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HUMAN RIGHTS COMMITTEE COUNTRY REPORT

Armenia

Independent information for the 105th session

of the Human Rights Committee (HRC)

HELSINKI CITIZEN'S ASSEMBLY VANADZOR (HCA VANADZOR)

HUMAN RIGHTS LITIGATION AND INTERNATIONAL ADVOCACY CLINIC

AND HUMAN RIGHTS PROGRAM

UNIVERSITY OF MINNESOTA

CRITICAL ISSUES

Right to Life (Article 6)

Excessive use of force with firearms by law enforcement and security forces

PROPOSED QUESTIONS FOR THE GOVERNMENT OF ARMENIA

1. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require law enforcement officials to “avoid the use of force or, where that is not practicable, . . . restrict the use of force to the minimum extent necessary” while dispersing unlawful but non-violent assemblies.¹ Further, while dispersing violent assemblies, “law enforcement officials may use firearms only when less dangerous means are not practicable and only to minimum extent necessary” as stipulated by the Principles.² With these principles in mind and in light of the firearms-related deaths during the public demonstrations in Yerevan on March 1, 2008, please explain **what steps are being taken to prevent any future misuse of force with small arms and light weapons (SALW) by law enforcement officials**. In particular, do your training programs emphasize less dangerous alternatives to the use of firearms including the peaceful settlement of disputes, the understanding of crowd behavior, and methods of persuasion, negotiation, and mediation with a view to reducing harm?

¹ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Aug. 1990), Principle 13, <http://www2.ohchr.org/english/law/firearms.htm>

² *Id.* at Principle 14.

2. Please explain what mechanisms are used to ensure that laws and regulations on the use of firearms by law enforcement officials are strictly enforced by the Government of Armenia? Does your enforcement mechanism include a clear chain of command over all officials authorized by law to use SALW, and is the abusive and arbitrary use of force by law enforcement officials punished as a criminal offense?

3. Please describe what training protocols are being used to educate law enforcement officials about their responsibilities under the Armenian law while using SALW, such as exercising proportionality. Further, what reporting and investigative procedures are in place to ensure that all incidents involving the misuse of small arms by State agents, including law enforcement officials, are reviewed and acted upon by independent and competent authorities?

I. INTRODUCTION AND BACKGROUND

The protection of the right to life under Article 6 of the International Covenant on Civil and Political Rights is a central and non-derogable tenet of international human rights law.³ In General Comment 6 the Human Rights Committee noted that “States parties should take measures ... to prevent arbitrary killings by their own security forces.”⁴ To be effective those measures must include restricting the use of force and firearms to the minimum extent necessary.

Armenia’s laws on the use of firearms by law enforcement officials reflect a respect for the right to life, and conform with some of the Principles on the Prevention of Human Rights Violations Committed with Small Arms [hereinafter SALW Principles].⁵ Armenia’s laws require that law enforcement officials “give warning of their intent” prior to using firearms.⁶ Further, the law prohibits law enforcement officials from using firearms against pregnant women, disabled persons, minors, and firing into crowds.⁷ Armenian law requires law enforcement officers to take steps to minimize the damage inflicted on an offender including providing medical aid.⁸

³ See Sub-Com. On the Promotion and Protection of Human Rights, Preliminary Report Submitted by Barbara Frey, Special Rapporteur in Accordance with Sub-Commission Resolution 2002/25 at para. 21, E/CN.4/Sub.2/2003/29 (June 25, 2003).

⁴ *Id.*

⁵ See Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, endorsed by Sub-Com. on the Promotion and Protection of Human Rights res. 2006/22, U.N. Doc A/HRC/Sub.1/58/L.11/Add.1 at 8 (24 Aug. 2006) [hereinafter SALW Principles].

⁶ The Government reports that “In particular, the laws of the Republic of Armenia ‘On the Police’, ‘On police troops’, ‘On Military Police’, ‘On national security bodies’ provide that officers of the mentioned bodies — prior to using physical force, special means, and firearms — shall be obliged to give a warning of their intent to use physical force, special means, and firearms, with sufficient time for the legitimate demand to be discharged and the violation to be terminated, unless to do so would pose an immediate threat to the life and health of citizens or the officer or may entail other grave consequences, or where the situation renders such warning impossible.” Government of Armenia, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant at 30, CCPR/C/ARM/2-3 (Apr. 8, 2010) [hereinafter Armenia State Party Report].

⁷ *Id.*

⁸ *Id.*

Armenian law permits physical force and firearms only if other means are not available, and any discharge of a firearm is to be reported to the prosecutor's office.⁹

On March 31, 2010, the Armenian government approved the 2010-2011 Police Reform Program, which was developed in cooperation with the Organization for Security and Cooperation in Europe (OSCE) and "recommended structural, organizational, and educational reforms in the police."¹⁰ The OSCE recommended amending existing laws, developing guidelines and mandatory training on the application of physical force by personnel during mass disorders, and developing guidelines for officers who are responsible for negotiations during mass disorders.¹¹ The Government adopted many of these recommended changes.¹²

It is not clear whether laws on the use of firearms by law enforcement officials are strictly enforced, and whether law enforcement officials are held accountable for the arbitrary and excessive use of force committed by SALW. The Government has reported to the OSCE that 161 law enforcement officers were trained on the use of firearms,¹³ but there is no evidence to show this improvement. Despite some changes in legislation, there is a gap in the implementation of the laws regarding firearms use. According to the United States State Department, the National Security forces and the police "continue to lack sufficient training, resources, and established procedures to implement reforms successfully or to prevent incidents of abuse."¹⁴ Further, within law enforcement bodies, impunity remains a serious problem, and there is "no dedicated mechanism for investigating police abuse."¹⁵

II. STATE OBLIGATION NOT TO VIOLATE THE RIGHT TO LIFE WITH SMALL ARMS AND LIGHT WEAPONS

*A state's first duty under the SALW Principles is negative: not to violate the right to life in its officials' acts or omissions regarding the use of small arms and light weapons.*¹⁶

Elections in Armenia have been marred by fraud and disputes, which have led to mass demonstrations that spilled into the streets.¹⁷ Armenian security forces have been documented to use excessive force to disperse protestors demonstrating election results.¹⁸ The most well-documented violations took place during the post-election demonstrations on March 1, 2008,

⁹ Law on Police, 2010, Articles 29 and 32(4).

¹⁰ Armenia State Party Report at 18.

¹¹ *Id.*

¹² See the decision of the Government of the Republic of Armenia N867-□ of 3 June, 2011, available in Armenian at <http://www.arlis.am/> and the decree of the head of the police of the Republic of Armenia 1-N, 30 May 2011.

¹³ See the "The report on the results of the implementation of 2011 activities and priorities of the Republic of Armenia" point 26, available in Armenian at <http://www.police.am/en/aycer/6106--2011->

¹⁴ United States Department of State, 2010 Armenia Country Report on Human Rights Practices at 18 (Apr. 8, 2011) available at <http://www.state.gov/documents/organization/160447.pdf> [*hereinafter* US State Department Country Report].

¹⁵ *Id.*

¹⁶ SALW Principles, *supra* note 5.

¹⁷ See HUMAN RIGHTS WATCH, DEMOCRACY ON ROCKY GROUND: ARMENIA'S DISPUTED 2008 PRESIDENTIAL ELECTION, POST-ELECTION VIOLENCE, AND THE ONE-SIDED PURSUIT OF ACCOUNTABILITY at 9–11, (Feb, 2009) available at <http://www.hrw.org/sites/default/files/reports/armenia0209webwcover.pdf> (elections in 1998, 2003, 2004, and 2008 have led to demonstrations in the streets).

¹⁸ See *id.* at 11.

which were met with excessive force by security forces, and resulted in the deaths of eight protestors and two police officers, and in 130 people being injured.¹⁹ Protestors and supporters of the opposition parties started gathering in Freedom Square (also known as Opera Square) in Yerevan city center on February 20, 2008, “when preliminary elections results would be known.”²⁰ After the preliminary election results were announced, thousands of protestors, who contended that the election results were fraudulent, continued to pour into Freedom Square.²¹

On March 1, 2008, security forces moved to suppress the mass protests in Freedom Square. According to statements of witnesses to Human Rights Watch, police officers began to use excessive force against protestors without warning and in absence of resistance.²² Events then took a violent turn, and some protestors clashed with the police.²³ However, according to reports collected by Human Rights Watch police officers continued to use excessive force against protestors who were not armed.²⁴ Further, some of the protestors were killed when police “discharged their firearms deliberately in circumstances where lethal force was not called for.”²⁵ According to the report on the March 2008 events by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, the Armenian police fired tracer bullets with Kalashnikov sub-machine guns over the heads of protestors.²⁶ Five of the ten total deaths resulted from bullet wounds by SALW. In two of the cases, the bullets were fired from Makarov PM pistols, in one case the bullets were fired from a Kalashnikov 47, and in the last two cases the specific firearms could not be determined because the bullets were not recovered from the bodies.²⁷ At 10:30 p.m., on March 1, 2008, then President Robert Kocharyan declared a state of emergency in Armenia.²⁸ The state of emergency remained in effect for twenty days, and placed a ban on all mass gatherings, required news media to only use official information in their domestic news coverage, and severely limited the publishing of pro-opposition group newspapers.²⁹

According to Amnesty International and Commissioner Hammarberg, law enforcement officials have not been properly prosecuted or impartially investigated for their excessive use of force that led to the deaths and injuries of demonstrators on March 1, 2008.³⁰ Further, Mr.

¹⁹ *See id.* at 16.

²⁰ *Id.* at 15.

²¹ *See id.*

²² *See id.* at 17.

²³ *See* HUMAN RIGHTS WATCH, *supra* note 17, at 17.

²⁴ *See id.*

²⁵ *Id.*

²⁶ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his Visit to Armenia from 18 to 21 January 2001 at 9, (May, 9, 2011) available at <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1867828&SecMode=1&DocId=1735976&Usage=2> [*hereinafter* Report by Thomas Hammarberg].

²⁷ *Id.*

²⁸ *See* HUMAN RIGHTS WATCH, *supra* note 17, at 35.

²⁹ *See* HUMAN RIGHTS WATCH, *supra* note 17, at 35.

³⁰ *See* Amnesty International, *The State of the World's Human Rights* (2011) available at <http://www.amnesty.org/en/library/asset/POL10/001/2011/en/519da037-1492-4620-9ed5-cac8f1cfd591/pol100012011en.pdf>; Report by Thomas Hammarberg, *supra* note 26, at 2; Human Rights Watch, *Armenia: Skewed Prosecution Over 2008 Clashes, Ensure Impartial Investigation and Justice in Use of Force Against Protestors*, (Feb. 25, 2009), <http://www.hrw.org/news/2009/02/24/armenia-skewed-prosecution-over-2008-clashes>.

Hammarberg found that the investigation into the ten deaths, discussed in the Replies from the Government of Armenia to the list of issues (CCPR/C/ARM/Q/2), fell short of the principles “which are essential to give practical meaning to the right to life under Article 2” of the European Convention on Human Rights.³¹ An Ad hoc parliamentary committee conducted an inquiry into the events of March 1, 2008. The Ad hoc parliamentary committee did not include any members from the opposition, who boycotted the committee because it marginalized the opposition.³² Further, the parliamentary committee’s report has been criticized by some who believe that it lacks credibility because of its wholesale condemnation of the opposition’s role in the protest in absence of criticism of the ruling authorities.³³ Armenian officials have been using the Ad hoc parliamentary committee’s recommendations to reform “certain structural deficiencies that were revealed by the March 2008 events.”³⁴ However, Commissioner Hammarberg contends that the Armenian government should do more in the response to the March 2008 events, including identifying those law enforcement officials responsible for perpetrating the acts that led to the deaths of protestors, and holding those officials accountable for their actions.³⁵ According to the United States State Department, “families of nine of the 10 victims unsuccessfully filed four separate lawsuits against the [Special Investigation Services] and the Prosecutor General’s Office for inaction and failure to investigate, reveal, and punish those responsible for the deaths”; the Court of Appeals rejected the lawsuit and the Court of Cassation, the highest appellate court, declined to accept the cases for review.³⁶

On 5 October, 2011 The Council of Europe (Monitoring Committee) adopted Resolution 1837 in which the Parliamentary Assembly reiterated its concern about the lack of results of inquiry into the 10 deaths from March 2008.³⁷ The Resolution stated that the March 2008 events clearly highlighted the need for thorough police reform in Armenia, and reiterated its call that the police should be brought under civilian control and accountability³⁸.

As a follow up to the Resolution, on 23 December, 2011, the Special Investigation Service in Armenia published a “public information report,” on the results of the criminal cases under the investigation of Special Investigation Services about the mass disorder in the capital of Armenia on 1-2 March, 2008. The public awareness report is only in Armenian, making it difficult for the international community to evaluate whether it abides by Council of Europe Resolution 1837 (2011). The public awareness report focused on the disruptive nature of the protests and the responsibility of the opposition.³⁹ This report’s approach was to justify the

³¹ Report by Thomas Hammarberg, *supra* note 26, at 12.

³² See Vahagn Muradyan, *Armenian Parliamentary Committee Releases Final Assessment of 2008 Clashes*, Central Asia-Caucasus Institute Analyst (Oct. 1, 2009) <http://www.cacianalyst.org/?q=node/5191>. “The parliamentary opposition Heritage Party and the extra-parliamentary Armenian National Congress (ANC), led by 2008 oppositional presidential candidate Levon Ter-Petrosyan, boycotted the committee’s work saying its composition and voting procedure marginalized the opposition.” *Id.*

³³ See Report by Thomas Hammarberg, *supra* note 26, at 12.

³⁴ *Id.* at 2.

³⁵ See *id.* at 2, 9, and 11.

³⁶ US State Department Country Report, *supra* note 14, at 5.

³⁷ Council of Europe Parliamentary Assembly Resolution 1837(2011), note 3

³⁸ Council of Europe Parliamentary Assembly Resolution 1837(2011), note 9, 9.2

³⁹ See “Informative report on the results of the criminal cases under the investigation of Special Investigation Services about the mass disorder in the capital of Armenia on 1-2 March, 2008”, available in Armenian at http://www.investigatory.am/upload/file/Information_for_MassMedia.pdf

necessity of using firearms and other methods of force by law enforcement officers. For example, the report noted that 1,337 law enforcement officers were sent to control the situation in Liberty Square, but did not report the number of protesters. The report stated that 220 law enforcement officers were injured as opposed to only 58 protesters. Of the more than 4,000 people questioned for the government's report, more than 1,000 of them were law enforcement officers. The report also blamed the Fact-Finding Group of Experts,⁴⁰ arguing that it was not impartial.⁴¹

On 14 March, 2012, the Council of Europe (Monitoring Committee) released a follow up report about the obligations and commitments by Armenia. The Council of Europe expressed concern that only a criminal investigation into the March 1 events has been initiated, and such an investigation was not the same as the inquiry the Monitoring Committee had in mind and recommended to the Armenian authorities.⁴²

Mistreatment and abuse by the police is common in Armenia, and is sometimes carried out with the use of SALW.⁴³ For example, on June 15, 2011, robbery suspect Arman Yengibaryan was killed as a result of gunshot wounds fired by police near Yerevan, Armenia.⁴⁴ After investigating the case, The Special Investigative Services in Armenia found the use of force by police against Yengibaryan to be lawful. The police justified the use of force because Yengibaryan fired a gas pistol at police while fleeing. On 11 November, 2011, the police officer, who killed Arman Yengibaryan was honored with "The stronghold of law" award.⁴⁵ While on the same day the complaint was filed to the Court of Appeals of the Republic of Armenia, and the courts failed to reach a final decision on whether the application of firearms was lawful or not.⁴⁶

Human rights groups in Armenia contend that the use of force in Yengibaryan's death was excessive because his gun did not have live ammunition and the wounds to his head and abdomen suggested that police failed to minimize use of lethal force.⁴⁷ Human rights groups in Armenia and Yengibaryan's family challenged the results of investigation but did not succeed in domestic courts. In March, these organizations took Yengibaryan's case to the European Court

⁴⁰ The group was formed after the March 2008 events by the special ordinance of the President and was comprised of two members from the ruling coalition and of the opposition, respectively, as well as one representative from the Office of RA Human Rights Defender, and operated for six months focusing primarily on the circumstances of the extra-judicial killings.

⁴¹ See "Informative report on the results of the criminal cases under the investigation of Special Investigation Services about the mass disorder in the capital of Armenia on 1-2 March, 2008", argument 1, available in Armenian at http://www.investigatory.am/upload/file/Information_for_MassMedia.pdf

⁴² See AS/Mon(2012)04rev 14 March 2012 amondoc04r_2012 or. Engl, note 7, available at http://assembly.coe.int/CommitteeDocs/2012/amondoc04rev_2012.pdf

⁴³ See Report by Thomas Hammarberg, *supra* note 26, at 6 (detailing instances of torture, and other cruel, inhumane and degrading treatment by the Armenian police).

⁴⁴ *An Innocent Person was Murdered*, HELSKINI CITIZENS' ASSEMBLY VANADZOR OFFICE (Sept. 19, 2011), <http://hcav.am/en/events/an-innocent-person-was-murdered/>.

⁴⁵ See the local daily newspaper "Haykakan Jamanak", available in Armenian at <http://www.armtimes.com/tag/5527>

⁴⁶ See the news of local human rights organization Helsinki Citizens' Assembly-Vanadzor, available in Armenian at <http://hcav.am/events/>

⁴⁷ <http://www.hrw.org/world-report-2012/world-report-2012-armenia>

of Human Rights asserting the violation of the Article 2 of the European Convention, the right to life.⁴⁸

III. CONCLUSION

The Armenian Government has adopted several important legal reforms regarding the use of force and firearms by law enforcement especially in response to recommendations by the OSCE and the Council of Europe. Enforcement of those laws through screening, training, planning operations and investigating and prosecuting violations is necessary to ensure that Armenia is meeting its obligations to protect the right to life under Article 6 of the Covenant.

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⁴⁸ See the news of local human rights organisation Helsinki Citizens' Assembly-Vanadzor, available in Armenian at <http://hcav.am/events>.