

APPROACHES TO UNDERSTANDING THE CONCEPT OF VULNERABILITY: INTERNATIONAL LEGAL ASPECT

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Abstract. The article analyses a number of international agreements, resolutions and strategic acts adopted under the auspices of universal and regional organisations on the regulation of vulnerable categories of persons. The authors describe the doctrinal approaches to the interpretation and understanding of the concept of “vulnerability”. The paper indicates that the concept of “vulnerability” has become widely used in the context of protection of human rights and fundamental freedoms. It is emphasised that the norms of modern international law do not regulate or reveal the essence and meaning of the concept of “vulnerability”, and do not offer an exhaustive standardised list of criteria by which persons could be classified as a vulnerable group of the population. International agreements and guidelines usually define the need to provide special protection to individuals or emphasise the special situation or vulnerability of certain categories of the population, but the concept of “vulnerability” remains quite broad for interpretation. It is noted that vulnerable categories of persons mainly include individuals who need enhanced or additional protection due to their physiological, age or psychological state, those being children, women, persons with disabilities, the elderly, migrant workers, refugees, national minorities and indigenous peoples, etc. It is emphasised that each vulnerable group may also have several signs of vulnerability. Therefore, when developing mechanisms for protecting the rights of these categories, all signs in aggregate and each of them separately should be taken into account. The author points out that those factors are involved in the formation of vulnerable groups: external and internal, notably, globalisation, extreme poverty, natural disasters, individual physical or mental characteristics, age, gender, disability, any vulnerability of legal status, etc.

Keywords: vulnerable categories of people, discrimination, international acts, human rights, human rights protection.

INTRODUCTION

Human rights and fundamental freedoms protection is among the most pressing issues nowadays. Under auspices of international organisations, new legal and organisational instruments for the protection of human rights are being developed and existing ones are being improved, with special attention to the needs of certain groups of the population, such as women, children, persons with disabilities, the elderly, migrants, etc. At the same time, there are situations when persons belonging to such vulnerable categories may require enhanced protection measures due to their physiological, age or psychological characteristics. In this regard, the concept of vulnerability, which is often associated with discrimination, social exclusion, etc., has gained importance in the field of human rights in recent years. Vulnerability usually results from a number of interrelated issues, which can be based on discriminatory attitudes and practices that favour certain groups of people, social exclusion, weak rule of law and legal support mechanisms, and personal characteristics of the individual. Vulnerability is also associated with “lines of contradiction” – those characteristics that formally divide society based on criteria such as language, social status, income, age, etc. These “lines of contradiction” can cause vulnerability among certain groups of people, depending on the specific situation in which they live. In addition, the term “vulnerability” has different meanings depending on its use in different spheres of human activity. The term “vulnerable populations” is used in relation to children, certain categories of women, persons with disabilities, migrant workers, refugees, national minorities and indigenous peoples, and the elderly. Each of these population groups is heterogeneous and is subject to different political, economic, social, legal, religious conditions and circumstances, and differentiation is possible within any of them on various grounds. For example, among children, women or the elderly, we can distinguish single mothers, single pensioners, elderly women, street children, refugees, people with HIV/AIDS, etc. There can be an infinite number of vulnerable groups. At the same time, it should be noted that international law does not have a single clear concept of “vulnerability”, which creates certain legal uncertainty and creates conditions in which there is no legal clarity and human rights bodies have a rather broad scope of interpretation of each case.

MATERIALS AND METHODS

The article analyses a number of international acts (agreements, resolutions and strategic documents, etc.) and doctrinal sources on the interpretation and understanding of the concept of “vulnerability”. The methodological basis of the study is a combination of general theoretical and special methods of scientific knowledge. In particular, the formal and logical method was used to analyse the provisions of international acts of a general and special nature. This method was also used to identify gaps in international instruments in the area under study and to develop proposals for their improvement. The comparative legal method was used to clarify the provisions of international universal and regional acts regulating the provisions on “vulnerability” and “categories of vulnerable persons”.

The application of the entire set of scientific methods, together with the principles and modern scientific approaches, made it possible to fulfil the tasks set, achieve the purpose of the study and ensure the scientific reliability and clarity of the theoretical results obtained.

All methods are used in conjunction with each other, which ultimately contributed to the comprehensiveness, completeness and objectivity of the scientific findings.

RESULTS AND DISCUSSION

In the context of historical and political development of society, special groups of the population with varying degrees of vulnerability began to form, who, due to their physical or mental characteristics, cannot gain equal access to the full exercise of their rights and freedoms. The concept of “vulnerability” is usually closely related to such phenomena as “sacrifice”, “deprivation”, “social dependence”, which contradict the idealised notion of legal protection of an individual, which is the core of the world community (Fineman & Fineman, 2017).

Vulnerability can be a difficult concept to understand, as it tends to mean different things to different people and is often described using different terms, including “predisposition”, “vulnerability”, “weakness”, “deficit” or “lack of capacity”. Some definitions of vulnerability include exposure in addition to susceptibility to harm (A promise of tomorrow, 2017).

Thus, the term “vulnerability” is used in many traditions, fields and disciplines, from economics and anthropology to psychology and engineering. The concept of vulnerability is quite multifaceted, which is why there are different approaches to its interpretation and understanding in science. In particular, M. Oris notes that the concept of vulnerability emerged in the study of natural disasters, where it was used to express their not entirely natural characteristic and the impossibility of understanding them without a holistic perspective that includes socio-economic and political aspects such as urban planning, infrastructure, governance, etc. This original approach from the outset involved a dynamic, process-based vision, a clear recognition of the complexity and consequences of interactions, and a distinction between risk exposure and risk occurrence (Oris, 2017).

The World Health Organization, in the context of environmental health in emergencies and disasters, takes the position that vulnerability is a function of susceptibility (factors that allow a hazard to cause a disaster) and resilience (the ability to withstand the damage caused by emergencies and disasters and then recover). It is noted that the concept of vulnerability helps to identify those members of the population who are most likely to be directly or indirectly affected by a hazard. It is also useful for identifying those who are more likely to suffer long-term restrictions on their livelihoods and lifelines, as well as those who will find it more difficult to resume their normal way of life (Adams & Wisner, 2002).

The International Organisation for Migration views the concept of vulnerability through the lens that some people are more exposed to harm than others because of exposure to some form of risk. The type of harm to which they are more vulnerable can vary: it can be psychological, physical, environmental, etc. Risk factors depend on the type of harm being considered and may or may not overlap (IOM Handbook, 2019).

In a general context, vulnerability can be understood as a state of exposure to adverse shocks that can harm an entity or system (a person, a household, an economy, a financial system, a climate system, etc.) Thus, a state of vulnerability can be characterised either by the presence of certain weaknesses or internal conditions inherent in an entity or system (which determine their vulnerability), or by the presence of certain probable external

shocks that the entity or system is unable to withstand. However, despite some differences in the understanding of vulnerability, most experts agree that understanding vulnerability requires more than analysing the direct impact of a threat. Vulnerability also refers to the broader environmental and social conditions that limit the ability of individuals and communities to cope with the impact of a hazard (Understanding Disaster Risk, 2017).

This distinction and ambiguity in understanding and interpreting the concept of vulnerability and its broader context has contributed to the slow spread of vulnerability research, until recently, when it has taken on an impressive scale: vulnerability has become a 21st century buzzword, one of the dominant concepts in a broad and complex field of social science (Oris, 2017).

In particular, the concept of “vulnerability” has become widely used in the context of protection of human rights and fundamental freedoms. In this regard, Alexander H. E. Morawa notes that in the context of human rights and, in particular, the right to development, the terms “vulnerable” or “vulnerability” are often used to describe segments of the population that are or should be the objects of additional care and attention. However, as one might expect, neither international legal instruments nor practice demonstrate a tendency to create a clear catalogue of vulnerable groups. At the same time, the author emphasises that the choice of international legislators when it comes to adopting specialised human rights conventions relating to the rights of certain groups indicates an awareness that they deserve special attention due to their vulnerability (Morawa, 2003).

Indeed, the norms of modern international law do not regulate or reveal the essence and meaning of the concept of “vulnerability”, nor do they offer an exhaustive standardised list of criteria by which persons could be classified as a vulnerable group. As a rule, international agreements and guidelines define the need to provide special protection to individuals or emphasise the special situation or vulnerability of certain categories of the population, but the concept of “vulnerability” remains quite broad for interpretation. In particular, the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 3 (1990) noted the need to protect the most vulnerable members of society even in times of acute shortage of resources, whether due to adjustment or economic recession... (para. 12).

In the provisions dated 1989, Convention on the Rights of the Child, States Parties recognise a mentally or physically disabled child is entitled to special care and shall promote and ensure the provision, subject to the availability of resources, of such care to such a child... (Article 23). According to the preamble to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, States Parties shall, in particular, take into account “the vulnerable situation in which migrant workers and their family members often find themselves”. International Convention 2006 for the Protection of All Persons from Enforced Disappearance suggests that states should consider as aggravating circumstances the circumstances of acts of violence against pregnant women, minors, persons with disabilities and other particularly vulnerable groups (Article 7).

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 specifying norms and benchmarks for the reception of persons seeking international protection also contains Title IV “Provisions for vulnerable persons”. These provisions provide for the obligation of Member States to take into account the special situation of

vulnerable persons, such as minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Article 21).

The term “vulnerable groups” is also actively used in declarations, programmes, action plans, as well as various working documents of UN bodies and international conferences. In particular, Chapter 6 of Section I, Social and Economic Aspects, of Agenda 21, adopted by the UN Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), provides that the section covers the following programme areas, including the protection of vulnerable groups. Meanwhile, it is specified that the general aim of the protection of vulnerable groups of people is to guarantee that each member of a group is granted an opportunity to advance to the highest potential (healthy physical, mental and spiritual growth); to provide youngsters with the possibilities to live healthy lives; to enable women to participate in social life; and to maintain opportunities for education and economic and technological advancement for indigenous peoples. The UN Millennium Declaration of 2000 (resolution 55/2) includes a special paragraph on “Protection of the Vulnerable” (VI), which specifies the vulnerability of children, as well as the civilian population experiencing sufferings caused by natural disasters, genocide, armed conflict and other humanitarian emergencies.

The provisions of some strategic documents address the issue of increased or cross-vulnerability of such population groups as women, older people, migrants, etc. In particular, in the text of the Nairobi Strategies of the States Parties to the World Conference for the Review and Appraisal of the Achievements of the UN Decade for Women: Equality, Development and Peace (1985) identified groups of women in need of special protection (vulnerable groups of women), including women living in drought-affected areas; women from poor urban areas; elderly women; young women; abused women; women living in poverty; trafficked women forced into prostitution women deprived of traditional livelihoods; women with physical and mental disabilities; refugee and displaced women and children; migrant women; women belonging to national minorities and indigenous populations (para. 41).

The Madrid Plan of Action on Ageing, 2002, contains a number of provisions that allow us to outline the range of the most vulnerable categories of older people: older women in rural areas, who are particularly vulnerable economically (para. 29); older people living alone, who are generally more vulnerable to poverty (para. 53(b)); older people in areas of emergency, such as natural disasters and other humanitarian emergencies (para. 54).

In the area of employment, vulnerable groups can be classified as follows: the absolutely poor; people with no education or primary education; the unemployed; self-employed or family farm workers in agriculture; landless or landless in rural areas; vulnerable women; members of Roma communities; people with disabilities, etc. (Report on Vulnerable Groups, 2011).

Thus, when analysing the documents related to the issue of vulnerable groups, it can be concluded that such groups may differ depending on the situational or personal circumstances. Their vulnerability can be increased or caused by certain factors, such as

globalisation, poverty, climate change, armed conflict, global migration, etc. Factors that increase the vulnerability of an individual or group can also include human rights violations, inequality, discrimination, gender-based violence - all of which contribute to economic deprivation and social conditions that limit individual choice. More specific factors commonly cited as relevant to individual vulnerability include gender, minority group membership and lack of legal status (Abuse of a position, 2013).

In some cases, the emergence of vulnerable groups is seen as a consequence of poverty caused by the economic crisis, environmental disasters, calamities and many other negative effects, including globalisation. In this light, the globalisation of social, cultural, economic and political processes also plays a significant role, which, along with its positive aspects, has also given rise to a number of serious problems called “global problems of our time”. Such consequences of global phenomena create the basis for legal insecurity of the population. However, “vulnerability” itself has a constructive nature, consisting of many factors.

Vulnerability is deemed to be a complex notion, since it is not only related to poverty. Extensive research over the past 30 years proves that mostly poor people are affected by disastrous effects. Poverty is both a factor and a result of disaster risk (mainly in states with inefficient risk management), as economic pressures make people live in unsafe places and conditions. Poverty and other multidimensional implications and drivers of vulnerability imply that exposure to hazards is frequently, but not always, connected with particular groups, including women, children, older people, persons with disabilities, migrants and displaced populations (Understanding Disaster Risk, 2017).

The most vulnerable groups of individuals, including those living in poverty or without secure tenure, are more likely to stay in disaster-prone areas, and are at greater risk of displacement or loss of livelihoods in case of a disaster, and will encounter greater challenges in re-establishing from disasters. On many occasions, vulnerability is worsened by direct or implicit discrimination, which impacts on the ability of individuals and communities to protect themselves from and recover from disasters.

The principles of equality and non-discrimination took root in international human rights law. Provision of non-discrimination and equality demands from governments and aid organisations to focus on vulnerability and inequality in pre- and post-disaster conditions, considering the need to address inequalities and protecting the most vulnerable. The UN treaty authorities specified that even in case of acute resource scarcity – a common occurrence in the aftermath of a disaster – states have a particular duty to protect vulnerable members of society (Office of the High commissioner, 1990). The countries are to take special steps to guarantee that disadvantaged individuals can fully and equally exercise their human rights. In post-disaster situations, the aforementioned measures may take the form of specific aid to promote the return of the most vulnerable groups or the provision of land/housing for landless or homeless individuals and families.

Meanwhile, globalisation and technological advances are providing tremendous opportunities for social and economic growth. Nevertheless, they also commence creating challenges, including financial crises, insecurity, poverty, exclusion and inequality within and between societies. Considerable obstacles to successive integration and entire incorporation in the global economy exist for developing countries, and for some countries with transition

economics. If the advantages of social and economic advancement are not shared by all the states, an increasing number of people in all the states and even regions might stay on the periphery of the international economy (Report of the Ad Hoc Committee, 2000).

However, the notion “globalisation” is frequently arbitrarily used. The United Nations Development Programme’s 1999 Human Development Report states that globalisation is not an emerging phenomenon, but the present era of globalisation is distinguished by some notable differences. As borders between states merge and disappear, people are deeply, intensely and directly connected than ever before. The authors of this report presume globalisation is characterised by a multidimensional character. It can be divided into multiple complex and interconnected processes with their own dynamics, which lead to various and frequently unforeseen consequences. Though there have been times characterised by globalisation, the ongoing era has some distinguishing features, comprising the emergence of modern technologies, notably information and communication ones, cheaper and faster transport connections, trade liberalisation, growing financial flows, and the corporations, which are expanding in size and power. Moreover, while many people benefit from new opportunities in travel and communication, and increased prosperity through the growing volume of trade, investment and capital flows, others are left behind and continue to live in poverty and cannot actually enjoy the benefits of the globalisation process (United Nations General Assembly, 2000).

It should be mentioned that the present-day migration processes are now becoming a global phenomenon of growing scale and complexity. Numerous states of the world are places of origin, transit or destination for migrant workers, and consequently, the development of labour migration can have a significant influence on the socio-economic situation in such countries. Although, notwithstanding the fact that the movement of people across the borders has been an ongoing process since ancient times, the amount of such movements is nowadays increasing for the reason of the growing economic and demographic varieties between countries. The phenomenon of labour migration is often addressed to. Year after year, millions of working men and women leave their jobs and cross the national borders to secure better living and working conditions for themselves and their families. The majority of them are motivated by a desire to earn higher wages, but they are frequently forced to leave their homes because of hunger and poverty, natural disasters and environmental degradation in their regions (International Labour Organization).

Labour migration and labour mobility, including refugee flows, are turning into a complicated problem. Numerous states are unable to face this state of affairs due to poor labour market functioning and weak governance, which causes irregular migration, underutilisation of labour, discrimination, growing inequality and exploitation, including in recruitment. If not properly regulated, labour migration can cause the decrease in decent work for migrant workers and their families, and give rise adverse and long-term socio-economic impacts in the state of origin and destination (International Labour Organization).

The United Nations Population Fund reported in 2015 that 244 million people live outside their countries. A lot of these people are seeking after better economic situation to improve their financial situation so that they could help their relatives by sending money to their homes. Not all migrants move to a new place because they are destitute or because they

have no choice at home. When employment prospects at home change for better, a good deal of migrants would return back home with newly acquired skills and experience, which is for better for the state as a whole. Nevertheless, some people – primarily nearly 23 million – are leaving their countries because of extreme living conditions that prevent from developing normally and fully (A promise of tomorrow, 2017). Furthermore, a considerable number of irregular migrants worldwide are striving to find more favourable living conditions, often relying on smugglers to help them reach their destination in dubious ways, risking their lives and health.

For instance, the Principles and Guidelines concerning protection of the human rights of migrants in vulnerable situations contain “migrants in vulnerable situations” concept, which denote individuals unable to efficiently exercise the human rights, are at risk of violations and, have the right to demand that the authorised bodies take special care of them. Meanwhile, the vulnerable situations faced by migrants may derive from numerous impacts that overlap or exist concurrently, reinforcing each other; they emerge and change through time insofar as circumstances evolve (Principles and Guidelines, 2018). Meanwhile, it should be noted that migrants themselves are not inherently vulnerable, they possess resilience and the ability to self-actualise, but factors that generate vulnerability might be referred to their personality or conditions of living. Therefore, in this regard, vulnerability is construed as both situational and individual.

CONCLUSIONS

Thus, we can conclude that the concept of “vulnerability” is not sufficiently studied and substantiated and may have different meanings depending on its use in different spheres of human activity. In international law, there is no single clear concept of “vulnerability”, but the “vulnerability” of a person or group of persons means, first of all, a higher risk of becoming a victim of violation of human rights and freedoms, including being limited in the ability to exercise the rights and freedoms guaranteed to each person, compared to other individuals, due to objective external factors and/or existing physical or psychological characteristics. Vulnerable groups usually include people who are at increased risk of poverty and social exclusion compared to the general population, including persons with disabilities, the elderly, women, children, refugees, representatives of ethnic minorities, etc. Each of these population groups is heterogeneous and is subject to different political, economic, social, legal, religious conditions and circumstances, and within each of them differentiation is possible on various grounds. For example, among children, women or the elderly, we can distinguish single mothers, homeless and street children, refugees, single pensioners, the sick, etc. There can be an infinite number of vulnerable groups. At the same time, the vulnerability of a person is usually caused by two factors, which are often inextricably linked. First of all, the degree of an individual’s vulnerability is influenced by objective external factors that do not depend on the person, but in one way or another put any individual in the so-called “vulnerable position”. For example, a person may be vulnerable to environmental disasters, climate change, natural disasters, global processes, etc. A person’s vulnerability can also be caused by physical or mental characteristics, such as gender, race, age, religion, disability, which cause rejection by society for any reason independent of the individual’s behaviour.

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