



OHCHR
Ms. Navi PILLAY
Chair Commissioner
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Geneva, 17 February 2022

Chair Commissioner Navi Pillay,

I refer to your letter dated December 29, 2021, in which you invited the Government of the State of Israel to cooperate with the Commission of Inquiry ("COI"), established by the Human Rights Council during its 30th Special Session, pursuant to Resolution S-30/1.

As this letter will highlight, it is obvious to my country, as it should be to any fair-minded observer, that there is simply no reason to believe that Israel will receive reasonable, equitable and non-discriminatory treatment from the Council, or from this Commission of Inquiry that you were appointed to lead.

Israel engages on a frequent and regular basis with a wide range of international human rights bodies as part of its commitment to the rule of law and the advancement of human rights. At the same time, we expect such bodies to act in good faith, without bias, and not in the service of a pre-determined political agenda. Regrettably, none of this can be expected from this COI.

Even a cursory review of the nature of this Commission, and the context in which it was established, demonstrates that it is designed to serve as a political tool, rather than as an impartial investigative body engaged in a legitimate inquiry on the basis of accepted and universally applied standards. This COI is sure to be yet another sorry chapter in the efforts to demonize the State of Israel, distorting the factual and legal record and hijacking the values, language and mechanisms of human rights in order to advance a partisan campaign:

1. The COI is itself a product of the systematic discriminatory treatment of Israel in the HRC. It is the ninth investigative body established against Israel – nearly a full third of all such

bodies ever created by the Council. While the world's most egregious human rights abusers receive little or no attention from the Council, Israel is the only country with a dedicated permanent agenda item, a permanent designated Special Rapporteur, and it is the subject of more condemnatory resolutions than any number of countries combined.

2. Ostensibly created in response to the conflict between Israel and the Hamas terrorist organization of May 2021, during which Hamas launched more than 4300 rockets at the Israeli civilian population, the COI's mandate and terms betray its true agenda. Unsurprisingly for anyone familiar with the record of the Council, the resolution establishing the COI makes no mention of Hamas' terrorism. Instead, it establishes an open-ended mandate that is effectively designed to investigate – in perpetuity – accusations against Israel since its inception. By mandating the investigation of so-called “underlying root causes”, the Council has cynically set the stage for the COI to make common cause with those anti-Israel organizations who do not even try to engage in genuine and balanced analysis, but rather manipulate reality and selectively target Israel in an effort to delegitimize and even criminalize its very existence, uniquely among the States of the world.

No other situation on the globe, no matter how shocking, has ever merited even a fraction of the attention to which Israel is subjected by the Council and to which has now been added an everlasting COI of unprecedented scope. With an outrageous annual budget of over 4.1 million dollars – far exceeding virtually all other COIs - the Commission is now positioned to permanently drain the resources of the United Nations to advance yet another toxic anti-Israel campaign.

3. Perhaps most telling of all, and as has been widely documented, is that all three members of the Commission, yourself included, have repeatedly taken public and hostile positions against Israel on the very subject-matter that they are called upon to “independently and impartially” investigate.¹ It is apparently of no consequence that the OHCHR's own rules and guidance on Commissions of Inquiry and Fact-Finding Missions clearly stipulate, as you are no doubt well aware, that: “*members should, in all cases, have a proven record of independence and impartiality. It is also important to ensure that the background of candidates, prior public statements or political or other affiliations do not affect their independence or impartiality, or create perceptions of bias.*”²

Thus, you are well known for personally championing an anti-Israel agenda and for numerous anti-Israel pronouncements, including the shameful libel comparing Israel to

¹ See, for example, references in the Letter of the Permanent Mission of Israel to the United Nations and other International Organizations in Geneva, to the H.E. Ambassador Nazhat Shameem Khan, President of the Human Rights Council, dated 5 October 2021 (objecting to the appointment of COI Members).

² Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law Guidance and Practice, United Nation Human Rights Office of the High Commissioner, HR/PUB/14/7, at 19, (Feb. 2015).

Apartheid South Africa, as well as advocating for the radical BDS (Boycott, Divestment and Sanction) campaign against Israel.³ Another member of the Commission, Mr. Sidoti, publicly presents himself as “working closely” with Palestinian human rights organizations,⁴ one of which provides formal legal advice to the Palestinian Authority, and he is associated with the Australian Centre for International Justice which has referred to Israel as a “settler-colonial and apartheid regime” from its very establishment, and calls for sanctions against Israeli officials and entities⁵. At the same time, the third COI member, Mr. Kothari, has, appallingly, used terms such as “ethnic cleansing” and “massacre” in relation to Israeli actions.⁶ Curiously, none of the above information appears on the Commission members’ official biography, as published on the website of the COI.

Given the longstanding institutional discrimination against Israel in the Human Rights Council, anyone concerned with the fairness of this process might have expected that the Council would ensure respect for its own rules and that members appointed to an “independent and impartial” investigative body were free of any conceivable charge of bias. Instead, the opposite is the case, with members appointed because they were tainted by bias, and based on their history of activism and hostile accusations against Israel, so as to guarantee a politically motivated outcome that is tailored in advance. Tepid, pro-forma, assurances from the COI of impartiality, and a professed intention to investigate all relevant parties, do nothing to remedy the inherent, indeed deliberate, prejudice embedded in the COI’s mandate, composition and agenda.

Against this background, it is hardly surprising that over 20 States - comprising half of the Council’s members and including notable democracies currently on the Council - withheld their support for the establishment of the COI. Nor is it surprising that a constant and growing number of countries, as well as acting and former UN Secretaries-General, have recognized the need to speak out and act against the anti-Israel discrimination at the United Nations.

³ “Apartheid... is happening in Israel... I hope that the Palestinian struggle to end colonization gains this kind of momentum, especially in the civilian campaign of BDS, Boycott, Divestment, and Sanctions”.

Africa4Palestine, *Judge Navi Pillay; Former UN High Commissioner on Human Rights*, United Nations International Day of Solidarity with the Palestinian People Seminar, YouTube (Dec. 14, 2017), <https://www.youtube.com/watch?v=nF61qfb5J-k>. See also, e.g., Press Release, United Nations Human Rights Office of the High Commissioner, *UN human rights chief condemns violent interception of Gaza aid flotilla* (May 31 2010), <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10079&LangID=E>.

⁴ Chris Sidoti, *The importance of a national human rights institution for Palestine*, ICHR In media (Nov. 14 2018) <https://ichr.ps/en/1/14/510/THE-IMPORTANCE-OF-A-NATIONAL-HUMAN-RIGHTS-INSTITUTION-FOR-PALESTINE-By-Chris-Sidoti.htm>.


⁵ Australian Center for International Justice, *Australia’s international obligations relating to trade with Israel Joint NGO Submission to the Department of Foreign Affairs and Trade* (may 7, 2021) https://acij.org.au/wp-content/uploads/2021/05/ACIJ-and-PHROC-Submission-DFAT-Trade-with-Israel-FINAL_Fix1.pdf.

⁶ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari Addendum Visit to the occupied Palestinian territories (5-10 January 2002), E/CN.4/2003/5/Add.1, (June 12, 2002), <https://undocs.org/E/CN.4/2003/5/Add.1>.

It is particularly shameful that this COI's predictable and noxious anti-Israel findings will only contribute to the polarization between Israelis and Palestinians, distancing them further from the very steps required to advance the cause of genuine peace and reconciliation between them. It is no less shameful that this COI both reflects and compounds the moral bankruptcy of the Human Rights Council's obsessive bias against Israel, causing lasting harm to the very values of human rights and respect for the rule of law that it was intended to uphold.

At the expense of coming to the aid of the victims of gross human rights violations worldwide, the Council is content, through the establishment of this COI, to squander its resources and its credibility, and to abandon any plausible claim to independence and impartiality, all in the service of politically expedient anti-Israel propaganda. It should be of no wonder that Israel, and anyone who actually cares about human rights and the rule of law, will treat the establishment of the COI, its functioning and its findings accordingly.

Sincerely,



Meirav Eilon Shahar
Ambassador
Permanent Representative

Cc: H.E. Mr. Federico VILLEGAS
President of the Human Rights Council