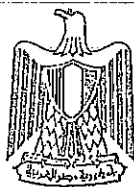


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بعثة مصر الدائمة
لدى الأمم المتحدة
جنيف

S.E.2010.087

24 September 2010

Excellency, *Dear brother,*

With reference to the upcoming first session of the Open-Ended Working Group on the Review of the Work and Functioning of the Human Rights Council, it gives me great pleasure, to forward herewith, on behalf of the Non Aligned Movement, the Position Paper representing the first contribution from the part of the movement to the review process.

I would like, on this occasion, to reaffirm the movement's full confidence in your leadership and in your ability to steer the review in a manner which will ensure the achievement of our collective aim to enhance the credibility and effectiveness of the Council in achieving its mandate, and to renew to you the expression of my best personal regards.

Best wishes

Sincerely,

Ambassador Hisham Badr

**Permanent Representative of the Arab Republic of Egypt
Chairman of the Non Aligned Movement**

H.E. Mr. Sihasak Phuangketkeow
President of the Human Rights Council
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NAM POSITION PAPER
ON
THE REVIEW OF THE WORK AND FUNCTIONING OF THE HUMAN
RIGHTS COUNCIL

First: General principles:

- The review of the work and functioning of the HRC, in accordance with OP 16 of GA Resolution 60/251, will necessitate embarking on a two-phased process:

First: Stock-taking, in an intergovernmental process and with input from relevant stakeholders, of the practical functioning of the various sections of the IB package. Both achievements and shortcomings should be identified.

Second: The specification of required fine-tuning within the framework of the IB package. This should be done with a view to upgrading its comprehensive implementation, bearing in mind that the IB package reflects a delicate balance achieved in 2006 that should be preserved and not be reopened.

- The outcome of the review should be consistent with GA resolution 60/251 and the IB package. It is about the review of the “work and functioning” of the Council and NOT its “mandate” NOR the “institutional and substantive principles” upon which it was established. The outcome of the review shall take the form of a supplement to the IB package which shall enhance its implementation.
- The HRC may also present its views with regard to the review of its status to the General Assembly for the latter's consideration.
- The HRC shall adopt the outcome of the review no later than June 2011.

SECOND: THE SUBSTANTIVE ASPECTS OF THE REVIEW:

1- The UPR :

General :

- The UPR is an innovative and valuable institutional feature of the HRC.
- It is important to recognize the positive aspects of the UPR:
 - The universal, cooperative, non politicized, non confrontational, and non selective nature of the mechanism and the principle of

equal treatment on which it is based with the full involvement of the state concerned.

- **The active involvement of Member States reviewed and their high level representation.**
 - **The UPR proved to be highly effective in conducting an open debate on the human rights situations in all countries around the world on the basis of cooperation and dialogue.**
 - **The momentum created both at the national and at international levels for the State under Review for self-assessment and mutual assessment. At the national level: through a broad consultation process before, during and after the review with the involvement of all relevant stakeholders; at the international level: through dialogue initiated between Member and Observer States of the HRC and the State under review (SUR).**
 - **UPR has been a catalyst, not only for improving the performance of independent national human rights mechanisms, particularly that of civil society, but also for bringing about positive changes to governmental approaches to policy making on human rights.**
 - **The UPR encouraged the ratification by States of various international human rights instruments, and the establishment of National Human Rights Institutions in conformity with the Paris Principles.**
- **In addition to these positive aspects, it is expected that the outcome of the UPR mechanism will prove in the mid- and long terms to be a valuable tool to assist States in the process of implementing their human rights obligations. The entire added value and overall assessment of the UPR can be fully established and conducted only after the completion of its first cycle in 2011.**
 - **The basis of the review of countries within the UPR, as well as the principles and objectives of the UPR, as agreed in the IB Package, must be preserved.**
 - **The UPR is an intergovernmental process, and United Nations Member-driven and action oriented.**
 - **Any changes that would result from the review in regard to the UPR mechanism should only take effect after the end of its first cycle to ensure equal treatment of all countries.**
 - **The current duration of the review within the UPR Working Group has not accommodated the increasing number of Member and Observer States wishing to participate in the interactive dialogue.**

- Many countries require technical and financial assistance for the implementation of the accepted UPR recommendations.
- There is a need to develop guidelines for the preparation by OHCHR of the two documents (the compilation of information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents + summary of information provided by other relevant stakeholders) mandated in paragraphs 12 (b) and 12 (c) of the IB package. This would reinforce the transparency, objectivity and fairness of the process.
- GA Resolution 60/251 emphasizes that consideration should be given to the capacity-building needs of SUR, and the IB package specifies that the enhancement of the state's capacity and of technical assistance is among the objectives of the review, and that such assistance should be on the basis of consultation with, and with the consent of, the State concerned. However, this is an area where not much progress has been achieved, and hence the review of the Council should result in determining ways to move forward in the area of capacity-building and technical assistance.

Operative:

a- Periodicity and duration of the review:

- There shall be a session of two weeks convened in September/October to adopt the reports of the UPR Working Group and for general debate under Agenda Item 6.
- The UPR cycle shall be extended to 5 years, thus allowing the examination of 13 States per UPR WG session instead of 16. This would give SUR more time to implement the accepted recommendations, and to prepare for the next review, and would also increase the duration of the review, and resolve the problem of list of speakers.
- A gap of one year between the end of the first cycle and the beginning of the second cycle would be needed for countries and relevant stakeholders to prepare for the second cycle adequately, for the intergovernmental elaboration and adoption of its modalities as well as guidelines for the preparation of the three documents which will constitute the basis of the UPR in the subsequent cycle.

b) Order of review of states in the UPR:

- The order of the first cycle shall be maintained in subsequent cycles.

c) Preparation of UPR documentation:

- Guidelines on the preparation of the documents that constitute the basis of the subsequent UPR cycles (information prepared by the state

~~concerned + the compilation of information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents + summary of information provided by other relevant stakeholders) should be elaborated intergovernmentally sufficient time prior to the beginning of the second cycle.~~

d) Technical Assistance/ UPR Voluntary Trust Funds

- There is a need to strengthen the resources of the UPR Voluntary Trust Fund to enable it to facilitate the participation of developing countries, particularly the least developed countries, in the UPR mechanism.
- The Voluntary Fund for Financial and Technical Assistance should, according to HRC resolution 6/17, provide, in conjunction with multilateral funding mechanisms, a source of financial and technical assistance to help countries implement recommendations emanating from the universal periodic review in consultation with, and with the consent of, the country concerned. Modalities of the functioning of this Fund should be agreed by the Council as a matter of priority, preferably before the beginning of the second UPR cycle and preferably within the context of the process of the review of the Council. Through such an exercise, the Council would also give guidance on the role expected from the trustees of UPR Voluntary Trust Funds to be appointed would enable their early appointment.

e) Follow-up to the outcome of the UPR:

- The subsequent cycle of the UPR should focus mainly on outlining the current developments in the country concerned since the previous review, in addition to the follow up on the implementation of those recommendations made in the preceding cycle which enjoy the support of the SUR, as well as on its voluntary commitments.
- Recommendation made by States should be consistent with basis of the review as stipulated in paragraph 1 of the IB text.
- The review of any country should include an assessment of the adequacy of the assistance received from the international community to enable the implementation of the accepted recommendations.

2 - Special Procedures:

General:

- The system of special procedures represents a key component of the Human Rights Council architecture enabling it to fulfil its mandate, and has provided valuable contributions to the promotion and protection of all human rights; civil, political, economic, social and cultural rights, including the right to development.

- **The independence, impartiality, integrity, and objectivity of the system of special procedures should be respected.**
- **Distinction should be made between, on the one hand, the independence of mandate-holders, and, on the other hand, their obligations, as determined by their mandate, the provisions of the UN Charter, and the Code of Conduct for Special Procedures Mandate Holders of the HRC. The objective of the review should therefore aim at further consolidating this understanding among all the stakeholders and taking concrete steps towards its respect, and the full compliance with the principles and regulations governing the exercise of the different mandates.**
- **All mandate-holders must act in an objective, independent, non-selective, impartial and non-politicized manner. They should exercise their mandate with professionalism, comply fully with the code of conduct, and build mutual trust and closer and constructive dialogue and cooperation with States.**
- **States need to cooperate with and assist special procedures in the performance of their mandated tasks, to provide them with the required information and respond to their communications in a timely manner.**
- **There is a need to apply the Code of Conduct in accordance with resolution 5/2 and to address allegations of non-compliance with that code.**
- **Experience of the HRC so far has shown the need for a better implementation of the system of selection and appointment of mandate holders stipulated in the IB package. It is very important to respect the principle of equitable geographical representation among Mandate-Holders when they are appointed.**
- **The process of review, rationalization, and improvement of mandates is a continuous process and should lead to avoidance of unnecessary duplication and the identification of whether the current structure of the mechanism in question (expert, rapporteur or working group) is the most effective one in terms of increasing human rights protection.**
- **Transparency in resource allocation and expenditure within the system of special procedures should be guaranteed, and unequal funding and under funding of certain mandate holders should be avoided.**
- **Country-specific mandates and resolutions: NAM believes that objective dialogue, cooperation, and positive engagement are the best means to address human rights issues. The NAM refuses any selective, politicized, or confrontational approach in this regard, and emphasizes the necessity of respecting the views of the concerned country and not imposing country resolutions or mandates against its will.**

Operative:

a) Selection/appointment

- The Consultative Group shall be mandated to request from the short-listed candidates for special procedures vacancies to make a written submission presenting their views on the relevant mandates and their vision as to their implementation. The Consultative Group should take into account the criteria of competence, gender, and geographic balance. This would enhance the quality of the recommendations presented by the Consultative Group to the President of HRC.
- The President of the HRC should follow the order of priority suggested by the Consultative Group, ascertaining acceptability of selected candidates by regional groups and shall conduct extensive consultations with them. In discharging this responsibility, the President shall be guided by the objective of identifying the candidates that enjoy consensus. The justification for any departure by the President from the suggested list presented to him by the consultative Group should be duly explained in a transparent manner to States. The President shall respect the timelines and method of consultation outlined in the IB package with regard to the appointment of mandate-holders.
- The Council may consider converting some Special Procedures into Working Groups in order to overcome the problems that may be associated with the structure of individual mandate holder. This is to be considered on a case by case basis by the Council through the relevant resolutions and in the context of a continuing RRI process.
- The consent by the concerned country should be the basis of any decision by the Council for the appointment of country-specific mandates thereby ensuring cooperation and helping to achieve actual results on the ground.

b) Funding:

- As a general principle, all special procedures shall be treated on an equal footing in terms of the resources put at their disposal.
- The OHCHR should provide information on the financial resources used by mandate holders in executing their mandates in the form of an "expenditure report" to be annexed to their reports.
- There shall be an exclusive reliance on UN regular budget funding and a ban on any fund-raising by, or voluntary contribution to, individual mandate-holders. Any voluntary contributions should be made to OHCHR in the form of non-earmarked resources, and OHCHR should allocate them equally to all mandate holders, and all contributions should be subject to public disclosure.

~~Equal human resources should be provided to all mandate holders, and only members of the secretariat of the OHCHR should accompany mandate holders in the course of their official country visits.~~

c) Conduct of Mandate- Holders:

- ~~Presidential Statement 8/PRST/2 of 18 June 2008 stipulates in paragraphs 3 and 4 that “the President will convey to the Council any information brought to his or her attention, including that by States and/or by the coordination committee of special procedures, concerning cases of persistent non-compliance by a mandate-holder with the provisions of Council resolution 5/2, especially prior to the renewal of mandate- holders in office.”, and “The Council will consider such information and act upon it as appropriate. In the absence of the above-mentioned information, the terms in office of the mandate-holders shall be extended for a second three-year term by the Council1.”~~
- ~~The provisions of the above mentioned presidential statement should be respected. While respecting the sovereignty of States and the independence of the Special Procedures , there is a need to establish, on the basis of equitable geographic distribution, a HRC “Legal Committee on compliance with the Code of Conduct (HRC res. 5/2)”. The Modalities of this Committee shall be elaborated intergovernmentally.~~

d) Reporting:

- ~~An Annex shall be added to country visits reports of Special Procedures including information presented to them by the State concerned, and their comments on the preliminary reports prepared by the Special Procedures.~~

3 – Complaints procedure:

- ~~Non-duplication with other human rights mechanisms must be strictly upheld, and the confidential nature of the mechanism should be retained.~~

4 – Advisory Committee:

- ~~The Human Rights Council Advisory Committee should continue to serve as a think-tank for the Council, providing it with expert advice, and working in accordance with the mandates and direction given by the Council, as stipulated in paragraphs 65 and 75 of the IB package. The time allocated for the meetings of the Advisory Committee should be increased and it should be provided with adequate secretariat support.~~

5- Methods of Work:

a) The agenda:

- The agenda of the HRC is more streamlined than that of the previous Commission on Human Rights. It provides a more comprehensive and balanced treatment of all dimensions of the mandate of the HRC and represents an extremely delicate balance that should be preserved.

b) Periodicity of regular HRC sessions and duration:

- The HRC shall continue to meet in three sessions for a total of ten weeks every year, as follows:

The First Session: shall discuss all agenda items except agenda Item 6. It would last for five weeks and can be convened in February/March.

The Second Session: shall discuss all agenda items except agenda Item 6. It could be convened in June and would last three weeks.

The Third Session: shall be dedicated to the adoption of the reports of the UPR Working Group as well as a General Debate under agenda Item 6. It can be convened in September/October.

c) Program of work

General:

- Ten weeks of HRC regular sessions, six weeks of UPR sessions and other meetings of subsidiary and intergovernmental bodies throughout the year have led to a "fatigue" among delegations. This situation has also negatively affected the availability of documents in required languages in a timely manner both for the HRC and UPR Sessions.
- The HRC Program of Work should be rationalized and rendered more manageable to diminish the overload of work for delegations, and to avoid duplication and repetition throughout the annual cycle.
- The NAM respects the mandate of the High Commissioner for Human Rights as stipulated in resolution 48/141. In addition, the following should be underscored:
 - OP4 of GA Resolution 48/141 stipulates 'Decides that the High Commissioner for Human Rights shall be

the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General; within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights.....’.

- OP 5 (g) of UNGA resolution 60/251 stipulates that the Human Rights Council “Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993”

Recommendation 2 of JIU report ref. JIU/REP/2007/8, reads as follows:

“The General Assembly should instruct the High Commissioner to seek advice and views of Human Rights Council in the preparation of the proposed Strategic Framework and the associated budget requirements for human rights activities prior to finalization of these documents”.

- Op3 of GA Resolution 61/159 requests the Joint Inspection Unit to assist the Human Rights Council to monitor systematically the implementation of the said resolution concerning the composition of of the Staff of the Office of the United Nations High Commissioner for Human Rights
- Therefore, there is a need to ensure better synergy, coordination and cooperation between HRC and the OHCHR and to build a constructive working relation and dialogue between both bodies. It is also important to ensure that the Strategic Framework and the Strategic Management Plan of the Office are consistent with the agreed international human rights law instruments as well as the HRC resolutions.

Operative:

- High Commissioner shall report to the HRC only once a year at the main session of the HRC. The reports of the High Commissioner to other

~~sessions shall be restricted to new developments and challenges since the previous Council session.~~

- ~~If there is an urgent human rights situation that occur during regular HRC's sessions, then the relevant Agenda item shall be brought forward on the programme of work.~~
- ~~An item on the OHCHR draft Strategic Framework should be included in the programme of work of the Council every two years under Agenda item 2. The High Commissioner would present the draft Strategic Framework to the HRC prior to its submission to the General Assembly. The President of the HRC should send a report reflecting discussions held within HRC to the General Assembly and to the Committee on Program and Coordination as an input to their consideration of the draft strategic framework by the High Commissioner.~~
- ~~The HRC should include an item in its program of work on "The OHCHR Strategic Management Plan" every two years under Agenda item 2; where the High Commissioner would present the draft Strategic Management Plan (SMP) to the Council and an interactive dialogue shall take place between Member/Observer States and the High Commissioner. The HRC will ensure its consistency with the Strategic Framework adopted by the General Assembly and with HRC resolutions.~~

d) Special Sessions:

General

- ~~The HRC is mandated, as outlined in the provisions of the GA Resolution No. 60/251, namely under operative paragraph 5 (f) to "..... respond promptly to human rights emergencies". In light of this provision and in view of the serious human rights violations, the Council has held a number of special sessions in a timely manner to respond to a number of human rights crises and emergencies.~~
- ~~Special sessions held by the Council allowed participatory debates, were results-oriented and were geared towards achieving practical outcomes, the implementation of which were monitored and reported on at following regular sessions of the Council which has followed-up on their results.~~

e) Role of President and Bureau:

- ~~Presidential Statements should be made only after extensive consultations with States and on the basis of consensus.~~

~~The President and the Bureau shall maintain a strictly procedural and organisational role, as stipulated for in rule 10 of the Rules of Procedure.~~

f) Resolutions:

- Proliferation of resolutions and duplication with GA resolutions should be avoided as much as possible in order to allow more time for negotiations on resolutions before action, early notification of meetings, avoid the holding of parallel consultations, increasing informal contacts and discussions.
- The Council should devise a method to ensure that All States are well apprised with the outcome of the negotiations conducted in informal meetings, before the resolutions or decisions are brought to the Council for action. In other words, the first informal is usually to introduce a draft resolution which is then followed up by a more limited consultations with certain interested delegations. There should be another informal to explain the result of the consultation to the wider circle before bringing the "clean" draft resolution to the plenary. Although this might prolong the adoption of the resolution at hand, it would nevertheless enhance the sense of ownership, trust and commitment of all delegations.
- The President's open-ended information meetings on resolutions, decisions and other related business as stipulated in Paragraph 112 of the IB text shall be implemented.
- The introduction of a two third majority for the adoption of country-specific resolutions should be considered.

THIRD: OTHER ISSUES:

Human Rights coordination and mainstreaming system wide:

- OP3 of HRC resolution 60/251 provides that the Council "should also promote the effective coordination and the mainstreaming of human rights within the UN system".
- There is a need to further enhance coordination and to mainstream human rights in the UN system. HRC should consider devoting a half day panel at least once a year to interact with Heads of UN Agencies and Funds on specific human rights themes. This would enable the Council to address related issues requiring further coordination or mainstreaming system-wide. The OHCHR, as the Secretariat of the Human Rights Council, shall prepare the required documentation for the panel. The outcome of the panel could be in the form of a negotiated Presidential Statement in the Council.

~~Synergy with the Third Committee of the UNGA should be encouraged in order to avoid overlapping~~

Funding :

- The availability of working documents in due time and in the six UN languages constitutes an important challenge for the functioning of the HRC. To solve this problem, necessary funds should be allocated to the translation of these documents.
- HRC President shall consult with UNGA President on options for fast-track approval by the General Assembly of HRC resolutions with financial implications.
- HRC should make appropriate recommendations on its own budget lines and on those of its subsidiary bodies.