

## ABHANDLUNGEN / ARTICLES

### On the right(s) track? United Nations (Specialized) Agencies and the Use of Human Rights Language

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#### A. Introduction

Based on Chapter IX of the Charter of the United Nations, the United Nations (UN) and its specialized agencies play a key role in international economic and social cooperation. This role covers a broad spectrum of areas and topics, such as the promotion of higher standards of living, solutions to health related problems and universal respect for and observance of human rights.<sup>1</sup> Already back in 1998 the UN Secretary-General called upon all entities within the UN system to mainstream human rights into their activities and programs.<sup>2</sup> Since then many UN agencies have adopted a human rights-based approach which is supposed to underlie the carrying out of their mandate. Part of that approach is to clearly spell out the specific human rights that are at stake and frame policies and programs by using human rights language. The question that will be addressed in this article is to what extent UN (specialized) agencies have adopted and are using language on economic, social and cultural rights (hereafter: esc-rights) as a framework or basis for their policies and programs. The underlying presumption is that the implementation of esc-rights would be strengthened if 'rights language' is used in the practice of these organizations. 'Rights language' is defined as an explicit reference to universal human rights (esc-rights and civil and political rights) and to right holders and duty bearers. 'Practice' can be seen as either internal (the institutional structure, policy documents and the training of staff), or external (country programs, awareness raising and promotional activities and publications). In short, three sub-questions have informed the research for the present article: 1. Have UN (specialized) agencies adopted esc-rights language, and if so, in what manner? 2. What is the (legal) meaning of this approach? 3. How have esc-rights been implemented in practice by these agencies? The method applied for researching these questions is a content analysis of official policy documents, website information, programs and projects adopted by the competent bodies of these UN agencies, which are mainly available on the Internet.

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1 Article 55 UN Charter.

2 Report of the UN Secretary-General, Coordinated Follow-up and Implementation of the Vienna Declaration and Programme of Action, UN doc. E/1998/60.

## B. UN Agencies and Rights Language

The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains a number of provisions on the role of specialized agencies. For example, Article 18 stipulates that the Economic and Social Council of the UN ‘may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities’.<sup>3</sup> The idea was, as Wilfred Jenks put it, that the specialized agencies would develop as ‘the executing agencies of the Covenant with a major share of the responsibility for its effective implementation’.<sup>4</sup> Philip Alston was of the view that the UN specialized agencies ‘have a fundamental responsibility to promote the realization of human rights in all the facets of their work’.<sup>5</sup> So far, however, most specialized agencies, with the exception of the ILO, have not established close working relationships with the UNCESCR. However, occasionally there are relationships between the UNCESCR and UNESCO and the WHO.<sup>6</sup>

As a response to the call from the UN Secretary-General to mainstream human rights through programs and activities, a number of UN agencies working in the field of development cooperation, the United Nations Development Group (UNDG), adopted a common understanding of a human rights based approach which should guide its programming for development.<sup>7</sup> This Common Understanding stipulates that all programs of development cooperation should further the realization of human rights, but also that human rights standards and principles should guide all development programming and cooperation. These human rights principles include: universality and inalienability of human rights; indivisibility, interdependence and inter-relatedness of all rights; non-discrimination and equality; participation and inclusion; accountability and the rule of law. For present purposes it is important that the Common Understanding explicitly states that ‘development cooperation contributes to the development of the capacities of ‘duty bearers’ to meet their obligations and/or ‘right holders’ to claim their rights’.<sup>8</sup> As right holders the Stamford Statement identifies individuals and

3 See also Articles 19-24 ICESCR.

4 *Wilfred Jenks*, *A New World of Law? A Study of the Creative Imagination in International Law*, London 1969, p. 54.

5 *Philip Alston*, The United Nations’ Specialized Agencies and Implementation of the International Covenant on Economic, Social and Cultural Rights, *Columbia Journal of Transnational Law* 18 (1979-1980), p. 117.

6 *Fons Coomans*, The International Covenant on Economic, Social and Cultural Rights – From Stepchild to Full Member of the Human Rights Family, in: Felipe Gómez Isa and Koen De Feyter (eds.), *International Human Rights Law in a Global Context*, Bilbao 2009, p. 303. UNICEF has close working relationships with the UN Committee on the Rights of the Child.

7 The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies (the ‘Stamford Statement’), adopted at a meeting which was held at Stamford, Connecticut, 3-5 May 2003, available online at <http://www.undg.org/index.cfm?P=221> (last visit 16 August 2012).

8 Stamford Statement, note 7. Agencies often undertake a Capacity Gap Analysis which is part of the human rights-based approach.

groups, and States and non-state actors as duty bearers. This Statement clearly uses human rights language, but it is still quite general and vague in terms of its legal meaning. It has been argued that the use of the concepts of 'duty bearers' and 'obligations' in the context of a Human Rights Based Approach, when applied outside the context of the State, tends 'to refer to roles and responsibilities relevant for the effective implementation of rights rather than to any form of formal legal responsibility'.<sup>9</sup> The rights language as used here would therefore probably mean that the UN agencies do not have legal obligations themselves. What it does mean is a contribution to clarifying and strengthening linkages at the conceptual, legal and policy levels between human rights and poverty reduction strategies and goals, such as the Millennium Development Goals.<sup>10</sup> The UNCESCR has gradually begun to lay down in its General Comments that actors other than States also have obligations under the ICESCR. The Committee in this respect focuses on the role of specialized agencies, in particular the international financial institutions and the WTO.<sup>11</sup> A parallel development is the work of the International Law Commission (ILC) on drafting articles on the responsibility of international organizations as subjects of public international law.<sup>12</sup>

Since approximately 2003 a number of UN agencies have adopted more detailed strategies aimed at integrating human rights into their policies and programs as part of a human rights-based approach.<sup>13</sup> A few examples will suffice to describe this trend. On a number of occasions the World Health Organization (WHO) has decided to strengthen the capacity of the organization and its member States to integrate a human rights-based approach. This means, for example, that the Secretariat will focus on incorporating human rights in the work of the organization when devising common terminology, tools and advocacy materials, but also making efforts to enlarge and strengthen the knowledge base, expertise and implementation strategy of the organization.<sup>14</sup> UNESCO, in 2003, adopted a Strategy on Human Rights, whose aim is, *inter alia*, to integrate a human rights-based approach into all UNESCO activities and projects; to intensify in-house coordination of human rights activities, particularly those within

9 Michael O'Flaherty, Towards Integration of United Nations Human Rights Treaty Body Recommendations: The Rights-Based Approach Model, in: Mahood Baderin and Robert McCorquodale (eds.), *Economic, Social and Cultural Rights in Action*, Oxford 2007, p. 35, footnote 53.

10 UNDG, ECHA (Executive Committee on Humanitarian Affairs) and OHCHR, *Strengthening Human Rights-Related United Nations Action at Country Level - Plan of Action 2003*, p. 11 (on file with the author).

11 See, for example, General Comment no. 18 on the right to work (Art. 6 ICESCR), UN doc. E/C.12/GC/18, paras 52-54, focusing on the role of the ILO, private enterprises and trade unions; General Comment no. 21 on the right to take part in cultural life (Art. 15 para 1(a)), UN doc. E/C.12/GC/21, para. 76, focusing on the role of UNESCO, WIPO, ILO, FAO and WHO.

12 See International Law Commission, *Draft Articles on the Responsibility of International Organizations*, UN doc. A/CN.4/L.778 (30 May 2011).

13 For a brief overview and discussion of this development see, André Frankovits, *The Human Rights Based Approach and the United Nations System*, Paris 2006.

14 See the WHO *Engaging for Health, Eleventh General Programme of Work 2006-2015*, available at: [www.who.int](http://www.who.int) (visited 29 April 2011).

UNESCO's competence; to increase awareness and knowledge on the part of UNESCO staff of human rights standards, major challenges to human rights and human rights-based programming.<sup>15</sup> Several staff training seminars on human rights standards and programming took place as from 2005. A prominent role in using rights language is played by UNICEF, a development which already dates back to 1998.<sup>16</sup> UNICEF's mission statement stipulates that the organization is guided by the Convention on the Rights of the Child and that it strives to establish children's rights as enduring ethical principles and international standards of behaviour for the protection of children.<sup>17</sup> UNICEF's human rights based approach means that its 'programmes of cooperation support those who have obligations to respect, protect and fulfil human rights, by helping them develop their capacities to do so. And UNICEF helps those with rights to develop their capacity to claim rights'.<sup>18</sup> Also UNDP already has a long history in integrating a human rights-based approach into its policies, programs and processes. It has played a key role in the further development of the UN Common Understanding and has been promoting its global acceptance.<sup>19</sup> Since 1998 its role has been supportive, protective and promotional for carrying out programs anchored in human rights. For example, the overall objective of its most recent Global Human Rights Strengthening Programme (2008-2011) is to fully integrate human rights into UNDP policies, programmes and processes.<sup>20</sup> UNDP's Strategic Plan 2008-2011 provides that UNDP should 'uphold universal United Nations norms and standards, including those related to human rights, UNDP does not have any normative or monitoring role with regard to human rights'.<sup>21</sup> According to the Strategic Plan UNDP should take 'a human development based approach' to programming. The reference to 'rights' was not included, but the practical meaning of the difference is likely to be marginal.<sup>22</sup> Since 2003 UNDP has been using detailed Working Guidelines for Human Rights-Based Reviews of UNDP Programmes, which are very concrete and practical and are meant to be applied at country level.<sup>23</sup>

15 UNESCO Strategy on Human Rights, p. 5, available at <http://www.unesco.org> (visited 10 May 2012).

16 UNICEF Executive Directive 1998-004, Guidelines for Human Rights-Based Programming Approach.

17 UNICEF's Mission Statement, available at [www.unicef.org](http://www.unicef.org) → About UNICEF (visited 10 May 2012).

18 See <http://www.unicef.org> → Rights and Results (visited 14 July 2012).

19 Frankovits, note 13, p. 28.

20 See [www.undp.org/governance](http://www.undp.org/governance) (visited 12 November 2011).

21 UNDP Strategic Plan 2008-2011, *Accelerating Global Progress on Human Development*, doc. DP/2007/43/Rev. 1, para. 16.

22 See on this aspect, *Mac Darrow and Louise Arbour*, The Pillar of Glass: Human Rights in the Development Operations of the United Nations, *American Journal of International Law* 103 (2009), p. 484 footnote 178.

23 Human Rights-Based Reviews of UNDP Programmes – Working Guidelines (June 2003), (on file with the author).

The policies and programs of UN Habitat depart from the idea that adequate housing is a human right of individuals which entails responsibilities for governments and entities of the international community.<sup>24</sup> The Food and Agriculture Organisation (FAO) has taken a number of initiatives in order to create a human rights-based approach to food issues. One of the most notable developments was the adoption of the Voluntary Guidelines to Support the Progressive Realization of the Right to Food by the Member States in 2004 (see further below). The World Bank Group still does not have a human rights policy, but in the view of the World Bank human rights will be realized when the organization carries out its mandate: 'While the World Bank is not an enforcer of human rights, it may play a facilitating role in helping members realize their human rights obligations'.<sup>25</sup> Human rights issues have, however, been discussed by leading World Bank officials, but at policy level no follow-up has been given to calls to integrate human rights explicitly within official policies. According to one study this is due to three factors.<sup>26</sup> One is that there is still no legal clarity on the issue whether the World Bank Group is bound by human rights obligations.<sup>27</sup> This also means that no official rights language is used. Secondly, there is little dialogue within the World Bank Group on how to respond to risks to the enjoyment of human rights that projects might cause. Finally, there is insufficient knowledge and expertise about substantive and institutional human rights issues among staff members. To complete this short overview, there are a few UN specialized agencies which have not incorporated references to human rights in their official policies or mainstreamed human rights throughout the organization. These include the World Intellectual Property Organization (WIPO), the International Fund for Agricultural Development (IFAD) and the United Nations Conference on Trade and Development (UNCTAD) and the International Monetary Fund (IMF).

### C. Meaning and Qualification of Rights Language Used

Generally speaking, policy decisions taken by the competent bodies of UN (specialized) agencies should be qualified as operational acts.<sup>28</sup> These relate to the functions and the achievement of the aims of the organization. For example, Article 18 of the Constitution of

- 24 The Habitat Agenda (2003), para. 61, available at [www.unhabitat.org](http://www.unhabitat.org) (visited 18 January 2012). Note that the Agenda talks about 'responsibilities', not of 'obligations'.
- 25 World Bank, Frequently Asked Questions → Human Rights, [www.worldbank.org](http://www.worldbank.org) (visited 16 June 2012).
- 26 World Resources Institute, A Roadmap for Integrating Human Rights into the World Bank Group, 2010, available online at [www.wri.org](http://www.wri.org) → publications (visited 18 January 2012).
- 27 See on this subject *Andrew Clapham*, Human Rights Obligations of Non-State Actors, Oxford 2006, p. 150-152; *Fons Coomans*, Application of the International Covenant on Economic, Social and Cultural Rights in the Framework of International Organizations, *Max Planck Yearbook of United Nations Law* 11 (2007), p. 367-372. See also the debate on the development of articles on the responsibility of international organizations by the ILC mentioned above.
- 28 See *Chittharanjan Amerasinghe*, Principles of Institutional Law of International Organizations, 2<sup>nd</sup> ed., Cambridge 2005, p. 160-172.

the WHO stipulates that the functions of the Health Assembly of Member States are to determine the policies of the organization and to take appropriate action to further its objectives. Operational acts may be directed to organs and staff inside the organization, but also to member states and other international organizations. The (legal) effects of operational acts may be derived from the Constitution of the particular organization and the wording of the policy decisions. As a general rule it can be said that these organizations do not have the power to take binding decisions in the operational field.<sup>29</sup> In this area states have not transferred legal powers to agencies. In addition, it can be argued that, in line with the ILC's Draft Articles on the Responsibility of International Organizations, decisions of executive bodies of UN agencies that act as a legal basis for operational activities cannot be invoked to justify an infringement of human rights standards that are based on the UN Charter and that are binding for these agencies.<sup>30</sup>

Human rights language used in policy documents adopted by Executive Boards or Meetings of Member States often has a hortatory purpose. The documents are meant to strengthen the profile of human rights as an important issue that is to be mainstreamed throughout the organization. These texts primarily have promotional and lip-service purposes; the focus is much less on implementation in practice at country or local level. It is doubtful whether by using 'rights language' a soft law legal basis is created which could trigger accountability for living up to commitments made by competent bodies and states. For UNDP's Strategic Plan, which contains a reference to upholding universal human rights standards, Darrow and Arbour have concluded that the formal agreement or consensus on general and vague wording masks disagreement between groups of states on the relationship between human rights and conditionality, state sovereignty and UN neutrality. In their view such documents are of little help in translating general principles into concrete action.<sup>31</sup>

Some policy documents that contain human rights language distinguish between different addressees: states as members, domestic stake holders, the Secretariats of the agencies or a mix of these actors.<sup>32</sup> However, these documents do not talk about breaches of obligations of duty-holders or violation of rights of right-holders. This might be too high an expectation as these agencies are not courts. On the positive side, rights language may promote awareness and trigger a stronger implementation of programs that aim at translating rights language into concrete projects at country- and grass-roots level. Rights language may also strengthen the legitimacy of the work of the UN agencies. However, opposite effects of using human rights language could be that rights language may deter states and agencies from implementation, because they may be held accountable by those who are affected. Furthermore, rights language

29 *Amerasinghe*, note 28, p. 171.

30 *Darrow and Arbour*, note 22, p. 488. Article 32 (1) of the ILC Draft provides that the responsible international organization may not rely on its rules as justification for failure to comply with its obligations under international law resulting from the commission of an international wrongful act.

31 *Darrow and Arbour*, note 22, p. 485, 495.

32 See for example, WHO *Medium-Term Strategic Plan 2008-2013*, Strategic Objective 7 - To Address the Underlying Social and Economic Determinants of Health, p. 62-64.

may politicize the work of the agencies. As a consequence, Governing Bodies of agencies, composed of governmental representatives, may be reluctant to adopt far reaching human rights language, because this could lead to allegations that UN agencies are legally bound by international human rights law. The political context is therefore crucial in understanding the support for policies and actions which might be against the interests of member states as perceived by them. Also different Departments within one agency may have diverging or opposite views and interests on human rights issues. For example, within UNESCO's Education Sector there is little support for mainstreaming human rights throughout the organization, while the Division on Human Rights would be in favour of this.<sup>33</sup>

#### **D. Implementation of Rights Language in Practice**

This section will investigate in what manner UN agencies have implemented human rights language in their programs and policies as part of a human rights-based approach. A distinction will be made between the sector of development cooperation within the framework of UNDG, and a few other organisations.

##### *I. UN Development Assistance Framework*

Within the framework of UNDG, steps have been taken to implement a human rights- based approach in operational activities at country level. The United Nations Development Assistance Framework (UNDAF) and Common Country Assessment (CCA) provide an appropriate basis for these human rights mainstreaming activities. Key to such an approach is first of all an assessment of the human rights-related capacities and experiences and on the basis thereof a mapping of demands for a full integration of human rights into activities at country level. This may lead to training modules on human rights issues to be offered to members of Country Teams. When drafting an UNDAF in cooperation with the government of a state, a human rights-based approach to operational activities should be included explicitly.<sup>34</sup> Clear evidence of this should be the use of rights language in the sense of references to specific human rights to be realized and/or promoted, and the identification of rights holders and duty bearers. Over the years many UNDAF's have been drafted and agreed upon by different UN agencies and governments. Increasingly they include human rights language and apply a human rights-based approach.<sup>35</sup> Two UNDAF country examples will be discussed here in greater detail, namely Egypt and Kenya. These countries have been selected at random. These UNDAF's will be assessed on the basis of the Common Understanding among UN Agencies on the Human Rights Based Approach to Development Cooperation adopted by UNDG (the Stamford Statement) discussed above.

33 This information is based on personal contacts of the author with (former) officials within and outside UNESCO.

34 UNDG, ECHA and OHCHR, note 10, p. 9-10.

35 Frankovits, note 13, p. 47.

## 1. UNDAF on Egypt

The events of early 2011 which led to a fundamental change of the political situation in Egypt have been inspired by protests from citizens who were claiming political freedoms, but also the right to a decent standard of living. As a result of structural (youth) unemployment, chronic poverty, rising food prices and poor living conditions people felt frustrated and stood up for their rights.<sup>36</sup> UNDP and its partners have stated that the dramatic events that began in January 2011 and the rapidly changing political, economic, social and cultural environment provide Egypt and its development partners with new opportunities. The challenges of fulfilling the demands of dignity, freedom and social justice have to be met.<sup>37</sup> Given the nature of the democratic transition and UNDP's mandate, UNDP's programmatic priorities in Egypt from mid-2011 until the end of 2012, will focus on four major pillars:

1. Supporting expanded and effective political participation
2. Supporting greater transparency and accountability
3. Promoting a culture of human rights
4. Supporting local development, poverty reduction and social justice.<sup>38</sup>

It should be emphasized here that the UNDAF on Egypt for the period 2007-2011 was agreed upon and signed on behalf of the Government of Egypt and the UN Country Team in Egypt on 28 March 2006. It thus dates back to the situation prior to the transition to a different political context. However, it is still applicable today. The text is based upon intensive consultations with key partners, such as Government Departments and civil society organizations. Its subtitle is 'Moving in the Spirit of the Millennium Declaration'. Its main message is 'that the state needs to strengthen its capacities to build the human capabilities of all citizens in an equitable way, so as to ensure that all Egyptians can realize their full potential and benefit from the expansion of choices in their lives'.<sup>39</sup> The framework clearly aims at using a human rights based approach as defined by UNDG in the Stamford Statement by identifying entitlements, right holders and duty bearers. One of the strengths of such an approach is that 'it steers the country away from social unrest and conflict that may arise owing to development disparities and poverty'.<sup>40</sup> In addition, the Millennium Development Goals (MDGs) act as a source of inspiration for the Egypt UNDAF. Achieving the MDGs must be based on a platform

36 See Center for Economic and Social Rights, Egypt: Economic and Social Rights Disparities Underlie Calls for Change, available online at <http://www.cesr.org> (visited 21 February 2011).

37 Statement on the website of UNDP-Egypt, available online at <http://www.undp.org.eg> (visited 10 July 2012).

38 Statement on the website of UNDP-Egypt, note 37.

39 UNDAF on Egypt, UN Egypt, Office of the UN Resident Coordinator, Cairo 2006, p. 9, available online at [http://www.undp.org.eg/Portals/0/z\\_UNDAF%202007\\_2011%20English.pdf](http://www.undp.org.eg/Portals/0/z_UNDAF%202007_2011%20English.pdf) (visited 15 June 2012). In the document the term 'state' has a broad and holistic meaning. It includes the government, civil society, the media and the private sector. These are considered key players and stakeholders in the development process.

40 UNDAF Egypt, note 39, p. 9.

of human rights norms and principles.<sup>41</sup> The UNDAF on Egypt does not mention which human rights treaties Egypt has ratified. The focus of UNDAF is on contributing to the realization of the MDGs. The UNDAF identifies five results to be achieved by 2011. These are the following:<sup>42</sup>

1. By 2011, the state's performance and accountability in programming, implementing and coordinating actions, especially those that reduce exclusion, vulnerabilities and gender disparities are improved.
2. By 2011, unemployment and underemployment are reduced and the worst forms of child labour are eliminated.
3. By 2011, regional human development disparities are reduced, including reducing the gender gap, and environmental sustainability improved.
4. By 2011, women's participation in the workforce, political sphere and public life is increased and all their human rights are increasingly fulfilled.
5. By 2011, democratic institutions and practices are firmly established and a culture of human rights through active citizenship is prevalent.

These outcomes mention human rights language explicitly (in 4 and 5), but mainly use concepts and terms (in 1, 2 and 3) which reflect human rights related ideas without stating this explicitly, such as vulnerabilities, child labour and the gender gap. These outcomes do not refer explicitly to specific entitlements or rights, nor do they identify specific right holders (with the exception of women in Outcome 4) and duty bearers.

The general approach followed in this UNDAF and the place and role of human rights becomes manifest in a section of the document where it calls for a new social contract between the State and its citizens. According to the UNDAF document:

'Egypt's new social contract can be characterized by an integrated human rights based programme of action that is tailored and targeted to the poor, but which provides choices and alternatives to other citizens so as to enable Egyptians to realize the ambitions and capabilities that they value. Under this new paradigm, duty-bearer-claim-holder relations will be put back in line with the values of social justice and rule of law. This is further in alignment with the Millennium Declaration and the recognition that good governance, human rights and the rule of law are intrinsically linked to progress towards the MDGs.'

The new social contract paradigm entails the active participation of equally powerful partners. The state will provide safety, security and protection of basic systems and rights through discharging its responsibilities of security, defence and justice. The state will also supply quality public goods that aim to achieve equality and equity and that are efficient and effective, particularly in the areas of health, education, social protection, participation and environmental sustainability. Citizens will in return provide not only their allegiance and

41 UNDAF Egypt, note 39, p. 9.

42 UNDAF Egypt, note 39, p. 10. It is beyond doubt that, by 2012, the goals that were set in 2006 have not been achieved. The political changes of 2011 and 2012 precisely aim at realizing them with more force and greater speed.

respect to the law but also their oversight and active participation in the application of the contract. In so doing, citizens will assume an oversight role in guarding and securing their gains and outcomes.<sup>43</sup>

Although the human rights based approach is said to be the new overall paradigm, it lacks a clear translation into specific rights and obligations of actors. What is more, public goods are not qualified as rights, and citizens seem to have duties towards the State (citizens have to provide allegiance and respect to the law).

Furthermore, when describing the targeted output and outcomes of UNDAF on Egypt in concrete terms, the document does not use human rights language. For example, one of the outcomes of the country program must be an improved quality of services, more demand-based, equitable and accessible. This is further refined in a number of specific outputs, such as ‘access to high quality family planning, maternal and child care services, increased with improved utilization of primary health care / family health facilities’.<sup>44</sup> Pursuant to the human rights based approach, a specific reference to the right to (reproductive) health care services as a component of the right to health would have been in place, including the type of obligations emanating from this right as laid down in Article 12 ICESCR and explained in General Comment 14. Furthermore, the Framework does include occasional references to human rights language when listing indicators and baselines aimed at measuring specific outcomes. For example, the number of national campaigns addressing women’s political, social and/or economic rights is used as an indicator for measuring whether public perception of women’s and girls’ rights has been enhanced.<sup>45</sup> On the other hand, the Framework, describes ‘improved and sustainable access to quality social services and basic needs (education, health, food, water and sanitation, social protection) to be achieved in a participatory manner in Upper Egypt’ as the desired outcome. However, this is not framed in terms of human rights to be realized. Also the expected outcome does not refer to the notion of progressiveness (time-line) in realizing the desired outcome. What is more, the concrete translation of this general outcome into concrete programme outputs lacks a human rights perspective (for example, ‘Access to food and assets for food insecure populations increased’, in stead of distinguishing between the different dimensions of accessibility of food as explained in General Comment 12 and defining ‘insecure populations’ in terms of what insecurity means and the features of specific populations, such as the situation of indigenous groups).<sup>46</sup>

Concluding this discussion of Egypt’s UNDAF, it is submitted that the Framework has been based on the human rights based approach to development cooperation as laid down in the Stamford Statement. At the general, macro-level the document incorporates the idea of human rights which serves as a guideline for programmes of development cooperation carried out by UN agencies. The weakness, however, of the document is that it fails to translate these

43 UNDAF Egypt, note 39, p. 19.

44 UNDAF Egypt, note 39, p. 26.

45 UNDAF Egypt, note 39, p. 40.

46 UNDAF Egypt, note 39, p. 28.

general notions into concrete rights and obligations derived from international human rights law. This applies in particular to esc-rights as legal notions which are largely absent from the Framework. However, it should be noted that often these general notions are translated into more concrete human rights language in the practical activities of UN agencies to operationalize and implement esc-rights at the domestic level. An example is the work of UNICEF and UNESCO for the implementation of right to education.<sup>47</sup> Furthermore, it is important to recognize that a ‘fluid’ understanding and application of the concept of right holders and duty bearers can be recommendable in order to take into account that the implementation of one right may entail interaction between multiple actors. A case in point is implementing the right to education in which children, parents, teachers, school boards and municipal authorities are involved.<sup>48</sup>

## 2. UNDAF on Kenya

The UNDAF Kenya 2009-2013<sup>49</sup> was developed by the UN Country Team and the Government of Kenya after consultations with civil society organizations. It is based on three priority areas. These include: (1) improving governance and the realization of human rights; (2) empowering people who are poor and reducing disparities and vulnerabilities; (3) promoting sustainable and equitable economic growth for poverty and hunger reduction with a focus on vulnerable groups. Gender equality, the HIV/AIDS problem and migration and displacement were recognized as cross-cutting themes for the UNDAF. Compared to the UNDAF Egypt, the document has a much stronger focus on human rights, in particular through its use of language drawn directly from international human rights law. In the UNDAF clauses from the UNDG Stamford Statement are reproduced, such as the reference to rights holders and duty bearers. For example, the focus of the UNDAF is ‘on areas where there are serious inequalities and high needs and where there is a major gap between the valid claims of right-holders and capacity of duty-bearers to meet their obligations’.<sup>50</sup> In discussing the lessons learnt from the previous UNDAF (2004-2008), the document clearly states that the ‘UNDAF should articulate specific outcome results with clearer focus and incorporate specific outcomes on gender equality and human rights’.<sup>51</sup>

One of the main features of UNDAF Kenya is that it links country program outcomes to be achieved to human rights by using concrete human rights concepts and references to spe-

47 See UNICEF/UNESCO, *A Human Rights-Based Approach to Education for All*, New York/Paris, 2007.

48 *William O'Neill*, *Integrating Human Rights into UN Development Analyses and Programmes – Lessons from the Review of the 2003 CCA and UNDAFs*, December 2004, p.6 (paper on file with the author).

49 UNDAF on Kenya 2009-2013, <http://nairobi.iom.int/Country%20Information/Kenya/Final-UNDAF-Narrative-May-20082.pdf> (visited 24 June 2011).

50 UNDAF Kenya, note 49, p. 2.

51 UNDAF Kenya, note 49, p. 3.

cific rights. An example is the general UNDAF Outcome ‘Democratic Governance and Human Rights including Gender Equality Progressively Enhanced’. A concrete country programme outcome to be achieved is ‘Implementation of global and regional covenants and conventions ratified by the Kenyan state accelerated, and advocacy for the ratification and domestication of those outstanding increased for progressive realization of human rights’.<sup>52</sup> Under this heading the document discusses UN human rights treaties ratified by Kenya. The UN agencies will support action taken at the national level to give follow-up to the concluding observations and recommendations by UN Treaty Bodies on Kenyan State reports. They will also monitor whether actions have been taken in light of the recommendations made.<sup>53</sup> It has been suggested that recommendations of Treaty Bodies could be used to design new programs by the UN Country Team.<sup>54</sup>

Another major UNDAF Outcome identified in the document is Increased and Equitable Access and Use of Quality Essential Social Services and Protection Services with a Focus on Vulnerable Groups.<sup>55</sup> Specific Program Outcomes to be achieved by 2013 explicitly mention the human right to which the outcome is related. For example, the desired outcome ‘Nation-wide essential nutrition services improved and increasingly used with a special focus on vulnerable groups including internally displaced persons and host communities’ is equated to ‘the right to essential nutrition progressively realised’.<sup>56</sup> The language used is similar to the wording of the ICESCR and General Comments. The aim of the Outcomes mentioned is raising the level of services with a particular focus on the rights of vulnerable and excluded groups, which is indeed typical for a human rights-based approach. Also other program outcomes mentioned are clearly related to the realization of human rights, such as prevention, care and treatment of AIDS/HIV patients. However the link with specific human rights is more implicit in the sense that no explicit human rights language has been used, such as the right to the highest attainable standard of physical and mental health.<sup>57</sup>

In conclusion, the UNDAF Kenya is stronger on human rights language than its counterpart on Egypt. In the Kenyan one the human rights-based approach is a red thread which runs throughout the document. The Framework is based on human rights notions such as inclusiveness, a focus on marginalized and vulnerable groups and concrete esc-rights. Country programs and outcomes are guided by human rights standards and principles. The outcome of UN human rights monitoring mechanisms is used to inform action plans at the domestic level. Consequently, the UNDAF Kenya to a large extent meets the criteria of UNDG’s Common Understanding (the Stamford Statement).

52 UNDAF Kenya, note 49, p. 4.

53 UNDAF Kenya, note 49, p. 5.

54 O’Neill, note 48, p. 8.

55 UNDAF Kenya, note 49, p. 6.

56 UNDAF Kenya, note 49, p. 6. See also p. 10.

57 UNDAF Kenya, note 49, p. 9.

In 2010, after a period of violent conflict and political turmoil, Kenya promulgated a new Constitution. This new document puts emphasis on the rule of law, democratic governance, separation of powers and transparency in decision-making. However, it is also noteworthy for the importance given to the protection of human rights, in particular esc-rights. These rights have been ‘upgraded’ and include, *inter alia*, the right to have equitable access to education, the highest attainable standard of health and access to clean and safe drinking water. It is the hope of UNDP that the new provisions in the Constitution on esc-rights and accountability mechanisms will be instrumental in making progress towards achieving the MDGs and the goals of UNDAF.<sup>58</sup>

## II. The Food and Agriculture Organization

The FAO promotes and coordinates collective action for the purpose of, *inter alia*, raising levels of nutrition and standards of living of people, bettering the condition of rural populations and ensuring humanity’s freedom from hunger.<sup>59</sup> Over the last 15 years FAO has increasingly stressed the importance of a human rights approach to food issues. For example, at the 1996 World Food Summit, convened by the FAO, Member States adopted the Rome Declaration on World Food Security in which they reaffirmed ‘the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger’.<sup>60</sup> In June 2002, at the World Food Summit – Five Years Later, Member States decided to start a process of developing ‘voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security’.<sup>61</sup> This was a major step forward on the road to mainstream human rights throughout the organization’s activities. Such guidelines were adopted by the FAO Council in November 2004 after intensive negotiations in the framework of an Intergovernmental Working Group

58 UNDP Kenya 2010 Annual Report, available online at: <http://www.kenya.undp.org> → Key publications (visited 19 September 2011). On 16 November 2011, the Kenyan High Court applied the provisions on esc-rights of the new Kenyan Constitution in *Osman & Others v. Minister of State for Provincial Administration and Internal Security*, available online at [http://www.escri-net.org/news/news\\_show.htm?doc\\_id=1624072](http://www.escri-net.org/news/news_show.htm?doc_id=1624072) (visited 10 January 2012).

59 FAO Constitution, Preamble, available online at <http://www.fao.org> (visited 7 July 2012).

60 Rome Declaration on World Food Security, 1996, available online at <http://www.fao.org> (visited 7 July 2012). See on the development of food as a human rights concept, *Wenche Barth Eide*, From Food Security to the Right to Food, in: *Wenche Barth Eide and Uwe Kracht (eds.)*, *Food and Human Rights in Development – Vol. I*, Antwerp-Oxford 2005, p. 67-97.

61 Declaration Adopted at the 2002 World Food Summit – Five Years Later, para. 10, available online at <http://www.fao.org>, (visited 7 July 2012). On the process of developing the Voluntary Guidelines, see *Arne Oshaug*, Developing Voluntary Guidelines for Implementing the Right to Adequate Food: Anatomy of an Intergovernmental Process, in: *Wenche Barth Eide and Uwe Kracht (eds.)*, *Food and Human Rights in Development – Vol. I*, Antwerp-Oxford 2005, p. 259-282. See also *Marie von Engelhardt*, Opportunities and Challenges of a Soft Law Track to Economic and Social Rights – The Case of the Voluntary Guidelines on the Right to Food, *Verfassung und Recht in Übersee* 42 (2009), p. 502-526.

of the FAO Committee on World Food Security with the involvement of NGOs and other stakeholders.<sup>62</sup> Crucial for a successful conclusion of the negotiations on the Guidelines was the very active role of NGO's, in particular Food First Information Action Network (FIAN). The Guidelines were developed to provide practical tools and guidance to help countries implement their obligations relating to the right to adequate food. According to its Preface, the Guidelines are a human rights-based practical tool addressed to all states. However, they do not establish legally binding obligations for states or international organizations.<sup>63</sup> Although of a soft law nature, the guidelines are important, because they show, at least to a certain extent, the political will of governments to address issues of hunger and poverty and take part in an exercise to better define their obligations resulting from the right to food. In other words, the Guidelines constitute a contribution to further normative development, in a process of negotiations in which governments were the key players. The United States, not being a State party to the ICESCR, emphasized the voluntary nature of the Guidelines, which is in line with their position that the right to food does not give rise to legal entitlements or obligations and that it must be considered as goal or aspiration to be realized progressively.<sup>64</sup>

The Guidelines also became crucial for the future work of the FAO on food issues. Using the momentum of the adoption of the Voluntary Guidelines and as a follow-up, a Right to Food Unit was established at FAO's Headquarters. Its goal is to support governments in implementing the right to food at the domestic level by providing information, developing training materials and raising awareness about food as a human right issue. The Right to Food Unit also works towards integrating human rights into FAO's activities to be used by all FAO staff members in their work. A number of implementation goals were set. These include as a general goal that the Right to Food Unit is to ensure, *inter alia*, that in every country there will be:

- Capacity of right-holders to claim their rights and of duty-bearers to carry out their obligations;
- Capacity and knowledge to incorporate the right to food in policies and strategies;
- An evaluation of right to food policies and right to food impact assessments.

In this way it contributes to developing a rights-based approach to food security as provided for in FAO's Strategic Framework 2000-2015.<sup>65</sup> Since 2005 the Right to Food Unit has been very active and productive in working towards achieving the aims just mentioned. It held

62 Voluntary Guidelines To Support The Progressive Realization Of The Right To Adequate Food In The Context Of National Food Security, adopted at the 127<sup>th</sup> Session of the FAO Council on 23 November 2004, available online at <http://www.fao.org/righttofood> (visited 7 July 2012). See further, *Gerald Moore*, The Food and Agriculture Organization of the United Nations: Towards a Right to Food Approach?, in: Michael Windfuhr (ed.), *Beyond the Nation State – Human Rights in Times of Globalization*, Uppsala, 2005, p. 146-149.

63 FAO Voluntary Guidelines, Preface, note 62, paras. 6, 9.

64 See the US Opening Statement for the FAO Right to Food Forum (Rome, 1-3 October 2008), available online at <http://www.state.gov/documents/organization/138856.pdf> (visited 19 September 2011).

65 See information about the FAO Right to Food Unit at <http://www.fao.org/righttofood> (visited 7 July 2012).

regional and national multi-stakeholder consultations on the implementation of the right to food, established a Right to Food Knowledge System acting as a platform for knowledge to support the progressive realization of the right to adequate food and issued many publications on theory and practice of the right to food.<sup>66</sup> One of the most interesting publications is the five volume Right to Food Methodological Toolbox published in 2009, available as a hard copy and electronically. The purpose of the toolbox is to show how the right to food can be implemented and promoted. It is composed of sections and volumes on different topics. These include a Guide on legislating for the right to food; a Guide on methods to monitor the right to food; an Outline for a right to food curriculum to be used for training and advocacy purposes; a guide for conducting a right to food assessment; and finally a Guide for budget work to advance the right to food.<sup>67</sup> The materials and resources provide analytical, educational and normative tools to be applied in practice.

We may conclude that within the FAO right to food language has been adopted and targeted steps have been taken to implement a right to food approach in advocacy, training and awareness raising projects and programs. Much of the effectiveness of these measures will depend on the continued commitment of FAO staff members and the political will of governments. The Right to Food Unit has played a pivotal role in setting up this process and its continued involvement is crucial.

### *III. UNAIDS*

UNAIDS is the Joint United Nations Programme on HIV/AIDS. It is funded by donor governments and sponsored by a number of UN agencies.<sup>68</sup> In its Strategy for 2011-2015, one of the key Strategic Directions is to advance human rights and gender equality for the HIV response.<sup>69</sup> The Strategy recognizes and accepts that the interdependence of issues and human rights lies at the heart of approaches and measures to tackle social and health related HIV problems. A holistic approach should inform the Strategic Direction of advancing human rights. The objectives that emanate from this Direction include:<sup>70</sup>

- To support countries in protecting human rights in the context of HIV and to create protective social and legal environments that enable access to HIV programs.
- To advance country capacity to reduce stigma and discrimination and to realize equitable service provision for those most affected by HIV.
- To ensure that national HIV strategies address the needs and rights of women and girls in the context of HIV.

66 For an overview see, <http://www.fao.org/righttofood> → Publications.

67 Available online at: [http://www.fao.org/righttofood/publi\\_02\\_en.htm](http://www.fao.org/righttofood/publi_02_en.htm) (visited 7 July 2012).

68 The co-sponsors include UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank.

69 UNAIDS, 2011-2015 Strategy Getting to Zero, available online at: <http://www.unaids.org> (visited 11 July 2012).

70 UNAIDS, 2011-2015 Strategy Getting to Zero, note 69, p. 42.

The rights based approach used by UNAIDS in its programs comes very much to the fore in the emphasis laid upon strengthening the legal environment and the legal capacity of stakeholders aimed at empowering them to know and demand their rights. Such actions include programs to reduce stigma and discrimination, provide legal aid and legal literacy, reform laws and train health care workers on non-discrimination, informed consent and confidentiality.<sup>71</sup>

The Prevention, Vulnerability and Rights (PVR) Division of UNAIDS plays a key role in developing policies and tools for achieving the Millennium Development Goals and Universal Access to HIV prevention, treatment, care and support. It also develops programs to advance and protect human rights in the response to AIDS, address the vulnerability of women, girls and sexual minorities.<sup>72</sup> One of the focal points of UNAIDS' programs is the Agenda for Accelerated Country Action for Women and Girls, Gender Equality and HIV. This operational plan addresses the needs of women and girls from a rights-based approach. It will be used here as an example to research how the directions given in the 2011-2015 Strategy have been translated and implemented into practice. From the plan it is clear that respect for and promotion of human rights are an integral part of this program. These are interwoven in all policies and actions and will be applied in a holistic way. For example, one of the goals is to create an enabling environment for the fulfillment of women's and girls' human rights and their empowerment in the context of HIV. One expected outcome in this regard is that women and girls are empowered to drive transformation of social and cultural norms and power relationships.<sup>73</sup> One other important goal of this Agenda is 'translating political commitments into scaled-up action to address the rights and needs of women and girls in the context of HIV'.<sup>74</sup> The interesting thing is that the Agenda talks about 'political commitments' instead of duties. For example, when discussing this goal the Agenda stipulates:

*'Existing global commitments, such as CEDAW and its Optional Protocol, the Beijing Platform for Action, the Programme of Action of the International Conference on Population and Development and the Millennium Development Goals, all provide a strong framework for comprehensive and multisectoral policies and programmes that address both the causes and consequences of HIV for women and girls. Also, regional- and national-level commitments, such as the African Protocol on the Rights of Women, the Maputo Plan of Action on Sexual and Reproductive Health and Rights and the Abuja Declaration, are in place. However, accountability for these commitments resides at various levels—community, national, regional and global—and involves different ac-*

71 UNAIDS, 2011-2015 Strategy Getting to Zero, note 69, p. 44-45.

72 <http://www.unaids.org> → Our Work → Programme Branch (visited 11 July 2012).

73 UNAIDS, Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV – Operational Guide, 2010, available online at [http://www.unaids.org/en/media/unaids/contentassets/datalimport/pub/manual/2010/20100226\\_jc1794\\_agenda\\_for\\_accelerated\\_country\\_action\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/datalimport/pub/manual/2010/20100226_jc1794_agenda_for_accelerated_country_action_en.pdf) at p. v (visited 11 July 2012).

74 UNAIDS, Agenda for Accelerated Country Action, note 73, p. v.

*tors, such as governments, UN agencies, donors, civil society, the media and the private sector.*’<sup>75</sup>

The paragraph does not distinguish between human rights treaties that give rise to legal obligations and other documents which have more of a political nature and meaning. The Agenda does not spell out who has which duties or commitments, and what exactly these duties and commitments are. In addition, in laying down expected results the document does not define these as human rights. For example, one outcome is that ‘women and girls have universal access to integrated multi-sectoral services for HIV, tuberculosis and sexual and reproductive health and harm reduction, including services addressing violence against women’.<sup>76</sup> There is no reference or link to applicable human rights standards, such as the right to health as laid down in Article 12 ICESCR. Finally, a detailed discussion of applicable human rights law is missing. This should have been included as the document takes such an explicit human rights-based approach.

In conclusion, although the UNAIDS Strategy Document and the Operational Agenda for Country Action do use promising human rights language as a basis and framework for policy, programs and measures, their translation into specific and concrete human rights concepts and their implications is missing. The general goal was meant, no doubt, to stimulate and encourage stake-holders. Implementation, however, lacks references to strict legal notions, such as rights and obligations.

#### IV. UNFPA

UNFPA, the UN Population Fund, is an international development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity.<sup>77</sup> Its focus is primarily on reproductive and health related rights, in particular those of women. The organization has adopted a human rights-based approach. Implementing such an approach as a basis for policies and programmes in countries requires a shift from thinking in terms of satisfying needs to developing and carrying out actions based on fulfilling rights. In UNFPA’s view, a human rights approach also means that individuals and communities need to be fully informed about their rights and to participate in decisions that affect them. Governments and other duty bearers often need assistance to develop the capacity, the resources and the political will to fulfil their commitments to human rights.<sup>78</sup> Underlying UNFPA’s human rights related policies and actions focusing on the rights of individual women and men is the International Conference on Population and Development (ICPD) Programme of Action adopted in 1994. The emphasis on human rights at the ICPD moved population policy and programs from a

<sup>75</sup> UNAIDS, Agenda for Accelerated Country Action, note 73, at 10.

<sup>76</sup> UNAIDS, Agenda for Accelerated Country Action, note 73, at 11.

<sup>77</sup> See the Mission Statement of UNFPA, available online at: <http://www.unfpa.org> → About UNFPA (visited 14 July 2012).

<sup>78</sup> <http://www.unfpa.org> → Human Rights.

focus on numbers to a focus on individual human lives. The ICPD Program of Action – also known as the Cairo Consensus – reaffirmed the application of universally recognized human rights standards to all aspects of population and development programs.<sup>79</sup> Due to culture and tradition reproductive and sexual rights are a sensitive issue in many countries. For example, it has been reported that the use of rights language has led to resistance from religion-based organizations. Also some governments perceive the use of human rights language by a UNFPA as a criticism of their domestic policies and practices.<sup>80</sup>

With a view to implementing the human rights-based approach, UNFPA developed a list of human rights that relate to its mandate, the applicable legal treaty provisions and rights-based actions emanating from these rights.<sup>81</sup> For example, the right to life and survival has been identified as crucial. This right has been laid down in Article 3 UDHR, Article 6 ICCPR and Article 6 CRC. The rights-based actions resulting from this right include preventing avoidable maternal deaths; ending pre-natal sex selection and female infanticide; screening for cancer that can be detected early and treated; and ensuring access to dual protection contraceptive methods. Another example is the right to the highest attainable standard of health. Relevant treaty provisions include Article 12 ICESCR, Article 12 and 14 CEDAW and Article 24 CRC. A rights-based action flowing from these standards is to provide access to affordable, acceptable and comprehensive reproductive health services. These examples demonstrate that UNFPA has put in place programmes translating human rights as legal notions into concrete actions to be applied by UN staff at country level. Another example is a project called Stronger Voices for Reproductive Health. Its goal has been described in the following manner:<sup>82</sup>

*'Central to the Stronger Voices initiative is women's empowerment, as the crux to strengthen women's voices for quality reproductive health care. Knowledge in reproductive health and rights empowers women to make informed decisions regarding their sexual and reproductive health. Good quality of care provides women with the information and services they need to lead healthier, more productive lives.'*

*'A user's right to quality reproductive health care is the cornerstone of the project. The initiative aims to enable women to better articulate their reproductive needs and rights through the establishment of community-based mechanisms that give them a stronger voice in securing quality sexual and reproductive health care. It will also encourage more interaction between health care providers and users.'*

79 <http://www.unfpa.org> → Human Rights.

80 Frankovits, note 13, p. 34.

81 <http://www.unfpa.org> → Human Rights → Promoting human rights.

82 <http://www.unfpa.org> → Human Rights → Putting Rights into Practice.

The project has been implemented in six countries: India, Kyrgyzstan, Mauritania, Nepal, Peru and Tanzania. For example in Kyrgyzstan, the maternal mortality rate has been increasing slightly over the years. The following reasons have been given for this development:<sup>83</sup>

*[there are] too many pregnancies to adolescent girls, multiple births and short intervals between births. To complicate the picture, over half of all pregnant women suffer from alimentary anemia. Many deliveries still take place at home without the presence of a qualified birth attendant or doctor, increasing the risk of both infant and maternal mortality.'*

In Kyrgyzstan health services in poor, rural and remote areas are non-existent, badly accessible and hardly affordable. One of the project's aims is increasing community awareness of the contents of a new Law on Reproductive Rights. This law puts users in a stronger position to demand sexual and reproductive health services and care. The UN Country Team is working together with UNFPA, UNICEF and WHO to implement the project.<sup>84</sup>

In conclusion, it can be argued that UNFPA has made major steps in elaborating and applying in a concrete manner a human rights-based approach in a practical way in programmes, policies and projects. The use of human rights language is a crucial element of that process. However, the emphasis is on rights of individuals, rather than on obligations of duty-bearers. The obligation-side is largely missing from the human rights framework as a stepping-stone for implementation. The reasons for this omission seem to be largely political as the willingness of governments is key to the implementation of projects.

#### **E. The Practice of Using Human Rights Language to Strengthen the Human Rights Obligations of UN Agencies in Light of the UN Charter**

An interesting question is whether the use of human rights language and the adoption of a human rights-based approach by UN (specialized) agencies contribute to a better understanding of the broader question of the UN and its agencies being bound by human rights law. Article 1(3) of the UN Charter stipulates that a key purpose of the UN is to achieve international cooperation in order to promote and encourage respect for human rights. The specialized agencies play a key role in achieving this goal. Articles 55 and 56 UN Charter read in conjunction establish obligations to take action to promote and respect human rights individually and collectively.<sup>85</sup> Collectively means action through cooperation with the United Nations. One could argue that the UN (specialized) agencies are acting on behalf of or represent the UN Organization and its Member States in this regard, because they share the same objectives

83 <http://www.unfpa.org> → Human Rights → Putting Rights into Practice → Stronger Voices → Kyrgyzstan (visited 16 July 2012).

84 <http://www.unfpa.org>, note 83.

85 *Sigrun Skogly, Beyond National Borders: States' Human Rights Obligations in International Cooperation*, Antwerp 2006, p. 76. *Olivier De Schutter, International Human Rights Law*, Cambridge 2010, p. 49-50.

as the UN itself and are legally linked to the Charter and its organs.<sup>86</sup> The Vienna Declaration and Programme of Action, the outcome document of the Second World Conference on Human Rights held in 1993, recognizes the vital role of specialized agencies and bodies and institutions of the UN system in the formulation, promotion and implementation of human rights standards within their respective mandates.<sup>87</sup> This is for example very clear from the Constitutions of a number of specialized agencies. The Preamble to the Constitution of the WHO provides for the enjoyment of the highest attainable standard of health as one of the fundamental rights of every human being. Also the Preamble to the Constitution of the FAO lists as one of the purposes of this organization to promote the general welfare by furthering separate and collective action for ensuring humanity's freedom from hunger. This is clearly a human rights-related norm and goal. According to one author 'the activities of all the elements in the UN system impact on, concern, or indeed define or refine human rights. The practice of the UN has led to a re-statement of the purposes of the UN Charter and those of the various constituent documents of the agencies as human rights'.<sup>88</sup> Human rights, therefore, are a major over-arching and cross-cutting common concern and objective of the UN governed by international (human rights) law.

One can reason that the use of human rights language and the related policies by UN agencies are a concretization and a translation into practice of the general purpose and obligation of the UN to respect and promote human rights as laid down in the Charter. This general obligation can be derived from the axiom that the UN is obliged to respect and pursue its own purposes.<sup>89</sup> This would entail that as a minimum the UN and its affiliated agencies, bodies and organs have to ensure that their own policies and actions do no harm to people living in countries where UN programs and projects are carried out.<sup>90</sup> Finally, it is also quite logical to identify a more positive obligation in the sense of an obligation for UN agencies to help UN member states to fulfil their own human rights legal commitments that are part of human treaties that they have ratified.<sup>91</sup> This type of support and assistance belongs to the core of the activities of these organizations as recognized in Articles 55(b) and 57 UN Charter.

## F. Concluding Remarks

Over the years many UN (specialized) agencies, but not all of them, have adopted a human based-approach for their policies and activities. A key component of this approach is the use

86 Philippe Sands and Pierre Klein, Bowett's Law of International Institutions, 5<sup>th</sup> ed. London 2001, p. 77. Nigel White, The World Court, the WHO, and the UN System, in: Niels Blokker and Henry Schermers (eds.), Proliferation of International Organizations – Legal Issues, The Hague 2001, p. 98. See also Article 57 UN Charter.

87 Vienna Declaration and Programme of Action, Sect. II.A, para. 3.

88 White, note 86, p. 94.

89 Mac Darrow and Arbour, note 22, p. 463, 472.

90 Mac Darrow and Arbour, note 22, p. 474.

91 Mac Darrow and Arbour, note 22, p. 478.

of human rights language by these agencies in policy documents, decisions, programs and actions at country level. The Stamford Statement was an important first milestone in this respect. UN Country Teams play an important role in translating rights language into concrete action, especially in the area of development cooperation. References to esc-rights have become more prominent and visible. We have seen some good examples of this, but also some more cautious practices and even a number of disappointing experiences. One conclusion is that rights language only means something when it is backed by a translation into implementation of clear and concrete activities, programs and projects. This requires political will and commitment by governments that approve the policy decisions that underlie such programs and projects. In addition, mainstreaming human rights means that all Divisions, Sectors and Departments of UN agencies are bound to back and implement such an approach into concrete actions. This too requires commitment and determination by senior officials that go beyond lip-service paid to the importance of a human rights-based approach. One of the key challenges for the future will be to assign more and experienced staff for human rights work to the different Sectors of UN agencies that are really committed to implement human rights in practice and collaborate with colleagues in other Departments in order to achieve a coherent and effective practical approach. Strong arguments support the axiom that UN (specialized) agencies are bound by human rights law through the human rights obligations of the UN Charter and their legal relationship with the UN. However, we must also conclude that in many instances it is unclear whether rights language used in the framework of policy documents, strategies, decisions or projects would give rise to legal responsibility and/or accountability of the agencies and other actors such as states. In many cases rights language used is of a promotional nature. There is a need, however, to study this issue further and develop (legal and/or political) mechanisms that can be used to hold agencies accountable for carrying out rights-based activities in the framework of development cooperation.<sup>92</sup>

92 See further on this Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt (eds.), *Accountability for Human Rights Violations by International Organisations*, Antwerp 2010.