Chapter 2. Human Rights and Gender Equality

2.1. Concepts and principles

25. The promotion and protection of HR & GE are central principles to the mandate of the UN. All UN agencies must work to fundamentally enhance and contribute to their realization, address the underlying causes of human rights violations, including discrimination against women and girls, and utilize processes that are in line with and support these principles. UN interventions that do not consider these principles risk reinforcing patterns of discrimination and exclusion or leaving them unchanged.

26. Human rights are the civil, cultural, economic, political and social rights inherent to all human beings, regardless of one’s nationality, place of residence, sex, sexual orientation, national or ethnic origin, colour, disability, religion, language, etc. All human beings are entitled to these rights without discrimination. They are universal, inalienable, interdependent, indivisible, equal and non-discriminatory. Human rights are expressed in and guaranteed by normative frameworks and laws that lay down the obligations of States to act in order to respect, protect and fulfil the human rights and fundamental freedoms of individuals or groups. Gender equality refers to the equal rights, responsibilities and opportunities of women and men, and girls and boys. Equality does not mean that women and men will become the same but that their rights, responsibilities and opportunities will not depend on whether they are born male or female.

27. Many elements need to be in place to ensure the adequate incorporation of HR & GE perspectives into the work of an entity, including its evaluations. An evaluation that is HR & GE responsive addresses the programming principles required by a human rights-based approach (HRBA) and gender equality mainstreaming strategy. HRBA and gender equality mainstreaming constitute a “framework of action as well as a methodological tool” to apply international human rights and gender-equality principles, values, standards and goals in all stages of programming.

2.2. International normative framework for HR and GE

28. To apply HRBA and GE mainstreaming, it is important to understand the nature and characteristics of the legal obligations that bind duty bearers. International, regional and national human rights instruments constitute a benchmark for evaluation and an essential reference for analysis, programming and evaluation processes.

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29. International human rights law is a system of international norms designed to protect and promote the human rights of all persons. It entails both rights and obligations.

30. The International Bill of Human Rights, constituted by the Universal Declaration of Human Rights (UDHR), the 1966 Covenant on Civil and Political Rights (ICCPR), and the 1966 Covenant on Economic, Social and Cultural Rights (ICESCR), recognize human rights as the foundation of freedom, justice and peace.

2.2.1. **The legal obligations concerning HR and GE protection**

31. International human rights law states the obligations of duty bearers (principally States) in terms of respect, protection and fulfilment of the rights of persons under their jurisdiction (rights holders). Duty bearers are obliged:

- **To respect rights and freedoms.** This means that duty bearers must not interfere with the enjoyment of rights. As the Inter-American Court of Human Rights has emphasized: “The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State.”

- **To protect human rights and guarantee their fulfilment.** This responsibility commits States to take steps to ensure that third parties do not interfere with the enjoyment of human rights. “This obligation implies the duty of States to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of judiciously ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized […] and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.” For example, States must protect the accessibility of education by ensuring that parents and employers do not stop girls from going to school.

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22 Strictly speaking, in international human rights law, duty bearers are States (represented by their different government agencies and institutions at national and local levels). However, references to other duty bearers can be found in literature on HRBA. Mentions are made to ‘moral duty bearers’ (including parents and family members, hospitals), corporate entities and UN agencies.


24 Ibid.

• To fulfil human rights. This obligation requires States to take steps to progressively realize rights, without any discrimination. This obligation is sometimes subdivided into obligations to facilitate and to provide for the realization of rights. The obligation to ‘facilitate’ refers to the obligation of the State to engage proactively in activities that would strengthen people’s ability to meet their own needs, for instance, creating conditions in which the market can supply the health-care services that they demand. The obligation to ‘provide’ goes one step further, involving direct provision of services if the right(s) concerned cannot otherwise be realized, for example to compensate for market failure or to help groups that are unable to provide for themselves.

**Box 2. State Obligations under CEDAW: Extracts from CEDAW Committee General Recommendation No. 25 (2004)**

- States’ obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies.
- States’ obligation is to improve the de facto position of women through concrete and effective policies and programmes.
- States’ obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.


32. Box 2 offers an example of how the CEDAW Committee has interpreted States’ obligations under its constitutive treaty.

33. Human rights law recognizes that a lack of resources can impede the realization of human rights. Accordingly, some human rights obligations are progressive in nature, while others are immediate. 26 For economic, social and cultural rights, States have a core obligation to satisfy the minimum essential level of each right. This level cannot be determined in the abstract; it is a national task, to be undertaken in accordance with human rights principles. However, in any situation where a significant number of people are being deprived of their right to health, housing, food and so forth, the State has a duty to show that all its available resources, including requests for international assistance, are being called upon to fulfil these rights. For socio-economic rights, the following obligations are of immediate effect:

- The obligation not to discriminate between different groups of people in the realization of the rights in question;
- The obligation to take steps (including devising specific strategies and programmes) targeted deliberately towards the full realization of the rights in question; and

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• The obligation to monitor progress in the realization of human rights. Accessible mechanisms of redress should be available where rights are violated.

34. Human rights treaties also set certain limits on human rights obligations in line with legitimate requirements of national security, public order or public health or in times of public emergencies, such as a security crisis.

35. Further, the comprehensive normative and legal framework for human rights includes these universal and regional human rights treaties as well as different sources of international law, customary international law, case law and other international consensus documents (such as the Millennium Declaration and the Beijing Platform for Action). Additionally, national legal systems have begun to enrich this normative body. Annex 1 details each of these sources of international human rights law.

36. The following sources are relevant as references and sources of information that evaluation teams and supervisors should consider while preparing, designing and carrying out evaluations.

2.2.1.1. International and regional human rights treaties

37. The Universal Declaration of Human Rights can be understood to be the cornerstone document of international human rights law. Although the UDHR did not begin as a legally binding document, it is now endowed with a high degree of legitimacy and “the growing consensus is that most, if not all, of the rights enumerated in the Universal Declaration of Human Rights have acquired a customary status in international law”. Two key international human rights treaties, the ICESCR and the ICCPR (together with their Protocols), further elaborate the content of the rights set forth in the UDHR and contain legally binding obligations for the States that become parties to them. Together with the UDHR, these documents are often called the International Bill of Human Rights.

38. Under the auspices of the UN, more than 20 general and subject-specific human rights treaties have been formulated since the adoption of the UDHR. These treaties create legally binding obligations on the States that ratify them (or accede to them), thereby giving these treaties the status and power of international law. Nine core international human rights treaties have established committees of experts to monitor the implementation of their provisions by the States and are presented in Box 3.


29 For the definition of ratification and accession to an international treaty, see the Glossary of Technical Terms.

30 Currently, seven of the human rights treaty bodies (CCPR, CESC, CERD, CAT, CEDAW, CED and CRPD) may, under certain conditions, receive and consider individual complaints or communications from individuals.
### Box 3. The Core International Human Rights Instruments and Their Monitoring Bodies

There are nine core international human rights treaties and ten monitoring bodies – committees of experts established to monitor the implementation of the treaty provisions by its States Parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

<table>
<thead>
<tr>
<th>Core international human rights treaties</th>
<th>Year</th>
<th>Monitoring body</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</strong></td>
<td>1965</td>
<td>Committee on the Elimination of Racial Discrimination (CERD)</td>
</tr>
<tr>
<td><strong>International Covenant on Civil and Political Rights (ICCPR)</strong></td>
<td>1966</td>
<td>Human Rights Committee (HRC)</td>
</tr>
<tr>
<td><strong>International Covenant on Economic, Social and Cultural Rights (ICESCR)</strong></td>
<td>1966</td>
<td>Committee on Economic, Social and Cultural Rights (CESCR)</td>
</tr>
<tr>
<td><strong>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</strong></td>
<td>1979</td>
<td>Committee on the Elimination of Discrimination against Women (CEDAW)</td>
</tr>
<tr>
<td><strong>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</strong></td>
<td>1984</td>
<td>Committee Against Torture (CAT)</td>
</tr>
<tr>
<td><strong>Convention on the Rights of the Child (CRC)</strong></td>
<td>1989</td>
<td>Committee on the Rights of the Child (CRC)</td>
</tr>
<tr>
<td><strong>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)</strong></td>
<td>1990</td>
<td>Committee on Migrant Workers (CMW)</td>
</tr>
<tr>
<td><strong>International Convention for the Protection of All Persons from Enforced Disappearance (CPED)</strong></td>
<td>2006</td>
<td>Committee on Enforced Disappearances (CED)</td>
</tr>
<tr>
<td><strong>Convention on the Rights of Persons with Disabilities (CRPD)</strong></td>
<td>2006</td>
<td>Committee on the Rights of Persons with Disabilities (CRPD)</td>
</tr>
<tr>
<td><strong>Optional Protocol to the Covenant on Economic, Social and Cultural Rights (ICESCR-OP)</strong></td>
<td>2008</td>
<td>CESCR</td>
</tr>
<tr>
<td><strong>Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1)</strong></td>
<td>1966</td>
<td>HRC</td>
</tr>
<tr>
<td><strong>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2)</strong></td>
<td>1989</td>
<td>HRC</td>
</tr>
</tbody>
</table>
### Box 3. The Core International Human Rights Instruments and Their Monitoring Bodies (continued)

<table>
<thead>
<tr>
<th>Core international human rights treaties</th>
<th>Year</th>
<th>Monitoring body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)</td>
<td>2002</td>
<td>Subcommittee on Prevention of Torture (SPT)</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD)</td>
<td>2006</td>
<td>CRPD</td>
</tr>
</tbody>
</table>

Source: [www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx)

39. The **central international legislation promoting gender equality** is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), adopted by the UN General Assembly in 1979. While many international instruments contain a free-standing provision for non-discrimination on the basis of sex, CEDAW established in detail the obligations of States in a variety of issues. Other international and human treaties contribute to protect the rights of women and girls, such as the *UN Convention on the Rights of the Child*, by considering the rights of specific categories of persons.

40. In addition to international human rights treaties, there are also regional human rights treaties (including those specific to women’s rights), which may concern the same sets of rights, but are only open for signature by States in the relevant region. Regional human rights treaties are important to consider when applying HRBA and gender-equality mainstreaming strategies as they provide an additional set of tools to assist governments in fulfilling their obligations. Regional human rights systems reinforce and complement international standards and machinery by providing the means by which human rights concerns are addressed within the particular social, historical and political context of the region concerned. As a result, regional human rights bodies can be important partners for close collaboration with the UN on activities of mutual concern.31

#### 2.2.1.2. Other sources of international law

41. International human rights law is not limited to the rights enumerated in treaties. It also comprises rights and freedoms that have become part of customary international law, binding on all States, including those that are not party to a particular treaty. Judicial decisions of the international or regional courts and of international monitoring bodies also have a significant role in international human rights law as they provide further clarifications on the scope of States’ obligations and the content of the rights.

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42. There are many other non-binding universal and regional instruments (declarations, principles, guidelines, standards, rules and recommendations) relating to human rights. These instruments have no binding legal effect, but have an undeniable moral force and provide practical guidance to States in their conduct.

43. For example, the UN Millennium Declaration (2000) is an important document for the realization of social and economic rights. It clearly underscores the necessity of advancing HR in order to achieve the MDGs in the areas of development and poverty eradication, peace and security, protection of the environment, and human rights and democracy. The Millennium Declaration reconfirms the central role of gender equality from the perspective of the Fourth World Conference on Women in Beijing (1995) and other major global conferences held in the 1990s. Furthermore, the MDG 3 focuses on promotion of gender equality and gender is considered a cross-cutting goal in the other seven agreed goals.

44. In the context of the implementation of human rights obligations, human rights mechanisms – including treaty bodies and special procedures – regularly provide general comments, which interpret and clarify the content and extent of particular norms, principles and obligations contained in the relevant human rights conventions. They also issue country-specific recommendations that provide detailed guidance on human rights standards applied in a given context.

2.3. The UN normative framework regarding HRBA and gender equality mainstreaming

45. Based on the international human rights framework, the UN has established a clear normative framework to promote the integration of a HRBA and gender equality mainstreaming in all UN entities actions.

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32 A non-exhaustive selection is listed on the OHCHR web page: <www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.


34 International human rights mechanisms include treaty bodies (established to monitor the implementation of core human rights treaties, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights or the Committee on the Elimination of Discrimination against Women (CEDAW Committee)); and mechanisms under the Human Rights Council (including special procedures established by the Human Rights Council to focus on certain countries or thematic issues and the Universal Periodic Review). For further information, see <www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

Mainstreaming human rights has been translated into (but not limited to) the adoption of HRBA across the UN system. Within the UN, significant progress has been made in the inclusion of HRBA over the last fifteen years, boosted by UN Global Conferences held in the 1990s, the adoption of the Millennium Development Goals in 2000, intergovernmental mandates, and UN reform initiatives. The 1986 UN Declaration on the Right to Development clearly represents a milestone in this evolution by declaring in Article 1, “the right to development is an inalienable human right.” The UN World Conference on Human Rights (Vienna, 1993) quickly and emphatically reasserted this principle.

The 1993 Vienna Declaration and Programme of Action

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 abridgment of internationally recognized human rights. (emphasis is ours).

In 1997, in the framework of UN organizational reforms, the UN Secretary-General designated human rights as a cross-cutting issue across each of the four substantive fields of the UN system’s work (peace and security; economic and social affairs; development cooperation; and humanitarian affairs).

Mainstreaming was first developed with regard to gender equality. The UN Third and Fourth World Conferences on Women, which took place respectively in Nairobi (1985) and Beijing (1995), instituted the use of gender mainstreaming as the “global strategy for promoting gender equality” in response to the low impact policies, programmes and actions in terms of equality between men and women. UNDP Chile, Guía para la transversalización de género en el PNUD Chile, UNDP Chile, 2006, p. 17. Since then, a number of UN entities, international cooperation agencies, and governments have adopted gender-mainstreaming strategies. Mainstreaming was then applied to other policy issues that are deemed fundamental to achieve sustainable development such as HR, environment or HIV/AIDS. Within the UN, gender equality mainstreaming efforts have been parallel to the systematic incorporation of HR. At present, they are progressively and more clearly interlaced.

Article 1, paragraph 1 of the UN Declaration on the Right to Development states: “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,” General Assembly resolution 41/128 of 4 December 1986.

Renewing the United Nations: A Programme for Reform, A/51/950, 14 July 1997

78. Human Rights are integral to the promotion of peace and security, economic prosperity and social equity. [...] [T]he issue of human rights has been designated as cutting across each of the four substantive field of the Secretariat’s work programme [...].

79. A major task for the United Nations, therefore, is to enhance its human rights programme and fully integrate it into the broad range of the Organization’s activities (emphasis is ours).39

48. Following on the 1997 reform agenda, the Secretary-General’s Report of 2002, ‘Strengthening of the United Nations: an Agenda for Further Change’,40 underlined the achievements obtained through integrating HR throughout the UN system and identified the building of strong human rights institutions at the country level as a principal objective of the UN. He launched the “Action 2 Initiative”,41 which was then replaced by the UN Development Group Human Rights Mainstreaming Mechanism (UNDG-HRM) in December 2009. The UNDG-HRM is aimed at strengthening policy coherence and operational support to UN country teams and at addressing the challenges HRBA mainstreaming presents across the UN system.42

49. Additional momentum was provided by the 2005 World Summit Outcome and the 2008 General Assembly resolution on Triennial Comprehensive Policy Review,43 in which Heads of State recognized that “development, peace and security and human rights are interlinked and mutually reinforcing,” resolved to integrate the promotion and protection of human rights into national policies, and supported the mainstreaming of human rights throughout the UN system. The MDG Review Summit in 2010 further acknowledged that human rights are an integral part of the effective work towards achieving the Millennium Development Goals.44


41 “Action 2” was a global programme coordinated by the UN High Commissioner for Human Rights, to “strengthen human rights-related UN actions at country level.” Report of the Secretary General to the General Assembly, ‘Strengthening of the United Nations: an agenda for further change’, A/57/387, 9 September 2002, paragraph 51. The objective of “Action 2” was to reinforce the capacity of UN country teams to support the efforts of Member States, at their request, in strengthening their national human rights promotion and protection systems.” For further information on Action 2 Initiative (2004-2009), see <www.un.org/events/action2/>.

42 See HRBA portal, <hrbaportal.org/human-rights-mainstreaming-mechanism>.


50. “The progress of UN reforms in the areas of human rights and development have opened new windows of opportunity to engage and support Member States in fulfilling their human rights commitments and national development goals. The establishment of the Human Rights Council and the Universal Periodic Review process has led to a rise in demand for more technical assistance and support from the UN in this regard. This requires more coordinated and coherent efforts among UN agencies, further building on the achievements and lessons from Action 2 and ‘Delivering as One’ system-wide coherence efforts.”

51. In 1993, the UN General Assembly established the Office of the High Commissioner for Human Rights (OHCHR) with the mandate to prevent human rights violations, secure respect for all human rights, promote international cooperation to protect human rights, coordinate related activities throughout the United Nations, and strengthen and streamline the United Nations system in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies.

52. Since 1997, a number of UN entities have integrated the human rights mandate into agency-specific policies, but each agency tended to have its own interpretation of approach and how it should be operationalized. In 2002 and 2003, UN agencies gathered to exchange experiences on HRBA. They adopted the Common Understanding, which was endorsed at the highest level by UNDG and included in the CCA/UNDAF guidelines. The document is intended to present a common perspective on HRBA and its implications for development programming.

2.3.2. UN mandate on gender mainstreaming

53. Promoting gender equality and reducing gender-based discrimination are at the heart of HRBA and are both central to sustainable economic and human development and to supporting women’s rights. Just as for HRBA, the UN system-wide commitment to systematically include a gender perspective in all their activities is clear and reinforced by numerous international documents. The pursuit of gender equality is integral with, but not subsidiary to, the UDHR and the covenants, which enshrine equality of rights between men and women. The 1979 CEDAW led the UN and its members to stress the importance of promoting gender equality. The Beijing Platform of Action and the Millennium Declaration also commit the UN to promoting gender equality in its development efforts, including through the gender mainstreaming approach.

54. The adoption of CEDAW marked a turning point in international human rights law with the explicit legal consideration of the special condition of women and its interdependent and inter-

45 Ibid.
46 The Common Understanding.
47 There is a UNEG Task Force working specifically on developing guidance for UNDAF evaluation working closely with UNDG. It aims to also address integration of HR and GE in UNDAF evaluations – which can provide such an assessment.
related impact on the fulfilment of all human rights. The preamble to CEDAW explains that, despite the existence of other instruments in which principles of equality and non-discrimination are established, women still do not have equal rights with men. It further states: “Discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”

55. The 1993 Vienna Declaration went beyond the discrimination paradigm to specifically recognize women’s rights as human rights.

56. The initial efforts to guarantee gender equality were focusing on separate targeted activities for women (i.e. ‘Women in Development’). In the 1970s, given the failure of this approach to effectively address gender equality structural gaps, initiatives were shifted “to integrating attention to women into all activities rather than keeping women on the sidelines of development” (i.e. ‘Women and Development’). After the Nairobi and Vienna Conferences, the 1995 UN Fourth World Conference on Women in Beijing clearly established gender mainstreaming as the major global strategy for ensuring the incorporation of gender perspectives in all areas of societal development and the promotion of gender equality (i.e. ‘Gender and Development’).

57. Gender mainstreaming is the strategy adopted by the UN for integrating gender equality in programming. In 1996, the UN General Assembly stressed the importance of gender mainstreaming calling upon the United Nations to promote an “active and visible policy” of mainstreaming gender perspectives. In the 1997 UN Economic and Social Council (ECOSOC) report, gender mainstreaming is defined as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making

1985 Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women

“Urges all organizations of the United Nations system, including the regional commissions and all specialized agencies, to take the necessary measures to ensure a concerted and sustained effort for the implementation of the provisions of the Forward-looking Strategies with a view to achieving a substantial improvement in the status of women by the year 2000 and to ensure that all projects and programmes take into account the need for the complete integration of women and women’s concerns”

49 CEDAW
women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is gender equality”.

58. Subsequent resolutions of the General Assembly recalled the same principle and other UN bodies have provided explicit mandates for gender mainstreaming in specific areas of work of the UN. For example, UN Security Council Resolution 1325 (2000) distinctly outlined the “urgent need to mainstream a gender perspective into peacekeeping operations.” Specific mandates are also available on bringing gender perspectives to the centre of attention in national budget processes as well as in poverty eradication, good governance, human rights, environmentally sustainable development and security.

59. In response, in 2006, a UN system-wide policy on gender equality and the empowerment of women and a strategy on gender mainstreaming were developed. It called for a system-wide action plan comprising indicators and timetables, allocation of responsibilities and accountability mechanisms and resources in order to effectively make the strategy operational. The main elements of the strategy include: a) accountability; b) results-based management for GE; c) oversight through monitoring, evaluation, audit and reporting; d) human and financial resources; e) capacity development; and f) coherence, coordination and knowledge and information management.

60. In 2010, the UN General Assembly established the UN Entity for Gender Equality and the Empowerment of Women (UN Women) with the mandate to assist countries and the United Nations system itself to progress more effectively and efficiently towards the goal of achieving GE, women’s empowerment and upholding women’s rights. One key aspect of UN Women’s mandate is to guide the system’s coordination on gender.

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As with human rights, a number of individual UN agencies have developed gender equality or gender equality mainstreaming policies to systematically include a gender perspective in all their activities. In 2012, the United Nations Chief Executives Board for Coordination adopted the System-wide Action Plan (UN SWAP) on gender equality and women’s empowerment, to be applied throughout the UN system. For the first time, the UN has a set of common measures with which to measure progress in its gender-related work, including the mainstreaming of the gender perspective across all its operations including in evaluation.

### 2.4. The human rights-based approach

The strategy for implementing human rights in UN programming is called the human rights-based approach to programming. HRBA is “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.”

Respect for human rights is a cornerstone principle of the UN Charter and guides the actions of all UN entities.

Human rights are expressed in and guaranteed by normative frameworks and laws that lay down the obligations of States to act in order to respect, protect and fulfil the human rights and fundamental freedoms of individuals and groups. These frameworks use ‘duty bearers’ to reflect obligations of States towards rights holders, which represent all individuals in the concerned State. HRBA explicitly focuses on discrimination and marginalization in the development process, and uncovers the underlying and root causes of major development challenges and unfulfilled rights. It develops the capacities of rights holders to claim their rights, and duty bearers to fulfil their obligations. It moves development from isolated benevolent initiatives to a system of rights and obligations established by international law.

HRBA must inform the way that programmes are designed, implemented, monitored and evaluated, using human rights standards and principles to increase the enjoyment of rights. This includes confronting patterns of inequality and discrimination, and formulating responses that address the structural causes of exclusion, marginalization and the denial of human rights.

The HRBA development model is different from a needs-based model, previously used by most UN development agencies. The needs-based model focuses on meeting key needs but not necessarily on changing the conditions behind unfulfilled needs, such as inequality, inability to

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58 The expression ‘duty bearer’ is defined differently in development programming and in human rights international law. Within this publication, the programming definition is adopted, which includes under the expression ‘duty bearer’ both state and non-state actors.

claim and enjoy rights, and imbalances in power relations. The main differences between the two approaches are summarized in Table 1.⁶⁰

<table>
<thead>
<tr>
<th>Needs-based approach</th>
<th>HRBA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focuses on input and outcome</td>
<td>Focuses on process and outcome</td>
</tr>
<tr>
<td>Emphasizes meeting needs</td>
<td>Emphasizes realizing rights</td>
</tr>
<tr>
<td>Recognizes needs as valid claims</td>
<td>Recognizes individual and collective rights as claims towards legal and moral duty bearers⁶¹</td>
</tr>
<tr>
<td>Individuals are objects of development interventions</td>
<td>Individual are subjects of rights and therefore entitled to assistance</td>
</tr>
<tr>
<td>Focuses on immediate causes of problems</td>
<td>Focuses on structural causes and their manifestations</td>
</tr>
</tbody>
</table>

60. There are three main rationales for adopting HRBA:

- The **intrinsic rationale** acknowledges that HRBA is the ‘right’ thing to do, morally and/or legally. It moves development actions from benevolence into the application of law. It also underscores the importance of creating accountability mechanisms for duty bearers to meet their national and international obligations. Finally, it ensures that people are not passive beneficiaries but recognized as rights holders and active participants in their own development.

- The **instrumental rationale** recognizes that HRBA leads to greater impact and more sustainable human development outcomes. HRBA focuses on analysing the inequalities, discriminatory practices and unjust power relations that exist in a society and affect the enjoyment of HR and the development processes, with the aim of contributing to changing them. It also emphasizes the participation of the persons targeted in a development programme.

- The **institutional rationale** implies examining situations and challenges through a holistic lens in a holistic way, guided by international human rights principles and standards. This new approach can lead to the adoption of integrated responses to problems, including addressing the social, political, legal and policy frameworks that determine the relationships between rights holders and duty bearers. Finally, it can also shape the relations with partners since partnerships should be participatory, inclusive and based on mutual respect.⁶²

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⁶¹ See definitions in the Glossary of Technical Terms.

67. A number of key benefits to implementing HRBA are highlighted in Box 4. Box 5 provides a practical example of how applying HRBA can efficiently address a recognized need (maternal mortality).

<table>
<thead>
<tr>
<th>Box 4. Key Benefits to Implementing HRBA</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Promotes realization of human rights and helps government partners achieve their human rights commitments;</td>
</tr>
<tr>
<td>• Increases and strengthens the participation of the local community;</td>
</tr>
<tr>
<td>• Improves transparency;</td>
</tr>
<tr>
<td>• Promotes results (and aligns with results-based management);</td>
</tr>
<tr>
<td>• Increases accountability;</td>
</tr>
<tr>
<td>• Reduces vulnerabilities by focusing on women and individuals/groups who are marginalized and/or discriminated against in society;</td>
</tr>
<tr>
<td>• More likely to lead to sustained change as human rights-based programmes have greater impact on norms and values, structures, policy and practice.</td>
</tr>
</tbody>
</table>


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<thead>
<tr>
<th>Box 5. An Example of HRBA Application: Addressing Maternal Mortality Through HRBA</th>
</tr>
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<tr>
<td>Unacceptably high maternal mortality rates prevail, despite 15 years of the global Safe Motherhood Initiative. There are very few signs of progress. This lack of progress can be attributed to the status of women, the systematic violation of their basic human rights, and also to failing health systems that deny many women access to emergency obstetric care (EmOC). These dynamics are inextricably linked. Unless the underlying factors relating to women’s human rights are addressed, the necessary conditions for ensuring significant investment in maternal care is never assured.</td>
</tr>
<tr>
<td>A fundamental shift in thinking and action is required if progress towards reducing maternal mortality is to be achieved. This shift requires a broadening of approaches to the problem of maternal mortality. The injustice inherent in the shockingly low percentage of women who have access to EmOC needs to be directly addressed through the systematic use of human rights values and principles to focus attention on underlying power dynamics that deny access to services that could save the lives of women experiencing obstetric complications.</td>
</tr>
<tr>
<td>Improving accessibility to both routine reproductive health services and EmOC requires serious attention to the systemic, institutional and political factors determining inequalities in access to these services. Rights-based approaches help to uncover the power dynamics that perpetuate these inequities, and suggest strategic interventions such as the reallocation of resources, changing accountability mechanisms within health systems and communities, and challenging existing hierarchies in health facilities.</td>
</tr>
</tbody>
</table>

In 2003, the Stamford Interagency Workshop on a Human Rights-Based Approach in the Context of UN Reform reached a common understanding and consensus on the definition of HRBA. The workshop also considered how the UN system could mainstream HRBA in its policies and practices on development cooperation. The resulting UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (referred to as the “Common Understanding”) states that:

a) All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

b) Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

c) Development cooperation contributes to the development of the capacities of ‘duty bearers’ to meet their obligations and/or of rights holders to claim their rights.

HRBA is therefore simultaneously (a) a goal, (b) a process, and (c) an outcome. Box 6 presents an example of the use of a treaty body recommendation in a Common Country Assessment (CCA).

<table>
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<tr>
<th>Box 6. Using Treaty Body Recommendations to Strengthen Human Rights Accountability – Philippines CCA</th>
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<tr>
<td>The Philippines CCA (2003) highlighted a key comment made by the Committee on the Rights of the Child on the country’s report on the Government’s failure to comply with international standards concerning juvenile justice, especially the use of incarceration to punish rather than rehabilitate. The Philippines CCA also identifies certain traditional beliefs and practices that tolerate the abuse and exploitation of children, and cites the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) as an important tool for Government and private sector actors to end this scourge. The use of ILO conventions in the analysis led to the identification of a variety of duty bearers.</td>
</tr>
</tbody>
</table>


The Common Understanding also defines *six key principles of HRBA* to guide programming: (i) universality and inalienability; (ii) indivisibility; (iii) interdependence and interrelatedness; (iv) non-discrimination and equality; (v) participation and inclusion; and (vi) accountability and the rule of law. Three of these principles are particularly relevant to evaluations and discussed throughout this Guidance:

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• **Non-discrimination and equality:** All individuals are equal as human beings, by virtue of the inherent dignity of each person. All human beings are entitled to their human rights without discrimination of any kind, such as sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

• **Participation and inclusion:** Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.

• **Accountability and the rule of law:** States and other duty bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

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**Box 7. Overview of the UN Common Understanding on HRBA**

**Goal:** All programmes of development cooperation, policies and technical assistance should further **the realization of human rights** as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

**Process:** Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments **guide all development cooperation** and programming in all sectors and in all phases of the programming process.

**Outcome:** Development cooperation **contributes to the development of the capacities of ‘duty bearers’** to meet their obligations and/or of ‘rights holders’ to **claim their rights.**

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2.5. The concept of gender, the goal of gender equality and the gender mainstreaming strategy

70. The concept of ‘gender’ is a socio-cultural analytical tool. It distinguishes itself from the term ‘sex’, which refers to biological aspects of a person. Gender is a social construction; it is used to understand and explain how a society establishes differences between men and women. Gender “refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context.
In most societies, there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age.”

71. The concept of gender has descriptive, analytical and political dimensions:  

- The **descriptive dimension** makes visible existing inequalities between men and women, the specific human rights violations women and men are victims of, and their respective needs.

- The **analytical dimension** is directed at analysing and understanding the realities within which a project/programme is attempting to intervene and anticipate its consequences.

- The **political dimension** implies putting in place actions to transform a situation marked by gender inequality.

72. **Gender equality** “refers to the equal rights, responsibilities and opportunities of women and men, and girls and boys. Equality does not mean that women and men will become the same but that their rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women’s issue but should concern and fully engage both men and women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development.”

73. Gender equality also refers to gender identities and sexual orientations. Gender identity is the way persons are perceived and perceive themselves, as masculine or feminine. The construction of gender identity is complex and involves a series of individual and social factors. Sexual orientation refers to “deep-seated direction of one’s sexual (erotic) attraction.” In many societies, people with gender identities and sexual orientations that do not conform to gender expectations are discriminated against, punished or socially excluded.

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65 Ibid.
68 University of California Berkeley, Gender Equity Resource Center, ‘LGBT Resources – Definition of Terms’, <geneq.berkeley.edu/lgbt_resources_definition_of_terms#sexual_orientation>.
While the UDHR and UN human rights treaties do not explicitly mention ‘sexual orientation’ or ‘gender identity,’ they do establish an obligation on the part of States to protect people from discrimination, including on the basis of “sex … or other status”.

Gender mainstreaming is “a globally accepted strategy for promoting gender equality. Mainstreaming is not an end in itself but a strategy, an approach, a means to achieve the goal of gender equality. Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities – policy development, research, advocacy/dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.”

The standard definition of gender mainstreaming can be found in ECOSOC resolution 1997/2:

“Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”

Although adopting a gender equality perspective “results in a stronger focus on the human rights of women and girls […], it integrates a reflection on how men and boys can also suffer distinct and disproportionately human rights violations.” However, the level of existing discriminations and inequalities faced by women often lead to programmes concentrating interventions on the fulfilment of women’s rights.

Gender equality mainstreaming implies the application of the following principles:

- Gender equality should be considered as an integral part of interventions, i.e. “women’s views, interests and needs shape the development agenda as much as men’s.” Its objectives should aim at supporting equal relations between men and women.

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71 <www.unhcr.org/refworld/docid/4652c9fc2.html>.
74 Ibid.
• It should be explicitly recognized that an intervention affects men and women differently and should address these differences. “Women and men have different perspectives, needs, interests, roles and resources – and those differences may also be reinforced by class, race, caste, ethnicity, or age.” 75

• *Gender equality does not require that women become the same as men.* Equality means that one’s rights or opportunities do not depend on being male or female. Equal, non-gender-specific treatment of men and women are often insufficient to achieve gender equality. More so, gender-blind or gender-neutral programmes and policies risk perpetuating and reinforcing existing patterns of discrimination and exclusion as they do not address the factors that generate inequalities between men and women and transform them. Specific measures are therefore needed.

• *Ensuring the equal participation of women and men as ‘agents of change’* in overall economic social and political processes is essential to achieving gender equality. This is not about the number of women who are included in participatory dynamics. It involves the possibility for women to advocate for their rights, their capacity to have their needs and interests taken into account and shape the decisions that affect their life. Partnership with women’s organizations and other groups working for gender equality is necessary to assist this process.

• *Achieving gender equality unavoidably concerns men and can only* be achieved through partnership between women and men. Men’s participation is aimed not only at changing attitudes and practices, fighting against gender stereotypes or providing an understanding about gender equality, but also at avoiding harm in relations between men and women. 76

In summary, *gender mainstreaming is a ‘twin track strategy’* 77 that involves (1) integrating women and men’s needs and interests into all development policies, programmes and projects and (2) developing interventions oriented at empowering women (see Figure 1. Gender Equality and Women’s Empowerment).

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75 Ibid.

76 In some contexts, women empowerment initiatives have led to domestic violence due to the husbands’ feeling that they had lost control over their wives. Although these incidents can be viewed as evidence of the effectiveness of an intervention, because they represent the threat women have posed to the power structure and its attempt to push them back, these unwanted situations could be avoided by guaranteeing men’s participation or other kinds of involvement in gender equality objectives.

2.6. HRBA and gender equality mainstreaming:
Two ‘complementary and mutually reinforcing’ strategies

78. Gender equality and women’s empowerment objectives are an integral part of HRBA. The elimination of discrimination against women and women’s rights has a central place in international human rights law. That is why HRBA and gender equality mainstreaming strategies are “complementary and mutually reinforcing, and can be undertaken without conflict or duplication.”

79. Gender equality mainstreaming and HRBA have much in common. Both rely on an analytical framework that can be applied to all development activities. For the former, the different situation experienced and roles played by men and women in a given society; and for the latter, a normative framework based on entitlements and obligations. They also share the same international normative framework. Both call attention to the impact of activities on the welfare of specific groups, as well as to the importance of empowerment and participation in decision-making. Both apply to all stages of activity (design, implementation, monitoring and evaluation) and to all types of action (legislation, policies and programmes). Finally, both require the systematic adoption of new and different approaches to existing activities, as distinct from developing new and additional activities, with a focus on results.

80. Understanding gender equality as a human right provides the highest level of normative authority, as human rights are the only values on which there is global consensus. Human rights have become part of international customary law, which means that they are applicable everywhere in the world. An example on the value-added of HRBA for gender programming is shown in Box 8. At the same time, gender analysis offers HRBA a tool to understand how gender power imbalances can affect the fulfilment of rights.

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Box 8. UNFPA: The Value-Added of HRBA for Gender Programming

Grounding gender programmes in a human rights framework clarifies the obligations and responsibilities of duty bearers (such as the Government, religious leaders, health workers, etc.). Impress upon a Government the fact that it has legal obligations to promote gender equality is especially important when dealing with the sensitive issues that fall under UNFPA’s mandate in this area. Often, Governments that may seem unwilling to deal with sensitive issues (such as cultural practices that are harmful to women) are more likely to do so when they are aware of their specific duties.

By encouraging the participation and inclusion of women and individuals/groups who are marginalized and/or discriminated against throughout the programming process, HRBA helps to ensure that gender equality is for everyone, including the most excluded groups. This will help to make programmes more effective in the long term.

Keeping in mind the human rights principles of universality and inalienability, indivisibility, and interdependence and interrelatedness strengthens gender equality programmes by emphasizing that all human beings have human rights and that all individuals are equal (women and girls, men and boys). The intersections that exist between human rights require that gender equality programmes be built upon multi-sectoral partnerships, and that the expertise and resources of diverse groups be combined to create truly comprehensive national women’s empowerment strategies. Such holistic support for gender equality will ensure more sustainable programmes.

Implementing the principles of equality and non-discrimination will shed light on groups that have been particularly neglected. Focusing on the most neglected groups is essential if gender equality is to be advanced.

HRBA emphasizes accountability and rule of law. This includes promoting the creation and implementation of national laws and policies that advance gender equality, supporting Governments in upholding the promises made at ICPD [the International Conference on Population and Development] and grounding these promises in Governments’ legal obligations under international human rights treaties, and ensuring that gender equality programmes are designed, implemented, and monitored and evaluated in a transparent, participatory manner. Such a process will help to ensure more sustainable and effective gender equality programmes in the long term.

2.7. **Human rights, gender equality and evaluation**

This Guidance does not ignore the existing discussions, mostly conceptual, on the differences between HRBA and gender equality mainstreaming. However, it concentrates on their shared and complementary goals, principles and tools:

- **Inclusion.** Evaluating HR & GE requires assessing which groups benefit and which groups contribute to the intervention under review. Groups need to be disaggregated by relevant criteria: disadvantaged and advantaged groups depending on their gender or status;

- **Participation.** Evaluating HR & GE must be participatory. Stakeholders of the intervention have a right to be consulted and participate in decisions about what will be evaluated and how the evaluation will be conducted. In addition, the evaluation will assess whether the stakeholders have been able to participate in the design, implementation and monitoring of the intervention. It is important to measure stakeholder group participation in the entire programming process as well as how they benefit from results.

- **Fair power relations.** Evaluating HR & GE must address power relations. Both HR & GE seek, inter alia, to balance power relations between or within duty bearers and right-holders. The nature of the relationship between programme implementers and stakeholders can support or undermine this change. When evaluators assess the degree to which power relations have changed as a result of an intervention, they must have a full understanding of the context in which the change took place. Further, they must conduct the evaluation in a way that is sensitive to the empowerment of disadvantaged groups, e.g. women’s empowerment where women are the disadvantaged gender within a given context. In addition, evaluators should be aware of their own position of power based on status, which can influence the responses to queries through their interactions with stakeholders who may occupy lower status positions. Therefore, evaluators need to be sensitive to these dynamics.