"Education is a liberating force, and in our age it is also democratizing force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances."

– Indira Gandhi
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In earlier blocks you have read about the human rights in general, rights of individuals and some specific collective rights like rights to self determination and right to development. In the process of evolution of human rights it has been observed that in many cases persons individually or collectively suffer or are discriminated against because they belong to a group. Also, in many cases, collectivities existence is threatened because of the fact of their being small in number or otherwise marginalized. To make individuals belonging to such groups and for such collectivities to exercise their rights as equals international community has accepted the principle of group rights in addition to traditional ideal of individual rights. In this block you will read about the status of some such groups and rights that have been provided for the protection and well being of individuals and collectivities.

In Unit 8 you will read about women, the kinds of discrimination women face, importance of women’s rights and the rights of women incorporated in various declarations and conventions. The unit also deals with the measures states are expected to take to eliminate discrimination against women. It also delineates some of the special measures taken, conferences and deliberations held under the auspices of United Nations to highlight the conditions of women and generate awareness about their rights and impress upon the states and civil society to take necessary measures to create conditions for effective implementations of declared rights.

Unit 9 deals with the Rights of the Child. As is well known because of their tenderness children are quite vulnerable. Their vulnerability is further precipitated by poverty, social conflicts and economic exploitation. Concern for protection for children have been expressed for quite long. U.N. General Assembly adopted the Declaration of the Rights of the Child in 1959. Later in 1990 there came U.N. Convention on the Rights of the Child. In this Unit you will read about these rights, their importance, machinery for the implementation and monitoring.

Unit 10 of this block is concerned with the rights of persons belonging to minorities. In this you will read how minorities are situationally disadvantaged and why they need special measures for protection of their identities. Minorities here include cultural, religious and linguistic groups different from the dominant community living in a state. Unit discusses the provisions for protection of minorities in international human rights law, how does the monitoring mechanism of Human Rights Committee under International Covenant on Civil and Political Rights functions and what are the sources of continuing threats to minorities.

Unit 11 deals with the rights of Refugees and Migrant Workers. Plight of refugees and migrant workers all over the world has been miserable. U.N. organs in general and those dealing with the Human Rights have been expressing concerns for them. In this unit you will read about the different categories of refugees and migrant workers, and the problems and difficulties they face. You will also be informed about the rights available to refugees and about the office of United Nations Commissioner for Refugees created for their welfare. You will also know about the efforts being made to protect the rights and interests of migrant workers and emerging trends particularly in the era of globalization.
Unit 12 of this block is concerned with the status and rights of Indigenous People. People who inhabited land before it was conquered by colonial societies or settlers from outside and who consider themselves distinct from them are known as indigenous people. For centuries these people had remained disadvantaged. In this unit you will read about their status and international communities concern with their rights. You will also know about various U.N. instruments and declarations recognizing rights of indigenous people. The unit also informs you about various efforts being made to generate awareness about the plight of these people and need to appreciate their concern for preservation of identity and dignified living as human beings.
UNIT 8 WOMEN’S RIGHTS

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  8.3.1 Domestic Violence
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8.0 OBJECTIVES
This unit discusses: the meaning and importance of women rights; all kinds of discrimination women all over the world face daily; women rights as incorporated in the United Nations Charter and other instruments and Womens’ rights in India.

After going through this Unit, you should be able to:
• know about women’s rights and different issues involved in women’s rights;
• understand how the United Nations has worked for the enhancement of women’s rights; and
• review the role of different international agencies in spreading awareness about women’s rights.
8.1 INTRODUCTION

Women's rights, as a term, typically refers to the freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or illegitimately suppressed by law, custom, and behaviour in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men and boys, and because activism surrounding this issue claims an inherent historical and traditional bias against the exercise of rights by women.

Issues commonly associated with notions of women’s rights include, though are not limited to, the right: to bodily integrity and autonomy; to vote (universal suffrage); to hold public office; to work; to fair wages or equal pay; to own property; to education; to serve in the military; to enter into legal contracts; and to have marital, parental and religious rights. Today, women in most nations, can vote, own property, work in many different professions, and hold public office. These are some of the rights of the modern woman. But women have not always been allowed to do these things. They and their supporters have waged and in some places continue to wage long campaigns to win the same rights as men and be viewed as equals in society.

Most early peoples considered women to be inferior to, or less than, men. Through laws and mythology (stories describing beliefs), the view that women were weak was passed on from one generation to the next. However, some ancient civilizations knew powerful women. For example, Queen Hatshepsut ruled Egypt as a mighty Pharaoh in the 15th century BC.

As time progressed, most women still enjoyed few, if any, rights. Their futures tended to be tied to the fortunes of their husbands or other male relatives. Yet even in periods dominated by men, some women became extraordinary leaders. For example, Queen Elizabeth I ruled England for 45 years, beginning in 1558. She became so influential that the era was named for her; during the Elizabethan Age, England emerged as a world power. Similarly Catherine the Great ruled over 18th-century Russia.

During the late 1700s, in a time called the Enlightenment, or the Age of Reason, some free-thinking women began planting the seeds of change. For example, in 1792 English author Mary Wollstonecraft wrote A Vindication of the Rights of Woman. She boldly proposed that women receive the same opportunities as men in education, work, and politics.

8.2 IMPORTANCE OF WOMEN'S RIGHTS

As you are aware human rights reflect the moral conscience of the world and the highest common aspiration that everyone should live in liberty, free from want and fear. So, human rights can be seen as a global vision backed by state obligations. The term ‘human rights’ refers to those rights that have been recognized by the global community and protected by international legal instruments.
Human rights for women, as for all individuals, are protected in the tenets of international law and international conferences provide the opportunity for governments to make, or repeat, declarations of commitment. For example, the Platform for Action adopted by the Fourth UN World Conference on Women held in Beijing during 1995 reflects the commitment made by governments in the Vienna Declaration and Programme of Action of the 1993 UN Conference on Human Rights, that “the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights”.

A Declaration is an important first step but does not automatically change practice. According to a leading lawyer, Catherine MacKinnon, ‘Human rights principles are based on experience, but the experiences have not been those of women. What most often happens to women escapes the human rights net. Whether in peacetime or in war, at home or abroad, in private or in public, by our side or by the other side, man’s inhumanity to woman is ignored.’ Consequently women world-wide continue to suffer violations of their rights. The causes and consequences may differ from country to country, but prejudices and discrimination against women continue to be widespread and involve the full range of human rights violations known to the modern world. But women and the girl child face additional human rights violations solely or primarily because of their sex. This fact is recognized at the highest levels of world leadership. The UN Secretary-General in 2006 stated that the issue of women’s and girl’s rights remain a priority for the United Nations and the international community.

Important steps towards protecting women’s human rights world-wide include documenting human rights violations, publicising these violations as widely as possible and campaigning to press government authorities to use all mechanisms available to secure an end to the abuses. Governments which fail to protect fundamental human rights should be confronted with the full force of international condemnation.

To hold states accountable for their performance with relation to global human rights standards is not to impose the value system of any one part of the world or another but to refer to universal values based on the distilled knowledge and wisdom of all our cultures. The Vienna World Conference on Human Rights attended by 171 states in 1993 agreed, ‘the universal nature of these rights and freedom is beyond question.’ The central factor is - all human rights are UNIVERSAL, INDIVISIBLE and INTER-RELATED.

Human rights are not just about liberty and freedoms but also about equality, equity and justice. Another milestone advance was made when the World Summit for Social Development recognised ‘that the enjoyment of human rights was a fundamental basis for social development.’ ‘Securing the realization of women’s human rights on a basis of equality with men is now seen as an essential pre-requisite for sustainable development.

The subject of human rights touches upon every aspect of human endeavour and aspiration. Human rights are inherent. Every man, woman and child is entitled to enjoy his or her human rights simply by nature of being human. It is this
UNIVERSALITY of human rights which distinguishes them from other types of rights such as citizenship or contractual rights.

If human rights are to be universally respected and protected, then they must apply to the lives of over half the human race - women.

Check Your Progress 1

1) What do you mean by Women rights?

2) Why does women suffer discrimination world wide?

3) What did the Vienna Conference on Human Rights assert?

8.3 WOMEN AND VIOLENCE

Gender-based violence – in various forms including rape, domestic violence, “honour” killings and trafficking in women – exacts a heavy toll on mental and physical health. Increasingly, gender-based violence is recognized as a major public health concern and a serious violation of basic human rights.

Around the world, at least one in every three women has been beaten, coerced into sex, or abused in some other way – most often by someone she knows, including by her husband or another male family member; one woman in four has been abused during pregnancy.
Millions of women require medical attention or otherwise suffer the impact of gender-based violence; fear of violence inhibits discussion and constrains the health choices and life opportunities of many millions more.

“Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms... In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.”

—Beijing Declaration and Platform for Action, paragraph 112

Gender-based violence both reflects and reinforces inequities between men and women and compromises the health, dignity, security and autonomy of its victims. It encompasses a wide range of human rights violations, including sexual abuse of children, rape, domestic violence, sexual assault and harassment, trafficking of women and girls and several harmful traditional practices. Any one of these abuses can leave deep psychological scars, damage the health of women and girls in general, including their reproductive and sexual health, and in some instances, results in death.

Violence against women has been called “the most pervasive yet least recognized human rights abuse in the world”. Accordingly, the Vienna Human Rights Conference and the Fourth World Conference on Women gave priority to this issue, which jeopardizes women's lives, bodies, psychological integrity and freedom. Violence may have profound effects – direct and indirect – on a woman’s reproductive health, including:

- Unwanted pregnancies and restricted access to family planning information and contraceptives.
- Unsafe abortion or injuries sustained during a legal abortion after an unwanted pregnancy.
- Complications from frequent, high-risk pregnancies and lack of follow-up care.
- Sexually transmitted infections, including HIV/AIDS.
- Persistent gynecological problems.
- Psychological problems.

Gender-based violence also serves – by intention or effect – to perpetuate male power and control. It is sustained by a culture of silence and denial of the seriousness of the health consequences of abuse. In addition to the harm they exact on the individual level, these consequences also exact a social toll and place a heavy and unnecessary burden on health services. Psychological abuse almost always accompanies physical abuse. In addition, one third to one half of all cases involve sexual abuse. A high proportion of women who are beaten are subjected to violence repeatedly.

Violence against women is a pervasive yet under-recognized human rights violation. Accordingly, the 1993 World Conference on Human Rights, Vienna, and the 1995 Fourth World Conference on Women, Beijing, gave priority to this problem.
8.3.1 Domestic Violence

Domestic violence is the most common form of gender-based violence. In every country where reliable, large-scale studies have been conducted, between 10 and 69 per cent of women report they have been physically abused by an intimate partner in their lifetime.

Most domestic violence involves male anger directed against their women partners. This gender difference appears to be rooted in the way boys and men are socialized — biological factors do not seem to account for the dramatic differences in behaviour in this regard between men and women.

Pregnant women are particularly vulnerable to gender-based violence. Some husbands become more violent during the wife’s pregnancy, even kicking or hitting their wives in the belly. These women run twice the risk of miscarriage and four times the risk of having a low birth-weight baby.

Cross-cultural studies of wife abuse have found that nearly a fifth of peasant and small-scale societies are essentially free of family violence. The existence of such cultures proves that male violence against women is not the inevitable result of male biology or sexuality, but more a matter of how society views masculinity.

8.3.2 Rape

The need to provide redress to abused women is urgent. For instance in India, close to the heels of the Protection of Women from Domestic Violence bill becoming an act, this is what was happening behind closed doors, Rape. In 2004, 525 rape cases were reported. In 14 such incidents, the perpetrator was the father of the victim. In 6 cases, it was the stepfather of the victim. In 39 cases the rapists were relatives.

Kirti Singh points out that the laws relating to sexual assault in India have not been changed or amended since the introduction of the Indian Penal Code in 1860, with the exception of certain amendments that came in 1983. The law continues to be both archaic and patriarchal. In 1983, the laws relating to rape were extensively amended, mainly due to intense and widespread movements by women’s organizations to bring about law reforms in this area.

8.3.3 Human Trafficking

Reports of trafficking in women come from nearly every world region. The greatest number of victims are believed to come from Asia (about 250,000 per year), the former Soviet Union (about 100,000), and from Central and Eastern Europe (about 175,000). An estimated 100,000 trafficked women have come from Latin America and the Caribbean, with more than 50,000 from Africa. War, displacement, and economic and social inequities between and within countries, and the demand for low-wage labour and sex work drive this illicit trade in women.

Trafficking in persons — the illegal and highly profitable recruitment, transport, or sale of human beings into all forms of forced labour and servitude, including trafficking into forced marriage — is a tragic and complex human rights abuse. Women are particularly vulnerable to this slavery-like practice, due largely to the persistent inequalities they face in status and opportunities worldwide.
8.4 SOCIAL EVILS

8.4.1 Child Marriage

Most countries have declared 18 as the minimum legal age of marriage. Despite the sanctions on child marriage, these continue. While the practice has decreased globally over the last 30 years, it remains common in rural areas and among the poorest of the poor. Impoverished parents often believe that child marriage will protect their daughters. In fact, it results in lost development opportunities, limited life options and poor health.

Child marriage is a health issue as well as a human rights violation. Because it takes place almost exclusively within the context of poverty and gender inequality, it also has social, cultural and economic dimensions.

Married adolescents have been neglected from the global adolescent reproductive health agenda because of the incorrect assumption that their married status ensures them a safe passage to adulthood.

Teenage brides with much older husbands often have limited capacity to negotiate sexual relations, use of contraception and childbearing, as well as other aspects of domestic life.

Data on spousal age differences show that adolescent girls’ husbands are often considerably older. Research from 16 countries in sub-Saharan Africa indicates husbands of 15-19-year-old-girls are on average at least 10 years older than their wives.

8.4.2 Women and the Right to Life and to be Born

According to a recent report by the United Nations Children’s Fund (UNICEF) up to 50 million girls and women are missing from India’s population as a result of systematic gender discrimination in India. In most countries in the world, there are approximately 105 female births for every 100 males.

In India, there are less than 93 women for every 100 men in the population. The accepted reason for such a disparity is the practice of female infanticide in India, prompted by the existence of a dowry system which requires the family to pay out a great deal of money when a female child is married. For a poor family, the birth of a girl child can signal the beginning of financial ruin and extreme hardship.

However this anti-female bias is by no means limited to poor families. Much of the discrimination is to do with cultural beliefs and social norms. These norms themselves must be challenged if this practice is to stop.

Diagnostic teams with ultrasound scanners which detect the sex of a child advertise with catchlines such as spend 600 rupees now and save 50,000 rupees later. The implication is that by avoiding a girl, a family will avoid paying a large dowry on the marriage of her daughter. According to UNICEF, the problem is getting worse as scientific methods of detecting the sex of a baby and of performing abortions are improving.

According to Ammu Joseph the most dramatic drop in the child sex ratio seems to have taken place in Punjab, Haryana, Himachal Pradesh, Gujarat and
Maharashtra, where clinics specializing in sex determination and sex selective abortions are known to have been in existence for at least a couple of decades. (Doing away with daughters The Hindu 9 December 2001)

8.4.3 Women and Economic Rights

According to Inter Press Service, “On a global scale, women cultivate more than half of all the food that is grown. In sub-Saharan Africa and the Caribbean, they produce up to 80 per cent of basic foodstuffs. In Asia, they account for around 50 per cent of food production. In Latin America, they are mainly engaged in subsistence farming, horticulture, poultry and raising small livestock.”

Yet women often get little recognition for that. In fact, many go unpaid. It is very difficult for these women to get the financial resources required to buy equipment etc, as many societies still do not accept, or realize, that there is a change in the “traditional” roles.

Check Your Progress 2

1) What are the different forms of violence faced by women?

2) Why do you think child marriage is a crime against women?

3) What is the immediate cause of the female sex-ratio going down in India?
8.5 WOMEN’S RIGHTS

The above mentioned status of women has often been questioned by social reformers and protesters in every age. The question of equal status of women received particular attention in twentieth century. Many countries enacted legislations recognizing women’s right to be equal citizens, to participate in social and political activities. Right to vote, which was denied to women even in long established democracies was slowly granted to them in one after the other country. After the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly the question of denial of equality to women and recognition of their right gained particular momentum. In years to come important international norms concerning women’s rights were drawn up by the Commission of Status of Women and adopted by the General Assembly.

As has been explained in earlier units most of the principle international human rights instruments have been drafted based on the model of the Charter of the United Nations and the Universal Declaration of Human Rights, pursuant to which human rights must be guaranteed “without distinction of any kind, such as race, religion, nationality, sex”. Indeed the United Nations has always affirmed that women’s rights are fundamental rights, that women should be guaranteed full participation on an equal footing in all aspects of political, civil, economic, social and cultural life and that the elimination of all forms of gender-related discrimination is one of the international community’s highest priorities. Based on this some of the important conventions adopted by the U.N. are as given below.

8.5.1 Convention on the Political Rights of Women

This convention was adopted by the General Assembly on 20 December, 1952. The convention recognizing that every one has the right to take part in the government of his/her country directly or indirectly through freely chosen representatives and has the right to equal access to public service in his/her country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights declares:

1) Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

2) Women shall be eligible for election to all publicly elected bodies established by national law, on equal terms with men and discrimination.

3) Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

8.5.2 Convention on the Nationality of Married Women (1957)

This convention was adopted in view of the conflicts arising in law in practice with reference to provision concerning the loss or acquisition of nationality by women as a result of marriage, of its dissolution or change of nationality by husband. The Convention recognizes that “every one has the right to a nationality” and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
Based on the above the Convention declares that Women's nationality shall not be automatically effected either due to marriage or its dissolution. Similarly it will not be automatically changed due to change of nationality by husband. In other words women has the right to retain or change her nationality independent of that of husband.

8.5.3 Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriage (1962)

This Convention is based on Article 16 of the Universal Declaration of Human Rights that states:

1) Men and Women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and its dissolutions.

2) Marriage shall be entered into with the free and full consent of the intending spouses.

In view of the above the Convention provides:

1) No marriage shall be legally entered into without the full and free consent of both parties.

2) States shall take legislative action to specify a minimum age of marriage.

3) All marriages shall be registered in an appropriate official register by the competent authority.

8.6 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Since the mid-1970s United Nations has been particularly active with regard to rights of women. One aspect of this has been adoption in 1979 of the Convention on Elimination of All Forms of Discrimination against women as a core Human Rights Conventions. As discussed in Unit 5, the core conventions provide for monitoring mechanisms for better protection and promotion of rights.

As with the other major international human rights instruments, the Convention provided for the establishment of a Committee to consider the progress made in the implementation of the Convention. The Committee on the Elimination of Discrimination against Women consists of 23 independent experts, elected by the States parties from among their nationals. At present, the Committee is authorized only to consider reports submitted by States parties, as no mechanism exists for the consideration of complaints from States or from individuals, although the World Conference on Human Rights, held at Vienna in 1993, had proposed the adoption of an optional protocol authorizing it to receive communications from individuals.

In its annual report submitted to the General Assembly through the Economic and Social Council, the Committee can request the United Nations to conduct studies either directly or indirectly on important aspects of women's rights. The Committee's reports are also transmitted for information to the Commission on the Status of Women.
The definition of discrimination against women as found in the Convention on the Elimination of All Forms of Discrimination against Women is more detailed than the definitions found in other instruments which are more general in scope. The Convention forbids any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality by men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The importance of this definition lies in the fact that the States which have ratified the Convention are required to evaluate the results of their measures and policies on the basis of the progress made in the prevention of discrimination. None the less, inequalities can persist in practice despite the existence of laws and regulations intended to guarantee equality under the law. Therefore, the States parties to the Convention are invited to take special measures to establish de facto equality, while ensuring that these measures are non-discriminatory. The States parties are required to establish education programmes aimed at eliminating gender bias the stereotypes and to take other measures to eliminate practices which are detrimental to women or place them at a disadvantage in relation to men. In its General Recommendation No. 5, the Committee on the Elimination of discrimination against women reaffirmed the importance of special measures to advance women’s integration into all aspects of civil society. For education, politics, the economy and employment in particular, these measures may be temporary according to the degree of equal access.

While the above mentioned international conventions are devoted to specific aspects of the rights of women, many other instruments also do take care of these. In fact all the bodies established to monitor the implementation of various instruments of Human Rights are authorized to consider questions of discrimination on the basis of sex which arise in the exercise of the rights guaranteed. In addition conventions of the International Labour Organization (ILO) also mention important measures of protection against discriminatory labour practices which place women in an inferior position in the workforce. Thus, at least in international human rights convention system much has been adopted for promotion of women’s equality and rights. How far these are implemented is a different question.

Check Your Progress 3

1) What rights are provided for women in the convention on the Political Rights of Women?

2) How is discrimination against women defined in the Convention on the Elimination of All Forms of Discrimination Against Women?
3) What measures states are expected to take to eliminate discrimination against women?

8.7 CONCERNS FOR WOMEN’S RIGHTS

As mentioned above promotion and protection of women’s rights has been a special concern for international community, more so since the mid 1970s. Accordingly a number of initiatives have been taken over the years for the advancement of women both by bodies created under the U.N. Charter and by others created under international instruments.

8.7.1 International Women’s Year and World Conference 1975

Year 1974 was celebrated by the U.N. as International Women’s Year. In this year Economic and Social Council of the U.N. established a voluntary fund. This fund later became the United Nations Development Fund for Women (UNIFEM), whose mandate is to identify and study trends and attitudes which present obstacles for women and to suggest promotional, educational and other measures designed to mitigate those problems. The year culminated in holding of World Conference in Mexico City in 1975.

8.7.2 Mexico World Conference

Mexico World Conference adopted the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace. The Declaration and the World Plan of Action for the Implementation of the Objectives of the International Women’s Year, appended to the Declaration, dealt with a number of important issues. They focused essentially, however, on the underdevelopment of socio-economic structures in most areas of the world as the major cause of women’s inferior position. The Plan outlines nine specific areas for national action, focusing primarily on equality of opportunity in education and employment and equality of remuneration and social benefits. Recommendations were also made as to various policies which could usefully be implemented at the regional and international levels.

8.7.3 U.N. Decade for Women (1976-1985) and World Conference

Following the World Conference of the International Women’s Year in 1975 the United proclaimed 1976-1985 as the U.N. Decade for Women’s. Apart from other activities during the decade was held the world Conference of the United Nations Decade for Women, in Copenhagen in 1980 around the themes of “equality, development in the status of women. In the same year, the General Assembly adopted the International Development Strategy for the Third United Nations Development Decade, in which it emphasized the importance of women as both agents and beneficiaries of the development process.
8.7.4 Nairobi Conference (1986)

The Nairobi Forward-looking Strategies were based on the principle that an essential contribution to the strengthening of international peace and security would be made by the elimination of all forms of inequality between women and men and by the integration of women into the development process. Great weight was given to the fundamental importance of national means of implementing the proposed policies, and Governments were requested to allocate resources and to establish or reinforce mechanisms to promote the full integration of women in all aspect of civil life in their countries.

The Economic and Social Council approved both the contents of the programme and the thrust of the implementation measures. It entrusted the practical application of the programme to United Nations bodies, specialized agencies and other intergovernmental and non-governmental organizations. The Council also established within the United Nations system a reporting mechanism with the aim of monitoring, reviewing and appraising the implementation of the Nairobi Forward-looking Strategies.

In its review and appraisal of the implementation of the Nairobi Forward-looking Strategies, the Commission on the status of women noted a number of serious obstacles hindering the advancement of women and recommended steps to be taken to remove them. In relation to the dejure and defacto inequality which continued to exist between men and women, it recommended that countries should make efforts to make women more aware of their rights.

8.8 FOURTH WORLD CONFERENCE ON WOMEN: BEIJING 1995

You have read above briefly about three World Conferences on Women: Mexico (1975), Copenhagen (1980) and Nairobi (1986). You have also read that in 1993 was held World Conference on Human Rights (Vienna). In Vienna Declaration and Programme of Action once again it was reiterated that the human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The conference urged the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations. It also underlined the importance of the integration and full participation of women as both agents and beneficiaries in the development. In particular, the world conference on Human Rights stress the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. All these aspects were dealt in detail and in a significant manner.

8.8.1 The Conference

The 1995 Fourth World Conference on Women, held in Beijing (China), was the largest gathering of government and non-governmental representatives even held with 17,000 persons in attendance. It produced a path-breaking document for
advancing women’s equity and equality, the Beijing Platform for Action. The Platform is an agenda for empowering women and furthering implementation of the 1986 Nairobi Forward-looking Strategies for the Advancement of Women. The Platform for Action sets time-specific targets for governments to eliminate discrimination in health, education, the workplace, decision making and the law, among other areas. The PFA identifies 12 critical areas of concern: poverty; education; health care; violence against women; women and armed conflict; women and the economy; women in power and decision making; institutional mechanisms; human rights of women; women and the media; women and the environment; and the girl-child. NGOs played an active role in the Beijing negotiations and have been active in both national and international follow-up to the conference.

The goal of the special session was to produce a political declaration and an outcome document that reviewed progress, identified challenges, and adopted new actions to be taken for further implementation of the PFA. Text negotiations in the March 2000 preparatory committee (PrepCom) were laborious with marked differences within and between governmental negotiating blocs. At the conclusion, most text was still “bracketed”, or in dispute. As a result, delegates at the PrepCom continued to work in informal negotiations over five and a half weeks, right up until the beginning of the special session.

8.8.2 Key Outcomes

The Political Declaration reaffirms governments’ commitments and recognizes their primary responsibility in implementing the PFA, the Nairobi Forward-looking Strategies, and the 12 critical areas of concern. It calls for continued international cooperation. It reaffirms the goal of universal ratification of the Convention on the Elimination of All Discrimination against women and commits to strengthening and safeguarding a national and international enabling environment, including through the protection of human rights. Governments agreed to regularly assess PFA implementation, with a view to meeting in 2005 to consider new initiatives.

The document entitled “Further action and initiatives to implement the Beijing Declaration and the Platform for Action” is divided into (I) an introduction; (II) Achievement and obstacles in the implementation of the 12 critical areas of the PFA; (III) Current challenges affecting the full implementation of the Beijing Declaration and the PFA; and (IV) Actions and initiatives to overcome obstacles and to achieve the full and accelerated implementation of the Beijing Platform for Action.

Paragraph 2 of the introduction states that “the full realization of all human rights and fundamental freedoms is essential to the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms.” PFA implementation “is the sovereign responsibility of each state”.

In Section II of the document the different positions expressed by industrialized and developing countries on the impact of structural adjustment policies on women resulted in compromise language referring to “inappropriate design and
application of structural adjustment programmes (SAPs)". In the area of "sexual and reproductive rights", this language as adopted in the five-year review of the 1994 International Conference on Population and Development (ICPD+5), was rejected and replaced with "sexual and reproductive health and reproductive rights of women". Violence against women, where perpetrated or condoned by the state or its agents is named as a human rights violation and states are held accountable.

In Section III, issues referred to contact groups were political will and commitment, sexual and reproductive rights, reference to CEDAW, globalization, sanctions and human rights. Compromise language on the term "sexual rights" was agreed on as "empowering women to have control over and decide freely and responsibly on matters related to their sexuality". Safe sex was replaced with "curbing high-risk behaviour".

Regarding globalization, paragraphs 29 and 30 of the section were much debated, particularly the linkage between globalization and SAPs and their negative impact on women. The final text affirms this linkage, as well as some negative impacts. A reference to labour standards was deleted as there are no universally-agreed standards. Language adopted refers to the high cost of external debt servicing due to SAPs, and declining terms of international trade as a set-back to development.

In Section IV there was debate over reference to the Beijing Conference report, which included reservations to the PFA. It was agreed that the report would be referenced once in the introduction. Other debated issues included good governance, health care and services, diversity, violence against women and the right to development.

The Platform for Action is an agenda for women's empowerment. It aims at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making. This means that the principle of shared power and responsibility should be established between women and men at home, in the workplace and in the wider national and international communities. Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace.

8.8.3 Beijing+5 and Future

Beijing+5 was a special session of the General Assembly entitled "women: 2000: Gender Equality, Development and peace for the Twenty-First Century", that took place in June 2000 at United Nations Head Quarters, New York. At that session governments reaffirmed their commitment to the goals of the 1995 Fourth World Conference and also adopted future actions and initiatives for the year 2000 and beyond.

No doubt in recent years there have clearly been some notable gains for women. Over the period, increased visibility in elected assemblies and state institutions, some closing of gender gaps in primary and to a lesser extent secondary school enrolment, a larger female presence in the labour market and in labour flaws that
cross international borders, and lower fertility rates are some of the changes world over. However, still a significant gap exists in gender equality which place limits on women’s access to income, authority and power. There is no single explanation for various types of inequalities and in some cases discrimination. The fact is that gender inequalities are deeply entrenched in all societies and are reproduced through a variety of practices and institutions, including policy interventions. Such needs to be done both at national and international community level to remove inequalities and gaps. The first General Assembly of U.N. of this century the Millennium Summit in the United Nations Millennium Declaration contains values, principles and eight specific goals as an international agenda for the twenty first century Goal 3 is “to promote gender equality and empower women”. International community needs to live upto this declaration. Of course civil society in general and women’s movement in particular have to play important roles to get expectations fulfilled.

Check Your Progress 4

1) Describe the basic principles on which Nairobi Forwarded-looking Strategies was based.

2) When was Fourth World Conference on women held? What was its main thrust?

3) Write down the important features of platform for Action adopted at Fourth World Conference on women.
LET US SUM UP

Women’s rights are inalienable and indivisible part of human rights.

**Women’s rights**, as a term, typically refers to the freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or illegitimately suppressed by law, custom, and behaviour in a particular society.

Human rights for women, as for all individuals, are protected in the tenets of international law and international conferences provide the opportunity for governments to make, or repeat, declarations of commitment. For example, the Platform for Action adopted by the Fourth UN World Conference on Women held in Beijing.

Every man, woman and child is entitled to enjoy his or her human rights simply by nature of being human. It is this UNIVERSALITY of human rights which distinguishes them from other types of rights such as citizenship or contractual rights.

Around the world, at least one in every three women has been beaten, coerced into sex, or abused in some other way.

Violence against women is a pervasive yet under-recognized human rights violation. Accordingly, the 1993 World Conference on Human Rights, Vienna, and the 1995 Fourth World Conference on Women, Beijing, gave priority to this problem.

Domestic violence is the most common form of gender-based violence. In every country where reliable, large-scale studies have been conducted, between 10 and 69 per cent of women report they have been physically abused by an intimate partner in their lifetime.

UNFPA’s (United Nations Population Fund) work in the area of gender equality and women’s empowerment is firmly grounded in international law.

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** is an international bill of rights for women. The General Assembly adopted the Convention in December 1979, and as of 2004.

The **Beijing Declaration and Platform for Action** was adopted at the September 1995 Fourth World Conference on Women (FWCW).

ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Women’s rights, as a term, typically refers to the freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or illegitimately suppressed by law, custom, and behaviour in a particular society.

2) Women world-wide continue to suffer violations of their rights. The causes and consequences may differ from country to country, but prejudices and discrimination against women continue to be widespread and involve the full range of human rights violations known to the modern world.
3) The Vienna World Conference on Human Rights attended by 171 states in 1993 agreed, ‘the universal nature of these rights and freedom is beyond question.’ The central factor is ‘all human rights are UNIVERSAL, INDIVISIBLE and INTER-RELATED.

Check Your Progress 2

1) Women suffer many different forms of violence such as rape, domestic violence, child marriage, social evils such as foeticide and infanticide.

2) Child marriage is a health issue as well as a human rights violation. Because it takes place almost exclusively within the context of poverty and gender inequality, it also has social, cultural and economic dimensions.

3) The immediate cause of decreasing sex-ratio in India is sex selective abortions or female foeticide.

Check Your Progress 3

1) Right to take part in the government of country through right to vote, to contest elections and to hold public office and exercise all public functions.

2) It means distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights, and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

3) States are required to establish educational programmes, take special measures for employment, economic independence and political participation.

Check Yours Progress 4

1) It was based on the principle that an essential contribution to the strengthening of International peace and security would be made by the elimination of all forms of inequality between men and women and integration of women into the development process.

2) The Fourth World Conference was held in 1995 in Beijing. Its main thrust was to empower women, and set time specific targets for governments to eliminate discrimination in health, education, the workplace, decision making and law.

3) The platform of Action identifies 12 critical areas of concern: poverty, education, health care, violence against women, women and armed conflict, women and the economy, women in power and decision making, women and the media, women and environment and the girl child.

For details see sub-section 8.8.2
UNIT 9  RIGHTS OF THE CHILD

Structure
9.0 Objectives
9.1 Introduction
9.2 Origin of the Concept of Children’s Rights
  9.2.1 Drafting of the CRC
9.3 The UN Convention on the Rights of the Child
  9.3.1 General Principles
  9.3.2 Provisions
9.4 Implementation Mechanism
  9.4.1 Problems in Implementation
  9.4.2 The Optional Protocols
9.5 Let Us Sum UP
9.6 Answers to Check Your Progress Exercises

9.0 OBJECTIVES

This unit will help you to:
• understand the concept of the rights of the child;
• recall the evolution of the UN Convention on the Rights of the Child;
• know about the provisions, implementation procedure and its problems; and
• learn more about the Committee on the Rights of the Child and its functions.

9.1 INTRODUCTION

The development of international concern for the rights of the child was propelled by a growing concern for human security and human development in a globalizing world. In this context, children, in view of their vulnerability are the most affected lot. Their vulnerability is further precipitated by poverty, conflict, exploitation and related problems. In the decade of 1990s, issues like conflict, civil war, child soldiers, divided families and broken childhood became strikingly evident throughout the world. The international community has come to realize that children as a group must have a set of exclusive rights and safeguards designed for them in addition to enjoying the rights enshrined in other human rights treaties. This realization led to the adoption of the comprehensive treaty enshrining all the rights required for children. Prior to the Convention on the Rights of the Child (hereafter the CRC), Article 24 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the International Covenant on the Economic, Social and Cultural Rights (ICESCR) recognized the child’s need for entitlement to special measures of protection. These two articles provided the legal protection and helped in greater elaboration of special measures and rights to form the CRC. In other words, CRC has bloomed from the 1959 UN declaration
on the Rights of the Child and the minimal provisions of the two Covenants. By far, the CRC represents the best elaboration on the rights of the child.

The Convention also reflected a change of perspective in that children were now being seen as the independent bearers of rights. The notion that prevailed earlier was that only those persons who could claim rights and impose corresponding obligations on others could be bearers of rights. This notion was replaced by the idea that rights are also understood as legally protected interests. That is to say, children's rights constitute legal safeguards to protect them from exploitation and vulnerability. Moreover, to exclude anyone from holding rights merely because s/he will not be able to claim, protect or exercise her/his rights responsibly is to speak the language of subordination and paternalism and it reflects a deep sense of mistrust of another's credibility to be the deserving carrier of rights. The Convention, therefore, was a definite departure from the prevailing conventional thought. It empowered children with rights and crystallized a rights-based approach to the issues concerning children.

9.2 ORIGIN OF THE CONCEPT OF THE RIGHTS OF THE CHILD

This section traces the history of the concept of rights of the child, the drafting of CRC, some objections that were raised by conservative groups in the United States and their counterparts elsewhere, as well as by commentators speaking from a Third World perspective.

In 1924 the Assembly of the League of Nations adopted the Declaration on the Rights of the Child. This Declaration makes the first mention of the “rights of the child” in any international document. It endorsed a similar Declaration promulgated by the Council of the Save the Children International Union in 1923. The League’s Declaration contains a sentence that has become the motto of all supporters of the children’s cause: “mankind owes to the child the best it has to give”. As a natural corollary, the UN General Assembly adopted the Declaration of the Rights of the Child on 20 November 1959. It was this text that was the springboard for the initiative to draft a convention on the subject.

The essential theme underlying these two non-binding declarations was that children need special protection and priority care because, socially and physically speaking, they represent the weakest part of human society. This situation of objective inferiority often favours their exploitation in different areas: labour, sexual integrity, etc. Therefore, they need special protection. At the same time they depend for their survival on adults. Since children are perceived as the future of mankind, the societies invest in their own future by taking care of them.

9.2.1 Drafting of the CRC

In 1978, Poland submitted a draft proposal for Convention which was closely modelled on the 1959 Declaration. The draft proposal failed to gain support but it helped in the establishment of an open-ended Working Group of the UN Commission on Human Rights (CHR). The Working Group, under the Chairmanship of Prof. Adam Lopakta from Poland, was responsible for drafting an international treaty on the human rights of children. It met regularly until
1988 when the final draft of the CRC was completed and sent to the General Assembly for adoption. The drafting process was democratic and inclusive in that besides the 43 states then represented in the CHR, observers from many other states and inter-governmental and non-governmental organizations in consultative status with the Economic and Social Council (ECOSOC) participated in the drafting of CRC. Initially many governments showed less enthusiasm in the drafting process. Many developing countries like Algeria, Argentina, Senegal and Venezuela, and states with Islamic law became active participants only towards the end. A key feature in the successful functioning of the Working Group of the CHR was continuity in the composition of government delegations.

The contribution of the NGOs in the drafting process has been highly laudable. In 1983 an NGO Ad Hoc Group was created in order to develop joint proposals and ensure greater coherence among the NGOs and submit annual reports to the Working Groups. The success of the NGO’s activities to promote support for CRC was undoubtedly instrumental in getting many governments to take the drafting process more seriously, and in giving the Working Group a renewed sense of purpose. The Working Group acted on the basis of consensus; no proposal was taken to a vote. This led to a very lengthy process, and the consensus system resulted in the abandonment of certain proposals, notwithstanding the support of a clear majority.

During drafting of the CRC many issues of controversy arose. Three of them are important. The first controversy was concerning the issue of definition of the minimum age of child. There were two opposing groups having differing viewpoints as to the moment when childhood begins — at conception or at birth. Neither side could agree to what would have been a definition of the child in Article 1 primarily owing to concerns regarding the issue of abortion. The Working Group finally came to a consensus that explicit reference to the formulation of minimum age in the Declaration would be made in the Preamble to the Convention, and that there would be no mention of minimum age in Article 1.

The second major area of disagreement was concerning the freedom of religion (Article 14). Its initial formulation, modelled on the text of Article 18 of the ICCPR, included reference to the “freedom to have or to adopt a religion …of his choice”. It was subsequently pointed out in the strongest terms that, under Islam, a child does not have the right to choose another religion, and that the right contained in the Covenant could only be held to apply to adults. This put the drafters in a delicate situation. Reluctantly, in the end there was a consensus to drop all reference to choice.

The third issue that provoked considerable problems was regarding the age at which children should be permitted to take part in armed conflicts (Article 38). This issue generated heated debate in the drafting process. The NGOs and many governments fought tirelessly to ensure that even if children could be recruited into the armed forces as of age fifteen, at least they be prohibited from taking a direct part in hostilities until they had reached eighteen years. At the last meeting of the Working Group, the United States delegate categorically refused to give such protection to the fifteen to seventeen age group.
Check Your Progress 1

1) Why do you think the rights of children are more important than compared to the rights of other groups?

2) Discuss the origin of the concept of the rights of the child.

3) What were the three controversial issues that dominated the debates during the drafting of the CRC?

9.3 THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

As discussed earlier, the CRC is a culmination of a process that began with the adoption of the Declaration on the Rights of the Child in 1959. Forty years later, it was adopted by the UN General Assembly on November 20, 1989 and entered into force in record time on September 2, 1990. Currently it has 193 states parties and by virtue of it, it is the most widely ratified Convention and has become the first human rights instrument to achieve universality in the UN system. Only the United States remains outside the treaty regime (though it has signed the Convention on 16 February 1995). This development is all the more remarkable, because the concept of children’s rights is relatively novel and the fact that the CRC is the most comprehensive single treaty in the field of human rights.

With the adoption of two Optional Protocols the scope of CRC is widened. On 16 May 2000, the UN General Assembly adopted two Optional Protocols: CRC: First Optional Protocol to CRC on the Involvement of Children in Armed Conflict and the Second Optional Protocol on the Sale of Children, Child
9.3.1 General Principles

Before looking at the provisions of the Convention, it would be helpful to look at the four general principles that capture the spirit and philosophy of the Convention:

a) Non-discrimination (Article 2);

b) Best interests of the child (Article 3);

c) Survival and development (Article 6); and

d) Participation and respect for the views of the child (Article 12)

These general principles guide the interpretation of the Convention and all actions concerning the children.

**Non-discrimination:** The first principle of non-discrimination obligates the member states to respect and implement the rights enshrined in the Convention 'without discrimination of any kind'. The member states have to make required changes in legislative, administrative and budgetary policies and choices to eliminate any prevalent discriminatory clauses and trends. However, the principle of non-discrimination does not prevent a member state from providing special measures to help differently-abled children in realizing their rights.

**Best interest of the child** is the most important principle that has attracted a great deal of academic interest. Simply put, it means that all legislative, administrative, judicial, public and private bodies concerned with children’s rights must constantly consider and bear in mind as to how their decisions and actions would affect the rights of the child. Best interest of the child is therefore the primary consideration that must inform all actions concerning children. As article 3(1) of the Convention states, this principle is equally applicable for public bodies, private actors and non-governmental organizations working in the field of human rights.

**Survival and Development:** This principle is enunciated in Article 6 which obligates the member states to “ensure to the maximum extent possible the survival and development of the child”. The Committee on the Rights of the Child in its General Comment no. 5 has stated that ‘development’ in this context should be seen as a ‘holistic concept, embracing the child’s spiritual, moral, psychological and social development’. Particular emphasis has been laid on access to such social sectors as education and health but according to the Convention, these and other economic and social rights are to be implemented ‘progressively’ to the ‘maximum extent of available resources and within the framework of the international cooperation. This phrase is similar to the one used in the International Covenant on Economic, Social and Cultural Rights.

**Participation:** Article 12(1) of the Convention provides for the child’s right to participation in all matters that might affect children. However, views of the child must be given due weightage in accordance with its age and maturity. States Parties are obligated to ensure that avenues for such participation by children are
established. The right to express one’s views freely and the right to participation are essential if the States Parties are to ensure that decisions on issues concerning children are made with due consideration to the best interest of the child. Such participation, it has been further emphasized by the Committee on the Rights of the Child, should not be limited to “listening” to the child; the need is to take their views seriously. In brief, every State is obligated to develop avenues for a two-way communication between children and policy makers.

9.3.2 Provisions

The Convention’s coverage is considerable: Article 1 states that the CRC applies to “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier” (Article 1), thus putting the burden on the state to justify instances in which lower age limit is prescribed. After the initial definition and the principles of non-discrimination and the best interest of the child, substantive provisions regarding rights begin. The rights contained in the CRC have often been analysed around three Ps — rights related to “protection”, “provision” and “participation”. The CRC covers all the traditional areas of human rights — civil, political, economic, social and cultural. It underscores the indivisibility, mutual reinforcement and equal importance of all rights. The only exception to this is the explicit mention of economic, social and cultural rights in Article 4, which requires states parties to undertake such measures to the “maximum extent of their available resources and where needed, within the framework of international cooperation”.

The Convention emphasizes the importance of the family and the need to create an environment that is conducive to the healthy growth and development of children. From the Preamble and throughout the text, great importance is attached to the role of the family. The family is referred to as “the fundamental group of society” (Preamble). The document recognizes that “for the full and harmonious development of his or her personality”, a child “should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Family is broadly defined, including “members of the extended family or community as provided for by local custom” (Article 5). With a view to promote the basic principles of “best interests of the child” and “respect for the views of the child”, the following rights and responsibilities are provided under family and alternative care:

i) Parental guidance (Article 5)

ii) Parental responsibilities (Article 18, para 1 & 2);

iii) Freedom from separation from parents (Article 9);

iv) Family reunification (Article 10);

v) Recovery of maintenance for the child (Article 27, para 4);

vi) Children deprived of a family environment (Article 20);

vii) Concerning adoption (Article 21);

viii) Illicit transfer and non-return (Article 11);

ix) Freedom from abuse and neglect (Article 19);

x) Physical and psychological recovery and social reintegration (Article 39);

xi) Periodic review of placement (Article 25).
The CRC also makes provision for special protection of children’s rights in difficult circumstances. Following provisions deal with the rights of different categories of children:

a) Children in situations of emergency:
   i) Rights of refugee children (Article 22);
   ii) Rights of children in armed conflicts (Article 38), including physical and psychological recovery and social reintegration (Article 39);

b) Juvenile children’s rights
   i) The administration of juvenile justice (Article 40);
   ii) Children deprived of their liberty, including any form of detention or placement (Article 37 (b), (c), (d));
   iii) The prohibition of capital punishment and life imprisonment (Article 37 (a));

c) Children in situations of exploitation:
   i) Freedom from economic exploitation, including child labour (Article 32);
   ii) Freedom from drug abuse (Article 33);
   iii) Freedom from sexual exploitation and sexual abuse (Article 34);
   iv) Freedom from other forms of exploitation (Article 36);
   v) Prohibition of sale, trafficking and abduction of children (Article 35).

d) Rights of children belonging to a minority or an indigenous group (Article 30)

Most of the rights contained in the above section are protection rights. It may be noted that the CRC has to be implemented in the context of existing international norms and national laws if those are more conducive to the realization of the rights of the child. Hence, although Article 1 defines child as a person below the age of 18 years, there are differing national laws prescribing minimum age for marriage, employment etc.

Social, Educational and Cultural Rights

CRC recognizes the following basic rights:

a) Survival and development (Article 6, para 2);

b) Rights of disabled children (Article 23);

c) Right to health and health services (Article 24);

d) Right to social security and child care services and facilities (Article 26 and Art. 18, para 3);

e) Right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27, para 1-3).

f) Right to education, including vocational training and guidance (Article 28);

g) Aims of education (Article 29);

h) Leisure, recreation and cultural rights (Article 31).
Human Rights of Groups

The rights contained in the above category of social, educational and cultural rights are predominantly “provision” rights in that they involve provision of services and facilities.

Civil Rights and Freedoms

These rights are related to basic civil rights and freedoms and they help in the “participation” of children in decision-making process.

a) Right to name and nationality, including registration after birth; the right to know and be cared by parents (Article 7).

b) Preservation of Identity (Article 8) - The child’s right to know one’s parents is important. The problem mainly arises when the child is abandoned by the parents, or when the child is born out of wedlock, or when the parents divorce. This provision is closely interrelated with Article 8 which obligates states to protect basic aspects of the child’s identity, i.e., nationality, name and family relations.

c) Freedom of expression (Article 13);

d) Access to appropriate information (Article 17);

e) Freedom of thought, conscience and religion (Article 14);

f) Freedom of Association and of peaceful assembly (Article 15);

g) Protection of privacy (Article 16);

h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37 (a)).

There are no duties explicitly imposed on children for the rights that they enjoy under the Convention. This is so because it is normally held that since children are seen as vulnerable individuals in need of protection, the duty to realize and maintain children’s rights falls on the state and society. The member states are obligated to make appropriate laws, implement them, establish national institutions for child’s welfare and rights, allocate funds and draft policies to realize the rights contained in the Convention. Additionally, family, community, non-governmental organizations and local networking groups concerned with children play a significant role in realizing the rights of the child.

Check Your Progress 2

1) Explain the two guiding principles of non-discrimination and survival and development of the child as provided in the CRC.
2) Which articles of CRC aim at promoting the basic principles of the “best interest of the child” and “respect for the views of the child”?

3) List the rights that a child is entitled to in situations of exploitation and emergency.

4) Which social, educational and cultural rights of the child are recognized in CRC?

9.4 IMPLEMENTATION MECHANISM

The CRC establishes its own mechanism, the Committee on the Rights of the Child, to monitor the implementation of the treaty by states parties (Article 43 (1)). The Committee, based in Geneva, originally consisted of 10 experts was enlarged to 18 experts in 2003. These experts are elected by the states parties for a period of four years with due consideration to equitable regional distribution and to the principal legal systems (Article 43 (2)). Although elected by the states parties, the experts are usually recognized in their field, of high moral standing, and work in their independent capacity. The composition of the Committee is multidisciplinary. It includes experts in such fields as law, medicine, economy, sociology, education and international law. Originally the Committee met annually but in view of its increased, and still increasing, volume of workload, it has met three times a year since 1995. The Committee now meets three times a year and considers six to eight reports in each session.

It has basically one (mandatory) procedure — to consider reports by the member states. The states parties are under an obligation (Article 44(3)) to submit an initial report within two years of entry into force of the Convention for them and
subsequently periodic reports every five years. The initial report is usually a statement of the policies and laws concerning children whereas the periodic reports review the progress made in their implementation. The Convention does not provide for either inter-state complaints or individual communication procedure.

The purpose of this procedure is to aid the Committee in understanding the level of adherence to the Convention achieved by a state party so that possible ways can be suggested for overcoming the difficulties in implementation. The Committee has repeatedly emphasized that reporting procedure itself should not be seen as a mere administrative exercise; rather, it is intended to give a state party an opportunity to review the existing legislation, harmonize it with the Convention provisions, evaluate their implementation, interact with NGOs, and to appreciate the attendant problems. The objective of the entire process is to make the domestic environment more child-friendly, and thereby enhance the understanding of, and the capacity to implement, the Convention. The states parties are obliged to provide sufficient information on the measures adopted and the progress made in the actual enjoyment of those rights to let the Committee have a comprehensive understanding. Further, the reports are to be made widely available within the country to generate public debate and domestic scrutiny (article 44(6)).

During consideration of state reports, the participation of a state representative is essential when the Committee is examining the report of a state. The questioning of state representatives by the Committee is not adversarial although it enables them to extract useful information from them. The Committee also takes into account relevant information from specialized agencies, such as UNICEF (Article 45 (a)), UNHCR, other treaty bodies, international organizations and NGOs (Article 45 (a)). It engages in a continuous “constructive dialogue” with governmental authorities of states parties. In the spirit of Article 45, the Committee and UNICEF have succeeded in establishing a very positive partnership since UNICEF treasures cumulative knowledge, database and experience in the area. The Committee has also built up an innovative relationship with civil society through national and international NGOs.

The Committee adopts “Concluding Observations”, on state reports and “General Comments” on the nature and extent of rights of the Convention, which provides interpretations of the provisions of CRC. Besides this, Articles 42 and 44 of the Convention obligate a state to make the principles and provisions of the Convention widely known to adult and children alike, and make their report publicly known in their country. The Committee usually refrains from using harsh or critical terminology in its concluding observations and has tended to couch its recommendations and concerns in an agreeable language.

### 9.4.1 Problems in Implementation

There are many problems in implementation of all the rights and provision of CRC. The Committee’s objective to promote and protect children’s rights has been hampered by the reservations and declarations made to the Convention. Sometimes the reservations are so extensive that they make member state’s assumption of obligations under the Convention more nominal than real. Its success story of being a widely ratified treaty is marred by these reservations. Nearly 50 states have formulated reservations to substantive provisions and some reservations are so extensive that they defeat the very objective of the Convention.
Secondly, reporting by the states parties is *irregular* and *delayed*. Huge backlog of state reports reveals that the Committee has faced progressive deterioration in state reporting. It is helpless in tracking down erring states because there is no provision for punitive action against such delays except for sending repeated reminders or allowing the state parties to submit combined reports in case they are overdue. Delay is not only on the part of the states; the Committee too has experienced a yawning gap between the date of submission of a report and the date of its consideration. Part of the reason for this delay was that the session allocated to the Committee was brief and was extended only in 1995.

Thirdly, success always comes at a price. As the most widely ratified Convention, the number of states parties and the volume of communications are large. There is enormous amount of work to be done before a report is taken up for discussion. The secretarial assistance available to the Committee is inadequate which makes timely processing of reports difficult.

Fourthly, the Convention makes the protection of civilians, including children, a matter of feasibility and not of necessity. Likewise, it is weak on the child soldiers' age limit for recruitment to combat services as low as 15. This, in effect, legitimizes use of children of 15-16 years as combat soldiers.

9.4.2 The Optional Protocols

The tenth anniversary of the entry into force of the CRC in the year 2000 was marked by the adoption of the two Optional Protocols — the Optional Protocol on the Involvement of Children in Armed Conflict (OP-AC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OP-Se).

OP-AC was adopted to address the pressing problem of rampant use of child soldiers in the 1990s. The decade of 1990s witnessed a large number of civil wars across the world. In most of these wars, the insurgent groups and irregular armies accounted for widespread recruitment of children below the age of 18 years for active participation in hostilities and their deployment in conflict zones. In some cases, the children operating machine guns and automatic weapons were as young as 12 years of age. Secondly, many countries have deposited reservation or declaration to Article 38 of the Convention that requires the member states to refrain from recruiting persons below the age of 15 years to the armed forces and to ensure that such persons do not take direct part in hostilities. To plug these loopholes a comprehensive and exclusive Optional Protocol was required.

OP-AC sets the *age* limit for the compulsory recruitment and direct participation in hostilities at 18 years and requires states parties to raise the minimum age for voluntary recruitment to at least 16. It prohibits insurgent armed groups “under any circumstances” from recruiting persons under 18 years or using them in hostilities. Insofar as the insurgent groups are concerned, the states shall adopt legal measures to prohibit and criminalize the practice of recruiting children. In its Preamble, the Protocol notes the adoption of the Rome Statute of the International Criminal Court (ICC) and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 or using them to participate actively in hostilities in both international and non-international armed conflicts.
Article 3 of the OP-AC further notes that in the instance of recruitment of members to the armed forces under the age of 18 years, the states shall maintain certain safeguards in respect of such recruitment. These safeguards include that:

a) such recruitment is genuinely voluntary;

b) such recruitment is done with the informed consent of the parents or legal guardians;

c) such persons are fully informed of the duties involved in such military service; and,

d) such persons provide a reliable proof of age prior to acceptance into military service.

The OP-AC also requires the states parties to make a binding declaration that such recruitments are not forced or coerced. Moreover, Article 6 of the Protocol requires states parties to take necessary legal, administrative and other measures to ensure effective implementation of Protocol’s provisions.

The OP-SC requires states parties to prohibit the sale of children, child prostitution and child pornography. Article 2 of the Protocol defines these three acts as follows:

a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

The states parties are also required to ensure that these activities are fully covered under its criminal or penal law and in extradition law between state parties. This means that an offender cannot seek refuge in another country after committing the offence. As positive measures, the states are required to adopt appropriate measures to protect the rights and interests of child victims of these offences. Such measures should include informing the child victims of their rights; providing appropriate support services, protecting their privacy and identity and providing for their safety at all stages of the criminal justice process.

The two Optional Protocols have implementation mechanism similar to the one provided under the Convention. States parties are required to submit, within two years of ratification, a comprehensive report to the Committee of the CRC on measures it has adopted to implement the provisions of the Protocols. Following the comprehensive report, the states parties have to submit periodic reports on the Optional Protocols every five years.

Both these Protocols have entered into force in 2002. This is remarkable in more ways than one; the CRC and the Protocols have come into force reasonably early compared to other human rights treaties and their protocols. Together, the CRC and the two Optional Protocols provide a comprehensive international framework for the protection of children. The real challenge today is to ensure their effective implementation world over.
Check Your Progress 3

1) What is the composition and functions of the Committee of the CRC?

2) Who all participate in the deliberations of the Committee in reviewing state reports?

3) Discuss any three problems encountered in the implementation of CRC.

4) Discuss the major features of the Optional Protocol on the Involvement of Children in Armed Conflict.

9.5 LET US SUM UP

Notwithstanding the problems, the CRC stands out as the universal human rights treaty, which has established a rights-based approach for children, in the light of a unique change in the global perception of the child. As for the present century, the Convention will surely face complex challenges, such as its implementation in a world ridden by increasing poverty and violence.

Despite the inadequacies, the monitoring mechanism of the Convention has been reasonably successful so far. Its significant achievements have been in enhancing
the level of participation and dialogue between the Committee, the reporting states, the NGOs and other UN organs and bodies through dispassionate, constructive engagement of all.

The effectiveness of CRC will depend, to a large extent, on the widespread awareness about the Convention by adults and children alike; it is of crucial importance that mass media, local and central authorities, and national and international NGOs contribute to the dissemination of information on the Convention. Everybody has a role to play in ensuring that the letter and spirit of the Convention becomes reality.

9.6 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) The rights of children are more important than those of other groups because of many factors. They depend on adults for the realization of their rights. They are more vulnerable compared to other persons in the society. This vulnerability flows as much out of age as from poverty, conflict and exploitation. For details, refer to section 9.1.

2) The origin of the CRC must be traced from the 1924 League Declaration on the Rights of the Child. This Declaration formed the basis of a similar Declaration adopted by the United Nations in 1959. In addition to these Declarations, one article relevant to children is found in the ICCPR and ICESCR, which formed the legal protective shield before the adoption of the CRC. For details see section 9.2.

3) The three controversial issues that dominated the deliberations during the drafting of the Convention were: definition of the minimum age of the child; freedom of religion; and, the minimum age at which children should be permitted to take part in armed conflicts. For details see sub-section 9.2.1.

Check Your Progress 2

1) Non-discrimination is provided for in Article 2 of the CRC. It means that the states shall implement the rights contained in the Convention without discrimination of any kind, although the state may make provisions for differently-abled children. Survival and development rights are enshrined in Article 6 where these twin concepts are seen as holistic ones to imply moral, physical, spiritual and mental development. See sub-section 9.3.1

2) Articles 5, 18, 9, 10, 27, 20, 21, 11, 19, 39 and 25. See sub-section 9.3.2

3) Articles 22 and 32 to 39. See sub-section 9.3.2.

4) See sub-section 9.3.2.

Check Your Progress 3

1) The Committee is composed of 18 independent experts from different disciplines who work in their individual capacity. The functions of Committee include the consideration of reports submitted by the states parties and adopting General Comments on the provisions of the Convention. See sub-section 9.3.3.
2) The Committee interacts and deliberates with the state representatives, international organizations, NGOs and other civil society institutions. See sub-section 9.3.3.

3) Three major problems faced by the Committee in the implementation of the Convention are: delayed and irregular reports by the member states; reservations and declarations appended to the Convention; too much workload to be handled by the Committee. See sub-section 9.3.4.

4) The OP-AC prescribes minimum age for recruitment of persons to armed forces, that such recruitment must be voluntary, and that those recruited below the age of 18 years shall not be allowed to take direct part in hostilities till they attain the age of 18 years. Moreover, the OP-AC obligates the member states to criminalize recruitment of child soldiers by the insurgent groups and irregular armies. See sub-section 9.3.5.
UNIT 10  THE RIGHTS OF PERSONS BELONGING TO MINORITIES

Structure

10.0 Objectives
10.1 Introduction
10.2 Who are Minorities?
10.3 Special Provisions for Minorities
10.4 The Existing Provisions for Protection of Minorities
10.5 Declaration on the Rights of Minorities
   10.5.1 Rights of Minorities
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10.6 Other Provisions
10.7 Monitoring Mechanism
   10.7.1 Working Group
10.8 Responses of States and Regional Groups
   10.8.1 Sources of Continuing Threat to Minorities
10.9 Let Us Sum Up
10.10 Key Words
10.11 Answers to Check Your Progress Exercises

10.0 OBJECTIVES

After going through this unit, you should be able to:

- understand how minorities are situationally disadvantaged;
- realize why it is necessary to provide special measures for members of minorities to enable them to enjoy effective equality;
- understand why cultural, religious and linguistic identity of minorities requires special measures for its preservation;
- get familiarized with international human rights standards on protection of minorities and mechanism of implementation and monitoring;

10.1 INTRODUCTION

Article 1 of the Universal Declaration of Human Rights (UDHR), 1948, proclaims that “all human beings are born free and equal in dignity and rights”. This moral commitment to ensure equal dignity and rights to all human persons has been one of the major concerns of the human rights movement during the last two centuries. In modern times it found expression in Article 55 of the Charter of the United Nations, 1945, requiring it to promote “universal respect for, and observance of human rights and fundamental freedoms of all without distinction
as to race, sex, language, or religion”. All member States of the U.N., irrespective of their political system, are therefore required to provide guarantee, in their Constitutions and law, of non-discrimination to all persons and citizens without any adverse distinction based on, among others, religion, language and culture.

What are the rights and freedoms whose equal enjoyment is required to be guaranteed to all? The answer is summed up in ‘All Rights For All’ i.e. civil, political, economic, social and cultural rights for all persons and citizens as well as for all communities or groups of persons/citizens.

However it has been the common experience of mankind throughout history that members of minorities i.e. smaller and vulnerable communities based on religion, language and culture, different from the dominant community/communities in the State are likely to be subjected to neglect and discrimination causing varying degrees of their exclusion in the common social, political and economic domain of national life. Moreover such communities may face majoritarian pressure of cultural assimilation, and find preservation of their distinct language and script and certain religious practices difficult. In some societies and countries certain religious and racial communities are stigmatized for supposed wrongs of history or are considered inferior in intellect and morals by virtue of their colour or descent.

Countering all such claims of inherent superiority of dominant races, religions, languages and cultures and their claim to set cultural norms for the rest of humanity, international human rights law affirms the rights of all smaller non-dominant communities i.e. minorities to enjoy their own culture, profess and practise their own religion and use their own language. It further puts obligation on member States to create conditions favourable for preservation and development of distinct identities of minorities.

Thus we find that recognizing the fact that no large society or country is homogenous, it is a major concern of human rights movement to ensure every one’s right to be equal though different, or right to be different, yet equal. This pursuit of equality and celebration of diversity are facets of the larger concern to ensure equal justice to the weak and the strong. In this regard the following excerpts from the resolution of the Indian National Congress adopted on 26 October 1937 deserves attention as it is based on recognition of rights of individuals as well as of groups to enjoy full freedom and opportunity, and on the affirmation of diversity as a source of enrichment of the Indian life:

The objective of the Congress is an independent and united India where no class or group or majority or minority may exploit another to its own advantage, and where all the elements in the nation may co-operate together for the common good and the advancement of the people of India. This objective of unity and mutual co-operation in a common freedom does not mean the suppression in any way of the rich variety and cultural diversity of Indian life, which have to be preserved in order to give freedom and opportunity to the individual as well as to each group to develop unhindered according to its capacity and inclination.
10.2 WHO ARE MINORITIES?

There is no common definition of minority. Various authors and scholars have defined minority in different ways depending on specific situations.

To start with, the permanent Court of International Justice in 1930 said: “a minority is a group of persons living in a given country or locality, having a race, religion, language and tradition of their own and united by this tradition of race, religion, language and sentiments of solidarity, with a view to preserving their traditions, maintaining their forms of worship, ensuring the instructions and upbringing their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.” This judgement of PCIJ became the starting point for the definition of a minority put forward by Prof. Capotorti in his report on the protection of minorities in 1977. The following definition of ‘minority’ was put forward by Francesco Capotorti in 1977 in his Study Report assigned by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities for implementation of Article 27 of the International Covenant on Civil and Political Rights (ICCPR).

A group numerically inferior to the rest of the population of a State in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

United Nations Organization and its bodies Human Rights Commission and Sub-Commission on Prevention of Discrimination and Protection of Minorities, have been engaged in providing a definition of minority for the purpose of formulating a declaration on the Rights of Minorities.

As no agreement could be arrived at among the member States over the definition, it was not officially adopted. Later during the course of the preparation of the Draft Declaration on Minorities the Sub-Commission considered a report prepared Mr. J. Deschenes in 1985, wherein ‘minority’ was defined as:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

However no consensus could again be arrived at in the Sub-Commission over the definition.

The lack of unanimity over definition, partly derives from differing minority situations, historical as well as contemporary, in different countries. However the criteria set forth in the two definitions above wherein minorities are characterized as groups of people with stable features of cherished identity, whose vulnerability derives from non-dominance in terms of number and power, adequately describe the universal situation of identity-based minorities, though
it excludes oppressed groups like Afro-Americans in the U.S. and Dalits in India, who got negative identity imposed upon them by virtue of their racial and social origin. In their case preservation of identity is not an issue, but attainment of equality of status and opportunity is an issue related to their group right. Prof. Capotori established certain subjective and objective criteria for determining a minority. He pointed out that at the objective level a minority is not only numerically inferior to the rest of the population of the state, it must also be in a non dominant position. At the subjective level, according to Capotori, the minorities show a sense of solidarity towards preserving their culture, traditions, religion or language. It is this subjective dimension of a minority, which distinguishes it from people willing to integrate. However, Deschenes, while defining “minority” for the UN Sub Commission for Minority Rights, pointed towards three basic characteristics: (i) numerical inferiority, (ii) non dominant status, and (iii) ethnic, religious and linguistic characteristics different from those of the majority population. Deschenes did not feel that preservation of identity constituted an essential attribute of the minority situation. The core feature of minority status of a group therefore is its vulnerability derived from inadequate access to power.

Check Your Progress 1

1) What are chief characteristics of minorities?

2) What makes minorities vulnerable?

3) Why is preservation of minority culture, language and religion difficult?
10.3 SPECIAL PROVISIONS FOR MINORITIES

Special measures are required for minorities to enable them to enjoy effective equality of treatment in the common national domain of social welfare, economic development and political participation so as to neutralize discriminatory-exclusionary practices against them. Again as their languages and cultures are likely to suffer neglect and even assimilationist pressure of the majority, special measures are required for the survival and development of minority languages and cultures and certain public manifestations of religious practices.

The principle of special measures for minorities was first definitively laid down by the Permanent Court of International Justice (PCIJ) in the case of The Minority Schools in Albania. The court said that the objective of minority rights was two fold: to secure for minority groups the possibility of living peaceably alongside the rest of the population and cooperating amicably with them while at the same time preserving the characteristics which distinguish them from the majority and satisfying the ensuing special needs. It held that these two characteristics are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority. The court therefore held that:

There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law. Equality in law precludes discrimination of any kind, whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations. It is easy to imagine cases in which equality of treatment of the majority and the minority, whose situations and requirements are different, would result in inequality in fact............. The equality between members of the majority and of the minority must be an effective, genuine equality, that is the meaning of this provision.

The aftermath of the First World War in particular saw the emergence of international debate on issues of minorities, their protection and rights. At the time of formation of League of Nations a case was made for non-discrimination and collective rights of racial and national minorities within new states as well as others seeking admission to the League. There was strong opposition also to this. The league of nations, however acknowledged the need for international protection of minority rights. As a result of that some treaties were adopted for protection of minorities. But the system of implementation of the treaties was weak.

After the second World War and with the establishment of United Nations Organization, the issue of minority protection was taken up afresh. To begin with the general feeling among the leaders was, that the guarantee of human rights and good relations between states will provide solutions to minority problems. However, in view of the fact that minority peoples were indeed under constant pressure from the dominant society in many states the United Nations Organization got involved in the issue of minorities protection. A sub-commission of U.N. Human Rights commission, on prevention of Discrimination and Protection of Minorities was established in 1962. The Sub-Commission in due course drafted a declaration on Minority Rights which was adopted by the U.N.
General Assembly in 1992. Earlier minority Rights were mentioned in the International Covenants on Civil and Political Rights. These still are there. Let us have a look at this.

**Check Your Progress 2**

1) How do you justify special measures for minorities?

2) How does the PCIJ explain the necessity of different treatment of minorities for equality?

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**10.4 THE EXISTING PROVISIONS FOR PROTECTION OF MINORITIES**

Universal Declaration of Human Rights made it clear that all human beings without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status are entitled to all the rights and freedoms. The UDHR thus made it clear that persons belonging to majority or minority cannot be discriminated in terms of availability of rights. Thereafter Article 27 of the International Covenant on Civil and Political Rights (ICCPR) provided particularly for protection of identity rights of minorities in the following words:

_In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language._

Initially there was a feeling that this provision was only negative in nature prohibiting states from denial of equality to members of minority communities. However, later on it was interpreted in more positive manner. The following paragraphs of the General Comment by the UN Human Rights Committee, 1994 elaborate the provisions of Article 27:

6.1 Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a ‘right’ and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected.
against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

6.2 Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2(1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

In spite of above clarifications it remains a fact that ICCPR addresses only minimal traditional minority rights that is cultural, religious and linguistic rights. At the same time these rights are available to individuals as members of minority groups and not to minorities as groups. These issues were later addressed by the UN subcommission on Prevention of Discrimination and Protection of Minorities.

The UN Sub-Commission defined the concept of non-discrimination and protection of minorities in the following words:

1) Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

2) Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population....It follows that differential treatment of such groups or individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole.

The Sub-Commission apart from other tasks, also started debating the necessity of a declaration on minority Rights.

10.5 DECLARATION ON THE RIGHTS OF MINORITIES

As already mentioned in 1962 was established the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. The sub-commission took up the issues related to minorities in greater depth and suggested the need for a Declaration on the Rights of Minorities. A draft declaration was submitted to the Commission on Human Rights by Yugoslavia in 1979. This draft provided
a framework for further discussions which continued in the decade of 1980s. Finally, The Declaration on the Rights of persons belonging to National or Ethnic, Religious or Linguistic Minorities was completed and adopted by the U.N. General Assembly in 1992. The Declaration was inspired by Article 27 of the ICCPR, explained above. It, however strengthened and clarified those rights which make it possible for persons belonging to minorities to preserve and develop their group identity. According to Prof. Asbjørn Eide, Chairman of the Working group on minorities, the Declaration sets out rights of persons belonging to minorities and the duties of the states in which they exist. While the rights are consistently set out as rights of individuals, the duties of states are in part formulated as duties toward minorities as groups. While only individuals can claim the rights, the state cannot fully implement them without ensuring adequate conditions for the existence and identity for the group as a whole.

10.5.1 Rights of Minorities

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly Resolution 47/135 of 18 December 1992 lays down the norms for the protection of rights of minorities to existence, to development and to distinct identity for which States are required to take special measures for effective equality and to create favourable conditions for preservation of distinct identity.

Article 1 of the Declaration states that states shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. The Article further asks that the states shall adopt appropriate legislative and other measures to achieve these ends. The other measures include judicial, administrative, professional, educational and further policies and steps for protection of minorities' identities and culture.

The specific rights of Minorities have been described in Article 2 of the Declaration. The basic premise behind these rights according to Article 2.1 is that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. The Article specifies the following specific rights for minorities.

Persons belonging to minorities have:

- Right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

- Right to establish and maintain their own associations.

- Right to establish and maintain without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other states whom they are related by national or ethnic, religious or linguistic ties.
Human Rights of Groups

Article 3 of the Declaration makes it clear that persons belonging to minorities may exercise their rights, individually as well as in community with other members of their group, without any discrimination. It is made clear that no disadvantage shall result for any person belonging to a minority as a consequence of the exercise or non exercise of the rights set forth in the Declaration.

10.5.2 Duties of the States

A reading of the rights provided in the Declaration makes it clear that these rights are not just negative in nature restricting the states from interference in freedoms and equality. These rights for effective implementation require positive measures by the States. The Declaration therefore sets the measures that should be taken in order that the rights can be properly exercised. These are as follows:

Article 4:

1) States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2) States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3) States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4) States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5) States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5:

1) National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2) Programmes of cooperation and assistance among States should be planned and implemented with regard for the legitimate interests of persons belonging to minorities.

Article 8:

1) Measures taken by States to ensure the effective enjoyment of the rights set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
The above provisions make it clear that adoption of the Declaration suggests that the State must under all circumstances respect and protect the existence of the minority and that its members retain their necessary sources of livelihood. Furthermore, as Asbjørn Eide points out, the state must abstain from any discrimination, directed against its members and protect them from discrimination. States shall also under all circumstances create favourable conditions to enable persons belonging to minorities to preserve and develop their identity. In both respects the word “shall” is used indicating a duty. As such what is required is that states seek to implement the rights to the maximum of their available resources and they seek in good faith to realize the purposes of the Declaration.

10.6 OTHER PROVISIONS

Apart from Article 27 of ICCPR and the Declaration on the Rights of Persons belonging to national or Ethnic, Religious or linguistic Minorities, some other international instruments also provide for protection of minorities. The provisions of the following other international instruments especially dealing with discrimination, intolerance, violence and hate crimes against minorities have a bearing on the protection of rights of minorities:

1) The UN Charter 1945
3) Universal Declaration of Human Rights, UN, 1948
4) Convention against Discrimination in Education, UNESCO, 1960
5) International Convention on the Elimination of All Forms of Racial Discrimination, UN, 1965
6) International Covenant on Economic, Social and Cultural Rights, UN, 1966
7) Declaration on Race and Racial Prejudice, UNESCO, 1978
8) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN, 1981
10) Vienna Declaration and Programme of Action of the World Conference on Human Rights, UN, 1993
12) Commission on Human Rights Resolution 1995/24, entitled “Rights of persons belonging to national or ethnic, religious and linguistic minorities”, setting up a working group on minorities, UN, 1995
14) Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities by Asbjørn Eide. UN Document E/CN.4/Sub.2/Ac.5/2001/2

15) Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance UN, 2001

10.7 MONITORING MECHANISM

The status of international Covenants and Conventions is that of multilateral treaties. Most of them have established committees of independent experts to oversee implementation of the provisions of the treaties.

You have already read that the following are treaty-based monitoring bodies, which are mandated to supervise State compliance with the concerned Convention/Covenant containing minority-specific provisions and standards.

1) Human Rights Committee (HRC) under the ICCPR
2) Committee on Economic, Social and Cultural Rights (CESCR)
3) Committee on the Elimination of Racial Discrimination (CERD)
4) Committee on the Rights of the Child (CRC)

States are required to submit an initial report to these treaty-bodies, followed by periodic reports every four or five years, in which they are expected to provide information on special legislative, administrative and judicial measures, policies and programmes to end discrimination against minorities. They are also required to provide statistical data on the share of minorities, including minority children, in economic development, social welfare, health and education. States have an obligation under Article 20(2) of the ICCPR to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

While examining State Reports the ‘treaty bodies’, including CESCR and Committee on Elimination of Discrimination against Women, and Committee against Torture (CAT) can and do ask government representatives questions about treatment of minorities, and minority rights. The reports are examined in open meetings of respective bodies, which NGOs and members of the public may attend.

Minorities and NGOs are free to provide relevant information to the Committee members.

The HRC, CERD and CAT can receive treaty-based complaints or petitions concerning alleged violations of standards by States, provided the concerned State has ratified the Convention and accepted the particular procedure. The Declaration on the Rights of persons belonging to National, or Ethnic, Religious and Linguistic minorities, of course is not a binding treaty. Therefore no binding mechanism for its implementation is available. However states are watched by the U.N. bodies; particularly through working groups and special rapporteurs.
10.7.1 Working Group

In order to provide a meaningful mechanism to monitor the observance of Declaration The Commission on Human Rights decided through its resolution 1995/24 to set up a five member Working Group on Minorities in 1995, to meet each year for five working days to promote the rights of persons belonging to…..minorities as set out in the Declaration, and in particular to:

a) Review the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

b) Examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

c) Recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities;

10.8 RESPONSES OF STATES AND REGIONAL GROUPS

Most of the countries claim that minorities in their respective States enjoy right to equality and non-discrimination, and that their language, culture and religion enjoy due protection, but in reality even liberal secular democracies of the West have not taken adequate measures for the maintenance and development of minority languages and cultures. In some countries like France cultural homogenization is encouraged in the name of secularism. In public employment, racial and religious discrimination is widespread. However in some countries like Canada, Australia and UK multiculturalism is increasingly becoming acceptable.

India’s own record is a mixed one. Its religious minorities have been periodically subjected to pogroms and massacres, often with the complicity of the law-enforcement system. The Constitution of India through Articles 25 to 28 grants right to freedom of religion and related rights. Article 29 of the Indian Constitution protects minority language and scripts. The Government of India has established a National Commission for Minorities (NCM) under an Act of 1992. It has also taken various other measures for protection and welfare of minorities. These will be discussed in detail in another unit.

In Pakistan and Bangladesh some minorities like Ahmadias do not enjoy the right to freely practise their religion. Blasphemy laws of Pakistan are a source of threat to religious minorities and Muslim dissenters.

In Europe regional mechanism has been established for protection for rights of minorities.

Some of these regional European Conventions etc. are given below:

1) Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, 1950
2) European Social Charter, Council of Europe, 1961
4) Documents of the Moscow Meeting of the Conference on the Human Dimension, CSCE, 1991
5) Helsinki Decisions on the Human Dimension, CSCE 1992
6) Framework Convention for the Protection of National Minorities, Council of Europe, 1994
7) The Hague Recommendations regarding the Education Rights of National Minorities, the Foundation on Inter-Ethnic Relations 1996

10.8.1 Sources of Continuing Threat to Minorities

With the rise of aggressive nationalism, religious extremism, intolerance and xenophobia, minorities have become soft targets in some parts of the world including Western Europe, the U.S and South Asia. In Post-September 11, 2001 (9/11) situation Muslims as a community have become suspects in Europe and America. The rise of extremism in India has been posing threat to Muslims and Christians.

In some European countries ‘Islamophobia’ has been recognized as one of the manifestations of religious intolerance. All these trends have been taken due note of in the Durban Declaration and Programme of Action, 2001, which require member States to publish disaggregated data on minorities and to make institutions of governance socially diverse. It needs to be noted that similar recommendations have been made in India also by various Commissions and Committees on minorities. The general observation everywhere is that protection and promotion of minorities identities are based on four requirements: protection of their existence, non-exclusion, non-discrimination and non-assimilation. It is also a fact that protection of minorities adds to peace and harmony in the society and creates a conducive atmosphere for development. By no means this is a threat to unity or integration of state.

Check Your Progress 3
1) What are the provisions for protection of minorities in international human rights law?

2) What is the thrust of the HRC’s General Comment on Article 27 of the ICCPR?
3) How does the monitoring mechanism of Human Rights Committee under ICCPR function?

4) What are the sources of continuing threat to minorities?

10.9 LET US SUM UP

Throughout ages in most societies and countries there have been communities smaller in number than the more numerous and dominant community/communities, whose members suffer neglect and discrimination. Such minority groups which have language, culture or religion different from the majority face difficulty in preserving their language and traditions. In earlier times, exclusion of such communities from positions of power and prestige and denial of equal opportunity to their members was accepted as a fact of life.

Now for the first time in human history the right to be different yet equal, or right to be equal though different, is being affirmed under the universal human rights standards of equality and non-discrimination.

It is also being affirmed that real enjoyment of equal rights by vulnerable minority groups requires adoption of special measures. Mere formal equality under law without special provisions will not result in equality in fact. It has been clarified by official comments on Article 27 of the ICCPR and by provision (3) of Article 8 of the UN Declaration on Rights of Persons belonging to …… Minority that such special measures will not be considered violative of the right to equality.

Though Article 27 of ICCPR deals only with identity rights of minority culture, religion and language, the principle of special measures has been extended to economic, social and political fields of national life.

As minorities periodically face threat to their existence, dignity and places of worship, it is required by the State to uphold rule of law, for which institutions of police, armed forces and justice system must have adequate minority representation.

To ensure minorities due share in legislative and other elected bodies, it is being widely felt that electoral systems should be so adapted as to make them minority friendly so that democracies become really inclusive and not just majoritarian.
All these concerns have given rise to norms of multiculturalism and pluralism, celebrating diversity as a source of enrichment.

The contrary trend of treating minorities as the “other” and as suspects, stigmatizing and demonizing them is also underway, leading to conflicts and use of force and threat of secessionism.

It has led human rights movement to treat inter-community relations, conflict resolution and peace as vital issues on its agenda.

### 10.10 KEY WORDS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-dominant</td>
<td>not being powerful enough</td>
</tr>
<tr>
<td>Vulnerable</td>
<td>open to attack</td>
</tr>
<tr>
<td>Homogenization</td>
<td>bringing about uniformity</td>
</tr>
<tr>
<td>Identity</td>
<td>that which distinguishes a group or person</td>
</tr>
<tr>
<td>Stigmatized</td>
<td>condemned</td>
</tr>
<tr>
<td>Demonized</td>
<td>negatively described like a demon</td>
</tr>
<tr>
<td>Exclusionary practices</td>
<td>practices aimed at excluding the minorities from opportunities and benefits</td>
</tr>
<tr>
<td>Assimilationist pressure</td>
<td>pressure of the majority to make distinct minority identities merge into the larger one</td>
</tr>
<tr>
<td>of the majority</td>
<td></td>
</tr>
<tr>
<td>Ostensible legal equality</td>
<td>apparent not real equality</td>
</tr>
<tr>
<td>Secessionism</td>
<td>seeking separation</td>
</tr>
<tr>
<td>Xenophobia</td>
<td>fear of the alien ‘other’</td>
</tr>
<tr>
<td>Islamophobia</td>
<td>fear and hatred against Islam</td>
</tr>
</tbody>
</table>

### 10.11 ANSWERS TO CHECK YOUR PROGRESS

**EXERCISES**

**Check Your Progress 1**

Develop the following points:

1) Vulnerability arising from Non-dominance in terms of number and power.
2) Numerical inferiority, inadequate share in power and in certain cases conflict over issues related to identity.
3) Culture and language require official support, without which they suffer neglect and may not service.
4) Yes. It is the logical corollary of equal enjoyment of all human rights by all.

**Check Your Progress 2**

1) Members of the majority get their identity rights protected as a matter of course. It is the minority community whose members face discrimination and minority identity which arouse suspicion and hostility. Hence the need of special measures.
2) The PCJI has laid down the principle of the necessity of different treatment of minorities so that equality is substantive and not just formal legal one.
Check Your Progress 3

1) The main binding provision is Article 27 of the ICCPR, 1966; but the Declaration on the Rights of Persons belonging to Minorities, 1992 provide the standards for measures to be adopted by member States.

All other instruments provide for non-discrimination on the basis of religion, belief, and race etc. In this regard the ILO Convention of 1960 and the Convention on the Rights of the Child, and Convention against Racial Discrimination, 1965 are significant.

2) Provisions under Article 27 of the ICCPR are expressed in negative terms and do not apparently recognize collective rights of groups.

The General Comment of the HRC, 1994 elaborates these provisions putting an obligation on States to adopt positive measures for effective protection of identity rights of minorities.

Secondly it recognizes the collective nature of identity rights.

Thirdly it concedes the necessity of special positive measures for minorities as legitimate.

3) Human Rights Committee requires member States to submit country reports every five years, in which they must give disaggregated data on minorities.

The report is examined by the Committee in open session, which may be attended by NGOs.

The Committee’s observations are required to be given due publicity and compliance by States parties.

4) Aggressive nationalism, racism, xenophobia, secular homogenization, religious intolerance are sources of threat to minorities.
UNIT 11 RIGHTS OF REFUGEES AND MIGRANT WORKERS

Structure
11.0 Objectives
11.1 Introduction
11.2 Categories of Refugees
   11.2.1 Reasons for Persecution
   11.2.2 Asylum Seekers
11.3 Rights of Refugees
   11.3.1 UN High Commissioner for Refugees
11.4 Migrant Workers
   11.4.1 UN Convention on Migrant Workers
   11.4.2 Rights of Undocumented Workers
11.5 Relevance of Migration Today
   11.5.1 Status of Migrant Workers
11.6 Recent Initiatives
   11.6.1 Suggestions for Improvement
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11.8 Answers to Check Your Progress Exercises
11.9 References

11.0 OBJECTIVES

This unit deals with the problems of Refugees and migrant workers and United Nations Conventions and efforts for protection of their rights. After going through this unit you will be able to:

- know the meaning and different categories of refugees;
- understand the problems refugees face;
- know the rights available to refugees and role of United Nations High Commissioner for Refugees;
- know the problem and difficulties faced by the migrant workers;
- analyse the nature and status of migrant workers in the era of globalized world; and
- understand the efforts being made to protect the interests and rights of different categories of migrant workers.

11.1 INTRODUCTION

The plight of refugees all over the world has been miserable. The number of refugees have grown very fast in the recent period. At present there are over 14
million refugees around the world. The total number of uprooted people including the internally displaced persons within any country is estimated at 24.5 million. As regards the countries of origin of these refugees, we can specially identify Palestine, Afghanistan, Iraq, Sudan, Congo, Somalia, Burundi and Vietnam. Globally speaking the major refugee destinations are Pakistan, Iran, USA, Syria, Germany and India. Similarly there are millions of workers who are away from home in other countries earning their livelihood in difficult and many times exploitative conditions.

While the world is debating on the universal application of human rights there also is need to focus our special attention on the current plight of refugees including the internally displaced persons (IDP) and the migrant workers all over the world. In this unit our concern is to highlight on the growing need to safeguard the interests and rights of the refugees, the internally displaced persons and the migrant workers in different parts of the world.

## 11.2 CATEGORIES OF REFUGEES

People who are forced to flee their homes due to persecution, whether on an individual basis or as part of a mass exodus due to political, religious, military or other problems, are known as refugees. The definition of a refugee has varied according to time and place, but increased international concern for the plight of refugees has led to a general consensus.

As defined in the 1951 United Nations Convention Related to the Status of Refugees (the Refugee Convention), a refugee is defined as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of prosecution…….”

The statute of the office of the United Nations High Commissioner for Refugees define the term as “any…….person who is outside the country of his nationality or if he has no nationality, the country of his former habitual residence, because he has or had well founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence”.

While the definition in the Refugee Convention has been used by international organizations such as the United Nations, the term continues to be misunderstood and is often used inconsistently in every day language. Media stories, for example, often confuse refugees with people migrating for economic reasons (“economic migrants”) and persecuted groups who remain within their own country and don’t cross an international border.

A special category are people who may have been forced to flee their homes for the same reasons as refugees but they have not crossed an international border. These people are called internally displaced persons. Unlike refugees, internally displaced persons have not crossed international border in search of protection.
They are displaced from their homes and communities, but are still within the jurisdiction of their government. In theory, therefore, it is still their national government which is responsible for their protection. Refugees conventions do not apply on them. There is, however, growing recognition at the international level for the plight of internally displaced persons: By the end of 2000, there were approximately 11.5 million refugees around the world who had fled their countries for a variety of reasons and an every greater number of internally displaced persons, between 20-25 million, who had abandoned their homes for similar reasons. Increasingly the majority of current conflicts in the world involve disputes between political or ethnic groups within countries rather than wars between countries. Given this trend, the number of persons caught up in conflicts in their own countries and forced to leave their homes is likely to increase.

11.2.1 Reasons for Persecution

To be called a refugees on the basis of persecution the reasons for persecution must be one of the five grounds listed in Article 1a(2) of the Refugee Convention: race, religion, nationality, membership of a particular social group or political opinion. Persecution based on any other ground may not be considered. Race is used in the broadest sense and include ethnic groups and social groups of common descent. Religion also has a broad meaning, including identification with a group that tends to share common traditions or beliefs, as well as active practice of religion. Nationality includes an individual’s citizenship. Persecution of ethnic, linguistic and cultural groups within a population also may be termed persecution based on nationality. A particular social group refers to people who share a similar background, habits or social status. This category often overlaps with persecution based on one of the other four grounds. It is applied to families of capitalists, landowners, homosexuals, entrepreneurs and former members of the family.

Political opinion refers to ideas not tolerated by the authorities, including opinions critical of government policies and methods. It includes opinions attributed to individuals (i.e. the authorities think a person has a certain political opinion) even if the individual does not in fact hold that opinion. Individuals who conceal their political opinions until after they have fled their countries may qualify for refugee status if they can show that their views are likely to subject them to persecution if they return home.

Whatever are the characteristics to define refugees as mentioned above, the important thing to keep in mind is that definitions come into play when countries and organizations attempt to determine who is and who is not a refugee.

11.2.2 Asylum Seekers

Persons who leave their country on the basis of persecution or apprehensions of persecution and want to be accepted in another country are known as asylum seekers. Those who are seeking refugee status in another country — normally need to establish individually that their fear of persecution is well-founded and undergo a legal procedure in which the host country decides if she or he qualifies for refugee status. However, during a mass exodus, it may not be possible for a host country to carry out individual screening. In such circumstances particularly when civilians are fleeing for similar reasons, a ‘group’ determination or refugee status may be declared, whereby each civilian is considered a refugee, in the absence of evidence to the contrary.
International law recognizes the right to seek asylum, but does not oblige states to provide it. Nations at times offer ‘temporary protection’ when they face a sudden mass influx of people and their regular asylum systems would be overwhelmed. In such circumstances people can be speedily admitted to safe counties, but without any guarantee of permanent asylum. Thus ‘temporary protection’ is helpful to both governments and asylum seekers in specific circumstances. Yet it only complements and does not substitute for the wider protection measures offered by the Refugee Convention. Refugee protection and assistance organizations generally promote three “durable solutions” to the fate of refugees:

- Voluntary repatriation: refugees are able to return to their home country because their lives and liberty are no longer threatened;
- Local integration: host governments allow refugees to integrate into the country of the first asylum; and
- Resettlement in a third country: repatriation is unsafe and the first-asylum country refuses local integration.

Most of the world’s refugees wait for durable solutions for their predicament. While most have been granted provisional or temporary asylum in neighbouring countries, they are not able to regularize their status or integrate. Their rights to move and work are often highly restricted, and educational and recreational opportunities are often nonexistent or severely lacking. These refugees may also be subject to attack, either by local security forces or by cross-border incursions from the country of origin.

Table 11.1: Global Profile of Refugees [12 million refugees in 2001]
(Ten largest groups)

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Main Countries of Asylum</th>
<th>Number of Refugees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Iran/Pakistan</td>
<td>3,809,600</td>
</tr>
<tr>
<td>Burundi</td>
<td>Tanzania</td>
<td>530,100</td>
</tr>
<tr>
<td>Iraq</td>
<td>Iran</td>
<td>554,000</td>
</tr>
<tr>
<td>Sudan</td>
<td>Uganda/Ethiopia/D.R.Congo/Kenya/Central African Rep.</td>
<td>489,500</td>
</tr>
<tr>
<td>Angola</td>
<td>Zambia/D.R.Congo/Namibia</td>
<td>470,600</td>
</tr>
<tr>
<td>Somalia</td>
<td>Kenya/Yemen/Ethiopia/USA/United Kingdom</td>
<td>439,900</td>
</tr>
<tr>
<td>Bosnia-Herzegovina</td>
<td>Yugoslavia/Croatia/Slovenia Tanzania/Congo/Zambia/Rwanda</td>
<td>426,000</td>
</tr>
<tr>
<td>Democratic Rep.Congo</td>
<td>Burundi</td>
<td>392,100</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>China/USA</td>
<td>353,200</td>
</tr>
<tr>
<td>Eritrea</td>
<td>Sudan</td>
<td>333,100</td>
</tr>
</tbody>
</table>

Sources: Refugees by Numbers 2002, UNHCR
An estimated 3.9 million Palestinians who are covered by a separate mandate of the U.N. Relief and Works Aget (UNRWA) are not included in this report. However, Palestinians outside the UNWRA area of operations such as those in Iraq or Libya, are considered to be of concern to UNHCR. In 2001, their number was 349,100.

Check Your Progress 1

1) Who are called refugees? In what categories they can be placed?

2) Under what types of persecution a person can seek refugees status?

3) Who are known as asylum seekers?

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11.3 RIGHTS OF REFUGEES

Refugees are particularly vulnerable to human rights violations and are often unable to secure adequate protection of their rights. As already explained refugees are individuals in grave danger in their own countries who cross an international border in search of protection. They need to flee and to be able to find a country of asylum and be granted legal protection (refugees status). They should never be forcibly returned to a country where their human rights will be violated. They should be assured of minimum standards of human treatment while they are in the asylum country. Also, if and when it is safe for them to return, refugees may need international assistance and monitoring of the human rights situation to assure their successful reintegration into society.

In terms of International human rights law in case of refugees it is important not to lose sight of the fact that refugees are first and foremost human beings, entitled
to certain human rights. The most important protection for refugees in
international human rights law is the principle of non-discrimination which
ensures that refugees, even though they are not citizens of the asylum country,
are entitled to the same fundamental rights and freedoms as citizens. In general,
the rights set out in International Bill of Human Rights (Universal Declaration
of Human Rights, International covenant of Economic, Social and Cultural rights
and International Convention Civil and Political Rights) apply equally to citizens
and non-citizens, with the exception of a few political rights such as right to
vote. It means that even though refugees are outside their own country they are
still entitled to respect for their basic human rights. In addition Universal
Declaration of Human Rights mentions specific rights as under:

Article 13.2 Everyone has the right to leave any country, including his own,
and to return to his country.

Article 14.1 Everyone has the right to seek and enjoy in other countries asylum
from persecution.

The U.N. Declaration on the protection of all persons from Enforced
Disappearance provides in Article 8:

“1) No state shall expel, return or extradite a person to another state
where there are substantial grounds to believe that he would be in
danger of enforced disappearance.

2) For the purpose of determining whether there are such grounds, the
competent authorities shall take into account all relevant
considerations including, where applicable, the existence in the state
concerned of a consistent pattern of gross flagrant or mass violations
of human rights.”

In spite of the above and various other provisions refugees still face a number
of problems. According to Amnesty International the main human rights issues that
refugees face can be grouped under the following headings:

- Right to seek asylum, i.e. their ability to leave their own country and their
ability to gain access to a country of asylum.

- Protection against forcible return i.e. their right not to be turned back at
borders or on the seas and their rights to a fair hearing of their asylum claims.

- Protection of refugees rights in asylum countries i.e. protection of refugees
civil rights (e.g. liberty and security of the person, freedom of expressions,
freedom of religion), non discrimination, protection of economic, social
and cultural rights (e.g. rights to work, right to adequate standard of living)
and voluntary resettlement to a third country.

- Right to return i.e. voluntary repatriation and monitoring safety of returnees.

11.3.1 UN High Commissioner for Refugees

The post of the U.N. High Commissioner for Refugees (UNHCR) was established
in 1950 by a resolution of the U.N. General Assembly. The main function of the
UNHCR is to provide international protection to refugees. As already pointed
out that while the circumstances leading to the refugees flows are varied and
intricate, their common feature is that persons concerned have been compelled
to leave their respective countries of origin in order to find security and protection elsewhere and they are all in need of, and entitled to, international protection. It is the responsibility of UNHCR to provide this protection to refugees to compensate for their lack or the denial of national protection. UNHCR is required to report annually to the U.N. General Assembly through the Economic and Social Council (ECOSOC). The General Assembly resolution each year guides the broad outlines of UNHCR policies, but more detailed discussion of these policies takes place at the annual Executive Committee of the High Commissioner's programme and since 1995 at its new Standing Committee; the Executive Committee meets for one week in Geneva usually in the last week of September or the first week of October. There are 53 Members State of Executive Committee. The standing committee meets four times a year. These committees consider policy matters, including matters of refugee protection. In recent years UNHCR has paid particular attention to the protection needs of refugee women and children.

Check Your Progress 2

1) What rights have been provided for refugees?

2) Describe the main Human Rights violations faced by refugees.

3) Describe the role and functions of U.N. High Commissioner for refugees.

11.4 MIGRANT WORKERS

International migration is a growing phenomenon, with an estimated 185 million people living outside their country of origin. As more people migrate, concern about their vulnerability to human rights abuses has increased. There is a
compelling case for a human rights response in international law. The most recent, large-scale effort is the United Nation’s International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW). The convention, in addition to laying out a comprehensive list of rights for migrant workers and their family members, sets guidelines for the promotion of legal and humane migration channels. The ICMW was adopted unanimously on 18th December, 1990 by the UN General Assembly, opening it for ratification. By signing the convention, countries agree to a monitoring and reporting process once it enters into force. Support among nations has been tentative. The ICMW received the 20 ratifications necessary for entry into force in 2003, 13 years after its passing. Today, among the 35 current signatories, major receiving states are notably absent. It is an important legal and human rights instrument as it is the most comprehensive international treaty to date on the rights of all migrants and members of their families.

11.4.1 UN Convention on Migrant Workers

The Migrants Rights Convention acknowledges the role which the migration of workers plays in the global economy and provides international standards to address the treatment, welfare and rights of migrant workers regardless of their status, as well as setting out the obligations and responsibilities of states who host migrant workers and members of their families.

The convention covers rights and protection for migrant workers at all stages of their migration, from their preparation in their country of origin, the period of transit, their stay in states of employment and their return to and resettlement in their country of origin. It also extends the concept of “equality of treatment” by calling for migrant workers and members of their families, who are non-nationals in states of employment, to be treated equally, within certain parameters.

As its title implies, the ICMW addresses the working situation of migrants, entitling them to same pay, hours, safety considerations, and other workplace conditions that nationals enjoy. However, the convention goes beyond rights in the workplace by enumerating a comprehensive list of protections for migrant’s family members, with the goal of acknowledging migrant workers as more than simply economic factors of production. Indicative of this concern are provisions barring the arbitrary expulsion of legal migrant workers. The ICMW does not attempt to create new rights. Rather, it explicitly extends to migrants those rights set forth in other UN documents. In enumerating these rights, the convention often invokes a principle of equal treatment between migrant workers and nationals. This is true across all of the convention’s “fundamental” civil and political protections, such as rights to conscience and religion, access to due process before the law, and humane detention. It is also the case for several economic, social and cultural rights — including remuneration and employment conditions, social security, emergency medical care, and access to education for children.

Another notable feature of the ICMW is its inclusion of the undocumented workers. Recognizing the risks undocumented migrants face from employers and others, the ICMW aims to ensure that, despite issue of questionable legal status, “Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law. “ Even with absent legal status, undocumented migrants are ensured certain legal rights”.

Rights of Refugees and Migrant Workers
Migrants with proper documentation enjoy a wider range of rights under the convention than the undocumented, including some level of political participation, access to unemployment benefits and public work schemes, access to education and training opportunities, the ability to form unions, and family reunification. Notably, the ICMW specifically states that the rights it lays out for undocumented workers should not be interpreted as implying their regularization, and it further endorses that states combat illegal migration while strengthening channels for lawful migration.

**11.4.2 Rights of Undocumented Workers**

The ICMW’s extension of rights to undocumented workers has been a major ratification obstacle for receiving countries. Some countries have viewed these rights as a way to encourage, or even reward, undocumented migrants’ violations of national immigration laws.

In contrast, others view the inclusion of protections for undocumented workers as the proper application of universal human rights to a vulnerable group. Some have posited that extending certain rights, such as those concerning equal work conditions, to undocumented migrant workers would remove the advantage some employers derive from hiring undocumented migrant workers. As a result, employment conditions for nationals and migrant workers would improve, and migrants would be discouraged from entering a country illegally.

**Economic Interests**

While several fundamental rights, such as protection from forced labour, elicit little controversy, receiving states have expressed the desire to retain discretion in limiting others. One reservation concerns the ICMW’s stipulation that the several rights delineated for migrant workers should be applied in a manner equal to that of nationals. In this regard, granting rights of equal access to economic, social, and cultural benefits is seen as costly. For instance, states have been inclined to draw a distinction between nationals and non-nationals regarding certain employment-related protections laid out by the ICMW for legal migrants, such as rights to unemployment benefits and access to public work scheme intended to combat unemployment. States are less likely to protect migrants in accessing education, health, housing and other social services as well.

States are especially reluctant to make these commitments when they are not able to provide adequately for their own nationals. This is a significant tension for developing countries or countries in times of economic hardship. Proponents of convention maintain that these protections are universal human rights which recognize migrant workers as more than merely economic inputs. Moreover, some rights, such as access to health services and housing, may be related to basic rights of the life and physical security.

While receiving countries may be wary of implementing the recommendations laid out by the ICMW due to the cost of services and benefits, they may also want to refrain from guaranteeing rights to work and residency, especially during times of economic hardship. Such flexibility has been used by countries in the past as a way to regulate economic downturns without significant political opposition. Sending countries that have an interest in providing jobs for their nationals overseas are also wary of signing the convention. Signing obligates
11.5 RELEVANCE OF MIGRATION TODAY

Some commentators have noted the dramatic changes that have taken place since the ICMW’s conception in the early 1970s and its drafting in the 1980s. For instance, at the time of the convention’s drafting, states were much more actively involved with the migration of workers, with recruitment being almost exclusively within the state’s domain. Requirements such as the obligation of sending states to give pre-departure orientation to its migrant workers going abroad are much less relevant today. Since then, migration has been facilitated more through private actors and migrants’ own networks, thus eroding the ability of states to implement the full range of recommendations outlined in the ICMW.

The significant administrative responsibilities of implementation would involve a wide range of state agencies and challenge the resources of countries, for example those in formerly Communist Eastern Europe, that have only recently established measures for managing migration. Even wealthy countries with highly developed administrative capacities have challenges keeping up with existing requirements of their immigration systems, as evidenced by the accumulated backlogs in processing applications in the US and UK, for example. Some countries, such as the US, have claimed that the level of rights outlined in the convention are equaled or surpassed by existing national laws. In such cases, the requirements for periodic reporting are seen as an additional drain on resources with no additional benefit to migrants.

11.5.1 Status of Migrant Workers

First, the number of migrant workers around the world has steadily increased over the last two decades due to the impact of global economic restructuring, escalating poverty, and violent conflicts. These individuals face abuse and discrimination in host countries. While resulting violations are many and varied, focusing on border violations may be a way to start advancing procedures for concrete protection of migrant workers.

Second, migrant workers crossing borders worldwide are often denied the basic rights to life and are subjected to degrading treatment by border police and/or officials. These egregious abuses result from increased numbers of military and border patrol officials without adequate training. The lack of training increases the likelihood of confrontation and human rights violations against migrants crossing borders. Prevalent abuses take the form of unprovoked shootings, physical abuse, sexual abuse, humiliation, abuse by private persons, and “environmental deaths”. Human Rights Advocates (HRA) has submitted reports on these violations in the past to the Human Rights Commission (E/CN.4/1997/ NGO/54).

Third, given that these human rights violations exist worldwide and host countries are proposing regressive legislation with little or no protection for migrant workers, it is imperative that immediate responsive action be taken to address them. However, as of December, 2007, 27 years after the United Nations General
Assembly established a working group to draft a treaty on the rights of migrant workers and members of their families, only 37 countries have ratified the resulting convention, and two additional States have signed it.

Fourth, treaty bodies of the United Nations could address the problems of migrant workers worldwide; however, due to severe backlogs in reporting mechanisms, it is unrealistic that they would be able to focus on migrant worker issues specifically. The International Labour Organization (ILO), the organization with jurisdiction over work-related issues, is also unable to address violations against migrant workers. Because the process for raising complaints under the ILO structure requires that Governments, employers or workers’ organizations raise the violations, migrant workers’ violations simply have not been considered. At this time, the Working Group of Intergovernmental Experts on the Human Rights of Migrants is the only body that can specifically address the human rights violations of migrants and their families. HRA also submitted information to the Working Group (E.CN.4/AC.46/1998/3/Add.35).

Lastly, as the treaty on migrant workers is at present not much in effect and there is no other body able to look at human rights violations affecting migrant workers, Human Rights Advocates supports and encourages the work of the Working Group, and believes it is critical to continue its work and strive for the treaty to go into effect.

11.6 RECENT INITIATIVES

In a recent letter addressed to the World Bank President, James Wolfensohn, on the eve of its annual meetings in Duabi, the Executive Director of Human Rights Watch, Kenneth Roth, has exhorted the bank to “highlight the importance of protecting migrant workers, both in the Gulf region and the global economy as a whole”. As the World Bank has recognized in its April 2003, report on Global Development Finance, remittances sent home by migrant workers has increased from $60 billion in 1998 to $62 billion in 2002. These payments, according to Roth, “have become more important and stable sources of finance for developing countries than private lending or official development assistance”. India leads the countries receiving large remittances at $10 billion followed by the Philippines ($6.4 billion), Morocco ($3.3 billion), Egypt ($2.9 billion), Lebanon ($2.3 billion), Jordan ($2 billion), Yemen and Pakistan ($1.5 billion each), Sri Lanka ($1.1 billion) and Indonesia ($1 billion). However, their economic significance to both their home countries and the societies in which they work notwithstanding, many migrant workers “suffer from discrimination, exploitation and abuse”.

Significantly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families came into force in 2003. Not surprisingly, not very many industrialized countries, which depend heavily on migrant labour, have shown any enthusiasm for adopting the Migrant Workers Convention which guarantees the full range of internationally recognized human rights to all migrant workers and their families, including the right to life, the right not to be subjected to torture or other forms of ill-treatment, the right to due-process of law, and the right to freedom of movement, association, expression, and religion. It further guarantees to migrants and their families “effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions”.
According to Roth, "many states seem reluctant to adopt the Migrant Workers Convention for fear that it will somehow privilege migrants, particularly those with "irregular status". "But the Migrant Workers Convention only reinforces human rights standards to which the same states are usually committed under other treaties. It recognizes the serious worldwide problem of migrants without legal status and, while seeking to protect them from exploitation, calls for cooperation among states parties to prevent and eliminate such 'illegal or clandestine movement and employment'. The Convention also grants broad latitude to states to maintain their own policies with respect to immigration, and requires migrant workers 'to comply with the laws and regulations of any State of transit and the State of employment' and 'to respect the cultural identity of the inhabitants of such States'."

As the World Bank has recognized that increasing labour mobility is a priority for poverty reduction and economic development in many countries and as these important reforms need to be accompanied by effective measures for the protection of migrant workers from exploitation and abuse, Roth has urged the bank to encourage countries to adopt and implement the protections contained in the Migrant Workers Convention.

11.6.1 Suggestions for Improvement

A major Think-tank in USA known as CATA has given several constructive suggestions in 2006 to the United Nation's Economic and Social Council and the General Assembly for the improvement in the status of migrant workers all over the world. These are as follows:

1) Receiving States should recognize the contribution to their economies of migrant workers by granting such workers the opportunity to remain with regular status and to integrate into Society, if that is their wish. So-called "temporary migration" programs, while often thought as mutually beneficial, in fact allow receiving states to enjoy a reliable supply of cheap labour while denying those workers the full range of rights, social services, and opportunities that full-time residents have access to. In addition, temporary migration programs require workers to spend long and repeated periods of time separated from their families, and almost invariably result in both gender and age-based discrimination in hiring practices.

2) Member states should grant to immigrant and migrant workers, including irregular immigrants, the same rights afforded to other workers, in accordance with the Universal Declaration of Human Rights and Conventions of the International Labour Organization. Migrant and immigrant workers around the world are rarely afforded the same rights under the law as other workers, which creates an incentive for employers to seek out immigrants for hire, in particular those without regular status. This in turn undermines the legal rights of non-immigrants workers by forcing them into a de facto position of competition with the immigrant workforce.

3) Member states, in particular industrialized nations of the global North ("receiving states"), should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The treaty cannot provide meaningful benefits to migrant workers and their families until it is ratified by those industrialized states that receive the majority of migrants worldwide.
4) Member states should reduce the root causes of worldwide migration by eliminating discriminatory trade and economic policies in the industrialized North. It is clear that trade liberalization between states of vastly different wealth does not lead towards sustainable development. Furthermore, the rhetoric of trade liberalization and free markets often does not match policy: Agricultural subsidies in the global North continue to disrupt local, agriculture-based economies in poor nations, and trade agreements tend to allow for the free flow of goods, capital and profit across borders, but not the free flow of people (i.e. labour). The economic desperation resulting directly and indirectly from such economic policies exacerbates the irregular migration that receiving states so regularly criticize.

Check Your Progress 3

1) Describe the basic characteristic of Migrant Workers Convention.

2) Describe in brief the current status of migrant workers in host countries.

3) What new initiatives have been proposed to improve the conditions of migrant workers?

11.7 LET US SUM UP

The problem of the world’s refugees and internally displaced is among the most complicated issue before the world community today. Much discussion is taking place at the United Nations as it continues to search for more effective ways to protect and assist these particularly vulnerable groups.

While some call for increased levels of cooperation and coordination among relief agencies, others point to gaps in international legislation and appeal for further standard-setting in this area. Everyone, however, agrees that the problem is both multidimensional and global. Any approach or solution would therefore have to be comprehensive and to address all aspects of the issue, from the causes of mass exodus to the elaboration of responses necessary to cover the range of
refugee situations from emergencies to repatriation. In this debate some facts remain beyond dispute. The first is that while some mass displacements may be preventable, none are voluntary. No one likes or chooses to be a refugee. Being a refugee means more than being an alien. It means living in exile and depending on others for such basic needs as food, clothing and shelter.

Information on the number of the world’s refugees, their geographical distribution, and the causes of their exodus is generally available. Seen from a chronological perspective, this information suggests that the refugee problem has undergone drastic quantitative and qualitative change in the past five decades. Since its creation, the United Nations has worked to protect refugees around the world. In 1951 most of the refugees were European. The majority of today’s refugees are from Africa and Asia. Current refugee movements, unlike those of the past, increasingly take the form of mass exoduses rather than individual flights. Eighty percent of today’s refugees are women and children. The causes of exodus have also multiplied and now include natural or ecological disasters and extreme poverty. As a result, many of today’s refugees do not fit the definition contained in the Convention relating to the Status of Refugees. This refers to victims of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

The United Nations system has also been very concerned by the rise in the number of mass internal displacements in recent years. The “internally displaced” are persons who are forced to flee their homes but remain within the territory of their own country. Since they remain inside their own countries, these persons are excluded from the present system of refugee protection. Most of the internally displaced populations are in developing countries and are composed largely of women and children. In some countries, the internally displaced make up more than 10 per cent of the population. The refugee situation has become a classic example of the interdependence of the international community. It fully demonstrates how the problems of one country can have immediate consequences for other countries. It is also an example of interdependence between issues. There is a clear relationship between the refugee problem and the issue of human rights. Violations of human rights are not only among the major causes of mass exoduses but also rule out the option of voluntary repatriation for as long as they persist. Violations of rights of minorities and ethnic conflicts are increasingly at the source of both mass exoduses and internal displacements.

Disregard for the minimum rights of refugees and internally displaced persons is another dimension of the relationship between the two issues. During the process of seeking asylum, a large number of people are faced with restrictive measures which deny them access to safe territories. In some instances asylum-seekers and refugees are detained or forcibly returned to areas where their lives, liberty and security are threatened. Some are attacked by armed groups, or recruited into armed forces and forced to fight for one side or the other in civil conflicts. Asylum-seekers and refugees are also victims of racist aggression.

Refugees have rights which should be respected prior to, during, and after the process of seeking asylum. Respect for human rights is a necessary conditions for both preventing and resolving today’s refugee flows. In the words of the United Nations High Commissioner for Refugees, Sadako Ogata, “The refugee issue must be put to all the government and peoples as a test of their commitment
to human rights.” As regards the status of refugees and migrant workers already there is a global movement to improve their status and protect their human rights. Several organs of the UN especially the Economic and Social Council are already working very hard to improve their status and ensure them good human treatment.

11.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) People who are forced to flee their homes due to fears of persecution or attacks become refugees in other countries. This migration can be individual or mass exodus. See section 11.2

2) The refugee convention recognizes persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion.

3) Persons who leave their country on the basis of persecution or apprehension of persecution and want to be accepted by other country. (see sub-section 11.2.2)

Check Your Progress 2

1) See section 11.3

2) Refugees face problems with regard to Right to seek asylum, protection against forcible return, protection of refugee rights in asylum countries, and right to return.

3) See sub-section 11.3.1

Check Your Progress 3

1) See sub-section 11.4.1

2) Number of migrant workers has increased; They are denied basic human rights and are subject to degrading treatment, host countries are proposing regressive measures, international institutions protection is not adequate.

3) Write your answer on the basis of section 11.6 and sub-section 11.6.1.

11.9 REFERENCES


Books


Steven L Spiegel etc., World Politics in A New Era Philadelphia, Harcourt Brace, 1999
UNIT 12 INDIGENOUS PEOPLE AND HUMAN RIGHTS

Structure

12.0 Objectives
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12.2 Indigenous People
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12.0 OBJECTIVES

This unit deals with the Status of Indigenous People world over, International Communities Concern with their rights and Spread of awareness about Indigenous People, Concerns.

After going through this unit you will be able to:

- recognize who indigenous people are;
- know what their status has been in terms of exploitation and neglect of recognition of their identity;
- understand what international Community at UN level and at regional levels has been doing to promote and protect their identity and rights; and
- know various sources that are available to understand status of Indigenous People and what is being done to improve their position.

12.1 INTRODUCTION

Indigenous People are known as the first nation people, tribals, aboriginals, adivasis, vanavasis, girijans, etc. Indigenous or aboriginal peoples are so called because they were living on their lands before settlers came from elsewhere; they are the descendants according to one definition — of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means. They have historical continuity with pre-invasion and pre-colonial societies that developed in their territories. They consider themselves as distinct from other sections of society in their homeland.
The United Nations has increasingly taken up the cause of these aboriginal who are considered as the World’s most disadvantaged group. Excluded from the decision-making process many of these people are marginalized, exploited, assimilated and subjected to repression, torture and murder when they speak out in defense of their rights. Fearing persecution they often become refugees or mask their identity abandoning their language, traditional costumes and clothing. In recent years these people have become quite aware of their exploitation. They have been organizing themselves to defend their rights and dignity. United Nations, particularly Human Rights commission and its sub-commission have been engaged in protection and promotion of their rights, identity and due place in societies they live in.

12.2 INDIGENOUS PEOPLE

People who inhabited land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories are called Indigenous Peoples. As defined by the United Nations Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Indigenous communities, people and nations are those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

Indigenous Peoples worldwide number between 300-500 million, embody and nurture 80% of the world’s cultural and biological diversity, and occupy 20% of the world’s land surface. The Indigenous Peoples of the world are very diverse. They live in nearly all the countries on all the continents of the world and form a spectrum of humanity, ranging from traditional hunter-gatherers and subsistence farmers to legal scholars. In some countries, Indigenous Peoples form the majority of the population; others comprise small minorities. Indigenous Peoples are concerned with preserving land, protecting language and promoting culture. Some Indigenous Peoples strive to preserve traditional ways of life, while others seek greater participation in the current state structures. Like all cultures and civilizations, Indigenous Peoples are always adjusting and adapting to changes in the world. Indigenous Peoples recognize their common plight and work for their self-determination; based on their respect for the earth. Despite such extensive diversity in Indigenous communities throughout the world, all Indigenous Peoples have one thing in common – they all share a history of injustice. Indigenous Peoples have been killed, tortured and enslaved. In many cases, they have been the victims of genocide. They have been denied the right to participate in governing processes of the current state systems. Conquest and colonization have attempted to steal their dignity and identity as indigenous peoples, as well as the fundamental right of self-determination.

12.2.1 Indigenous Peoples’ Rights at Stake

Despite international recognition and acceptance of the Universal Declaration of Human Rights, which guarantees the fundamental rights of all human beings,
in practical fact Indigenous Peoples’ human rights remain without specifically designated safeguard. To this day, Indigenous Peoples continue to face serious threats to their basic existence due to systematic government policies. In many countries, Indigenous Peoples rank highest on such underdevelopment indicators as the proportion of people in jail, illiteracy rate, unemployment rate, etc. They face discrimination in schools and are exploited in the workplace. In many countries, they are not even allowed to study their own languages in schools. Sacred lands and objects are plundered from them through unjust treaties. National governments continue to deny Indigenous Peoples the right to live in and manage their traditional lands; often implementing policies to exploit the lands that have sustained them for centuries. In some cases, governments have even enforced policies of forced assimilation in efforts to eradicate Indigenous Peoples, cultures, and traditions. Over and over, governments around the world have displayed an utter lack of respect for Indigenous values, traditions and human rights.

In international discussions on the protection and promotion of Indigenous Peoples’ human rights, some States have argued that a more conscientious application of human rights standards would resolve the issue. On the other hand, Indigenous Peoples argue that such international human rights standards have consistently failed to protect them thus far. What is needed, they argue, is the development of new international documents addressing the specific needs of the world’s Indigenous Peoples. Although the Universal Declaration of Human Rights is designed to protect the human rights of all individual human beings. International law concerning collective human rights remains vague and can fail to protect the group rights of Indigenous Peoples.

Check Your Progress 1

1) Who are known as Indigenous people?

2) What rights of indigenous people are under challenge?
12.3 INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS PEOPLES’ RIGHTS

You have read earlier that International legal instruments take the form of a treaty (also called agreement, convention, covenant, protocol), which may be binding, on the Contracting States. When negotiations are completed, the text of a treaty is established as authentic and definitive and is “signed” to that effect by the representatives of States. There are various means by which a state expresses its consent to be bound by a treaty. The most common are ratification or accession. A new treaty is “ratified” by those states that have negotiated the instrument. A state, which has not participated in the negotiations, may, at a later stage, “accede” to the treaty. The treaty enters into force when a pre-determined number of states have ratified or acceded to the treaty. When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others, a specific law may be required to give an international treaty, although ratified or acceded to, the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory.

Not all International instruments are legally binding treaties. For example, some of the most important human rights instruments are declarations. A declaration does not have any legal power to enforce compliance, but rely purely on the moral weight it carries. Indigenous Peoples’ rights overlap with many other human rights. Many important Indigenous Peoples’ rights are not framed in specific Indigenous Peoples’ rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide. There are various such instruments that either mention or proclaim the rights of Indigenous people. These include both evolved by the United Nations Organization and other international bodies.

12.3.1 United Nations Instruments

Since its establishment, the United Nations has, as part of its overall human rights work, addressed some situations which affect indigenous people. The concerns of indigenous people find their place in a number of instruments and studies prepared over the years, and in the activities of human rights organs. Important of these are discussed below.

Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous People was adopted by the United Nations General Assembly during its 61st session at UN Headquarters in New York City on 13 September, 2007. While as a General Assembly Declaration it is not a legally binding instrument under international law, according to an UN press release, it does “represent the dynamic development of international legal norms and it reflects the commitment of the UN’s member states to move in certain directions”; the UN described it as setting “an important standard for the treatment of indigenous peoples that will undoubtedly be a
significant tool towards eliminating human rights violations against the planet's 370 millions indigenous people and assisting them in combating discrimination and marginalisation”.

The Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also “emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations”. It “prohibits discrimination against indigenous people”, and it “promotes their full and effective participation in all matters that concern them and their rights to remain distinct and to pursue their own visions of economic and social development”.

Originally drafted in 1985 by the Working Group on Indigenous Populations, the world’s largest human rights forum, the draft Declaration was adopted by the United Nations Sub-Commission on the Promotion and Protection of Human Rights in 1994. From there, the draft was submitted to the Commission on Human Rights, which established the Working Group on the draft Declaration on the Rights of Indigenous Peoples. The Working Group, in which more than 200 Indigenous organizations participate, meets once a year. Its goal has been to facilitate the General Assembly’s adoption of the Declaration by 2004, the final year of the International Decade for the World’s Indigenous Peoples. The U.N. General Assembly finally adopted the declaration on the rights of Indigenous People on 17 Sep. 2007. Australia, Canada, New Zealand and the United States voted against the declaration.

**Universal Declaration of Human Rights (1948)**

The Universal Declaration of Human Rights is the first international document that states that all human beings are “equal in dignity and rights” (Article 1). Everybody is entitled to the rights in the Declaration, “without disentitled to the rights in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2).

From the above clause it is quite clear that like other individuals indigenous peoples are entitled to enjoy all existing human rights. Therefore, United Nations Committees which oversee the implementation of binding agreements – the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, which includes specific provisions relating to indigenous people – consider indigenous issues when examining reports by States on their performance under these treaties.

**Convention on the Prevention and Punishment of the Crime of Genocide (1951)**

Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group: “killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another
Since indigenous people form a group and have been so recognized, they are covered by this convention.

**International Covenant on Civil and Political Rights (1966)**

This Covenant outlines the basic civil and political rights of individuals. There are also provisions for collective rights. “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language,” (Article 27). As already mentioned the Human Rights Committee constituted to monitor implementation of ICCPR.

**International Covenant on Economic, Social and Cultural Rights (1966)**

This Covenant describes the basic economic, social, and cultural rights of individuals. It also has provisions for collective rights, under which category indigenous people are also covered.

**Convention on the Elimination of All Forms of Racial Discrimination (1966)**

“Racial discrimination” is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (Article 1)

**International Labour Organization (ILO) Convention (1989)**

The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples’ human rights. The convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples.

**Convention on the Rights of the Child (1990)**

The Convention contains regulations and suggestions relevant to Indigenous Peoples on the non-discrimination of children (Article 2), the broadcasting of information by the mass media in minority languages (Article 17), the right to education, including education on human rights, its own cultural identity, language and values (Article 29). Article 30 states that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language. (Article 30)

**Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)**

This Declaration deals with all minorities, which includes many of the world’s Indigenous Peoples. It concerns only individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states’ obligations towards minorities as well as the rights of minority people. Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities (Article 1); the free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority (Article 2); the exercise of minority rights, both individual and in groups (Article 3); and education of and about minorities. (Article 4)
Convention on Biological Diversity (1992)

The Convention calls upon its signatories to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;” (Article 8(j))

12.3.2 United Nations Conferences

Rio Declaration on Environment and Development and Agenda 21 (1992)

These two documents are connected to the Earth Summit in Rio de Janeiro. In them, the special relationship between Indigenous Peoples and their lands is acknowledged. Indigenous Peoples have a vital role in environmental management and development because of their traditional knowledge and practices. (Rio Declaration, Principle 22) In order to fully make use of that knowledge, some Indigenous Peoples might need greater control over their land, self-management of their resources and participation in development decisions affecting them. (Agenda 21, Chapter 26.4)

Vienna Declaration and Programme of Action (1993)

As you know the Vienna Declaration is the closing declaration of the 1993 World Conference on Human Rights held in Austria. Apart from other aspects it also “recognizes the inherent dignity and the unique contribution of indigenous people [sic] to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being.” (1.20)

Furthermore, the declaration called for the completion of the draft Declaration on the rights of Indigenous Peoples, the renewal and updating of the mandate of the Working Group on Indigenous Populations and the proclamation of the International Decade of Indigenous Peoples. (1.28 – 32). The Conference called upon States to take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination and recognize the value and diversity of their distinct identities, cultures and social organizations.


At this Conference in 1994 it was agreed that the perspectives and needs of Indigenous Peoples should be included in population, development or environmental programs that affect them, that they should receive population- and development-related services that are socially, culturally and ecologically appropriate. (Paragraph 6.24) Another important decision was that Indigenous Peoples should be enabled to have tenure and manage their land, and protect the natural resources and ecosystems on which they depend. (Paragraph 6.27)

Durban Declaration and Programme of Action (2001)

The Durban Declaration and Programme of Action has a specific section dealing with Indigenous peoples issues. Perhaps more important than all the
recommendations is the fact that the Declaration is the first United Nations documents that uses the phrase “Indigenous Peoples” rather than “Indigenous People”.

### 12.3.3 Regional Groupings Declarations

**European Union (EU)**


This resolution provides the main European Union guidelines for support of Indigenous Peoples. It calls for the integration of Indigenous Peoples’ interests at all levels of development cooperation and the full and free participation of Indigenous Peoples in the development process. The resolution states: “Indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource for the entire planet.”

**Organization for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities**

The Office of the OSCE High Commissioner on National Minorities was established in 1992 to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States. The High Commissioner has no specific Indigenous Peoples mandate, but treats Indigenous Peoples like any other national minority.

**Organization of American States (OAS)**

**Proposed American Declaration on the Rights of Indigenous Peoples (1997)**

The draft Declaration outlines the human rights that are specific to Indigenous Peoples. Items covered include, among others, the right to self-government, Indigenous law and the right to cultural heritage. A Working Group of the OAS is still discussing the Declaration.

**World Bank**


This Operational Directive outline the World Bank’s definition of and interest in Indigenous Peoples. It also addresses economic issues (technical assistance and investment project mechanisms) concerning Indigenous Peoples. The Bank’s narrow definition of Indigenous Peoples and ambiguity concerning its role in their economic development has resulted in much criticism from Indigenous Peoples’ human rights advocates. Consequently, the World Bank is currently in the process of revising it.

### Check Your Progress 2

1) How does various U.N Human Rights Conventions protect Indigenous people?

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2) What are the basic contents of Declaration on the Rights of Indigenous People?

3) On what criticism some countries in U.N. General Assembly voted against the Declaration?

12.4 UNITED NATIONS ORGANS FOR INDIGENOUS PEOPLES' HUMAN RIGHTS

United Nations and its subsidiary bodies have established following organs specifically to work on issues concerning indigenous peoples and their rights.

UN Working Group on Indigenous Populations

The United Nations Working Group on Indigenous Populations, a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human rights is the first and only UN body involved exclusively with matters concerning the human rights of Indigenous Peoples. It reviews national developments concerning the promotions and protection of Indigenous Peoples’ human rights and develops international standards for their rights and freedoms. The Working Group also undertakes studies on a variety of issues affecting Indigenous Peoples. Nearly 700 persons regularly attend the Working Group sessions, including observers for Governments, Indigenous Peoples, non-governmental organizations, and scholars.

In reviewing national developments, the working group receives and analyses written information submitted by Governments, specialized agencies and other organs of the United Nations, other international and regional inter-governmental organization, non-governmental bodies and the indigenous people themselves.

The Working Groups mandate, however, does not authorize it to examine specific complaints of alleged violations of human rights with the purpose of making recommendations or taking decisions on such cases; other United Nations complaints channels are available for that purpose.
UN Permanent Forum on Indigenous Issues

In 2000, the Economic and Social Council (ECOSOC), one of the six main organs of the United Nations, established the Permanent Forum on Indigenous Issues to consider a wide range of issues affecting Indigenous Peoples. The Forum, which includes eight Indigenous experts, is the first and only international body in the United Nations that has Indigenous Persons as specified members. It meets once a year for ten working days and submit annual reports to the Economic and Social Council. The first meeting was held on May 13-24, 2002. The Permanent Forum serves as an advisory board to the Economic and Social Council, discussing Indigenous issues relating to economic and social development, culture, the environment, education, health, and human right. From these discussions, the Forum provides expert advice and recommendations to the Council, raises awareness of Indigenous issues within the UN system, and prepares and disseminates information on Indigenous issues.

UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples

Rodolfo Stavenhagen was appointed as the first Special Rapporteur on Indigenous Peoples on 24 April 2001. His mandate is as follows: to gather information on violations of human rights and fundamental freedoms of Indigenous Peoples, to formulate recommendation to prevent and remedy such violations and to work together with other experts of the UN Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human rights. The Rapporteur cooperates closely with the Permanent Forum on Indigenous Issues and the Working Group on Indigenous Populations.

12.5 AWARENESS GENERATION AND EDUCATION

Various agencies, organs and NGOs working for the promotion and protection of Indigenous peoples rights are also actively engaged in spreading awareness and education about their conditions and rights. For that purpose some specific websites have also been created which discriminate useful information concerning Indigenous people’s issues.

Principal Websites Devoted to Indigenous Peoples’ Human Rights

Center for the World’s Indigenous Peoples

The Center for the World’s Indigenous Peoples is a research and education organization dedicated to an appreciation of the knowledge of indigenous peoples. It serves to promote greater understanding of the social, economic and political realities of indigenous nations. The Center aims to foster better understanding between peoples and to establish cooperation between nations as well as between nations and states. The Center’s website contains information on education programs and conferences, publications research and domestic and international policy concerning Indigenous Peoples. The website also includes links to The Center for Traditional Medicine, The Fourth World Institute, The Fourth World Journal, and The Center for the World’s Indigenous Peoples’ Bookstore.

Native Web

Native Web is an international educational organization that uses telecommunications to disseminate information about indigenous nations,
peoples, and organization around the world. Native Web enables indigenous communities all over the world to communicate, share resources, and coordinate on projects and initiatives. Native Web’s on-line resource Center includes a nations index, geographic regions index, news/events, legal issues, books and music. Links at this site provide pathways to detailed information concerning nearly any Indigenous issue.

**Cultural Survival**

Cultural Survival is an organization dedicated to developing new strategies for responding directly to the critical needs of the world’s indigenous populations. It analyses and publicizes examples of how indigenous peoples have successfully responded to the serious crises. These case studies are the central issues of Cultural Survival’s research, education and advocacy program. They are discussed in Cultural Survival’s conferences, in its publications and on its web site.

**The Indigenous and Tribal Peoples Centre**

The Indigenous and Tribal Peoples Centre aims to foster a better understanding of Indigenous Peoples’ values, knowledge, practices and education. The Website provides links to resources that enhance understanding of current development on relevant issues and provide information important for informed participation between various sectors of society and in decision-making processes. Four of the Website’s main topics are: promoting sustainability, traditional cultures and values, legal frameworks and Indigenous Peoples, and Indigenous Peoples, Mother Earth and the Spirituality Project.

**Indian Law Resource Center**

The Indian Law Resource Center engages in legal advocacy for the protection of Indigenous People’ human rights, cultures and traditional lands. On the site are descriptions of the Center’s casework, archives to newsletters and links to relevant organizations and documents. The Center deals with cases in North and Central America.

**Survival International**

Survival International is a worldwide organization supporting tribal peoples. It stands for their right to decide their own future and helps them protect their lives, lands and human rights. Survival works by educating the people of ‘The West’ about Indigenous People and by providing Indigenous People with the information and means they need to preserve their way of life in the face of contacts with the Western world and Western companies.

**United Nations Office of the High Commission for Human Rights**

The Office of the High Commission for Human Rights’ Indigenous Peoples website provides an extensive overview of Indigenous Peoples and the UN systems. This site also provides links to the Working Groups, the Permanent Forum, Special Rapporteur, UN documents, funding, and the UN system.

**United Nations Development Programme – Indigenous Peoples**

This site details how the UNDP works together with Indigenous Peoples. It includes information on Indigenous Peoples’ issues, the UNDP’s programs and objectives regarding Indigenous Peoples, and a resource center containing documents, information on conferences and contacts at the UN.
World Conference Against Racism/UN Guide for Indigenous Peoples

The United Nations Guide for Indigenous Peoples includes twelve leaflets on indigenous Peoples and the UN system. Some of these include: Indigenous Peoples, the UN and Human Rights, Human Rights Treaty Bodies and Indigenous People, Indigenous Children and Youth, and Indigenous Peoples and the Environment.

Indigenous Peoples and the European Union

European Union Human rights and Democratisation Policy – Promoting and Protecting the rights of Indigenous Peoples

The website has a link to the EU Council Resolution on Indigenous Peoples. It also contains information on some of the EU programs that affect indigenous peoples. It lists names and email addresses of relevant EU people and has links on international organizations and indigenous NGOs.

Indigenous Peoples and the Organization of American States

Inter-American Commission on Human Rights

This is the website of the Human Rights Commission of the Organization of American States. Most information relates to human rights in general, but under the heading ‘Publications’ there is a link to the Proposed American Declaration on the rights of Indigenous Peoples.

The People’s Decade of Human Rights Education

The People’s Decade of Human Rights Education (PDHRE) is dedicated to increasing awareness of human rights in order to strengthen and invigorate efforts for change. PHDRE teaches how the human rights framework can be used to address social and economic injustices throughout the world. The Indigenous Peoples’ component of the PDHRE website provides a concise overview of Indigenous Peoples’ human rights and a comprehensive explanation of governments’ obligations and commitments to ensuring the human rights of Indigenous Peoples with specific text citations. It also includes a wide variety of lesson plans and strategies for human rights education.

Check Your Progress 3

1) What role U.N. Permanent Forum on Indigenous people performs?
2) Write about some voluntary organizations working for the course of Indigenous people?

12.6 LET US SUM UP

Discussions in the Working Group on Indigenous Populations and in other human rights bodies indicate that, despite certain progress made, a great deal remains to be done in order to resolve outstanding issues coming between indigenous peoples’ interests and national or private development, between the livelihoods and lifestyles of the peoples concerned and public policies and projects. The positive contribution, which indigenous groups can make to environmental protection has already been mentioned. The land issue remains crucial. National economic development generates pressure on territory still in the hands of indigenous peoples. Barren wastelands or forested hinterlands once thought to have little economic, political or military value have been identified as areas of vital importance. These developments could affect the economies and habitats, and the social, religious and cultural systems of indigenous peoples.

The world community has long acknowledged that the distinct cultures and languages of indigenous peoples form part of the cultural heritage of humankind and deserve protection. Much more important than a means of everyday communications, language is the vehicle of culture and identity. Yet organizations defending indigenous peoples’ rights cite cases where educational systems are being used to forge nations with one language, history and culture.

Many Governments have stated that they are aware of the serious problems faced by indigenous peoples living in their territories and of the factors, which have placed them among the most vulnerable groups in national societies. In some parts of the world, a permanent dialogue is taking place. In other places, direct negotiations between indigenous peoples and Governments have been instituted and are moving forward, with the aim of improving relations and guaranteeing better protection of indigenous peoples’ rights.

Some countries have introduced autonomous institutions as well as other programmes specially designed for indigenous peoples at the local and regional levels. These moves are designed to improve conditions in such areas as health, housing, labour and education, and contribute, as far as possible, to the maintenance of traditional ways of life and culture.

In recent years, several Governments have amended their constitutions and legislation to take into account the multicultural character of national society. Some progress has also been made in returning and guaranteeing collective ownership of indigenous lands.
The involvement of the United Nations in the promotion and protection of the rights of indigenous peoples has progressed rapidly. This role will be enhanced by public awareness and understanding of the principal issues involved. The International Decade offers an opportunity to raise public awareness and interest and to develop an international plan of action for the improvement of the living conditions of indigenous peoples.

12.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) People who inhabited land before it was occupied or conquered by colonial societies or settlers from outside. They have historical continuity with pre-invasion and pre-colonial societies.

2) See sub-section 12.2.1

Check Your Progress 2

1) Human Rights provided in various U.N. treaties are available to all human beings without discrimination of race, religion, sex, nationality etc. As such they are also available to indigenous people. In addition indigenous people are protected by specific rights provided to them as a group.

2) See sub-section 12.3.1

3) These relate to issues of rights to self-determination, land claims etc. For details see sub-section 12.3.1

Check Your Progress 3

1) The forum serves as an advisory board to the Economic and Social Council. It discusses indigenous issues relating to economic and social development, culture, environment, education, health and human rights.

2) Write your answer on the basis of contents in section 12.5.

12.8 REFERENCES


