Kurdish Human Rights Project

KHRP

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FREEDOM OF EXPRESSION AND THE MEDIA IN THE KURDISH REGIONS

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I. SUMMARY

Whilst the right to freedom of expression and the media is provided for generally in legal frameworks throughout the Kurdish regions, the enjoyment of the right remains significantly constrained in practice. In particular, limitations are imposed by state authorities through both legislation and in practice.

Among other things, states in the Kurdish regions impair media freedom through: the use of vaguely-worded laws applied subjectively by prosecutors and judges to silence peaceful but dissenting or alternative opinions; violence against and harassment and intimidation of journalists, leading to self-censorship; and closing down or preventing the effective operation of media organisations deemed to be critical of state policies. Where violations of this right arise, there is often a failure on the part of states to apply appropriate human rights due diligence obligations, with gaps in the steps of preventing, investigating, prosecuting and punishing perpetrators of violations.

This briefing paper presents the keys issues relating to the right to freedom of expression and the media in Turkey, Syria, Iran, Armenia and Kurdistan, Iraq, as well as cross-regionally. It provides examples of violations of this right indicative of widespread practice and illustrates how violations of media freedom impact disproportionately on members of the Kurdish communities. Finally, it offers a number of key recommendations for how state authorities, civil society and the international community can address the problems relating to media freedom in the Kurdish regions.

II. THE INTRODUCTION

The right to media freedom – an element of the wider human right to freedom of expression – is commonly viewed as a cornerstone of any democratic society, necessary for the free flow of information, the full participation and self-fulfilment of individuals within society and the enjoyment of other human rights. It is of particular importance to the dissemination of information relating to politics and court proceedings. Further, the UN Human Rights committee has noted that states 'must take particular care to encourage an independent and diverse media' and 'must also promote and protect access to the media for minority groups.'[1]

This briefing paper focuses on media freedom across the Kurdish regions, specifically within Turkey, Syria, Iran, Armenia and Kurdistan, Iraq. It begins with a brief review of the elements of the right to freedom of expression and an overview of the applicable national legal frameworks relating to media freedom. KHRP then highlights a number of issues in the exercise of this right – in the (overlapping) areas of publishing, broadcasting, journalism and the Internet – and provides examples of violations indicative of widespread practice. Finally, KHRP offers a number of recommendations for states and civil society organisations within the Kurdish regions, as well as the international community, to strengthen the enjoyment of this right in practice.

III. THE RIGHT TO FREEDOM OF EXPRESSION AND THE MEDIA

The right to freedom of expression is enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights, among other international human rights agreements.[2] It is related to, and frequently invoked with, the right to freedom of thought, conscience and religion, and the rights to peaceful assembly and association.

The substantive right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by state authorities. Protection is extended to both the substance of the expression and the manner in which information or ideas are conveyed.

Freedom of expression is not an absolute, non-derogable right.[3] However, any restrictions or limitations by state authorities in relation to the free exercise of the right are subject to strict conditions which the relevant state must be able to establish convincingly for each individual case. These are as follows:

- The interference must be '**prescribed by law**' and therefore be public, formulated with sufficient precision to enable an individual to regulate her or his conduct accordingly, and not subject to unfettered discretion

- Restrictions must only be imposed for a **legitimate purpose** deemed necessary in a democratic society. Depending on the overarching legal framework, such reasons will generally include: the interests of national security, territorial integrity or public safety; the prevention of crime and disorder; the protection of health and morals; the protection of the reputation or rights of others; the prevention of the disclosure of information received in confidence; or the maintenance of the authority and impartiality of the judiciary.

- Finally, the manner and scope of the restriction must be **proportionate** to the identified purpose.

In practice, restrictions often (but not always) satisfy the first two conditions and most cases at human rights courts turn on

[1] UN Human Rights Committee, *Draft General Comment No.34 on Freedom of Opinion and Expression*, 31 January 2011.

[2] Please see the Annex provided with this paper for an overview of the international legal framework relating to the right to freedom of expression and the media, as well as the relevant legal frameworks in each of our focus countries.

[3] As opposed to, for example, the right to life or the prohibition of torture.

the principle of proportionality. Generally, courts will accept a level of discretion on the part of the states in assessing the proportionality of any restrictions, which will vary depending on the subject matter and the individual case. For example, the European Court of Human Rights has applied a narrower margin of appreciation with respect to political speech as compared with, for example, issues of morality and commercial speech. General and absolute prohibitions on certain types of expression (other than hate speech or similar) is likely to be a disproportionate interference with media freedom.

The obligation to respect this right is binding on all branches and levels of state, and states must also adopt due diligence measures to ensure that persons are protected from any violations and from acts of non-state parties that would impair the enjoyment of the right.

IV. NATIONAL LEGAL FRAMEWORKS

The overarching legislative and administrative frameworks across the Kurdish regions reflect, in general, the international standards on the right to freedom of expression.

However, the types and extent of permitted restrictions, duties and responsibilities associated with the right, vary according to the country and context. These are apparent primarily through relevant domestic legislation, administrative policy and practices, and judicial decisions. KHRP remains concerned about the effective implementation of media freedom and notes that various changes are required to both vaguely-worded legal provisions and the way in which the judiciary interpret such provisions.

Turkey

Media freedom in Turkey is regulated primarily through the Turkish Constitution, the *Türk Ceza Kanunu* (Turkish Penal Code / TCK), the Press Law and the Anti-Terror Law.

Article 26 of the Constitution of Turkey provides for the right to freedom of expression, subject to restrictions '*for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.*'

The most controversial limitation to media freedom is set out in Article 301 of the TCK, which criminalises insults against the Turkish nation. Despite amendments to this provision in 2008 (with the previous version referring more widely to insults against 'Turkishness'), the law remains a restriction on free and open criticism of the state and has been used to harass and prosecute journalists, publishers, writers, political activists, and even children for peacefully expressing dissent.[4] Other relevant restrictions are set out in the TCK and other laws,[5] in connection with alleged: defamation and insult (particularly against public figures or in reference to the person's religious beliefs);[6] praise of crime or criminals;[7] incitement of the public to enmity, hatred or degradation,[8] or to legal disobedience;[9] production of propaganda for illegal organisations or their objectives;[10] printing, displaying broadcasting of obscene images;[11] defamation of the president;[12] and denigration of the Turkish flag.[13]

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[4] KHRP, *Freedom of Expression in Turkey,* 2006. http://www.khrp.org/khrp-news/human-rights-documents/2006-publications/doc_details/86-briefing-paper-freedom-of-expression-in-turkey.html.

[5] European Commission, *Turkey 2010 Progress Report*, 9 November 2011. http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf

[6] Turkish Penal Code, Article 125.

[7] Turkish Penal Code, Article 215.

[8] Turkish Penal Code, Article 216.

[9] Turkish Penal Code, Article 217.

[10] Turkish Penal Code, Article 220/8; Turkish Anti-Terror Law, Article 72.

[11] Turkish Penal Code, Article 226.

[12] Turkish Penal Code, Article 299.

[13] Turkish Penal Code, Article 300.

In the context of these vaguely worded legal provisions, problems within the legislative framework today lie more in its subjective interpretation by public prosecutors and judges, and its application to situations that arguably rest outside the provision wording.
In addition, uneven implementation and lack of commitment to the agreed structure from many who work in state institutions limit the effectiveness of the legal framework on media freedom.

Further, the government frequently ignores Article 39(4) of the Treaty of Lausanne, which states that: '*[n]o restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press or in publications of any kind or at public meetings*.'

However, within this broader context, Turkey has made a number of positive steps within its legislative framework in recent years to better protect freedom of expression, in large part in connection with Turkey's EU accession negotiations and the associated requirement for Turkey to adhere to the Copenhagen Criteria. This has translated into some important changes for journalists. For example, in the 1990s, journalists who were doing nothing more than their jobs faced trial and conviction in state security courts, were forcibly 'disappeared' by state security forces, and were subject to ill-treatment and torture. Today, journalists who fear for their lives are largely those that are worried about not getting adequate protection from the police when faced with harassment by vigilante groups who may or may not be linked to state apparatus.

Syria

Freedom of expression is ostensibly enshrined in Article 38 of the Syrian Constitution, albeit only as far as such expression meets the criteria of '*… constructive criticism in a manner that safeguards the soundness of the domestic and nationalist structure and strengthens the socialist system…*'

However, the 1963 state of emergency imposed by the Ba'ath Party, which remains in effect until recently, allowed the state to legally derogate from its constitution. Even with the lifting of the state of emergency, the state continues to act to severely curtail general civil society activity and restrict related constitutional rights such as the right to freedom of expression, peaceful assembly, and privacy.[14] The violent crackdown by the state in recent months in response to civil society uprising against the Ba'ath Party regime has included intensified restrictions on rights and freedoms across Syria, including the right to freedom of expression. No international media/ journalists are allowed access to region, and local media report on events under fear of aggressive retribution at the hands of the state.

Those critical of the regime and its policies are often silenced through the application of criminal law as a means of limiting freedom of expression. The most commonly used charges are of 'disseminating false information with the aim of harming the state',[15] 'defaming the state',[16] 'publishing false information'[17] and 'undermining national sentiment'.[18] Censorship and self-censorship occur regularly.

Further, the media is heavily regulated by Decree 50 (2001), which limits the issues journalists may write about and provides that the government can disband a publication for reasons of national interest.[19]

Given its current approach to media freedom, Syria is ranked 165th out of 175 countries in the Reporters Without Borders press freedom index and is on that organisation's list of 'Enemies of the Internet', while President Bashar al-Assad is regarded as one of the world's 40 worst 'Predators of press freedom' by Reporters

[14] Kerim Yildiz, *The Kurds in Syria: The Forgotten People*, 2005, pp. 106-115.
[15] Syrian Penal Code, Article 286.
[16] Syrian Penal Code, Article 287.
[17] Syrian Penal Code, Article 285.
[18] Syrian Penal Code, Article 286.
[19] Decree 50/2001, Article 29.

Without Borders.[20] The majority of the media is owned and controlled by the state, creating an effective monopoly.

While there have been recent reports of a new draft media law,[21] it remains to be seen if the law will improve this situation or whether the law will actually be introduced at all. Over the years it has become apparent, through KHRP's meetings with the Syrian government and in relevant reports by the state to the United Nations that, at various times, Syria introduces draft laws that purport to improve the human rights landscape in the country but often do not progress them from the draft stage. Further, given the recent events in Syria, involving clashes between civil society and state security officials, the situation concerning legal developments remains highly unstable and difficult to predict at the time of writing.

Iran

Article 24 of the Iranian Constitution protects the right of freedom of expression '*…except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law.*' Article 168 provides the following safeguard in relation to the manner in which parties accused of breaching such laws will be dealt with: '*Political and press offenses will be tried openly and in the presence of a jury, in courts of justice.*'

Article 9 sets out further indications of the state's approach to permitted limitations, which states:

> …the freedom…and territorial integrity of the country are inseparable…and their preservation is the duty of the government and all individual citizens. No individual, group, or authority, has the right to infringe…upon the… independence or the territorial integrity of Iran under the pretext of exercising freedom. Similarly, no authority has the right to abrogate legitimate freedoms…under the pretext of preserving the independence and territorial integrity…

While this presents an apparent balance between competing interests, the state frequently makes use of the first part of this Article to curtail freedom of expression and other rights under the guise of protecting the independence and integrity of Iran, without upholding the second part.

The Press Law 1986 sets out the responsibilities and limitations of the media. According to Article 3, '*The press have the right to publish the opinions, constructive criticisms, suggestions and explanations of individuals and government officials for public information while duly observing the Islamic teachings and the best interest of the community.*'

Article 6 expands on the explicit restrictions on the activities by the press, restricting them from 'publishing atheistic articles or issues', 'creating discord between and among social walks of life specially by raising ethnic and racial issues', encouraging acts against the security of Iran, 'disclosing documents or the secrets of the Armed Forces or publishing deliberations of the Islamic Consultative Assembly or private proceedings of courts without legal permit', insulting Islam or offending the Leader of the Revolution, libel or insulting legal or real persons who are lawfully respected, even by means of pictures or caricatures and committing plagiarism or quoting articles which oppose Islam in such a manner as to propagate such ideas.

In the application of this legal framework – again, with vaguely worded provisions open to subjective and inconsistent interpretation by prosecutors and judges – there is currently a very low degree of media freedom in Iran today.

[20] Reporters Without Borders, *Predator – Bashar al-Assa, President, Syria*, 2011. http://en.rsf.org/spip.php?page=predateur&id_article=37213. Last accessed 19 March 2011.

[21] See, for example, Reuters, *Syria's Assad says not changing course after Egypt*, 31 January 2011. http://us.mobile.reuters.com/article/topNews/idUSTRE70U2LV20110131?feedType=RSS&feedName=topNews. Last accessed 22 March 2011.

Kurdistan, Iraq

Article 38 of the Iraqi Constitution provides that '*The State shall guarantee in a way that does not violate public order and morality…freedom of expression…freedom of press…media and publication*' and '*freedom of assembly and peaceful demonstration, and this shall be regulated by law.*'

However all such personal liberties are limited by two main exemption clauses: the Iraqi Council of Representatives has the power to define what these freedoms mean, and no freedom may conflict with Islamic morality.

A distinction must be drawn between the extent of media freedom under the Kurdistan Regional Government in the semi-autonomous northern region of Iraq, and under the Government of Iraq more generally. While media freedom is, in most respects, better protected in the former, issues regarding implementation of the legal framework and, in particular, the treatment of journalists, exist in both regions.

In 2007, the KRG Parliament passed a press law (no.25) that was approved by the Presidency (decree no. 24) in 2008. This law, designed to protect freedom of expression and publication, contains robust protection for journalists. Unfortunately, according to KHRP sources, as with other laws that exist in the KRG, this law is not always implemented in a consistent manner.

By tolerating the presence of hundreds of independent, opposition, and party-owned media outlets, Kurdistan, Iraq on one hand, appears to be less restrictive on freedom of expression than many other countries in the region such as Syria, Iran and Saudi Arabia. On the other hand, KHRP has learned that the KRG does not appear to provide equal opportunities to reporters to do their work. KHRP's sources report that perhaps the biggest problem is a lack of access to information on an equal basis, with reporters not in favour with the ruling parties often having to rely upon rumours and anonymous sources. By default, it is alleged that independent journalists are discredited.

According to KHRP sources, journalists affiliated with the ruling parties have better access to information and are given the upper hand when it comes to covering presidential press conferences and key events. It was explained that government officials trust their own journalists more than they do independent ones, believing that if they give information to a reporter who essentially functions as a party-mouthpiece s/he would then publish the news the way they want it published. As an example, President Barzani reportedly does not invite independent reporters to form part of his delegation while visiting foreign countries, preferring instead to take only his own party reporters with him.

In addition, it is alleged that when reporters working for *Khabat,* the KDP's newspaper, or *Kurdistani Nwe*, the PUK's newspaper, go to get information from a government office, they are reportedly welcomed with respect. However, this is alleged not to be the case for reporters working for an independent newspaper such as *Awene* or a critical magazine such as *Lvin*.

In addition to the above, despite the KRG ostensibly offering protection for journalists through legislation, they continue to be at risk of being beaten up, harassed or thrown in prison if they cover expressions of dissent such as anti-government protests by groups or individuals associated with political parties.

V. PUBLISHING

Across the Kurdish regions, it is not only writers of material who experience backlash for expressing dissenting or alternative opinions peacefully, but also those who publish and disseminate their work, particularly those who publish work on minority or human rights issues. Violations of media freedom in this context occur at various levels, including legislation and

policies aimed at controlling publications, repression of free publication through legal cases, intimidation of publishers and the closure of journals, newspapers and publishing houses.

In Syria, Iran and Turkey, this situation is exacerbated in relation to publications in the Kurdish language, where the mere use of Kurdish can be viewed as a political act indicating (from the perspective of state authorities) separatist intentions.

Direct state control, bans and censorship

Publishing in Syria is tightly controlled by the ruling Ba'ath Party, as codified in Decree No. 50. While a number of publications have appeared in recent years which are not subject to government control, each of these publications is still required to have prior approval by the information ministry and intelligence services.

The restrictions on publishing in Syria are most severe in the case of Kurdish language books and magazines. The Kurdish language is not recognised as an official language and is banned from public and private education. The Ba'ath Party enforces a ban on Kurdish language publications, so publishers and printers reportedly refuse to publish Kurdish material for fear of having their licences revoked and incurring heavy fines.[22] Siyament Ibrahim, Editor-in-Chief of the Kurdish-language newspaper, *Aso*, was arrested on 25 November 2010 for owning books translated into Kurdish.[23]

Similarly in Iran, Kurdish publications have been a target for increased repression. Human Rights Watch reports that at least six daily and weekly bilingual Persian and Kurdish publications have been banned by courts and many Iranian Kurds import Kurdish-language books from Kurdistan, Iraq.[24]

Generally, Iranian law requires that all books obtain a publication permit from the Ministry of Culture and Islamic Guidance. According to International Pen, censorship is an issue of great concern in Iran, with the publishing industry reportedly 'in crisis' and several thousand works banned by authorities.[25]

For example, while novelist Shahram Ghavami was allowed to reprint his novel *Soheila* under the previous Khatami administration, the ministry under the current Iranian government has refused to grant this permission and has requested that he delete 761 passages to obtain a republication permit.

Human Rights Watch documents the case of writer and researcher, Behzad Khoshali, who has translated many books into Kurdish. The Iranian Ministry of Culture and Islamic Guidance has refused to grant the necessary permits to publish these books, whilst the Ministry of Information bureau has confiscated two of them from bookstores despite the fact that he had permission to publish them.[26]

Legal cases against writers and publishers

Publishing in Turkey is generally repressed through numerous civil and criminal cases against authors and publishers, commonly under the TCK and the Anti-Terror Law. There are currently a large number of writers and publishers on trial in Turkey, many of whom have had consecutive trials brought

[22] Harriet Montgomery, *The Kurds of Syria: An existence denied*, 2005. http://www.yasa-online.org/reports/The%20Kurds%20of%20Syria%20-%20An%20existence%20denied.pdf

[23] KHRP, *Submission to the UN Universal Periodical Review of the Republic of Syria*, 10 March 2011, p.7. http://www.khrp.org/khrp-news/human-rights-documents/2011-publications/cat_view/57-2011-publications-.html.

[24] Human Rights Watch, *Iran: Freedom of Expression and Association in the Kurdish Regions*, 9 January 2009. http://www.hrw.org/en/node/79044/section/6.

[25] International Pen, *Writers on Minority Issue under Attack*, May 2009. http://www.internationalpen.org.uk/index.cfm?objectid=5E5D2AF0-3048-676E-26C655566651BF95. Last accessed 19 March 2011.

[26] http://www.khrp.org/khrp-news/human-rights-documents/2011-publications/cat_view/57-2011-publications-.html.

[*] Human Rights Watch, *Iran: Freedom of Expression and Association in the Kurdish Regions*, 9 January 2009.

against them in an effort to restrict their work.

Perhaps the most well known victim of this method of state attrition against a publisher is Ragip Zarokolu, founder of Belge Publishing House and co-founder of the Human Rights Association of Turkey. Mr Zarakolu and his wife, Ayşenur Zarakolu, have faced multiple trials over the 30 years that they have been writing and publishing on human rights issues, and have also served time in one of Turkey's notorious F-Type prisons.

Recently, after publishing the book 'KCK Dosyası/Küresel Devlet ve Devletsiz Kürtler' (KCK File/Global State and Stateless Kurds), Mr Zarakolu, and the book's author, Mehmet Güler, were tried and convicted in March 2011 on the charges of producing propaganda **on behalf of a terrorist organisation**. Mr Güler received a sentence of one year and three months in jail, while Mr Zarakolu was fined 16,000 TL.[27]

Indeed, the charge of publishing propaganda on behalf of a terrorist organisation is a common means of discouraging publications and imprisoning or fining publishers and authors. Academics and politicians fall within the scope of this trend. It was reported that sociologist İsmail Beşikçi has been sentenced to a further one year and three months in prison, after spending 17 years behind bars, for an article entitled 'Right to Determination and Kurds' in an academic journal. Mr Beşikçi currently has 32 of his 36 books banned as they relate to the Kurdish question. The editor of the journal was also tried and fined.[28] Former MP and member of the Democratic Party (DEP), Hatip Dicle, has recently been sentenced for one-year and eight-months for creating propaganda for a terrorist organisation in his book *'Yargılayanlar yargılanıyor'* (Judiciaries judged).[29]

Such legal action also occurs in other Kurdish regions. For example, International Pen relates the case of Azizi Banitorof, an Iranian writer, journalist and human rights activist, who was sentenced to five years' imprisonment in 2008 for 'acting against national security', 'propaganda against the regime', 'incitement to rebellion' and 'relations with foreign officials' in relation to his publications. Mr Banitorof left Iran in late 2008 to escape arrest, and would be considered to be in great danger if he were to be repatriated.[30]

In 2010 in Kurdistan, Iraq, according to Reporters without Borders, the magazine *Rega* was fined 35 million Iraqi dinars (22,660 euros) by a court in Erbil for a report suggesting that the Kurdistan Democratic Party (KDP) security forces were involved in the murder of a journalist. Similarly, a court in Erbil fined the *Standard* newspaper 6 million Iraqi dinars (3,900 euros) following legal action by the Ministry of Agriculture. The newspaper's owner expressed concern over the independence of

[27] On 20 July 2010, the Istanbul Public Prosecutor opened the trial against Zarakolu and Güler under Article 7 of the Anti-Terror Law, in connection with the publication of the book.

[28] Hurriyet Daily News, *Turkish court sends writer to prison over 'propaganda charge'*, 4 March 2011. http://www.hurriyetdailynews.com/n.php?n=turkish-court-sends-writer-to-prison-over-8216propaganda8217-charge-2011-03-04. Last accessed 21 March 2011.

[29] Antenna-tr, *Weekly Freedom Bulletin No.11/11*, 18 March 2011. http://www.antenna-tr.org/First_Page.aspx?SiteID=48. Last accessed 22 March 2011.

[30] International Pen, *Yousef Azizi Banitorof,* 21 March 2011. http://www.internationalpen.org.uk/go/freedom-of-expression/campaigns/iran-focus/yousef-azizi-banitorof. Last accessed 21 March 2011.

the KRG judiciary from the government as a result of this decision. [31]

Raids and physical attacks on publication sites

In addition to the pressure of threatened or actual legal action, direct attacks on publishing houses or bookshops also occur. For example, in Turkey members of the youth branch of the Justice and Equality Party (HEPAR) reportedly threatened a bookstore and its staff in Istanbul for selling the Metis Diary 2011; the group maintains that the book is insulting towards the first Turkish President, Mustafa Atatürk, and promotes the PKK.[32]

In Kurdistan, Iraq, magazines and publications have reportedly been subject to raids by security forces and legal action, often for criticisms of the two leading political parties, PUK and KDP. According to Reporters without Borders, Issam Al-Husseini, the president of the board of the magazine *Medias*, stated that the headquarters of the magazine were raided by security forces without explanation in 2010, despite the fact that the magazine covers youth and culture issues exclusively. [33]

VI. BROADCASTING

The right to freedom of expression will generally permit the licensing of broadcasting, television and cinema by states.[34] A monopoly broadcasting system, whilst not automatically inconsistent with media freedom, may constitute a disproportionate interference with the right where the state is unable to justify the applicable restrictions.[35]
Courts have recognised that the audio-visual media often have a much more immediate and powerful effect than the print media, and will take this into account when assessing the proportionately of any limitations imposed by the state.[36]

States in the Kurdish regions have adopted a variety of approaches in order to restrict broadcasting freedom. These include restrictive licensing conditions and control over the use of satellites, limitations on the language of broadcast, and broadcasters and associated individuals subjected to legal cases, physical attacks and other forms of intimidation and harassment.

Direct state control

The legal framework for broadcasting in Turkey took a big step forward in February 2010, when the Radio and Television Higher Board allowed broadcasting in different languages and dialects for the first time.[37] Fourteen radio stations and TV channels have since been granted permission to broadcast in Kurdish and Arabic.[38] While this is a positive step, the new legislation does not grant complete broadcasting freedom. As aforementioned, Turkey has the constitutional authority to restrict broadcasts contrary to: the Turkish Republic's existence and independence, the integrity of state and land together with the nation, Atatürk principles and reforms, or broadcasts which promote terrorist organisations. Furthermore, the Prime Minister or appointed Minister retains the right to issue a broadcast ban when required for the national security or to prevent damage to the public order.[39]

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[31] Reporters Without Borders, *Kurdistan, Iraq: Lawsuits raining down on news media*, 20 December 2010, http://en.rsf.org/irak-iraqi-kurdistan-lawsuits-raining-20-12-2010,39086.html. Last accessed 21 March 2011.

[32] Antenna-tr, *Diary Vendor Threatened*, 17 February 2011. http://www.antenna-tr.org/sites.aspx?SiteID=36&mod=news&ID=2434. Last accessed 21 March 2011.

[33] Reporters Without Borders, *Investigative Report, Between Freedom and Abuses: the Media Pradox in Kurdistan, Iraq*, November 2010. http://en.rsf.org/irak-between-freedom-and-abuses-the-03-11-2010,38736.html.

[34] For example, this is expressly set out in Article 10(1) of the ECHR.

[35] Informationsverein Lentia v Austria, Nos. 131914/88, 15041/89, 15717/89, 157717/89 and 17201/90, Series A, No. 276, 17 EHRR, 24 November 1993.

[36] Jersild v Denmark, No. 15890/8, Series A, No. 289, 19 EHRR Paragraph 31, 29 September 1994.

[37] KHRP, *Broadcasting in Mother Tongue finally arrives*, 17 Legal Review, 2010, p.27.

[38] European Commission, *Turkey 2010 Progress Report*, 9 November 2010, p.32. http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf

[39] Antenna-tr, *Green light for PM to ban broadcasts*, 16 February 2011.

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. The are two regulatory bodies appointed to oversee regulation of broadcasting in Armenia, the National Television and Radio Commission (NTRC) and the Council of Public Television and Radio, responsible for the broadcasting and licensing of private broadcast media and for regulation of public broadcast media respectively. Although purporting to be independent, it is broadly recognised that they are by no means free of influence from the state, which has been able to exert control.

The Law on Television and Radio was proposed by the Armenian Government and approved by the Parliament on 10 June 2010,[40] as part of its move to regulate the ongoing transition to mandatory digital broadcasting. The amendments, which drew criticism not only from NGOs and opposition groups but also from the OSCE[41] and the PACE Monitoring Commission on Armenia,[42] effectively serve to strengthen the already tight control that the government have over media outlets in Armenia, and are a blow for media pluralism as they reduce the number of television stations that are available, and place restrictions on licenses that will make it difficult for new and diverse broadcasters to come through. With the adoption of this new law, starting from 2011 the number of TV channels broadcasting in the capital will be reduced from 22 to 18 which will also reduce the diversity of TV programming.

The OSCE was concerned that many of the recommendations that it made in its earlier reports in April and May 2010 were not finally incorporated, such as a change in the system of financing Public Television and Radio and that of the National Commission on Television and Radio so that their financial independence from the state is guaranteed, and that the system of selecting and appointing members of the Council for Public Television and Radio should be reformed to provide for a possibility of a pluralistic public broadcasting.[43]

The amendments will result in restrictions on licenses, control over licenses by courts and restrictions on media freedom, in contravention of the ECtHR judgment in the KHRP-led case of *Meltex Ltd and Mesrop Movsesyan v. Armenia* 17 June 2008[44] and of the repeated appeals and recommendations of the UN, OSCE, Council of Europe and EU. 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.

In addition, the Armenian Government has failed to ensure that the composition of the members of the NTRC is less politically influenced, with half of its members being elected by the National Assembly for a six-year term while the other half appointed by the President of the Republic for a six-year term.[45] Indeed, the draft law in a number of

http://www.antenna-tr.org/sites.aspx?SiteID=36&mod=news&ID=2430. Last accessed 21 March 2011.

[40] The Law of the Republic of Armenia on Television and Radio, 10 June 2010. http://www.parliament.am/legislation.php?sel=show&ID=3853&lang=arm. (Armenian version). Last accessed 21 March 2011.

[41] OSCE, *OSCE media freedom representative calls for amendments to Armenia's draft broadcast law to promote media pluralism*, 15 June 2011. http://www.osce.org/fom/69353. Last accessed 19 March 2011.

[42] PACE, *PACE rapporteurs urge Armenian authorities to revise media legislation*, 24 June 2010. http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5751. Last accessed 19 March 2011.

[43] OSCE Freedom of Media Experts, *OSCE Addendum to the Comments on the Amendments to the Law of the Republic of Armenia on Broadcasting and to the Review on the Concept Paper on Migrating to Digital Radio and TV Broadcasting System made earlier,* March and May 2010, http://www.osce.org/fom/68579. Last accessed 19 March 2011.

[44] KHRP, *ECtHR finds Armenia in violation of Article 10 for refusal of broadcasting rights*, June 2008. http://www.khrp.org/latest-news/2008-news/374-ecthr-finds-armenia-in-violation-of-article-10-for-refusal-of-broadcasting-rights.html. Last accessed 21 March 2011. For more details on the case see: Kerim Yildiz, Tigran Ter-Yesayanand Saadiya Chaudary, *Freedom of Expression in Armenia: Following the Meltex Case.*, KHRP 15 Legal Review, 2009.

[45] European Platform on Regulatory Authorities, *Profile on Armenia.* http://www.epra.org/comasystem/readit.pl/Profile_Armenia_nov_2010.pdf?wfa=1295070166&daten=bloBPHm2z7VOPzmPkeKmXeSbcpUOwLIskPDSAIeGukp24oP1FY6hK1290437275. Last

articles instead puts public broadcasting under control of the National Commission on Television and Radio, blurring the distinction between public and private broadcasting. The UN Special Rapporteur on the situation of human rights defenders Margaret Sekaggya noted in her report following a visit to Armenia in June 2010, that 'the recently adopted and proposed amendments to the existing legislative framework, notably the NGO Law and the amendments to the Law on Broadcasting, constitute regressive developments, and will obstruct the activities of human rights defenders.'[46]

In Syria, despite some liberalisation in recent years, television and radio broadcasting is dominated by the state. The Syrian Arab Television and Radio Broadcasting Commission (SATRBC), affiliated to the Ministry of Information, provides the personnel for the state-run channels. These channels serve the purposes of the regime and in no way allow free expression or media pluralism. While some private stations exist, they are not allowed to broadcast news or political content.[47] The pan-Arab satellite TV news station *Al-Jazeera* has never obtained permission to open a permanent bureau.[48]

Harassment, violence and legal action against broadcaster

Like publishers, broadcasters and TV presenters are also at risk of harassment, fines and imprisonment in their work.

By way of example, in Turkey a programme by Nihat Sırdar received a warning from the Radio and Television Supreme Council (RTSC) for protesting expensive oil prices and a fine of 300,000 TLs.[49] In Syria, Human Rights Watch reports that Ali Ahmad, a photographer working for the satellite TV station Rotana, was arrested in January 2010, and released in February 2010 without charges.[50]

In Armenia, the state has continued its persecution of independent television broadcaster A1+, which has been taken off the air since 2002 in a move that is widely thought to be due to the outlet's criticism of the government. The Armenian authorities have denied numerous previous requests by A1+ for the re-issuance of its license, despite popular support for the station and a ruling in favour of the independent outlet in the ECtHR judgment in *Meltex Ltd and Mesrop Movsesyan v. Armenia.*

In Kurdistan, Iraq, there have reportedly been numerous incidents of broadcasters and TV stations being subject to violent attack, by both state and civilian forces KHRP partners have confirmed that NRT (the first independent TV station) had its offices set alight three days after it began broadcasting the anti-government uprisings in Suleymaniya in February 2011. Whilst there was an investigation into this incident, which identified suspects with pro-government sympathies and links to state security forces, there has been no reported action to follow up on this investigation has been taken. The investigations appear toothless, with little hope of either the perpetrators or those above them being held accountable for their actions. Radio stations such as Radio Gorran and Radio Nawa have also reported experiencing problems with state authorities, after covering the demonstrations in February 2011.

On 6 March 2011, the Committee to Protect Journalists related that several gunmen stormed the building of Radio Dang, an independent radio station in Sulaimaniya's Kalar district, setting it alight and causing

accessed 20 March 2011.

[46] Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders, *Report on Mission to Armenia*, 23 December 2010, p.20. http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add2.pdf. Last accessed 14 march 2011.

[47] IRIN, *SYRIA: Private media breaks taboos, but restrictions remain*, 30 April 2006. http://www.irinnews.org/Report.aspx?ReportID=26330. Last accessed 21 March 2011.

[48] Reporters Without Borders, *Ten years after Bashar al-Assad's installation, the government still decides who can be a journalist*, 15 July 2010. http://en.rsf.org/syrie-ten-years-after-bashar-el-assad-s-15-07-2010,37959.html. Last accessed 21 March 2011.

[49] Antenna-tr, *RTSC warning for protest of increasing prices*, 4 March 2011. http://www.antenna-tr.org/sites.aspx?SiteID=36&mod=news&ID=2499. Last accessed 21 March 2011.

[50] Human Rights Watch, *HRW World Report 2011*, 2011. http://www.hrw.org/en/world-report-2011/syria.

damage to equipment and confiscating materials. The station's director linked the attack to Radio Dang's coverage of recent anti-government demonstrations in Sulaimaniya.[51]

Interference with broadcasting

Rather than only pursuing legal action following a program or broadcast as in some other part of the Kurdish regions, Iranian authorities take a preventative approach. According to a report by Article 19, during a pro-democracy rally in Tehran to show support for the uprisings in Egypt and Tunisia, authorities jammed satellite news channel in anticipation of the protests.[52] In 2010, Iran blocked the broadcasting of Germany's *Deutsche Welle*, Voice of America's Persian News Network, and BBC World's Persian-language programs.[53]

VII. JOURNALISM

Action by state authorities against individual journalists limits media freedom both directly and indirectly, and states must distinguish between personal expression and the dissemination of the statements of others.

Intimidation, harassment and violence against journalists, and the arrest, prosecution and detention of journalists will be disproportionate interferences with media freedom in most instances. In relation to the following acts, the states will need to be able to establish that they comply with the proportionality principle: the obligation to disclose journalistic sources; searches of journalists' homes or workplaces; and seizure of material, observation or phone tapping of journalists.

[51] Committee to Protect Journalists, *CPJ condemns the attack on radio station in Iraqi Kurdistan*, 8 March 2011. http://www.cpj.org/2011/03/cpj-condemns-the-attack-on-radio-station-in-iraqi.php#more. Last accessed 20 March 2011.

[52] Article 19, *Iran: Freedom of Expression on the Frontline*, 14 February 2011. http://www.article19.org/data/files/pdfs/press/iran-freedom-of-expression-on-the-frontline.pdf

[53] Radio Free Europe Radio Liberty, *EU Foreign Ministers call on Iran to end broadcast jamming*, 22 March 2011. http://www.rferl.org/content/EU_Calls_On_Tehran_to_End_Iranian_State_Censorship/1990324.html. Last accessed 21 March 2011.

State control of journalism

Syria's poor media freedom record is significantly attributable to its repression of journalism. To obtain a press card, issued by the Government, journalists must first register with the Union of Journalists; a means by which the Syrian government controls who becomes a journalist. The foreign press is also regulated with Decree No. 50 (2001) granting authorities the right to forbid foreign media if it covers subjects concerning national sovereignty, threatens national security or violates public decency.[54] For example, Reporters without Borders relates that the Italian news agency ANSA in Damascus was shut down in July 2010 for trying to cover arrests of civil society representatives at the time.[55]

There has been a recent reported increase in repression of journalists generally in Iran, as UN secretary-general Ban Ki-moon stated in a report to the UN Human Rights Council. The Iranian Ministry of Culture and Islamic Guidance has withdrawn its required accreditations for foreign journalists, while a dozen foreign journalists had their press cards taken off them following a demonstration in February 2011 in solidarity with the uprising in Egypt. In March 2011, the bureau chief of the Agence France-Presse's (AFP) was forced to leave the country.

Nasrin Sotoudeh, an Iranian lawyer, journalist and writer was arrested on 4 September 2010 on charges of 'propaganda against the state' and 'conspiracy to disturb order'. The charges were mainly over interviews with foreign-based media regarding her clients who were jailed during the 2009 presidential elections. She has been sentenced to 11 years in jail, and banned from acting as a lawyer and leaving the country for 20 years.[56]

[54] Decree 50/2010, Article 10

[55] Reporters Without Borders, *Ten years after Bashar al-Assad's installation, the government still decides who can be a journalist*, 15 July 2010. http://en.rsf.org/syrie-ten-years-after-bashar-el-assad-s-15-07-2010,37959.html. Last accessed 21 March 2011.

[56] KHRP sent Urgent Action letter to the Office of the High Commissioner for Human Rights on 6 December 2010.

Harassment, physical attacks, and legal cases against journalists

Journalists across the Kurdish regions find themselves facing charges of anti-terrorism, defamation and acts of anti-state security during the course of their ordinary work activities.

There have been increasing reports of violence and attacks against journalists in Armenia in recent years, particularly following the unrest in the wake of the controversial March 2008 presidential election when a 20-day state of emergency was declared and used to censor all media so that it only included state-sponsored information. During this time the government closed several opposition newspapers along with their websites as well as radio transmission and website access to Armenian Liberty, a service of Radio Free Europe. 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.[57] The report drew particular attention to the presidential elections 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.

According to the Committee to Protect Freedom of Expression's 2010 Annual Report on the Situation with Freedom of Speech and Violations of Rights of Journalists and Media in Armenia, there was in fact a reported slight reduction in the incidences of physical violence against journalists in 2010, but an increase in pressure on the media and media staff and in violations of the right to seek and impart information.[58] Journalists who are critical of the state or report on civil and political issues, such as corruption are particularly at risk, leading to a climate of self-censorship. In 2010, the Committee to Protect Journalists reported on two violations against both a staff journalist and the editor of a pro-opposition daily newspaper *Haykakan Zhanamak.*

Ani Gevorgian, a journalist for the paper, was arrested while covering a sit-in protest being staged by activists with the Armenian National Congress at Liberty Square in Yerevan.[59] Meanwhile, Nikol Pashinian, an opposition activist and editor-in-chief *Haykakan Zhamanak*, was beaten in custody while serving a four-year prison term in Kosh prison outside of Yerevan, for allegedly organising mass riots following the post-election unrest of the 2008 presidential elections. He was moved into solitary confinement in December 2010, allegedly in retaliation for the anti-corruption articles that he had been writing from prison.[60]

In Turkey, journalists have long been the target of state repression, and while in recent times there has been a decrease in actual physical attacks and murders, KHRP remains concerned about the increase in criminal charges being brought against journalists as a more indirect form of silencing their activities.

In response to statements made about freedom of expression in the recent European Commission's 2010 Progress Report on Turkey, Prime Minister Recep Tayyip Erdoğan reacted strongly in a statement made in parliament on 8 March

[57] US State Department, *Human Rights Report 2008 for Armenia.* http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119066.htm. Last accessed 19 March 2011.

[58] Committee to Protect Freedom of Expression, *2010 Annual Report on the Situation with Freedom of Speech and Violation of Rights of Journalists and Media in Armenia*, July-September 2010, p.6. http://khosq.am/wp-content/uploads/Quart-3-2010-ENG2.pdf. Last accessed 19 March 2011.

[59] CPJ, *Police in Armenia detains pro-opposition journalists.* http://www.cpj.org/tags/ani-gevorgian. Last accessed 20 March 2011.

[60] CPJ, *Armenian activist and editor attacked, placed in strict jail.* http://cpj.org/2010/12/armenian-activist-and-editor-attacked-placed-in-st.php. Last accessed 20 March 2011.

2011, stating that the 27 journalists in prison in Turkey are held in connection with charges unrelated to their journalistic activities. The Turkish Journalists Union (TGS) and the Platform for Solidarity with Imprisoned Journalists (TGDP) disagreed, saying the number of arrested journalists is actually 68.[61] There have recently been protests by media organisations in Turkey with thousands of people marching in central Istanbul on 13 March 2011 to protest against a crackdown on the press in Turkey after the arrest of more than a dozen journalists this month.

In Turkey, legal action against journalists who comment on important criminal investigations and criticise state authorities such as the army and politicians is commonplace. In November 2010 Rasim Ozan Kütahyalı, a journalist, was investigated under Article 301 of Turkish Criminal Law for ''denigrating the Turkish nation'' following a series of articles he wrote which criticised the Turkish army's behaviour in the south-east. These included personal attacks on the General Staff Presidency.[62]

Similarly, in May 2009 the trial began in Istanbul of Oguz Sönmez, Mehmet Atak, Gursat Özdamar and Serkan Bayrak on a charge of "alienating the public from the institution of military service" (Article 318). They had publicly supported conscientious objector Mehmet Bal in 2008 and protested against his rearrest and alleged torture whilst detained. All four were acquitted.[63]

However, the Kurdish issue is not the only criminalised subject matter restricting the freedom of journalists. For an article published in 2008 on retired colonel and alleged member of the Ergenekon, Hasan Atilla Uğur, and allegations that he ordered the murder of Rıdvan Özden, the journalist Nazlı Ilıcak has been sentenced to 87 days in prison (commuted to a fine of 1740 TL) for 'defamation and attempting to influence the jurisdiction.'[64] Although the UN has specifically noted that 'all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition', in an unprecedented case of targeting the freedom of the press, Turkish Prime Minister Recep Tayyip Erdoğan has initiated legal action against Oktay Ekşi, former chief columnist for the Hürriyet newspaper. The offending statement was the suggestion that Erdoğan would 'sell his own mother.'[65]
Reporters without Borders has documented numerous cases of legal action against journalists in Iran. For example, Ehsan Mehrabi was arrested in Iran on 22 January 2011 and began a one year prison sentence. He was sentenced by a revolutionary court for 'anti-government publicity' after giving an interview to the BBC's Farsi-language service and another radio station, Radio Farda.[66] Shahram Azmodeh, editor of a monthly magazine, is now serving a six month jail sentence, received as a result of a complaint by a local mayor. In December 2010, intelligence ministry agents arrested six journalists from the newspaper *Shargh* with no reason given. In the same month, Mashaallah Shamsolvaezin, spokesman for the *Association of Iranian Journalists* and the *Iranian Committee for the Defence of Freedom of Press*, was sentenced to 16

[61] Hurriyet Daily News, *Thousands march in Istanbul to demand press freedom,* 13 March 2011. http://www.hurriyetdailynews.com/n.php?n=hundreds-of-turkish-journalists-protest-crackdown-2011-03-13. Last accessed 21 March 2011.

[62] http://www.bianet.org/english/print/129711-anti-terror-law-took-th,
Amnesty International, *Annual Report 2011.* http://www.amnesty.org/en/region/turkey/report-2011

[63] Amnesty International, *Report 2010 – Turkey.* http://www.unhcr.org/refworld/country,,AMNESTY,,TUR,,4c03a7f637,0.html.
Bianet, *Four rights activists still on trial, 9 July 2009.* http://bianet.org/english/freedom-of-expression/115750-four-rights-activists-still-on-trial

[64] Todays Zaman, *Court orders journalist to pay Ergenekon suspect for insult,* 3 March 2011).. http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=237166&link=237166. Last accessed 21 March 2011.

[65] KHRP, *Freedom of Expression in Turkey*, 2006, http://www.khrp.org/khrp-news/human-rights-documents/2006-publications/doc_details/86-briefing-paper-freedom-of-expression-in-turkey.html

[66] Reporters without Borders, *Press freedom violations recounted in real time (from 1st January 2010)*, 22 June 2010.
http://en.rsf.org/iran-press-freedom-violations-recounted-07-06-2010,36143.html Last accessed 21 March 2011.

months in prison for 'insulting the president of the Republic'.[67]

Journalist and women's rights activists, Jila Bani Yaghoob, has been sentenced to a year in prison and banned from working as a journalist for 30 years.[68] Women journalists are indeed a common target in Iran. The Human Rights House of Iran recounts the case of journalist Azam Vismeh, arrested at midnight in her home by plain-clothes security agents. After 21 days' detention, Vismeh, who has worked with reformist publications, was released on a $70,000 bail.[69] Sussan Mohamadkhani Ghiassvanad was similarly arrested by intelligence ministry agents in her home. She was only able to contact her family two days later. The Canadian Journalists for Free Expression (CJFE) highlighted the work of Iranian journalist and women's rights activist Jila Baniyaghoub for International Women's Day. Ms Baniyaghoub was arrested in June 2009 for covering post-election protests in Tehran and sentenced to one year's imprisonment and a 30 year writing ban in June 2010. Her work focuses on social and political injustice, with reference to women.[70]

In 2010, Iraq remained one of the most dangerous countries in the world to work as a journalist. During demonstrations in Kurdistan, Iraq in February 2011, according to Reporters Without Borders journalists were 'attacked and illegally and summarily arrested' by police and soldiers who were 'supposed to protect them' during the protests.[71] The offices of the newspaper Hawlati, in Erbil, received a threatening phone call in which staff were told to evacuate their office after they covered the protests of the previous day. Police and members of the intelligence service assaulted a reporter with the Kurdish News Network, Bryar Namiq, during the protests, while KURDIU reporter Balen Othman was attacked and his camera was destroyed. There are just two examples from the numerous reports of journalists being attacked and sustaining injuries at the hands of security forces while reporting protests.

The murder of journalists in Iraq generally is another issue of utmost concern. Hilal Al-Ahmadi, a journalist for two local weekly papers, was gunned down outside his home in Mosul on 17 February 2011. The Iraqi group Journalistic Freedoms Observatory (JFO), an organisation targeted by security forces itself in February 2011, state that al-Ahmadi was well known for his work on financial and administrative corruption.[72] In May 2010, journalist Zardasht Osman was kidnapped from the Salahadin University in Erbil, and found dead two days later in Mosul. According to KHRP sources, his family and friends are convinced that he was murdered for his scathing articles against the ruling parties. However, the KRG contends that Osman was killed by Ansar-Al Islam, a group with ties to Al Qaeda.

Due-diligence obligations

The İstanbul 10th Administrative Tribunal has found the Ministry of Interior guilty for not complying with its positive human rights obligations of intercepting or preventing the assassination of prominent Turkish-Armenian writer, Hırant Dink, despite the existence of sufficient evidence.

VIII. THE INTERNET

[67] Reporters without Borders, *Press freedom violations recounted in real time (from July to December 2010)*, 31 December 2010. http://en.rsf.org/iran-press-freedom-violations-recounted-04-11-2010,37863.html Last accessed 21 March 2011.

[68] Reporters without Borders, *Press freedom violations recounted in real time (from 1st January 2010)*, 22 June 2010. http://en.rsf.org/iran-press-freedom-violations-recounted-07-06-2010,36143.html Last accessed 21 March 2011.

[69] Human Rights House of Iran (RAHANNA), *Journalist Azam Vismeh Released from Evin on $70,000 Bail*, 21 July 2010. http://www.rahana.org/en/?p=5751 Last accessed 23 March 2011.

[70] IFEX, *CJFE celebrates women journalists on International Women's Day*, 8 March 2011. http://www.ifex.org/international/2011/03/08/womens_day/. Last accessed 23 March 2011.

[71] Reporters Without Borders, *Action call after "black day" for media freedom*, 1 March 2011. http://en.rsf.org/iraq-action-call-after-black-day-for-01-03-2011,39646.html Last accessed 1 March 2011.

[72] IFEX, *Journalist killed; security forces attack media, protesters*, 23 March 2011, http://www.ifex.org/iraq/2011/02/23/media_protests_quashed/ L:ast accessed 23 March 2011/

Online media has become increasingly influential and its accessibility has resulted in it becoming a particular target for censorship across the regions. Many sites are blocked and those who write for online journals or even in personal blogs have found themselves facing prosecution for expressing alternative or dissenting opinions.

Internet and website bans

Turkey has placed access bans on thousands of website, using Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication. Millions of Blogspot sites were made inaccessible due to a Telecommunication Communication Presidency (TİB) ban. However, the Public Chief Prosecution of Diyarbakır decided to lift the access ban two weeks after it had been established, an encouraging result.[73] Turkey's recent removal of the ban on Youtube, in October 2010, was a similarly positive move.[74]

The European Court of Human Rights is currently considering an application by Ahmet Yıldırım and Yaman Akdeniz against Turkey's Internet censure of Google sites,[75] and Last.FM.[76] The European Court has communicated this case to the Turkish Government and Turkey must provide submissions in reply by 9 June 2011. The central questions posed by the European Court included whether banning Internet use for all users was proportionate to the means of protecting copyright and artistic rights.[77] The applicants allege punishing those who break the law should be the correct response, rather than punishing all users of the Internet.

Similarly, in Syria, the Syrian Centre for Media and Free Expression states that 241 news and information websites are blocked, 49 of them are Kurdish sites while 15 are human rights related.[78] A ban on Facebook was imposed as a result of Syrians befriending Israelis and was lifted, along with the ban on *Twitter* and *YouTube*, in February 2011.[79] Wikipedia's Arabic version was blocked from May 2008 to February 2009.[80]

In Iran, blogging constitutes the main forum for dissident writing and state authorities exercise technical restraints, including filtering and limiting bandwidth, and implement legal and regulatory controls. Censorship of websites, particularly relating to political and human rights issues as well as prominent social media networks, is very common.

Legislative restrictions and policing of the Internet

In Syria, an Internet communications bill was approved by the cabinet in November 2010, with the aim of further restricting the circulation of information on the Internet. The bill is expected to be voted by the Syrian Parliament soon. Reporters without Borders' 2011 'Internet Enemies' report identifies two provisions which are particularly disturbing; the first would allow the authorities to try journalists before criminal courts and impose harsh jail sentences; the second would allow any

[73] Bianet, *Blogspot Access Ban Lifted,* 16 March 2011. http://www.bianet.org/english/freedom-of-expression/128603-blogspot-access-ban-lifted Last accessed 22 March 2011.

[74] BBC News, *Turkey lifts two-year ban on YouTube,* (30 October 2010. http://www.bbc.co.uk/news/technology-11659816, Last accessed 15th November 2010.

[75] By Denizli Court, Case Number 2009/377, 23 June 2009. For breaching Turkish Law No. 5651, Article 8, on the regulation of publications and copyright infringements on the Internet.

[76] Banned by Beyoğlu Public Prosecution decision number 2009/45, on 26 June 2009. Turkish Law No. 5846, Article 4, on artistic and intellectual works was used to issue the ban, arguing that the site had been used to illegally publish artistic works to which the user did not own the rights.

[77] Application no. 3110/10 + 1 [20877/10] Questions to Parties, 2 February 2011.

[78] Reporters Without Borders, *Ten years after Bashar el-Assad's installation, the government still decides who can be a journalist,* 15 July 2010. http://en.rsf.org/syrie-ten-years-after-bashar-el-assad-s-15-07-2010,37959.html. Last accessed 21 March 2011].

[79] The Economist, *Media Freedom in Syria: A show of strength or a sign of weakness?*, 9 February 2011. http://www.economist.com/blogs/newsbook/2011/02/media_freedom_syria Last accessed 22 March 2011.

[80] Reporters Without Borders, *Internet Enemies 2011 - Syria*, 11 March 2011 http://www.unhcr.org/refworld/docid/4d82268dc.html Last Accessed 19 March 2011.

'judicial auxiliary' – an intentionally broad term – to conduct investigations into journalists suspected of committing 'crimes' as defined by law, and to decide whether or not they should be arrested.[81]
Also in Syria, a law facilitating access to bloggers, in force since 2007, dictates that Internet café managers must register the personal data of customers who post articles online or participate in discussion forums. Website editors are obliged to do the same, or may be forced to shut down their website.[82]

While access to the Internet in Armenia is largely free, in times of political unrest, the government has not hesitated to put in place restrictions on the Internet as a means to curtail public protest and discontent. This happened for the first time during the unrest following the 2008 elections, when the Government blocked sites that were based in Armenia and also YouTube after a video showing clashes between protesters and police was uploaded. The ban was lifted after 20 days.

In January 2011, the first Iranian cyber-police force was established. Previously, in May 2010, a commander in the Islamic Revolutionary Guard Corps (IRGC) confirmed that an Iranian 'Cyber Army' had been created to police online networks, as stated in a publication by Reporters without Borders.[83] In addition, the state uses filtering software created in Iran to block networks and websites, with decisions over censorship determined by the Committee in Charge of Determining Unauthorised Websites (CCDUW).[84] As a result, blogs run by individuals are banned, while censors also target photo or video sharing platforms like Flickr, Photobucket and YouTube. The regime spies on dissidents online, infiltrating social networks through websites such as Facebook.[85]
By contrast, Kurdistan, Iraq and Iraq generally are relatively liberal in their attitudes towards Internet access, with no evidence of filtering by the state.

Repressive measures against bloggers and other Internet users

Reporters without Borders reports that Syrian bloggers have been arrested under Article 287 of the Criminal Code, accused of 'defaming the state', or Articles 285 and 286, for 'publishing false information' and 'undermining national sentiment'.[86] For example, Kareem Arbaji was sentenced to three years jail on 13 September 2009 under Article 286, having spent two years in pre-trial detention after his arrest by military intelligence officers.[87] 19-year-old student and blogger, Tal Al-Mallouhi, was detained for 11 months before appearing before a state security accused of spying. She was sentenced in February 2010 to five years in prison for 'divulging information to a foreign state.'[88] The charges were allegedly based on a letter she wrote to U.S. President Barack Obama urging him to take a more balanced position towards the Arabs and Muslims, and on an invitation she received to attend a U.S. national holiday reception at the U.S. embassy in Cairo.[89] The EU Delegation to Syria issued a statement in relation to the arrest, maintaining that the sentencing of Al-Mallouhi is "contrary to the recent positive steps of the Syrian authorities to open certain social media sites" and calling for her immediate release.[90] International Pen has also called for her release, stating that no evidence had been produced in support of the charges against

[81] *Ibid*
[82] Reporters Without Borders, *Ten years Bashar al-Assad's installation, the government still decides who can be a journalist,* 15 July 2010. http://en.rsf.org/syrie-ten-years-after-bashar-el-assad-s-15-07-2010,37959.html Last accessed 21 March 2011].
[83] **Reporters Without Borders, *Internet Enemies 2011 - Iran,* 11 March 2011, http://en.rsf.org/internet-enemie-iran,39777.html. Last Accessed 20 March 2011**
[84] *Ibid*
[85] *Ibid*
[86] Reporters Without Borders, *Ten years after Bashar el-Assad's installation, the government still decides who can be a journalist,* 15 July 2010. http://en.rsf.org/syrie-ten-years-after-bashar-el-assad-s-15-07-2010,37959.html Last accessed 21 March 2011.
[87] Ibid
[88] Reporters Without Borders, *Internet Enemies 2011 - Syria*, 11 March 2011, http://en.rsf.org/internet-enemie-syria,39779.html Last accessed 19 March 2011.
[89] Ibid
[90] British Embassy Damascus, *European Union's statement on the sentencing of Tal Al-Mallouhi',* 17 February 2011. http://ukinsyria.fco.gov.uk/en/news/?view=News&id=555423782 Last accessed 23 March 2011.

her.[91] Furthermore, Lord Hylton drew attention to this arrest, and further human rights abuses in Syria, in a written question in the House of Lords. Lord Howell asserted, in response, that the UK is committed to encouraging Syria to comply with its human rights obligations.[92] Reporters without Borders states that arrests of bloggers increased dramatically in February 2011, during the uprisings in Tunisia and Egypt.[93]

As in Syria, bloggers in Iran are subject to harassment, criminal investigations and charges. Nasour Naghipour, blogger and human rights activist, obtained a seven year sentence in January 2011.[94] 18 year old Navid Mohebbi was granted a conditional release following the receipt of a three year prison sentence for 'actions against national security' and insulting the Islamic Republic's founder and current leader by means of 'foreign media.'[95] Ali Anjam Rooz, a blogger, was arrested by plain clothes intelligence agents in home in 2010, with the charge and his place of arrest unknown.[96] In September 2010, blogger Hossein Derakhshan was sentenced to 19.5 years in prison, accused of 'cooperation with hostile states, propagating against the regime, propagation in favour of anti-revolutionary groups, insulting sanctities, and implementation and management of obscene websites.'[97] The International Campaign for Human Rights in Iran reported the death in prison of blogger Omidreza Mirsayafi in March 2009. A doctor imprisoned with the blogger stated that he suffered from severe depression and the medical authorities of the prison had failed to give him adequate care. Mirsayafi was accused of insulting the leaders of the state and producing propaganda against the state.[98]

IX. CONCLUSION & RECOMMENDATIONS

Media freedom, as an important subset of the human right to freedom of expression across the Kurdish regions, is a key requirement in a democratic society with respect for pluralism, tolerance and broadmindedness.

In assessing the extent to which this right is able to be enjoyed in practice, it is necessary to consider the existing legal framework relating to media freedom, the interpretation of the applicable legal provisions, the policies and practice in place to ensure implementation of the relevant legal framework, and the mechanisms in place to address violations of this right.

To this end, KHRP makes the following recommendations:

For Governments in the Kurdish regions:

- To amend or abolish broadly-worded provisions in the legal framework relating to media freedom that give rise to subjective and inconsistent interpretation and allow the government to punish individuals

[91] International Pen, *SYRIA: blogger and poet sentenced* , 17 February 2011), http://www.internationalpen.org.uk/go/news/syria-blogger-and-poet-sentenced Last accessed 23 March 2011.

[92] Hansard, *House of Lords Written Answers 1 March 2011 Volume No. 725, Part No. 116'* http://services.parliament.uk/hansard/Lords/bydate/20110301/writtenanswers/part065.html Last accessed 23 March 2011.

[93] Reporters Without Borders, *Internet Enemies 2011 - Syria*, 11 March 2011, http://en.rsf.org/internet-enemie-syria,39779.html Last accessed 19 March 2011.

[94] **Reporters without Borders, *Press freedom violations recounted in real time (from 1st January 2010)*, (22 June 2010) http://en.rsf.org/iran-press-freedom-violations-recounted-07-06-2010,36143.html Last accessed 21 March 2011.**

[95] **Reporters without Borders, *Press freedom violations recounted in real time (from July to December 2010)*, 31 December 2010), http://en.rsf.org/iran-press-freedom-violations-recounted-04-11-2010,37863.html Last accessed 21 March 2011.**

[96] Reporters without Borders, *Press freedom violations recounted in real time (from 1st January 2010),* 22 June 2010), http://en.rsf.org/iran-press-freedom-violations-recounted-07-06-2010,36143.html Last accessed 21 March 2011.

[97] **International Campaign for Human Rights in Iran, *Iranian Blogger Hossein Derakhshan Sentenced to Over 19 Years in Prison'*, 28 September 2010), http://www.iranhumanrights.org/2010/12/hossein-derakhshan-returns-to-evin-prison/ Last accessed 23 March 2011.**

[98] The Independent, *Iranian blogger dies in prison*', 20 March 2009) http://www.independent.co.uk/news/world/middle-east/iranian-blogger-dies-in-prison-1649558.html Last accessed 23 March 2010

arbitrarily for peacefully expressing alternative or dissenting views

- Introduce further training for the judiciary, prosecutors and state officials regarding international human rights standards in order to ensure that judges and prosecutors are aware of, and implement in a proportionate manner the principles of freedom of expression as established in the relevant jurisprudence

- Ensure that defamation and libel are decriminalised in all states

- Promote diverse participation in media as well as equal access to information, and the removal of barriers to minority communities' full enjoyment of rights in society

- Conduct research that will provide disaggregated and more reliable data on the restrictions on freedom of expression and the media

- Engender a suitable political environment to encourage local NGOs, human rights organisations and civil society groups to monitor, and develop appropriate frameworks to assist in the promotion of media freedom

- Release all persons currently deprived of their liberty for peacefully exercising their right to freedom of expression

- Ensure effective mechanisms are in place to ensure due diligence on the part of the state relating to violations of media freedom, including preventing, investigating, prosecuting and punishing such acts – in particular, for states in the Kurdish region to set up effective investigations into violent repression of journalists, bloggers and other media participants involved in demonstrations calling for state reform

- Uphold rule of law, and ensure that the mechanisms that are in place to protect journalists (such as the Press Law in the KRG) are implemented consistently

- For Turkey to uphold its commitment to reform and to honour the obligations which follow from the EU accession negotiations, including the Copenhagen Criteria, in order to guarantee the right to freedom of expression and to facilitate political and cultural dialogue in Turkey

- For Syria to commit to a specific reform agenda that safeguards human rights and public freedoms, including the right to freedom of expression, including the amendment or abolishment of its press law (Decree No. 50/2001) in order to bring the state's permitted actions towards and restrictions of the country's media in line with its international obligations, and to take steps to end the effective monopoly on TV and radio broadcasting

- For Iran to cease excessive and violent repression of media participants, whether through the application of vague legislation, disproportionate publication bans, extreme sentencing or other forms of intimidation, as well as cease interference, by way of the removal of accreditation/permission, with the usual activities of local and foreign journalists

For local NGOs, human rights organisations and civil society groups:

- Document and highlight violations of the right to freedom of expression and the media to provide up to date information that can be shared with governments and other NGOs, and used in reporting to international monitoring bodies

- Work across disciplines so that lawyers, campaigners, issue-based groups, members of the media community and others can work together using a variety of tools to challenge issues

For the international community:

- Urge the governments of the Kurdish regions to adhere to the international agreements they are party to with respect to the right to freedom of expression and the media

- Continue to closely monitor the reform process in Turkey, including the situation regarding freedom of expression, and exert considerable influence to ensure that Turkey stays committed to reform and complies with the Copenhagen Criteria

- Ensure any trade and other international agreements are directly linked to how the relevant states deal with the right to freedom of expression and the media

- Support the governments of the Kurdish regions in developing clear legislation relating to media freedom, in line with international human rights standards, as well as effective processes for implementation of such legislation and offer expertise in relation to training of the judiciary

- Act swiftly and urgently to have the issue of violence against journalists and others involved in media freedom raised on an international agenda
- Offer financial and technical support to local civil society organisations

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The Kurdish Human Rights Project (KHRP) is a UK registered charity committed to the promotion and protection of the human rights of all persons living within the Kurdish regions. Its innovative and strategic approach to international human rights practice, combined with a long-term and consistent presence in the region, enables it to secure redress for survivors of human rights violations and prevent abuse in the future.

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