UNIT 18  HUMAN RIGHTS: INTERNATIONAL CONCERNS – VIENNA AND OTHER UN CONFERENCES

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18.0 OBJECTIVES

After studying this unit, you should be able to:

• explain human rights as a matter of concern to people everywhere – one which Governments find increasingly difficult to ignore;

• understand Vienna Declaration and Programme of Action (VDPA); and

• describe and list the Human Rights concerns in terms of feminine issue, children, indigenous people, minorities, social development, habitat, environment and others.

18.1 INTRODUCTION

Human rights and United Nations (UN) have been inextricably intertwined to each other. One of the primal objectives of the latter has been the maintenance of international peace and security. This objective, as the Charter of the UN
envisages, is feasible through extending respect for, and recognizing the need for, the promotion and protection of human rights and fundamental freedoms.

You have already read that a plethora of declarations, conventions, treaties, resolutions-cumulatively conceived as legal regime-pertaining to human rights promulgated by the UN characterize the contemporary scenario on the subject. The legal regime of human rights has acquired a standard that has been increasingly emulated by the members of the international community ever since they started crafting their constitutional, legal, and juridical systems. To this extent, the international legal regime served the functions of norm-setting on the subject, on a global scale.

Modern international law has allocated to the state the responsibility of formulating and implementing human rights at both the national and global levels. Responsibility to Protect is an emerging international norm which sets forth that states have the primary responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing, but that when the state fails to protect its populations, the responsibility falls to the international community. The law hasn’t envisioned the possibility of extending this function to para-state entities such as the international civil societies. Of late, the latter have assumed international significance of far-reaching implications. Most of the UN bodies have established linkages with them in order to advance the cause of human rights. Thanks to globalization, and its variety of derivatives such as the Information and Communication Technology, the role of civil societies has assumed global proportion to the extent that no state can afford to neglect them in the overall global landscape of human rights. Contemporary international law has to accommodate this reality in the structure of international organization so that the civil society obtains a formal, legal recognition. The end of Cold war has catapulted the promotion and protection of human rights and to the global agenda. Unless all the stakeholders are made to realize their importance and responsibilities, the optimistic scenario of human rights is difficult to obtain in the ensuing years. It is in this content that concern for promotion and protection of human rights has become important at international community.

18.2 THE WORLD CONFERENCE : VIENNA 1993

After the Second World War, international relations followed the logic of power politics. This was the age of Cold War and the world was divided into two major blocs. One group of countries was allied to the United States. While the other block was allied to USSR. Both USA and USSR were regarded as super powers and were competing for dominance in the international arena. This was a divided international system, described as bi-polar, and a large number of countries of the developing world did not want to align themselves either with the USA or the USSR. They wished to retain their independence. They remained non-aligned, and formed themselves into Non-aligned Movement (NAM). As you know, India is a leading member of the NAM.

One of the major international developments of the 90’s was the collapse of the Soviet Union, after which, the world became dominated by a single center of power, namely the United States of America. The world now became ‘unipolar’. As the competition for hegemony was over, the way now opened for contemplating other issues of global interest and concern. It was in this context
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Implementation were felt necessary. Human Rights thus came to occupy a prominent place in the international agenda. As you have already that right from the time of adoption of Universal Declaration of Human Rights there had been going on debates about their nature and implementation. One forum for these had been world conferences.

The first World Conference on Human Rights was held in Tehran in 1968. Though the Tehran Conference affirmed the principles contained in the Universal Declaration of Human Rights, 1948 (about which we read in the previous units), it was not until World Conference on Human Rights at Vienna in 1993 that human rights assumed an authoritative meaning and force of implementation. A World Plan of Action was prepared.

The second world conference on Human Rights was held in Vienna from 14 to 25 June 1993. It was marked by an unprecedented degree of participation by government delegates and the international human rights community. Some 7,000 participants, including governments, academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations (NGOs) – two thirds of them at the grass-roots level – gathered in Vienna to review and profit from their shared experiences. The Vienna Congress had reflected a true gathering of a global scale.

18.2.1 Objectives of Vienna Conference

The idea for the world conference on Human Rights emerged at the United Nations in 1989. By the time it opened on 14 June 1993 it promised to be the largest single gathering of governments and grass-roots human rights groups. It had five main objectives:

1) to review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration of Human Rights (1948).
2) to identify obstacles to further progress in this area, and the ways and means of overcoming them.
3) to examine the relation between development and the enjoyment by everyone of economic, social and cultural as well as civil and political rights, while recognizing the importance of creating conditions whereby everyone can enjoy these rights as set out in the International Covenants on Human Rights.
4) to evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights.
5) recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms. Finally, the Congress sought to make recommendations for ensuring the necessary financial and other resources for United Nations activities in the promotion and protection of human rights and fundamental freedoms.

The principle theme of the conference was centred around the promotion and protection of human rights as the birthright of all human beings and the responsibility of governments at all levels. The resulting document of the conference was the Vienna Declaration and Programme of Action, which outlines
a comprehensive plan for strengthening the implementation of human rights and focuses on the links between development, state, and the promotion of human rights.

The Conference agenda, as set by the forty-seventh session of the General Assembly of the U.N. in 1992, also included the examination of the link between development, democracy and economic, social, cultural, civil and political rights, and the evaluation of the effectiveness of United Nations methods and mechanisms with the aim of recommending ways to ensure adequate financial and other resources for United Nations human rights activities.

The preparatory process included three key regional meetings — Tunis (Africa region), Costa Rica (Latin American region) and Bangkok (Asian region). These meetings produced declarations outlining particular concerns and perspectives of the African, the Latin American and Caribbean and the Asian and Pacific regions. In addition, informal meetings in Europe and North America and the scores of satellite meetings throughout the world representing broad spectrums of society made extremely valuable contributions. At the final meeting in May, which ended after an extended session, the Preparatory Committee prepared a final draft with which the conference, hosted by the Austrian Government in Vienna, began its work and final negotiations.

Check Your Progress 1

1) What were the main objectives of the Vienna Conference?

2) Enumerate the main features of the Vienna Conference.

3) Name three regional preparatory meetings held before the Vienna Conference.
On 25 June 1993, representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action (VDPA). The Vienna Declaration laid emphasis on the observance of human rights, in a just and balanced manner as all human rights emanate from human dignity, and the individual worth of every human person. The latter is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms. The Declaration reaffirmed the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all. The Declaration took cognizance of the responsibilities of all States, and reaffirmed that the member states in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

The Declaration reaffirmed the Preamble of the Charter of the UN 'to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples'. The Declaration referred to various forms of discrimination and violence that continue to victimize women all over the world. The Declaration reminded the UN of its primary responsibility to promote and protect human rights universally.

18.3.1 The Structure of the Declaration

Part I of the Declaration contains 39 Articles. The substance of these Articles does unmistakably point towards the holistic and integrated nature of human rights. They also assert the inevitable fact that there exists no hierarchy of human rights, thereby emphasizing the equal weight given to all categories of rights. Another significant feature of this Conference has been the recognition of the universal character of human rights, thereby reemphasizing the so-called cultural relativist perspective of human rights. In this connection, it is necessary to highlight the substance of some important Articles contained in Part I.

Article 1 entitles every human being with human rights and fundamental freedoms and makes the Governments accountable for their promotion and protection; Article 2 refers to peoples right to self-determination. Article 3 talks about the rights of people under foreign occupation. In this connection, the Declaration makes reference to the Geneva Convention pertaining to the Protection of Civilian Persons in Time of War, and other applicable norms of humanitarian law. Article 8 establishes mutual linkages among democracy, development and human rights.

Article 10 reaffirms the Right to Development and emphasizes the need for extending the benefits of development — distributive justice — to all, thus obviating the possibility of the denial of human rights. This Article, in its extended form
found its echo in Articles 14 and 25. The latter makes note of extreme poverty and social exclusion. Article 11 establishes a relationship between development and environment, thus, bringing to the fore the notion of sustainable development, that takes care of the interest of the posterity.

Article 15 aims at eliminating all forms of racism and racial discrimination, xenophobia and related intolerance.

Article 17 refers to terrorism in all its forms and manifestations including drug trafficking. It also refers to the potential of terrorism to threaten territorial integrity, state security and destabilize legitimately constituted Governments.

Article 18 refers to the rights of women, girl child, and persons belonging to national or ethnic, religious and linguistic minorities. Article 21 takes care of the rights of the child.

Article 20 makes reference to the rights of the indigenous people and the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development.

The rights of the disabled persons are recognized in Article 22. While Article 23 makes relevance the rights of the refugees and the displaced person.

The crimes of genocide, "ethnic cleansing", and rape of women in war situations have been condemned as abhorrent practices and the proportionate punishments thereto have been called in Article 28.

Article 31 prohibits the use of food as a tool for political pressure.

Article 33 recognizes and makes an appeal to the member-states to incorporate human rights education as part of their curriculum; Article 38 recognizes the role of the NGOs in the promotion and protection of human rights.

The role of the media has been recognized in terms of their freedom and protection in accordance with the requirement of national laws in Article 39.

18.3.2 Implementation Machinery-Programme of Action

Part II of the Declaration talks about the mechanism of implementation and is subdivided into five sub-sections. Each section is further sub-divided into paras. It attempts to internalize the processes in context of promotion and protection of human rights and realizing the goals of basic rights and fundamental freedoms. It is necessary to highlight all the sub-sections and the substance of some of the important paras in it.

a) Increased Coordination on Human Rights Within The United Nations System

One of the great achievements of the United Nations is the creation of a comprehensive body of human rights law — one to which all nations can subscribe. The sub-section 1 contains eighteen Paras (1-18). It reaffirms and urges all United Nations organs, bodies and the specialized agencies, whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their actions. While Para 8 allows the convening of emergency sessions of the Commission on Human Rights [since 15 March 2006, Human
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Rights Council replaced the Commission as a positive initiative and that other ways of responding to acute violations of human rights.

Paras 9-12 aim at increasing the resources for human rights programmes within and future regular budgets of the UN and call for increased extra-budgetary resources. The Conference requests the UN Secretary General to provide sufficient human, financial and other resources to the Centre for Human Rights (CHR) to enable it effectively, efficiently and expeditiously to carry out its activities, in accordance with Article 101 of the Charter of the United Nations.

Paras 13-16 talk about the strengthening of the CHR to play an important role in coordinating system-wide attention for human rights. The CHR should be assured of adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. In terms of promotion of human rights, the Centre should, in particular, organize at least once a year, information meetings open to all Member States and organizations directly involved in these projects and programmes.

Paras 17 and 18 refer to the adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights for the promotion and protection of all human rights.

b) Equality, Dignity and Tolerance

Paras 19 to 24 cover issues such as Racism, racial discrimination, xenophobia and other forms of intolerance. In Para 19, while eliminating racism and racial discrimination in all their manifestations, the World Conference also appeals to the international community to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination, thus, laying importance on the action plan. Para 20 appeals to the member-states to make enabling laws to give effect to the decisions reached. Para 21 refers to contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Para 23 makes all persons who authorize criminal acts associated with ethnic cleansing as individually responsible and accountable therein. While Para 24 obligates the states to combat those practices. This subsection refers to following categories of discrimination and emphasizes need for their elimination.

- Persons belonging to National or Ethnic, Religious and Linguistic Minorities

Paras 25 to 35 deal with national, religious and linguistic minorities, indigenous people, and migrant workers. The Vienna Conference urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities.

Paras 28 to 32 talks about the rights of the indigenous people and reiterate to introduce the declaration on the rights of indigenous people and urges member-states to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them.
Talking about the rights of migrant workers, the Conference, through Paras 33 to 35, urges all states to guarantee the protection of the human rights of all migrant workers and their families and to consider the possibility of signing and ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families.

- **The Equal Status and Human Rights of Women**

The Conference highlighted through Paras 36 to 44, the importance of eliminating all forms of discrimination against women in particular murder, systematic rape, sexual slavery, and forced pregnancy. It further urges all member-states for universal ratification of the Convention on the Elimination of All Forms of Discrimination Against Women by the year 2000. To comply with these decisions the Congress seeks to set up Treaty monitoring bodies (Para 40). Para 43, talks about the role of women in the decision-making processes.

- **The Rights of the Child**

The Conference underlines the need for promoting respect for the rights of the child to survival, protection, development and participation. It exhorts the member-states to integrate the Convention on the Rights of the Child into their national action plan (Para 47). Para 48 refers to measures to be taken against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse. Para 49 urges member states to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

- **Freedom from Torture**

The Conference considers torture as a violation of human dignity (Para 55). It further affirms that torture under any circumstance can not be condoned, be it internal or international disturbance or armed conflicts (Para 56). The Congress urges all member-states to put an immediate end to the practice of torture and eradicate the evil (Para 57), in Para 62, prevents, terminates and punishes acts of Enforced disappearances through effective legislative, administrative, and judicial measures.

- **The Rights of the Disabled Person**

In Paras 63 to 65 the Conference reaffirms that all human rights and fundamental freedoms are unreservedly applicable to persons with disabilities. It proscribes any form of discrimination against the person afflicted with disabilities. It calls upon the member states to adopt the draft standard rules on the equalization of opportunities for persons with disabilities (Para 65).

c) **Cooperation, Development and Strengthening of Human Rights**

The sub-section covers Paras 66 to 77. It lays emphasis on strengthening pluralistic civil society. It also calls upon member states to strengthen rule of law, freedom of expression and the administration of justice, and popular participation in the decision-making processes (Para 67). Para 68 seeks to strengthen the Centre for Human Rights. Para 71 enjoins upon member-states to draw up their national action plans for the promotion and protection of human rights, while para 73 reinforces civil society entities. Para 77 exhorts the UN and its specialized agencies to ensure the promotion and protection of trade union rights.
d) Human Rights Education

Paras 78 to 82 establish right to human rights education as a fundamental right. Through this new right, it seeks to promote mutual understanding, tolerance, and peace among people (Para 78). It urges the member-states, via Para 79, to eradicate illiteracy. The Congress reiterates the proclamation of UN Decade for Human Rights Education (Para 82).

e) Implementation and Monitoring Methods

Paras 83 to 98 falls under this sub-section. It refers to National Human Rights Institutions which are called upon to meet periodically under the auspices of the Centre for Human Rights with a view to examining ways and means of improving their mechanisms and sharing experiences (Para 86). This part specifically endeavours to strengthen international human rights instruments by the World Body and by the members of the international community. The latter are enjoined to accept optional communication procedures germane to human rights (para 90). While para 91 of the Congress views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue.

Para 95 underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. Para 98 seeks to strengthen the enjoyment of economic, social and cultural rights. To achieve this objective, it lays emphasis on examining a system of indicators to measure progress in the realization of these rights.

In Paras 99 and 110 the Conference enjoins upon the UN organs, the specialized agencies and the Secretary General to look after the follow up action in terms of proclaiming United Nations decade for human rights. The Congress also deals with the Special Declarations and Resolution concerning Bosnia Herzegovina and Serbia-Montenegro and Angola pertaining to ethnic cleansing perpetrated against Muslims by the first two states and civil war in the last mentioned state.

18.4 THE FIVE-YEAR REVIEW OF THE VIENNA DECLARATION AND PROGRAMME OF ACTION (VDPA)

The final document adopted at the Vienna Conference was endorsed by the forty-eighth session of the U.N. General Assembly (resolution 48/121, of 1993). Secretary-General in his report on the follow-up to the World Conference on Human Rights to the General Assembly at its forty-ninth session asserted that ‘The VDPA undoubtedly constituted one of the major events in the United Nations history of human rights. If adequately implemented, it will be a milestone in this history.’

The Vienna Conference took historic steps to promote and protect the rights of women, children and indigenous peoples. The Declaration also made concrete
recommendations for strengthening and harmonizing the monitoring capacity of the United Nations system. In this regard, it called for the establishment of a High Commissioner for Human Rights by the General Assembly. This office was created on 20 December 1993 (resolution 48/141). Mr. José Ayala Lasso was nominated by the Secretary-General as the first High Commissioner. He assumed office on 5 April 1994. The overall mandate of the High Commissioner for Human Rights includes the coordination of the implementation of the VDPA by the United Nations system. The Vienna declaration and programme of action were reviewed after 5 years of adoption to assess the progress these had made.

The Review provided a framework for a comprehensive and future-oriented evaluation of the state of human rights at both international and national levels. The intention behind the Five-Year Implementation Review of the VDPA in 1998 was to compel the international community to reaffirm its commitment to human rights through determined and concrete action aimed at the effective safeguarding of these rights by all States, the United Nations system and other international organizations in cooperation with non-governmental organizations. In undertaking a thorough analysis of the achievements attained and the obstacles remaining in this regard, the Review tried to identify measures necessary to ensure the full realization of the recommendations adopted by the World Conference. The Review was thematically oriented. It focused on practical information regarding effective implementation of recommendations adopted by the Vienna World Conference.

The Commission on Human Rights also at its fifty-fourth session (March-April 1998) – while reflecting on the role of the UDHR, undertook an initial review of the implementation of the VDPA based on the Interim report of the United Nations High Commissioner for Human Rights on the Five-Year Review of the Implementation of the VDPA. The Economic and Social Council at its substantive session in 1998 – also reviewed the implementation of the VDPA by the United Nations system and identified the following: methods of achieving a concerted system-wide approach to human rights; examples of best practices by the UN system in the implementation of the VDPA; areas of responsibility in which efforts should be made to implement fully the VDPA; and plans for improving inter-agency cooperation and coordination to achieve better results in the implementation of the VDPA.

Check Your Progress 2

1) What were the main emphases behind Vienna Declaration?
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2) Explain the significance of the structural aspect of the Vienna Declaration.

3) Bring out the salient features of the review process of VDPA.

4) Illustrate the initiatives of the Economic and Social Council in the implementation of VDPA.

5) When was the post of High Commissioner for Human Rights established?

18.5 OTHER IMPORTANT UN CONFERENCES

You have already read that involved in human rights, were also issues of consolidation of positions in terms of gender, children, indigenous people, minorities, social development, habitat, environment and others. Goals for meeting basic human needs were drawn from previous declarations and programmes of action. Various UN conferences have attempted to shape the global developmental agenda for the years to come. The UN conferences draw upon the experience of previous international conventions, and takes account of present realities and future needs.
18.5.1 International Conference on Population and Development, Cairo, 1994

The International Conference on Population and Development (ICPD), Cairo, September 1994, witnessed the development of new strategies which focused on meeting the needs of individual men and women rather than only target groups. The ICPD was attended by representatives from 179 governments and over 1,500 NGOs from 113 countries. The ICPD decided on a Programme of Action outlining the procedure guiding both national and international policies on population and development for the following twenty years. It looked at the population question from the perspective of its relationship with sustainable development and economic growth.

The Action Programme offered an outline for all people to become aware of their own and their children’s health and well-being. The Plan of Action takes account of the interplay between population and development and recognizes reproductive rights including family planning practices and the size of the family. The three main goals set by the Programme included:

1) making family planning universally available by 2015 in order to reduce infant and maternity mortality rates;

2) integrating population concerns into all policies within the realm of sustainable development; and

3) making available to women and girls the opportunities for education, health, and employment services in order to provide them with more options.

18.5.2 The World Summit for Social Development Copenhagen, 1995

The World Summit for Social Development (WSSD) was held in Copenhagen, Denmark in March 1995 under the auspices of the UN. It exhorted the international community to formulate people-centric programmes of social development. The Summit was attended by 186 member-states, buttressed by 811 non-governmental organizations.

The WSSD was held as a result of the growing international concern with social development problems, specifically dealing with poverty and social disintegration, conflict, insecurity and the reduction of unemployment with the promotion of productive employment. These problems became evident to both rich and poor, and in turn promoted a great concern for solutions. These solutions, being out of any single government’s reach were not easily accessible and not usually socially and economically balanced. As a result, the WSSD had as one of its primary goals making evident, ways to do away with such imbalances by placing social development back on the international agenda.

Among the ground-breaking agreements made by the world’s leaders in the Declaration are ten commitments to: eradicate absolute poverty by a target date to be set by each country; support full employment as a basic policy goal; promote social integration based on the enhancement and protection of all human rights; achieve equality and equity between women and men; accelerate the development of Africa and the least developed countries; ensure that structural adjustment programmes include social development goals; increase resources allocated to...
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It is suggested by some observers that the social development consensus reached at the Summit reflects the predominance of Western economic paradigms following the collapse of the centrally planned economies of the USSR and Eastern Europe. Significantly, after the arguments about resource transfer between developed and developing nations, the most difficult issues to resolve were those concerning social and cultural differences, for example on the definition and role of the family or on reproductive health services, rather than about social and economic structures. The Summit did not meet the expectations of many developing countries which sought some movement on the international resource issues of the level of official development assistance (ODA) and debt relief. Despite the international declarations and World Summits the inequality between the first and third world still persists and indeed widens. There is an increase in absolute, as well as relative poverty in most of the 45 poorest developing countries.

The Copenhagen + 5 Review Process

The Special Session, entitled the “World Summit for Social Development (WSSD) and Beyond: Achieving Social Development for all in a Globalizing World” is commonly referred to as Copenhagen + 5. The event was attended by 35 member-states along with 2045 NGO delegates. Despite deep political divisions over issues such as human rights, governance, debt and nature and the scope of globalization, the negotiating climate ran positively among the member-states. A three part Outcome Document, which includes a political declaration, a review and assessment of the implementation of Social Summit, and further actions and initiatives to implement the commitments made in 1995, was issued. This final document made progress in raising issues such as: the transparency of international financial institutions, the need for new and innovative sources of funding, and the recognition of the critical importance of access to medicine at affordable prices.

The Social Summit and its Review explicitly places poor and disadvantaged people as actors and contributors to social development. The 1995 Summit showed a clear shift in perspective away from the notion of ‘the poor’ as ‘victims of poverty’ into ‘people living in poverty’ who are ‘citizens universally entitled to development who should fully enjoy economic, social, cultural, civil and political rights’.

18.5.3 The World Conference on Women, Beijing, 1995

The Beijing World Conference on Women (1995) stems from previous conferences in Mexico City 1975, Copenhagen 1980, Nairobi 1985 and the United Nations Decade for Women (1976-1985), and the Vienna Congress in 1993. It drew in its ambit 189 member-states and 2,100 non-governmental organizations. You have read about this conference in Unit 8 of this course. Just to remind you the conference focused, inter alia, on the perspective of women’s human rights: women and poverty, women and decision-making, the girl-child, allowing women control over sexuality and reproductive health; reviewing laws containing punitive measures against women who have undergone illegal abortion; and recognizing
rape as a war crime punishable by law. The resulting document was the Beijing Declaration and Platform for Action (BDPA) setting out measures for national and international action on the subject.


The Second UN Conference on Human Settlements (Habitat II: The City Summit) held in Istanbul in 1996 dealt with the problem of human habitat arising out of the increasing urbanization of world’s population. The Istanbul meet was preceded by the Vancouver conference of 1976. The former was attended by 171 member-states with 2,400 NGO representatives. The Conference adopted The Habitat Agenda wherein assorted themes centred around environment, human rights, homelessness, disasters, social development, women, population figured prominently.

The conference committed itself to provide adequate shelter for all, sustainable settlements, gender equality, financing of settlements, international co-operation, and the assessment of progress. The conference stressed that the governments should provide to individuals, families, and communities improved housing amenities by prohibiting discriminatory practices in this regard. By emphasizing the need for shelter, a healthy and safe environment, the Istanbul Meet offered a ray of hope to all those world’s homeless.

18.5.5 World Food Summit, Rome, 1996

The World Food Summit (Rome, 1996) was the first global gathering of 186 member-states to address the problems of hunger and malnutrition. The summit focused on food security and exhorted the policy makers to grapple with this serious problem.

At the 1974 World Food Conference, governments had examined the global problem of food production and consumption, and solemnly proclaimed that “every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop their physical and mental faculties”. However, more than twenty years later the goal of eradicating hunger, food insecurity and malnutrition “within a decade”, as expressed by that Conference, has not been reached. Almost 800 million people in developing countries today face chronic malnutrition and 199 million children under the age of five suffer from acute or chronic protein and energy deficiencies. At present, as many as 88 nations fall into the category of low-income food-deficit countries (LIDFCs).

The Rome Declaration and the Plan of Action adopted by the Summit outlined methods to achieve universal food security and reduce, by half, the current number of undernourished people in developing countries by 2015.

The Plan of Action outlined seven commitments namely: general conditions for economic and social progress to insure food security; poverty eradication and access to food; sustainable increases in the production of food; contribution of trade to food security; preparedness, prevention, and response to food emergencies; optimal investment in human resources and comprehensive sustainable development; and co-operation in the implementation and monitoring of the Plan of Action. The Summit reflected the highest political commitment on the part of the Governments to address with the problem of food security.
1) What did the ICPD Programme of Action offer?

2) Bring out the salient features of the Copenhagen Declaration and its commitments.

3) What main decisions were taken at the World Food Summit?

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18.6 EARTH SUMMIT

In 1992, world leaders met in Brazil to discuss a global action to protect the world’s environment. This largest ever gathering of world leaders was the first Earth Summit; decisions made at it helped bring sustainable development on to the world’s agenda.

The Earth Summit (officially known as the World Summit on Sustainable Development or WSSD) was a United Nations (UN) global conference, which was set up to find ways to halt the destruction of irreplaceable natural resources and tackle pollution of the planet. The first Earth Summit was held in Rio de Janeiro, Brazil in 1992 and was attended by over 170 governments and more than 2,000 representatives from non-government organizations (NGOs). In 1997 the UN General Assembly called a special session in New York to review progress since Rio. Three agreements and two legally binding conventions were agreed at the 1992 Earth Summit.

Agreements

1) Agenda 21 – a wide-ranging comprehensive action plan for achieving sustainable development worldwide.
2) Rio Declaration on the environment and development – a series of principles defining the rights and responsibilities of states.

3) Statement of forest principles – a set of principles to underlie the sustainable management of forests worldwide.

Conventions

1) The United Nations Framework Convention on Climate Change (UNFCCC): to prevent global climate change. The Kyoto Protocol, the global agreement to cut greenhouse gas emissions, was developed as part of this Convention.

2) The Convention on Biological Diversity (CBD) – to prevent the eradication of the diversity of biological species.

The Commission on Sustainable Development – also known as CSD – was created in December 1992 to ensure effective follow-up of the 1992 United Nations Conference on Environment and Development (UNCED - also known as the Earth Summit), in Rio de Janeiro, Brazil, where world leaders signed the Framework Convention on Climate Change and the Convention on Biological Diversity; endorsed the Rio Declaration and the Forest Principles; and adopted Agenda 21, a 300-page plan for achieving sustainable development in the 21st century.

The first Earth Summit did make a difference. It forced environmental issues to the top of political agendas and forced recognition of the importance of policies that achieve environmental, social and economic gains simultaneously, rather than trying to balance one against the other. Unfortunately governments did not show the political will to tackle the big issues, although there are numerous examples of good projects that have been carried out around the world.

In 2002, a ten-year review was held at the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa. The Summit reiterated the initial mandate and functions of the Commission on Sustainable Development (CSD) as a high level forum on sustainable development, and decided to enhance its role so that it can respond to the new demands emerging from the WSSD Plan of Implementation. This will entail major changes in the programme and organization of work, the nature of the Commission's outcomes, reporting to CSD and the UN Organizations, and ways of engaging major groups and other partner involved in the implementation process.

18.7 WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, DURBAN

Participated by 163 member-states, attended by 4,000 NGOs, the Durban Conference, 31 August – 7 September 2001, took place after 50 years of international anti-racism campaign, beginning with the adoption of the United Nations Charter in 1945. Five main themes formed the core of the Conference's agenda for Durban:

1) sources, causes, forms and contemporary manifestations of racism;

2) victims of racism and discrimination;
3) measures of prevention, education and protection aimed at the eradication of racism, racial discrimination and related intolerance at the national, regional and international levels;

4) provision for effective remedies, recourse, redress (compensation) and other measures at all levels; and

5) strategies to achieve full and effective equality, including international cooperation and enhancement of United Nations and other international mechanisms.

The Conference fixed long established traditional forms of racism and the plight of groups at particular risk: indigenous peoples, ethnic, religious and cultural minorities. Indian Dalit (Scheduled Castes) groups also raised the issue of caste-based discrimination. While, many speakers, most from Arab countries, argued that the problem in West Asia was one of racism and colonialism.

The Declaration expresses solidarity with the peoples of Africa in their continuing struggle against racism, racial discrimination, xenophobia and related intolerance. It also affirms the great importance of solidarity, respect, tolerance and multiculturalism, which constitute the moral ground and inspiration for the worldwide struggle against the inhuman tragedies that have affected people throughout the world, especially in Africa, for too long.

Noting the importance of paying special attention to new manifestations of racism, discrimination, xenophobia and related intolerance to which youth and other vulnerable groups might be exposed, the Declaration recognizes that those evils are among the root causes of armed conflict. It expresses deep concern that socioeconomic development is being hampered by widespread internal conflicts, including those arising from racism, discrimination, xenophobia and related intolerance, and from lack of democratic, inclusive and participatory governance.

It also expresses concern that in some States, political and legal structures or institutions, many of them inherited and persisting today, do not correspond to the multi-ethnic, multicultural and multi-lingual characteristics of the population, in many cases constituting an important factor of discrimination in the exclusion of indigenous peoples. The Summit set up Permanent Forum for Indigenous Issues and the appointment by the United Nations of a Special Rapporteur on the subject.

The Declaration describes victims of racism, racial discrimination, xenophobia and related intolerance as individuals or groups of individuals who are or have been negatively affected by, subjected to or targets of those scourges. It recognizes that people of African descent have for centuries been victims of racism, discrimination and enslavement and of history's denial of their rights. It also recognizes that they, as well as Asians and people of Asian descent, face barriers as a result of social biases and discrimination. The Summit also condemned racism and discrimination against migrants and the stereotypes often applied to them.

Noting that racism, discrimination and xenophobia contribute to forced displacement and movement of people as refugees and asylum seekers, the Declaration recognizes with concern that despite efforts to combat them,
When a matter comes up before the Court, if it finds that a violation of the Convention has occurred, it may ask the state party concerned to remedy the situation and award compensation to the victim. Its pronouncements are legally binding on the state parties. The Court also has an advisory jurisdiction and a unique power to take provisional measures. The advisory opinion of the Court can be sought by the member states regarding the interpretation of the Convention or other human rights instruments of the OAS. The provisional measures are the temporary restraining orders issued by the Court in matters pertaining to those cases pending before it or the Commission to avoid causing irreparable damage to persons concerned.

Check Your Progress 2

1) Enumerate the rights covered in the American Declaration of the Rights of Man.

2) Discuss the main features of the Inter-American Convention on Human Rights.

3) Discuss the powers and functions of the Inter-American Commission on Human Rights.

4) Do you think the Inter-American Court of Human Rights is effective in implementing the American Convention? Give Reasons.
### 14.4 THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (ACHPR) : BANJUL CHARTER

The ACHPR has seen a gradual development over a period of time before a final draft was prepared and adopted in Banjul, Gambia, in 1891. Hence, ACHPR is also known as the Banjul Charter. This Charter received approval of the Organization of African Unity (now African Union) in Nairobi, Kenya, in 1981. The Charter entered into force on 26 October 1986 after it received the required number of ratifications (26).

ACHPR is a near-universal human rights treaty in Africa in the sense that all the members of the AU have ratified it. It is seen as a very unique treaty because it has introduced many new concepts to the existing human rights documents and has drawn more upon the international (UN) human rights treaties than from other regional organizations. Its uniqueness is evident from, firstly, the use of the term ‘peoples’ in its title. The African Charter has adopted this term because the founding fathers were of the view that the western concept of individual-centric human rights was not suitable to the traditional African notion of community-centric rights and duties. Therefore, the African Charter attempts to incorporate African family values, customs, and traditions along with some fundamental rights. The reference point for ACHPR is not the individual but the community rights and duties are mostly ascribed to groups. The term peoples’ rights in this context symbolize emphasis on group rights or collective rights that have to be enjoyed by the entire community or group. Correspondingly, most of the duties are also imposed on such collectivity. One may also notice in the African Charter a lot of emphasis on family life, family values and family as a fundamental unit of social life. Thus, group rights, or the third generation rights are the flavour of the ACHPR.

Second unique feature of the ACHPR is that it grants all the generations of rights in one single document. Unlike the European system (European Social Charter) and the Inter-American system (Protocol on Social, Economic and Cultural Rights), the ACHPR guarantees civil and political rights, economic, social and cultural rights and certain group rights. Hence, it represents, in its own unique way the indivisibility of the three generations of rights.

Thirdly, the ACHPR not only recognizes rights but also imposes corresponding duties on individuals, community and the state. The Charter enumerates individual duty to preserve family as a social unit, respect parents at all times and to preserve and promote African values and traditions. Articles 27 and 28 proclaim everybody being ‘his/her brother’s keeper’. One’s duty towards one’s kith and kin and towards society at large has been institutionalized.

Fourthly, the Charter grants powers to the states to impose restrictions on the enjoyment of the rights in times of emergency, in respect of public order etc. While the most substantive provisions have such mitigating clauses (escape clauses) woven into them, there is no exclusive list of non-derogable rights or a statement of situations that may warrant the suspension of rights. An exclusive provision allowing for the suspension of rights does not appear in the Charter probably because every substantive article has a limitation appended to it. Such language makes the effectiveness of the rights guaranteed in the Charter less than optimum.
14.4.1 Rights Guaranteed in the African Charter

The African Charter has 68 articles in all. These articles can be divided into three parts. In the first part, Articles 1-29 consist of ‘Rights and Duties’. Articles 30-60 form the second part dealing with ‘Measures of Safeguard’ of human rights. This is the lengthiest section and is mostly concerned with the implementation mechanism, i.e., the composition, powers, functions and procedures of the African Commission on Human and Peoples’ Rights. Although so many Articles are devoted to the Commission, it has not been a very powerful or an independent body. It has not been able to take many effective steps towards implementing the Charter. The third section consists of Articles 64-68 concerning significance, ratification and entry into force of the Charter and so on.

The African Charter is a very comprehensive instrument in that it includes all kinds of rights — individual, collective, universal, regional, developmental — and duties. The civil and political rights include the right to life, liberty, information, right to self-determination, the right to development (which can also be seen as a collective right), the right to own property, the right to religion and worship, the right to protection against foreign exploitation of natural resources, freedom of colonized or oppressed peoples from foreign rule and exploitation, the right to protection against corruption, tribalism, nepotism and exploitation by the ruling class, the right to existence and the right to one’s culture.

A cursory look at the above list of the rights suggests that they are both civil-political and collective in nature. That is, there is no clear-cut demarcation between these two sets of rights. They often overlap.

Since most African countries have been under colonial rule, there is a great emphasis on right to self-determination, freedom from foreign rule and exploitation etc. One significant provision to be noted here is that in Article 12, which prohibits the expulsion of any foreigner legally present or resident in a state except in accordance with law. Mass expulsions of people aimed at national, racial, ethnic and religious groups are totally prohibited.

The economic, social and cultural rights are enumerated in Articles 15-18. Article 15 guarantees right to work and equal pay for equal work; Article 16 is on right to health and education. Article 18 is important because it obligates the state to provide moral welfare and physical healthcare to the family and to eliminate discrimination against women and to ensure the protection of the rights of the woman and the child as stipulated in international instruments. Articles 19-24 talk of peoples’ rights and Articles 25-29 on duties. Articles 27 and 28 have been discussed above. Article 29 imposes a common duty to promote African unity.

One problem with the rights guaranteed in the Charter is that they are limited by the overriding powers granted to the state such as law and order of the concerned state.

14.4.2 The Implementation Mechanism

The measures of implementation found in the African Charter are modelled more on the ICCPR than on the regional European and the Inter-American system. Initially the African system did not provide for a court because the prevailing notion in Africa placed a great deal of emphasis on negotiation and conciliation as methods for the resolution of conflict rather than litigation and trials. It is
usually held in Africa that negotiation and conciliation has no winners or losers and hence allows for better reconciliation; litigation on the other hand leads to more dispute and creates animosity. Moreover, the African system with its emphasis on group rights is designed to deal with massive denials of human rights rather than individual violations.

On the institutional front, the African Charter provides for a Commission (Article 30) to promote and protect human and peoples’ rights in Africa. The provisions regarding the Commission are most elaborate (Articles 32-61). It has eleven members elected for a period of six years by the Assembly of the Heads of the States and Governments and they work in their individual capacity although the governments nominate them. It was created in 1987 and has its seat at Banjul in Gambia though it meets in other parts of Africa.

In 1998, the OAU adopted a Protocol to the African Charter establishing the African Court of Human and Peoples’ Rights, which came into effect in 2004 upon receiving 20 ratifications. The Court will have eleven members like the Commission but it is yet to be established and its seat has not been determined. Only the Commission or the state party concerned can bring the cases before the Court. A state can, however, make a special declaration to allow direct access to individuals and NGOs.

The functions of the Commission can be categorized into two parts — promotional and quasi-judicial. The promotional functions include the power to undertake studies, convene conferences and, publication and dissemination of information (Article 45). As part of the promotional functions, the Commission may also give its views and recommendations to the member states regarding the ‘problem areas’ and issues of concern evidenced in its studies.

The quasi-judicial powers of the Commission are mainly two. The Commission interprets the provisions of the ACHPR upon the request of the member states or any other organ of the OAU (Article 45(3)). The Commission also may formulate principles and rules regarding problems of human rights in Africa that can form the basis of legislations in member states (Article 45(1)(b)). The Commission is further empowered to draw upon international human rights instruments in formulating these principles and rules (Articles 60-61).

14.4.3 The Interstate and Individual Complaint Mechanism

The Charter allows two mechanisms of implementation, namely, interstate complaint and individual complaint mechanism. The interstate complaint mechanism allows a state party to bring the violation of the Charter by another state party to the attention of the Commission. The Commission then ascertains the facts and holds hearings at which both the parties are invited to present their views. The Commission then prepares a report stating the facts and recommendations, if any, and sends the report to OAU’s Assembly of Heads of State and Government.

The individual complaint mechanism is similar to the one found in UN system and very different from the European or the American Conventions. Individuals and non-governmental organizations may send the complaint directly to the Commission (Article 55) after exhausting all the domestic remedies. However, the African system is not intended to deal with isolated individual violations but
with those that reveal a series of systematic, large-scale or massive violations of human rights. Secondly, once a complaint is found to be admissible, the Commission cannot act on its own; it has to refer the matter to the Assembly which in turn may decide to request the Commission to undertake a study or make recommendations. Hence, in the African system, the Assembly has overriding powers over the Commission in matters of individual complaint mechanism. Despite having so many provisions in the Charter devoted to it, the Commission does not enjoy an independent status and its recommendations are not legally binding. Considering that the Commission was the only implementing organ envisaged in the Charter, its powers and position are weak.

Check Your Progress 3

1) What are the unique features of the African Charter of Human and Peoples’ Rights?

2) Discuss the rights contained in the African Charter.

3) Do you think that the implementation mechanism in the African Charter has been effective? How will the establishment of the Court help the process?

14.5 LET US SUM UP

Regional human rights arrangements are an important feature of international protection of human rights. They are an intermediary between the global and the domestic human rights regimes. Regional systems evolve in response to common historical background, cultural similitude, shared political experiences, and levels of development witnessed in a region. They are also beneficial for the individual because they enhance the culture of human rights protection and provide an additional safety net in terms of rights and their enforcement. An individual is
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no longer at the mercy of his state; s/he can approach the regional mechanism of redress.

The regional system first emerged in Europe because of the unique conditions prevailing there. Western Europe was a region that had developed with a distinct political tradition rooted in democracy. The western liberal political system was more conducive to the development of a regime of civil-political rights of the individual; also, as a region that had witnessed two world wars of unprecedented proportion and the denial of the most basic human rights during those wars, the urgent need for a human rights system was felt. Europe wanted to fortify the region with a strong human rights arrangement extending beyond the national borders so that another leader like Hitler would not emerge ever again.

The regional arrangements have had a favourable influence on one another and have emulated the positive features found in each of them. While the European and the inter-American system had many commonalities, the African system has many unique features. The latter one reinforced the undeniable relevance of socio-economic-cultural rights and group rights to any discourse on human rights. In fact, all the three regional systems now have incorporated the three generations of rights in their arrangement. The European system has done it through the European Social Charter and the inter-American system through its Additional Protocol in the Area of Economic, Social and Cultural Rights. On the other hand, the African system has emulated the two other arrangements in establishing the African Court of Human and Peoples’ Rights. In the end, it can be said that the three regional instruments are constantly evolving, both conceptually and institutionally, towards developing more encompassing and better human rights regimes.

14.6 ANSWERS TO CHECK YOUR PROGRESS

EXERCISES

Check Your Progress 1

1) The main features of the ECHR are that it was the first comprehensive regional human rights treaty that provided for a redressal mechanism both in terms of procedures and institutions. It is a treaty that primarily protects civil-political rights and has generated a lot of jurisprudence. See section 14.2.

2) The individual complaint system has been highly successful whereas the interstate mechanism has not been very popular. The affected individual or NGOs can directly approach the Court. See sub-section 14.2.3 and 14.2.4.

3) The European Court has assumed great importance in the recent years as it has replaced the Commission and assumed its functions as well. It consists of judges equal to the number of states parties to the Convention, elected for a period of six years and they have a renewable term. The Court examines the communications regarding the alleged violation of the rights protected in the Convention. It has been overburdened with work but has been successful. See sub-section 14.2.5.

Check Your Progress 2

1) The American Declaration enumerates all the fundamental rights and freedoms of the civil-political nature. It enlists 27 rights and 10 duties. Although merely a Declaration, it has attained a normative character. See sub-section 14.3.1.
2) The American Convention guarantees an extensive list of civil and political rights. One unique right is the right to a name. The Convention obligates the states parties to both “respect” the rights and “ensure” their free and full exercise. The Convention lists many non-derogable rights including the right to judicial remedies. See sub-section 14.3.2.

3) Its functions are preparing country reports on the human rights situations, investigating the specific human rights problems, and receiving individual petitions and inter-state communications. The Commission also has competence over all the other human rights instruments of the OAS. See sub-section 14.3.3.

4) The Court has been very effective in implementing the Convention because its powers are deeper and legally binding. It may ask the state party concerned to remedy the situation (if there is a violation) and award compensation to the victim. The Court also has an advisory jurisdiction and a unique power to take provisional measures. The advisory opinion of the Court can be sought by the member states regarding the interpretation of the Convention and the provisional measures are the temporary restraining orders issued by the Court in matters pertaining to those cases pending before it or the Commission to avoid causing irreparable damage to persons concerned. See sub-section 14.3.4.

Check Your Progress 3

1) ACHPR is a very unique treaty. Firstly, it uses the term ‘peoples’ in its title. It attempts to incorporate African family values, customs, and traditions along with some fundamental rights. Secondly, it grants all the generations of rights in one single document and represents the indivisibility of rights. Thirdly, it not only recognizes rights but also imposes corresponding duties on individuals, community and the state. Fourthly, the Charter grants powers to the states to impose restrictions on the enjoyment of the rights in times of emergency, in respect of public order etc. See section 14.4.

2) The rights guaranteed are civil-political in articles 1-14, socio-economic cultural in articles 15-18, group rights in articles 19-24 and duties in articles 24-29. There is a grate deal of emphasis on such rights as right to self-determination, freedom from colonial rule and exploitation, protection against corruption, tribalism, nepotism and exploitation by the ruling class, and prohibition of expulsion of any foreigner or mass expulsion of people. See sub-section 14.4.1.

3) The implementation procedure has not been very effective under the Commission because the Commission lacks independent powers. The Commission cannot act on its own; once a complaint is found to be admissible, it has to refer the matter to the Assembly of the Heads of the State and Government, which in turn may decide to request the Commission to undertake a study or make recommendations. Hence, in the African system, the Assembly has overriding powers over the Commission in matters of individual complaint mechanism. Despite having so many provisions in the Charter devoted to it, the Commission does not enjoy an independent status and its recommendations are not legally binding. The establishment of the Court with binding powers will certainly help better monitoring and implementation. See sub-section 14.4.2.