

Migration, Refugee and Conflict

Week 12- Risk and Vulnerabilities

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Defining vulnerability

The discourse of vulnerability is considered important in academic literatures, policy making, humanitarian debates and migration related aspects.

The term vulnerable persons and vulnerable groups are widely used.

However the common understanding of vulnerability is still not in existence as the definition varies as per the existing diverse fields.

The vulnerability concept is also linked with the concepts of risk.

Diverse risk is generated in the vulnerability context.

Scholars have defined vulnerability in diverse contextual notions.

Vulnerability includes exposure, resistance and resilience

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- The exposure to hazardous conditions and susceptible to damage.
- It also emphasizes on the unexpected consequences and is understood in terms of risks.
- In disaster management and environmental science the vulnerability can be viewed through the uncertainty occurred in the nature.
- In economics the vulnerability can be viewed in terms of poverty
- In the medical field vulnerability can be categorized as per the individual or group of individuals being prone to health issues .recent example is a threat of COVID-19 . The people below the poverty line were more at risk.
- In case of migration vulnerability can be linked to risk .

Vulnerable group

International Organization of Migration defines Vulnerable Group as;

1. Per the contextual aspects
2. They include any group or sector of society
3. Those individuals or groups are at higher risk
4. They are more prone to discriminatory practices.
5. They are facing violence, social disadvantages or economic hardships than other groups
6. Furthermore, these groups are also at higher risks during the time of conflict, crisis or disasters.

The discriminatory practices, violence, social disadvantages or economic hardship defines vulnerable group.

Types of Vulnerability

- **Physical Vulnerability:** It basically denotes the potential impact on physical environment. It includes structural damages.
- **Economic Vulnerability:** This includes impacts on economic facets. The loss of productive workforce arises. The violent conflict can cause economic losses due to short term disorder. The long term economic losses can also occur.
- **Social Vulnerability:** The potential impacts of events on poor populations, pregnant or lactating mothers, the handicapped, differently abled persons, children and elderly etc. Social vulnerability arises psychological distress. The loss of social cohesion occurs due to community and political unrest. Natural disasters can cause internally displaced persons.
- **Environmental Vulnerability:** This includes impacts on environment. The destruction of ecological zones, the destruction of cultural heritages, loss of biodiversity and loss of cultural diversity.

Vulnerability

The European Court of Human Rights has always focused on vulnerable groups in its judgements to ensure the safeguarding of human rights of marginalized groups, including migrants and particularly asylum seekers.

The high-level stakeholder meeting on migration governance also has emphasizes that

“ the notion of “vulnerability” acknowledges that those forced to flee and seek protection are expose to higher risks of enduring human rights violations”.

- Conceptualizing vulnerability includes three main characteristics of vulnerability. It includes;

1. Innate vulnerability
2. Situational vulnerability
3. Structural vulnerability

Innate Vulnerability

- It focuses on the natural characteristics. The permanent risk is due to the natural characteristics.
- The innately vulnerable are those who are at higher risks; they include pregnant women, lactating and nursing mothers, elderly population, disabled people, unaccompanied children or separated child.
- The children's and elderly population as naturally considered as the vulnerable populations.
- The natural condition of vulnerability also continuously changes.
- These days the innate vulnerability can be seen in Unaccompanied Minors (UAM) in the context of forced migration governance. They are considered to be most vulnerable and deserve for special protective measures.
- These UAM when they reach 18 years they lose their legal vulnerable status. These may also cause other vulnerabilities such as having limited health accesses.

Situational Vulnerability

- The specific situation and the experiences make certain individual or group of people vulnerable.
- Migrants may find themselves being vulnerable due to situations that forces them to leave their country of origin. The reason to leave the country of origin could be poverty, violent conflict amongst many diverse reasons.
- Mostly depends on the external variables and is influenced by personal, social, economic and environmental circumstances.
- It also includes the characteristics such as; oppression, domination and injustice.
- Example; disaster induced vulnerabilities , victims of violence.

Structural Vulnerability

The structural vulnerability basically is caused by the social, economic and political hierarchies.

Example can be taken from Health sector.

Risk of negative health outcome occurs due to social, economic and political hierarchies prevalent in the society. An individual or group of individuals become structurally vulnerable when the institutional and policy level both affects their existence. Example ; migrant workers , refugees and asylum seeker not being provided with proper health care.

Discrimination is a major ingredient of structural vulnerability.

Migrants in Vulnerable Situations

- The concept of vulnerability can be understood to mean that some people are more at risk in terms of physical, environmental, psychological, mental conditions.
- The vulnerable population ; vulnerable migrants are those individuals or group of individuals who cannot exercise either human rights and are unable to exercise their human rights. In addition, they are more prone to risk of violations and abuses.
- Violence, Abuse and Exploitation are present in the dynamics of vulnerable situations.
- Violence means the intentional use of physical force or power, threats exists and it leads to injury, death and psychological harm.
- Abuse is an improper act by a person in a power and this includes physical, sexual psychological and positional abuse.
- Exploitation is unfair treatment of a person for someone else benefit.

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- The vulnerable situation faced by migration can have a diverse forms.
- There are several cross-cutting dimensions that further pushes the migrants being in vulnerable situation.
- The migrants in vulnerable situations are those migrants who are unable to enjoy their human rights.
- They are deprived from human rights and are prone to be a part of human trafficking and transportation, smuggling , forced Labour and also the increase in risk of abuse and diverse violations arises.
- The factors that generate vulnerability pushes migrant to leave their country of origin. Later they might face situation of risk during the transit as well as in the destination countries.

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According, to United Nations High Commissioner for Human Rights these Vulnerabilities can include “poverty, discrimination, lack of access to fundamental human rights, including education, health, food and water, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family”.

They may apply to individual migrants or to groups of migrants.

-United Nations General Assembly, Principles and Practical Guidance on the protection of the human rights of migrants in vulnerable situations

Vulnerable situation

The vulnerable situations associated with the reasons for leaving the country of origin includes ;

- The extreme poverty and no employment opportunities
- Natural disasters as a reason for leaving
- Climate change and environmental degradation
- Gender inequalities
- Separation of Family
- Lack of access to rights to education, health including sexual and reproductive health.
- Lack of access to education of decent work, food, water , basic necessities etc.
- Political instability
- The presence of Violent Conflict

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Vulnerable situations encountered by migrants during their journey and at destination;

- The travel is dangerous. The route they travel can cause more risk. The irregular route can further push migrants in a vulnerable situations.
- Use of dangerous forms of travel in a hazardous conditions is seen; large number of people are crossing sea to escape persecution in their country accompanying with toddlers . The boats are occupied with more numbers than it actually can endure.
- The use of smugglers for crossing the border can exploit them and they will face abuses. In between migrants can fall in the trap of traffickers. The smuggling of migrants and trafficking in persons can occur.
- The basic necessities may be lacking during the journey. This includes; adequate food, adequate drinking water, no access to medical care
- The long transits is a risk to the migrant workers.
- Xenophobia is another trait of vulnerability.

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Vulnerable situation is also associated with the individual identity, their conditions and circumstances ;

- The discrimination occurs due to age, gender, race, sex, ethnicity, race, nationality, religion, language, sexual orientation, gender identity or migration status.

The discrimination can also be occurred due to their economic conditions; poverty.

Pregnant women, nursing and lactating mothers, persons with poor health conditions (also including people living with HIV), person with disabilities, older persons and children, the unaccompanied or separated children .

This category of people are more prone to physical or psychological conditions.

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- Other vulnerabilities arises when several steps are taken by

Closing the border

Denying the effective screening and identification

Arbitrary rejection at the border

Collective expulsion

Violence by State officials and other actors

The cruel and inhumane treatment

Denying of humanitarian assistances

Failing to cope the crisis by strengthening the humanitarian services.

Existence of structural vulnerability

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Longer transits causes

- Irregular and precarious conditions
- Migrants are unable to access justice
- Risk of human rights violations and abuses
- The presence of sexual and gender based violence
- Ill-treatment , cruelty and torture can occur
- Inhumane or degrading treatment and punishment can occur

Violence Against Women (VAW)

In 1994 United Nations Declaration on the Elimination of Violence against women defined VAW as any act of gender-based violence that results in or is likely to result in physical, sexual, psychological harm and suffering to women. This includes threats, coercion and arbitrary deprivation of liberty occurring in both private and public life.

The declaration included violence's as follows however mentioned that it cannot be limited to only these few ;

Physical, sexual and psychological violence in the family (beating, sexual abuse of girls and young women)

Dowry-related violence that includes marital rape, female genital mutilation and other existing harmful traditional practices.

Non spousal violence and violence related to exploitation

Physical, sexual and psychological violence in the community; rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere.

Trafficking of women and forced prostitution

Physical, sexual and psychological violence perpetuated by State

Beijing Platform of Action 1995

The Fourth World Conference added violence as

- Forced sterilization and forced abortion
- Coercive or forced contraceptive use
- Female infanticide and prenatal sex selection
- The human rights violations of women in situations of armed conflict; murder, systematic rape, sexual slavery and forced pregnancy.

The Beijing Platform for Action identified vulnerable to violence to those who belonged to minority groups, indigenous women, refugee women, women migrants including migrant workers, women in poverty living in rural or remote communities, destitute women, women in institutions or women in detention, female children, women with disabilities, elderly women, displaced women, repatriated women, women living in poverty, women in situations of armed conflict, foreign occupations, wars of aggression, civil wars and terrorism including hostage taking.

12 critical areas of concern of Beijing Platform

- Women and Poverty : It challenges the private sector and governments at every level to address the increment of women living in poverty throughout the globe.
- Education and training of women: It focuses on ensuring all women the right to literacy and freedom to choose their potential.
- Women and health : The physical and mental health as a right of women and girls and promotes funded research and dissemination of information on women's health issues
- Violence against women: The protection of women from any form of violence; physical, mental, psychological in any places; home, work spaces and community. The concern of women's right as human rights and fundamental freedom.

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- Women and armed conflict: Beijing platform for action focuses that women are particularly vulnerable during armed conflicts.
- Women and the economy: It has come up with several strategies for women's economic security through employment, cooperatives, business and diverse economic opportunities.
- Women in the power and decision- making: It acknowledges the fundamental rights and responsibility of women to participate at all levels of decision making in all the spheres of society.
- Institutional mechanism for the advancement of women: Beijing platform for action has emphasized on improvising the existing institutions and creating new mechanisms to facilitate the full integration of women into society and also has accentuated on electing women to office.

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- Human rights of women : It has emphasized that the human rights of women and girls are inalienable and it is universal . One major initiations include; Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
- Women and the media : It has focused on overcoming the stereotypical thinking of women not being a part of communication. It highlights on equal access and participation of women in all kinds of communications.
- Women and the Environment: It promotes women's participation in the repair, healing and protection of the natural environment and polluted urban environment.
- The girl-child: It underlines the importance of meeting girl-child needs and safeguarding their rights to full equality.

CEDAW

- It was adopted in 1979 by the UN General Assembly and is also known as international bill of rights for women.
- It consists of a preamble and 30 articles with its focus on the principle of non-discrimination.
- It focuses on fundamental human rights, human dignity and equal rights .
- The principle of non-discrimination emphasizes on freedom and equal in dignity.

What discrimination does?

It violates the principle of equality of rights and respect for human dignity

It created obstacles to the participation of women on equal terms in political, social, economic and cultural spheres.

It hinders the growth of prosperity of society and family.

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- CEDAW establishes legal standards for the achievement of gender equality through the elimination of discrimination against women.
- It aims for the equality for women in all spheres.
- Article 30 and Part 6
- Its core principle includes; substantive equality, non-discrimination and state obligations.

PART 1

Article 1

Term Discrimination Against Women ?

- Discrimination shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

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Article 2 Policy measures to be taken : Governments condemn discrimination against women in all its forms and will work to end it. What it includes? – Abolishing all existing laws, customs and regulations that are discriminatory.

Article 3 Guaranteeing of Basic Human rights: Government has main role to take all appropriate actions to ensure advancement of women . In addition, to protect women's rights on a basis of equality with men. Human rights of women.

Article 4 Temporary Special Measures: Governments may institute affirmative action programmes to ensure women's advancement. De facto equality between men and women; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

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Article 5 Sex Roles and Stereotyping : Governments will strive to eliminate cultural and traditional practices that perpetuate discrimination and gender stereotyping of women; idea of inferiority and superiority if either sexes

Article 6 Trafficking and Prostitution: Government will work to eliminate trafficking in women and the exploitation of prostitution of women.

PART 2

Article 7 Political and Public Life : The Government will work to eliminate discrimination against women in political and public life. It will ensure women the right to vote, hold office and actively participate in political parties, lobby groups and NGOs.

Article 8 Participation at the International Level : Governments will take action to ensure women the opportunity to represent their government at the international level and participate in international organizations.

Article 9 Nationality: Governments will grant women equal rights to change or retain their nationality and that of their children.

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PART 3

Article 10 Equal Rights in Education: Governments will act to eliminate discrimination against women in education. This includes giving women and men equal access to education and vocational guidance; the same curricula, examinations, standards for teaching and equipment and equal access to scholarships and grants

Article 11 Employment: Governments will eliminate discrimination against women in the workplace. Women will have the same employment rights as men . Women also shall have maternity leave and special protection against harmful work during pregnancy.

Article 12 : Health Care and Family Planning

Government will eliminate discrimination against women in health care and provide them with equal access to health-care services, including family planning.

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Article 13 Economic Life, Sport and Culture: Governments will act to eliminate discrimination against women in the economic and social arenas. Women will have equal access to family benefits, loan and credit, and an equal right to participate in recreational activities, sports and cultural life.

Article 14 Rural Women: Governments will ensure that the particular needs of rural women are met in relation to access to services, training and employment opportunities and social equity schemes and act to eliminate discrimination against them.

PART 4

Article 15 Equality Before the Law: Governments will give women equality with men before the law, including rights to enter contracts, administer property, appear in court or before tribunals, to choose residence and domicile.

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Article 16 Marriage and the Law: Governments will ensure that women and men have equal rights to choose a spouse and to marry; the same rights and responsibilities within marriage and on divorce; and equal rights in all matters relating to the birth, adoption and raising of children.

PART 5

Articles 17-22 : Detail of the establishment and function of the Committee on the Elimination of Discrimination against Women

PART 6

Articles 23-30: Detail of the administration of the Convention

Optional protocol of CEDAW also is an additional human treaty.

Workplace harassment

The Sexual Harassment at Workplace (Prevention) Act, 2014 of Nepal has defined workplace harassment as;

If anyone commits or causes to be committed, the following acts by abusing one's position, power or authority to any employee or customer in the workplace by creating any form of pressure, influence or enticement or by discouraging, it shall be considered that sexual harassment has been committed: -

a) To touch or attempt to touch any organ of the body with sexual intent, (b) To use or display word, picture, newspaper, audio, visual, other information technology, medium, object or material related to obscene and sexual activity, (c) To display or express obscene and sexual intent by writing, speaking or gesticulating, (d) To make an offer for sexual activity, To tease or annoy with sexual intent.

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- This act prevents sexual harassment at workplace. It has clearly identified workplace as government entities, entities owned fully or partially by government, corporate bodies or institutions established in accordance with prevailing laws and firm, institution or corporate body registered or licensed to carry out any trade, or provide services (together the “Entities”) in the course of conducting their business.
- This act has broadened the definition of workplace however it is limited to organized sectors and seems to exclude the unorganized sector ; informal sectors.
- Act has defined sexual harassment, it has included responsibilities and duties of the employer, also includes complaint and punishment mechanism, it also has included victim protection provisions and lastly also has incorporated the remedy available under other laws.

ILO Convention No. 190 on Violence and harassment

- This convention defines violence and harassment in the world of work as the unacceptable behaviors and practices and threats whether it occurs once or repeatedly and results or likely results in physical, psychological, sexual or economic harm and also includes gender-based violence and harassment.
- The gender-based violence and harassment means violence and harassment that is directed at persons just because of their sex or gender.
- The major objective of this convention is to protect workers and other persons in the world of work. They include;

Employees defined by national provisions, persons working irrespective of their contractual status, persons in training; interns and apprentices, workers whose employment has been terminated, volunteers, job seekers and job applicants and an individual exercising authority, duties or responsibilities of an employer.

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When violence and harassment in the world of work is recognized?

- The workplace; both public and private sphere at workplace
- Where workers are paid, where workers take rest, where workers have meal, where workers use sanitary, where workers use changing and washing facilities.
- During work-related trips, travel, training, events or social activities.
- The work-related communication; the use of communication and information technologies.
- The employer-provided accommodation
- When travelling to and from work

Forced Labour

According to the ILO Forced Labour Convention, 1930 (No.29), forced or compulsory Labour is

“ all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”

Three elements can be identified;

- Work or service: It refers to all types of work ; including informal economy.
- Menace to any penalty: The risk of penalty occurs and people are compelled to work.
- Involuntariness

Indicators identifying the presence of forced Labour by ILO

- Abuse of vulnerability
- Deception
- restriction of movement
- Isolation
- Physical and Sexual Violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

References

- Allain, J. (2018). What is Forced Labour? A Practical Guide for Humanities and Social Science Research. *Researching Forced Labour in the Global Economy: Methodological Challenges and Advances*. pp.79-93. <http://doi.org/10.5871/bacad/9780197266472.003.0005>.
- Carruth, L., Martinez, C., Smith, L., Donato, K., Pinones-Rivera, C., & Quesada, J. (2021). Structural vulnerability: migration and health in social context. *BMJ Global Health*
- Cruz, A., & Klinger, S. (2011). Gender-based violence in the world of work: overview and selected annotated bibliography. *ILO*.
- Gilodi, A., Albert, I., & Nienaber, B. (2022). Vulnerability in the Context of Migration: a Critical Overview and a New Conceptual Model. *Human Arenas*. <https://doi.org/10.1007/s42087-022-00288-5>
- Government of Nepal. (2014). *The Sexual Harassment at Workplace (Prevention) Act*.

Contd...

ILO.(2016). *ILO standards on forced labour the new protocol and recommendation at a glance.*

ILO.(2019). *Violence and Harassment Convention, 2019 (NO.190).*

0 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C19

IOM.(2019).*IOM handbook on protection and assistance for migrants vulnerable to violence,exploitation and abuse.*

IOM.(2022). *Global estimates of modern slavery forced labour and forced marriage.*

LessardPhilips,L.,Lindenmeyer,A.,Phillimore,J.,Fu,L.,&Jones,L.(2022).*Vulnerability, migration and wellbeing: investigating, experiences, perceptions and barriers.* The Nuffield Foundation.

Mendola,D.,& Pera,A.(2021). Vulnerability of refugees: Some reflections on definitions and measurement practices. *International Migration*. DOI: 10.1111/imig.12942

OHCHR.,& Global Migration Group.(n.d). *Principles and Guidelines, supported by practical guidance on the human rights protection of migrants in vulnerable situations.)*

UN.(1979). *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

References

UN WOMEN.(2014). *Beijing Declaration and Platform for Action Beijing+5 political declaration and outcome.*

Westen,C.J.van.(n.d.). *Caribbean Handbook on Risk Information Management.*
<http://www.charim.net/methodology/53>

<https://pioneerlaw.com/nepal-introduces-legislation-to-address-sexual-harassment-at-workplace>