



**Australian Government**  

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**Department of Foreign Affairs and Trade**

File No.: 18/1891

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**Subject: The role of technical assistance and capacity-building in fostering ‘mutually beneficial co-operation’ in promoting and protecting human rights**

The Australian Government has the pleasure to provide the following information to assist in the preparation of the Human Rights Council Advisory Committee’s report.

***Overview***

In Australia’s view, this request faces fundamental threshold difficulties, as ‘mutually beneficial co-operation’ is not an agreed multilateral concept in human rights and development contexts, but rather a domestic concept of one particular State. Use of the term is likely to cause confusion and could undermine clear long established and agreed principles with regard to the promotion and protection of human rights, technical assistance and capacity-building, and development co-operation. It may also narrow the well-understood concept of ‘international co-operation’.

While technical assistance and capacity building plays an important role in promoting and protecting human rights, we do not see a role for ‘mutually beneficial co-operation’ in this discussion. Indeed, the term appears intended to embed a transactional approach to UN processes: rather than supporting the UN human rights pillar, it instead promotes a quid pro quo on the provision of technical assistance and capacity building.

***Questions on the phrase ‘mutually beneficial co-operation’***

Australia reiterates its concern, expressed during the 37<sup>th</sup> Session of the Human Rights Council, that the phrase ‘mutually beneficial co-operation’ appears to prioritise state-to-state relations; this is inappropriate in the human rights context.<sup>1</sup> Human rights belong to all individuals,<sup>2</sup> and are universal, indivisible, interdependent and interrelated.<sup>3</sup> States hold primary responsibility for promoting and protecting the human rights of individuals. ‘Mutually beneficial co-operation’ between states is not a relevant consideration when promoting and protecting human rights.

The linking of technical assistance and capacity-building with ‘mutually beneficial co-operation’ in this request raises further concerns. For example, where the Human Rights Council has passed a resolution under Item 10 requesting the provision of technical assistance and capacity building by OHCHR or an associated special procedure, what impact would the concept of ‘mutually beneficial co-operation’ have in this context? For whom is this co-operation intended to be ‘mutually beneficial’? Usage of this term is likely to prompt confusion, rather than clarity.

In the broader development context, ‘mutually beneficial co-operation’ suggests that development co-operation may only take place where it is ‘mutually-beneficial’. We are concerned that this may be a pretext for conditionality in development co-operation. Australia’s technical assistance and capacity-building initiatives are concessional in nature (grants and concessional loans) without

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<sup>1</sup> <https://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/statement-on-promoting-mutually-beneficial-cooperation-in-the-field-of-hr-23-march-2018.pdf>

<sup>2</sup> Charter of the United Nations, art 1(3), International Covenant on Economic, Social and Cultural Rights, preamble.

<sup>3</sup> Vienna Declaration and Programme of Action, OP1.5.

conditionality. They are delivered most frequently through our development co-operation program, governed by the rules of Official Development Assistance as defined by the OECD Development Assistance Committee. The objectives of those initiatives are to promote and specifically target the economic development and welfare of developing countries, not to deliver 'mutually beneficial co-operation' between states.

We note that, while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.<sup>4</sup>

### ***The concept of international co-operation***

Unlike 'mutually beneficial co-operation', the concept of 'international co-operation' to promote and protect human rights is well understood in the international human rights system.<sup>5</sup> A number of international instruments provide a framework for States to engage in international co-operation to promote and encourage respect for human rights generally, as well as to enable States to comply with their own human rights obligations.

For example, the *Charter of the United Nations* (UN Charter) states one of the purposes of the UN is to 'achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all'.<sup>6</sup> Similarly the *Vienna Declaration and Programme of Action* states that 'enhancement of international co-operation in the field of human rights is essential for the full achievement of the purposes of the United Nations'.<sup>7</sup> It also references the need for States and international organisations to cooperate with civil society.<sup>8</sup> The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) states that each State Party 'undertakes steps, individual and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights in ICESCR.<sup>9</sup>

Such references do not create binding obligations on States Parties to provide international assistance and co-operation. But they can be understood as a mechanism to ensure the full realisation of the human rights of all individuals by States, where States engage with the international community to take advantage of its resources as an additional means to support this realisation, such as through technical assistance and capacity-building.

*The Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities* (CRPD) also reference international co-operation. For example the CRPD states that 'States Parties recognize the importance of international co-operation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organisations and civil society, in particular organisations of persons with disabilities'.<sup>10</sup> Encouraging international co-operation to assist a State does not exonerate the State from fulfilling its human rights obligations within its territory.<sup>11</sup>

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<sup>4</sup> Vienna Declaration, OP1.10.

<sup>5</sup> UN Charter, arts 1(3), 55, 56; ICCPR, arts 2, 11, 15; *Convention on the Rights of the Child*, preamble, arts 4, 45; *Convention on the Rights of Persons with Disabilities*, arts 32, 37–38; *Universal Declaration of Human Rights*, preamble, art 22; Vienna Declaration; *General Assembly Resolution 60/251*.

<sup>6</sup> UN Charter, art 1(3).

<sup>7</sup> Vienna Declaration, OP1.

<sup>8</sup> Vienna Declaration, OP13.

<sup>9</sup> ICESCR, art 2(1).

<sup>10</sup> CRPD, art 32.

<sup>11</sup> See for example, CRPD article 32(2).

In the resolution which established the HRC, the General Assembly recognised that ‘the promotion and protection of human rights should be based on the principles of co-operation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings’.<sup>12</sup> The General Assembly decided that the work of the Council shall be guided by ‘constructive international dialogue and co-operation, with a view to enhancing the promotion and protection of all human rights’<sup>13</sup> and that it should work in close co-operation with Governments, regional organisations, national human rights institutions and civil society’<sup>14</sup>. The HRC also emphasised that decisions on special mandates should take into account the principles of international co-operation and dialogue aimed at strengthening the capacity of States to comply with their human rights obligations.<sup>15</sup>

The HRC has a mandate, *inter alia*, to address situations of violations of human rights, including gross and systematic violations<sup>16</sup>, undertake a universal periodic review<sup>17</sup> and to contribute, through dialogue and co-operation, towards the prevention of human rights violations and respond promptly to human rights emergencies.<sup>18</sup> States should cooperate with the HRC by providing access to special procedures and working with other States through the HRC to identify situations of violations of human rights, including in particular country situations.

As can be seen in the examples provided above, international co-operation can encompass co-operation between States, as well as between States and the UN system, international organisations, national human rights institutions (NHRIs) and civil society. It is difficult to see how ‘mutually beneficial cooperation’ – a concept which relates to state-to-state relationships – would be applicable in this context. It could limit the breadth of cooperation available to a State compared to those included in the examples above.

### **Conclusion**

Technical assistance and capacity building play an important role in promoting and protecting human rights, but we do not see a role for ‘mutually beneficial co-operation’.

‘Mutually beneficial co-operation’ is not an agreed multilateral concept in human rights and development contexts, but rather a domestic concept of one particular State.

It adds little to international human rights discourse, and may conflict with well-established, existing concepts. In particular, in the human rights context, it appears to provide for an inappropriate primacy for state-to-state relations.

With regard to development co-operation and technical assistance, it may encourage conditionality, including in the provision of technical assistance and capacity-building under the auspices of Item 10 of the HRC agenda.

If States were to apply ‘mutually beneficial co-operation’ in the context of ‘international cooperation’, it may impose new, untested constraints on this otherwise well-established concept.

We recommend the Advisory Committee consider these issues carefully in completing its study under the terms of HRC Resolution 37/23.

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<sup>12</sup> A/RES/60/251, PP10.

<sup>13</sup> A/RES/60/251, OP4.

<sup>14</sup> A/RES/60/251, OP5(h).

<sup>15</sup> A/HRC/RES/5/1, OPs 56, 63.

<sup>16</sup> A/RES/60/251, OP3.

<sup>17</sup> A/RES/60/251, OP5(e).

<sup>18</sup> A/RES/60/251, OP5(f).