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# ***FORUM LAW CENTER***

*Yerevan, Armenia*

## **NGO Coalition Submission to the UN Universal Periodic Review of the Republic of Armenia**

*For consideration by the Office of the UN High  
Commissioner for Human Rights for the eighth  
session of the UPR Working Group in 2010*

**9<sup>th</sup> November 2009**

Kurdish Human Rights Project (KHRP) is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.

## **Introduction**

1. This submission outlines KHRP and Forum's concerns with regard to the following human rights and related issues in Armenia:
  - (a) Restrictions on freedom of expression;
  - (b) Restrictions on freedom of association; and
  - (c) The treatment of political prisoners on arrest and detention.
2. The submission is based upon Armenia's obligations contained in a number of international treaties and conventions signed and ratified by Armenia, and in domestic legislation, all of which are identified during the course of this submission.

## **Freedom of Expression**

3. Freedom of expression in Armenia remains an area of central concern in assessing the State's human rights record. The majority of Armenia's population relies on television and radio for news and information since free circulation of newspapers is limited and subscription rates are high. Although Armenia's constitution provides for freedom of expression and freedom of the press (Article 27 of the Constitution) the 2008 US State Department Human Rights Report for Armenia found that in practice these rights are not respected, with continued reports of incidents of intimidation, violence and self-censorship.<sup>1</sup> Such a view is supported by KHRP and Forum's experience in a case before the European Court of Human Rights (ECtHR)<sup>2</sup> and within the country itself.
4. Media independence in Armenia is sorely lacking. While most of Armenia's television stations are privately operated, most are also owned by government politicians or pro-government businessmen with the effect being that journalists find themselves compelled to engage in self-censorship. In his Ad Hoc Report commissioned in response to the outbreaks of violence in March 2008 that followed the presidential elections, the Human Rights Defender of the Republic of Armenia (a public official), Armen Harutyunyan, condemned the 'heavy political bias of television stations' whose campaigns aimed at discrediting and undermining opposition candidate Levon Ter-Petrossian and his supporters.<sup>3</sup> The report drew particular attention to the presidential elections held in February of last year, and highlighted the insufficient protection afforded to freedom of expression by the Armenian authorities, asserting the need for the authorities to commit fully to the fundamental concept of media pluralism to ensure a free, open, and democratic society in the country.

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<sup>1</sup> US State Department Human Rights Report 2008 for Armenia available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119066.htm> (last accessed 8 June 2009).

<sup>2</sup> Meltex Ltd and Mesrop Movsesyan v. Armenia (Application no. 32283/04).

<sup>3</sup> Full report is available at <http://ombuds.am/main/en/10/31/1389/> (last accessed 8 June 2009).

5. Harassment and violent conduct towards the media is also common. In recent years distributors of politically-motivated leaflets have been repeatedly indicted with having committed criminal offences, newspaper editors are frequently charged with participating in opposition marches and broadcasting stations critical of the government are threatened or closed down. Arbitrary tax audits have been used to impose indirect restrictions on freedom of the press. In October 2007, tax officials inspected independent broadcaster Gala TV in Gyumri shortly after it had broadcast a speech made by Ter-Petrosian, one of only two regional outlets to do so. The company subsequently faced accusations of tax evasion and had a number of its assets and bank accounts frozen. In November 2008, journalist Edik Baghdasaryan was attacked and beaten as he walked to his car from his office in Buzand Street in Yerevan.<sup>4</sup>
6. In a case brought jointly by KHRP and Forum in 2008<sup>5</sup>, the ECtHR ruled that Armenia had illegitimately restricted freedom of expression in relation to its treatment of the country's first independent television station A1+ (owned by Meltex Ltd), which lost its broadcasting licence in 2002 and was repeatedly denied a new one. This was only the second judgment to address Armenia's infringement of its citizens' rights to freedom of expression since its accession to the Council of Europe in 2001.
7. Following this landmark ruling the National Assembly passed several legislative amendments to the Armenian Law on Television and Radio. These amendments, *inter alia*, introduced a moratorium on the granting of broadcast licences for a period of two years, to allegedly provide time to implement a planned digital switchover. However, the amendments had the effect of further preventing A1+ from obtaining a broadcasting licence and returning to the air. The National Assembly passed this amendment in an unannounced evening session and without prior notification or consultation with interested parties. Further, the moratorium was passed shortly before a call for bids for several television frequencies, including a band that traditionally belonged to Meltex Ltd, which were about to become available. The amendments also gave existing stations the right to extend their licences until January 2011. These actions demonstrate Armenia's continued efforts to prevent free, fair and independent broadcasting, despite receiving a ruling from the European Court of Human Rights that such action constitutes a violation of the right to freedom of expression.
8. There is also concern that the planned switch over to a digital medium will force out small local private broadcasters, such as GALA TV, who are unlikely to be able to afford the licences or the new digital equipment needed. As has been stated in a recent report from the Organization for Security and Co-operation in Europe (OSCE), such local

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<sup>4</sup> 'Journalist Edik Baghdasaryan Attacked' The Armenian Mirror Spectator, 20 November 2008, available at <http://www.mirrorspectator.com/?p=167>

<sup>5</sup> Meltex Ltd and Mesrop Movsesyan v. Armenia (Application no. 32283/04). The case was brought jointly by the Yerevan-based Forum Law Centre and KHRP. For more details on the case see *Freedom of Expression in Armenia: Following the Meltex Case*, by Kerim Yıldız, Tigran Ter-Yesayan and Saadiya Chaudary, KHRP Legal Review, 2009, Vol. 15

TV stations are vital to ensure the “informational and political pluralism of the media” in Armenia, yet “the government tends to ignore [such broadcasters] in the face of mounting costs of the switchover”<sup>6</sup>.

9. The state of emergency, declared on 2<sup>nd</sup> March 2008 following the disputed presidential elections held on 19th February, had dramatic and dire consequences for freedom of expression in Armenia. From 1<sup>st</sup> to 20<sup>th</sup> March, journalists and media outlets that covered opposition activities were harassed by the authorities. Several opposition media outlets reported having websites closed or restricted, and newspaper editions were refused permission for publication<sup>7</sup>.

### **Freedom of Assembly**

10. Following the presidential election result in February 2008, opposition protests began in the capital’s Republic Square a number of days later. On 1<sup>st</sup> March, after nine days of peaceful protests in the Square, police and military forces attempted to disperse the 700-1,000 remaining protestors using batons and electric-shock devices<sup>8</sup> in what Amnesty International called “the worst political violence witnessed since independence”<sup>9</sup>. According to Amnesty International, at least 10 people died in the ensuing clashes and over 350 were injured<sup>10</sup>. Following the declaration of a state of emergency, dozens of prominent members of the opposition were arrested, including a number of high-ranking figures associated with opposition candidate Ter-Petrosyan and members of the opposition Republic Party. Some of those detained were reportedly beaten or suffered ill-treatment while in police custody. Many of those detained remained in pre-trial detention at undisclosed locations for months, with no contact allowed from family members or legal representatives.
11. On 17<sup>th</sup> March 2008 the National Assembly approved amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations which gives local authorities the power to ban public meetings<sup>11</sup>. Concerns expressed by the Council of Europe and the OSCE led to the Armenian authorities agreeing on 22<sup>nd</sup> April to the revise these amendments. Nonetheless, the Yerevan municipal authorities continued to ban a number of demonstrations by opposition groups. These amendments have caused widespread concern among civil society organisations as they constitute a clear threat to freedom of assembly in Armenia and provide the government with yet another means of control over specific vocal segments of the community.

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<sup>6</sup> Comments on the Draft Law of the Republic of Armenia on Broadcasting, Dr. Andrei Richter, OSCE, 2009, p.17.

<sup>7</sup> *Amnesty International Report 2009 on Armenia*, available at

<http://thereport.amnesty.org/en/regions/europe-central-asia/armenia>

<sup>8</sup> *Armenia: Police Beat Peaceful Protesters in Yerevan*, Human Rights Watch, 2<sup>nd</sup> March 2008, available at:

<http://www.hrw.org/en/news/2008/02/29/armenia-police-beat-peaceful-protesters-yerevan>

<sup>9</sup> Comments on the Draft Law of the Republic of Armenia on Broadcasting, Dr. Andrei Richter, OSCE, 2009, p.17.

<sup>10</sup> *Amnesty International Report 2009 on Armenia*, available at

<http://thereport.amnesty.org/en/regions/europe-central-asia/armenia>

<sup>11</sup> For the law adopted on 17<sup>th</sup> March 2008, see: [http://www.venice.coe.int/docs/2008/CDL\(2008\)036-e.asp#\\_ftn1](http://www.venice.coe.int/docs/2008/CDL(2008)036-e.asp#_ftn1)

12. On 11<sup>th</sup> June 2008, the National Assembly amended the Law but the language of the new provisions remains more restrictive than the original pre-2008 text<sup>12</sup>. Since March 2008, over 70 applications submitted by the opposition to stage rallies have been turned down by Yerevan authorities with a reference to the amended Article 9 of the statute: “Assemblies can be banned if the Police or National Security Service representatives have truthful data that the event creates a threat of violence, restriction of other persons’ rights, threat for the national security etc”. Nevertheless, it has to be noted that the opposition held 3 rallies (on 20<sup>th</sup> June, 4<sup>th</sup> July and 5<sup>th</sup> August 2008), for which their applications had been rejected, all of which occurred without any serious incidents. Authorised rallies which took place on 15<sup>th</sup> September and 17<sup>th</sup> October 2008 also proceeded without incident, however there was a considerable increase in the police presence in comparison to other (non-authorised) rallies. Furthermore, on the days when the aforementioned authorised rallies took place no public transport worked between the regions and the capital, in clear violation of the freedom of movement and assembly. As the Parliamentary Assembly of the Council of Europe (PACE) has made clear, guaranteeing citizens’ freedom of assembly in theory is not enough as it must also be respected in practice<sup>13</sup>.
13. Following continued pressure from the Council of Europe, the National Assembly passed several amendments to the Criminal Code, in particular, Article 225 (mass disorders) and Article 300 (usurpation of power). The PACE Monitoring Committee’s Co-Rapporteurs on Armenia stated in their recent report to the Committee<sup>14</sup> that the new Article 300 defines usurpation of state power as “the seizing of the powers of the President of the Republic, National Assembly, Government or Constitutional Court, through violence, threat of violence or any other manner not envisaged in the Constitution of Armenia” in contrast to the original text of the Article which defined usurpation of power as “actions directed to the violent takeover of the state power, or towards the violent overturning of the constitutional order”<sup>15</sup>. Such a change, in the view of the Co- Rapporteurs, substantially narrows the scope for interpretation<sup>16</sup>. This amendment is welcome as it provides for greater certainty in construing the Article and limits the scope for abuse by prosecuting authorities.
14. The Co-Rapporteurs also observed that the amended Article 225 now defines mass disorder “more clearly” and criminalises the organisation (as a wilful act) of mass disorders and not the mere non-violent participation in such events<sup>17</sup>. In addition, they noted that the original “problematic” Article 225-3 (mass disorder accompanied with

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<sup>12</sup> [http://www.venice.coe.int/docs/2008/CDL\(2008\)078-e.asp#P28\\_258](http://www.venice.coe.int/docs/2008/CDL(2008)078-e.asp#P28_258)

<sup>13</sup> Paragraph 4.2 of PACE Resolution 1620 (2008):

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1620.htm>

<sup>14</sup> *The functioning of democratic institutions in Armenia*, Report by the Co-Rapporteurs for Armenia, Georges Colombier and John Prescott, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), PACE, 22<sup>nd</sup> June 2009, Doc. 11962.

<sup>15</sup> *Ibid*, para.34.

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*, para.35.

murder) has been removed from the text of the Article and mass disorder had now been added as an aggravating circumstance in the articles of the Criminal Code that deal with murder, defining such an act as “the illegal wilful deprivation of a person’s life”<sup>18</sup>. Such legislative changes which limit the restrictions imposed on future assemblies and demonstrations are welcome and provide for greater clarity to interpretation of the Article.

15. The Venice Commission, in its recent Opinion<sup>19</sup>, considered that these amendments to the Criminal Code generally represented an improvement in that they reduce the scope for overbroad and abusive interpretation. In addition to what has been stated above, KHRP and Forum broadly share the views of the Venice Commission in welcoming the legislative changes. However, as the Co-Rapporteurs documented in their recent report<sup>20</sup>, not all categories of persons deprived of their liberty in relation to the events of March 2008 are covered by the March 2009 changes to the Criminal Code. The Co-Rapporteurs also noted that persons charged and convicted solely on the basis of police testimony, without substantial corroborating evidence, are regrettably not covered by the changes to the Code. To date, no action has been taken to address the plight of such persons, which is of particular concern given the observation by the Co-Rapporteurs that “increasing number of allegations that witnesses were pressured by the police into making false testimonies against a number of opposition members”<sup>21</sup>. The PACE, in its Resolution 1620 (2008), considered that verdicts based solely on police evidence, without corroborating evidence, were unacceptable.
16. We also share the concerns of the Co-Rapporteurs that the Prosecutor General of Armenia has thus far failed to produce any final conclusions or recommendations in his investigation into the 10 deaths that occurred during the election demonstrations<sup>22</sup>. KHRP and Forum echo the Co-Rapporteurs’ salutation of the President of Armenia’s recent decision to ask the Prosecutor General to provide a full report of his investigations for review by the Ad Hoc Parliamentary Inquiry Committee without any further delay<sup>23</sup>.

### **The treatment of political prisoners during arrest and detention**

17. Prior to the 2008 presidential election period, there were only three persons detained in Armenia who were regarded as political prisoners. Two were members of the “Armenian Volunteers’ Unity”, who were arrested after the first meeting of the movement on 3<sup>rd</sup> December 2006, where they had voiced their disagreement with the Armenian authorities’ approach to settling the conflict in Karabakh region. The third,

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<sup>18</sup> Ibid.

<sup>19</sup> Opinion on the Draft Amendments of February 2009 to the Criminal Code of Armenia adopted by the Venice Commission at its 78th Plenary Session, CDL-AD(2009)009: [www.venice.coe.int/docs/2009/CDL-AD\(2009\)009-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)009-e.asp)

<sup>20</sup> Report by the Co-Rapporteurs for Armenia, June 2009, para.42.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, para.8.

<sup>23</sup> Ibid.

Arman Babajanyan, was the founder and editor-in-chief of the opposition daily newspaper “Zhamanak Daily” published in both Armenia and California. To date, the first two prisoners have been released but third prisoner is still incarcerated. There were also 73 prisoners of conscience in Armenia all of whom are Jehovah’s witnesses who refused to undergo the mandatory military service.<sup>24</sup>

18. Following the demonstrations after the 2008 election, more than 100 people have been detained on criminal charges. The detainees are predominantly opposition activists, including three members of Parliament who supported the opposition. Trials of those detained started at the end of March 2008 some of which are still on-going. In most of the cases, the witnesses were police officers, often the very ones who made the arrest. The main charges were based on Article 225 (mass disturbances) and Article 316 (use of violence against a representative of authorities) of the Criminal Code. According to the statistics provided by the General Prosecutor’s Office, as of December 17, 2008:

- Five persons were acquitted;
- One person saw his criminal case dismissed under the Article 183 of the Criminal Procedure Code on the grounds of reconciliation with the injured;
- Five persons were sentenced to a fine;
- 38 persons were conditionally released;
- 52 persons were sentenced to prison;
- 26 persons had their cases dismissed at first instance<sup>25</sup>.

19. Many of those arrested were subjected to physical abuse and ill-treatment at the time of arrest and while in police custody<sup>26</sup>. The majority of such persons were denied the right to a legal representative and held in police custody for days or weeks at a time before being actually charged. In addition to the arrests, opposition supporters throughout the country have faced other forms of persecution including being forcibly brought to police departments, threatened with the loss of their jobs and having their homes searched. In its Resolution 243 (January 2009), PACE stated that it remained “dissatisfied with, and seriously concerned by, the situation of persons deprived of their liberty in relation to the events of 1<sup>st</sup> and 2<sup>nd</sup> March 2008 and who may have been charged and imprisoned for political motivations”<sup>27</sup>.

20. KHRP and Forum are currently acting on behalf of three applicants - Petros Makeyan, Shota Saghatelyan and Ashot Zakaryan - in their complaints against the Republic of Armenia. The application concerns the events surrounding the 2008 presidential election prior to which the applicants were all appointed as proxies to the presidential

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<sup>24</sup> *EU-Armenia Human Rights assessment and recommendations*, The International Federation for Human Rights (FIDH), the Civil Society Institute (CSI), the Foundation Against Violation of Law (FAV) and the Helsinki Committee of Armenia (HCA), 10 February 2009: [http://hra.am/file/fidh\\_report\\_feb.pdf](http://hra.am/file/fidh_report_feb.pdf).

<sup>25</sup> Ibid, p.5.

<sup>26</sup> Ibid p. 6

<sup>27</sup> Paragraph 5: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1643.htm>

candidate Levon Ter-Petrosyan. The Applicants in this case were arrested, detained in inhuman conditions and charged with the offence of 'Hindrance to the free implementation of the right to elect, to the work of election commissions or to the implementation of the authority of the person participating in elections' under Article 149 of the Criminal Code of Armenia. The same Article provides that if these actions are committed by a group they are punishable with imprisonment for up to five years.

21. The Applicants suffered grave procedural violations during the course of their trial and appeal including being denied their right to call witnesses in their defence, being excluded from the court room during the hearing and being denied their right to self-representation. It is KHRP and Forum's view that the totality of the misconduct applied against these individuals constitutes violations of the prohibition of torture or inhuman or degrading treatment, the right to liberty and security, the right to a fair trial, the right to respect for their private and family life and home, the freedom of assembly and association and the right to free elections.

### **Conclusion and recommendations**

22. The human rights situation in Armenia remains a matter of serious concern. It is clear that the country still has a very long way to go before it can claim to meet the human rights standards set out in the international human rights instruments it is a party to. Its membership obligations to the Council of Europe also remain largely unfulfilled.
23. It is hoped the Government of Armenia will take heed of several recent judgments of the European Court of Human Rights (ECtHR) which found against Armenia with regard to Armenia's obligations under the European Convention on Human Rights (ECHR). This Convention mirrors the provisions contained in the International Covenant on Civil and Political Rights and it is widely accepted that the same standard of treatment is required for a violation to be found under either Convention.
24. In the cases of *Amiryan v. Armenia* (application no. 31553/03), *Gasparyan v. Armenia* (no. 35944/03), *Sapeyan v. Armenia* (no. 35738/03), the applicants were Armenian nationals who had been detained and then penalised for having participated in unauthorised demonstrations in February 2003. The ECtHR held in January 2009 that the administrative penalties the applicants had received as a result of their demonstrating constituted a violation of Article 11 ECHR (freedom of assembly and association). In the case of *Gasparyan v. Armenia* (No. 2) (application no. 22571/05) the applicant, Maksim Gasparyan, had been arrested in May 2004, in order to prevent him from taking part in demonstrations organised in Yerevan. In June 2009, the ECtHR found in favour of the applicant's complaint under Article 6 ECHR (right to a fair trial) that his detention was unfair and unlawful given the expedited administrative proceedings brought against him. The Court also found that the applicant had no right to contest his conviction in breach of Article 2 of Protocol

No. 7 ECHR (right to appeal in criminal matters) to the Convention.<sup>28</sup> The ECtHR has also found the Republic of Armenia in breach of Article 3 ECHR, which provides for freedom from torture and inhuman and degrading treatment, due to conditions of detention<sup>29</sup>.

25. There are a number of other similar cases against the Republic of Armenia before the European Court of Human Rights in which the applicants have suffered similar treatment. In relation to cases involving administrative detention, the ECtHR has clearly found that the appeal procedure available to the applicant had lacked any clearly-defined procedure, time-limits or consistent application in practice, in violation of Article 2 of Protocol No. 7 ECHR.
26. KHRP and Forum call on the Government of Armenia to initiate an open and serious dialogue between all political groups in Armenia on reforming the political system to ensure great respect for freedom from torture or inhuman or degrading treatment, freedom and pluralism of speech, freedom of assembly and association, fair trial rights, and improvements in the conditions of prisons and police stations.

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<sup>28</sup> This decision has been upheld by the court in two recent judgments in cases also brought by KHRP and Forum: *Karapetyan v. Armenia* (application no. 22387/05) and *Stepanyan v. Armenia* (application no. 45081/04)

<sup>29</sup> *Kirakosyan v. Armenia* (application no. 31237/03), *Mkhitaryan v. Armenia* (no. 22390/05) and *Tadevosyan v. Armenia* (no. 41698/04)