

## **ANNEX: KEY CONCERNS WITH DRAFT RESOLUTION A/HRC/43/L.31 ON PROMOTING MUTUALLY BENEFICIAL COOPERATION IN THE FIELD OF HUMAN RIGHTS**

This annex recaps the key concerns our organisations<sup>1</sup> have in relation to draft resolution A/HRC/43/L.31, all of which were raised by several States and/or civil society organizations during the informal negotiations held in March 2020.

### **“MUTUALLY BENEFICIAL COOPERATION FOR HUMAN RIGHTS”**

Significant concerns were raised by a number of stakeholders during the informal negotiations in March 2020 (as well as in 2018 in the context of the negotiation of resolution 37/23<sup>2</sup>) on the lack of clarity and definition of the key term: “mutually beneficial cooperation”.

While there remains no agreed definition, China’s submission to the HRC Advisory Committee on this issue explains that the resolution promotes “the construction of a new type of international relations,”<sup>3</sup> suggesting a departure from the consensus texts at the core of the United Nations human rights system.

It is also increasingly becoming clear that the government of China is using this vague term to promote an approach of “negotiations” between States towards outcomes that would benefit them, as opposed to outcomes focused on accountability and the respect, fulfilment, protection and promotion of human rights of individuals or protected groups. We find this approach deeply problematic and a major threat to the human rights architecture. Human rights and states’ obligations on human rights cannot be negotiated to ensure a “mutually beneficial” outcomes for States. To the contrary, human rights are non-negotiable, inherent to all human beings. State’s duty to respect, protect, fulfil and promote them are legal obligations, enshrined in international law. One of the three pillars of the UN’s mandate is to ensure the universal respect, protection, fulfilment and promotion of human rights, not to negotiate legal obligations in place to guarantee them.

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<sup>1</sup> African Centre for Democracy and Human Rights Studies, Amnesty International, Asian Forum for Human Rights and Development (FORUM-ASIA), Cairo Institute for Human Rights Studies, Chinese Human Rights Defenders, CIVICUS: World Alliance for Citizen Participation, Commonwealth Human Rights Initiative, Conectas Direitos Humanos DefendDefenders (East and Horn of Africa Human Rights Defenders Project), Human Rights in China, Human Rights Watch, International Commission of Jurists, International Federation for Human Rights (FIDH), International Service for Human Rights, Southern African Human Rights Defenders Network, World Organisation against Torture (OMCT).

<sup>2</sup> HRC resolution 37/23 , Promoting mutually beneficial cooperation in the field of human rights, adopted as orally revised by a recorded vote (28 to 1, with 17 abstentions), 54th meeting, 23 March 2018, available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/37/23](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/37/23).

<sup>3</sup> Reply to the Questionnaire of the Human Rights Council Advisory Committee on the Role of Technical Assistance and Capacity Building in Fostering Mutually Beneficial Cooperation submitted by China (“China’s submission to the Advisory Committee”), p. 1, available at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/TechnicalAssistance/China\\_English.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/TechnicalAssistance/China_English.pdf).

## **UNDERMINING THE HRC'S MANDATE TO ADDRESS HUMAN RIGHTS VIOLATIONS**

Another major concern is that the resolution appears to call into question the core mandate of the HRC to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.”<sup>4</sup>

The Advisory Committee report calls on States to “avoid applying *any pressure* to secure cooperation,” and even to avoid “preaching *so-called* ‘universal’ values” (emphasis added). Instead, it recommends that technical assistance and capacity-building be “dispensed in line with the principles of the Charter of the United Nations, in particular the principles of sovereignty and non-intervention,” and “only at the request” of States concerned.

This position, reiterated by the draft resolution (pp.4), undermines the delicate balance struck by years of careful negotiations, from UNGA resolution 60/251, to HRC resolution 5/1, and the commitment to universality and indivisibility of human rights as underlined by the Vienna Declaration. It also ignores the reality that the cause of serious violations may often be political in nature, rather than merely a lack of knowledge or resources.

In essence, the resolution seeks to reframe the international human rights system as a forum for “non-confrontational” dialogue to benefit, first and foremost, the duty-bearers (i.e. states) rather than the rights-holders.

While genuine dialogue and cooperation are the ideal, efforts to ensure that human rights are fulfilled, promoted, respected and protected may be uncomfortable and, at times, lead to confrontation among States, or between States and members of civil society, particularly where gross and systematic human rights violations are ongoing. The HRC, in line with its clear mandate and responsibility, must be defended as the world’s forum for those difficult conversations to be had, which are needed now more than ever. It must continue to fulfil its clear mandate to respond to human rights violations even where dialogue and cooperation with the State concerned are not possible.

To recast the system as one in which states are not challenged, and in which domestic human rights issues are not addressed at the international level, would clearly not be in keeping with the HRC’s clear mandate to respond to human rights violations. States committed to the effective functioning of the international human rights system, and those committed to preserving the delicate balance achieved in the IBP, should be deeply concerned by this.

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<sup>4</sup> UNGA resolution 60/251, op. cit.

## INTERNATIONAL COOPERATION NEEDED NOW MORE THAN EVER

At this moment of global crisis, the success of efforts to address the huge challenges created and exacerbated by the COVID-19 pandemic rely on a commitment to principled multilateralism and international cooperation and assistance. As noted in the PRST adopted by consensus on 29 May 2020, “COVID-19 has become a global pandemic that can only be countered effectively through international cooperation, unity, solidarity and collective action, based on a multilateral approach and strong international institutions.”<sup>5</sup>

In setting out the HRC’s mandate, the General Assembly (GA) clearly identified “constructive international dialogue and cooperation” as one of four principles to guide the HRC’s work “*with a view to enhancing the promotion and protection of all human rights*”<sup>6</sup> (emphasis added). In this framing, constructive dialogue and cooperation are not an end in themselves, but a means to an end.

Draft resolution A/HRC/43/L.31, however, does not appear to promote constructive engagement between States and civil society or human rights mechanisms *with a view to enhancing the promotion and protection of human rights*. Rather, the resolution presents “mutually beneficial cooperation” between States – and by civil society and mechanisms *with States* – as the ultimate objective in itself (see pp.3).

While this initiative presents itself as being about cooperation, it is a deeply divisive and polarising initiative, pushing forward one singular vision of the direction of the human rights pillar at the expense of the consensus carefully forged among States over decades.

Our organisations understand credible “dialogue and cooperation” on human rights to mean good-faith engagement on the part of States and a willingness to be self-reflective and self-critical, all in order to benefit fully from the expertise and support of the HRC and its mechanisms. True “cooperation and dialogue” means a willingness on the part of States to cooperate with the HRC, the UPR, Special Procedures and other human rights mechanisms to address challenges faced and correct mistakes made.

Such mechanisms are essential, and their work should not be rejected based on aggressive assertions of national sovereignty. The text of the draft resolution, however, fails to recognize this, instead noting that “...each State has the inalienable right to choose freely and develop, in accordance with the sovereign will of its people, its own political, social, economic and cultural systems, without interference from any other State or non-State actor, in strict conformity with the Charter, the Universal Declaration of Human Rights and other relevant international instruments” (pp.11).

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<sup>5</sup> HRC PRST A/HRC/43/L.42, Human rights implications of the COVID-19 pandemic, adopted through silence procedure, 29 May 2020, available in draft as adopted at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/43/L.42](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/43/L.42).

<sup>6</sup> GA resolution 60/251, operative paragraph 4 (emphasis added).

Credible “dialogue and cooperation” on human rights also means recognizing the important complementary role of other stakeholders engaging with the HRC and governments, such as civil society organisations, human rights defenders, journalists and National Human Rights Institutions (NHRIs). It is essential that these stakeholders are able to participate, cooperate and engage in dialogues with the HRC in a safe environment and without undue hindrance or fear of reprisal. But the main sponsors ignored proposals to include in this resolution a reference to the need to ensure an enabling space for all stakeholders to participate in, cooperate and engage in dialogue with the HRC and its mechanisms without fear of reprisals.<sup>7</sup> The meeting that the resolution proposes to convene at HRC46 (pp.8) also appears to exclude civil society and other key stakeholders from the discussion.

We thus urge all States to recommit to genuine dialogue and cooperation with a view to enhancing the promotion and protection of human rights and finding global solutions to the global challenges faced in the context of the current pandemic. In the context of the HRC, such dialogue and cooperation must be with a view to enhancing the promotion and protection of human rights and the fulfilment of the HRC’s mandate.

## **RECOMMENDATIONS FOR ENGAGEMENT AS HRC43 RESUMES**

We urge States committed to protecting, preserving and strengthening the international human rights system on the basis of the careful consensus achieved with the HRC’s IBP to reject the present initiative by working together to ensure a vote is called and by voting against.

It is particularly important to have a broad cross-regional coalition of States working together to address this threat. In this regard, we call on the group of States that signed onto the HRC membership pledge to work together to oppose the resolution as a matter of principle, given its clear intention to overturn and undermine the system.

Changes to the language of the resolution alone would not change the underlying nature of this initiative, which evidently seeks to reframe the international human rights system as a forum for “non-confrontational” dialogue to benefit, first and foremost, States – and not rightsholders. We believe this resolution cannot be salvaged by mere re-drafting, but that it must be stopped in its tracks.

In addition, we call on states to put on record clear objections highlighting that this resolution does not reflect the consensus of the international community. Specifically, we urge this group of States to work together to:

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<sup>7</sup> Language put forward during the 37th session, drawn from operative paragraph 8 of [GA resolution 72/247](#) (adopted by consensus) which was ignored by China was an additional preambular paragraph as follows: “*Condemns all acts of intimidation and reprisal by State and non-State actors against individuals, groups and organs of society, including against human rights defenders and their legal representatives, associates and family members, who seek to cooperate, are cooperating or have cooperated with [the Human Rights Council and its mechanisms] and strongly calls upon all States to give effect to the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, [including the Human Rights Council and its mechanisms].*”

- ensure a vote is called on behalf of the group when the draft resolution is presented for adoption at the HRC;
- commit as a matter of principle to vote against the resolution;
- deliver an explanation of vote in defence of the HRC's mandate, underlining the importance of its mandate to address violations and engage in difficult discussions, particularly in the current context.