

March, 2014

Ref: Draft resolution on *the promotion and protection of human rights in the context of peaceful protests*. (HRC 25)

Excellency,

The under-signed human rights organizations have the honor to address you in respect of the draft resolution on *the promotion and protection of human rights in the context of peaceful protests*, which shall be adopted during the current 25<sup>th</sup> session of the UN Human Rights Council.

History tells us that many of the fundamental rights we enjoy in our contemporary life were obtained after generations before us engaged in sustained protests in the streets. Thus, we welcome the renewed and increased attention the Council has dedicated to this issue, given that in recent years it has regained momentum. We have reviewed the draft resolution and there are three specific points that we wish to highlight, as we believe amendments would result in increased specificity for human rights protection in this area.

Firstly, we are deeply concerned about the idea conveyed in the draft resolution that only peaceful protests are protected. **It is crucial to emphasize that all human rights protections remain directly applicable to all forms of social protest, whether or not they are classified as peaceful.** Broader human rights protections must not be artificially limited to “peaceful protests”. Limitations on use of force, for example, are particularly important and should apply generally to all police actions.

Many of our countries have experienced non-peaceful protests. Even in these situations, the government has a duty to respect, protect and fulfill fundamental human rights. Our collective experience suggests that many governments are quick to classify a particular protest as “non-peaceful”, even when the vast majority of individuals remain non-violent. This general classification is then used to justify a wide range of repressive measures. The blanket classification of an entire assembly as non-peaceful has the effect of arbitrarily abrogating the rights of a large number of individuals. In this regard, **we suggest that the language of current PP19 ought to change to reaffirm that individuals do not cease to enjoy any human rights, not only their right to peaceful assembly, as a result of sporadic violence in the context of protests.**

In order to accurately reflect the level of protection currently recognized under international human rights law, we therefore strongly suggest the deletion of the word “peaceful” from the title of the resolution, as well as from PP9, PP11, PP12, PP14, PP15, PP16, PP17, PP18, PP19, PP20, PP21, PP22 and op. paras. 2, 6, 7, 8, 9, 16, 17, 18, 19 and 20. In this regard, we specially emphasize the importance of deleting the reference to “peaceful” from PP15, PP16 and op. para. 2 and 6, since these paragraphs refer to the prohibition of violations like torture, executions and sexual violence, which are of a non-derogable character.

Secondly, the drafting of this resolution is an important opportunity for the international community to keep establishing human rights standards for the adequate regulation of the use of force in the context of protests. Accordingly, **we suggest including in the resolution an explicit reference that recalls that police forces play a vital role in the protection of the right to life, liberty and security of the person in the context of social protests, including of participants, bystanders**

**and police officers, and therefore their action shall always aim at de-escalating violence.** Such role implies recognizing the heterogeneity and complexity of protests situations, as well as the necessity of adjusting police responses proportionally, according to the specific circumstances, and differentiating individual behavior from that of the crowd. The complaints against the police should be investigated effectively and impartially, and if applicable, subject to disciplinary or criminal sanctions. The police should be identified during public order operations, via labels with name or number, and enforceable orders must be given to ensure compliance with the obligation to use these labels. Protective equipment should be used for the protection of officers and not as a means to hide their identity.

In respect to the regulation of the use of force, it is worrisome that the draft text of op. para. 14 falls back from language already set in op. para. 11 of the HRC Resolution 22/10, adopted on the topic on April 2013,<sup>1</sup> as a result of eliminating the expression “refrain from using lethal force during protests”. We disapprove this change and call on the Council to maintain previously agreed text.

In light of this we recall that **it should be clear in the resolution’s text that, pursuant to international standards, lethal force may not be used in the context of protests except to protect life, in self-defense or defense of others, against the imminent threat of death or serious injury, and only when less extreme means are insufficient to achieve these objectives.** Moreover, lethal force may not be used to disperse a gathering, and when necessary, crowds may be dispersed through non-violent means only. Such is not reflected in the current text of the draft resolution, particularly as envisioned in op. para. 11.

**In respect to the duty to investigate deaths and injuries caused during protests, it is crucial to ensure that investigations into allegations are thorough and independent of the law enforcement body involved, to ensure impartiality.**<sup>2</sup> We hence suggest the adjustment of op. para. 12 along these lines.

Thirdly, in respect to what the Council will request from the OHCHR in order to continue the consideration of this topic, we would like to suggest an adjustment of op. para. 22 taking into account the conclusions and recommendations of the OHCHR’s *seminar on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests*. **The mandate to prepare “guidelines for facilitating and protecting peaceful protests based on good practices” should indicate that the focus of these guidelines should be placed on the regulation of police actions and the use of force in protests.** Otherwise, the formulation put forward in the current draft resolution may open the possibility for excessive regulation, which has the potential to significantly chill protest and, hence, undermine the rights to assembly, expression and association.

We therefore propose the Council to request from the OHCHR, in collaboration with special procedures and in consultation with all relevant stakeholders, to prepare practical and operationally focused guidelines on proper conduct of law enforcement officials in the context of social protests,

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<sup>1</sup> See The promotion and protection of human rights in the context of peaceful protests of 9 April 2013, UN Doc A/HRC/RES/22/10.

<sup>2</sup> See, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 28 May 2010, UN Doc A/HRC/14/24/Add.8, paras. 71 – 73.

including the appropriate types of weapons, police methods and tactics to be used to facilitate and manage protests, including with respect to assemblies during which acts of violence occur.<sup>3</sup>

Furthermore, we are concerned about the distance of the proposed time frame in op. para 23 to continue the Council's consideration of the topic. **In view of the urgency and gravity of this matter and to ensure that civil society can broadly give input into this process, we believe the resolution should provide a follow-up process and update on the guidelines proposed in the resolution to be presented to the 28<sup>th</sup> session of the Human Rights Council.**

Lastly, we would like to convey our appreciation for the increased attention the draft resolution has paid to the issue of regulation on the use of less-lethal weapons. We are particularly supportive of op. paras. 12 and 15. Also, we support the call for protocols for the training and use of less-lethal weapons, as already recognized in previous HRC Res 22/10, and included in draft op. para. 14. We moreover welcome the incorporation of new PP23, which calls for adequate training while refraining from using military personnel to perform law enforcement duties. Nevertheless, taking into account the inadequacy of military's participation in responding to protests,<sup>4</sup> we strongly suggest the elimination of the expression "to the extent possible" and that such aspect is contemplated in the operative paragraphs.

Please do not hesitate to contact any of our organizations to discuss on specific suggestions and comments. We remain of course open for any further clarifications about this letter.

Thank you for your attention. We hope that the above points shall be useful as you move forward in your deliberations.

Cordially,

American Civil Liberties Union – ACLU  
Asian Forum for Human Rights and Development – FORUM-ASIA  
Association for Civil Rights in Israel – ACRI  
Cairo Institute for Human Rights Studies – CIHRS  
Canadian Civil Liberties Association – CCLA  
Centro de Estudios Legales y Sociales – CELS  
Commonwealth Human Rights Initiative – CHRI  
Conectas Direitos Humanos – Conectas  
Corporación Humanas – Humanas  
East and Horn of Africa Human Rights Defenders Project – EHAHRDP  
Egyptian Initiative for Personal Rights – EIPR  
Human Rights Watch – HRW  
Hungarian Civil Liberties Union – HCLU  
International Service for Human Rights – ISHR  
Irish Council for Civil Liberties – ICCL  
Kenya Human Rights Commission – KHRC  
Legal Resources Centre – LRC

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<sup>3</sup> See, Report of the United Nations High Commissioner for Human Rights, Seminar on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, UN Doc A/HRC/25/32, para. 48.

<sup>4</sup> See, Report of the Special Rapporteur on Human Rights Defenders of 13 December 2012, UN Doc HRC/HRC/22.47/Add.1, para. 41