DRAFT RESOLUTION (26 February 2013)

'Protecting human rights defenders'

The Human Rights Council,

PP1. Recalling the Universal Declaration of Human Rights and General Assembly Resolution 53/144 of 9 December 1998, by which the assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms annexed to that resolution, and reiterating the importance of the Declaration and its promotion and implementation;

PP2. Recalling previous resolutions on human rights defenders, in particular A/HRC/RES/13/13 on the protection of human rights defenders, as well as A/HRC/RES/16/5 and A/RES/66/164;

PP3. Reaffirming that States are under the obligation to protect all human rights and fundamental freedoms of all persons; *(*PP5, A/RES/66/171*)*

PP4. Acknowledging that human rights defenders play an important role at the local, national, regional and international levels, in the protection and promotion of human rights; (based on A/RES/60/251)

PP5. Stressing that respect and support for the activities of human rights defenders, including women human rights defenders, is essential to the overall enjoyment of human rights;

PP6. Mindful that domestic law and administrative provisions and their application should not in any way criminalize, impede, restrict or obstruct the peaceful activities of human rights defenders;

PP7. Gravely concerned that, in some instances, national security and counter-terrorism legislation as well as other measures, such as laws regulating civil society organizations and the dissemination of information online and offline, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law; *(based on PP4, A/RES/66/164 with addition)*

PP8. Recognizing the urgent need to address, and to take concrete steps to prevent, the use of national legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and amending relevant legislation and its implementation in order to ensure compliance with international human rights law;

PP9. Welcoming the adoption in some States of legislative frameworks and guidelines, including the decriminalization of defamation, that serve to protect human rights defenders in their activities from being criminalized for peaceful activities, and against threats, harassment, violence and attacks by State and non-State actors;

1. *Welcomes* the work of the Special Rapporteur on the situation of human rights defenders, including the last two reports submitted pursuant to Human Rights Council resolution 16/5,

on the use of legislation affecting the activities of human rights defenders, and national human rights institutions, respectively[1];

2. *Re-emphasizes* that States should create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity, including in remote areas of the country; (based on OP2 A/HRC/RES/13/13 with addition)

3. *Stresses* that legislation affecting the activities of human rights defenders, and its application, must be consistent with international human rights law, including the International Covenant on Civil and Political Rights (ICCPR), and guided by the Declaration on human rights defenders[2];

4. *Urges* States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law, as an essential component of ensuring their protection, including by respecting the independence of their organizations and by avoiding stigmatization of their work; (based on OP4 A/HRC/RES/13/13 with addition)

5. *Condemns* the imposition of any limitations on the work and activities of human rights defenders enforced in contravention of international human rights law;

6. Calls upon States to ensure that national legislation designed to guarantee public safety and public order contains clearly defined provisions and that no discrimination is permitted in the application of such legislation, notably in response to the exercise of the rights to freedom of expression, association and peaceful assembly;

7. *Further calls upon* States to ensure that human rights defenders can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law, and in this regard to ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts; (OP6, A/RES/66/164)

8. *Underlines* that the access to and use of information technologies and the media of one's choice, including radio, television and the Internet, should be facilitated at the national level, between States and at the international level as an integral part of the enjoyment of the fundamental rights to freedom of opinion and expression;

9. *Calls upon* States to respect, protect and ensure the right to freedom of association of human rights defenders and in this regard to ensure, where procedures governing registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory,

[1] See A/67/292 and A/HRC/22/47.

[2] See resolution 53/144, annex.

expeditious, inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law; (OP5, A/RES/66/164)

10. *Further calls upon* States to ensure that reporting requirements placed on human rights defenders and civil society organizations do not inhibit functional autonomy, that legal restrictions are not imposed on potential sources of funding, including foreign sources aimed at supporting the legitimate work of human rights defenders, and that no law should criminalize or delegitimize activities in defense of human rights carried out with foreign funding;

11. *Expresses grave concern* that measures related to national security and counter-terrorism may be used to target, impede or criminalize the legitimate work and activities of human rights defenders;

12. *Requests States* to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights; (OP7, A/RES/66/164)

13. *Calls upon* States to ensure that their anti-terrorism legislation clearly identifies which offences qualify as terrorist acts, by drawing upon transparent and foreseeable criteria, such as the cumulative conditions defined by the Special Rapporteur on the promotion and protection of human rights while countering terrorism; (A/HRC/16/51 paragraph 28)

14. *Further calls upon* States to ensure that laws and measures to combat terrorism prohibit and do not provide for, or have the effect of, subjecting persons to arbitrary detention, such as detention without due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, or the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, nor the unlawful deprivation of the right to life, or the trial of suspects without fundamental judicial guarantees; (drawn from OP12, A/HRC/RES/19/19)

15. *Urges* States to provide access for relevant international bodies, non-governmental organizations and national human rights institutions, where such exist, to persons detained under anti-terrorism and other legislation relating to national security, and to ensure that human rights defenders are not harassed or prosecuted for providing legal assistance to persons detained and charged under legislation related to national security;

16. *Also calls on* States to avoid and eliminate unduly broad or vague legal provisions which may be subject to potential abuse to the detriment of fundamental freedoms and human rights, and specifically to ensure that:

a. under no circumstances should the work of human rights defenders be criminalized, nor should human rights defenders be prevented from enjoying universal rights due to their work, whether they operate individually or in association with others;

b. criminal cases against individuals, including human rights defenders, are subject to an impartial and independent investigation in compliance with due process standards;

c. all unsubstantiated cases are closed immediately, with individuals being afforded the opportunity to lodge complaints directly with the appropriate authority;

d. the judiciary is independent, impartial and competent in order to oversee effectively legislation and its application affecting the work and activities of human rights defenders;

e. any provision or decision that may interfere with the enjoyment of human rights must respect fundamental principles enshrined in international law, so that they are lawful, proportionate, necessary, non-discriminatory and effective;

f. laws and policies that provide for a general right of public access to information held by public authorities, which may be restricted only by narrow and clearly defined limitations, are adopted and implemented;

g. penalties for defamation are foreseen only under civil law and limited in order to ensure proportionality to the harm done, and that provisions do not prevent public officials from being held accountable;

h. legislation aimed at preserving public morals is compatible with international human rights law, and does not have the effect of criminalizing activities in defense of human rights;

i. legislation does not target activities of individuals and associations defending the rights of minorities, or defending those espousing, minority or dissenting views or beliefs;

17. *Expresses particular concern* about systemic and structural discrimination and violence faced by women human rights defenders, and *calls upon* States to integrate a gender dimension in their efforts to create a safe and enabling environment for the defense of human rights;

18. *Reaffirms* the right of everyone, individually and in association with others, to unhindered access to and communication with international institutions, in particular the UN, its representatives and mechanisms in the field of human rights, including the Human Rights Council, Special Procedures and Treaty Bodies, as well as regional human rights mechanisms, and *strongly calls upon* all States to refrain from enshrining in law, while ensuring adequate protection from, any act of intimidation or reprisals against those who cooperate, have cooperated or seek to cooperate with such institutions, including their family members and

associates, and *reaffirms* the duty of all States to end impunity for such actions by bringing the perpetrators to justice and by providing an effective remedy for their victims;

19. *Affirms* that where required, UN accreditation procedures must be transparent and respect due process in accordance with applicable international instruments and procedures;

20. *Underlines* the value of national human rights institutions, mandated in accordance with the Paris Principles, in the continued monitoring of existing legislation and consistently informing the State about its impact on the activities of human rights defenders by issuing relevant recommendations;

21. *Stressing in particular* the valuable contributions of national human rights institutions, civil society and other stakeholders in providing input to States on the potential implications of draft legislation when such legislation is being developed to ensure that it is in compliance with international human rights law, as well as in monitoring relevant laws and their effect on the working context of human rights defenders;

22. *Invites* leaders in all sectors of society and respective communities, including political, social and religious leaders, as well as leaders in business and media, to express public support for the legitimate role of human rights defenders and the importance of their work;

23. *Encourages* States, national human rights institutions and other stakeholders to include in their UPR and treaty body reports information on the steps taken to create a safe and enabling environment for human rights defenders, including by bringing legislation affecting the activities of human rights defenders and its application in line with international human rights law;

24. *Encourages* the OHCHR, relevant regional mechanisms and national human rights institutions to assist States in bringing their legislation and its application in line with international human rights law, including the International Covenant on Civil and Political Rights, and guided by the Declaration on human rights defenders;

25. *Invites* States to seek guidance and assistance, including through the Special Rapporteur, in the process of reviewing, amending or developing legislation which affects or would affect human rights defenders directly or indirectly;

26. *Invites* the Special Rapporteur to continue to monitor legislation and its implementation affecting human rights defenders and to provide guidance and assistance to States as needed and required;

27. *Decides* to remain seized of the matter.