

***Open Letter to Member States of the UN Human Rights Council***

**Re: Civil society organisations urge States to reject amendments to Human Rights Council resolution on “the promotion and protection of human rights in the context of peaceful protests” (HRC/31/L.21)**

22 March 2016

Your Excellency,

The undersigned non-governmental organisations urge your delegation to vote in favour of the draft resolution on “the promotion and protection of human rights in the context of peaceful protests” (HRC/31/L.21), and to vote against all draft amendments (L. 72 - 79).

We believe that there are four principled reasons to vote against all eight proposed amendments:

**1. On the responsibilities of organisers, international human rights law supports the principle of individual liability**

**L.75** seeks to emphasise the requirement for states to ensure organizers of protests are cognizant of their “duties and responsibilities” vis-a-vis the actions of others.

The amendment would deflect the HRC’s focus from its primary concern: the international human rights obligations of States, shifting this to the responsibility of individuals. There is no authority in international human rights law to support the proposition that organisers or participants in an assembly should be collectively responsible for the actions of others.

If adopted, the amendment would imply that organisers of assemblies should be liable for the conduct of third parties, and this may be used to justify practices that violate international human rights law. The joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (the Compilation) is clear that such a position “would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”<sup>1</sup> The guidance of the OSCE and Venice Commission supports this, emphasising that “there should be individual liability for any individual who personally commits an offence or fails to carry out the lawful directions of law-enforcement officials.”<sup>2</sup> This is pertinent considering the tactics of some opponents of peaceful protests to act as *agents provocateurs*, to deliberately frustrate the peaceful intentions of assembly organisers and participants against the intent of organisers by engaging in or provoking violence. Moreover, international human rights law is clear that sporadic and isolated violence or other criminal acts by some individuals in a protest does not deprive all others of their rights, including to freedom of peaceful assembly and of expression;<sup>3</sup> it is those engaged in the violent or other criminal acts that must be held individually accountable.

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<sup>1</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur

<sup>2</sup> OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly: Second Edition . <http://www.osce.org/odihr/73405>

<sup>3</sup> The Compilation, *op. cit.*, para. 20. See also: European Court of Human Rights, *Ziliberg v. Moldova*, application No. 61821/00, 4 May 2004.

We consider that the references in draft L.21 to organisers as relevant stakeholders in OP7, and the issue as addressed in the Compilation (see para. 26) and HRC res 25/38 (see PP23, for example), is appropriate and should not be changed.

## **2. The Council must ensure that all human rights in peaceful protests are promoted and protected:**

Proponents of the draft amendments have framed some of their objections to the resolution by taking issue with the language of “peaceful protest”, instead suggesting the focus should be on “peaceful assemblies”. In addition to recommending this substitution (L.74, L.79),<sup>4</sup> the draft amendments together propose the deletion of references to a broader range of human rights and concerns relevant in the context of peaceful protests (L. 74, L. 76, L.77).

We agree with the cosponsors of the resolution that the focus on peaceful protests is intended to capture the protection and promotion of broad range of existing human rights in a particular context, and does not imply the creation of new rights. Importantly, the term “protest” is broader than simply the right to freedom of peaceful assembly, it also captures the freedoms of expression and of association; “protest” captures not only collective expression governments or others agree with, but captures the existing right of all people to individually and collectively criticise the government or other powerful actors.<sup>5</sup>

Therefore, the suggested deletion of the inclusive listing of the most relevant rights in this context (L.76), the deletion of some of the most pertinent human rights concerns regarding the inappropriate use of force in peaceful protests (L. 74), and the substitution of the specific reference to “human rights defenders” (L.78), are each alarming; if adopted these amendments would undermine the resolution’s grounding in international human rights law and its relevance to the context of peaceful protests that it seeks to address.

## **3. The Council must give due regard to the special procedures, their work, and previous HRC initiatives:**

The bulk of draft amendments (L.72, L.76, L.77, L.78, L.79) seek to dilute or delete references to specific HRC special procedures, to the Compilation and the encouragement of follow-up to it, and to previous HRC initiatives on promoting and protecting human rights in the context of peaceful protest.

We urge States to retain all references to the decision and resolutions that led up to L.21, including HRC resolution 28/31. These are important to the framing of the Compilation, and we observe that there are precedents for the Council “recalling” resolutions that have been adopted by vote, including HRC resolution 25/38.<sup>6</sup> On this basis, States should vote against L.72.

The Compilation is an important contribution to build upon the work of the HRC in setting out key aspects of the international human rights legal framework in the context of assemblies and protests specifically. It was formulated on the basis of extensive cross-regional consultations with over 50 States and more than 100 experts to bring together a variety of best practices and practical guidance to States in complying with their international human rights law obligations. We see it as essential and entirely appropriate that L.21 welcomes the Compilation in positive terms, and that it strongly encourages all stakeholders to use this resource to enhance protection and promotion of human rights during protests. It is also crucial that L.21 encourages the Special Rapporteur on

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<sup>4</sup> One State has indicated that for its delegation, it will call a vote on any resolution framed around “peaceful protests” rather than “peaceful assemblies”, regardless of whether amendments succeed.

<sup>5</sup> See: Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, 12 September 2011, at para. 11. See also: the Compilation, *op. cit.*, at para. 11.

<sup>6</sup> See HRC res 27/31, adopted without a vote, September 2014, at pp4.

extrajudicial, summary or arbitrary executions to continue working on this issue.<sup>7</sup> On this basis, States should vote against L.76, L.77, L.78 and L.79.

**4. The Council must recognise the principle that national laws and regulations be in compliance with international human rights obligations:**

One amendment (**L.73**) seeks to dilute references to the binding nature of international human rights obligations by adding new language (not previously agreed in either the HRC or GA) that may be wrongly interpreted as implying the primacy of national laws over international law. The amendment is also unnecessary: L.21 OPs 1 and 5 cover (on the basis of previously agreed language) the obligations of States under international human rights law and the importance of domestic legislation that is in line with these obligations.

On the basis of these arguments, we respectfully urge your delegation to reject all amendments, and to vote in favour of L.21 as a whole.

Yours Sincerely,

ARTICLE 19

American Civil Liberties Union (ACLU)

Amnesty International

Asian Forum for Human Rights and Development ( FORUM-ASIA )

Bahrain Institute for Rights and Democracy (BIRD)

CIVICUS: World Alliance for Citizen Participation

DefendDefenders (East and Horn of Africa Human Rights Defenders Project)

Egyptian Initiative for Personal Rights (EIPR)

European Center for Not-for-Profit Law (ECNL)

Gulf Centre for Human Rights (GCHR)

Human Rights House Foundation (HRHF)

Hungarian Civil Liberties Union

International Center for Not-for-Profit Law (ICNL)

International Lesbian and Gay Association (ILGA)

International Service for Human Rights (ISHR)

Nazra for Feminist Studies

Punto24, Turkey (P24)

Reporters Without Borders (RWB/RSF)

World Movement for Democracy

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<sup>7</sup> See, in addition to the Compilation, report A/HRC/17/28.