

UPR Submission by a Group of Civil Society Organizations Armenia, 2009

This submission summarizes the concerns of a group of civil society organizations with the state of human rights in Armenia as well as provides recommendations for each of the sections covered. In the aftermath of the 2008 elections, there has been an unprecedented political repressions and curtailing of democratic freedoms. The human rights crisis that resulted in the aftermath of the flawed Presidential election of 2008 remains largely unattended. There has been no due investigation into the deaths of the 10 people resulting from the post-electoral clashes.

The report was prepared by the following organizations: Transparency International – Anti Corruption Center, Protection of Rights without Borders, Civil Society Institute, Helsinki Committee of Armenia, Helsinki Citizens' Assembly – Vanadzor, Collaboration for Democracy Center, Victims of State Needs, Armenian Association of Women with University Education, Yerevan Press Club, Open Society Institute Assistance Foundation - Armenia.

In preparing this submission the organizations have relied on the results of their ongoing and continuous monitoring in the areas of free and fair elections, independence of judiciary, torture and ill-treatment, right to assembly, freedom of conscience and religion, property rights, women and children's rights, independence of media and right to healthy and safe environment. The organizations regularly publish and disseminate both locally and internationally their reports on the above-mentioned areas.

I. Elections in Armenia

(1) Elections are among the most problematic institutions in the Armenian system of governance. Illegal use of vast financial resources by the ruling elite and big businesses, along with various forms of financial, political and physical pressure imposed on opposition parties, media and voters, seriously distort the election results and post-election processes.

(2) According to local¹ and international observers², the Armenian elections are accompanied by violence, use of administrative, media and human resources, impeded and early campaigning, vote buying, bribing of members of electoral commissions, media bias, incorrect voters' lists, ballot stuffing, open voting, presence of unauthorized persons, harassment and intimidation of opposition activists and proxies, infringement of rights of observers and journalists, malpractices in the vote count and tabulation, lack of sanctions against violators, ineffective complaint mechanisms, etc.

(3) Consolidation of authoritarian rule is another critical factor to be considered in this respect. Both factors actually led to the elimination of any real political competition. All this makes impossible for opposition forces to receive sufficient financial, human and other kind of support. In those cases when some businessmen tried to fund the opposition, the authorities swiftly launched harsh reprisals against them including arrests and criminal accusations. Many opposition supporters lost their jobs and businesses.

Recommendations

1.1 Promote real political competition, guarantee freedom of media, expression and assemblies, and ensure equal conditions for all political forces to contest.

1.2 Ensure a strong mechanism for detecting and punishing electoral fraud and other violations, including those related to campaign funding and use of administrative resource

1.3 Improve respective electoral legislation, particularly on campaigning, party finance and composition of electoral commission, and strengthen its enforcement, as well as meet Armenia's international obligations to comply with standards of democratic elections.

¹ Monitoring of Campaign Finance of the 2007 and 2008 Elections in Armenia, Transparency International Anti-corruption Center, Yerevan, 2009

² <http://www.osce.org/odihr-elections/documents.html?lsi=true&limit=10&grp=222>

II. Judiciary

Dependence over executive

(4) Independence of judiciary is not conclusively guaranteed at the legislative level. The President has a workable tool to put pressure on “defiant” judges and thus the Executive predetermines the outcome of judicial cases. Particularly, Article 117 of the judicial code vests the President with wide discretionary power, while endorsing the list of judges, compiled by the Council of Justice. This article uses the expression “candidates acceptable to him”, which leaves loopholes for abuses and arbitrary use of powers in practice. Disciplinary measures are also used to “punish” judges who attempt to go against executive’s control. Direct pressure on the judges by the executive is a clear message to the rest that the executive will not tolerate disobedience.³ Vivid examples of such pressure on the judges are the Royal Armenia case when a judge was removed from his office for ruling against the tax authorities. The fact that there has not been a single ruling in favor of the plaintiffs from Northern Avenue cases (property rights cases) even after the decision of the Court of Cassation ruling on unconstitutionality of the whole process is also apparent indication of the dependency of the judiciary from the executive. Furthermore, in the light of the events of March 1⁴, 2008 the control became even more vivid as the courts granted all requests of the body of inquest on application of detention, as a measure of restraint in respect of activists and opposition leaders.

Fair Trial

(5) Court monitoring results⁵ reveal that in criminal cases courts have an accusatory bias, thereby breaching not only the principle of presumption of innocence, but also the adversarial nature of proceedings and the principle of equality of arms before the court. Preference is given to the prosecutor’s witnesses undermining the adversarial process of the trials. In addition, problems relating to arbitrary administration of justice and serious limitations on the right to defense were recorded. Below are some vivid examples:

- Vahe Grigoryan, who represented the citizens from Northern Avenue who had property alienated from them, was arrested on accusations of fabrication of documents. These accusations subsequently were not confirmed.
- In spite of the ruling of the Constitutional Court, that remitting criminal cases for additional investigation is unconstitutional, the Mataghis case⁶ was sent to a new preliminary investigation.

(6) During the trials of March 1 cases the pattern of blatant and widespread violation of fair trial standards was also recorded. Particularly, the court trials undermined the right to defense, curtailing the right to have adequate time and facilities for the preparation of the defense. The principles of presumption of innocence, equality of arm, fairness of proceedings, the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him were also ignored. Intimidation and pressure against witnesses were also widely employed and the evidence elicited as a result of such actions was admitted and used by the judges.

(7) Lawyers who represented members of opposition in relation with the March 1 events or involved in politicized cases (for example, the cases relating with Sukiasyan family) have also been pressured. Four lawyers have been accused of contempt of court under the criminal limb, whereas many other instances of imposition of judicial sanctions were also observed. Currently, the Constitutional Court is invited to consider the constitutionality of the applied provision of criminal code.

Free Legal Aid

³ 2008 Human Rights Report: Armenia. US Department of State

⁴ See Human Rights Watch’s report “Democracy on Rocky Ground”

⁵ Right to Fair Trial in Judicial System of Republic of Armenia: Monitoring Results, Armenian Institute for Development

⁶ In April 2004 three military servicemen were deprived of their liberty and were interrogated as witnesses regarding a case of a homicide in the army division. During five days they were kept in the department of the Military Police where they were subjected to torture, underwent beatings and swearing and were deprived of an opportunity to sleep and eat. They were forced to give self- incriminatory testimony. Consequently they were involved in the case as accused

(8) There is no effective legislative regulation of provision of free legal aid. Article 6 and Section 7 of the Law on Advocacy regulate free legal aid and public defense, which does not ensure effective and qualified legal aid and protection for socially vulnerable groups in different types of cases.

Recommendations

2.1 At legislative level and in practice ensure genuine safeguards for independence of judges and exclusion of any pressure or influence on the judiciary. While endorsing the proposed list of judges the President should not be empowered to make a discretionary selection from the list. Remove the test of “acceptability of the candidacy of the judge for the President” from the text of law

2.2 Ensure adversarial nature of trials and equality of arms, precluding prevalence of the prosecution, respect for the principle of presumption of innocence and the right to defense, without impeding in practice effective realization of this right by unlawful means, including unlawful pressures and intimidation on lawyers

2.3 Ensure full implementation of international and national fair trial standards in practice

2.4 Adopt a standalone Law on Legal Aid in compliance with international standards

III. Torture and Ill-Treatment

(9) New Criminal Code, adopted in 2003, envisages articles criminalizing torture. However, definitions of two articles 119 and 341 of the Code do not correspond to the definition of torture envisaged by Article 1 of the UN Convention against torture ratified by Armenia in 1993. Specifically, wording is missing which would prescribe not only a direct involvement of public official in the acts of torture, cruel, inhumane or degrading treatment or punishment but also hold public officials responsible “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” as the UN Convention stipulates. Another issue is that while Article 341 gives an exhaustive list of public officials, Article 119 does not refer to public officials at all.

(10) Armenia ratified the Optional Protocol to UN Convention against Torture in 2006. In 2008 the National Assembly of Armenia amended RA Law on Human Rights Defender to designate the Defender as a National Preventive Mechanism envisaged by the Optional Protocol. Although the process preceded to ratification was constructive and transparent and included a vivid dialogue between civil society and relevant state agencies, designation of the National Preventive Mechanism was done largely against the recommendations of the local civil society and of international experts. As a result of the discussions, a model for the NPM, with distinct participation of civil society, was agreed between all stakeholders. Nevertheless, currently the NPM is not regulated by a law and the civil society involvement is not institutionalized and is simply left to the good will of the Human Rights Defender.

(11) After March 1, 2008, there were numerous torture allegations of the imprisoned with the purpose of solicitation of testimonies. Many of these allegations were made during the trials. Nevertheless, there is no information on effective and adequate investigation of these allegations.

(12) As NGOs and Public Monitoring Group over Penitentiary⁷ (PMG) report⁸, the cases of torture or ill-treatment occur mostly within the Police system of Armenia as a measure to obtain forced testimonies from suspects and witnesses. The pressure on witnesses was widely demonstrated during the trials related to March 1 events when during final trials of opposition leaders many witnesses stated in the courts that their pre trial testimonies were obtained through torture. Instances of abduction of witnesses and their family members were also observed. In general, when participant of a trial (defendant, witness, defense attorney) makes an allegation of torture or ill-treatment during pre-trial investigation, as a rule, judges do not properly consider these statements and the evidence allegedly obtained through torture, is not deemed

⁷ Based on the Law of the Republic of Armenia on Treatment of Arrestees and Detainees adopted in 2002, Groups of Public Monitoring observers over Penitentiary Institutions (2003) and over Detention Center of Police (2006) were created.

⁸ Penitentiary System of the Ministry of Justice of the Republic of Armenia in 2008.
http://www.hra.am/content/library/pmg_report_2008_eng.pdf

inadmissible. The practice of detaining of the relatives of suspected crime perpetrators until the alleged perpetrator comes in is widespread and reported in many occasions.

(13) On May 12, 2007 Levon Gulyan⁹ was summoned to the police station to testify as a witness, later he was taken to the RA Police Headquarters and after several hours of interrogation was found dead in the yard of Headquarters' building. The lawyer initially representing Mr. Gulyan's family saw the body a few hours after the death and saw bruises and evidence of ill-treatment. Two other witnesses reported that they also had been subjected to acts of ill-treatment. However, no proper investigation was conducted of this case and no official has been punished.

(14) The risk of torture in the police is very high because in some cases a person actually deprived of liberty may be kept in the police station or in the rooms of investigators without a record in the protocol of detention and actually in incommunicado detention. According to RA legislation arrest should not exceed 72 hours (deprivation of liberty without court order based on the decision of investigative body), which is counted from the moment mentioned in the protocol. The Police Monitoring Group has a right to have access to the detention centers of the Police, but not to the police stations, where most of the time violations occur, and people deprived of liberty are kept without any record of it. After the events of March 1, 2008 there have been numerous cases of arrested persons being kept in the police for four days and longer.

(15) Cases of inhuman or degrading treatment occur in the penitentiary institutions. There, the underpinning reason is punishment for bad behavior. Latest of such cases appeared in December 2008 in "Nubarashen" institution where an ad-hoc search was conducted within the facility, resulting in a serious clash between inmates and Rapid Response Group (RRG) during which many inmates were heavily beaten and the head of the RRG was injured. This caused continuous violence towards all the convicts in the cell and all of them were injured as a result. The PMG further qualified the incident as torture that was applied as a punishing measure. Based on the statement of the PMG a criminal case was instituted, which was terminated by the decision of the investigator on April 28, 2009, on the ground of the lack of corpus delicti in the actions of the administration of the penitentiary institution.

(16) A similar incident occurred in Goris Criminal Institution where an incident occurred between a convicted person and an investigator. After the incident ended, the convicted person was punished. Yet, all the convicted persons and persons deprived of their liberty residing in the prison were also punished collectively. They were beaten and their personal belongings burnt.

(17) The PMB has reported about poor living conditions in penitentiary institutions of Armenia, which can be amounted to inhumane, cruel and degrading treatment. Particularly, the Group mentioned overcrowding in some penitentiary institutions, poor medical care and bad quality of food.

Helsinki Citizen's Assembly – Vanadzor reports on ill-treatment of persons in semi-closed institutions, such as psychiatric institutions, orphanages and elderly homes.¹⁰ Violence is used against persons with mental disabilities, which is never examined. The persons with mental disability are not informed about their rights and responsibilities and do not have information on the protection of their rights. The NGO reports that patients of psychiatric institutions do not know what kind of medicine they are treated with; children in orphanages are deprived of food as a punitive measure or locked up for several hours.

(18) While there is a mechanism for civil society oversight in such closed and semi-closed institutions as penitentiary and the detention centers of the police is no mechanism for oversight of the army. In this light, the cases of ill-treatment and deaths in the army remain largely unrevealed and are not properly investigated.

Recommendations

3.1 Define torture and ill-treatment as per UN Convention against torture, and other cruel, inhuman and degrading treatment or punishment and relevant legislation including the Criminal Code.

9 "The EU Should Obtain Significant Improvements In The Field Of Human Rights" 10 February 2009. http://hra.am/file/fidh_report_feb.pdf

¹⁰ http://www.hcav.am/Downloads/monitoring_1_eng.pdf

- 3.2 Provide legislative basis for the NPM of the OPCAT and ensure institutionalized civil society participation
- 3.3 Ensure access for Police monitoring group to all premises and facilities of the Police where people may be kept
- 3.4 Ensure proper and thorough investigation of torture cases and hold perpetrators accountable. Make the investigation accountable to Armenian public by reporting on the results of each such case (without opening the process and jeopardizing the investigative process)
- 3.5 Ensure thorough consideration of all accusations of torture made in courts during the trial and if confirmed, inadmissibility of evidence obtained in such way
- 3.6 Ensure the capacity of staff of closed and semi-closed institutions i.e. quantity, remuneration and continuous training on human rights issues and standards for such institutions

IV. Meetings and Rallies

(19) The right to conduct meetings and rallies is regulated by the RA Law on Meetings, Rallies and Demonstrations. The Law was hastily amended on March 17, 2008 and during the state of emergency (declared by presidential decree after the March 1 clashes) and provisions were added to the Law, which allow undue restriction of freedom of assembly. Article 9(4)(3) provides that rallies and meetings may be prohibited if the police or special investigative body provides official justification. Although the Law meets CoE standards on paper, the right to freedom of assembly is not guaranteed in practice in Armenia.

(20) In the aftermath of the presidential elections of 2008, ten people died and many were injured. Since then, demonstrations and rallies in particular have been unduly obstructed and prohibited by the authorities. Helsinki Committee of Armenia's monitoring for the period of October 2008 – March 31, 2009 reveals that in the case of 33 demonstrations out of 88 (including authorized and unauthorized meetings, spontaneous meetings, etc) the police have in one way or another interfered by prohibiting rallies, dispersing participants and prohibiting citizens to remain in certain areas of the capital. In six of these meetings, excessive use of force by the police is registered. In addition, during the scheduled meetings the movement/operation of public transport from regions to the capital is checked and often restricted by the police.

(21) Notifications about upcoming demonstrations and rallies are brutally restricted by the authorities. Representatives of oppositional parties' youth wings are routinely harassed while informing the public about upcoming meetings. In one of such examples, Tigran Arakelyan, an oppositional-activist has been charged under the Article 258 (3)(2) of the Criminal Code of the RA - "offering resistance to a representative of authorities". The case is ongoing. In general, there is a tendency to tighten the grip on any kind of activism in the country. Even small-scale demonstrations (under 100), which do not require the organizers' to notify authorities about the demonstration are often stopped and prohibited on superficial grounds.¹¹ There is a latent executive order not to rent out halls for meetings and discussions to most critical representatives of Armenian civil society.

Recommendations

- 4.1 Revoke Article 9(4)(3) of RA Law on Conducting Meetings, Rallies and Demonstrations
- 4.2 Guarantee proper investigation of cases where police force was used illegally
- 4.3 Immediately stop persecution of activists
- 4.4 Abandon the practice of not renting out halls to critical civil society, imposed on hotels and other entities by authorities

V. Freedom of Conscience and Religion

(22) The RA Law on Freedom of Conscience and Religious Organizations adopted in 1991 includes numerous contradictions and unclear wordings. In 2009 the RA National Assembly in the first reading

¹¹ The Law does not require official notification of a demonstration under 100 participants. Nevertheless, in many instances the authorities stop the demonstrations claiming that there are more than 100 participants and the demonstration has not been authorized.

passed the draft law on the amendments to the abovementioned Law which contains restrictive provisions and brings forth arbitrary interpretations, particularly reinforcing definitions of “Christianity” and “soulhunting”. The definition of “Christianity” contradicts the provisions of the Constitution of the RA which stipulates separation of State and Church and is an undue intervention into the freedom of conscience and belief as well as religious autonomy. Definition of “Soulhunting” is a term with wide meaning and can be applied to any religious organization and cause the termination of its activities. Besides it should be changed with the term “improper proselytism”¹². The criteria for religious organizations to be registered are becoming more stringent. Also, the draft law includes a requirement to shut down the activities of non-registered religious organizations inconsistent with the RA Constitution and international agreements. According to the amendments to be made to RA Criminal code, fines and penal sanctions are foreseen for “soulhunting”.

(23) Despite the fact that the Law on Alternative military service is in force since 2004, representatives of “Jehovah’s Witnesses” religious organization refuse alternative military service. As of 1 September 2009, 69 Jehovah’s Witnesses are sentenced to imprisonment.

(24) Acts of intolerance towards religious organizations do not receive adequate response or investigation from state authorities though the Criminal Code contains an article on religious hostility. In Mass Media, all religions other than the Armenian Apostolic Holy Church are called “sects”. The whole country is flooded with leaflets where other religious organizations are called “sects” or spy organizations of other countries, and there is a call to struggle against them. There are registered cases that in public schools during the “History of Armenian Church” class religious intolerance is propagated. Cases on illegal actions committed against representatives of religious organizations by police and NSS have been reported in the Press; however, law enforcement bodies have not investigated these publications.

Recommendations

- 5.1 Amend the Law on Freedom of Conscience and Religious Organizations according to international criteria, in particular, replace the term «soulhunting» with the notion «improper proselytism»;
- 5.2 React towards appeals containing religious intolerance;
- 5.3 Draft and adopt a new Law on Alternative non-military (civil) service.

VI. Property Rights

(25) RA Constitution stipulates that property may be alienated for the needs of the society and the state only in exclusive cases of prevailing public interests, in the manner prescribed by law and with prior equivalent compensation. On November 27, 2006, a Law passed in the National Assembly on Alienation of Property for State Needs, which gives a vague framework for the reasons under which property may be alienated. As a result, loopholes in practice lead to widespread abuse of property rights.

(26) Since 2000 the Government has embarked on a city center reconstruction project, which was carried out with a massive violation of property rights of citizens. As a result, many citizens have been forced out of their homes with minimum compensation. Local courts do not provide a remedy as there has not been a single decision in favor of the citizens up to date. The ECHR has ruled in favor of these citizens in the case of Minasyan and Semerjyan v. Armenia (no. 27651/05, judgment of June 23, 2009). As a result, a number of other rights are violated as well: the citizens were left without registration and subsequently were denied the right to vote, serve in the army, right to social welfare, work, education and acquiring new passport.

Recommendations

- 6.1 Amend the RA Law on Alienation of Property for State Needs to provide precise and foreseeable cases for alienation of property and guidelines for assessment of the existence of “genuine public interest”

¹² “Joint opinion on the law on making amendments and addenda to the Law on the Freedom of Conscience and on Religious Organizations and the Law on Amending the Criminal Code of the Republic of Armenia”, European Commission for Democracy Through Law ((Venice Commission), CDL-AD(2009)036, Opinion no. 530/2009,“, Strasbourg, 23 June 2009.

- 6.2 Ensure effective safeguards, including judicial, against arbitrary interpretations of genuine public interest and permissible cases of alienation
- 6.3 To provide redress to persons affected by the expropriation processes up to 2006

VII. Women's Rights

(27) Armenia ratified CEDAW in 1993 and the Optional Protocol in 2007. Although the National Action Plan on Improving the Status of Women and Enhancing Their Role in Society 2004-2010 is in line with the recommendations provided by the international documents, an entire package of requirement measures as well as logistical and financial resources for their implementation is not outlined.

(28) Despite the fact that the RA National Assembly ratified the UN Convention on Political Rights of Women in 2008 no real measures are taken to redress gender imbalance in the legislative branch of government. Women make up only 8.6% of deputies in the National Assembly; women are not involved in 7 out of 12 Standing Committees of the National Assembly. In 2008 compared to 2002 representativeness of women as ministers and deputy ministers shrunk from 8% to 2.4%. There are only two women ministers out of a total of eighteen, one governor (marzpet) out of ten and one deputy-governor out of 21. There are only 2 women as deputy ministers out of 65 (3%). Women comprise only 11% as high-level civil servants.

(29) There is discrimination against women at local self-governance and regional level as well. Since 1990s, there has not been a single woman serving as a mayor (out of total 48) or deputy-mayor (51). Women are represented at a rate of 0.5% at local government bodies (Avagani) and only 2.6% of leaders in rural areas are women. In the last 10 years, not a single woman has been a candidate for the position of Yerevan city's Mayor. There are no women leaders in 12 communities of Yerevan.

(30) At the same time, 51% of Armenia's population is women, 60% of which have higher education. In procedural and judicial practice, Armenia does not adhere to fundamental principles of international law and documents aimed at elimination of discrimination against women.

Recommendations

- 7.1 Implement all recommendations as per CEDAW Committee's report on implementation of the Convention on the Elimination of All Forms of Discrimination Against Women
- 7.2 Develop a National Mechanism as a tool to eliminate discrimination against women based on the recommendations of Beijing Platform for Action and recommendations of CEDAW Committee.
- 7.3 Establish a position of Deputy Ombudsman to ensure equal rights and opportunities for women
- 7.4 As per commitments in RA Government's Action Plan for 2008-2012 develop strategic priorities and ensure measures for gender balance in all areas of socio-political life
- 7.5 Adopt a Law on State Guaranteed Equal Rights and Opportunities for Men and Women
- 7.6 Change Article 100 of RA Electoral Code to increase the quota for women to 25% based on their actual representation

VIII. Children's Rights

(31) A latent process of violation of children's Constitutional rights and as per the UN Convention on the Rights of the Child (CRC) is in place in Republic of Armenia. Education management practices and decision making does not guarantee the right to receive primary education for children in rural areas. The practice of funding schools as per number of children resulted in closure of a substantial number of classes in elementary school and a raise in level of dropouts in general. The dropout rate in the country is 8% and in the range of 11%-13.5% in the regions, which creates basis for raise in illiteracy rate subsequently will increase poverty.

(32) Armenia submitted reports on implementation of the CRC twice and reviewed in 2000 and 2004. On both occasions, the Committee was concerned about "the absence of a system of juvenile justice, in particular the absence of specific laws, procedures and juvenile courts."

(33) Juvenile justice issues are not properly addressed in Armenia. Although, the Armenian legislation envisages several essential standards regarding juvenile justice,¹³ issues of prevention, alternative punishments and rehabilitation for juvenile offenders remain unsolved. There are reported cases of physical abuses of juveniles when they enter criminal justice system (mainly in the police, however cases in prison and special schools were also reported). There are no special standards of interrogation of a suspect, accused, witness and victim juveniles, as well as special court procedures for juveniles and well-established alternatives to deprivation of liberty.

(34) Accounts of violations of children's rights in closed and semi-closed institutions including physical abuse and sexual harassment, labor exploitation, inadequate healthcare and education for children in specialized children's home and orphanages have been recently revealed through several scandalous cases. At the same time, currently there is an ongoing criminal case against Mariam Sukhudyán, an environmental activist, who raised the issue of ill-treatment and possibly sexual harassment in one of the semi-closed schools for children with special needs.

Recommendations

8.1 Monitor implementation of UN Convention on the Rights of the Child and children's Constitutional Rights on access to basic education, develop and implement measures for inclusion of children in primary and secondary schools

8.2 Ensure conditions and mechanisms for realization of children's Constitutional right to education, hold and increase responsibility for state officials for not taking measures to ensure the right to primary and secondary education for children.

8.3 Discuss and develop the concept on juvenile justice for Armenia

8.4 Include the methodology for working with juveniles in the special trainings for judges, lawyers and prosecutors

8.5 Establish the mechanism of independent control over the special schools, similar to the Police and Prison Monitoring groups mentioned in this report.

IX. Freedom of Expression and Media

(35) There are no real mechanisms to ensure independence and political impartiality of the public broadcasting company as well as of the body regulating television and radio. Lack of diversity and unbiased coverage becomes especially evident during elections and referendums. Superficial amendments implemented in 2007-2009 in the broadcast legislation do not meet the recommendations of PACE resolutions 1532 (2007), 1609 (2008), 1620 (2008), 1643 (2008), 1677 (2009) on fulfilling of Armenia's commitments before the Council of Europe and on functioning of democratic institutions in the country. Given the dominant role of TV as a source of information, lack of plurality in the air seriously hinders free delivery of news and opinions to the public.

Recommendations

9.1 Reform the broadcast legislation to ensure real independence of the regulatory body on television and radio as well as of the managing body of Public TV and Radio Company.

9.2 Provide clear and exact definitions in the Law describing the mission and responsibilities of these bodies.

(36) The amendments to the Law on TV and Radio (passed in September 2008) on digitalization of TV and radio broadcasting contravene the letter and spirit of the ruling of the ECHR on Meltex Ltd (the A1+ TV company) case and respective recommendation of the PACE Resolution 1620. Instead of fostering diversity of broadcasting and enabling A1+ to be on air through a tender for frequencies, the amendments banned tenders till 2010, including the frequencies for which the terms of licenses expire. The amendments were adopted without any prior discussion with relevant parliamentary committee, media professionals, international expert organizations and Armenian civil society. The need for the moratorium

¹³ such as age for criminal responsibility in compliance with international standards, elimination of life sentence for juveniles, obligatory presence of legal representative and lawyer for accused juvenile

was substantiated by the digitalization process but even up to day there is no clear cut program of the government for the switch to digital broadcasting.

Recommendations

9.3 Repeal the amendments to the Law on Television and Radio and announce tenders for broadcasting licenses, which expired.

9.4 Ensure objectivity and transparency of the tenders by involving independent experts according to the RA Law on Television and Radio, hold public hearings on different aspects of the digitalization process.

(37) Total control over the information sphere became explicit in the light of the 2008 March events when state of emergency was declared in Yerevan. For the first time since country's independence, preemptive censorship was carried out. The censorship was not stemming from the presidential decree on state of emergency and directly contradicted RA Law on Mass Information. As a result, a number of newspapers were not published as well as independent online media were blocked.

Recommendations

9.5 Give a political and legal assessment of the censorship applied during March 2008, sanction those who ordered and performed the censorship

(38) Violence against journalists remains one of the main impediments of their professional activity. Most cases of such violence are not properly investigated and guilty persons are not punished. Moreover, in many instances the law-enforcement authorities hinder the professional work of journalists and use violence against them. Human rights and media organizations report that in the period of January 2007 – July 2009 65 actions against journalists and media entities took place that required criminal investigation and liability. In 25 of these cases, the law-enforcement or fiscal authorities were the ones who impeded the work of the journalists. Only in 3 out of 65 cases, the guilty were punished whereas investigation is still ongoing for some of the other cases. It is typical that only one guilty person is punished as a result of the investigation, while generally journalists are attacked by groups. At the same time, the motives of these attacks remain unclear and those that ordered the violence remain unpunished.

Recommendations

9.6 At state level rise the question of ineffectiveness of investigation and responsibility of law-enforcement authorities for lack of crime disclosure of violence against journalists

9.7 Regard the very low percentage of such crime disclosure as an indicator of professional incapacity of the respective investigators.

X. Right to Healthy and Safe Environment

(39) Natural resource use practices in Armenia violate the rights of present and future generations to live in a healthy and safe environment. Environmental protection policies are not properly designed and enforced to ensure mitigation of environmental impacts and adequate quality of the environment. In the most of cases, the mentioned problems are associated with unlawful acts of state institutions, non-transparent and discretionary decision-making, abuses of power and impunity of criminal acts.

(40) Without a long-term strategy for use of natural resources the mining activity is included as a priority area within the government's program, whereas licenses are issued to companies, many sponsored by high level officials, without any planning and assessment of environmental consequences.

(41) Forest cover continues to decrease in the country. Though, illegal logging records a decline, a large volume of trees is being cut under the name of "sanitary cutting", which increased about 7 times throughout 2005-2007. In addition, the government continues unlawful allocation of forests for mining or construction and does not put restrictions on the export of timber products.

(42) Government fails to ensure conservation of protected areas, instead makes discretionary changes to the boundaries of those changing regimes and allocating plots for business activities. Reserves of plants and animals, including Red Book registered ones, are under a risk, also affecting the food security for people whose livelihood depends on natural products. E.g., reserves of white fish in Lake Sevan are on the

edge of extinction and, in present, there is little chance that this species will be able to reproduce itself in a natural environment.

(43) Urban development takes place on the territory of green areas and rivers flowing through settlements and usually takes a form of dense construction of multi-storey buildings, highly increasing the seismic and other risks as well as the urban stress.

(44) The country lacks waste management programs. Waste-related laws do not stipulate liabilities for the disposal of hazardous waste, thus the mining industries do not pay for millions of tones of tailings and other toxic waste generated from exploitation of metal ores (copper, gold and molybdenum).

(45) Government fails to regulate the assessment of environmental impacts of projects, plans and programs, specifically on forests, plants, animals and human health. Modifications in the environment often take place without consultation with experts and the due environmental assessments. Projects receive permits as a result of inaccurate expediency analysis, which underestimate the actual costs of economic activities. Adoption of long-promised changes to legislation gets postponed for years without justification.

(46) UNECE Aarhus Convention, ratified by Armenia in 2001, is not properly implemented in the country, while its Compliance Committee's Conclusions and Recommendations issued in March 2006 remain to be ignored by authorities. The public concerned is mostly deprived of its right to know about changes to its living environment and to participate in decision-making. These rights are ignored even in the case of adoption of strategic plans and programs. E.g., the issue of increase of water intake from 170,000 m³ to 360,000 m³ from Lake Sevan - the biggest freshwater reservoir in the region, which could have adverse effect on the whole ecosystem was not communicated to more than 90 communities living around and depending on the lake. Or, the decision on exploitation of uranium reserves, which would result in radioactive waste and displacement of population of nearby villages in Syunik Marz, takes place without due notification and complete disregard of concerns of the affected communities. Access to justice in environmental matters is limited, whereas the courts do not recognize NGO rights to represent the public interest to living in a healthy and safe environment.

(47) Transboundary impacts of economic activities are completely disregarded in spite of requirements of UNECE Espoo Convention, ratified by Armenia in 1997. E.g. the estimated 500 tones of tails and 600 mln tones of other waste in Shnogh river watershed generated from mining in Teghut copper-molybdenum deposit will result in contamination of the transboundary river Debed. Yet, the likelihood of these impacts is absolutely refused by the government and the likely affected public in the neighboring country is not informed about the project. Armenia also postpones ratification of the SEA Protocol, signed in 2003.

Recommendations

10.1 Urgently take measures to improve the environmental assessment legislation, including methodologies for impact assessment on forests, plants, animals and human health as well as cost-benefit analysis. Regulate and apply the assessment of transboundary impacts.

10.2 Take immediate measures to improve legislation and enforcement to ensure adequate participation of the public in environmental decision-making and access to justice in accordance with international obligations.

10.3 Adopt of a long-term strategy for use of mineral resources and respective legislation for adequate environmental protection and compensation for disposal of wastes and other environmental damage.

10.4 Revise forest legislation to improve protection of rare forests in the country. Apply measures to increase the forest cover, safeguard the protected areas and preserve the endangered species of plants and animals.

10.5 Stop allocation of green areas for the purpose of private construction, restore and expand the territory of public parks to mitigate urban stress. Conduct independent assessment for the quality of new multi-storey buildings and adopt policies to ensure safety.