

Review Article**Environmentally Displaced Persons and Protection of Their Rights: Issues and Challenges****Aparna Singh*, Samiuddin******Abstract**

Environmentally Displaced Persons by virtue of being human beings have human rights which must be protected. Though there is evidence of population migrating for environmental reasons there is still no comprehensive definition of Environmentally Displaced Persons. The CEDEW CRC and the Refugee Convention, 1951 were promulgated to protect the vulnerable class of people. Similarly, EDPs are at-risk population, whose fundamental rights must be protected. In this paper, the authors have dealt with the need to protect the EDPs as vulnerable population and their basic fundamental rights. The attempts have been made to throw light on the problem of EDP. The paper highlights and throws emphasis on to incorporated a model definition of EDP which can be adopted by the world community to give such population a definitive legal status.

Keywords: EDP; Refugee; Community; Population; Displaced; Protection; Women; Children.

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E-mail: greeneyearparna@gmail.com**Received on** 08.04.2017**Accepted on** 24.04.2017**Introduction**

EDPs by being members of human race are entitled to basic human rights. The CEDAW, CRC and the Refugee Convention establish connection between the importance of fundamental human rights enshrined in U.N. Charter and the UDHR. The purpose of the conventions being to propagate and promote these rights. The Preamble of the 1951 Refugee Convention makes reference to the UDHR thereby indicating the desire of the drafters of the refugee convention to develop the definition of refugee in line with human rights principles. EDPs are almost placed at the same footing as the IDPs and the refugees since all of them are forcibly displaced from their natural habitat. In fact, EDPs are in a more vulnerable position as they are being denied the fundamental rights which are simultaneously protected under the

CEDAW, CRC and the 1951 Refugee Convention. EDPs by being members of humanity deserve that their fundamental human rights should be protected.

Of all the human rights the right to life is the most central one. The right to life is of particular concern to EDPs, IDPs and the refugees. They all leave their homes and countries of origin because their lives are in peril. Those leaving their homes for environmental reasons are specifically leaving because they are either temporarily or permanently uninhabitable. Once they leave their life, physical health is under threat and they are deprived of the basic needs. Their right to physical integrity is directly related to the right to life in the sense that one cannot have life without physical integrity [1]. EDPs are deprived of their right to life which is protected for refugees and the IDPs because they do not have the same protection. But all EDPs, IDPs and the refugees have the same needs.

Need to Recognize and Protect Vulnerable Population

EDPs need to be protected as vulnerable population as afforded to women, children and refugees. There was a need to protect these populations at the time these conventions were implemented [2]. Each of these conventions outlines the justification for why each population is entitled to special care. Women need special care because equality is central to the society as enshrined in the U.N. Charter and the UDHR. Children in CRC require special protection because they are physically and mentally immature and they deserve care and assistance according to the UDHR. Similarly, the 1951 Refugee Convention recognizes that the refugees do have fundamental rights and that the same should be protected. The 1951 Refugee Convention codifies these considerations of humanity. Today, there is need to protect EDP. It is a vulnerable population and requires the support of the world community to protect them. As mentioned earlier there are evidences which show that the people are being displaced for environmental reasons.

The problem of EDPs is aggravated due to the poverty. The EDPs need protection mainly because of the lack of the institutional support to help overcome the effects of the disasters. The increase in the number of the disasters shows that there is need to protect the ever increasing population being displaced by such disasters. These disasters effect the poorest people the hardest as they lack the infrastructure and means to survive with the effects of the disasters. On top this, the poor people live in inherently vulnerable areas such as flood plains, as they cannot afford to live in a less at risk-area [3].

Poor people are also effected by the famines [4]. Developed countries which maintain high level of public health and education are averse to causes of refugee and migrant outflows, like famine. On the other hand, it is the developing and the underdeveloped countries which are susceptible to environmental issues like famine because these are mainly agrarian economies. When such a thing happens, people are compelled to leave their countries the land can no more sustain them. Failure of national governments to support their people increases the vulnerability EDP population that is forced to relocate. EDPs do not have a legal status as vulnerable population. They do not fit into the definition of refugees and IDPs.

Inadequacies in Current Protection Mechanism

EDPs being part of human race should be accorded

the same fundamental human rights that are afforded to all, in particular to those who are forcefully displaced—refugees and the IDPs. They leave their homes for the same reason as refugees and IDPs. They have lost their homes, access to food and water and their livelihood. Current instruments which protect displaced persons are inadequate the needs of the EDPs. EDPs are not same as the IDPs. IDPs remain within their countries of origin. The protection accorded to the IDPs is inadequate to cover EDPs because protection is accorded to those displaced within the borders of their country. Protection of IDP rights is limited to the national legislations. The definition of IDP provides no means of international protection. The responsibility of providing protection to the IDPs lies solely on the nation the IDP is moving within [5].

EDPs have been sought to be brought into the refugee classification, terming them environmental refugees. Refugees, unlike IDPs, have official legal status that allows for their protection by the international entities. But as mentioned earlier EDPs are not the same as the refugees given its definition.

The definition of refugee under the Refugee Convention demands that the movement has to be for a “well-founded fear of being persecuted”. The grounds of persecution which are mentioned in the definition of refugee are connected with the civil or political status [6]. Persecution requires a persecutor, which has to be a human being or the state imposing the harm. On the other hand, EDPs migrate because the environment is causing the harm. There is no persecutor. Therefore, EDPs do not merit protection under the Refugee Convention or its Protocol. Also, people who move cause of environmental reasons are not specifically targeted by their government, an essential condition under the Refugee Convention. Additionally, environment does not fall under any of the five reasons for persecution.

Some jurists argue that some EDPs may find protection under the desired interpretation of persecution. UNHCR handbook says that the definition of persecution is not universal [7]. Actions of state can amount to persecution where “acts of environmental destruction, such as [sic] poisoning of wells, the burning of crops, or the draining of marshlands are methods purposefully used to persecute, intimidate or displace a particular population [8].” Here political oppression manifests itself as environmental damage. Again, here the victim would get protection not as EDP but as a refugee covered under 1951 Refugee Convention.

This can protect only handful portion of the population that is forced to relocate for environmental

reasons. When people get displaced for environmental reasons, the destruction or change in environment can be man-made, natural disaster or gradual land degradation. Such reasons would not be covered under the definition of refugee in 1951 Refugee Convention. Man-made environmental destruction can occur without the political persecution. Naturally occurring disasters though enhanced by land degradation caused by human action cannot be seen as political oppression. Hence, the protection provided to the refugees would not be available to the EDP.

The OAU Convention and the Cartagena Declaration give expansive meaning the term refugee. Still, it does not explicitly deal with the environmental causes of migration. Moreover, if it assumed that the regional instruments can provide protection to the EDPs, it would be limited to those regions. Thus, EDPs do not have international protection mechanism. They must be protected and granted a legal status of their own.

Previous Attempts at Developing Solutions

Though the scholars have tried to devise the creative and at times complex solutions to deal with the situation of the EDP, at present there are no international instruments that protect the EDPs. According to Tracey King an international body should be created to specifically deal with the EDPs [8]. King hopes to include the UN Environmental Programme, the UN Development Programme, the International Office of Migration, UNHCR, and the UN Office for the Coordination of Humanitarian Affairs, and hypothesizes that because the mechanism includes existing organizations, the international community would not need to contribute funding beyond what is needed for the administrative costs of coordination [10].

Nicole Angeline Cudiamat [11] is of the opinion that such a mechanism would not be able to address fully the needs of EDPs because of the lack of the concerted effort to address the needs of EDPs. According to her though every organization may be trained separately and equipped to handle EDP issues the time and resources which they would be able to allocate for such purpose would be limited. International community as a whole should pledge to meet its financial needs. Similarly, Gregory McCue and Michael Prieur propose that a separate convention should be brought for the protection of EDPs to help this vulnerable population [12].

McCue discusses the adoption of convention from the standpoint of international environmental law.

In his convention, he gives the framework of the duties of the countries to prevent environmental disasters, minimize the consequences of the environmental disasters, giving prior notice as to any impending disaster and the compensation of the injuries sustained during such disasters. It would include the states responsibility of dealing with the migratory effects of environmental events [13]. So the conventions main focus is on prevention of environmental disasters, minimization of future disasters and development of emergency plans to tackle events of natural disasters.

His convention fails to address the issues of people who are forced to migrate because of the environmental reasons. It focuses on environmental problems where there is environmental disaster. People migrate for many reasons connected with the environment, not all of which are sudden and considered to be natural disaster. In his convention EDP issues form only a part of the convention and appear to reduce the effect that migration has on the people itself. Hi theory addresses the environmental aspects of migration before they occur; it does not focus on the human rights aspects which are necessary to address the situation of the EDPs.

Prieur's Draft Convention on the International Status of Environmentally Displaced Persons places EDPs in the centerstage of the convention and addresses their needs following migration [14]. The draft convention enlists the rights of EDPs such as rights to receive assistance, shelter, care, family, education and work. It creates obligation of the States to develop domestic law and recognize the official legal status of the EDPs and stresses for the creation of a world agency to deal with EDP issues and the implementation of the convention. It is a comprehensive document providing for the international protection of the EDPs, including all the necessary elements when drafting the convention. According to Prieur the first draft of the convention was published in the year 2008. The copies of the draft were sent to the governments and the international and non-governmental organizations. The convention has not been adopted till date. The international community should act to protect this vulnerable population.

Need for Independent Legal Status

It is the availability of fundamental rights and lack of protection at the same time which led to the protective measures for children, women and refugees. EDPs too have fundamental rights. But they are not protected. Their situation is same as that of

the refugees. But they do not get the same protection because of the technicalities in the definition of refugee. Migrations due to environmental reasons have increased throughout the world. The changes in the environment whether gradual or sudden hit the poor the hardest. EDPs are extremely vulnerable class. They are not protected under the current regime. Their sufferings are same as that of refugees and the IDPs but they do not get the same rights. It is high time that the protective measures should be developed for them.

The first thing in the direction is to devise a comprehensive definition for the EDPs. This will address the gap between the EDP rights and the protection of those rights. They should be given a definitive legal status. Their rights should be defined, the resources to which they are entitled, the obligations of the states sending and receiving the EDPs and the responsibilities of the intergovernmental and nongovernmental institutions should all be demarcated. Care for the same should be taken from the 1951 refugee convention.

EDP: A Model Definition

As is agreed by the scholars that the EDPs are not same as refugees, all the essential factors should be considered while devising the definition for EDPs. Its scope should be defined, the population as displaced persons should be identified. The nature of the displacement (whether natural or man-made, sudden or gradual), the recognition of fundamental human rights and their vulnerability shall all be considered.

“The term “environmentally displaced person” shall apply to any person who, as a result of a natural disaster, gradual environmental changes, and/or human-induced environmental stressor that threatens his life or physical integrity, is forced to relocate elsewhere because of the incident, and is unable to seek aid from the country where he has relocated to, or the country of his nationality, if the relocation is internal [15].”

Nicole Angeline Cudiamat, uses the term “displaced persons” instead of the term refugee to define their displacement. Essam El-Hinnawi, David Barker, Norman Myers and Laura Westra all use the term refugee in their definitions of people displaced by the environmental reasons. Refugees are the persons who are displaced outside of their countries of origin. At the same time there are people who are displaced within the countries of origin. Cudiamat says the reason for using the term displaced person is that it includes both the IDPs and the people leaving

their country for environmental reasons. According to her including IDPs in the definition would guarantee protection to them at the international level when their home countries are unable or unwilling to protect them. Currently the protection of IDPs’ right is limited to national legislation.

The proposed definition of an EDP rejects the use of the term “refugee” but it must be acknowledged that there is some support for extending the current definition of refugee to include people who must relocate because of environmental causes [16]. If the current definition of refugee is expanded it would give EDPs protection under the 1951 Refugee Convention and its Protocol. However, it is proposed for devising an independent legal definition for EDPs so that EDPs may establish the need to protect their rights as distinct population, as opposed to being a mere addition to the refugee regime of protection. The implementation of EDPs’ own unique definition will lead to the development of a comprehensive system of protection that is exclusive to the EDP population, not merely an enlargement of already existing protection [17].

The definition proposed here includes people who are affected as a result of natural disasters—which often occur suddenly—and gradual environmental changes. Various other attempts made at giving definitions have included provisions for both types of environmental changes [18]. The definition given by Myers includes a list of specific causes of environmental problems including drought, erosion, desertification and deforestation [19]. The definition adopted here (of Cudiamat) for an EDP does not denote specific disasters so as not to impliedly limit protection to only people who have suffered because of those environmental causes. Also, this definition includes as provision for human induced environmental disruptions. There is evidence that human-induced environmental degradation or disasters lead to relocation of people [20]. The inclusion of responsibility for human-induced environmental stressors is important in order to encompass all causes of damage to the environment that result in displacement [21].

The right to life is part of the doctrine of fundamental human rights, and the EDP is entitled to have this right protected. Environmental issues resulting in the threat of life or physical integrity and ultimately to fundamental human rights, must be present to qualify as an EDP. The inclusion of the protection of the right to life broadens the definition to people who are in actual or imminent life-threatening danger as well as those suffering from threats to their health and/or the deprivation of basic

sustenance needs. The specific inclusion of the right to life in the definition of the EDP is an acknowledgement of the international community's responsibility to the protection of life and the ability of people to survive [22].

One of the greatest difficulties in developing a definition specific to EDP is what tends to be the multi-causal nature of migration [23]. The definition adopted here addresses this issue by not seeking to isolate environmental stressors as the sole cause for the migration of people, but rather as one of the potentially several reasons. The language of the proposed definition does not state that environmental reasons must be the only cause of relocation, but rather a cause of relocation. By making this distinction, the proposed definition does not require that an environmental stressor is the sole or primary reason for displacement, but simply one driving force of potentially several.

The inclusion of the last clause in the proposed definition of an EDP is integral to demonstrating the vulnerability of the EDP. Of the definitions conceived by many scholars, only David Barker's contains a clause stating that an environmental refugee is one who is "unable or unwilling to avail themselves of the protection of their own countries in dealing with the impacts of environmental disruptions [24]". As stated already, a large factor contributing to the vulnerability of EDPs is the lack of institutional support in the wake of an environmental disruption. Poverty, famine, and weak government infrastructures are also tied to the vulnerability of the EDP [25]. When a person is unable to seek aid from his own government, he is truly vulnerable [26]. Therefore, the inclusion of this final clause helps to truly exemplify the vulnerability of the EDP and the need for his protection.

Need for the Adoption of Model Definition by the U.N. General Assembly

The model definition of an EDP should be proposed to and adopted by the General Assembly. The General Assembly is one of the principal organs of the U.N. and the only one that equally represents all 192 member states [27]. It is the main deliberative body of the U.N. and each member state has one vote when issues come up before it [28]. Part of its duties is to promote the development of international law and the realization of human rights throughout the world [29]. The Acceptance of a principle by a majority of member states serves as evidence of a worldwide agreement regarding the necessity of the law [30]. The promulgations of the CEDAW, CRC,

and 1951 Refugee Convention were all preceded by General Assembly resolutions that recognized the need for the protection of women, children, and refugees [31].

The model definition reconciles all of the previous attempts to classify an EDP into a single, authoritative definition that the General Assembly would be more receptive to adopting [32]. The General Assembly's approval of the above model definition of an EDP would be the first global acknowledgement of the necessity to protect this vulnerable population. Also, because the issue of the protection of the EDPs concerns principles that are enshrined in the U.N. Charter – fundamental human rights, namely the right to life—then the General Assembly's approval of the definition would have a direct legal effect [33]. The definition would be recognized as an authoritative interpretation and application of the principles of the U.N. Charter, thereby creating an obligation for member states to further address the plight of the EDP and seek remedy for it. From there, the development of a convention and the establishment of organizations to protect EDPs can spring forth, and the protection of this population can begin [34].

Conclusion

The creation of the legally recognized definition of EDPs is integral to establishing a specific level of protection for them. Establishing EDP as a vulnerable class of persons will ensure that all people who suffer from mass displacement because of the environment can be protected. Their protection will no longer have to require the notoriety of a massively catastrophic event to move the international community to pledge their support.

The definition proposed here is the first step toward the protection of the EDPs. Protective instruments for women, children, and refugees established their status as vulnerable populations. The recognition of the need for their protection is what led to the implementation of conventions solidifying the international community's commitment to their protection. Reconciling the various attempts to categorize EDPs into a single, comprehensive classification is the starting point for the development of a complete system of protection for EDPs. Following the acceptance of the proposed definition by the U.N. General Assembly—evidence of international adoption of the term—one hopes that the progression of the development of a protective regime will take the same course as that of women,

children and refugees, and development of a larger international instrument will result. This process must first begin with the establishment of a legally recognized definition of an EDP.

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