

ABSTRACTS

On the right(s) track?

United Nations (Specialized) Agencies and the Use of Human Rights Language

By *Fons Coomans*, Maastricht

The United Nations 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. Over the years many UN agencies, such as UNDP, UNICEF, UNAIDS and the FAO, 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 as a framework or basis for their policies and programs. The underlying presumption is that the implementation of social, economic and cultural rights would be strengthened if 'rights language' is used in the practice of these organizations. In the article particular attention is given to UN Development Assistance Frameworks (UNDAF) which have been concluded between UN agencies and governments of developing countries. The UNDAF's on Egypt and Kenya will be discussed in more detail. One of the findings of the research is that references to human rights have become more prominent and visible. The article discusses a number of good examples of this trend, 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. Another conclusion is 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.

The Theory of Human Rights Principles by Carlos Santiago Nino

By *Ana Paula Barbosa-Fohrmann*, Rio de Janeiro

The Argentine constitutionalist and legal philosopher C.S. Nino died in 1993 in a plane crash at the age of 52 years. His theory was influenced by various philosophers. Among others it

refers to I. Kant, J. Rawls and J. Habermas. Over the last ten years his theory has widely spread in Brazil. By means of a reconstruction of Kantian moral theory, Nino founds human rights and human dignity on a moral procedure. His procedural model is composed of the following stages: discourse, principles, rights and institutions. This paper will focus on the ratio between the first three stages that serve as a basis for the formulation of Nino's three moral principles of human rights: autonomy, inviolability and human dignity. This article proposes an ethical foundation for the legitimation of human rights principles expressly and implicitly written in the Brazilian Constitution of 1988, in particular the one of human dignity, which in Art. 1 III has the status of fundamental constitutional principle.

The Constitutional Right to Health within the Mercosur: Obesity and Bisphenol A in Perspective

By *Alberto Krayyem Arbex*, Rio de Janeiro

In a broad sense, the right to health involves statutory guarantees, which are afforded by the constitutions of Brazil and Argentina. The defence of these rights, within the Mercosur, leads to a constitutional debate on the applicability of legal provisions for the protection of health. Brazil and Argentina are involved in similar discussions and may benefit from common legal solutions. This article brings to light two emerging issues, obesity and bisphenol A, that have not yet been comprehensively addressed by the public health systems of those two important countries of Mercosur.

The legal framework for the increasing prevalence of obesity in the Mercosur and the ban of the harmful substance bisphenol A in products for children are the main themes of this paper. In addressing these problems, it brings bioethics to the legal debate and proposes possible, internationally applicable solutions.

Renewable Energy Promotion in South Africa – Surrounding Conditions and Recent Developments

By *Cord Lüdemann*, Stellenbosch

The field of renewable energies has registered a substantial growth in the last two decades which also results from an increasing understanding of the necessity for policy instruments to promote renewable energies. As economic development in the developing regions of the world involves a substantial increase in energy demand, the deployment of renewable energy technologies can contribute to both a diversification of energy sources as well as social and economic upliftment in developing countries. The following article aims at familiarising with the South African policy on renewable energy promotion. Unlike other African countries,

South Africa features typical challenges of a developed economy including heavy reliance on fossil fuels with high emission rates, high requirements with regard to energy access and the problem of energy poverty. Reference to renewable energies has been made in several South African policy documents and the National Energy Act 34 of 2008. In 2009, a first detailed promotion scheme was introduced by the National Energy Regulator for South Africa (NER-SA). In a recent policy change, South African government has been setting up a procurement programme for renewable energy capacity, replacing the earlier promotion scheme. The following article describes and explains the single steps in South African renewable electricity support. Subsequently, the South African performance will be analysed. South Africa's recent support measures represent the two main mechanisms for renewable energy promotion, which will be discussed in the first instance. In a second step, South African promotion policy will be put into the broader context of climate change protection efforts and socio-economic framework conditions. The article concludes with an outlook on further challenges to provide a coherent regulatory framework for renewable energy promotion.

The EU Lisbon Treaty and EU Development Cooperation: Considerations for a Revised EU Strategy on Development Cooperation in Eritrea

By *Daniel R. Mekonnen*, Galway and *Mirjam van Reisen*, Tilburg

The European Union (EU) is a leading global actor in development cooperation. Its development cooperation is subject to binding treaty obligations which guide the scope and extent of its foreign policy instruments. This paper examines the scope of legality of EU-Eritrea development cooperation under the relevant treaty obligations of the EU, particularly under the legal framework of the Treaty of Lisbon. Concluding that EU aid to Eritrea is indeed contributing to the sustainment of dictatorship in the country, the authors argue in favour of a revised policy for EU-Eritrea development cooperation. The authors also call for the EU to strengthen positive aid measures, such as helping refugees and supporting democratic organisations of the Eritrean diaspora, while ending direct support to the Government of Eritrea, such as bilateral aid, until the Government of Eritrea can improve conditions so that essential criteria (respect for human rights, democratic accountability, and the rule of law) can be met, as stipulated by the main EU treaties and the Cotonou Agreement.