paragraphs”; that is, they are interpreted by authorities as they see fit to serve their own interests. One interviewee gave some examples:

The Press Law is filled with unclear concepts and elastic laws, so they can use the press laws in different ways for different purposes. For example, when they refer to “harm our culture and customs,” the question is: “What is our culture?” There is no definition of our culture, everyone looks at our culture in a different way. Or when it refers to “national security,” but there is no definition of national security. They use the national security laws

⁹⁹ See Duffy & Alkazemi, *supra note*; Larsen, *Supra note*.

¹⁰⁰ The Law of Journalism in the Kurdistan Region in Iraq, No.35, (2007).

in different circumstances and however it suits the interests of ruling actors. Or what does “religious sanctity” mean? I look at religious sanctity in my way; others in different ways. For example, for me “Imam” is an ordinary person, but for many people they have “religious sanctity,” and so on.¹⁰¹

Another interviewee indicated that unclear definitions have a major impact on watchdog journalism, especially when it comes to reporting on corruption among state officials. Interviewee No. 1 specifically referred to Article 9, No. 4, which mentions reporting on “secrets of individuals, even if true”:

According to this Article, my editor prevented the publishing of my reports many times, as they were about corruption among our politicians (for example, oil smuggling, expired products, oil revenues). We really need our lawmakers to further explain what they mean when referring to the “secrets of individuals.”¹⁰²

Third, our results revealed conflict and divergence between the top officials within the MCY and KJS. The interviews showed that there is a “conflict of orders” between the two institutions, regarding their supervision of the implementation of media laws.¹⁰³ As mentioned above, while the MCY supervises audiovisual media (media licenses, taxes, advertising distribution), the KJS supervises print journalism (newspapers, magazines) as well as digital media, and all journalists

¹⁰¹ Interviewee No. 8, interview by author, Sulaymaniyah –KRI (August 21, 2019 at 17:50).

¹⁰² Interviewee No.1, interview by author, Duhok-KRI (July 21, 2019 at 10:20).

¹⁰³ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56).

in the KRI fall under the Press Law.¹⁰⁴ However, our study showed that, in reality, the MCY interferes with journalistic work and the content of the Press Law, and in many cases the MCY changes the contents of the law to fit its requirements without notifying the KJS. As one interviewee (No. 14) from the KJS stated:

The MCY has no right to interfere in journalistic work and media content or to shut down a media company such as a TV station and so on. The MCY is only responsible for the media licenses, taxes, advertising distribution. All journalists in the KRI are entitled to freedom of expression under the Press Law (2007). We have many problems with the MCY and its interference in the Press Law. We had some cases when the MCY changed the contents of the law to control journalistic work; this is bad for the KRG's reputation because we attempt to apply the journalism laws as much as we can, especially because we are under the scrutiny of international human rights organizations, but the MCY does not understand our point.¹⁰⁵

At the same time, undemocratic views about the rights of journalists were expressed by state actors within the MCY. One interviewee (No. 19) described the KJS as unprofessional and too supportive of journalists:

The Kurdistan Journalists Syndicate should not be responsible for journalists and the Press Law because they cause us a lot of problems. We do not have control of the Press Law, and we do not have control of journalists' membership licenses; the KJS has registered 14,500 journalists in the KRI.¹⁰⁶

¹⁰⁴ *Id.*

¹⁰⁵ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56).

¹⁰⁶ Interviewee No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

These conflicts between the MCY and KJS have created a precarious environment for journalists and editors as the MCY uses various techniques to control journalistic work by circumventing the Press Law (2007). For instance, by applying national security laws, the penal code or terrorism laws instead. One interviewee (No. 14, a high-ranking board member of the KJS) described one way of circumventing press laws, referring to Article 8 (Press Law, 2007):

Journalists who make critical reports about someone are directly summoned by the court with claims that their report contains defamation. In these cases, journalists should be fined according to the Press Law (2007). However, the court has used Iraqi Government penal laws established in the 1950s. While the KJS is supposed to attend court during the investigation sessions, the court has never allowed the KJS to attend these sessions. This really puts journalists in danger, because the court demands a legal advisor from the MCY during the investigation sessions, and they use old laws from a period where the media environment was totally different; the culture has changed, social relations have changed, and there was no digital media then.¹⁰⁷

Overall, the analysis showed that, although the KJS attempts to protect journalists to some extent, huge pressure is applied to it by the MCY, due to the latter's strong networks with the judiciary.

Transparency and accountability

¹⁰⁷ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56).

As indicated in previous research, the lack of transparent laws and regulations is another mechanism that has been used to control media and journalistic work in transitional democracies.¹⁰⁸ Our study showed that lack of transparency and accountability is indeed also a technique used by the executive authority (MCY) in the KRI in relation to issues of ownership, the distribution of resources and access to information. This technique is applied during either the drafting of media laws or their implementation, under pressure from the dominant parties or high-ranking politicians.

Regarding the drafting of media laws, the document analysis found that the Press Law (2007) addressed issues related to the transparency of ownership of printed media such as the owner's profile and their source of funding.¹⁰⁹ However, these issues are excluded from regulations related to audiovisual media and PSB.¹¹⁰ For example, in Article 3 of the Media Regulations for Audiovisual Media drafted by the executive authority, in the section on "Granting media licenses: terms and conditions", there are no sections referring to the financial visibility (funding sources) of media organizations or media ownership.¹¹¹

Moreover, in the introduction, the MCY indicates that "our media regulations will apply to all types of media organizations"; however, there are no paragraphs that mention and define the types of media owners.¹¹² Article 8 refers to "general principles for advertising", describing all conditions related to advertising formats and contents.¹¹³ However, there are no conditions

¹⁰⁸ See Podesta, *Supra note*, 2008; Orayb Aref Najjar, *The 1995 Palestinian press law: A comparative study*, 2 Commun. Law Policy. 41-103 (2009); Nielsen et al., *supra not*.

¹⁰⁹ See The Law of Journalism in the Kurdistan Region in Iraq, No.35, (2007).

¹¹⁰ See Kurdistan Region of Iraq, Ministry of Culture and Youth in the Kurdistan, *Guidelines for Audiovisual Media: Instructions for regulating frequency spectrum and licensing radio and television stations*, (Erbil, Ministry of Culture and Youth, 2014).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

referring to the distribution of advertising (either commercial or government). Similarly, the Commercial Advertising Law (2019) only defines commercial advertising that is directly under the supervision of the MCY, and while it addresses issues such as sanction fees, advertising content and consumer protection, there are no articles about fair distribution and state advertising.¹¹⁴

Other aspects also emerged from the interviews. First, some interviewees who worked as media regulators indicated that the issues related to “sources of funding” and “ownership transparency” were not important, as it is clear to the public who owns a particular media outlet and who financially supports them. Interviewee No. 17 explained:

In the KRI, about 99% of media organizations belong to political parties and are funded by them. This is a fact I monitor directly as a [removed for anonymity], I do not think these aspects should necessarily be addressed in laws, since it is clear to the public. However, we have attempted to raise questions on these issues but never succeeded.¹¹⁵

Our interviewees revealed that there are some regulators who intentionally avoid addressing some issues, such as government advertising and funding sources, due to pressures from the ruling parties. As reported by one interviewee (No. 14):

Many times in our regular meetings with the executive authority, I have discussed the need to address state advertising distribution, but no actual work has been done on this matter.

¹¹⁴ See Commercial Advertising Law in the Kurdistan Region of Iraq, No.4, (2019), <https://www.parliament.krd/english/parliament-activities/legislation/2019/>.

¹¹⁵ Interviewee No.17, interview by author, Erbil-KRI (August 5, 2019 at 13:18).

Our lawmakers do not have a clear and professional intention; they look at laws as business deals among parties and the government.¹¹⁶

Second, we found there is a vagueness surrounding the implementation of media laws. Consistent with previous research, the KRG may use national laws, such as anti-terrorism and national security laws, as an indirect method to control some media organizations. Some interviewees revealed that the Ministry of Interior is involved in issues concerning renewing or establishing media organizations and the extrajudicial detention of journalists (related to national security).¹¹⁷ However, sometimes the reasons for the interference of the Ministry of Interior were found to be ambiguous to the regulators within the MCY. One interviewee (No. 19) from the MCY added further insights in this regard:

We always have to wait for the decisions (i.e., acceptance or rejection) from the Ministry of Interior. We do not know what their conditions are; we do not know why they do not give permission for establishing or renewing a particular media outlet; and we are not allowed to ask questions about these issues. We only get the response from them, which is what they indicate on the application form.¹¹⁸

On this point, we found that the interviewees did not provide much insight into the issues surrounding “national security,” and they censored themselves while presenting their views. We

¹¹⁶ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56).

¹¹⁷ Interviewee No. 16, interview by author, Duhok-KRI (August 19, 2019 16:20).

¹¹⁸ Interviewee No. 19, interview by author, Erbil-KRI (August 6, 2019 10:20).

also noted that there are some informal (verbal) rules involving issues related to media licenses, as one interviewee (No. 19) said:

From my point of view, the applicants know why they are rejected, they know the reasons, that's why they do not demand their rights in court. The applicants come to us to receive their applications and see "the rejection," they withdraw their rights, nobody goes to court administration to demand their rights. Why? Because the security forces tell them why they had their media license rejected. But we have few cases of rejection and around 80% of applicants get their media license.¹¹⁹

Third, another common view among the interviewees was that the lack of transparency was due to the lack of knowledge of the lawmakers regarding issues related to the media market and system. This was because the supervisory actors involved in the legislation did not meet the job requirements, with the lawmakers selected due to their loyalty to their political parties, not due to their professional background. As one interviewee (No. 14) stated:

Our parties choose famous journalists to get votes from the public, rather than use them as experts in the legislative committee in the parliament. They choose famous actors in the media to get votes. As these actors are already known by the public, the parties do not need to invest money to advertise their candidates. So they have taken these journalism characters as ready-made candidates without investing time and money to obtain votes from the public. When I was appointed as a member of parliament, I thought I would fill

¹¹⁹ Interviewee No. 20, interview by author, Erbil-KRI (August 6, 2019 16:00).

many gaps in the media laws, as I promised, but they did not even allow me to join the media committee.¹²⁰

Overall, these findings provide important insights into how media are regulated in the KRI. There is a non-transparent regulatory environment characterized by a high level of informality and strong intervention by the ruling parties in the media regulatory authorities (in terms of hierarchy, contents of the laws and their implementation).

Discussion and Conclusion

This study employed media capture theory as a framework to examine the media regulatory environment of the media in the KRI. Through this lens, it contributes to our understanding of media systems in transitional democracies, providing insights into the role of political parties, the role of the state, media market concentration, and challenges in terms of journalistic professionalism.

The results show how a variety of formal and informal techniques are used by state actors, ruling parties and the government to control media regulatory bodies, through the establishment of hierarchies of power in these bodies, the drafting of legislation and the implementation of laws. The formal techniques concern direct interference of the government through official policies and approaches. The informal practices include holding influential positions, issuing unofficial orders through external actors or exercising verbal Islamic laws (Fatwa/Sharia), implementing laws with unclearly defined concepts or “elastic laws,” the lack of activation of media laws, clientelism and

¹²⁰ Interviewee No. 14, interview by author, Erbil-KRI (August 6, 2019 13:56).

patronage linkages, corruption, exclusion, legal gaps and negligence. In the following paragraphs, we present five major findings that are seen as the main contributions to the literature.

First, our findings point out that media regulatory bodies are controlled by the two ruling parties. This observation supports previous research, demonstrating that such bodies can be controlled by multiple parties.¹²¹ In “multi-party colonization,” all parliamentary party nominees are granted seats on the various supervisory bodies of the media.¹²² In such cases, media freedom may increase, as all parties have similar access to government resources, but none can control all of the resources.¹²³ Alternatively, media bodies might be controlled by one party, i.e. “one-party colonization.”¹²⁴ In such a context, the ruling party might abuse and exploit its influence over the legislative authority and use media regulations to suit its own needs. As a consequence, media freedom is severely restricted.¹²⁵ Taking the case of the KRI, media regulatory bodies may be considered an example of dual colonization of the media, where the two major parties (KDP and PUK) clearly have control. Consistent with the literature, this study found that the two parties’ control over the media regulatory bodies offered them multiple benefits, such as tax exemption, control of public funding and rent seeking.

Second, we found that informal politics has a strong impact on these bodies. These informal practices include unofficial orders, patronage linkages, unwritten rules such as the Fatwa, which have resulted in poor implementation and legislation of media laws. For example, while two authorities (executive and legislative) are formally appointed to regulate media, informal institutions and practices by regulators are embedded within the media regulatory organizations.

¹²¹ See Jan Zielonka, *supra note at 73-85*.

¹²² See Péter Bajomi-Lázár, *The Party Colonisation of the Media: The Case of Hungary*, 27 East Eur. Politics Soc. 60-89 (2013).

¹²³ *Id.*

¹²⁴ See Péter Bajomi-Lázár (2013), *supra note at 74*.

¹²⁵ See Péter Bajomi-Lázár (2015), *supra note*.

The findings revealed that these informal practices were above the law and outside formal institutions. In the literature, informal practices have been identified as potent, particularly in transitional democracies.¹²⁶ In such contexts, the parliament or other governmental bodies are not of such key importance, with the political system mainly represented by informal hierarchical networks. These informal relationships often possess greater power than formal institutions.¹²⁷ And again, these informal practices boost corruption and rent seeking. In this regard, Rupnik and Zielonka (2013: 13) argued that:

informal practices and the network gain importance when the state is weak, political institutions are underdeveloped, and the laws are full of loopholes and contradictions (...) The rule of law is replaced by the rule of informal ad hoc arrangements orchestrated by people who have no accountability operating in a mood of dirty togetherness.¹²⁸

Third, regarding the contents of laws and rules, our findings support the notion that lawmakers intentionally draft vague laws, or “elastic laws,” to be used by regulators to restrict journalistic work, as a tool alongside arbitrary policies and coercive control. In addition, the findings confirmed that regulators in the KRI have either no information about media ownership or only incomplete information related to the transparency of funding and resources, which is to the benefit of the two dominant parties. Our findings further expand existing knowledge regarding this topic: these techniques have been deliberately used by regulators to support their own interests (as

¹²⁶ Martin Krygier, *Good, Bad, and ‘Irritant’ Laws in New Democracies*, In MEDIA AND POLITICS IN NEW DEMOCRACIES, 119-136 (Jan Zielonka ed, 2015).

¹²⁷ Martin Krygier, *Supra not* at 123.

¹²⁸ Jacques Rupnik & Jan Zielonka, Introduction: *The State of Democracy 20 Years on: Domestic and External Factors*, 27 East Eur. Politics Soc. 3-25 (2013).

indicated in the literature).¹²⁹ However, it is also the case that lawmakers lack knowledge and appropriate professional backgrounds, having been granted a position within the media regulatory bodies because of their loyalty, in a process called “cadre politics,” rather than for their expertise in the field. This has been labeled a “nomenklatura system,” which refers to a reliance on old authoritarian power.¹³⁰ In this process, key positions of authority, such as senior positions in the state bodies selected by parties are appointed based on a high degree of mutual loyalty or “macropolitics.”¹³¹ Research has shown that this practice occurs in transitional democracies and that it can develop into systems of informal clientelist structures and networks called “new nomenklatura,” in a form of non-transparent state exploitation by political parties or “state capture.”¹³² We believe that this would be a fruitful area for future research.

Fourth, the methodological approach (sampling, triangulation of data, a mixed method) used in this study provided conceptual clarity on a complex media system in a non-transparent environment based on informal networks among powerful social institutions. The combined use of document analysis and interviews revealed significant formal and informal social and organizational practices. This approach may help scholars working in similar contexts.

Overall, this research provided further understanding of how media are regulated through informal ties between regulators and powerful sources of pressure in the KRI. It is obvious from the findings that the rights of journalists are not protected in the KRI. More broadly, further research is needed to determine how journalists working in such environments are able to bypass these instruments and maintain some degree of independence and professionalism, as well as how

¹²⁹ See Don Podesta, *supra note*.

¹³⁰ Michal Klíma, Politics in Post-Communist Europe Political Parties, Clientelism and State Capture, 8-50 (2020).

¹³¹ *Id.*

¹³² Michal Klíma, *supra note* at 11.

journalists themselves distinguish between informal and formal structures and regulations related to their journalistic work.

Table 3 Political parties in the KRI 2018

Party	Seats in parliament (n) since 2018
Kurdistan Democratic Party (KDP)	45
Patriotic Union of Kurdistan (PUK)	21
Movement for Change (Gorran)	12
New Generation (Naway Nwe)	8
Kurdish Islamic Group	7
Towards Reform (Hevpeymaniya Ber bi Îslah)	5
Turkmen reserved seats for minority groups	4
Chaldean Assyrian Council (Christian)	1
Modern Alliance	1
Freedom List	1

Table 4 Media-related laws created by the KRG, Iraq (2003-2022)

Media related-laws and regulations	Issuance year
Press Law	2007
Right to Access Information Law	2013
Guidelines for Audiovisual Media	2014
Commercial Advertising Law	2019
Bill Reorganizing Digital Media	2020

Table 5 Political background of state actors in the committee established by the MCY

State actors	Political background
Directorate of Ministry of Culture and Youth (MCY)	(2) KDP, (1) PUK
Kurdistan Journalists Syndicate (KJS)	(2) KDP
Prime Minister's Directorate	(1) KDP
Directorate of Media, Publishing House, and Public Service Broadcasting	(1) PUK
Directorate of the Ministry Transport and Communications	(1) KDP
Directorate of the Ministry of Justice (Court)	Unknown
Academics from media and communication studies	Unknown

List of figures:

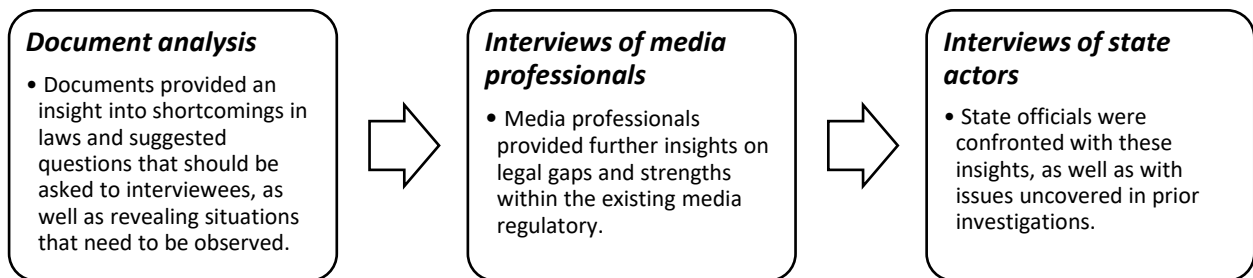


Figure 3 Data triangulation

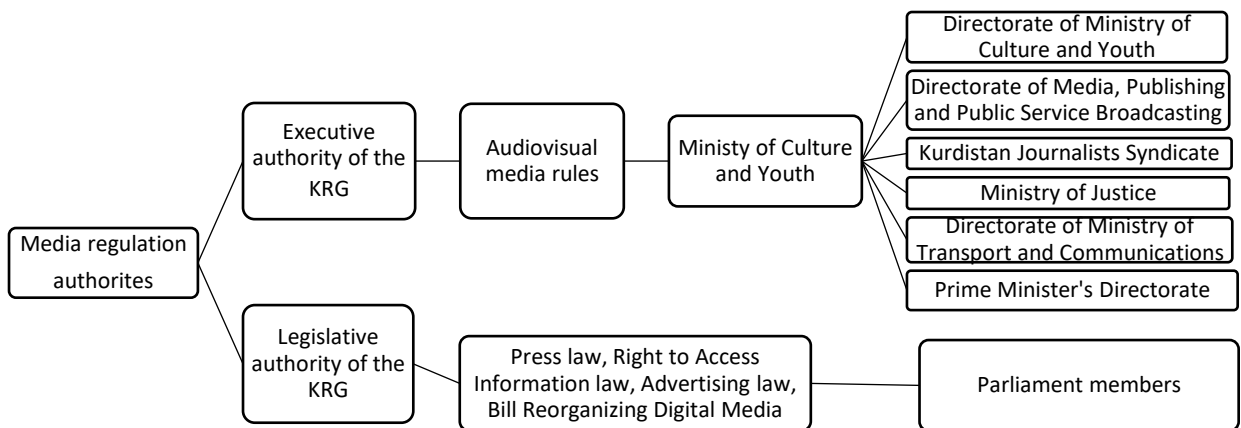


Figure 4 Institutions officially involved in drafting media regulation in the KRI, 2019