



## **The State of Israel's Contribution to the First Open-Ended Working Group on the Human Rights Council Review**

### **A. Introduction**

The Human Rights Council (hereinafter: the Council) was established by UNGA Resolution 60/251 (hereinafter: resolution 60/251) of March 2006, as part of a comprehensive UN reform effort headed by former Secretary General Kofi Anan. This resolution also determined that at the end of its first five years of operation, the Council is required to review and report to the General Assembly on its "work and functioning".

After almost four years of operation, it has become clear that the Council has failed to live up to the expectations which accompanied its establishment, having too quickly followed in the footsteps of its discredited predecessor, the Commission on Human Rights. The Commission on Human Rights failed primarily due to a lack of credibility, legitimacy and professionalism in its exercise of selectivity, politicization and double standards. Therefore with the establishment of the new Human Rights Council there exists an even more critical need to adopt a professional and credible agenda reflecting its founding principles as outlined in resolution 60/251.

Israel welcomes the review of the 'working and functioning' of the Council and considers the review process as a genuine opportunity warranted to bring about substantive changes in the working methods, function and composition of the Council. A real reform is needed in order to enable the Council to fulfill its mandate and play a leading role in promoting and protecting human rights around the globe.

The principles that are meant to guide the work of the Council include "universality, impartiality, objectivity and non-selectivity... without distinction of any kind and in a fair and equal manner, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights." Unfortunately, these principles are not present within many aspects of work and functioning of the Council.

In order to bring about a genuine change, the review process must seek to remedy any provision within its Institution Building package which does not correspond to the principles laid out in resolution 60/251. Any portion of the Institution Building package in noncompliance with the Council's mandate must be resolved accordingly.

The Member States of the Council must also live up to their obligations in the promotion and protection of human rights. Israel recalls that resolution 60/251 decided that "when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of their human rights and voluntary pledges and commitments made thereto." In light of the human rights records of some incumbent Member States of the Council, Israel registers its concern as to the legitimacy of the membership of the Council.

If the Council continues to be seen as a cynical tool for States, rather than a mean to advancing a responsible human rights agenda, it will undoubtedly continue to fail. Israel continues to follow closely the work of the Council with growing concern as to its lack of credibility and effectiveness in the context of both human rights and broader U.N. reform.

## **B. Concrete Proposals**

### **1. Item 7 and Human Rights Situations of Concern**

On 18 June 2007, the Council adopted the Institution Building package which identifies the “Human Rights Situation in Palestine and other occupied Arab Territories” as the 7<sup>th</sup> agenda item of the Council. The singling out of one state, Israel, in the permanent agenda of the Council for disproportionate focus in each and every session, constitutes an institutionalized discrimination and contravenes the basic principles establishing the Human Rights Council, such as operative paragraphs (2) and (4) of resolution 60/251.

**Revising the Council’s agenda to remove Item 7** is the most crucial test of the Council in order to attain true credibility and international legitimacy. The record of all states, including the State of Israel, should be subject to constructive criticism and review. However, consideration of all UN member states should be held, in an equitable and fair manner under Agenda Item 4, which is dedicated to the consideration of human rights situations of concern in any other country or region in the world. A special agenda item for one state alone stands in marked contrast to basic notions of fairness and impartiality

At the same time, **time allotment to Item 4 should be increased** to better ensure that the Council lives up to its responsibility to promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner and that the work of the Council shall be guided by the aforementioned principles: universality, impartiality, objectivity and non selectivity, constructive international dialogue and cooperation.

### **2. Special Procedures**

#### *Guidelines and Criteria*

Input of the special procedures is a necessary element of expertise for the Council. Nomination of mandate holders should be based on clearly defined professional criteria. **The work of the special procedure mandate holders, fact-finding missions and related mechanisms should be guided by relevant developed guidelines on “best practices”.**

With regard to country-specific mandates, Israel considers such mandates as essential to the work and functioning of the Council. To ensure the objectivity and credibility of its work

regarding the appointment of country rapporteurs, **transparent criteria should be formulated so as to set automatically the establishment of a mandate for such rapporteurs.** Specifically, it is vital to avoid appointing as rapporteurs individuals who have already published or promoted debated positions on the topic of the mandate.

#### *Code of Conduct*

In recent sessions of the Council and during review discussions over its conduct, cynical code of conduct claims have been raised to undermine the independence of special procedure mandate holders. The independence, impartiality, integrity and objectivity of special procedure mandate holders must be ensured. Allegations of violations of the code of conduct by a special procedure holder must be substantiated, and not exploited as an excuse to interfere with their independence or their work.

#### *Convening Special Sessions*

In order to ensure the universality of a special session, support from all geographic regions for such a session should be required. **The required threshold for convening such a session should remain one-third of the members of the Council and further include at least two (2) states from each geographic group.**

#### *Cooperation between States and Special Procedures*

States should cooperate with thematic special procedures as a vital course of action to ensure human rights are being upheld within the country. **Any sitting member state of the Council should allow special procedure mandate holders to visit the country during its membership in the event such a request so arises.**

### 3. Universal Periodic Review

#### *General Comments*

While the first round of the UPR cycle was seen by some as being a relative success, it is essential to preserve the integrity and to recall the principles underlying the UPR mechanism, including the promotion of the universality, interdependence, indivisibility, and interrelatedness of all human rights, and for the UPR to be conducted in an objective, transparent, non-selective, constructive, and non confrontational and non politicized manner.

#### *Recommendations*

The three sessions of the Council convened per year seem to be timed-well. However, the **duration of the sessions should be extended in order to accommodate all states that would like to speak** on a particular SuR. At this point in time, the IB package allots three hours of review per SuR. **Extending the three hours to four hours** would resolve the political nature surrounding the queue process, as well as address the demand to be on the speaker's list. **In**

**the alternative, Israel is open to the idea of the Council convening one session per year dedicated entirely to the adoption of UPR Working Group reports.**

**The issue of the order of the queue should also be resolved by drawing the list of speakers by alphabetical lot.**

#### 4. Independence of the OHCHR

The independence of the High Commissioner for Human Rights and the OHCHR is of the utmost importance. The status quo of the High Commissioner and the Office as an independent body of the United Nations, whose mandate covers human rights, must be maintained, and even strengthened to a higher threshold to which it now stands.

The High Commissioner must be enabled to call for special sessions as part of the review process to ensure such convening of special sessions are impartial and non politicized.

The OHCHR could be more forthright and more active in fulfilling its expert role. In furtherance of its independent mandate from the General Assembly and its legal separation from the Council, it should be frank in offering advice in human rights issues. The High Commissioner could make whatever structural changes to her office are necessary to enhance this use of her staff's expertise.

The Secretariat of the Human Rights Council and its mechanisms, both internal and external, should be transferred from the OHCHR to UNOG and placed directly under the authority of the President of the Council.