



New Zealand submission to the Human Rights Advisory Committee on ‘The role of technical assistance and capacity building in fostering mutually beneficial cooperation in promoting and protecting human rights’

1. The Human Rights Council Advisory Committee, through resolution 37/23, has been tasked to conduct a study on the role of technical assistance and capacity-building in fostering ‘mutually beneficial cooperation’ in promoting and protecting human rights. In this context, UN member States and others have been invited to provide views. This submission reflects the views of the New Zealand Government to assist the Advisory Committee in drafting the report.

2. ‘Mutually beneficial cooperation’ does not have an inter-governmentally agreed definition. The term has appeared in voted resolutions on the right to development from 2006¹ onwards in a very narrow context, but most prominently it was presented as a new concept in the Human Rights Council in resolution 37/13. We are unclear as to how ‘mutually beneficial cooperation’ differs from ‘international cooperation’, and what if any, value there might be in the consideration of the concept. In our view the Human Rights Council Advisory Committee should carefully consider existing international human rights law on international cooperation, including the issues outlined below.

3. Article 1 of the UN Charter sets out a framework for international cooperation, stating that one of the purposes of the UN is:

“To achieve international cooperation 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”.

Chapter IX, entitled ‘International Economic and Social Cooperation’ provides the relevant detail. Under Article 56 of the Charter of the United Nations, member States pledge:

“to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all”.

4. According to Article 22 of the Universal Declaration on Human Rights:

“Everyone . . . is entitled to realisation, through national effort and international cooperation . . . of the economic, social and cultural rights indispensable for his dignity and free development of his personality”.

5. Additionally, interpretations of the human rights obligations relating to international cooperation and assistance are elaborated in human rights treaties (in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR)) and by the views expressed by relevant human rights treaty body monitoring bodies². For example, these terms have been considered in some

¹ A/C.3/61/L.34 adopted by a recorded vote of 126 (Y)-51(N)-1(A) on 28 November 2006

² See e.g. Committee on Economic, Social and Cultural Rights General Comment No. 2 (International Assistance), General Comment No.3: (the nature of States parties’ obligations); CESCR, Statement: An Evaluation of the Obligation to Take Steps to the ‘Maximum of Available Resources’ Under an Optional Protocol to the Covenant, UN Doc E/C.12/2007/1 (10 May 2007) see in particular paras 5, 8, 11; Committee on the Rights of the Child General Comment 5 (General Measures of Implementation) paras 60 - 64, General Comment No. 15 (right to health) para 34;

detail in the Covenant on Economic, Social and Cultural Rights, and it is also included in the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities.

6. In its General Comment No. 3 on The Nature of States Parties' Obligations (Art.2 Para.1 of the Covenant), the Committee on Economic, Social and Cultural Rights stated that:

"in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus the realisation of [economic, social and cultural rights] is an obligation of all states. It is particularly incumbent upon those States which are in a position to assist others in this regard . . . in the absence of an active programme of international assistance and cooperation on the part of all those States that are in position to undertake one, the full realisation of [economic, social and cultural rights] will remain an unfulfilled aspiration in many countries".

7. ICESCR Article 2(1) considers the fact that some steps required of states will be taken 'through international assistance and co-operation, especially economic and technical'. In this regard, the phrase 'to the maximum of its available resources' refers to both the resources existing within a State as well as those available from the international community through international cooperation and assistance. To the extent that 'mutually beneficial cooperation' leads to improved economic development, it may increase the maximum available resources of a State which should therefore lead to improved implementation of the 'progressively realizable' elements of certain economic, social and cultural rights.

8. The Committee on Economic, Social and Cultural Rights has expressed the view that there is a minimum core obligation to ensure the minimum essential levels of each of the rights for all individuals³. Core obligations are not subject to the notions of progressive realisation and resource availability. Accordingly, even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances and on a non-discriminatory basis. The core obligations and progressive realisation means that economic development *per se* cannot be considered to have a positive impact on human rights unless the development is undertaken in a way that does not violate the rights of individuals, and if the economic benefit and increased resources are directed by the State towards fully realising the rights of individuals

9. In our view the Declaration on the Rights to Development (1986), and the Vienna Declaration and Programme of Action (1993) represent the inter-governmentally agreed parameters on the interrelationship of international cooperation, human rights, and development (although noting that not all countries supported the Declaration on the Right to Development, and Article 3(3) referring to 'new international economic order' remains contentious). Section C of the Vienna Declaration and Programme of Action entitled 'Cooperation, development and strengthening of human rights' is particularly relevant. Key provisions of these documents that may assist the Advisory Committee study are listed in annex 1.

³ Committee on Economic, Social and Cultural Rights, General Comment No.3: (the nature of States parties' obligations), para 10

10. Finally, we note the important work that OHCHR has undertaken on a human rights-based approach to development issues, which includes: the key principles of universality, indivisibility and interdependence of all human rights; and the principles of non-discrimination & equality, transparency, participation & inclusion, and accountability & the rule of law.

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New Zealand Permanent Mission to the United Nations, Geneva

Annex 1: Declaration on the Right to Development & Vienna Declaration and Programme of Action

A. Declaration on the Right to Development – adopted by GA resolution 41/128 of 4 December 1986

PP2 Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom

PP10 Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia , by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

PP13 Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development

PP14 Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3

3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development...

Article 4

1. States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

Article 6

1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

2. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

3. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.

B. Vienna Declaration and Programme of Action - adopted by the World Conference on Human Rights in Vienna on 25 June 1993

PP4 Reaffirming the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

PP16 Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,

I

1.....In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

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.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

11.

....Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual,

and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.

13. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

18.

...Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

21. ... International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

II

B. Equality, dignity and tolerance

...

4. The rights of the child

47. The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty.

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against

female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

II

C. Cooperation, development and strengthening of human rights

66. The World Conference on Human Rights recommends that priority be given to national and international action to promote democracy, development and human rights.

67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes.

68. The World Conference on Human Rights stresses the need for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others, broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programmes.

69. The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That programme should make available to States assistance for the implementation of plans of action for the promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed programme.

71. The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.

72. The World Conference on Human Rights reaffirms that the universal and inalienable right to development, as established in the Declaration on the Right to Development, must be implemented and realized. In this context, the World Conference on Human Rights welcomes the appointment by the Commission on Human Rights of a thematic working group on the right to development and urges that the Working Group, in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommending ways and means towards the realization of the right to development by all States.

73. The World Conference on Human Rights recommends that non-governmental and other grass-roots organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate, activities and implementation relating to the right to development and, in cooperation with Governments, in all relevant aspects of development cooperation.

74. The World Conference on Human Rights appeals to Governments, competent agencies and institutions to increase considerably the resources devoted to building well-functioning legal systems able to protect human rights, and to national institutions working in this area. Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programmes, including resource banks of information and personnel with expertise relating to the strengthening of the rule of law and of democratic institutions.

75. The World Conference on Human Rights encourages the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights.

76. The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request assistance for such purposes as regional and subregional workshops, seminars and information exchanges designed to strengthen regional arrangements for the promotion and protection of human rights in accord with universal human rights standards as contained in international human rights instruments.

77. The World Conference on Human Rights supports all measures by the United Nations and its relevant specialized agencies to ensure the effective promotion and protection of trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. It calls on all States to abide fully by their obligations in this regard contained in international instruments.