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PROMOTING HUMAN RIGHTS

LRC
LEGAL RESOURCES CENTRE

March 7, 2013

To the Permanent Representatives at UN Offices in Geneva

Ref. –Resolution on the promotion and protection of human rights in the context of social protests.

Your Excellency,

The undersigned represent national civil society human rights organizations from across the globe. We are writing in regard to the draft resolution of the UN Human Rights Council on “The promotion and protection of human rights in the context of peaceful protests”, to be adopted at its 22nd Session.

Our organizations welcome the renewed and increased attention to freedom of peaceful assembly and the protection of human rights, including freedom of association, expression and opinion, in the broader context of social protest. As domestically focused actors, we believe that the diversity of our collective experiences reflect the multiple facets of the right to peaceful assembly and rights within the context of social protest more broadly. As highlighted by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Office of the High Commissioner for Human Rights, the many forms of public participation are essential components of any vibrant democracy¹. Such activities must be actively facilitated by states if they are to comply with their obligations to protect, respect and fulfil international human rights.

¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, paragraph 24, 21 May 2012; OHCHR, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, paragraph 8, 21 January 2013.

We have reviewed the draft resolution and are encouraged by many of the proposed provisions. There are, however, five specific points that we wish to highlight where we believe amendments would result in increased specificity for human rights protection in this area. These suggested amendments include:

- a. After existing paragraph 3 – an additional paragraph offering more precision on the definition of “peaceful assembly”, differentiating the conduct of individuals from that of the protest as a whole;
- b. In PP14 and paragraph 7 – language that accurately conveys that broader human rights protections, and in particular use of force restrictions, limit state conduct in both peaceful and non-peaceful assemblies;
- c. In paragraph 8 – additional specificity regarding the chilling effect that results from the excessive state regulation of peaceful assembly;
- d. In paragraph 10 – to recognize the need to regulate and establish protocols for the use of less lethal weapons; and
- e. In paragraph 10 – incorporate human rights standards limiting the intervention of military personnel in the context of social protests.

Each of these areas is canvassed below.

- a. A more precise definition of “peaceful assembly”

The undersigned organizations have spent decades monitoring policing and protest in their respective countries. 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 state measures, from the dispersal of a peaceful protest to the use of force. The blanket classification of an entire assembly as non-peaceful has the effect of arbitrarily abrogating the peaceful assembly rights of a large number of individuals.

Because of these first-hand observations, we welcomed the Special Rapporteur’s reference to the European Court of Human Rights’ ruling that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.”² We urge you to follow the lead of the Special Rapporteur and include a paragraph after paragraph 2 or 3 that references this quote, or specifies that the right to peaceful assembly must be interpreted in a way that ensures that individuals who are exercising their peaceful assembly rights continue to receive protection of this right, even when other individuals within a crowd commit acts of violence.

- b. Language that accurately conveys that broader human rights protections, and in particular use of force restrictions, limit state conduct in both peaceful and non-peaceful assemblies;

² European Court of Human Rights, *Ziliberg v. Moldova*, application No. 61821/00 (2004).

We would also like to draw your attention to the notion that “international human rights law only protects assemblies that are peaceful.”³ This statement is overbroad and therefore legally incorrect. While the right to peaceful assembly is necessarily limited to non-violent gatherings, all other human rights protections remain directly applicable to all forms of social protest, whether or not they are classified as violent. Limitations on use of force, for example, are particularly important and should apply generally to all police actions.

When speaking of human rights protections in the context of social protest, broader human rights protections must not be artificially limited to peaceful assembly. Many of our countries have experienced non-peaceful protests. Even in these situations, the government has a duty to respect, protect and fulfil fundamental human rights. In order to accurately reflect the current protections afforded by international human rights law, we suggest that the word “peaceful” be deleted from PP14 and paragraph 7. We also urge you to expand the scope of the seminar in paragraph 25(a) by deleting the word “peaceful,” as many human rights violations occur during events that started peacefully but escalated.

c. Additional specificity regarding the chilling effect that results from the excessive state regulation of peaceful assembly.

Our organizations also welcome the references in paragraph 4 to the chilling effect that threats of abusive civil and criminal proceedings can have on freedom of peaceful assembly. Although protest management can be an important state role, excessive state regulation of peaceful assembly also has the potential to significantly chill peaceful protest. We therefore suggest that paragraph 8 be expanded to include a recognition that the states’ responsibility to protect, respect and fulfil the right to peaceful assembly and other human rights in the context of social protest more generally extends to the obligation to minimize legislative or regulatory practices that may chill the exercise of these rights, including measures such as prior approval permitting schemes, notification time periods, fees, the imposition of liability or insurance obligations on protest organizers, infiltration and surveillance by police, or intrusive searches of protesters.

d. Recognize the need to regulate and establish protocols for the use of less lethal weapons technology;

We note that paragraph 10 of the draft resolution “encourages States to make non-lethal weapons and protective equipment available to law enforcement officials.” The use of less-lethal weapons is obviously preferable as a last resort alternative to live ammunition or the use of lethal force. In our experience, however, many countries deploy this technology at a much earlier stage than they would lethal force, using it to disperse peaceful protests or in lieu of other available de-escalation techniques. Moreover, there is often a disturbing dearth of scientific evidence regarding the health effects of these weapons, and a growing number of reported cases in which they have had effective lethal impact. However, there are insufficient regulations and protocols, both in the national and international levels, regarding the use of these kinds of weapons.

³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, paragraph 25, 21 May 2012; OHCHR, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, paragraph 10, 21 January 2013.

Government principles and protocols restricting a weapon's appropriate use should be based on independent scientific testing of health risks and must be put in place prior to purchase of any new technology. Police must be thoroughly trained in appropriate usage and all deployment must adhere strictly to the legal limits on use of force. Because of the potential for abuse and unknown health effects, less-lethal weapons should only be made available after rigorous independent scientific testing and appropriate police training. Their use should be made subject to public regulatory oversight, and robust ex-post accountability and oversight mechanisms.

We have significant reservations about "encouraging" all States to deploy less than lethal weapons technology. We suggest adding language in paragraph 10 that clarifies that less-lethal weapons should only be available after conducting rigorous independent scientific testing and providing appropriate police training. Public regulatory oversight, and robust ex-post accountability and oversight mechanisms are also necessary pre-requisites if less than lethal weapons are to be deployed in a human rights compliant way.

e. Clarification regarding the permissible use of military personnel when responding to protest.

Paragraph 10 of the draft resolution "[c]alls upon States ... to ensure adequate training of law enforcement officials and military personnel and to promote adequate training for private personnel acting on behalf of a State". We are concerned that this statement implies that military personnel are appropriate State actors for responding to public protest. As stated in PP7, PP8 and PP9 of the Draft Resolution, participation in protests is part of the democratic life in any society, and therefore protesters should not be seen or treated as a threat. The main logic behind the intervention of military forces is to defend a country from events perceived as dangerous for its integrity. Thus, military personnel should not be involved in the policing of social protests. The inadequacy of the participation of military forces in maintaining public order has been highlighted, among others, by the Special Rapporteur on Human Rights Defenders⁴.

We therefore suggest that you add an opening sentence to paragraph 10, recognizing that military personnel should not be relied upon for state responses to public protests.

Thank you very much for your dedication to the protection of human rights in this area. We are very supportive of the Human Rights Council moving forward to reinforce international standards in the context of protest and policing, and greatly appreciate the attention and work you have put into the draft resolution. We hope that some of the above points will be useful to you as you move forward in your deliberations.

Please do not hesitate to contact any of our organizations if you wish to discuss this matter further.

Sincerely,

⁴ Report of the Special Rapporteur on Human Rights Defenders, A/HRC/22.47/Add.1, paragraph 41, 13 December 2012.

American Civil Liberties Union – ACLU (USA)
Association for Civil Rights in Israel - ACRI (Israel)
Canadian Civil Liberties Association - CCLA (Canada)
Centro de Estudios Legales y Sociales - CELS (Argentina)
Egyptian Initiative for Personal Rights - IEPR (Egypt)
Hungarian Civil Liberties Union - HCLU (Hungary)
Irish Council for Civil Liberties - ICCL (Ireland)
Legal Resource Center - LRC (South Africa)
Liberty (UK)