

Chapter three: Systems of Protection for Vulnerable Groups

- ✓ The aim of human rights instruments is the protection of those vulnerable to violations of their fundamental human rights.
- ✓ There are particular groups who, for various reasons, are weak and vulnerable and consequently require special protection for the equal and effective enjoyment of their human rights.
- ✓ Often human rights instruments set out additional guarantees for persons belonging to these groups; *i.e.*, the Committee on Economic, Social and Cultural Rights has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states (parties) to extend special protective measures to them and ensure some degree of priority consideration, even where in the face of severe resource constraints.

1. Women's rights

- ✓ The inferior status of women is entrenched in history, culture and tradition.
- ✓ Through the ages, national and religious institutions have been called upon to justify violations of women's rights to equality and enjoyment of fundamental human rights. Even now, women are subject to discrimination in all stages of life; in income, education, health and participation in society and they are particularly vulnerable to specific violations such as gender-based violence, trafficking and sex discrimination.
- ✓ Various international bodies have been established with the aim of eradicating policies, actions and norms that perpetuate discrimination against women and violate women's human rights.

International Human Rights Standards

- ✓ After the Second World War, a number of treaties on the protection of women were drafted and both the UN Charter and the International Bill of Human Rights (see *e.g.* Article 3 of ICESCR and Article 3 of ICCPR) proclaim equal rights for men and women and ban discrimination on the grounds of sex.
- ✓ In addition to instruments relating to discrimination in general, a whole series of instruments have been developed specifically for the protection of women, the elimination of discrimination against women and the promotion of equal rights.
- ✓ One of the most important instruments for the protection of women is **the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which was adopted by the UNGA on 18 December 1979, following consultations over a five-year period by various working groups, the CSW and the UNGA. It entered into force in 1981. The 30-article Convention sets out internationally accepted principles and measures to achieve equal rights for women everywhere. As of July 2004, 177 states were parties to CEDAW.
- ✓ Articles of the Convention call for non-discriminatory health services for women, including services related to family planning, and equal legal capacity to that of men. States Parties agree that all contracts and other private instruments that restrict the legal capacity of women shall be deemed null and void' (Article 15). Special attention is given to the problems of rural women (Article 14).
- ✓ The effectiveness of the Convention in promoting the rights it contains is significantly undermined by the numerous reservations made by States Parties. Most reservations aim to preserve religious and national institutions that are contrary to the rights guaranteed and many are obviously incompatible with the object and purpose of the Convention.
- ✓ On 6 October 1999, the General Assembly adopted an Optional Protocol to the CEDAW, which entered into force in 2000. The Protocol establishes a procedure that allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the CEDAW Committee. In July 2004, 60 states had ratified the Optional Protocol.
- ✓ Other universal instruments relating to the rights of women include the **UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)**, the **UN Convention on the Political Rights of Women (1952)** and the **UN Convention on the Nationality of Married Women (1957)**. Furthermore, the Rome Statute of the International Criminal Court (1998) Article 7 establishes that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence are each to be considered a crime against humanity.

Supervision

- ✓ The CEDAW establishes the Committee on the Elimination of Discrimination Against Women to oversee the implementation of the rights it guarantees (for further analysis of the Convention and Committee see XX).
- ✓ The Committee acts as a monitoring system to oversee the implementation of the Convention. This is done principally by examining reports submitted by states parties, but in 1999, an optional protocol expanded the powers of the Committee to include competence to receive individual complaints. This procedure allows individuals and groups of individuals, alleged victims of violations, to file a complaint against states parties to the protocol. As has been examined, the Optional Protocol also establishes a distinctive feature: an inquiry procedure that allows the Committee to initiate investigations into suspected grave or systematic violations by a state party of the rights contained in the Convention. In this regard the Committee can carry out visits to the country in question.
- ✓ The Committee has contributed significantly to the interpretation of the obligations imposed by the Convention through its General Recommendations which have dealt with several issues of utmost importance for women such as violence against women (General Recommendation No. 12 - Violence against women); equal remuneration for work of equal value (General Recommendation No. 13 - Equal remuneration for work of equal value); female circumcision (General Recommendation No. 14 - Female

circumcision); AIDS (General Recommendation No. 15 - Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome); violence against women (General Recommendation No. 19 - Violence against women); equality in marriage and family relations (General Recommendation No. 21 - Equality in marriage and family relations); women's political rights (General Recommendation No. 23 - Political and Public Life) and women and health (General Recommendation No. 24 - Women and Health).

- ✓ The UN Commission on the Status of Women has a mandate to consider confidential and public communications on the status of women. During each session, a Working Group of five members, selected with due regard for geographical distribution, gathers in closed meetings to consider communications addressed to the Commission and those pertaining to women received by the Office of the High Commissioner for Human Rights, including the replies of governments thereto, with a view to bringing to the attention of the Commission those communications which reveal a consistent pattern of reliably attested injustice and discriminatory practices against women. The Commission may make recommendations to ECOSOC regarding the complaints submitted; what steps are to be taken is decided by ECOSOC.

2. The rights of the child

- ✓ Every child has the right to grow to adulthood in health, peace and dignity. Young children are vulnerable and dependent on adults for their basic needs, such as food, health care and education. Ensuring the rights of children to health, nutrition, education, and social, emotional and cognitive development is imperative for every country and entails obligations for every government.
- ✓ Ensuring that children enjoy fundamental rights and freedoms not only advances a more equitable society, but fosters a healthier, more literate and, in due course, a more productive population. Clearly, children's rights are closely tied to women's rights; even before being born a child's survival and development is dependent on the mother's health and opportunities. Women are still primary care-givers for children, so ensuring women's rights is positively linked to children's enjoyment of human rights.

International Human Rights Standards

- ✓ In 1924, the League of Nations adopted a Declaration on the Rights of the Child (Declaration of Geneva), containing five basic principles reflecting the clear consensus that children were in need of special protection. In 1959, the UNGA unanimously adopted another more elaborate Declaration on the Rights of the Child, stating in the preamble that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'.
- ✓ Serious work on drafting a convention on the rights of the child began in the final years of the 1970s, resulting in the UNGA adoption of the Convention on the Rights of the Child (CRC) on 20 November 1989. The Convention entered into force on 2 September 1990 and a few years later the majority of the world's states had ratified it. As of July 2004, 192 states had ratified the Convention, making the CRC the most universally accepted human rights treaty ever drafted. The United States and Somalia are the only UN members, which have not ratified the Convention.
- ✓ The Convention is meant to be all encompassing and sets out civil, political, social, economic and cultural rights for 'every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier' (Article 1). Four general principles have guided the authors of the Convention:
 - The principle of non-discrimination (Article 2);
 - The best interests of the child (Article 3);
 - The right to life, survival and development (Article 6); and
 - Respect for the views of the child (Article 12).
- ✓ Underpinning the CRC are three core concepts; protection, provision and participation:
 - protection, against, e.g., violence, abuse, neglect, maltreatment or exploitation (Article 19);
 - provision of, e.g., name and nationality (Article 7), social security, adequate standard of living and education (Articles 26 to 28);
 - participation through the right of a child to express its views, to freedom of thought and to freedom of association (Articles 12 to 15).
- ✓ The CRC contains several rights which are also included in other international instruments, but Article 41 provides an explicit 'most favourable conditions clause', stating that nothing in the CRC shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in the law of a state party or international law in force in that state (Article 41).
- ✓ While the Convention sets out many rights already proclaimed in other instruments such as the ICCPR (Articles 23(4) and 24) and ICESCR (Article 10(3)), it is the first instrument to specifically grant child rights and protection as autonomous human beings. The value added by the CRC lies mainly in that:
 - The general rights formulated in earlier conventions and the UDHR have been reformulated with a special focus on the rights and needs of the child. Other rights only applicable to children are elaborated, such as the right to adoption, education and contact with parents.
 - New elements have been included, such as the provisions regarding parental guidance and regarding international co-operation in the field of handicapped children.
 - The CRC covers children in difficult circumstances, such as the separation from parents; abuse and neglect; disabled and refugee children; indigenous children and children belonging to minorities; sale, trafficking and abduction of children; deprivation of liberty; and children in armed conflict.
- ✓ Some international instruments contain more protective clauses than the CRC. For instance, Article 32 CRC regarding child labour does not explicitly define a minimum age for admission to employment. ILO 138

stipulates that the minimum age for admission to employment or work shall not be less than 15 years and that developing countries may initially specify a minimum age of 14 years. For employment under specified circumstances (e.g., in the case of health hazards), the minimum age is 18 years in the aforementioned ILO Convention. The CRC generally sets out the minimum age of 18 years (Article 1) so does ILO 128 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), which defines persons younger than 18 as children (Article 2).

- ✓ Similarly, while the CRC forbids recruitment of children below 15 years for the armed forces, Article 77 of Protocol I to the Geneva Conventions of 1949, affords superior protection as regards recruitment of children between 15 and 17 years of age. Here, Article 41 ('most favourable treatment') applies for those states, which have ratified more favourable international instruments. Moreover, states may make declarations when ratifying the CRC, expressing their commitment to apply more protective standards; e.g., by not recruiting children under 18 years of age into the armed forces.
- ✓ Two optional protocols to the CRC were adopted by the UNGA in 2000. The Optional Protocol to the CRC , on the Involvement of Children in Armed Conflict aims at, *inter alia*, raising the minimum age of individuals taking part in armed conflict to 18 and includes a unique provision regulating the acts of non-state actors, stipulating that non-state forces should not recruit persons under 18. The Second Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography stipulates, *inter alia*, that states have to ensure that certain acts against children are criminalised, and that states are obliged to prosecute or extradite offenders under their jurisdiction.
- ✓ Relevant standards in the regional systems for the protection of children's rights include the Africa Charter on the Rights and Welfare of the Child (1990), setting out in Article 18(3) that 'the State shall [...] ensure protection of the rights of the woman and the child as stipulated in international declarations and conventions'.
- ✓ The American Convention on Human Rights sets out the equal rights of children born in and out of wedlock (Article 17(5)) and that 'every minor child has the right to measures of protection [...] on the part of his family, society, and the state.' Other relevant documents within the American context are, for instance, the Inter-American Convention on the International Return of Children (1989); the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors (1984); and the Inter-American Convention on International Traffic in Minors (1994). Within the European system the European Social Charter sets out special protection for children with regard to employment (Article 7) and the right of children and young persons to social, legal and economic protection (Article 17). Other important European conventions on the Adoption of Children (1967); the European Convention on the Legal Status of Children born out of Wedlock (1975); and the European Convention on the Exercise of Children's Rights (1996).

Supervision

- ✓ The CRC establishes the Committee on the Rights of the Child to supervise the progress made by the states parties in achieving the realisation of their obligations contained in the Convention.
- ✓ The Committee is composed of ten multidisciplinary experts from fields such as international law, medicine, education and sociology, whose main task is to review reports submitted by states on actions they have taken to implement the Convention, as it has no competence to receive individual complaints.
- ✓ The Committee may convene informal regional meetings with the collaboration of UNICEF, to get familiar with the different issues facing children in different regions, as well as establishing dialogues with NGOs and governments. Like other supervisory mechanisms, the Committee adopts General Comments for the interpretation of the rights contained in the CRC. The Committee has recently (2003) adopted General Comment 5 on general measures of implementation of the CRC, outlining the obligations of states in regard to the Convention.
- ✓ The United Nations Children's Fund (UNICEF), one of the key organisations concerned with children's rights.
- ✓ UNICEF was created in 1946 in the aftermath of WWII to provide European children facing famine and disease with food, clothing and health care. Today, UNICEF aims to overcome the obstacles that poverty, violence, disease and discrimination place in a child's path. UNICEF's role is specifically mentioned in Article 45 of the CRC. The organisation focuses on improving the child's environment, the improvement of primary health care, water supply, nutrition, education and community development. In recent years, it has invested heavily in programmes for, among other things, immunisation, water supply systems and literacy. UNICEF is a global leader in vaccine supply, reaching 40 percent of the world's children and is paramount in the implementation of the targets set at the 1990 World Summit for Children and the Millennium Development Goals.

3. Minority protection regime

➤ The rights of indigenous people

- ✓ Indigenous peoples have only after World War II become the subject of international human rights debate.
- ✓ The indigenous differ enormously in cultures, religions, and patterns of social and economic organisation, such as the Mayas in Guatemala, the Inuit in Canada, the Masai in Tanzania, and the Naga in India. Some estimated 5,000 indigenous peoples comprising around 300 million persons live in more than 70 countries from the Arctic to the Amazon.
- ✓ In his Study of the Problem of Discrimination Against Indigenous Populations, the rapporteur of the Sub-Commission, Mr Martinez Cobo, has formulated a definition, which features the most important characteristics: *Indigenous communities, peoples 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 the 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 basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

- ✓ Looking at Mr Martinez Cobo's definition and the ILO Conventions, a number of characteristics can be distinguished:
 - Indigenous peoples have a strong affinity with the land they live on. Their environment is essential for their survival as a cultural entity; it is decisive for their social and cultural conditions;
 - They are not dominant in their present national society, usually they have little if any influence on state policy;
 - They generally speak their own language and have common cultural qualities; and
 - Their political/organisational structure is generally of a decentralised nature.

International Human Rights Standards

- ✓ The first international standard on indigenous populations was ILO 107 (1957), revised and reformulated in 1989 and amended as ILO 169. In this Convention, a definition of indigenous peoples is given in Article 1(1):
 - Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
 - Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all their own social, economic, cultural and political institutions.
- ✓ Since the 1970s, the United Nations has been involved in initiatives, frequently in co-operation with the ILO and the OAS, concerning the development of specific standards for the protection of indigenous peoples.
- ✓ In 1982, the UN Working Group on Indigenous Populations was created as a body of the Sub-Commission for the Prevention of Discrimination and Protection of Minorities (now Sub-Commission on the Protection and Promotion of Human Rights). One of its commitments was the drafting of a Declaration on the Rights of Indigenous Populations, which was adopted by the Sub-Commission in August 1994. The draft Declaration consists of 45 articles, related to issues such as:
 - The right of indigenous populations to self-determination (Article 3);
 - The right not to be 'forcibly removed from their lands or territories' (Article 10);
 - The right 'to practice and revitalise their cultural traditions and customs' (Article 12);
 - The right 'to establish their own media in their own languages' (Article 18); and
 - The right 'to determine and develop priorities and strategies for the development or use of their lands, territories and other resources [...]' (Article 30).
- ✓ Although some instruments, such as the Draft Declaration on Indigenous Rights, ILO 169 and the Convention on the Rights of the Child (Article 30) address indigenous people as a separate group from minorities in general, in General Comment 23, the Human Rights Committee states that indigenous peoples are minorities for the purposes of Article 27 (see above 'National Minorities'). Other treaty bodies also deal with minorities; for example, the Committee on the Elimination of Racial Discrimination (CERD) has issued a General Recommendation on Indigenous Rights under the CERD (General Recommendation No. 23 - Rights of indigenous peoples).

Supervision

- ✓ At the UN treaty-based level, the Human Rights Committee has been called upon several times by indigenous persons to decide on possible infringements of their human rights.
- ✓ A number of cases have involved complaints relating to the preservation of culture of indigenous groups, language rights and access to effective remedies. Issues include dispossession by the state of the ancestral land of indigenous groups; legality of rules stipulating loss of membership in an indigenous minority following marriage to a non-indigenous person; forced use of language other than the indigenous language during official court proceedings; indigenous rights to natural resources; and state interference with traditionally indigenous lands.
- ✓ Three charter-based bodies have been established to deal with issues relating to indigenous peoples at the UN:
 - the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,
 - the Working Group on Indigenous Populations, and
 - the Permanent Forum on Indigenous Issues.
- ✓ In 2001, the UN Commission on Human Rights appointed a Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, from Mexico, in response to the growing international concern regarding the marginalization and discrimination against indigenous people worldwide (Resolution 2001/57).
- ✓ The Special Rapporteur has under his mandate addressed a wide range of human rights issues. He has, for instance, formulated a proposal for a definition of indigenous peoples, and addressed the role of intergovernmental and non-governmental organisations, the elimination of discrimination, and basic human rights principles, as well as special areas of action in fields such as health, housing, education, language, culture, social and legal institutions, employment, land, political rights, religious rights and practices, and

equality in the administration of justice. His conclusions, proposals and recommendations mark important progress in United Nations consideration of the human rights problems facing indigenous peoples; many are still under consideration and others have been incorporated into resolutions of the Sub-Commission.

- ✓ Apart from facilitating and encouraging dialogue between governments and indigenous peoples, the Working Group on Indigenous Populations has a two-fold mandate: a) to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples; and b) to give attention to the evolution of international standards concerning indigenous rights.
- ✓ The Permanent Forum on Indigenous Issues serves as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues relating to economic and social development, culture, the environment, education, health and human rights.
- ✓ The Forum focuses on the following issues:
 - to provide advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the UN through the Council;
 - to raise awareness and promote the integration and co-ordination of activities relating to the indigenous issues within the UN system; and
 - to prepare and disseminate information on indigenous issues.

> **Protection of disabled persons**

- ✓ Discrimination against persons with disabilities has a long history and persons with disabilities are regularly excluded from participation in society and denied their human rights.
- ✓ Discrimination against the disabled can take many forms, ranging from limited educational opportunities to more subtle forms, such as segregation and isolation because of physical and social barriers. The effects of discrimination are most clearly felt in the sphere of economic, social and cultural rights, in the fields of, for instance, housing, employment, transport, cultural life and access to public services.
- ✓ The obstacles the disabled face in enjoying their human rights are often the result of exclusion, restriction, or preference, and, for instance, when the disabled do not have access to reasonable accommodation on the basis of their limitations, their enjoyment or exercise of human rights may be severely restricted.
- ✓ In order for disabled persons to freely enjoy their fundamental human rights, numerous cultural and social barriers have to be overcome; changes in values and increased understanding at all levels of society has to be promoted, and those social and cultural norms that perpetuate myths about disability have to be put to rest.

International Human Rights Standards

- ✓ In general, international human rights instruments protect the rights of persons with disabilities through the principles of equality and non-discrimination.
- ✓ The UDHR refers expressly to disabled persons, stipulating in Article 25 that 'everyone has the right to security in the event of [...] disability', but its derivatives, the ICCPR and ICESCR, do not contain any explicit reference to persons with disabilities.
- ✓ Many provisions of the Covenants are, however, of direct relevance for ensuring equal opportunities and the full participation of persons with disabilities in society; for example, Article 6 (respecting the right to life) and Article 7 (respecting the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment) under the ICCPR and Article 2 (the general non-discrimination norm) under the ICESCR. Article 23 of the Convention on the Rights of the Child specifically discusses the rights of handicapped and disabled children.
- ✓ The Committee on Economic, Social and Cultural Rights has adopted a General Comment on persons with disabilities. General Comment No. 5 - Persons with disabilities is particularly important as it establishes that disability falls under the heading, 'other status' in Article 2 ICESCR and is therefore regarded by the Committee as a prohibited ground for discrimination. Similarly, the Committee on the Elimination of All Forms of Discrimination Against Women has adopted General Recommendation No. 18 - Disabled women.
- ✓ Under the auspices of the AU, the African Charter of Human and Peoples' Rights stipulates in Article 18(4) that the disabled shall be entitled to special measures of protection and the African Charter on the Rights and Welfare of the Child discusses the rights of handicapped children in Article 13.
- ✓ The European Social Charter (revised) stipulates that disabled persons have the right to independence, social integration and participation in the life of the community' (Part I No. 15) and sets out steps that states shall undertake to this end, such as promoting access to employment and education (Article 15).
- ✓ Article 6 of the Protocol of San Salvador stipulates: 'States Parties undertake to adopt measures to make the right to work fully effective [...] in particular, those directed to the disabled' and Article 9 sets out the right to social security in case of disability. Moreover, provisions in human rights instruments protecting members of vulnerable groups are applicable to disabled persons.
- ✓ Two international conventions dealing directly with the rights of disabled persons have been drafted. One is the **Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities 1999** (see 2.3), The other Convention is ILO 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983). It sets out, *inter alia*, principles of vocational rehabilitation and employment policies aimed at equal opportunity and measures for action at the national level to be taken for the development of rehabilitation and employment services for disabled persons.
- ✓ Specific non-binding instruments have also been adopted at the international level addressing the rights of disabled persons. These instruments include the Declaration of the Rights of Mentally Retarded Persons (UNGA Resolution 26/2856 (XXVI), 1971); the Declaration on the Rights of Disabled Persons (UNGA Resolution 30/3447 (XXX), 1975); the World Programme of Action concerning Disabled Persons (UNGA

Resolution 37/52, 1982); the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability (UNGA Resolution 44/70, 1990); the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (UNGA Resolution 46/119, 1991); ILO Recommendations concerning Vocational Rehabilitation of the Disabled (1955) and concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983); the Sundberg Declaration on Actions and Strategies for Education, Prevention and Integration (1981); the Salamanca Statement on Principles, Policy and Practice in Special Needs Education (1994); and the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UNGA Resolution 48/96, 1993).

- ✓ A World NGO Summit on Disability was held in Beijing in March 2000, resulting in the Beijing Declaration on the Rights of People with Disabilities in the New Century. Through this Declaration, the NGOs in the field of disability lent their moral authority to the idea of a disability-specific human rights treaty.
- ✓ In 2001, in the wake of the Beijing Summit, the General Assembly established an Ad Hoc Committee to consider proposals for a convention on disability. The aim is a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the work done in the fields of social development, human rights and non-discrimination (UNGA Resolution 56/168, 2001). The Committee is at the first stages of work and held its second session in June 2003, assisted by the participation of several prominent global NGOs in the field of disability such as: Disabled Persons International (DPI); Inclusion International; Rehabilitation International (RI); World Blind Union (WBU); World Federation of the Deaf (WFD); World Network of Users and Survivors of Psychiatry (WNUSP); and World Federation of the Deaf-Blind (WFDB).
- ✓ In December 2001, the Mexican government put forward Resolution 56/168 in the United Nations General Assembly. The resolution called for consideration of a Convention on the human rights of persons with disabilities and further sought the immediate formation of an Ad-Hoc Committee. This Committee would 'consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities'. Resolution 56/168 passed without any vote.
- ✓ The General Assembly subsequently passed Resolution 56/510, respecting the accreditation and participation of NGOs in the Committee, and Decision 56/474, which 'requests the Secretary-General to make, as needed and within existing resources, reasonable efforts to facilitate the participation by persons with disabilities in the meetings and deliberations of the Ad Hoc Committee [...]'

Supervision

- ✓ In 1994, the position of Special Rapporteur on Disability of the United Nations Commission for Social Development was established. The task of the Special Rapporteur is to monitor implementation of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities and to advance the status of people with disabilities throughout the world. Furthermore, under the auspices of the UN, the Division for Social Policy and Development of the United Nations Secretariat is the focal point on matters relating to disability.
- ✓ One of the major development goals of the United Nations is promoting the quality of life of the disadvantaged, including people with disabilities. The year 1982 was the UN International Year of Disabled Persons and towards its end the World Programme of Action concerning Disabled Persons (WPA) was adopted by the General Assembly. The WPA is a global strategy to enhance disability prevention, rehabilitation and equalisation of opportunities with the aim of full participation of persons with disabilities in social life and national development. The WPA emphasises the need to approach disability from a human rights perspective and that persons with disabilities should not be treated in isolation, but within the context of normal community services. The WPA provided analysis of principles, concepts and definitions relating to disabilities and an overview of the world situation regarding persons with disabilities, setting out recommendations for action at the national, regional and international levels.
- ✓ The International Day of Disabled Persons is 3 December each year. The aim is to promote an understanding of disability issues and mobilise support for the dignity, rights and well-being of persons with disabilities. Similarly, the United Nations Economic and Social Commission for Western Asia (ESCWA) has launched the Arab Decade for People with Disabilities from 2003-2012.

> Elderly Persons

- ✓ The majority of older persons are women and striking differences exist between regions; for instance, one out of five Europeans is 60 years or older, but only one in twenty Africans.
- ✓ It is only recently that the attention of the world community has been drawn to the social, economic and political issues related to this phenomenon of ageing on a massive scale.
- ✓ As the world's population ages and the traditional role of the family as the main support of older people weakens, the elderly are increasingly vulnerable to abuse and various forms of negative stereotyping and discrimination. They often have limited access to health care and face specific age related restrictions in many fields, such as job discrimination in hiring, promotion and dismissal. Furthermore, as many industrialised countries struggle with the task of adapting their social and economic policies to the ageing of their populations, even in affluent societies many older persons live in conditions of poverty.
- ✓ In developing countries with limited social security systems, the emigration of the younger members has left the elderly, traditionally cared for by members of their families, to fend for themselves. This is especially true in the case of older women who live longer than men do and more commonly face poverty and isolation.

International Human Rights Standards

- ✓ In general, the rights stipulated for the elderly in international instruments stem from the principles of dignity and non-discrimination.

- ✓ Neither the UDHR nor its derivatives, the ICCPR and ICESCR , contain any explicit reference to older persons, but many provisions of these instruments are of direct relevance to ensuring equal opportunities and the full participation of the elderly.
- ✓ Although the rights of older persons are not referred to in the Bill of Rights, the ICESCR Committee expressly addresses the economic, social and cultural rights of older persons in General Comment No. 6 - The economic, social and cultural rights of older persons . In the General Comment, the Committee calls on states parties, *inter alia*:
 - to pay particular attention to older women as they have often not engaged in a remunerated activity entitling them to an old-age pension;
 - to institute measures to prevent discrimination on grounds of age in employment and occupation; to take appropriate measures to establish general regimes of compulsory old-age insurance; and
 - to establish social services to support the whole family when there are elderly people at home and assist elderly persons living alone or elderly couples wishing to remain at home.
- ✓ The General Comment also sets out that, even though not specified as a prohibited ground for discrimination in the Convention, 'other status' could be interpreted as applying to age. It is beyond doubt that the principle of non-discrimination enshrined in the ICESCR, ICCPR, CERD and CEDAW prohibits discrimination on the grounds of age.
- ✓ Three regional human rights instruments expressly mention older persons as a group in need of special protection. In Article 18(4), the African Charter stipulates that the aged shall have the right to measures of special protection in keeping with their physical or moral needs. The Protocol to the African Charter on the Rights of Women in Africa sets out special protection for elderly women. Article 17 Protocol San Salvador stipulates that everyone has the right to special protection in old age and calls upon states to progressively provide suitable facilities, food and medical care for elderly persons that lack them; to undertake work programmes to enable the elderly to take part in productive activity; and to foster establishment of social organisations aimed at improving the quality of life of the elderly.
- ✓ The Revised European Social Charter sets out the right to social protection for the elderly in Article 23. According to this provision states parties undertake to adopt measures:
 - to enable the elderly to remain full members of society for as long as possible by providing adequate resources and information about available services;
 - to enable the elderly to choose their life-style freely and live independently for as long as possible by providing adequate housing and services; and
 - to guarantee support for older persons living in institutions. In addition, the Charter on Fundamental Rights of the European Union (2000) sets out the rights of the elderly 'to lead a life of dignity and independence and to participate in social and cultural life' (Article 25).
- ✓ In 1982, the World Assembly on Ageing, held in Austria, adopted the Vienna International Plan of Action on Ageing , the first international instrument on ageing. It was endorsed by UNGA Resolution 37/51. The Plan promotes international co-operation to strengthen the capacities of states to contend with the ageing of populations and to address the developmental potential and dependency needs of older persons. It addresses research, training and education and makes recommendations in the following areas: a) education; b) health and nutrition; c) family; d) protection of elderly consumers; e) income security and employment; f) housing and environment; and g) social welfare. The Plan is to be implemented within the framework of other international standards and human rights instruments
- ✓ In 1991 in pursuance of the Plan of Action, the General Assembly adopted the United Nations Principles for Older Persons (UNGA Resolution 46/91) encouraging states to adopt certain principles relating to the status of the elderly, promoting independence, participation, care, self-fulfilment and dignity of elderly persons.
 - *Independence*: includes access to adequate food, water, shelter, clothing and health care, as well as the opportunity for remunerated work and access to education and training.
 - *Participation*: aims for older persons to actively participate in the formulation and implementation of policies that affect their well-being, to share their knowledge with younger generations. Furthermore, the elderly should have the right to form movements and associations.
 - *Care*: entails that the elderly should benefit from family and health care and that when residing in care or treatment facilities their human rights and fundamental freedoms shall be respected.
 - *Self-fulfilment*: entails that educational, cultural, spiritual and recreational resources should be available for older persons to be able to pursue opportunities for the full development of their potential.
 - *Dignity*: aims for the elderly to live in dignity and security and be free of exploitation and physical or mental abuse; to be treated fairly, regardless of age, gender, racial or ethnic background, disability, financial situation or any other status; and be valued independently of their economic contribution.
- ✓ In 1992, the General Assembly adopted the Proclamation on Ageing. The Proclamation, *inter alia*, urges support for older women and that they be recognised for their contributions to society; older men are encouraged to develop capacities, which they may have been prevented from developing during breadwinning years; families should be supported in providing care and all family members encouraged to co-operate in care-giving.
- ✓ In 2002, the Second World Assembly on Ageing adopted a Second International Plan of Action on Ageing . This plan includes a number of central themes setting out goals, objectives and commitments. These include:

- the full realisation of all human rights and fundamental freedoms of all older persons;
- the achievement of secure ageing;
- empowerment of older persons;
- provision of opportunities for individual development;
- ensuring the full enjoyment of all human rights, and the elimination of all forms of violence and discrimination against older persons;
- gender equality among older persons;
- recognition of the importance of families;
- provision of health care, support and social protection for older persons; and
- recognition of the situation of ageing indigenous persons.

Supervision

- ✓ Several supervisory bodies are progressively developing the application of their respective instruments to afford protection to this group and now concluding observations frequently offer recommendations on the protection of elderly persons (see, for example, the Concluding Observations of the CESCR on Jamaica E/2002/22 (2001); CEDAW Committee on Iceland A/57/38 (2002) and CERD Committee on Iraq CERD/C/304/Add. 28 (1997)).
- ✓ The UN Commission for Social Development is responsible for follow-up and appraisal of the implementation of the 2002 International Plan of Action on Ageing. The Commission is to integrate the different dimensions of population ageing as contained in the International Plan of Action in its work.
- ✓ The United Nations conferences and special sessions of the General Assembly provide the context in which the specific contributions and concerns of older persons shall be expressed.
- ✓ To follow up on the International Plan of Action and the Principles for Older Persons the UNGA proclaimed 1999 the International Year of Older Persons. The theme was 'A society for all ages', containing four dimensions: individual lifelong development, multigenerational relationships, the inter-relationship between population ageing and development, and the situation of older persons. The International Year raised awareness, and fostered research and policy action worldwide, including efforts to integrate the issue of ageing into all sectors of public life.

Refugees

- ✓ Throughout history, people have fled their homes to escape persecution.
- ✓ In the aftermath of World War II, the international community included the right to seek and enjoy asylum in the 1948 Universal Declaration of Human Rights.
- ✓ In 1950, the Office of the United Nations High Commissioner for Refugees (UNHCR) was created to protect and assist refugees, and, in 1951, the United Nations adopted the Convention Relating to the Status of Refugees (1951 Convention), which is the cornerstone document of refugee protection. In addition, the Protocol relating to the Status of Refugees (the 1967 Protocol) helped to widen the definition of a refugee, as it lifted the time and geographic limits found in the 1951 Convention.
- ✓ While the international community has generally responded swiftly and generously to refugee crises in the past 50 years, some worrying trends are emerging. Countries that once generously opened their doors to refugees have largely regressed in their commitment to protect refugees by adopting adversarial and restrictive policies. Real and perceived abuses of asylum systems, as well as irregular movements, have led to the refusal of entry to refugees and expulsion from asylum countries. Those who reach a potential country of asylum are often turned away or sent back without having been able to apply for asylum.
- ✓ The majority of today's refugees are from Africa and Asia. Current refugee movements frequently take the form of mass exoduses rather than individual flights. Eighty percent of today's refugees are women and children and the causes of flight 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 1951 Convention. In 2001, there were an estimated 14.9 million refugees in the world people who had crossed an international border to seek safety and at least 22 million internally displaced persons (IDPs) who had been uprooted within their own countries.
- ✓ According to the 1951 Convention relating to the Status of Refugees, a refugee is someone who:
 - Has a well-founded fear of persecution because of his/her Race, Religion, Nationality, Membership in a particular group, or Political opinion;
 - Is outside his/her country of origins; and
 - Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.
- ✓ The African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional treaty adopted in 1969, added to the definition found in the 1951 Convention to include a more objectively based consideration, namely: Any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or event seriously disturbing public order in either part or whole of his/her country of origin or nationality. (Article 1(2)).
- ✓ In 1984, a colloquium of Latin American Government representatives and jurists adopted the Cartagena Declaration. Like the AU Convention, the declaration adds a more objectively based consideration to the 1951 Convention refugee definition to include: Persons who flee their countries 'because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order'.

International Human Rights Standards

- ✓ The 1951 Convention Relating to the Status of Refugees, as amended by the 1967 Protocol Relating to the Status of Refugees, is the most important international instrument protecting the rights of refugees.
- ✓ The 1951 Convention specifies who is a refugee, and what rights a refugee has, once she/he has been recognised as such.
- ✓ In Article 33, the principle of *non-refoulement* is established. This principle forbids states to expel or return a refugee, in any manner whatsoever, to the frontiers of territories where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (the *non-refoulement* principle also encompasses non-rejection at the border and can oblige a state to accept a person on its territory).
- ✓ It does not oblige a state to grant the person asylum. The refugee may be expelled to another state where his life and freedom will not be in danger, provided that state is prepared to admit him. Granting of asylum may, however, be the result of *non-refoulement*, if no other state is prepared to admit the refugee.
- ✓ The 1951 Convention also includes 'exclusion clauses', which stem from the understanding that the commission of some types of crimes justifies the exclusion of the perpetrators from the benefits of refugee status. Under Article 1(f), refugee status under the 1951 Convention does not apply to persons with regard to whom there are 'serious reasons' for considering they have committed the following crimes: a) Crimes against peace, war crimes and crimes against humanity; b) Serious non-political acts; and c) Acts contrary to the purposes and principles of the United Nations.
- ✓ Often the recognition as refugee on the basis of Article 1(A) of the 1951 Convention will coincide with the granting of asylum, according to national law. In general, asylum will not be granted if the person concerned can enjoy protection elsewhere, or if there are compelling reasons of public order not to admit her/him.
- ✓ There can be situations in which it would be inhumane to return someone who does not fulfil the criteria for refugee status under the Refugee Convention. This can be the result of general circumstances in the country of origin such as, for example, war and hunger. It can also be related to individual circumstances such as the risk of torture or cruel, inhuman or degrading treatment or punishment upon return. Granting of asylum may therefore imply both admission as refugee on the basis of the 1951 Convention and permission to stay on humanitarian grounds.
- ✓ In addition to the 1951 Convention and the 1967 Protocol, two regional instruments have been adopted expanding the definition found in the 1951 Convention, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and the Cartagena Declaration on Refugees (1984) (see textbox above).
- ✓ In addition to international and regional refugee conventions, international human rights law and international humanitarian law play a significant role in guaranteeing international protection of refugees.
- ✓ Article 3 of CAT provides for protection from *refoulement* in situations where there is a substantial risk of torture. The *non-refoulement* provision under CAT is absolute. Unlike the *non-refoulement* provision of the 1951 Convention it is not linked to cases where a person fears harm on account of race, religion, nationality, membership of a particular social group, or political opinion and it does not provide for exceptions based on national security. This means that the prohibition of return applies to all persons regardless of their past criminal conduct.
- ✓ [CRC](#) applies to all children without discrimination, including child refugees and asylum seekers. CRC specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in the Convention, as well as other conventions to which the state is party.
- ✓ Regional human rights conventions also establish important safeguards for refugees. For example, Article 3 of European Convention has been interpreted by the European Court as prohibiting return of persons where there is a risk of torture while Article 22(7) of the American Convention recognises the right to seek and be granted asylum and Article 22(8) prohibits *refoulement*.
- ✓ In humanitarian law, Article 44 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War deals specifically with refugees and displaced persons. Moreover, the 1977 Additional Protocol which one provides that refugees and stateless persons are to be protected under the provisions of Parts I and III of the Fourth Geneva Convention.

Supervision

- ✓ UNHCR was created to provide international protection to refugees and to find durable solutions to refugee problems. These functions include securing legal and practical protection to refugees with and through governments, overseeing the mobilisation and co-ordination of resources for the well-being and survival of refugees and encouraging conditions in conflict zones that will allow refugees to return voluntarily to their countries of origin. Both the 1951 Convention (Article 35) and its 1967 Protocol (Article II) bestow upon UNHCR responsibility for supervising implementation by states.
- ✓ The Convention and Protocol specifically establish the obligation of states to provide UNHCR with information on the condition of refugees, implementation of the Convention and Protocol and relevant national law. They do not, however, provide for individual complaints or a state reporting procedure. In addition to providing protection to refugees, UNHCR's mandate has been expanded to include persons in refugee-like situations, internally displaced persons, stateless persons, and returnees (refugees who have returned to their own countries).
- ✓ At the international level, UNHCR promotes accession by states to international agreements relating to refugees and monitors government compliance with international refugee law. To this end, the Global

Consultations on International Protection were launched in 2001. The Consultations were aimed at promoting improved understanding of the 1951 Convention, its strengths, limitations and potential. The process was designed along three tracks: a) Ministerial Meetings of states parties to the Convention; b) Roundtable meetings with experts; and c) Policy formulation in the framework of the Executive Committee (ExCom). These consultations resulted in the establishment of the Agenda for Protection, a series of guidelines for UNHCR, governments and humanitarian organisations to strengthen worldwide refugee protection.

- ✓ In the field, UNHCR staff work to protect refugees through a wide range of activities, including emergency response; relocating refugee camps away from border areas to improve safety; ensuring that refugee women have access to food distribution and social services; reuniting separated families; providing information to refugees on conditions in their home country so that they can make decisions about return; documenting a refugee's need for resettlement to a third country of asylum; visiting detention centres; and giving advice to governments on draft refugee laws, policies and practices.
- ✓ UNHCR seeks long-term and durable solutions to refugee problems by helping refugees return voluntarily to their home countries if the situation allows it; monitoring the treatment and promoting the reintegration of returnees after repatriation has taken place; helping refugees integrate in their countries of asylum and resettling refugees to third countries when needed.
- ✓ International human rights supervisory mechanisms have also played a key role in protecting the rights of refugees and asylum seekers. Both the Committee Against Torture and the Human Rights Committee constitute crucial safeguards for refugees and asylum seekers in danger of being returned to face torture or cruel, inhuman or degrading treatment or punishment. Under its individual complaint procedure, the Committee Against Torture has developed a broad jurisprudence concerning the principle of *non-refoulement* under Article 3 of CAT and has provided important protection to refugees and asylum seekers who risked being deported to countries where they would be exposed to torture.
- ✓ The Committee on Economic, Social and Cultural Rights and the CEDAW, CRC and [CERD](#) Committees have all played an important role in refugee protection by raising issues relating to refugees when examining state reports.

➤ Stateless person

- ✓ Nationality and citizenship are fundamental elements of human security because they provide people with a sense of belonging and identity. They provide a legal basis for the exercise of many human rights.
- ✓ Persons without a nationality are in many countries denied numerous human rights that citizens take for granted, like access to schools and medical care, ownership of property, marriage and foundation of a family and enjoyment of legal protection.
- ✓ Nationality is not granted indiscriminately, but is normally based on factors such as the place of birth of a person, parentage or the relationship a person has established with a state through, for example, marriage to a national or long-term residence there.
- ✓ A **stateless person** is the person who is not considered a national of any state under operation of its law. Statelessness occurs for many different reasons.
 - A person may lose her/his nationality and is not able to acquire a new one because of extended stay abroad or because of marriage or dissolution of marriage to a person of a different nationality (women are particularly vulnerable).
 - In the case of children, if they are born to stateless persons or refugees, or in some cases out of wedlock, they may be denied citizenship.
 - Some individuals may find themselves stateless because of faulty administrative practices, such as excessive fees or the failure to be notified of registration or other obligations.
 - Children who are not properly registered at birth can easily become stateless, as they are not able to show where or to whom they were born.
- ✓ Situations of statelessness involving a large number of persons in a particular society may arise in a number of different circumstances.
 - Governments may change their nationality laws and deny certain groups nationality under the new laws in order to marginalise them or to facilitate their expulsion from the state's territory.
 - The transfer of territory or sovereignty or the disintegration and formation of new states may leave thousands of people stateless or with disputed claims of citizenship.
- ✓ International conventions on statelessness were adopted in 1954 and 1961, but because the international community did not pay much attention to statelessness at that time, few countries acceded to these treaties. UNHCR was entrusted with certain responsibilities with regard to stateless persons, but for many years the organisation devoted little time, resources, and efforts to statelessness.
- ✓ The end of the Cold War led to a profound change in international relations and forced the issue of statelessness onto the agenda of the international community. These changes included the disintegration of several states, the rise of ethnic consciousness in many parts of the world and the fear of large-scale population movements involving stateless persons. This prompted UNHCR and other humanitarian organisations to address the issue of statelessness in a more urgent and systematic manner, by trying to avert situations that can lead to statelessness, protecting stateless persons and trying to find adequate solutions to their problems. Ultimately, however, the problems of statelessness and disputed nationality can only be effectively addressed by states themselves.

International Human Rights Standards

- ✓ The two primary international conventions on statelessness are the **Convention relating to the Status of Stateless Persons (1954)** and the **Convention on the Reduction of Statelessness (1961)**.
- ✓ Article 1 Convention relating to the Status of Stateless Persons defines a stateless person as a person not considered a national (or citizen) under the law of any state. In addition to providing a definition to statelessness, the Convention seeks to improve the status of stateless persons and helps ensure that stateless persons enjoy fundamental rights and freedoms without discrimination. It regulates, *inter alia*, the legal rights of stateless persons, their access to work and welfare and urges states to facilitate their assimilation and naturalisation.
- ✓ The Convention on the Reduction of Statelessness defines ways in which persons who would otherwise be stateless can acquire or retain nationality through an established link with a state through birth or descent. It deals with cases of statelessness resulting from, *inter alia*, a change of civil status, residence abroad, or the voluntary renunciation of nationality. It also stipulates that children should be granted the nationality of the state party in which a parent had citizenship. The Convention prohibits states parties from depriving people of their nationalities on racial, ethnic, religious, or political grounds. The Convention does not, however, oblige states to grant nationality to stateless persons who enter their territory, unless those persons already have strong connections with the state and do not have any chance of acquiring a nationality elsewhere.
- ✓ Other international instruments dealing with the right to nationality include, *inter alia*, Article 15 Universal Declaration on Human Rights, which stipulates the right to a nationality and the right not to be arbitrarily deprived of nationality and Article 5 of CERD, which seeks, with respect to the right to nationality: 'To prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour, or nationality or ethnic origin, to equality before the law.'
- ✓ Other international instruments deal specifically with the right to a nationality with regard to women and children. These include the Convention on the Nationality of Married Women (1957), CEDAW (Article 9) and CRC (Articles 7 and 8). The instruments concerning women seek to ensure that they enjoy equal rights to acquire, change or retain nationality, while those covering children deal mainly with the right of children to be registered and to acquire a nationality from birth.
- ✓ At the regional level, the American Convention on Human Rights (1969) and the European Convention on Nationality (1997) underline the need of every person to have a nationality, and seek to clarify the rights and responsibilities of states in ensuring individual access to a nationality.

Supervision

- ✓ Similar to the situation of IDPs, there is today no specific body that deals with the problem of statelessness, or that supervises the 1954 and 1961 statelessness conventions.
- ✓ In order to fill this vacuum, upon the entry into force of the Convention on the Reduction of Statelessness in 1975, UNHCR was provisionally asked to assume the responsibilities foreseen in Article 11 Convention on the Reduction of Statelessness 'of a body to which a person claiming benefit of this convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority'. However, no mention was made of UNHCR's competence with regard to the Convention relating to the Status of Stateless Persons and UNHCR was not asked to assume any wider responsibilities regarding statelessness issues.
- ✓ In recent years, the international community has faced an increased number of stateless persons and the security issues arising with them. This led the High Commissioner's Executive Committee and the UN General Assembly to adopt and endorse the Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons (Resolution 50/152). In addition, UNHCR was requested to 'actively promote accession' to the 1954 and 1961 Conventions on statelessness, 'as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of national legislation'.
- ✓ UNHCR has taken a number of practical steps to strengthen its efforts with regard to stateless persons. It has appointed a legal expert on the problem of statelessness, and has actively assisted governments in the preparation and implementation of nationality legislation while encouraging them to accede to the 1954 and 1961 statelessness conventions. In addition, UNHCR has strengthened its working relationship with a number of organisations involved in this issue such as the UNHCHR, the Council of Europe and the OSCE.

➤ Migrant workers

- ✓ Migrant workers play a vital role in the global economy, and today, one human being out of 35 is an international migrant. Unfortunately, the growing number of migrants due to the increased mobility of people from poorer areas to those better off is a cause of rising tension, particularly in the receiving countries. One problem is the perception of migrant workers as temporary guests, who will eventually go back 'home', when in reality they settle and become permanent members of society, entitled to rights as other citizens.
- ✓ Traditionally, poverty and the inability to earn a decent living are major reasons behind migration from one country to another, as well as war, civil strife, insecurity and persecution arising from discrimination. But migrant workers and their families frequently find themselves in situations of vulnerability in their host countries, in part due to their living and working outside of their state of origin. They are aliens and may, because of that status alone, be targets of suspicion and hostility and, as they are frequently poor, they share the economic, social and cultural handicaps of marginalised groups in the host country.
- ✓ Migrant workers often face discrimination in terms of employment: exclusion from certain jobs, difficulty in access to vocational training and contracts that are inferior to those of nationals. Migrant workers are also known to have been subject to inferior working conditions, they have been denied the right to participate in trade unions and they are often assigned jobs that nationals do not want. Migrant workers are exceptionally vulnerable when they are recruited and employed illegally, often with criminal elements involved. Illegal immigrants are more often than not targets of exploitation.

- ✓ They are at the mercy of their employers, forced to accept abhorrent conditions, in the worst cases amounting to modern day slavery or forced labour, incapable of seeking justice for fear of expulsion from the host country. Furthermore, children of migrants often need special measures to help them adapt to a foreign language and customs, especially when it comes to education in a new language.

International Human Rights Standards

- ✓ Historically, the rights of migrant workers have fallen under general diplomatic protection, based on the international law governing the treatment of non-nationals.
- ✓ In 1990, the UNGA adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families . The main thrust of the Convention is that persons who qualify as migrant workers under its provisions are entitled to enjoy their human rights regardless of their legal status.
- ✓ The Convention does not create new rights for migrants, but aims at guaranteeing equality of treatment and the same working conditions for migrants and nationals, as well as guaranteeing the rights of migrants to maintain ties to their countries of origin. The Convention aims at:
 - Preventing inhumane living and working conditions, physical and sexual abuse and degrading treatment (Articles 10, 11, 25, 54).
 - Guaranteeing migrants' rights to freedom of thought, expression and religion (Articles 12, 13).
 - Guaranteeing migrants' access to information on their rights (Articles 33, 37).
 - Ensuring their right to legal equality. This implies that migrant workers are subject to correct procedures, have access to interpreting services and are not sentenced to disproportionate penalties such as expulsion (Articles 16-20, 22).
 - Guaranteeing migrants' equal access to educational and social services (Articles 27-28, 30, 43-45, 54).
 - Ensuring that migrants have the right to participate in trade unions (Articles 26, 40).
 - Ensuring that migrants can return to their country of origin if they wish to, that they are allowed to pay occasional visits, and that they are encouraged to maintain cultural links (Articles 8, 31, 38).
 - Guaranteeing migrants' political participation in the country of origin (Articles 41, 42).
 - Ensuring migrants' right to transfer their earnings to their home country (Articles 32, 46-48).
- ✓ Furthermore, the Convention establishes rules for recruitment of migrant workers, and for their return to their states of origin, it details the steps to be taken to combat illegal or clandestine migration and it imposes a series of obligations on parties in the interest of promoting 'sound, equitable, humane and lawful conditions' for the international migration of workers and members of their families. Although the Convention has entered into force, only a few countries (26 as of July 2004) have become party to it, most of which primarily send migrants abroad. For the time being, it looks as though several migrant-receiving countries are not willing to be bound by the Convention as many find the formulation of the rights unacceptable.

Supervision

- ✓ At the World Summit for Social Development in 1995, states committed themselves to ensure that migrant workers benefit from the protection provided by relevant national and international instruments. They pledged to take concrete and effective measures against the exploitation of migrant workers, and to encourage all states to consider ratifying and fully implementing international instruments relating to migrant workers.
- ✓ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides for the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- ✓ A state party can make a declaration that it recognises the competence of the Committee to receive and consider individual communications on behalf of persons who claim that their rights under the Convention have been violated. The effectiveness of this mechanism remains to be seen as its power depends on whether states will accept the Committee's optional complaints procedure. Of the existing mechanisms that deal with violations of the rights of migrant workers, the ILO procedures are currently considered to be the most effective.
- ✓ In 1997, the UN Commission on Human Rights established the Working Group of Intergovernmental Experts on the Human Rights of Migrants with a mandate to gather all relevant information on the obstacles existing to the effective and full protection of the human rights of migrants, and to elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.
- ✓ Furthermore, in 1999 the Commission appointed a Special Rapporteur on the human rights of migrants, to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation. The Rapporteur's mandate is to receive information on violations and make recommendations and promote effective application of human rights standards and norms. The Rapporteur has expressed concern that measures aimed at stopping irregular migration frequently undermine migrants' basic rights, including the right to seek asylum and minimum guarantees against arbitrary deprivation of liberty.

> HIV Positive Persons and AIDS Victims

- ✓ HIV positive persons and AIDS victims are often subject to violations of many rights; some economic and social such as work-related rights and access to health care facilities, but also in relation to the enjoyment of civil rights, such as the right to privacy and freedom of movement.
- ✓ HIV/AIDS demonstrates the indivisibility of human rights since the realisation of economic, social and cultural rights, as well as civil and political rights, is essential to an effective response to the epidemic.

- ✓ The incidence of HIV/AIDS is disproportionately high in groups who already suffer from lack of protection and discrimination; such as women, children, those living in poverty, minorities, refugees and internally displaced people. In this regard, for example, the CEDAW Committee has stressed the link between women's reproductive role, their subordinate social position and their increased vulnerability to HIV infection.

International Human Rights Standards

- ✓ The key human rights principles essential for effective protection of people with HIV/AIDS are to be found in existing international instruments, such as the ICESCR; ICCPR; CEDAW; CAT; CERD; and the CRC .
- ✓ At the regional level, the American Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the African Charter on Human and Peoples' Rights also enshrine general state obligations, which are applicable to persons affected by HIV/AIDS. There are, however, to date (July 2004), no binding international human rights standards dealing specifically with HIV/AIDS.
- ✓ The UN General Assembly has emphasised the need to counter discrimination and to respect human rights of people with HIV/AIDS in several resolutions (e.g. Resolutions 45/1990 and 46/20 1991) and has held a Special Session on the topics (e.g. in 2001). The UN Commission on Human Rights has also adopted numerous resolutions on human rights and HIV/AIDS (see, e.g., Resolution 1989/1). Another international instrument worth mentioning is the Paris Declaration on Women, Children and AIDS (1989).
- ✓ The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the joint United Nations Programme on HIV/AIDS (UNAIDS) have developed guidelines to assist states in translating international human rights norms into practical observance in the context of HIV/AIDS: The International Guidelines on HIV/AIDS and Human Rights (1998) and its Revised Guideline 6: Access to prevention, treatment, care and support (2002).

Supervision

- ✓ Since the epidemic began in the early 1980s, the international community has become increasingly concerned with the human rights protection of HIV/AIDS infected people.
- ✓ This is a crosscutting theme that UN treaty bodies have dealt with from their different perspectives, progressively developing the application of their respective instruments to respond to the pandemic and its consequences, setting out that states parties should include in their reports information on the effects of AIDS on the enjoyment of human rights of those infected and the measures taken to prevent discrimination against them.
- ✓ The treaty bodies have dealt with HIV/AIDS in several General Comments and Recommendations. In this regard, CEDAW General Recommendation No. 15 - Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS) adopted in 1990 and 24 on Women and Health adopted in 1994 are important. In the same vein, General Comment No. 3 - HIV/AIDS and the right of the child was adopted by the Committee on the Rights of the Child in 2003.