

## **Exploring Vulnerability's Challenges and Pitfalls in Belgian Asylum System**

*Research Report on the Legal and Policy Framework  
and Implementing Practices in Belgium*

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**VULNER Research Report 1**

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This picture has been taken in the Red Cross centre of Uccle for unaccompanied minors on August 31st, 2020. This work of art, made by Jocelyne Coster, represents the migratory path (the red line) through earth and sea. The earth has been reproduced with residents' fingerprints. The picture has been chosen as a cover because the migratory road represented reminds that vulnerability is a constant and continuous process. It also represents our path, winding as in the picture, towards a better understanding of vulnerability.

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## EXECUTIVE SUMMARY

This research report has been published as part of the EU Horizon 2020 VULNER research project ([www.vulner.eu](http://www.vulner.eu)). Our project arose from the finding that the requirement to address migrants' multiple and various vulnerabilities is flooding the policy discourse on asylum and migration at the EU and global levels (as illustrated by the UN Global Compact for Migration and its objective 7 to 'reduce vulnerabilities' in migration, and the current focus at the EU level on the establishment of vulnerability assessment mechanisms as part of asylum and border procedures as well as in resettlement programmes).

Yet, if not based on scientific data and analyses that provide a clear and non-stereotyped understanding of the vulnerabilities that are lived and experienced by migrants, such a policy objective runs the risk of failing to address vulnerabilities, exacerbating existing vulnerabilities or even producing new ones.

The overall objective of the VULNER project is to produce such scientific knowledge in ways that will assist states in identifying suitable strategies to assess the 'vulnerabilities' of migrants, to address their specific needs and to prevent stereotyped understandings of their lived experiences. The VULNER project also seeks to develop a broader, more thorough and more critical reflection on the increasing use of 'vulnerability' as a legal and policy standard that guides the development and the implementation of migration policies, including how it relates to border control considerations inherent in such policies.

This research report presents some of the intermediate research results of the VULNER project, based on the first phase of the project, which consisted of mapping out the vulnerability assessment mechanisms developed by state authorities in Belgium, including how they are implemented on the ground through the practices of the public servants in charge.

The following research questions are addressed: What do the relevant domestic legislation, case-law, policy documents, and administrative guidelines reveal about how "vulnerabilities" are being assessed and addressed in the countries under study? Do the relevant state and/or aid agencies have a legal duty to assess migrants' vulnerabilities, and if yes, using which procedures, when and how? Following which legal and bureaucratic criteria? How do decision-makers (street-level bureaucrats) understand and perceive the 'vulnerabilities' of the migrants they meet on a daily basis? How do they address these 'vulnerabilities' through their everyday practices? What is their stance on existing legal requirements towards 'vulnerable' migrants? Which loopholes do they identify?

The approach followed for this report was an inductive one, in which we aimed to start by analysing existing state approaches towards 'vulnerability' as a legal and policy concept. We complemented our focus on the legal framework with interviews with decision-makers.

This is just the first phase of the data collection process. We are now conducting ethnographic fieldwork among informal and state-run migrant and refugee settlements, with the view to reach a more profound understanding of migrants' own experiences of vulnerability. The objective is to document and reflect on how these experiences are shaped, and sometimes even produced, by the legal frameworks and state

practices; how refugees and migrants adapt their behaviour to fit within existing vulnerability categories; and what coping and resilience strategies they develop. Our ultimate objective is to reflect upon thoroughly and from a critical perspective on the increasing use of ‘vulnerability’ as a standard that guides the development and implementation of migration policies at EU and global levels.

This report aims at reaching institutions, actors and organizations involved to distinct levels in the Belgian protection regime. It can be a useful tool to shed light on how vulnerabilities are concretely assessed and addressed throughout the asylum procedure. Raising awareness of the way through which vulnerability is evaluated and handled at each step of the asylum process is relevant to improve the overall efficiency of the system. Indeed, this would enable the authorities and the actors involved in the protection regime to learn from their respective practices. Furthermore, this study comes at a time where more attention is paid to Belgian asylum and protection regime with the current proposal to establish a Belgian Migration Code. Therefore, this research could also be of interest to the experts in charge of this reform project as well as to the legislative power.

This report explores the asylum procedure in Belgium under the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens (Aliens Act), the Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens (Reception Act) as well as their implementation decrees.<sup>1</sup> It also deals with the specific “durable solution procedure” for minors, as enshrined in Articles 61/14 and 74/16 paragraph 2 of the Aliens Act. With the objective of assessing the implementing practices, administrative guidelines have been consulted, such as *Ministerial Decree laying down the code of ethics for staff members of reception facilities for asylum seekers or Ministerial Circular of 15 September 2005 on the residence of unaccompanied foreign minors*. Moreover, guidelines and comments from the UNHCR have been consulted.<sup>2</sup> The combination of all these documents allows us to have a comprehensive understanding of the Belgian asylum system in light of the international protection regime, as well as to identify the challenges in terms of assessing and addressing vulnerabilities.

The fieldwork included sixty interviews with both asylum authorities and reception centres’ staff. The asylum authorities involved in the study were: Minors and Victims of Human Trafficking Special Unit (MINT-EH) at the Immigration Office, Office of the General Commissioner for Refugees and Stateless persons (CGRS), Council of Alien Law Litigation (CALL), Labour Court, Fédasil Dispatching Unit, Fédasil Voluntary Return Service. Interviews have been conducted also with the staff (Directors, Deputy Directors, social

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1 See Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens; Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless Persons; Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

2 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Background Note on the Safe Country Concept and Refugee Status, EC/SCP/68, 26 July 1991; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on Bill 2548/003 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners (hereinafter ‘Unicameral Bill [opinion]’), 4 October 2017; EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER’S PROGRAMME, General Conclusion on International Protection, No. 87 (L), 50th session, A/AC.96/928, 8 October 1999; UN COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (CMW), Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23.

workers and medical staff) of eight reception centres run by Fédasil (Federal Agency for the reception of asylum seekers) and the Red Cross. Moreover, one interview has been carried with the Director of Sūrya (centre specialized for the victims of human trafficking) as well as with a social assistant of a Local Reception Initiative (LRI).

Those institutions and reception facilities have been selected for this study for three main reasons. Firstly, because they are key institutions that intervene at specific moments in the Belgian protection regime. Secondly, because these institutions are identifying and addressing vulnerability in their respective functions and daily practices (based sometimes on legal obligations to do so). Thirdly, because they are confronted with different groups of vulnerable people throughout the procedure (from a long period of time on daily basis for reception centres to a short hearing in front of the Council for Alien Law Litigation).

The legal research and the fieldwork have led to key findings:

- the partial/uncomprehensive scope of the vulnerable groups identified in the law;
- the diversity of approach taken by the actors in the field;
- the lack of a (consistent) communication between the different authorities and actors involved in the Belgian protection system.

The authorities and aid workers on the ground favour a *case-by-case* approach in identifying the more vulnerable profiles among the protection seekers. The groups and categories enshrined in the law are used as a warning bell by the actors on the field in order to pay special attention to certain applicants, to take into account their protection and reception needs and, eventually, to inform their decisions. In general, the *case-by-case* approach leads to a diffuse inclusive effect because the applicants' needs are prospectively taken into adequate consideration. However, in light of the ample room for manoeuvre in the hands of the authorities and in the absence of substantial guidelines upstream as well as the obligation to state reasons of the decision downstream, there is a real risk of highly discretionary decisions. Furthermore, in the same way a flexible approach could be inclusive, it then can also exclude anyone from the qualification of being vulnerable.

In light of the study conducted in Belgium, identifying and addressing vulnerabilities departing from the categories could prove to be problematic for three main reasons. Firstly, vulnerability is a multifaceted, complex concept susceptible to change and develop over time and space. In light of the fact that vulnerability is likely to be an intrinsic feature for all the protection seekers and that intersectionality is the rule, vulnerability should not be assessed and addressed in a logic of presence/absence, but rather along layers and degrees of vulnerabilities. Secondly, the categories identified in the law are not ultimately comprehensive. There are some *groups* that are not taken into account – above all (isolated) man and young adults (those who have just turned eighteen) – as well as some *factors* that are relevant for vulnerability assessment. Among others, the most recurring and relevant factors identified are the socio-cultural and socio-economic background as well as the consequences of the migratory path, the complexities of the asylum procedure and the hardships of the life in the reception centres. Thirdly, the vulnerabilities that are addressed on the ground seems to be the most “practical” ones. This leads to a more general reflection that the consideration and the “management” of vulnerability seems to be calibrated in line with what the State can do in light of economic and human resources at disposal as well as its political priorities.

The results of the research also show the lack of (consistent) communication between the different actors involved in the asylum procedure that makes the process of identifying, assessing and addressing vulnerability fragmented and potentially ineffective in the long run. Strikingly, as an example, the dialogue between the CGRS and the reception centres seems to be non-existent, even though both have clear obligations to assess and consider vulnerability. The rigid division of the tasks over the procedure and the distinct roles assigned to the different authorities and actors prevents common and fruitful channel of communication from being implemented. This lack of communication prevents a continuous, coherent consideration and a real *follow-up* of vulnerable profiles throughout the procedure.

This report also shows that vulnerability does not carry the same consequences for the different asylum bodies, or sometimes any consequences at all. This lead not only to a lack of *effective consequences* deriving from the notion of vulnerability on the ground (the concrete effects of qualifying an asylum seeker as vulnerable remains unclear), but also to a lack of *consistency* in the way it is assessed and considered within the procedure. The impact and role vulnerability can therefore remain very variable, with a large margin of appreciation for the decision-makers supposed to assess it on the ground.



## RÉSUMÉ

La publication de ce rapport s'inscrit dans le cadre du projet de recherche européen Horizon 2020 VULNER ([www.vulner.eu](http://www.vulner.eu)). Ce projet part du constat que la prise en compte des vulnérabilités des personnes migrantes est une nécessité dans les politiques d'asile et de migration, tant au niveau européen qu'au niveau mondial. Cette nécessité se reflète dans le Pacte des Nations unies pour les migrations et son objectif n° 7 de « réduire la vulnérabilité » en migration, ainsi que dans l'introduction de mécanismes d'évaluation de la vulnérabilité dans le cadre des procédures d'asile et des programmes de réinstallation au niveau européen.

Un tel objectif politique doit néanmoins pouvoir s'appuyer sur des analyses claires et fondées, qui donnent une image objective des vulnérabilités vécues par les migrants. Sans étude sérieuse, ces vulnérabilités risquent de ne pas être considérées, d'être exacerbées voire d'être créées précisément parce qu'elles ne sont pas prises en compte.

L'objectif global du projet VULNER est donc de produire de la connaissance scientifique dans ce domaine, de manière à aider les États à définir des stratégies appropriées pour évaluer les « vulnérabilités » des migrants ainsi que pour répondre à leurs besoins spécifiques tout évitant une approche stéréotypée de leurs expériences de vie. Le projet VULNER vise également à développer une réflexion plus large, plus approfondie et plus critique sur l'utilisation croissante de la « vulnérabilité » comme norme juridique et politique dans le développement et la mise en œuvre des politiques migratoires, ainsi que sur la façon dont la « vulnérabilité » est liée aux considérations de contrôle des frontières inhérentes à ces politiques.

Ce rapport de recherche reprend les résultats intermédiaires du projet VULNER, obtenus durant la première phase de l'étude. Cette première phase a permis d'identifier les mécanismes développés par les autorités belges pour évaluer la vulnérabilité des personnes migrantes. Cette première étape du projet a aussi analysé la manière dont ces mécanismes sont mis en œuvre sur le terrain par les autorités compétentes.

Différentes questions sont abordées dans ce rapport : Que prescrivent les lois nationales, la jurisprudence, les documents politiques et les directives administratives sur la manière d'évaluer et de traiter les « vulnérabilités » ? Le Gouvernement et/ou les organismes d'aide concernés ont-ils une obligation légale d'évaluer la vulnérabilité des migrants, et si oui, selon quelles procédures, quand et de quelle manière ? Sur base de quels critères juridiques et administratifs cette évaluation doit-elle être menée ? Comment les « street level bureaucrats » appréhendent et perçoivent-ils les « vulnérabilités » des migrants qu'ils rencontrent au quotidien ? Comment abordent-ils ces « vulnérabilités » dans leurs pratiques ? Que pensent-ils des exigences légales actuelles au sujet des migrants « vulnérables » ? Quels sont les vides juridiques existants ?

Ce rapport adopte une approche inductive, qui a d'abord consisté en l'étude des approches gouvernementales existantes de la « vulnérabilité » en tant que concept juridique et politique. Cette emphase mise sur le cadre juridique a ensuite été complétée par une série d'entretiens réalisés avec les acteurs de terrain.



Ce rapport ne constitue que la première étape du processus de collecte de données. Des recherches ethnographiques dans des centres d'accueil pour migrants (gérés par l'État et par ses partenaires) ainsi que dans des lieux d'installation plus informels, vont être menées afin de mieux comprendre comment les migrants eux-mêmes vivent et pensent la vulnérabilité. L'objectif est de documenter et de réfléchir à la manière dont ces expériences sont façonnées, et parfois même produites, par les cadres juridiques et les pratiques étatiques ; à la manière dont les migrants adaptent leur comportement pour correspondre aux critères des catégories de vulnérabilité existantes ainsi qu'aux stratégies d'adaptation et de résilience qu'ils développent dans ce processus. L'objectif final de ce projet est de mener une réflexion approfondie et critique sur l'utilisation croissante de la « vulnérabilité » comme norme guidant le développement et la mise en œuvre de la politique migratoire au niveau européen et mondial.

Ce rapport s'adresse aux institutions, acteurs et organisations impliqués dans le système d'asile belge à différents niveaux. Il peut servir d'outil pour mieux comprendre et appréhender la manière dont les vulnérabilités sont concrètement évaluées et traitées tout au long de la procédure d'asile. Dans cette perspective, il peut aussi contribuer à renforcer l'efficacité globale du système d'asile. En effet, ce type d'information peut permettre aux autorités et aux autres acteurs concernés de tirer des enseignements des pratiques respectives de chaque acteur impliqué dans la procédure. Par ailleurs, cette étude intervient à un moment où, à la lumière de la proposition actuelle de rédaction d'un nouveau code belge des migrations, une grande attention est déjà accordée au système belge d'asile et de protection. Par conséquent, cette étude peut également présenter un intérêt pour les experts en charge de ce projet de réforme ainsi que pour le législateur belge.

Ce rapport aborde la procédure d'asile en Belgique dans le cadre de la Loi du 15 décembre 1980 sur l'entrée, le séjour, l'établissement et l'éloignement des étrangers (Loi des étrangers), de la Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et d'autres catégories d'étrangers (Loi accueil), ainsi que de leurs arrêtés d'exécution.<sup>1</sup> La « procédure solution durable », spécifique aux mineurs non accompagnés telle que prévue par les Articles 61/14 et 74/16, paragraphe 2, de la Loi des étrangers, est également mentionnée dans ce rapport. Afin d'évaluer les pratiques de mise en œuvre, des directives administratives ont également été consultées, telles que le décret ministériel établissant le code de déontologie des membres du personnel des structures d'accueil des demandeurs d'asile ou la circulaire ministérielle du 15 septembre 2005 sur le séjour des mineurs étrangers non accompagnés. En outre, les lignes directrices et les commentaires du HCR ont été consultés.<sup>2</sup> La combinaison de l'ensemble de ces sources permet une compréhension globale du système d'asile belge à la lumière du régime international de protection, ainsi que l'identification des défis qui se posent en termes d'évaluation et de traitement des vulnérabilités.

1 Voir l'Arrêté royal du 8 octobre 1981 relatif à l'entrée sur le territoire, au séjour, à l'établissement et à l'éloignement des étrangers ; l'Arrêté royal du 11 juillet 2003 déterminant la procédure et le fonctionnement du Commissariat général aux réfugiés et aux apatrides ; l'Arrêté royal du 25 avril 2007 relatif aux modalités d'évaluation de la situation individuelle du bénéficiaire de l'accueil.

2 HAUT-COMMISSARIAT DES NATIONS UNIES POUR LES REFUGIÉS, Note générale sur la notion de pays et sur le statut de réfugié, EC/SCP/68, 26 juillet 1991 ; HAUT-COMMISSARIAT DES NATIONS UNIES POUR LES REFUGIÉS, Commentaires du Haut-Commissariat des Nations unies pour les réfugiés (HCR) sur le projet de Loi 2548/003 modifiant la Loi du 15 décembre 1980 relative à l'accès au territoire, au séjour, à l'établissement et à l'éloignement des étrangers et la Loi du 12 janvier 2007 relative à l'accueil des demandeurs d'asile et de certaines catégories d'étrangers (ci-après " projet de Loi monocaméral [avis] "), 4 octobre 2017 ; COMITÉ EXÉCUTIF DU PROGRAMME DU HAUT COMMISSAIRE, Conclusion générale sur la protection internationale, n°. 87 (L), 50ème session, A/AC.96 /928, 8 octobre 1999 ; COMITÉ DES NATIONS UNIES POUR LA PROTECTION DES DROITS DE TOUS LES TRAVAILLEURS MIGRANTS ET DES MEMBRES DE LEUR FAMILLE (CMW), Observation générale conjointe n°4 du Comité pour la protection des droits de tous les travailleurs migrants et des membres de leur famille et n°23 du Comité des droits de l'enfant sur les obligations des États concernant les droits fondamentaux des enfants dans le contexte des migrations internationales dans les pays d'origine, de transit, de destination et de retour, 16 novembre 2017, CMW/C/GC/4-CRC/C/GC/23.

Le travail de terrain a mené à la réalisation de soixante entretiens avec les autorités belges de l'asile et le personnel des centres d'accueil. Les autorités rencontrées dans le cadre de cette étude sont les suivantes: le bureau Mineurs et Traite des Êtres Humains (MINTEH) de l'Office des étrangers, le Commissariat Général aux Réfugiés et aux Apatrides (CGRA), le Conseil du Contentieux des Étrangers (CCE) ainsi que la Cour du travail, le service « dispatching » de Fédasil (l'agence fédérale pour l'accueil des demandeurs d'asile) et le service de retour volontaire de Fédasil. Le personnel (directeurs, directeurs adjoints, travailleurs sociaux et personnel médical) de huit centres d'accueil gérés par Fédasil et la Croix-Rouge a également été interrogé. En outre, un entretien a été mené avec le directeur de Sürya (centre spécialisé pour les victimes de la traite des êtres humains) ainsi qu'avec un travailleur social d'une initiative locale d'accueil (ILA).

Ces institutions et structures d'accueil ont été choisies pour trois raisons principales. D'abord, parce qu'il s'agit d'institutions essentielles qui interviennent à des moments spécifiques dans le régime de protection belge. Ensuite, parce que ces institutions sont amenées à identifier et prendre en compte la vulnérabilité des demandeurs d'asile dans le cadre de leurs fonctions respectives et de leurs pratiques quotidiennes, à la suite (ou non) d'une obligation légale. Enfin, parce que les personnes travaillant au sein de ces institutions sont confrontées à différents groupes de personnes vulnérables tout au long de la procédure (au quotidien et pendant une longue période pour le personnel des centres d'accueil ou lors d'une courte audience, pour le Conseil du contentieux des étrangers).

La recherche juridique, couplée au travail de terrain, a permis de tirer des conclusions essentielles quant à la prise en compte de la vulnérabilité dans le système belge. Ces conclusions soulignent:

- le caractère partiel/incomplet des groupes vulnérables tels que mentionnés dans la loi ;
- les approches divergentes quant à l'identification, l'évaluation et la prise en compte des vulnérabilités par les acteurs de terrain ;
- le manque de concertation et de communication (cohérente) entre les différentes autorités et acteurs impliqués dans le système de protection belge.

Les acteurs de terrain adoptent une approche au cas par cas pour identifier les profils les plus vulnérables parmi les demandeurs de protection. Les groupes et catégories définis par la loi sont utilisés par les acteurs de terrain comme une sonnette d'alarme visant à accorder une attention particulière à certains demandeurs et à éclairer leurs décisions relatives aux besoins de protection et d'accueil de ceux-ci. De manière générale, cette approche au cas par cas a un effet très inclusif, car elle vise à prendre en compte les besoins des demandeurs d'asile de manière appropriée. Cependant, la grande marge de manœuvre dont disposent les autorités, couplée à l'absence de lignes directrices concernant la prise en compte de la vulnérabilité en amont et l'absence d'obligation de justifier cette prise en compte en aval, crée un risque réel de décisions hautement discrétionnaires. Ainsi, si une approche flexible de la vulnérabilité peut être inclusive, elle peut aussi se révéler être particulièrement exclusive en écartant des profils qui ne peuvent être considérés comme vulnérables.

L'étude menée en Belgique suggère que l'identification et le traitement des vulnérabilités sur une base catégorielle peut potentiellement poser problème pour trois raisons principales. Premièrement, la vulnérabilité est un concept complexe et multiforme qui peut changer et évoluer dans le temps et l'espace. Si la vulnérabilité est susceptible d'être une caractéristique intrinsèque de toutes les personnes en quête

de protection et que son caractère intersectionnel ne fait pas doute, la vulnérabilité ne doit pas être appréhendée dans une logique de présence/absence, mais plutôt dans une perspective de « degrés » et « niveaux » de vulnérabilité. Deuxièmement, les catégories définies dans la loi ne sont pas exhaustives. Certains groupes de personnes ne sont pas pris en compte – en particulier les hommes (célibataires) et les jeunes adultes (ayant atteint la majorité) – et certains facteurs pertinents pour l'évaluation de la vulnérabilité en sont absents. Le milieu socioculturel et socio-économique, les conséquences du parcours migratoire, la complexité de la procédure d'asile et le passage en centre d'accueil sont les facteurs les plus fréquemment mentionnés dans cette étude. Troisièmement, les vulnérabilités prises en compte sur le terrain se trouvent aussi être les vulnérabilités les plus évidentes et les plus « pratiques ». Cette réflexion conduit à une considération plus générale selon laquelle la prise en compte et la « gestion » de la vulnérabilité semblent être avant tout indexées sur ce que l'État belge peut faire, à la lumière des ressources économiques et humaines dont il dispose et de ses priorités politiques.

Par ailleurs, ce rapport montre également qu'il existe un manque de communication (cohérente) entre les différents acteurs impliqués dans le processus d'asile. Cette absence de communication rend le processus d'identification, d'évaluation et de prise en charge de la vulnérabilité très fragmenté et potentiellement inefficace à long terme. Dans cette étude, et à titre d'exemple, il est frappant de constater qu'il ne semble y avoir aucun dialogue entre le CGRA et les centres d'accueil, alors que les deux institutions ont des obligations légales claires d'évaluer et de prendre en compte la vulnérabilité. La division rigide des tâches tout au long de la procédure et les différents rôles attribués aux diverses autorités compétentes empêchent l'établissement d'un canal de communication commun et efficient. Ce manque de communication empêche également une prise en compte continue, cohérente et un réel suivi des profils vulnérables tout au long du processus.

Enfin, ce rapport souligne que les conséquences attachées à la vulnérabilité varient pour les différentes instances impliquées dans la procédure d'asile. Dans certains cas, la vulnérabilité semble être une notion juridique dépourvue de conséquences concrètes. Cela conduit non seulement à un manque d'impact effectif de la notion de vulnérabilité dans les pratiques des acteurs de terrain (les conséquences concrètes de la qualification de vulnérable d'un demandeur d'asile restent floues), mais aussi à un manque de cohérence dans la manière dont la vulnérabilité est évaluée et prise en compte tout au long de la procédure. L'impact et le rôle de la vulnérabilité peuvent donc rester très variables et refléter une marge d'appréciation importante dans les pratiques des acteurs de terrain chargés d'évaluer la vulnérabilité.

## UITVOERIGE SAMENVATTING

De publicatie van dit onderzoeksrapport kadert in het EU Horizon 2020 VULNER onderzoeksproject ([www.vulner.eu](http://www.vulner.eu)). Dit project is opgestart vanuit de vaststelling dat de nood aan een aanpak van de verschillende soorten kwetsbaarheid van migranten in het asiel-en migratiebeleid erg groot is, en dit zowel op Europees als op mondiaal niveau. Dit blijkt ook uit het VN-Migratiepact en de daarin vermelde doelstelling n° 7 om 'kwetsbaarheden te verminderen' in migratiecontext, alsook uit de invoering op EU-niveau van kwetsbaarheidsbeoordelingsmechanismen in het kader van asiel-en grensprocedures en van hervestigingsprogramma's.

Echter, dergelijke beleidsdoelstelling dient gebaseerd te zijn op wetenschappelijke inzichten en analyses die een duidelijk en objectief beeld schetsen van de kwetsbaarheden die migranten ervaren. Indien dit niet het geval is, loopt men het risico dat deze kwetsbaarheden helemaal niet aangepakt worden, dat bestaande kwetsbaarheden verergerd worden of zelfs dat nieuwe kwetsbaarheden worden veroorzaakt.

De algemene doelstelling van het VULNER-project is dan ook om dergelijke wetenschappelijke kennis te produceren op een wijze die staten helpt bij het identificeren van geschikte strategieën om de 'kwetsbaarheden' van migranten te beoordelen, om tegemoet te komen aan hun specifieke behoeften en om stereotiepe opvattingen over hun levenservaringen te voorkomen. Het VULNER-project streeft er verder ook naar een bredere, meer diepgaande en meer kritische reflectie te ontwikkelen op het toenemende gebruik van 'kwetsbaarheid' als een wettelijke en beleidsmatige norm in de ontwikkeling en de uitvoering van migratiebeleid, alsook op de wijze waarop 'kwetsbaarheid' zich verhoudt tot overwegingen van grenscontrole die inherent zijn aan dergelijk beleid.

Dit onderzoeksrapport bespreekt enkele tussentijdse onderzoeksresultaten van het VULNER-project, die zijn gebaseerd op het onderzoek uit de eerste fase van het project. In deze eerste fase werden namelijk de mechanismen, die door de Belgische autoriteiten zijn ontwikkeld om de kwetsbaarheid van migranten te beoordelen, in kaart gebracht. Daarbij werd ook onderzocht hoe deze mechanismen op het terrein worden toegepast door de bevoegde ambtenaren.

De volgende onderzoeksvragen komen aan bod: Wat schrijven de relevante nationale wetgeving, jurisprudentie, beleidsdocumenten en administratieve richtlijnen voor over de wijze waarop "kwetsbaarheden" moeten worden beoordeeld en aangepakt in de bestudeerde landen? Hebben de betrokken overheids- en/of hulpinstanties een wettelijke verplichting om de kwetsbaarheid van migranten te beoordelen, en zo ja, volgens welke procedures, wanneer en hoe? Op grond van welke wettelijke en administratieve criteria? Hoe begrijpen en zien beleidsmakers (ambtenaren op straatniveau) de "kwetsbaarheden" van de migranten die ze dagelijks ontmoeten? Hoe pakken ze deze "kwetsbaarheden" aan in hun dagelijkse praktijken? Wat is hun standpunt ten aanzien van de bestaande wettelijke voorschriften voor 'kwetsbare' migranten? Welke wettelijke lacunes zijn er volgens hen?

Dit rapport hanteert een inductieve aanpak, waarbij we in eerste instantie de bestaande overheidsbepalingen van 'kwetsbaarheid' als juridisch en beleidsmatig concept hebben geanalyseerd. Deze focus op het wettelijke kader, vulden we vervolgens aan met interviews met beleidsmakers.

Dit is slechts de eerste fase in ons proces van gegevensverzameling. Momenteel voeren we etnografisch veldwerk uit in informele en door de staat beheerde migranten- en vluchtelingennederzettingen, met het oog op het verkrijgen van een meer verregaand inzicht in de manier waarop migranten zelf hun eigen kwetsbaarheid ervaren. Het doel is om te documenteren en te reflecteren over hoe deze ervaringen worden gevormd, en soms zelfs worden geproduceerd door de wettelijke kaders en staatspraktijken; hoe vluchtelingen en migranten hun gedrag aanpassen om binnen de bestaande kwetsbaarheidscategorieën te passen; en welke coping- en veerkrachtstrategieën ze daarbij ontwikkelen. Onze uiteindelijke doelstelling is om grondig en vanuit een kritisch perspectief na te denken over het toenemende gebruik van 'kwetsbaarheid' als norm die de ontwikkeling en uitvoering van het migratiebeleid op EU- en mondiaal niveau aanstuurt.

Dit rapport richt zich tot instellingen, actoren en organisaties die op verschillende niveaus betrokken zijn bij het Belgische beschermingsstelsel. Het kan een nuttig instrument zijn om meer inzicht te krijgen in de manier waarop kwetsbaarheden concreet worden beoordeeld en aangepakt doorheen de asielprocedure. Bewustmaking van de manier waarop kwetsbaarheid wordt geëvalueerd en behandeld in elke stap van de asielprocedure is relevant om de algemene efficiëntie van het systeem te verbeteren. Dit zou de autoriteiten en andere betrokken actoren immers in staat stellen om van elkaars respectievelijke praktijken te leren. Bovendien komt deze studie er op een moment waarop er, in het licht van het huidige voorstel om een nieuwe Belgische Migratiecode op te stellen, reeds veel aandacht wordt besteed aan het Belgische asiel- en beschermingsregime. Daarom zou dit onderzoek ook van belang kunnen zijn voor de deskundigen die betrokken zijn bij dit hervormingsproject, alsook voor de wetgevende macht.

In deze publicatie bespreken wij de asielprocedure in België in het kader van de wet van 15 december 1980 betreffende de binnenkomst, het verblijf, de vestiging en de verwijdering van vreemdelingen (Vreemdelingenwet), de wet van 12 januari 2007 betreffende de opvang van asielzoekers en andere categorieën vreemdelingen (Opvangwet), alsook hun uitvoeringsbesluiten.<sup>1</sup> Ook wordt ingegaan op de specifieke "duurzame oplossingsprocedure" voor voor niet-begeleide minderjarigen, zoals neergelegd in de artikelen 61/14 en 74/16, lid 2, van de Vreemdelingenwet. Met het oog op de beoordeling van de uitvoeringspraktijken zijn ook administratieve richtsnoeren geraadpleegd, zoals het *Ministerieel Besluit tot vaststelling van de deontologische code voor personeelsleden van opvangvoorzieningen voor asielzoekers of de Ministeriële Circulaire van 15 september 2005 inzake het verblijf van niet-begeleide minderjarige vreemdelingen*. Bovendien zijn de richtsnoeren en commentaren van de UNHCR geraadpleegd.<sup>2</sup> De combinatie van al deze documenten maakt het mogelijk om een volledig inzicht te krijgen in het Belgische asielsysteem in het licht van het internationale beschermingsregime, alsook om de uitdagingen op het vlak van

<sup>1</sup> Zie Koninklijk Besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen; Koninklijk Besluit van 11 juli 2003 tot vaststelling van de procedure en de werking van het Commissariaat-generaal voor de Vluchtelingen en de Staatlozen; Koninklijk Besluit van 25 april 2007 tot vaststelling van de nadere regels voor de beoordeling van de individuele situatie van de begunstigde van de opvang.

<sup>2</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Background Note on the Safe Country Concept and Refugee Status, EC/SCP/68, 26 juli 1991; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Commentaar van het Bureau van de Hoge Commissaris van de Verenigde Naties voor de Vluchtelingen (UNHCR) op wetsvoorstel 2548/003 tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen en de wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde categorieën vreemdelingen (hierna: Unicameral Bill [advies]), 4 oktober 2017; UITVOERING VAN HET PROGRAMMA VAN DE HOGE COMMISSARISSEN, Algemene Conclusie inzake internationale bescherming, nr. 87 (L), 50e zitting, A/AC.96/928, 8 oktober 1999; VN-COMITÉ VOOR DE BESCHERMING VAN DE RECHTEN VAN ALLE MIGRANTEN EN WERKNEMERS EN LEDEN VAN HUN FAMILIES (CMW), Gezamenlijk algemeen commentaar nr. 4 van het Comité voor de bescherming van de rechten van alle migrerende werknemers en hun gezinsleden en nr. 23 van het Comité inzake de Rechten van het Kind over de verplichtingen van staten met betrekking tot de mensenrechten van kinderen in de context van internationale migratie in landen van herkomst, doorreis, bestemming en terugkeer, 16 november 2017, CMW/C/GC/4-CRC/C/GC/23.

de evaluatie en de aanpak van kwetsbaarheden te identificeren.

Het veldwerk bestond uit zestig interviews met zowel de asielautoriteiten als het personeel van de opvangcentra. De bij de studie betrokken asielinstanties waren: Speciale Eenheid Minderjarigen en Slachtoffers van Mensenhandel (MINTEH) bij de Dienst Vreemdelingenzaken, het Commissariaat-Generaal voor de Vluchtelingen en de Staatlozen (CGVS), de Raad voor Vreemdelingenbetwistingen (RVV), de Arbeidsrechtbank, de dispatchingseenheid van Fedasil (Federaal agentschap voor de opvang van asielzoekers) en de Dienst voor Vrijwillige Terugkeer van Fedasil. Daarnaast interviewden we ook het personeel (directeuren, adjunct-directeuren, maatschappelijk werkers en medisch personeel) van acht opvangcentra die worden beheerd door Fedasil en het Rode Kruis. Bovendien is één interview gehouden met de directeur van Sürya (een centrum dat gespecialiseerd is in slachtoffers van mensenhandel) en met een maatschappelijk werker van een plaatselijk opvanginitiatief.

De keuze voor deze instellingen en opvangfaciliteiten gebeurde op grond van drie belangrijke redenen. Ten eerste, omdat het essentiële instellingen zijn die op specifieke momenten in het Belgische beschermingsregime ingrijpen. Ten tweede, omdat deze instellingen kwetsbaarheid identificeren en aanpakken in hun respectieve functies en dagelijkse praktijken (al dan niet als gevolg van een wettelijke verplichting). Ten derde, omdat ze gedurende de gehele procedure geconfronteerd worden met verschillende groepen kwetsbare personen (hetzij gedurende op dagelijkse basis en gedurende een lange tijdspanne voor opvangcentra, hetzij tijdens een korte hoorzitting voor de Raad voor Vreemdelingenbetwistingen).

Het juridisch onderzoek en het veldwerk hebben tot belangrijke bevindingen geleid:

- het gedeeltelijke/onvolledige toepassingsbied van de kwetsbare groepen die in de wet worden genoemd;
- de verschillen in aanpak tussen de verschillende actoren in het veld;
- het gebrek aan een (consistent) overleg tussen de verschillende autoriteiten en actoren die bij het Belgische beschermingssysteem betrokken zijn.

De autoriteiten en de hulpverleners op het terrein geven de voorkeur aan een aanpak waarbij de identificatie van de meest kwetsbare profielen onder de personen die bescherming zoeken *geval per geval* gebeurt. De in de wet vastgelegde groepen en categorieën worden door de actoren op het terrein gebruikt als een alarmbel om bijzondere aandacht te besteden aan bepaalde aanvragers, om rekening te houden met hun beschermings- en opvangbehoeften en, uiteindelijk, om hun beslissing te motiveren. In het algemeen leidt deze *geval per geval* aanpak tot een diffuus inclusief effect, omdat de behoeften van de aanvragers in de toekomst op passende wijze in aanmerking worden genomen. Echter, gelet op de ruime manoeuvreerruimte waarover de autoriteiten beschikken en het ontbreken van zowel substantiële richtlijnen van hogerop en als van een verplichting om de beslissing van onderuit te motiveren, bestaat er een reëel risico op zeer discretionaire beslissingen. Bovendien is het mogelijk dat een flexibele aanpak, net zoals zo'n aanpak inclusief kan zijn, gelijk wie kan uitsluiten van de kwalificatie 'kwetsbaar'.



Uit de studie die in België werd uitgevoerd, blijkt dat het identificeren en aanpakken van kwetsbaarheden op basis van categorieën mogelijk problematisch is, en dit om drie belangrijke redenen. Ten eerste is kwetsbaarheid een complex concept met vele facetten, dat in tijd en ruimte kan veranderen en evolueren. Aangezien kwetsbaarheid waarschijnlijk een intrinsiek kenmerk is van alle personen die bescherming zoeken en aangezien intersectionaliteit de regel is, moet kwetsbaarheid niet worden beoordeeld en aangepakt volgens een logica van aanwezigheid/afwezigheid, maar eerder in het licht van de verschillende lagen en gradaties van kwetsbaarheid. Ten tweede zijn de in de wet vastgestelde categorieën uiteindelijk niet allesomvattend. Er zijn bepaalde *groepen* die niet in aanmerking worden genomen – in het bijzonder (alleenstaande) mannen en jongvolwassenen (degenen die net achttien zijn geworden) – en ook bepaalde *factoren* die relevant zijn voor de beoordeling van kwetsbaarheid. De meest terugkerende en relevante factoren zijn onder meer de sociaal-culturele en sociaaleconomische achtergrond, alsmede de gevolgen van het migratietraject, de complexiteit van de asielprocedure en de harde werkelijkheid van het leven in de opvangcentra. Ten derde lijken de kwetsbaarheden die ter plaatse worden aangepakt de meest “praktische” kwetsbaarheden te zijn. Dit leidt tot een meer algemene overweging dat het in aanmerking nemen en het “beheren” van kwetsbaarheid lijkt te worden afgestemd op wat de staat kan doen in het licht van de economische en menselijke middelen waarover hij beschikt alsook van zijn politieke prioriteiten.

Verder toont het onderzoek nog aan dat er een gebrek is aan (consistente) communicatie tussen de verschillende actoren die bij de asielprocedure betrokken zijn, waardoor het proces om kwetsbaarheid vast te stellen, te beoordelen en aan te pakken gefragmenteerd is en op lange termijn mogelijk ondoeltreffend is. Opvallend is bijvoorbeeld dat er geen dialoog lijkt te bestaan tussen het CGVS en de opvangcentra, ook al hebben beide instellingen duidelijke verplichtingen om kwetsbaarheid te beoordelen en in overweging te nemen. De rigide taakverdeling doorheen de procedure en de verschillende rollen die aan de verschillende autoriteiten en actoren zijn toebedeeld, verhinderen dat er een gemeenschappelijk en vruchtbaar communicatiekanaal tot stand komt. Dit gebrek aan communicatie verhindert een voortdurende, samenhangende beschouwing en een echte *follow-up* van kwetsbare profielen doorheen de gehele procedure.

Ten slotte blijkt uit dit rapport dat kwetsbaarheid niet dezelfde gevolgen teweegbrengt bij de verschillende asielinstanties, en in sommige gevallen zelfs helemaal geen gevolgen heeft. Dit leidt niet alleen tot een gebrek aan *effectieve gevolgen* van het begrip kwetsbaarheid in de praktijk (de concrete gevolgen van de kwalificatie van een asielzoeker als kwetsbaar blijven onduidelijk), maar ook tot een gebrek aan *samenhang* in de manier waarop kwetsbaarheid in de procedure wordt beoordeeld en in aanmerking genomen. De impact en de rol van kwetsbaarheid kunnen dus zeer variabel blijven, met een grote beoordelingsmarge voor de besluitvormers die geacht worden kwetsbaarheid in de praktijk te beoordelen.



## **ABBREVIATIONS**

**CALL** Council for Alien Law Litigation

**CARDA** Centre d'Accueil Rapproché pour Demandeurs d'Asile (Specialized care reception centre for asylum seekers)

**CEAS** Common European Asylum System

**CeMAViE** Centre Médical d'Aide aux Victimes de l'Excision (Medical Help Centre for Victims of FGM)

**CGRS** Office of the General Commissioner for Refugees and Stateless persons

**CIRÉ** Coördination et Initiatives pour Réfugiés et Étrangers (Belgian non-profit association)

**CJEU** Court of Justice of the European Union

**CODE** Coördination des ONG pour les Droits de l'Enfant (Belgian non-profit association)

**CS** Council of State

**EASO** European Asylum Support Office

**ECtHR** European Court of Human Rights

**EMN** European Migration Network

**FGM** Female Genital Mutilation

**GAMS** Groupe pour l'Abolition des Mutilations Sexuelles féminines (Group for the Abolition of Female Genital Mutilation)

**IOM** International Organisation for Migration

**LGBTQIA+** Lesbian, Gay, Bisexual, Pansexual, Transgender, Genderqueer, Queer, Intersexed, Agender, Asexual, and Ally community.

**LRI** Local Reception Initiative

**MINTEH** Bureau Mineurs et Traite des Êtres Humains (Minors and Victims of Human trafficking special unit)

**OOO** Observation and Orientation Centre for unaccompanied children

**PCSW** Public Centre for Social Welfare

**UCLouvain** University of Louvain (Belgium)

**UM(s)** Unaccompanied Minor(s)

**UNHCR** United Nations High Commissioner for Refugees

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## I INTRODUCTION

The notion of “vulnerability” of applicants for international protection is not just an element of political discourse. It is a notion which has become key to the construction and development of an international protection system and has gradually found its way into legal texts. In 2016, the New York Declaration repeatedly addresses takes up the notion of vulnerability<sup>1</sup> with regard to the various problems that migrants face during their journey. From this perspective, the Global Compact for Safe, Orderly and Regular Migration recognises that situations of so-called vulnerability can arise at different stages of the migration journey, both in the country of origin and in the country of transit or destination<sup>2</sup>. It sets out a number of measures by which States commit to address “the needs of migrants in situations of vulnerability and to address the respective challenges”<sup>3</sup>.

The vulnerability of applicants for international protection is also reflected in European law. It is assessed in different stages and legal instruments of the Common European Asylum System (hereinafter, CEAS). Both Directive 2013/32/EU on common procedures for granting and withdrawing international protection<sup>4</sup> (hereinafter, Procedures Directive) and Directive 2013/33/EU laying down standard for the reception of asylum seekers<sup>5</sup> (hereinafter, Reception Conditions Directive) require Member States to assess and respond to the vulnerabilities of asylum seekers from the earliest stages of the procedure<sup>6</sup>. Some rulings of the Court of Justice of the European Union (hereinafter, CJEU) have assessed the “vulnerability” of applicants for protection to rule on the legality of their removal under the Dublin Regulation<sup>7</sup>.

While this concept is central, it is surrounded by pitfalls. Vulnerability is an essential element in the development of a comprehensive protection regime. However, the notion of vulnerability is also lacking in precision and its concrete scope is still undetermined because its meaning varies according to the context in which it is used. A robust international protection regime requires a deep understanding of the notion and its applications both practical and legal.

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1 See, for example, paragraph 11, paragraph 12 and paragraph 29 of the New York Declaration on Refugees and Migrants, A/RES/71/1, 3 October 2016.

2 See item 12 of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, A/CONF.231/3, Marrakesh, 10-11 December 2018.

3 *Ibid.*, item 13

4 COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)”, *Official Journal of the European Union*, 29 June 2013.

5 COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)” *Official Journal of the European Union*, 29 June 2013.

6 See chapter IV, Reception Directive and Article 24, Procedures Directive.

7 See COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)”, *Official Journal of the European Union*, 29 June 2013 (hereinafter, Dublin Regulation).

These elements raise the question at the heart of the VULNER research project: how does the law assess, address, shape and produce the vulnerabilities of protection seekers? With this question, this research combines two types of analysis. On the one hand, a legal angle, which attempts to analyse the mobilisation of vulnerability in Belgian law and in the case law of the Council for Alien Law Litigation (hereinafter, the CALL) and the Council of State (hereinafter, the CS). On the other hand, a social science analysis, through “field research” which gives a voice to asylum actors in order to understand how they perceive and use the notion of vulnerability in practice<sup>8</sup>.

How are these vulnerabilities defined and approached in doctrine, jurisprudence, legislation and administrative directives in Belgium? What is the margin of application for the actors responsible for implementing the law in the use of the notion of vulnerability? What consequences can be drawn from this use by asylum actors? How can we think about vulnerability beyond the categories of vulnerable persons established in European directives and Belgian law? These questions underlying the main research are all addressed in this report.

To answer the central question of this study and the others arising from it, this report is divided into three distinct parts. A first part on the methodological choices made in this research. A second part dedicated to the legal and policy framework. This second part aims at documenting how vulnerability is defined and identified in the Belgian asylum system through a systematic research and analysis of all references to the vulnerabilities of applicants for international protection, as well as their different definitions in existing legislation, administrative practices, policy documents, and case law of central asylum authorities. The third part analyses how the definitions of vulnerabilities in the Belgian asylum system are implemented in practice by actors responsible for applying the legal framework. The way in which vulnerabilities are defined and approached in the Belgian asylum system cannot only be understood in depth by means of a study focusing on the law and the scientific literature dealing with the notion. Implementing actors have a margin of interpretation in their day-to-day implementation of the law which deserves to be studied. Those involved in the asylum procedures also identify, experience and address vulnerability in their daily routine in a way that can differ from what is established in the law. Interviews were conducted with these actors to gather their experiences in this area. They are analysed in the third part of the report.

This report aims to reach out to the institutions, actors and organisations involved at different levels in the Belgian protection system. It can be a useful tool to highlight how vulnerabilities are concretely assessed and addressed throughout the asylum procedure. Raising awareness of how vulnerability is assessed and addressed at each stage of the asylum procedure is relevant to improving the overall efficiency of the system. Indeed, it would allow authorities and actors involved in the protection regime to learn from each other’s practices. Furthermore, this study comes at a time when more attention is being paid to the Belgian asylum and protection regime with the current proposal to establish a Belgian Migration Code. Therefore, this research could also be of interest to the experts in charge of this reform project as well as the legislature.

The confrontation between what the law says and what the field reveals makes it possible to obtain a more global but also more nuanced approach to vulnerability, to its potential but also, to the practical difficulties it poses. These three parts are followed by a general conclusion setting out the lessons to be learnt from the results obtained.

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<sup>8</sup> This first VULNER report only includes interviews with actors playing a role in the asylum procedure (Judges, civil servants, social workers). The second VULNER research report will also give a voice to the asylum seekers themselves.



## II. METHODOLOGY

### 1. Introduction

The present report aims at analysing how the concept of vulnerability of protection seekers is defined, assessed and addressed in the legal framework as well as in the policy documents and in the administrative guidelines within the Belgian context. It aims also at documenting and examining how the vulnerabilities of protection seekers are understood and addressed by the decision-makers, civil servants and social workers. The analysis of vulnerability in asylum enabled us to create the design of an intelligible theoretical framework that “channels” the complexity of the subject discussed. This report is based on data collected through a combination of legal and empirical research methods. This section proposed to explain the methodological choices.

#### 1.1. Legal analysis and desk research: the protection of the vulnerables through the Belgian asylum system

The first part of this report tends to identify how vulnerability is enshrined Belgian law, both in hard legal sources (legislation and court cases) and soft legal sources (administrative guidelines and policy documents), in light of the EU standards established (in particular in the Procedures Directive and the Reception Conditions Directive)<sup>9</sup>.

Systematic analysis of the various legal and administrative instruments composing the asylum process in Belgium has been done. Hard legal documents such as European Directives, Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals<sup>10</sup> (hereinafter, the Aliens act) and implementing regulation relating to the inclusion of vulnerability within the asylum procedure have also been examined. The durable solution procedure for minors, as enshrined in Articles 61/14 and 74/16 paragraph 2 of the Aliens Act, has also been examined. Other soft law documents, such as guidelines and recommendations from the United Nations High Commissioner for Refugees (hereinafter, UNHCR) commenting on Belgian legislation, have been used to critically approach the notion of vulnerability. Other documents such as comments and observations from NGOs dealing with migration issues have also been analysed. Subsequently, case laws from Belgian asylum Courts (the Council of State – hereinafter, the CS – and the Council for Alien Law Litigation – hereinafter, the CALL–) have been analysed.

Various cases from the **Council for Alien Law Litigation** have been selected for this study mainly from 2019 and 2020. They are all made public and contain a motivation. These are cases dealing with a specific group of vulnerable people as established by the Belgian and European legal framework<sup>11</sup>.

Within these categories, other cases have also been selected as they deal with multiple vulnerabilities,

9 COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)”, *Official Journal of the European Union*, 29 June 2013; COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)” *Official Journal of the European Union*, 29 June 2013.

10 Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals, *Belgian Official Journal*, 31 December 1980, and subsequent amendments.

11 These cases deal with women (single women and women with children), LGBTQIA+, minors and unaccompanied minors (hereinafter, UM(s)).

but also other types of vulnerability than the ones enshrined in Law<sup>12</sup>. The **Council of State** publishes its judgments and decisions on non-admissibility in digital form. One exception to this rule concerns judgments and decisions on non-admissibility dealing with the application of immigration law, which are only published when they have an impact on the jurisprudence or are important to legal research. The cases selected deal with: minors, multiple vulnerabilities and relationships between vulnerabilities and the notion of “safe country of origin”. This analysis also wants to show the gradual consideration of vulnerability as a factor to be assessed by the Council of State.

### 1.2. Implementing practices: the way vulnerabilities are assessed and addressed by decision-makers, civil servants and social workers

Vulnerability and its complexity cannot be fully apprehended only through legal desk research. It must be analysed through the experience and realities of the asylum institutions and actors on the ground, abiding by the law and implementing what laws foresee (or not). By their positions and experience, actors interviewed in this research can be considered “experts” dealing with vulnerability in the field of our research, in their daily work. In total, 60 interviews have been conducted from July to October 2020, in Belgium. From these interviews, 10 have been conducted in English, 50 in French. The data collected, namely experts’ positions, assessment or experience, must be built and generated with the help of a specific instrument, **semi-structured interviews**<sup>13</sup>, which form the core of this qualitative, inductive research. The qualitative inductive approach used in this research, as well as semi-structured interviews as an instrument to implement it, are relevant in this research-perspective as it allows flexibility<sup>14</sup>.

These experts’ interviews are very different from interviews focusing on a representative sample of the population. The goal of this qualitative method is to select those who are likely to provide the most relevant information connected to our topic. Some key actors had already been identified by the initial proposal for the VULNER project, but some who were deemed to be relevant were added during the fieldwork<sup>15</sup>. This was done in a perspective to develop our sample and cover all the variables around the research question of this study. The notion of representativeness here is therefore very different than the one in quantitative research, as it should not be understood statically. In that sense, rather than being selected for reasons connected to statistics, the people interviewed have been recruited because they can bring light to the practices being studied and generate enough data to answer the research question.

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12 We warmly thank all the people who agreed to take part in the interviews. This report would not exist without their contributions. A special thanks goes also to Julie Lejeune, Director of Nansen, for her comments and insightful suggestions.

13 The main goal of our interviews was to collect data on how the vulnerabilities of the protection seekers are understood and addressed by the relevant decision-makers in their everyday practices. To reach this objective different interview grids have been designed to be adapted to each category of actors interviewed. The topics covered during the interviews included: interviewees’ perception and definition of vulnerability in asylum, existence and influence of other types of vulnerability (socially constructed or created by the asylum procedure itself), abuse and strategies connected to vulnerability, resilience and criticisms as well as proposal for improvement. The interviews have been transcribed with the help of a specific program (Dragon) and of the students of the *Université Catholique de Louvain*. Then, the interviews have been coded, without using any specific program, but identifying the main themes and sub-themes, in light of the research questions and other relevant topics identified through fieldwork. The extracts cited in the present report, from the interviews conducted in French, have been translated by the authors. Any errors remain ours alone.

14 An *inductive approach* does not settle preconceived ideas or theories that must be matched by facts. It allows the research to be more than just an “illustration–confirmation” process. *Semi-structured interviews* allow the researcher to ask a series of relatively open-ended questions, which allow the interviewee to speak openly, in the words of the person concerned.

15 We systematically asked staff in the Red Cross and Fédasil centres we have been visiting whether they had any contact with another centre located in Flanders but never got any positive answer. We finally managed to get in touch with one Flemish centre located in Broechem, near Antwerp, whose contact was given to us by Fédasil. Another Fédasil centre also agreed to participate in the interviews at a later stage. Due to time constraints, these interviews have not been conducted so far.

### 1.2.1. Semi-structured interviews

#### **a) Features and characteristics of the interviews and key actors selected**

The interviews have generally been conducted at the workplace of the participants (namely at their office or at the reception centres)<sup>16</sup>. Some of our interlocutors have preferred to stay anonymised. Our analysis therefore does not include direct citations that could be assigned to one specifically identifiable person interviewed who refused to be so, but remains more connected to a “job function” (for instance, a social worker at a reception centre). Some interlocutors (only two of them) refused to be recorded.

#### **b) Fieldwork challenges**

Difficulties have been faced during the implementation of these interviews. They are described in the following points: **a)** difficulties *to get in touch* with some institutions (the Council of State, for instance, did not reply to our request and this report could not be based on interviews with Counsellors from the CS); **b)** *availability, time and COVID-19* constraints: people selected often postponed the interviews planned due to availability reasons. Interviews conducted in summer (July and August) were also postponed due to the fact that (most of) the Belgian administration is in official recess during this period of the year. During the interviews with social workers, some issues also came up due to fact that they were busy working in the centre (time constraints, disrupted interviews). This context is part of the interviews and helps us to understand better what the reality of the social workers is, working with vulnerable people on the ground. It is also part of our data and it is considered as such to support or assumption in some parts of this report, discussing the fact that centre staff lacks the time to properly address vulnerabilities. Finally, COVID-19 restrictions, coupled with time constraints, also led to difficulties to get more interviews with some institutions (within the Labour Court, for instance); **c)** *lack of connection with the Flemish* part of Belgium: it has been very difficult during our interviews to get in touch with reception centres located in Flanders<sup>17</sup>; **d)** *administrative constraints*: before conducting the interviews at the Fédasil reception centres, we first had to meet the Fédasil main office in Brussels to explain our research and project. After one meeting and some subsequent contacts by emails, they agreed that we conduct the interviews within the centres and gave us some info about specific centres we could go and visit, in Wallonia and Flanders; **e)** *Mistrust*: some actors negotiated the terms of the interview by asking to have access to the full content of the interviews and to be able to take a look at the report before it was published<sup>18</sup>. It was not uncommon for these actors to have had a bad experience in the past and to be suspicious of the use our team might make of their data, particularly with regard to sensitive topics.

#### **c) Interviews and interlocutors**

Interviews included actors playing a role in the asylum procedure from four different categories: 8 Judges, 12 civil servants from the Belgian administrations, 36 social workers, 4 medical staff (nurses). Their role and functions will be described in the following points.

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<sup>16</sup> In these cases, only the excerpts from their interviews directly used in the final report were provided.

<sup>17</sup> The interview was firstly not supposed to deal with this procedure as our request was to discuss vulnerabilities *within* the asylum procedure. Yet this procedure turned out to be a relevant subject to discuss as: it is a unique procedure implemented in Belgium; vulnerability plays a role in the assessment of what could be a durable solution for unaccompanied minors; the interlocutors had a lot of experience implementing this procedure (this was also where the interview led us to).

<sup>18</sup> Contact with other members of the dispatching unit remained unanswered.

**1) Judges.** In the Council for Alien Law Litigation, 7 Judges were interviewed, three of them being Dutch-speaking. Among the 7 Judges interviewed, 2 were exclusively dealing with migration cases and Dublin cases while the others were treating asylum cases only. Another Judge from the Labour Court of Liège was interviewed.

**2) Civil servants.** At the CGRS, 11 protection officers (public servants deciding on asylum applications) were selected to participate in the interviews, 3 being Dutch speaking. The protection officers had received specific training either on gender issues (like forced marriage or sexual violence) or on minors and unaccompanied minors (hereinafter, UMs). One protection officer/supervisor (supervising the work of other protection officers during the hearings) has also been interviewed. At the Immigration Office, the Minors and Victims of Human Trafficking Special Unit (*Bureau Mineurs et Traite des Êtres Humains*, hereinafter MINTEH), also called the “vulnerable” unit, have been interviewed. The interview dealt, among other things, with one specific procedure existing for minors in Belgium called the “Durable solution”. This procedure is only applicable for those minors who do not claim asylum or for those who received a negative decision at the end of their asylum procedure<sup>19</sup>.

**3) Social workers** in the *dispatching service* (one former employee)<sup>20</sup> and in the *reception centres* (8 reception centres have been selected in this research, 4 from Fédasil<sup>21</sup> and 4 from the Red Cross<sup>22</sup>). These centres have not been chosen at random. They have been selected for three reasons: a) the variety of the public welcomed (unaccompanied minors, single men and women, families), b) the geographic locations (remote village, middle-sized town, Capital city), c) specificities of certain centres (emergency centre and first arrival centre (Petit-Château)<sup>23</sup>). Each Director and/or Deputy Director has been met, except for Broechem Centre. Besides the Directors, interviews were conducted with different profiles of social workers, namely: social assistants (Rocourt, Jette, Rixensart, Broechem, Sugny); “referees” for unaccompanied minors (Jette, Uccle); individual coaches or “*Accompagnateur individuel*”<sup>24</sup> (Broechem, Rocourt, Ans); and multipurpose employees or “*Collaborateur polyvalent*”<sup>25</sup> (Ans, Rocourt, Broechem, Jette, Uccle). Social workers play a prominent role in our research, as they constitute the most represented category of people interviewed in our sample. Our research does not only focus on vulnerabilities intrinsic to the asylum seekers but also on those *created and maintained* by the procedure and the asylum system *itself*. The reception centres, as we went through our interviews, turned out to be the places that created vulnerabilities, which we thought should be analysed in depth. Those are also the place where people spend a major part of their asylum procedure, as they can stay at the reception centres for months, even years, pending a decision. Life in the centre proved to be a real *vector* of vulnerability but also an amplifier of pre-existing vulnerabilities. This waiting period also creates a unique context in which vulnerabilities develop and can be noticed by social workers. They had therefore a lot to say as, firstly, they work with a public that is *priori* vulnerable on a daily basis, over a long period of time. Secondly, they are part of a structure (the reception centres) and a procedure (the asylum process in which they intervene as providers of accommodation) that can produce or reinforce the vulnerabilities of this public. The inter-

19 Petit-Château (Brussels), Rixensart (Wallonia), Sugny (Wallonia), Broechem (Flanders).

20 Uccle (Brussels), Jette (Brussels), Rocourt (Wallonia), Ans (Wallonia).

21 Petit-Château is the only centre that we did not go to visit in person due to COVID-19 restrictions.

22 This is the official denomination given by the Belgian Red Cross.

23 *Ibid.*

24 The interview with the nurse from the Rixensart reception centre has been cancelled at the last minute on the day of the interview. Nurses in centres are very busy and it is not so easy to get an interview from them.

25 61 people were interviewed out of the 60 interviews conducted (one interview was conducted with two participants). For the purposes of this report, the interview conducted with the resettlement programme coordinator at Fédasil is not used, but will be for future work.

views conducted with social workers were very rich and resourceful. They justify a significant part of this research being devoted to them. Beside the reception centres, one interview was also conducted at a specific centre specialised in victims of human trafficking, called Sürya, in Liège. This centre offers temporary shelter and accommodation in a private house or supervised apartment for a limited period of time. Sürya helps the victims to overcome the situation they have experienced and the traumas they have suffered, and to develop plans for their future. The aim of the centre is also to ensure that the rights and interests of the victims are defended during the legal proceedings.

**4) Medical staff (nurses)** turned out to be key people to interview. Our research reveals that they play a role within the reception centres that goes well beyond dealing with health issues, that they seem to be the “referees” to deal with asylum’s seekers vulnerabilities, even when these are not strictly connected to medical issues. They endorse lots of responsibility in identifying and dealing with vulnerable profiles at the centres. We have been interviewing nurses directly working at a specific centre (3), but also one “relief nurse” who moves from one centre to another to help in the medical work when needed as well as to listen to the needs of the nurses in the reception centres, who are generally alone in their work<sup>26</sup>.

Summary table of all the interviews conducted

Actors and institutions interviewed	Number of people interviewed <sup>27</sup>	Job/functions	Language
<b><u>Social workers</u></b>			
Dispatching unit	1	Former employee at “the info point” of Fedasil Dispatching	French-speaking
Reception centres	Red Cross: 4 centres, 20 people Fedasil: 4 centres, 13 people	Director, deputy director, social assistant, “referee for unaccompanied minors”, multipurpose employee	1 centre Dutch-speaking, 7 centres French-speaking
Voluntary return service	2	Voluntary return coordinator	French-speaking
LRI	1	Social assistant	French-speaking
<b><u>Medical staff (nurse)</u></b>			
Nurse working for a specific centre	3 (Broechem, Ans, Jette)		1 Dutch speaking, 2 French-speaking
“Relief nurse”	1 (working in Uccle and Jette, among other centres)		French-Speaking
<b><u>Civil Servants</u></b>			

<sup>26</sup> The interview with the nurse from the Rixensart reception centre has been cancelled at the last minute on the day of the interview. Nurses in centres are very busy and it is not so easy to get an interview from them.

<sup>27</sup> 61 people were interviewed out of the 60 interviews conducted (one interview was conducted with two participants). For the purposes of this report, the interview conducted with the resettlement programme coordinator at Fedasil is not used, but will be for future work.

Protection officers	10		3 Dutch-speaking, 7 French-speaking
"MINTEH" civil servants	2		1 Dutch-speaking, 1 French-speaking
<b><u>Judges</u></b>			
Labour Court	1		French-speaking
CALL	7		3 Dutch-speaking, 4 French-speaking
<b>Total</b>	60		

### III. LEGAL AND POLICY FRAMEWORK

#### 1. Introduction

This legal report proposes to analyse how the notion of “vulnerability” is used and defined in Belgian asylum Law through the systematic analysis of all references to vulnerability and associated terms. This analysis focuses on the current Belgian legislation as well as on the policy documents of the administrations responsible for implementing the asylum procedure. It also includes and analyses case law from the Council for Alien Law Litigation (the main asylum Court in Belgium) and the Council of State.

In order to answer the central question and the underlying issues this document raises, it is divided into seven parts, following the stages of the asylum procedure. To facilitate the understanding and reading of the reader who would not be familiar with the Belgian asylum procedure, a diagram of the Belgian asylum system has been added at the beginning of this report.

In a nutshell, **three main stages** can be distinguished in the asylum procedure under Belgian law:

- The first step is to determine, on the basis of the Dublin Regulation, whether Belgium is the State responsible for examining the application. The administration in charge of this operation is the Immigration Office.
  - The second step is to determine whether the applicant needs international protection. The administration in charge of this operation is the Office of the Commissioner General for Refugees and Stateless persons.
  - The third step is potential appeal against a decision to deny protection. This appeal can be lodged by the asylum seeker and his or her Lawyer at the Council for Alien Law Litigation.
- A fourth step may in some rare cases occur. This is an appeal in “administrative cassation” to the Council of State against a decision from the CALL.

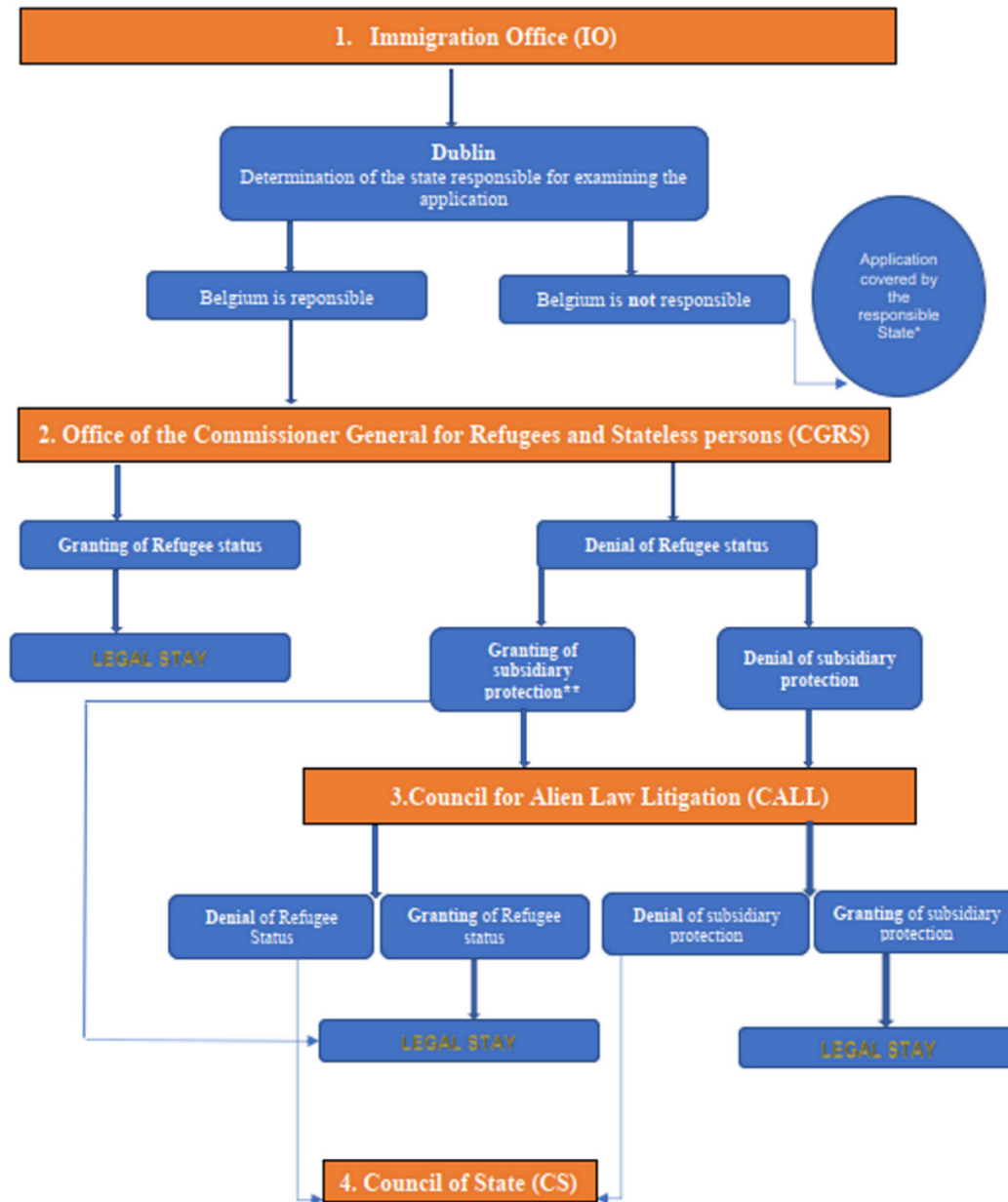
This report examines, in that order, the way vulnerability is identified and addressed: in the *submission of the asylum application* (section 2); in the *determination* of the State responsible for examining the application (section 3); in the *reception* and the granting of material assistance (section 4); in the *examination of the application for protection* (section 5); and finally, in the possible *appeals* before the asylum Judge (section 6) as well as in front of the Council of State<sup>28</sup> (section 7). In each of the first four stages, this report considers what Belgian law provides to identify, assess and address vulnerability at each step of the asylum procedure. In the last two stages, this report deals with case-Law analysis and discusses how asylum Judges assess vulnerability and take it into account. These sections are followed by a conclusion.

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<sup>28</sup> These last two parts on “appeal” deal with case law analysis from the CALL and the CS.



**ASYLUM PROCESS IN BELGIUM**



\*The application of Dublin and the assumption of responsibility by another Member State can be contested before the CALL (annulment procedure). For reasons of legibility and simplicity, this possibility is not included in the above diagram.

\*\***Subsidiary protection** is protection granted to an alien who cannot be recognised as a refugee but for whom there are nevertheless serious reasons to believe that he or she would face a risk of serious harm if returned to his or her country of origin.

## 2. Filing an application for international protection in Belgium: how is vulnerability assessed?

The asylum application can be submitted in *three ways*. Firstly, the application for protection can be made **at the border**. A foreigner who arrives on Belgian territory without the necessary documents to enter must submit his application without delay by getting in touch with the authorities. Secondly, the application for protection can be filed **on the territory** (the foreigner has entered legally or illegally)<sup>29</sup>. Thirdly, the application for protection can be submitted **from a detention centre or a prison**. In this case, the foreign national must submit their application for protection to the director of the centre or prison in which they are detained. The director will forward this application to the Immigration Office for registration.

The vulnerability of the asylum seekers is already identified and considered in the submission of an asylum application. In this sense, Article 24 of the 2013/32/EU Directive on common procedures for granting and withdrawing international protection has been transposed into the new Article 48/9 of the Aliens Act<sup>30</sup>. This provision deals with the identification of vulnerability when applying for asylum, but also with the examination of the application later on, which is aimed at determining whether the applicant for international protection has special procedural needs<sup>31</sup>.

Various elements should be mentioned with regard to the identification of the applicant's vulnerabilities at the time of the application for protection. Special procedural needs can be assessed in two different ways in Belgium.

Firstly, vulnerability can be identified by means of **a questionnaire**. Article 48/9(1) provides that the asylum seeker may state in a precise and detailed manner in a questionnaire the elements that justify their special procedural needs. The explanatory memorandum of the Act of 21 November 2017, explaining the intention of Parliament in writing this provision, justifies the use of the questionnaire by stating that the applicant is expected to take responsibility for mentioning their vulnerabilities<sup>32</sup>. By introducing this questionnaire, the legislator expects the applicant to cooperate in collecting information concerning their application. This questionnaire is seen as a first means for the applicant to express and record these elements in writing so that appropriate measures can be taken. It is therefore a first opportunity for the applicant to put forward their special procedural needs. If these are not clearly met, established and demonstrated, the applicant will not benefit from any special procedural measures.

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29 Two situations must be distinguished: either the foreigner has just arrived in Belgium. In this case, if he or she has entered illegally, his/her application must be submitted within 8 working days of his arrival. If he or she entered legally, with a visa (of the short-stay type), the application must be submitted before the expiry of the visa. See more in: CARLIER J-Y., SAROLEA S., *Droit des étrangers*, Brussels, Larcier, 2016, page 488.

30 Law of 21 November 2017 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (Aliens Act), Article 48/9, *Belgian Official Journal*, 12.03.2018.

31 It should be noted, in terms of the choice of words, that the Directive refers to applicants "requiring special procedural guarantees" while Article 48/9 deals with applicants with "special procedural needs".

32 Draft law amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners, *explanatory memorandum*, Doc., Ch., 2016-2017, No. 54 2548/001, page 55.

The Office of the United Nations High Commissioner for Refugees highlighted the initiative to set up a questionnaire. However, it perceives some weak points in it. Thus, the UNHCR regrets that this type of questionnaire does not allow a complete assessment of the specific needs of the applicant. In this sense, the UNHCR recommends a “holistic” assessment, possibly carried out in several stages over a longer period of time with the help of qualified staff<sup>33</sup>. Furthermore, the UNHCR recommends that this examination should be carried out even *before* the application is submitted, *as soon as it is presented* (in other words, as soon as the applicant announces their intention to apply for asylum on the territory)<sup>34</sup>.

Also, it is interesting to highlight the conflict of “temporality” that can arise from the use of instruments such as this questionnaire. While it is important for the legislator that vulnerabilities are identified and verbalised as early as possible with the active assistance of the applicant, it may also be appropriate for the applicant themselves to be given more time, with subsequent advice, to clearly identify any special needs they may have. There may therefore be a time lag between “procedural” time (ideally as brief and brisk as possible) and “human” time (or the reflection on special procedural needs that takes longer than the time required to complete a questionnaire). At the same time, taking the time to identify all one’s potential vulnerabilities and needs is also likely to result in a longer period of indeterminacy, without status, and further delay in the commencement of a sometimes criticised lengthy asylum procedure.

Secondly, vulnerability can be identified by means **of a medical examination**. Article 48/9(2) therefore provides for another way of examining whether there are procedural needs. Indeed, the Article stipulates that a professional health care practitioner, designated by the Immigration Office, may make recommendations about any special procedural needs that an applicant may have<sup>35</sup>. To this end, a medical examination is conducted. If the recommendations provided by the medical practitioner relate to medical information, this information can only be transmitted prior to the consent of the applicant for international protection<sup>36</sup>.

The UNHCR welcomes the possibility of conducting a medical examination to assess the special procedural needs of applicants. It considers that this examination “[...] is based primarily on present effects and not on signs of past persecution or serious harm”<sup>37</sup> and is therefore adequate to detect the current special procedural needs of applicants. Moreover, the UNHCR believes that this review may lead to a “more rapid and earlier”<sup>38</sup> consideration of these same needs. Paragraph 3 of Article 48/9 states that the applicant may report elements to the CGRS at a later stage of the procedure<sup>39</sup>. The UNHCR also welcomes

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33 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on Bill 2548/003 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners (Unicameral Bill) [opinion], 4 October 2017, point 25.

34 *Ibid.*, point 27.

35 See Article 48/9, paragraph 2 of the Aliens Act.

36 The explanatory memorandum of the law specifies that the medical civil servant must be a medical expert within the meaning of Royal Decree No. 78 of 10 November 1967. See draft law amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners, *op.cit.*, page 56.

37 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on Bill 2548/003 amending the Act of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners and the Act of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, point 28.

38 *Ibid.*

39 See Aliens Act, Article 48/9, paragraph 3.

this possibility, recalling that reasons such as “shame or lack of confidence”<sup>40</sup> may prevent applicants from revealing some of their experiences at the beginning of the procedure. The UNHCR mentions that this type of reaction is particularly noticeable in the case of vulnerable profiles such as persons who have been the victims of torture, rape or any other form of psychological, physical or sexual violence<sup>41</sup>.

The assessment of special procedural needs will remain valid if a foreigner submits a subsequent application. The explanatory memorandum of the Law of 21 November 2017 justifies this in view of the short deadlines for processing subsequent applications, which do not justify a new assessment<sup>42</sup>. The procedural needs of the applicant may still change and the CGRS may recognise that the applicant does not have (or no longer has) the same procedural needs as before. To this end, the explanatory memorandum cites, for example, the case of an unaccompanied minor who was a minor when they filed their first application and who would no longer be a minor when they filed the second one<sup>43</sup>.

Article 48/9, paragraph 7, subparagraph 3, provides for an exception to this rule. It allows the applicant to include in their second statement elements relating to any special procedural needs they may have, even if they had been assessed as not having any in the previous assessment. The UNHCR emphasises in this regard that if the applicant’s situation has changed between the first and second application, the special procedural needs of the applicant should be reassessed<sup>44</sup>. Such an assessment, according to the UNHCR, should correspond to the criteria and standards of the initial assessment (i.e. it should be multi-disciplinary, holistic and ideally conducted in several stages by competent and qualified staff)<sup>45</sup>.

It should also be noted that the Law of 21 November 2017 guarantees that an applicant for international protection with special procedural needs that are not compatible with the accelerated procedure (namely, one specific procedure applying in certain cases with restricted deadlines)<sup>46</sup> will not be subject to this procedure. However, the explanatory memorandum of the law specifies that this is not an automatic measure: an applicant whose needs would be incompatible with this type of procedure will not be sys-

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40 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Bill 2548/003 amending the Law of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, point 29.

41 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Bill 2548/003 amending the Law of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, point 29.

42 Draft Law amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners, *op.cit.*, page 60.

43 *Ibid.*

44 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Bill 2548/003 amending the Law of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, point 31.

45 *Ibid.*

46 In this type of procedure, the CGRS has a maximum of 15 working days to decide on the application.

tematically excluded. If “adequate support” (e.g. an interpreter and a protection officer of the same sex as the applicant, certain accommodations for medical reasons, etc.) exists, the applicant may be entitled to the accelerated procedure. The UNHCR, in its commentary, regrets that this provision is not automatically applicable<sup>47</sup>.

## 2.1. COVID-19 impact on lodging and asylum application: creating further vulnerabilities?

The vulnerability of asylum seekers may sometimes result from the absence or suspension of opportunities to lodge an asylum application in times of the saturation of the reception system. In the Belgian case, various examples have shown how the policies implemented (or the absence of their implementation) have contributed to creating new vulnerabilities for already vulnerable applicants. The current coronavirus crisis is one of them. It has had immediate consequences on the submission of asylum applications. In March 2020, for health reasons and social distancing, the Immigration Office decided to limit the number of asylum applications registered, which again made it impossible for many people to submit their application for international protection<sup>48</sup>. In its press release, the Immigration Office states that “priority will therefore be given to the most vulnerable asylum seekers, such as unaccompanied minors, families with children or sick people”<sup>49</sup>, without however specifying the number of registrations that may be submitted. Vulnerable persons are therefore considered to be priority and their application must be examined first. Questions may then arise as to the ability of the Belgian State to reconcile the health imperatives of the pandemic with its international asylum obligations.

In Belgian asylum policy, other periods of saturation of the reception network may have increased the vulnerability of asylum seekers in applying for asylum.

Firstly, in 2015, faced with a large influx of asylum seekers from Syria, Iraq and Afghanistan, the Belgian government decided to impose a limit on the submission of asylum applications to 250 per day. This cap dropped to 60 in February 2016. Very quickly, Belgian reception structures reached their saturation point and Belgium could no longer meet the reception objectives it is bound to under European provisions to provide adequate accommodation during the procedure. This saturation of reception services led to two types of action: on the one hand, *formal, government action*. From July 2015, emergency reception places were created<sup>50</sup>. On the other hand, it led to *informal, collective and citizen action*: the Citizen Platform for Refugee Support, “Bxl Refugees”, was created in September 2015. It defines itself as “a space for meeting

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47 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Comments of the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Bill 2548/003 amending the Law of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, point 30.

48 See THIENPONT P-Y., “Coronavirus: l’Office des étrangers limite dès lundi le nombre d’enregistrements des demandeurs d’asile”, *LeSoir*, 15 March 2020, available at: <https://www.lesoir.be/287301/Article/2020-03-15/coronavirus-loffice-des-etrangers-limite-des-lundi-le-nombre-denregistrements> [accessed 15 December 2020].

49 *Ibid.*

50 The Council of Ministers launched a first temporary increase in reception by adding 2,500 places. In August 2015, 6,000 additional places were planned. Mobile accommodation was set up as a reinforcement in 13 federal reception centres. In October 2015, a first reception centre managed by a private operator was created and 4000 new places were granted by the Council of Ministers. On 28 August, the Government agreed to a further 6,600 places. From 48 centres in July 2015, Belgium had 90 in December of the same year. See FÉDASIL, *Bilan 2015 accueil des demandeurs d’asile et retour volontaire* [Report], June 2016, page 5 and onwards.

and coordinating individual and collective initiatives concerned with migration issues<sup>51</sup>. Since 2015, the platform has provided adapted reception (in particular, by creating specific adapted reception places, such as the Sisters' House, the exclusively female accommodation facility of the Citizen Platform for Refugee Support) and responded to requests for assistance and information from people exiled.

This reception crisis has not remained without legal consequences for the Belgian State. In its decision, **R.G. No. 2015/KB/5 of 7 December 2015**, the Brussels Labour Court obliged the Belgian State to grant material assistance to an underage asylum seeker, deprived of any assistance on the grounds that his asylum application had not yet been registered with the Immigration Office. In its judgment, the Court emphasised that the absence of registration of the asylum application cannot be a ground for refusing to grant material reception conditions. The State cannot, *at the same time*, delay the registration of asylum applications, restrict their number to a daily quota and, *at the same time*, refuse the granting of material assistance<sup>52</sup>.

Secondly, in November 2018, the practice of suspending the submission of asylum applications was repeated. Theo Francken, the Secretary of State for Asylum and Migration, decided to limit the number of asylum applications to sixty per day. He justified this in the wake of the increase in registered asylum applications and in a desire to avoid a crisis situation similar to that of 2015, threatening to put the Belgian reception system under pressure. It is interesting to note the secretary's arguments: priority in the introduction of asylum applications was given to so-called *vulnerable* persons (sick, disabled, unaccompanied minors)<sup>53</sup>. However, the interpretation of "vulnerable" and priority persons proved to be complex, when the CGRS indicated that the increase in the migration flow was mainly due to the massive arrival of Palestinian nationals fleeing the Gaza Strip. How can we distinguish who is vulnerable *among the vulnerable*, in this configuration and, above all, what are they *vulnerable to*?

The Council of State, in its judgment **No. 343.306 of 20 December 2018**, ordered the suspension of the execution of the decision of the Secretary of State for Asylum and Migration, on the grounds that it made access to a fundamental right (i.e. effective access to the asylum procedure) excessively difficult<sup>54</sup>. It is interesting to dwell on the Council of State's comments in this judgment: the CS appreciates the vulnerability in which asylum seekers are immersed, beyond their own characteristics. Thus, the Council of State takes into account the fact that several foreigners who go to the Immigration Office for the first time to submit an application for international protection are turned away, sometimes present in vain for several days in a row. It says, between the lines, that what makes them vulnerable is the lack of status due the impossibility of applying (and thereby, to guarantee a dignified reception, an individual examination and procedural guarantees).

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51 See the website: <https://www.bxlrefugees.be/en/> [accessed 15 December 2020].

52 See Labour Court Brussels, 7 December 2015, R.G. No.2015/KB/5.

53 See BELGA, "Les demandes d'asile augmentent, Theo Francken décide de les limiter à 60 par jour", *RTBF online*, 23 November 2018, available at: [https://www.rtbf.be/info/belgique/detail\\_les-demandes-d-asile-augmentent-theo-francken-decide-de-les-limiter-a-60-par-jour?id=10080081](https://www.rtbf.be/info/belgique/detail_les-demandes-d-asile-augmentent-theo-francken-decide-de-les-limiter-a-60-par-jour?id=10080081) [accessed 17 December 2020].

54 See C.S., 20 December 2018, No. 343.306, point 19.



### 3. Identifying the State responsible for the examination of asylum protection: the Dublin mechanism and the consideration of the asylum seeker's vulnerability

Once the application has been submitted, the Immigration Office will proceed to determine the State responsible for the application for international protection under the Dublin Regulation. Two configurations are therefore possible:

- Either Belgium **is the State responsible for the application**. In this case, a file containing the identity of the applicant and the reasons for his or her application for protection is sent to the CGRS. The refugee applicant can henceforth benefit from reception.
- Or Belgium **is not the State responsible for the application**. The Belgian State contacts the country it considers responsible for the application (first country of entry into the European Union) in order to conclude that the applicant should be transferred there. The applicant is notified of a decision refusing access to the territory as well as residence.

A very limited number of provisions stipulate the consideration of vulnerability in the Dublin Regulation. Recital 13 stresses that the interests of the child and the particular vulnerability of minors must be considered in the application of the Regulation. Article 32 of the Regulation mentions that in the case of a Dublin transfer, the transferring State must inform the State examining the application of information relating to the special needs of the applicant transferred. These special needs are those arising from the categories of so-called vulnerable persons identified in Article 36 of the Law of 12 January 2007.

While the notion of vulnerability as such does not appear in the Dublin Regulation, some authors nevertheless believe that it underlies the Dublin Regulation, because its recital 39 recalls its objective to respect fundamental rights as guaranteed in particular by the Charter of Fundamental Rights of the European Union. The impact of vulnerability on the assessment of the risk of exposure to inhuman or degrading treatment in the transfer of an applicant should also be noted. The impact of vulnerability, even when and where it is not clearly indicated, is therefore reflected in the transfers provided for in the Dublin Regulation. It is also reflected in other of its mechanisms: notably, in Article 17, which allows for derogation from the Dublin Regulation through the assessment of vulnerability<sup>55</sup>.

### 4. Reception and vulnerability: how does Belgium's reception policy identify and address vulnerability?

The 2013/33/EU Directive laying down standards for the reception of applicants for international protection<sup>56</sup> was transposed into the Law of 12 January 2007, which was reformed on 21 November 2017<sup>57</sup>. This law establishes a right to reception for applicants for international protection and refers to vulnerabilities, assessing them in different ways: Firstly, in *taking into account* the special needs of some asylum seekers in terms of reception; Secondly, in *the evaluation of* reception and thirdly, in *the specific treatment of* certain categories of vulnerable people.

<sup>55</sup> This possibility has been ruled by the CJEU in several examples of case law – see for instance CJEU, *Zuheyra Frayeh Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet*, C-528/11, 30 May 2013 or CJEU, *C. K., H. F., A. S. v. Republika Slovenija*, C-578/16, 16 February 2017.

<sup>56</sup> COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, "Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)", *op.cit.*

<sup>57</sup> Law of 21 November 2017 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*



## 4.1. Consideration of special needs in the reception area

The general principle stating that special needs and vulnerabilities are taken into account is mentioned in Article 36 of the Law of 12 January 2007.

The law establishes a non-exhaustive list of so-called vulnerable persons, such as “minors, unaccompanied minors, single parents accompanied by minors, pregnant women, persons with disabilities, victims of human trafficking, elderly persons, persons with serious illnesses, persons suffering from 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”<sup>58</sup>. The Article also mentions that, in order to meet the specific needs of vulnerable persons, the agency in charge of reception or the partner must conclude agreements with specialised associations<sup>59</sup>.

In this sense, Article 11, paragraph 3.2 of the law lays down the obligation to designate a suitable place of registration for the applicant, paying “particular attention to the situation of the vulnerable persons referred to in Article 36”<sup>60</sup>.

### *4.1.1. Vulnerability labelling: an effective process?*

At the beginning of the asylum procedure, the Immigration Office, the medical service of the dispatching unit and its designation service<sup>61</sup> immediately carry out an assessment of the vulnerability of the refugee status applicant. When designating a reception centre, the dispatching is based on the identification of vulnerability by the Immigration Office, in order to find a place adapted to the identified vulnerabilities. In the reception structures themselves, “labels” have been set up, with specific spots reserved for “specific target groups” (e.g. certain very complex medical cases, vulnerable women or UMs). All other so-called “generic” places are also labelled according to what the shelter contains in terms of infrastructure (e.g. in terms of wheelchair access, or clearly separated sanitary facilities). Fédasil (the government agency in charge of organising the reception conditions for asylum seekers in Belgium), has also invested in the “Match-It”<sup>62</sup> management system, which should enable a better harmonisation between individual needs and adapted reception facilities.

However, and according to the study conducted by Fédasil on the reception of vulnerable persons in 2018, the information available in “Match-It” is sometimes not up to date or too “vague to refer to”<sup>63</sup>. The more complex the vulnerable profile becomes, the more it is made up of multiple vulnerability factors, and the less relevant this labelling is. Thus, Fédasil recognises, for example, that the vulnerabilities specific to LGBTQIA+ groups are much more complex to objectify in terms of labelling. Faced with this type of profile, Fédasil’s study indicates that social workers make greater use of their “field knowledge”, in other

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58 Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners, *Belgian Official Journal*, 7 May 2007, Article 36.

59 *Ibid.*

60 *Ibid.*, Article 11, paragraph 3.2.

61 The dispatching unit is a service of Fédasil in charge of designating a suitable reception spot for each asylum seeker so that they can benefit from customized material aid (accommodation, food, medical care).

62 The “Match-It” system is a database of the reception network. It enables the management of the reception spots available according to the specific needs of the protection seekers. See the website: <https://www.socialsecurity.be>.

63 FÉDASIL, *Personnes vulnérables avec des besoins d'accueil spécifiques. Définition, identification, prise en charge* [Study], *Study and Policy Department*, 6 December 2018, page 56.

words, their personal knowledge of the capacity of certain centres to accommodate particular profiles. This knowledge also takes into account the layout of certain centres, which may offer more privacy<sup>64</sup>. In this way, many people without a specific “target group label” can potentially benefit from spots adapted to their particular needs.

In addition to its vague and sometimes unsuitable nature, the labelling process raises questions. In Fédasil’s study, social workers emphasise that the concept of vulnerability applied in the labelling process should be “broadened”<sup>65</sup>. The study also highlights other factors (such as illiteracy) that are rarely considered, even though they constitute “serious risk factors”<sup>66</sup> according to social workers. In this perspective, “contextual factors” (such as the procedural situation of an applicant) are particularly relevant to mention: the study stresses that they constitute a stumbling block, since, when designating a reception place, “people who have little chance of obtaining a protection status are [...] excluded from suitable places when they should be considered vulnerable according to the actors in the ground”<sup>67</sup>.

The above points therefore call for careful and realistic assessment of the role of social workers in identifying and recognising vulnerability marker behaviours.

Also, the presupposition underlying the identification of vulnerabilities upon reception should be noted: the asylum seeker is expected to *collaborate* in the identification of their vulnerabilities. In this sense, applicants must not only be aware of their vulnerabilities, but must also be able to identify them precisely and above all, in the context of an interview, to *talk* about them. The role that is implicitly expected of the asylum seeker is therefore one of collaboration in the identification of his or her vulnerabilities. This expectation of collaboration can be problematic, especially when it is based on certain behaviours “expected” from them, particularly in the expression of their special needs. Jane Freedman, in her Article on emotion in refugee narratives, highlights how the absolute necessity to produce and highlight needs-related emotions “is not simple and adds another form of stress and anxiety to formal interviews”<sup>68</sup>. Faced with the injunction to make specific needs visible, to be able to put them into words, the asylum seeker may find himself or herself helpless, weak and ultimately *vulnerable*.

#### 4.2. Assessment of vulnerabilities upon reception

The Law of 12 January 2007 provides that the individual situation of the reception beneficiary is examined to determine whether the reception meets his or her specific needs. The modalities of this assessment are detailed in several legal texts. Article 22, paragraph 1 of the Law of 12 January 2007 states that this assessment must take place within 30 days of the designation of the compulsory place of registration for the applicant. Paragraph 1.1 (*new*) of the same Article specifies that the examination of specific reception needs may also give rise to the examination of special procedural needs, as referred to in Article 48/9 of the Aliens Act<sup>69</sup>. To this end, the agency in charge of the reception may make recommendations

64 FÉDASIL, *Personnes vulnérables avec des besoins d'accueil spécifiques. Définition, identification, prise en charge [Study]*, Study and Policy Department, 6 December 2018, page 29.

65 *Ibid.*, page 101 and onwards.

66 *ibid.*, *op.cit.*, page 101.

67 *Ibid.*

68 FREEDMAN J., “Fear, Shame, Humiliation? The complex emotions of asylum seekers and refugees in Europe”, *Centre for Information and Studies on International Migration, Migrations Société*, No. 168, 2017/2, page 25.

69 Law of 21 November 2017 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, Article 22, paragraph 1.1. (amended).

regarding the special procedural needs that an asylum seeker may have with the Immigration Office and the CGRS. Paragraph 2 of the Article refers to an examination of the *individual* situation of the reception beneficiary, which includes an examination of the “undetectable signs”<sup>70</sup> of possible vulnerability, such as that present in people who have been subjected to torture or other serious forms of psychological, physical or sexual violence.

The *modalities* of this assessment are set out in the Royal Decree of 25 April 2007, which indicates, in Articles 2, 4, 5 and 8, how this individual situation must be assessed<sup>71</sup>. Thus, it is mentioned that the individual situation of the beneficiary must be assessed with regard to their medical, social and psychological situation (art.2); that it must be carried out by a reference social worker (art. 4); that the assessment must be formalised in a report, indicating the measures to be taken (art. 5); and that at least one interview must take place between the reference social worker and the asylum seeker (art. 8). Paragraph 3 of the same Article mentions that the assessment of the individual situation continues throughout the applicant’s stay in the reception facility. Article 10 of the Royal Decree of 25 April 2007 further specifies that no later than six months after the first assessment, a follow-up assessment of the situation of the host beneficiary must be drawn up by the reference social worker<sup>72</sup>.

While the Articles of law are clear, there are still a number of grey areas regarding the operational aspect of these Articles and the mission of social workers to “detect” vulnerabilities. On the one hand, and as a first step, a difficulty may arise from the fact that there is no substantive definition of vulnerability. As mentioned earlier in this report, the non-exhaustive list of categories of people who are by definition vulnerable is evolving and does not provide an explicit framework that would concretely specify how vulnerability should be identified at a time “t”. On the other hand, this lack of an “effective method” for identifying vulnerabilities makes it difficult for social workers to understand them in a relevant way. To this end, the 2016 study on vulnerabilities by the Fédasil research service is unequivocal: in the centres, social workers encounter “[...] difficulties in correctly interpreting behaviour”<sup>73</sup>, even though these are external markers of vulnerability. This also echoes the comments of Jane Freedman, who, in her Article on the use of the notion of vulnerability in the European asylum system with regard to women in the asylum process, highlights the persistent belief underlying the legislative measures adopted: this constant belief consists in defining vulnerabilities as characteristics “[...] easily identifiable and able to be objectified in an individual”<sup>74</sup>, which poses problems in identifying *implicit* vulnerabilities.

Questions may also arise about the degree of expertise required from social workers to identify vulnerabilities: to what extent do social workers have the skills to correctly perceive at times *hidden* vulnerabilities? As the Fédasil study points out, social workers would have “[...] difficulties in making (complex) diagnoses on problems for which they are not trained, particularly psychological problems, victims of sexual or domestic violence or trafficking in human beings”<sup>75</sup>. Other elements, specific to the centre, can also complicate the identification of vulnerabilities. As the reception centres are open centres, from

70 Law of 21 November 2017 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.*, Article 22, paragraph 2.

71 Royal Decree of 25 April 2007 determining the modalities of the assessment of the individual situation of the host beneficiary, *Belgian Official Journal*, 7 May 2007.

72 *Ibid.*

73 FÉDASIL, *Personnes vulnérables avec des besoins d'accueil spécifiques. Définition, identification, prise en charge, op. cit.*, page 47.

74 FREEDMAN J., “The uses and abuses of vulnerability in EU asylum and refugee protection: protecting women or reducing autonomy?”, *CEIC papers, International Journal on Collective Identity Research*, 2019, page 7.

75 FÉDASIL, *Personnes vulnérables avec des besoins d'accueil spécifiques. Définition, identification, prise en charge, op. cit.*, page 47.

which applicants can enter and leave, Fédasil points out the lack of interaction with the residents, or discontinuous interaction, as a factor causing difficult follow-up<sup>76</sup>. The very layout of some centres, their internal structure (lack of common space where people can meet in a confidential and relaxed manner, lack of space or talk without being disturbed) may also work against the spontaneity of claimants to express their vulnerabilities<sup>77</sup>.

#### 4.2.1. Adapted training

Article 18(7) of the Reception Conditions Directive stipulates that social workers in reception centres and those responsible for implementing the Directive must be given appropriate training. This training is twofold: on the one hand, it is “useful training” with regard to the needs of male and female applicants (art.29) and, on the other hand, it is more specific training for staff in charge of UMs (art.24) who are confronted with applicants who are victims of torture, rape and other serious forms of violence (art.25).

In the provision of quality training, Member States are not alone. The European Support Office (hereinafter, EASO) guarantees the organisation and implementation of training, particularly in the field of reception and identification of the needs of vulnerable people in the Member States. EASO has developed a tool to help Member States implement their obligations, entitled “*EASO tool for identification of persons with special needs*”. It aims to help States to identify the special needs that may arise for certain applicants in relation to their reception and the special procedural safeguards that need to be derived from them<sup>78</sup>. In Belgium, in the framework of the detection of reception vulnerabilities, a similar tool has been developed by Fédasil, the government agency in charge of organising the reception conditions for asylum seekers. This tool provides, among other things, for the creation of a single file for each applicant including the vulnerabilities detected. This file aims to be shared between all the competent authorities in order to uniformly identify the applicant’s vulnerabilities. In their study on legal support for asylum seekers in Belgium, Hélène Gribomont and Sarah Smit, researchers at the University of Louvain (hereinafter, UCLouvain), nevertheless emphasise that in 2016 this tool was neither completely “automated” nor completely “functional”<sup>79</sup>.

However, the training courses are still ongoing. At the end of 2018, the EASO report mentioned specific seminars and training given in Belgium, especially on the medical and psychological aspects of Female Genital Mutilations (hereinafter: FGM), but also on other types of vulnerable profiles whose procedural needs are still little studied, such as transgender persons<sup>80</sup>. In December 2019, Fédasil also proposed a new “training catalogue” in collaboration with Caritas International and the International Organisation for Migration (hereinafter, IOM) to help social workers communicate clearly about Voluntary return and to guarantee updated information on this subject<sup>81</sup>.

76 FÉDASIL, *Personnes vulnérables avec des besoins d'accueil spécifiques. Définition, identification, prise en charge*, op. cit., page 48.

77 *Ibid.*

78 In concrete terms, the tool allows vulnerabilities to be identified on the basis of potential special needs, using indicative “markers” (medical documents, statements in the interview that attest to a particular fragility, etc.). It also highlights certain “general guidelines” as to the special guarantees to be granted to so-called vulnerable applicants.

79 See GRIBOMONT H., SMIT S., *Rapport final “territoire”, accompagnement juridique aux demandeurs d’asile en Belgique* [Study], June 2016, page 106.

80 EUROPEAN ASYLUM SUPPORT OFFICE, *Annual Report on the Situation of Asylum in the European Union* [Report], 2018, page 121.

81 FÉDASIL, “Formation Retour Volontaire”, 2019, available at: <https://www.retourvolontaire.be> [accessed 15 December 2020].

#### 4.2.2. Internal rules and deontology of the reception network

In addition to the specific training given to social workers, Fédasil has also imposed internal operating rules on itself. Staff members are subject to a code of ethics in which the duty of confidentiality is a fundamental principle. This code is an integral part of labour regulations. It guarantees, among other things, respect for the principle of non-discrimination, the acknowledgement of a care recipient's philosophical, religious or political convictions, his or her right to private and family life and their right to freedom of expression. It also aims to regulate the functions and work in the reception structure, as well as relations between the social workers, centre staff and applicants. Four fundamental values specific to the reception structures emerge from this code of conduct: respect, client orientation, impartiality and discretion. "Client orientation" can be understood as the legal framework provided to every asylum seeker. In the case of vulnerability, it is particularly important since it means that applicants are entitled to 'quality and effective support'<sup>82</sup>. This includes, in particular, active listening by the social worker, taking into account "specific difficulties" (such as cultural barriers, loss of social structure,...), transparent information about the services that residents can expect from social workers, but also the relevance and timeliness of the services provided. In addition, the code emphasises "cultural differences" and language, which should not constitute obstacles to the proper understanding of social workers and applicants.

The other reception areas, such as the Red Cross and Rode Kruis headquarters have each drawn up their own code of ethics for staff members. These documents include the elements stipulated in Article 50 of the 2007 Reception Law and systematically refer to professional secrecy and the duty of confidentiality. Minimum quality criteria for reception have therefore been prescribed for each facility<sup>83</sup>.

#### 4.2.3. Training challenges

While these training courses are useful, they continue to raise certain questions, mainly because they do not allow for a personalised, individual and complete assessment of a vulnerable profile. Assessing and addressing vulnerability is not a question of finding "a good method" that will enable all the challenges posed by the complexity of vulnerability to be met. On the contrary, it is rather to carry out a multidisciplinary assessment of a person's vulnerability and their own resilience, in order to check on which specific points it is appropriate to provide support or not.

Fédasil is aware of this challenge. In a 2018 report, the government agency deplored the limits imposed on practices for identifying vulnerabilities. These are assessed very early in the procedure, generally exclusively through "formal instruments" and "standardised procedures" (e.g. standard surveys). While increasingly comprehensive training is provided, and (medical and social) staff from different disciplines is involved in the detection of vulnerabilities, Fédasil emphasises that "there is not enough time for in-depth multidisciplinary consultation"<sup>84</sup>. Moreover, it is impossible to obtain an expert opinion under these conditions. This leads to a serious paradox for the government agency: social workers, the very people responsible for identifying vulnerabilities, consider themselves to be "no longer able to estimate who is vulnerable or not"<sup>85</sup>.

82 See Fédasil Website: <https://www.fedasil.be/fr/propos-de-fedasil/nos-valeurs> [accessed 17 December 2020].

83 See Ministerial Decree laying down the code of ethics for staff members of reception facilities for asylum seekers – Addendum -, *Belgian Official Journal*, 18 April 2014.

84 FÉDASIL, *Personnes vulnérables avec des besoins d'accueil spécifiques. Définition, identification, prise en charge, op. cit.*, page 102

85 *Ibid.*

By using standardised procedures, a *translation* difficulty also arises. How can a vulnerable “profile” that emerges from a vulnerable person, which gradually develops in a reception centre, be faithfully conveyed and translated in the form of a detailed medical and psychological dossier, on a “checklist” or on the “Match It” database of the Belgian reception networks? Furthermore, while the *translation* may contain some flaws, the transfer of information from one centre to another and its adequate *interpretation* can also lead to disparities. In its study carried in 2018, the federal agency Fédasil and various field collaborators already regretted the fact that the information included in a medical file is not always correctly transmitted within the reception network<sup>86</sup>. They therefore stress the need to restart the process of identifying vulnerabilities and, potentially, the lack of coherence in the whole procedure.

Although the involvement of actors from different disciplines is recurrent in the identification of vulnerabilities, it carries with it its inherent difficulties. Fédasil emphasises the need for additional harmonisation between internal and external stakeholders (medical staff, social workers, but also psychologists, teachers, etc.) to avoid coordination difficulties (for example, in terms of professional secrecy)<sup>87</sup>. Moreover, the number of people involved may vary from one reception structure to another. The Local Reception Initiative (hereinafter, LRI), individual housing for asylum seekers, for example, do not have their own medical staff. The role and coordination of the different actors involved in the care system are therefore not always clearly defined. Furthermore, in its 2018 study, Fédasil also pointed out a recurrent lack of qualified interpreters<sup>88</sup>. These fluctuations may also reinforce the discontinuities present in the management of vulnerabilities.

#### 4.2.4. Access to lawyers in remoted centres

Accessibility to legal aid, to lawyers, is a fundamental issue for asylum seekers in the centre. However, the geographical location of a reception centre can complicate this access. In their study, Héléne Gribomont and Sarah Smit highlight the difficulties of physical access to certain services for centre residents in rural areas. These centres are sometimes several hours away from Brussels, where the competent asylum authorities reside, which has a strong impact on the autonomy of the asylum seekers living there and the social fabric they build or not. In this sense, Emmanuelle Bonerandi, in her study on asylum seekers residing in rural centres, points out how the reception environment, when predominantly rural, plays a specific role in the temporary integration of these populations<sup>89</sup>. The author speaks of a “fixing effect”<sup>90</sup> of the centres located in the countryside, which leads to less displacement but also less autonomy for the applicants. In this respect, Héléne Gribomont and Sarah Smit underline the difficulties asylum seekers have in travelling to consult the relevant authorities<sup>91</sup>. On the one hand, these centres can also provide more support: Fédasil’s involvement in the organisation and transport costs is increased, and its involve-

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86 *Ibid.*, pages 53 and 54.

87 *Ibid.*, *op. cit.*, page 57.

88 *Ibid.*, page 8.

89 BONERANDI E., «L'accueil des demandeurs d'asile à la campagne - Des étrangers d'un autre genre ?» in DIRY J-P., *Les étrangers dans les campagnes : Actes du colloque franco-britannique de géographie rurale*, 31 March 2008, Clermont-Ferrand, Presse Universitaires Blaise Pascal, page 344.

90 *Ibid.*

91 GRIBOMONT H., SMIT S., *Rapport final “territoire”, accompagnement juridique aux demandeurs d'asile en Belgique*, *op.cit.*, page 299.



ment is reinforced. On the other hand, the more rural regions are also affected by a lack of lawyers specialising in immigration and asylum law, who are often located close to the competent authorities and mostly in Brussels. In some provinces, such as Luxembourg, there is a real problem of access to legal aid, even though the province has a particularly high number of reception centres<sup>92</sup>.

#### 4.3. Treatment of certain categories of vulnerable persons upon reception

Certain categories of persons identified as vulnerable receive special and particular treatment in the context of reception. This is the case for minors in the Law of 12 January 2007, and for unaccompanied foreign minors in the Programme Law of 24 December 2002 (I)<sup>93</sup>.

##### *4.3.1. Treatment of minors*

Article 37(1) of the Law of 12 January 2007 states that the assessment of the needs of the minor is carried out on the basis of the “best interests of the child”<sup>94</sup>. Paragraph 2 specifies that this best interest is assessed on the basis of four factors: the possibility of family reunification, the minor’s well-being and social development, his or her safety and security as well as the minor’s opinion<sup>95</sup>. Article 38 of the 2007 law also specifies that the minor shall be accommodated with their parents, the person exercising parental authority or guardianship<sup>96</sup>. Article 39 further specifies that for minors who are victims of “all forms of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatment or armed conflict”<sup>97</sup>, the provision of appropriate mental health care and access to rehabilitation services is organised.

##### *4.3.2. Treatment for unaccompanied minors*

Articles 8 and 9 of the Law of 24 December 2002 insist on the compulsory appointment of a guardian from the start of the procedure and the obligation to inform the unaccompanied minor of the progress of the procedure, as well as the rights and obligations arising from it<sup>98</sup>. In addition, the UM has its own adapted reception structure: Article 41 of the Law of 12 January 2007 mentions that specific reception structures have been set up for the reception of UMs. These are the Observation and Orientation Centres for unaccompanied children (hereinafter, OOC). These centres are defined as structures that take the necessary measures to guarantee the protection of UMs. An OCC is not a definitive reception measure: it is considered an “observation stay”<sup>99</sup>, with the aim of drawing up a medical, psychological and social profile of the minor, and “[...] to detect a possible situation of vulnerability on view of directing them towards appropriate care”<sup>100</sup>. The reception of the UM is therefore carried out in structures separate from those reserved for adults and provides for specialised supervision.

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92 *Ibid.*

93 Programme Law of 24 December 2002 (I), *Belgian Official Journal*, 31 December 2002.

94 Law of 12 January 2007, *op.cit.*, Article 37.

95 *Ibid.*

96 *Ibid.*, Article 38.

97 *Ibid.*, Article 39.

98 Programme Law of 24 December 2002 (I), *op.cit.*, Articles 8 and 9.

99 ASSOCIATION POUR LE DROIT DES ÉTRANGERS, « Accueil des mineurs étrangers non accompagnés », *Fiches pratiques*, available at:

<https://www.adde.be/ressources/fiches-pratiques/mineurs-etrangeurs/accueil-des-mineurs-etrangeurs-non-accompagnes-mena> [accessed 17 December 2020].

100 *Ibid.*



If the unaccompanied minor chooses to lodge an asylum application on the territory, Fedasil will designate a specific compulsory place of registration for them, adapted to their vulnerability. If the UM does not lodge an asylum application, the ministerial circular of 15 September 2005 relating to the residence of UMs will apply<sup>101</sup>. It obliges the administration and its officials to find an appropriate reception structure, which will not put the applicant in “a more vulnerable or precarious situation than the one he experienced when fleeing his country of origin”<sup>102</sup>. Article 42 of the Law of 12 January 2007 states that the staff responsible for UMs in reception facilities must receive appropriate training.

As soon as an UM arrives in Belgium, it must be reported to the Guardianship service, which has the task of appointing a guardian to the UM to support them in their procedures.

Various questions also need to be raised when identifying vulnerability among UMs.

*Firstly*, determining the age of the “UM potential”. The authorities can ask the Guardianship service to carry out an estimate of the person’s age by means of a triple medical test (X-rays of the wrist, collarbone and teeth). If the test results show that the person is not a minor, he or she will no longer benefit from specific supervision. The question of age is essential to access certain rights and to take specific vulnerabilities into account. The triple test therefore plays a decisive role. However, certain organisations such as “*La Coordination des ONG pour les Droits de l’Enfant*” (hereinafter, CODE), a network of associations aiming to ensure the proper application of the Convention on the Rights of the Child in Belgium, are calling this triple test into question. With the support of medical opinions, it challenges the validity of the test, stressing its unreliability<sup>103</sup>. In the same vein, the non-profit organisation “*Coordination et Initiatives pour Réfugiés et Étrangers*” (hereinafter, CIRÉ) stresses that “too often, minors are allotted one or two years more than their real age”<sup>104</sup>. In this case, the association points out that minors “are deprived of the specific support they should have had until the age of 18. This has the effect of exacerbating the vulnerability from which they were already suffering, or of revealing new vulnerabilities”<sup>105</sup>.

*Secondly*, the consequences that are drawn from the identification of these vulnerabilities. When the young person reaches the age of 18, a series of rights specific to their UM status disappear: they no longer benefit from representation by their guardian, they are no longer subject to compulsory schooling (and the reception centres are reluctant to pay and guarantee schooling for all UMs<sup>106</sup>), and, more generally, they must take sole responsibility for following up their request for protection and all the ensuing steps. As a result, and still with the *same* vulnerabilities, the young adult is given *different* rights, *different* guarantees and less supervision. How then can we guarantee that the young adult’s persistent vulnerabilities can be considered in the long term?

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101 Ministerial Circular of 15 September 2005 on the residence of unaccompanied foreign minors, *Belgian Official Journal*, 7 October 2005.

102 DRAMMEH L., “Life project for unaccompanied migrant minors: A handbook for front-line professionals [recommendations]”, *Council of Europe Publishing*, 12 July 2007, point 29, available at: <https://www.refworld.org/pdfid/545ca9e74.pdf> [accessed 15 December 2020].

103 COORDINATION OF NGOs FOR CHILDREN’S RIGHTS [CODE], *What kind of reception for foreign minors?* [Analysis], October 2015, page 3.

104 Coordination et Initiatives pour Réfugiés et Étrangers [CIRÉ], *18 ans, l’âge de l’autonomie ? L’accueil des mineurs étrangers non accompagnés (MENA) demandeurs d’asile en Belgique francophone* [Analysis], November 2017, page 5.

105 *Ibid.*

106 See in particular UNHCR- COUNCIL OF EUROPE, *Unaccompanied and separated asylum-seeking and refugee children turning eighteen: what to celebrate?* [Field research report], March 2014, page 29.

Thirdly, questions may also be raised about the training of the guardian in charge of UMs in order to apprehend vulnerabilities. For example, as early as 2015, in the context of Belgium’s universal periodic review at the United Nations Human Rights Council, the “Minor in Exile” platform highlighted the insufficient training of guardians, given their major responsibility in caring for UMs<sup>107</sup>. To this end, the platform suggested that a single five-day training course be given to the guardian, during which the guardian is to be trained on the complex situations of UMs. The official website of the Belgian Guardianship service does not mention any specific skills to be mastered by applicant guardians. Thus, during the interview organised by the service to become a guardian, the site mentions that it will be assessed whether the candidate has “[...] sufficient knowledge of foreigners’ law, youth law and civil law aspects relating to property management”<sup>108</sup>. The site also mentions that “[...] pedagogical and psychological qualities, including training in listening to minors and multicultural reception”<sup>109</sup> will be assessed. Apart from the fact that these indications remain vague (which concrete skills are expected from the candidate guardian? How will it be gauged whether the latter has “sufficient knowledge”? What does “listening skills for minors and multicultural reception” consist of?), the Minors in Exile platform underlines above all a lack of training for the guardians<sup>110</sup>. The platform also wonders about the fact that there is no code of conduct or code of ethics that the guardians should respect. Already in 2009, the European Migration Network (hereinafter, EMN) and its Belgian national contact point mentioned the need to create a code of conduct for guardians to clarify certain grey areas in its relationship with the UM and other institutions with which it has to collaborate (e.g. to what extent is the guardian bound by professional secrecy)<sup>111</sup>.

Vulnerability upon reception is therefore defined and taken into account in two ways and in two stages: *First* and foremost, it is identified and defined by means of criteria, “profiles” listed in a non-exhaustive manner in Article 36. *Secondly*, according to these profiles, special guarantees are put in place in reception, through an individual assessment of special needs, or, for certain categories of people such as minors, through specialised reception in an adapted structure. Vulnerability is therefore assessed on the basis of “categories or profiles” from which special procedural needs arise.

In the light of the above, three challenges can be highlighted in the identification and consideration of vulnerabilities by the reception structures.

Firstly, a challenge in terms of the means of *identifying* vulnerability in all its complexity. This is particularly the case in that the “formal” methods of identification (standard survey, standardised procedure, database) do not allow more complex vulnerability profiles to be considered, as vulnerabilities can be multidimensional and at times invisible. These methods are therefore supplemented by more “informal” tools (mainly the field knowledge of social workers), which can however prove to be problematic too. On

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107 MINORS IN EXILE, *UN Human Rights Council - Universal Periodic Review: Belgium, Submission of Minor in Exile Platform* [Recommendations], July 2015, page 8.

108 SERVICE PUBLIC FÉDÉRAL JUSTICE, “How to become a Guardian?” *online resources*, available at: <https://justice.belgium.be> [accessed 15 December 2020].

109 *Ibid.*

110 MINORS IN EXILE, *UN Human Rights Council - Universal Periodic Review: Belgium, Submission of Minor in Exile Platform* [Recommendations], *op.cit.*, page 8.

111 See EUROPEAN MIGRATION NETWORK [NATIONAL CONTACT POINT BELGIUM], *Unaccompanied minors in Belgium, reception, return and integration arrangement* [Study], July 2009, page 66.

the one hand, because they are not formalised anywhere, and their application may seem random and unpredictable. On the other hand, because they reflect the flaws of the traditional identification system, in which social workers themselves struggle to identify vulnerabilities in a comprehensive and detailed manner.

Secondly, a challenge in terms of how to *communicate* these vulnerabilities. Difficulties can arise *internally*, between the different actors of a multidisciplinary team (the lawyer, the doctor, the social worker), who have to coordinate their actions, but also in the *translation* of these vulnerabilities (how to accurately reflect a profile with its multiple vulnerabilities, when these are not or only taken into account superficially in a classic and selective encoding system). *Externally*, the transmission of information relating to an applicant's vulnerabilities, in the event of a transfer to another centre, for example, can also include certain difficulties that prevent continuous and coherent support.

Thirdly, a challenge in *addressing* these vulnerabilities. On the one hand, because certain centres, due to their layout, geographical location, and the more or less specialised training of their staff, ensure that the vulnerabilities of residents are continuously and appropriately taken into account. On the other hand, because the system for considering vulnerabilities is based on the prior identification of these vulnerabilities. Therefore, what kind of care is reserved for vulnerabilities, not previously identified, that might emerge in the reception centre itself, might resurface there or are the product of a precarious procedural situation?

## 5. Examination of the asylum application by the CGRS

The CGRS is competent to recognise or to deny refugee status<sup>112</sup>. The following section examines the identification of vulnerabilities in the examination of the asylum application by the protection officers of the CGRS. It highlights the pros and cons of the law and practice governing this examination.

### 5.1. Vulnerabilities in the examination of asylum application under Belgian law

There is no explicit reference to vulnerability in the granting of refugee status under Belgian law. Nevertheless, a reference to taking vulnerability into account can be seen in Article 48/6(5)(c) of the Aliens Act. It states that the bodies responsible for examining the application must take into account the "individual status and personal situation of the applicant, including factors such as his background, sex, age [...]"<sup>113</sup> in considering whether they could be or have been exposed to persecution or serious harm. These factors imply they could render the person vulnerable and having been subject to persecution. In practice, the CGRS can identify vulnerabilities based on the "special needs" questionnaire filled out by the asylum seeker at the Immigration Office as well as the medical examination, but it can also identify it with the help of other documents joined to the application file (for instance, medical certificates). Other vulnerabilities may also be notified by the applicant at a later stage of the procedure<sup>114</sup>.

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<sup>112</sup> It is also competent to grant subsidiary protection (namely, another type of protection for an alien who cannot be recognised as a refugee but for whom there are nevertheless serious reasons to believe that he or she would face a risk of serious harm if returned to his or her country of origin). See Article 57/6 Aliens Act.

<sup>113</sup> Article 48/6, paragraph 5, c, Aliens Act.

<sup>114</sup> See Law of 21 November 2017 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (Aliens Act), *op.cit.*, Article 48/9, paragraph 3.

In any case, Article 48/9, paragraph 4 specifies that the CGRS must evaluate whether the applicant has special needs and must take those into account by providing adequate support throughout the procedure.

### 5.1.1. Proving that one has a well-founded fear

At the European level, Article 4 of the Directive 2011/95/EU (hereinafter, the “Qualification Directive”<sup>115</sup>) is the only provision devoted to proof. It reflects a classic concept of leaving the burden of proof with the applicant. According to the provision, it is up to the applicant to prove that they are in need of international protection as well as to the State to assess the relevant elements of the application. The European Courts have qualified this initial conception, according to which the burden of proof lies exclusively with the asylum seeker. Both the CJEU and the ECtHR have emphasised the obligation for asylum authorities to carry out a rigorous examination, which gives them an active role in the burden of proof<sup>116</sup>.

At the Belgian level, the burden of proof is laid down in Articles 48/6 and 48/7 of the Aliens Act. The provisions reflect those contained in the European Qualification Directive. They require the asylum seeker to provide as quickly as possible all the elements necessary for their application. Article 48/6, paragraph 1 specifies that these elements include, inter alia, the applicant’s statements and all documents in his or her possession relating to “[...] his or her age, past history [...], the country or countries in which he or she has previously resided, previous applications, itineraries [...]”<sup>117</sup>. While the notion of vulnerability is not mentioned as such in the Article, some of the factors mentioned may be perceived as making the person more vulnerable (e.g., age). It should also be noted that a *variety* of factors are put forward: from more intrinsic characteristics (e.g. the age of the applicant) to characteristics external to the applicant (e.g. his or her itinerary before arriving on the territory).

The applicant’s ability to prove there is a need for protection on their part will be revealed in the applicant’s story. It is also through this narrative that they will be able to demonstrate how they were, they have been or they are potentially subject to certain vulnerabilities that have not been detected at an earlier stage of the procedure (for example, when filling in the questionnaire before the IO). The accuracy and coherence of the narrative can be affected by these vulnerabilities (for example, psychological factors can lead to memory loss following trauma or an inability to express oneself).

Various authors have examined the tension between the evidence required, an applicant’s vulnerability and their overall credibility. This tension is particularly noticeable in the case of female asylum seekers who have been victims of sexual violence. The doctrine has highlighted the difficulty for female victims of this type of violence to *prove* their need for protection<sup>118</sup>: firstly, because their activities and the violence they have suffered are not always recorded in formal documents, and secondly, because they may be reluctant to talk about sexual violence. Their story, although decisive, can therefore be doubly impacted:

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115 COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)”, *Official Journal of the European Union*, 20 December 2011.

116 See for instance, CJEU, *M.M. v Minister for Justice, Equality and Law Reform, Ireland*, November 2012, C-277/11, 22 and ECtHR, *M.S.S. v Belgium and Greece*, 21 January 2011, No. 30696/09.

117 Article 48/6, paragraph 1, Aliens Act.

118 See for instance, FREEDMAN J., “Women Seeking Asylum”, *International Feminist Journal of Politics*, Vol. 10:2, 2008, pages 154-172.

impacted *once* by cultural barriers that prevent them from talking about the sexual violence they have suffered, fuelled by a permanent feeling of shame. Impacted a *second time*, by memory barriers, particularly in the case of trauma, which can modify or annihilate the memory of names, dates and specific events, all of which are fundamental in assessing the credibility of the story.

The UNHCR has been highlighting these specific difficulties relating to female asylum seekers since the 2000s. In 2002, the High Commissioner's Guidelines on Gender-Related Persecution under the Convention relating to the status of refugees (hereafter referred to as the 1951 Refugee Convention or Geneva Convention)<sup>119</sup>, noted the need to put into place procedures that can create a situation of trust in female asylum seekers. Particularly in the context of sexual violence, the UNHCR recommends that asylum authorities should be attentive and receptive to their emotions and traumas. From a procedural point of view, the UNHCR recommends that a female interviewer be automatically assigned to female victims of sexual violence. These recommendations have been transposed into European law in Articles 15 b) and 15 c) of the Procedures Directive. In Belgian law, they can be found in the Royal Decree of 11 July 2003, which establishes procedural guarantees that the CGRS should commit to during hearings. In practice however, divergences exist in the practices of the CGRS. For example, in its guide "Women, girls and asylum in Belgium", the CGRS stresses that female asylum seekers can ask to be interviewed by a woman, and that the CGRS will take this into account "as far as possible"<sup>120</sup>. Also, the CGRS stresses that the applicant must explain why she would like to be interviewed by a person of her gender and/or assisted by a female interpreter<sup>121</sup>. On the subject of interpreting, differences also appear with regard to the terms chosen in the Directive and the 11 July 2003 Royal Decree. While the Directive requires "appropriate" communication between the applicant and the person conducting the interview (art.15, c), the Royal Decree emphasises that the asylum seeker and the interpreter must understand each other "sufficiently"(art.15).

Consideration of the vulnerabilities of asylum seekers in the broadest sense, and of female victims of sexual violence in particular, is therefore variable in practice. The narrative, in that it constitutes the core of the asylum procedure, carries within itself certain requirements that can make applicants *vulnerable* in their approach. A broader assessment of vulnerability in terms of the law should therefore be applied.

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119 Convention Relating to the Status of Refugees (1951), General Assembly Resolution 429 (V) (1950), adopted on 28 July 1951, entered into force on 22 April 1954.

120 OFFICE OF THE COMMISSIONER GENERAL FOR REFUGEES AND STATELESS PERSONS, "Women, girls and asylum in Belgium, Information for women and girls who apply for asylum" June 2011, page 11, available at: <https://www.cgra.be/fr/publications> [accessed 15 December 2020].

121 *Ibid.*

### 5.1.2. *The identification of vulnerabilities in the asylum procedure: collaboration of asylum seekers and training of protection officers*

The training of protection officers is a method implemented by the Belgian system to detect and address the vulnerabilities of asylum seekers. Thus, protection officers, in direct contact with asylum seekers, receive specific training to deal with certain vulnerabilities (e.g. sexual violence) and to question specific profiles (e.g. minors). These elements are further discussed in the following section.

The 11 July 2003 Royal Decrees regulate the determination of vulnerability by protection officers. Article 3, paragraph 2 of the Royal Decree provides for the creation of a knowledge and learning centre within the CGRS with the aim of providing agents with “basic and continuing training”<sup>122</sup> relating, inter alia, to the application of the 1951 Geneva Convention. For the CGRS staff, this training should also develop skills relating to the hearing of asylum seekers, intercultural communication, as well as “basic training on the specific needs of vulnerable persons”<sup>123</sup>. In its internal Charter, the CGRS does not give a precise definition of the skills that should be developed, except that it refers to a language used during the individual interview which must be “adapted to the recipient and his or her context”<sup>124</sup>. This internal charter of the CGRS includes the provisions of the Royal Decree. Point 2 of the Charter recalls that the protection officer must “demonstrate the necessary knowledge to adequately conduct personal interviews with specific dimensions, such as those of applicants from vulnerable groups [...]”<sup>125</sup>. Point 1 also recalls that the specific features of the case require appropriate preparation and “to the extent possible”<sup>126</sup>, a careful examination of the documents in the case file.

The provisions of the Charter are very vague, and those detailing the “specific training” that CGRS agents must follow are not very precise. Thus, for (un)accompanied minors or persons who have suffered violence, the Charter simply specifies that the protection officer must “[...] adjust their approach and use specific conversation methods.”<sup>127</sup>. The Charter does not explain what is meant by “adjusting their approach” and “specific conversation methods”.

### 5.1.3. *Specific guarantees in the examination of UMs applications and their vulnerability*

With regard to the asylum procedure and the examination of their application, UMs also benefit from their own framework of assessment. Indeed, special provisions are included in the programme law of 24 December 2002 (I). In Article 57/1, paragraph 3, it is stipulated that “the CGRS shall give importance to the declarations of the foreign minor in accordance with his or her age, maturity and vulnerability”<sup>128</sup>.

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122 Royal Decree of 11 July 2003 establishing the procedure before the General Commissioner for Refugees and Stateless Persons as well as its functioning, *Belgian Official Journal*, 27 January 2004, Article 3, paragraph 2.

123 *Ibid.*

124 OFFICE OF THE COMMISSIONER GENERAL FOR REFUGEES AND STATELESS PERSONS, “Personal Interview Charter [online]”, August 2019, point 9, available at: <https://www.cgra.be> [accessed 15 December 2020].

125 *Ibid.*, point 2.

126 *Ibid.*

127 *Ibid.*, point 9.

128 Programme Law of 24 December 2002 (I), *Belgian Official Journal*, *op.cit.*, Article 57/1, paragraph 3.



Paragraph 4 stresses that the best interests of the child is a determining consideration, which must “guide the CGRS during the examination of the application for international protection”<sup>129</sup>. Similarly, the Royal Decree of 11 July 2003 mentions in Article 2, paragraph 2 that the officers who conduct the hearing of a minor asylum seeker must have the necessary knowledge of the particular needs of this group<sup>130</sup>.

It should be noted that in the event of a refusal to grant protection to an unaccompanied minor, a specific procedure exists in Belgium, alongside the asylum procedure. This is the “durable solution” procedure, a procedure which aims to determine, in accordance with the best interests of the child, a solution to regularise the UM’ situation. This may involve family reunification, the granting of a residence permit for an unlimited period of time, but also a return to the country of origin<sup>131</sup>. The Immigration Office, with the help of the guardian assigned to the unaccompanied minor, is considered competent to decide on a durable solution. The “Implementing Practices” part of this report looks at how the Immigration Office is assessing vulnerability in the “durable solution” procedure.

## 5.2. CGRS’s backlog of asylum applications: exacerbating asylum’s seekers vulnerabilities?

In April 2016, the CGRS saw the number of “pending” asylum applications rise from 5,000 to 18,300<sup>132</sup>. As a result, the CGRS posted a statement on its website that some applicants could have to wait more than a year. The CGRS also stated that it wants to “reduce its backlog as much as possible”<sup>133</sup> by the end of 2017. Nevertheless, in its 2019 “asylum statistics” report, the CGRS highlighted an ever-increasing backlog and a total backlog of more than 10,000 unprocessed files. In order to reduce this backlog, in 2019 the Council of Ministers twice approved the reinforcement of the staff of the asylum authorities (protection officers and administrative staff). The CGRS hopes to clear this backlog by March 2021.

Questions may arise as to the detection and consideration of applicants’ vulnerabilities in the face of this backlog.

On the one hand, pending asylum applications make the situation of candidate refugees precarious, as it is unclear how long they may remain on the territory and obtain protection. In his Article on the psychological effects of the asylum application, Abdelnasser Al Saad Egbariah qualifies this waiting period as a space of “non-belonging and social anomie”<sup>134</sup>. Accordingly, being foreigners make the candidate refugees vulnerable for two reasons. First, they are vulnerable because of their status as “outsiders”, who arrive to a given territory in expectation of a clear status. Second, they are vulnerable because while waiting for their status, they experience this feeling of non-belonging.

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129 Programme Law of 24 December 2002 (I), *Belgian Official Journal, op.cit.*, Article 57/1, paragraph 4.

130 Royal Decree of 11 July 2003 establishing the procedure before the General Commissioner for Refugees and Stateless Persons as well as its functioning, *op.cit.*, Article 2, paragraph 2.

131 See the website: <https://justice.belgium.be/>

132 See OFFICE OF THE COMMISSIONER GENERAL FOR REFUGEES AND STATELESS PERSONS, “Précisions quant aux délais d’attente à l’intention des demandeurs d’asile”, 21 april 2017, available at:

<https://www.cgra.be/fr/actualite/precisions-quant-aux-delais-dattente-lintention-des-demandeurs-dasile>

133 *Ibid.*

134 AL SAAD EGBARIAH A., “Effets psychiques de la demande d’asile”, *Dialogue*, 2003/4, No.162, page 105.



On the other hand, a tension may arise between the need to take account of vulnerabilities (which requires an investment of time, money and competent staff) and the latent desire to clear the backlog of applications as quickly as possible. The CGRS's discourse is revealing in this respect: it affirms its objective to move towards an even more "efficient", "effective" asylum policy<sup>135</sup>. Questions may however arise on how to reconcile the potentially time consuming tasks of completing an exhaustive assessment of an application and of an asylum's seekers vulnerability, with this imperative of efficiency.

## 6. Vulnerability on appeal: addressing and dealing with vulnerability before the Council for Alien Law Litigation

There are no explicit references in the law explaining how asylum judges from the CALL should address or assess vulnerability on appeal. The way in which the claimant's vulnerability is considered and addressed on appeal before the Council can be discovered above all through the case law of the CALL. Indeed, case law makes it possible to highlight how, in practice, the Judge considers vulnerability and the impact that this can have in granting a protection. In the CALL's case law, vulnerability is considered in the granting of refugee status at two levels. On the one hand, it is considered at the level of *restitution capacity of the applicant*. On the other hand, it is considered *at the level of the risk of persecution of the asylum seeker*. These are practices, or jurisprudential constructions which are not enshrined in the law.

The small number of cases analysed in this section (due the brevity of the "Legal and Policy Framework" section), precludes any causal analysis. However, this gives an idea of how the vulnerability of asylum seekers is considered when they appeal against a decision. This section of the report deals with case law from the CALL. The cases selected refer to three different categories of people considered as vulnerable, namely women, people from LGBTQIA+ community and (un)accompanied minors. They also analyse how other factors (e.g. education levels) can have an impact on vulnerability profiles.

### 6.1. Consideration of asylum seekers' vulnerability at the level of restitution

The CALL takes the vulnerability factor into account for several types of so-called vulnerable people when they recount their stories.

The vulnerability of **minors** is assessed by the Judge through several CALL decisions. Vulnerability coupled with age makes it possible to justify a lower level of requirement in relation to the credibility of the story. Above and beyond the vulnerability or particular profile of the minor, it is above all the "young age" of the applicant that the Judge take into account in order to be more flexible in dealing with his or her application. The judgments that follow illustrate this point.

In judgment **No.232.252 of 5 February 2020**, the Council recognised as a Refugee the applicant of Afghan origin because of his fear of persecution due to a conflict between his father and the Taliban as well as his membership in the Hazara ethnic group. While the CGRS considered the claimant's responses to be vague and incomplete, the Council considered, on the contrary, that "given the claimant's profile"<sup>136</sup>, he satisfactorily answered the relevant questions put to him by the protection officer in light of his young age. The CALL noted that the claimant was only 14 years old at the time of the alleged events and that the

<sup>135</sup> See for instance: OFFICE OF THE COMMISSIONER GENERAL FOR REFUGEES AND STATELESS PERSONS, "Résorption Presque totale de l'arriéré du CGRA", 4 July 2018, available at:

<https://www.cgra.be/fr/actualite/resorption-presque-totale-de-larriere-du-cgra> [accessed 17 December 2020].

<sup>136</sup> CALL, 5 February 2020, No. 232.252, point 4.2.3.2.

claimant was only 16 years old at the time of his interview with the CGRS. While the Council validated the *answers given* by the minor, it took a critical view of the *questions put* to him by the CGRS, given his particular profile<sup>137</sup>. The Council concluded that the applicant had a well-founded fear in light of the general context and the vulnerability of the applicant due to his young age and ethnicity.

The applicant's young age also justified a less severe requirement in the restitution of the narrative in Council judgment **No. 219.680 of 11 April 2019**. The CALL recognised the applicant from Afghan as a refugee on the ground that he had been forcibly recruited against his will by the Taliban in order to fight alongside them. The CGRS refused to grant him protection on the grounds that his story was full of inconsistencies. The Council opposed the CGRS decision. Here again, the Council points out that inconsistencies in the story could be explained by the claimant's young age at the time of his departure from Afghanistan (he was 13 years old)<sup>138</sup>.

We can clearly see that the minority and the resulting vulnerability means minor applicants are often given the benefit of the doubt when it comes to their stories. This is clearly seen in Judgment **No. 138.876 of 19 February 2015**, when the CALL recognised an applicant, of Guinean origin as a refugee on the grounds that she was at risk of both forced marriage and female genital mutilation. The CGRS had rejected her application, questioning the authenticity of the forced marriage as well as the risk of FGM. The CALL disagreed from the CGRS's position. It insisted that the *benefit of the doubt* should be applied to asylum applications from minors and that assessments should include objective elements. In this judgment, to overcome the inconsistencies in the applicant's story given her vulnerability, the CALL attached particular importance to statistical information on the risk of FGM in Guinea. It therefore gave considerable weight to the statistical documents added to the case file and chose to prioritize these elements over the inconsistencies in the applicant's story. As FGM rates are extremely high in Guinea, the Judge stated that there was a "quasi-certainty"<sup>139</sup> that the applicant would be subjected to excision. In this case, the applicant's vulnerability, but above all her minor status, is therefore a means of adapting the degree of requirement in an asylum story, in favour of objective elements that can prove fear.

This more "flexible" assessment by the Council due to the minority status of the applicants is not new. As far back as 2011, in judgment **No. 72.592 of 23 December 2011**, the CALL used the same reasoning when it recognised an applicant of Guinean origin as a refugee on the grounds that she feared that she would be arrested if returned to her country of origin. The CGRS determined that the applicant's statements were characterized by major inaccuracies, which prevented her from being granted international protection. Contrary to the CGRS, the Council determined that the claimant gave a "concise and coherent account given her young age"<sup>140</sup>. Thus, the Council recognised her as a refugee.

At the same time, the CALL's case law seems not to be consistent on the impact that young age and vulnerability can have on the restitution of facts. In judgment **No. 75.455 of 20 February 2012**, an applicant of Guinean origin lodged his asylum application on the grounds that he had allegedly suffered ill-treatment due to the political position of his father, who was sought by the authorities. In this case, the

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137 The Council considers that the questions asked to the claimant were not appropriate, in that they concerned knowledge of holy places, places to visit, when the claimant stated that he had never left his village and its surroundings. CALL, 5 February 2020, No. 232.252, point 4.2.3.2.

138 CALL, 11 April 2019, No. 219.680, points 5.5.2 and 5.9.

139 CALL, 19 February 2015, No. 138.876, point 5.6.

140 CALL, 23 December 2011, No. 72.592, point 4.4.

Council confirmed the decision of the CGRS not to recognise the applicant's refugee status. The Council specified that in this instance the degree of imprecision was such that it could not be explained solely by the applicant's young age. The Council therefore stated that "the young age invoked does not justify the aforementioned misunderstandings or mitigate their content"<sup>141</sup> and denied refugee status.

The CALL's case law therefore seems to vary on this point. The assessment of the impact of the claimant's young age on their story seems to vary among the chief justices, who have a wide discretion to decide whether to qualify certain elements as "essential" (and for which "young age" is not sufficient to justify certain omissions) or "accessory" (which may justify certain inaccuracies). There is a fine line between these two options, as it is difficult to be objective when listening to the narratives of minor applicants (*i.e. What criterion makes it possible to prioritise memories in terms of their importance? How can we ensure that the requirements to know how to say and describe certain things are not culturally centered?*)? Moreover, in the preceding judgments, the Judge refers above all to the young age of the applicants to justify the inaccuracies in their accounts. Their vulnerability comes in second place, and is implied: it follows naturally from their minority status. This minority status is mainly assessed in terms of the applicants' ability to reconstruct their narrative.

The role vulnerability plays in an applicant's ability to tell a story is assessed by the CALL for minors but also, for other vulnerable profiles, namely **person with (attested) psychological vulnerabilities**. These psychological vulnerabilities are often put forward by the requesting party to justify the state of vulnerability and the incapacity of the applicant to develop his/her story. In these cases, as in those dealing with minors, the Council's case law is not consistent. Some cases illustrate below that other factors (here, for example, an applicant's level of education) can be taken into account by the Judge to put vulnerability into perspective and refuse to grant a protection. There is therefore no consistency in the CALL's case law as to the consequences that a psychological disorder may have on the ability to reconstruct a narrative. This remains at the discretion of the Judge.

In judgment **No. 228.634 of 7 November 2019**, the CALL refused to grant refugee status to an applicant from Togo of Mina ethnicity living in Mali since the age of two. In support of her application for protection, the applicant claimed that she was forcibly married by her father and her maternal uncle. The CGRS determined that the claimant's account had significant gaps. Without denying the veracity her story, the CGRS ruled that there was nothing in it to indicate that the applicant "was not capable of defending her application for protection"<sup>142</sup>. On appeal, the claimant submitted a psychometric assessment report dated 16 April 2019. The applicant argued that this document demonstrated "that she presents a very particular vulnerability which strongly relativises the profile put forward in the contested decision"<sup>143</sup>. The Council nevertheless considered that the shortcomings noted by the CGRS remain in any event intact. The Council emphasised that this cannot reverse the doubt of credibility, "especially as the applicant presents a profile of an educated woman, with higher education and having worked as a commercial agent [...]"<sup>144</sup>.

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141 CALL, 20 February 2012, No. 75.455, point 3.7.

142 CALL, 7 November 2019, No. 228.634, point B.

143 *Ibid.*, point 6.9.

144 *Ibid.*, point 6.8.1.1.

By the same token, in judgement **No. 222.611 of 13 June 2019**, the CALL refused to grant refugee status to an applicant of Moroccan origin and Muslim faith, who applied for international protection on the grounds that she suffered from physical and verbal harassment at work and at home due to her civil status in Morocco (i.e., divorced). In support of her application, the petitioner filed certificates of psychological follow-up dated February and May 2019. The documents, included a certificate dated February 14, 2019 stating that the applicant had developed obsessive post-traumatic anxiety. The CGRS determined that the claimant's comments lacked precision and remained evasive. On appeal, the claimant argued that these imprecisions could be explained, by (among other things) her vulnerable status. The Council did not agree with her explanations. The CALL determined that there was not enough evidence of a well-founded fear of persecution on the part of the applicant due to the inaccuracies in her account. Her profile as a vulnerable woman justified by the certificates of psychological follow-up was not sufficient to justify a less detailed restitution of the story<sup>145</sup>. In addition, they were not sufficient to cover the inaccuracies in the same story. The application for protection was therefore rejected by the CALL.

Sometimes the asylum Judge simply lacked the information to decide how a particular psychological vulnerability could lead to a more flexible requirement in the restitution of the narrative. In judgment **No. 224.841 of 12 August 2019**, the applicant, a Catholic Chadian national of Sara Topouri ethnicity, lodged an appeal against the rejection of her application. In support of her appeal, the applicant argued that she had been forced to marry and that she would be at risk of FGM if she returned to Chad. The CGRS doubted the credibility of the claim of forced marriage and the risk of FGM. The Council determined that the applicant failed to provide any concrete evidence that could support her statements regarding her psychological fragility. It pointed out that the "state of emotional exhaustion"<sup>146</sup> had not been demonstrated to the extent that it would make the applicant incapable of telling her story fully. The Council concluded that it was unlikely, in view of the applicant's statements, her age and her high level of education, that she was at risk of FGM. Refugee status was therefore denied.

What the three previous judgments have in common is that they all concern educated and independent women. Women asylum seekers who are victims of gender-based violence are the subject of abundant CALL case law. The selection of judgments discussed below testify to the asylum judge's appreciation of their vulnerability. These judgements highlight not only women's gender vulnerability (relating mainly to gender-based violence), but also clarify how their vulnerability relates to other factors (in particular, socioeconomic status).

It is therefore necessary to assess how the Council evaluates certain factors to reinforce or distort the *a priori* vulnerable profile of female asylum seekers who are victims of gender violence. If the education factor can have an impact on the restitution of their narrative, it can also have an impact on the "risk" that these profiles incur if they return home. This is detailed in the judgments below.

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145 CALL, 13 June 2019, No. 222.611, see point 5.9 and onwards.

146 CALL, 12 August 2019, No. 224.841, point 5.7.2.

## 6.2. Consideration of asylum seeker's vulnerability in the level of risk

In judgment **No. 229.001 of 20 November 2019**, the applicant of Russian nationality, Tatar origin, and Muslim by birth but now an atheist, lodged an appeal against a decision refusing her refugee status and subsidiary protection. In support of her application, she referred to her fears, on the one hand, of being forcibly married by her father to one of his older acquaintances and, on the other hand, that her father might convert his son, against his will, to Islam and force him to pursue a religious education. The CALL ruled that the claimant's account was not convincing. It stated that it does not see "why the applicant, as an educated, independent, married woman and mother of a child, could not effectively oppose her father and his possible marriage plans"<sup>147</sup>. The Council insisted that she was an educated woman who could oppose her father's wishes. Considered "independent"<sup>148</sup>, having graduated from law school, the Council believed that her fears could legitimately qualify her for neither refugee status nor subsidiary protection.

In the same vein, in judgment **No. 227 048 of 3 October 2019**, the applicant, a Congolese national of Protestant faith, challenged a CGRS decision refusing to grant her any type of protection. In support of her asylum application, the applicant claimed that she was arbitrarily detained by the Congolese state police and military officers after they ransacked her home, on the grounds that the applicant, a former nurse, had allegedly treated rebel groups opposed to the government. She stressed that she had been tortured by several soldiers in prison and sexually abused. In its hearing the CGRS emphasised the applicant's profile as an "educated and polyglot woman"<sup>149</sup>, working in a hospital and financially independent, who had managed to travel to Belgium with her three children. On appeal, the Council ruled that the applicant's statements about her detention and the violence she suffered were "incomplete, unconvincing and contradictory"<sup>150</sup>. The Board determined that, in light of the applicant's profile (in particular her level of education and employment status), there was a reasonable alternative to staying in Belgium; that is, the applicant could reasonably be expected to settle in Kinshasa or Lubumbashi. Her application was denied.

In judgment **No. 223.906 of 11 July 2019**, the applicant, a Nigerian national of Muslim religion, appealed the rejection of her initial application. In support of her appeal, the applicant stated that she worked as a journalist at the Ténéré Television in Niamey and that she was very committed to women's rights. By undertaking various televised actions to this effect (televised debates, conferences, etc.), the applicant stated that she was the target of threats from the Islamic Association of Niger. The CGRS determined that central elements of the narrative lacked precision and that the applicant did not establish fear of persecution. Moreover, the CALL stated that it was implausible that the administrative file "is not more substantiated with regard to the central elements of the story"<sup>151</sup>. With regard to FGM, the Council specified that the applicant did not show credible evidence of fear of this eventuality in her appeal. Furthermore, the CALL emphasised that it is not clear who, "in view of her profile"<sup>152</sup>, could persecute the applicant. Thus, the CALL sided with the CGRS and upheld its rejection of the applicant's appeal.

Two remarks can be made regarding the aforementioned judgments.

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<sup>147</sup> CALL, 20 November 2019, No. 229.001, point 4.5.3.

<sup>148</sup> *Ibid.*

<sup>149</sup> CALL, 3 October 2019, No. 227.048, point B.

<sup>150</sup> *Ibid.*, point 5.4.2.

<sup>151</sup> CALL, 11 July 2019, No. 223 906, point 5.13.1

<sup>152</sup> *Ibid.*, point 5.17.

Firstly, the level of education and financial independence clearly seems to render female victims of gender violence “less” vulnerable. Elisabeth Olivius, in her Article, points out that women asylum seekers are often first perceived from a gendered perspective as “passive subjects in need of humanitarian aid”<sup>153</sup>, which makes an association between being a woman in migration and the fact of being vulnerable a *priori*. This imaginary is powerful and influences asylum authorities to such an extent that some experts claim that women asylum seekers sometimes feel obliged to “stick” to certain characteristics of vulnerability in order to access certain rights which would otherwise be denied to them<sup>154</sup>.

The judgments discussed above seem to show that having a high level of education disqualifies women from being vulnerable, which could also be based on a gender perspective (couldn't they be educated, financially independent and *still* vulnerable?). They question what vulnerability means when applied to a woman who is a victim of gender violence. According to the Council, the typical profile of a vulnerable woman is one that is illiterate, poor and dependent on. The Council's argument may come as a surprise when it repeatedly rules that an educated, “resourceful” profile could easily oppose repeated gender violence. According to this argument, the Council seems to equate a person's intellectual development with his or her ability, in practice, to combat dangerous and harmful practices. *What kind of violence* are highly educated women less vulnerable to, precisely?

Secondly, a very individualistic reading emerges from CALL's position: the female victims of violence in these judgments are supposed to be able to fight *individually, by themselves*, against *structural* violence and *systemic* domination (power relations in a patriarchal society, for example). By insisting on the individual (here, the woman) who, through her intellectual and professional skills, is more or less vulnerable, the CALL neglects the structural oppression of traditional societies and gives education and independence weight, which can be considered questionable (in what way are these attributes considered as “shields” to prevent a forced marriage, for example?) It is a reading centred on the “individual” that emerges, which is also found in the interpretation of the Geneva Convention, which requires a fear of *individual* persecution. In this type of argument, the Council seems to equate a person's intellectual development with their ability to fight against dangerous and harmful societal practices and not to fear them.

### 6.3. “Exacerbating fear” and particular vulnerability of some asylum seekers

The Judge therefore has a discretionary power in assessing what may or may not “discredit a story”, and whether or not to excuse inaccuracies. In Belgian case law, this is particularly true in the case of the concept of “exacerbated fear”, a Belgian jurisprudential construction which aims to take account of the vulnerability of the person (in particular, the way in which the events the applicant experienced continue to make them vulnerable and fear being returned to their country of origin). Exacerbated fear establishes a level of risk that is linked to the extremely serious persecution that has occurred in the applicant's past. It accepts that the intensity of past persecution is sufficient in itself to establish a fear of persecution for the future<sup>155</sup>. From this perspective, the vulnerability of the applicant's profile plays a special role in that it may be decisive (if it is attested) in the granting of international protection. Therefore, vulnerability is taken into account here, not in the requirement for the restitution of accounts, but in the actual establishment of the risk of persecution.

153 OLIVIUS E., “Constructing Humanitarian Selves and Refugee Others”, *International Feminist Journal of Politics*, 18(2), 2016, page 282.

154 FREEDMAN J., “Fear, Shame, Humiliation? The complex emotions of asylum seekers and refugees in Europe”, *Centre for Information and Studies on International Migration, Migrations Société*, n° 168, 2017/2, pages 23-34.

155 See more in: CARLIER J-Y., SAROLEA S., *Droit des étrangers, op.cit.*, page 428.



If exacerbated fear is first and foremost a Belgian jurisprudential construction, it is also a legal concept that operates by analogy with the cessation clause in Article 1 Section C, 5 of the 1951 Geneva Convention, which allows a refugee to refuse to seek the protection in their country of origin on the grounds of “compelling reasons”, even if the situation in the country has changed according to objective measures<sup>156</sup>. The applicant may therefore invoke objective past persecution as grounds for being granted protection. The Belgian legislature also enshrined this possibility in Article 48/7 of the Aliens Act, which allows protection to be granted and subjective fear to be assessed in cases where trauma has been particularly severe.

The use of exacerbated fear by Judges from the CALL judges is illustrated in various rulings. In these, the Judge considers that the seriousness of the acts experienced by the applicants is such that the asylum seeker cannot legitimately benefit from the protection of his country of origin. This was clearly illustrated in the CALL judgments recognising the refugee status of Rwandan nationals (see for example **CALL, 11 March 2008, No. 8512; 30 September 2008, No. 16.711 and 18 December 2008, No. 20.727**). In these cases, the Judge considered that the trauma linked to the genocide was such that the return to Rwanda was a sufficient condition to create a subjective fear of return.

More recently, the Council applied the principle of exacerbated fear in cases of *female genital mutilation*. This can be seen in judgment **No. 242.577 of 20 October 2020**. In this case, the applicant, who was of Djiboutian origin and Muslim faith, opposed the FGM of her three daughters. The applicant herself was subjected to FGM at the age of 11 and suffered from after-effects. She also stated that she was disinfibulated and reinfibulated on three occasions in Djibouti. The CGRS ruled that the applicant’s account lacked credibility and failed to establish personal fear. On appeal, the Council deemed that the extreme seriousness of such forms of physical harm presented an exacerbated fear on the part of the applicant. The claimant demonstrated by means of medical and psychological certificates that she suffered from persistent physical and psychological after effects associated with FGM. The Council ruled that this information underlined the importance of current “physical and psychological suffering”<sup>157</sup> resulting from FGM the applicant had been subjected to in the past. The CALL concluded that there is “a persistent and exacerbated state of fear within her that would impede any reasonable prospect of return to her country”<sup>158</sup>. Refugee status was therefore granted to the applicant.

With regard to gender-based violence, exacerbated fear is also recognized in the private sphere, particularly with regard to *forced marriage*. Thus, in judgment **No. 213.357 of 30 November 2018**, the applicant of Mauritanian origin filed a second application for international protection, invoking the forced marriage to which she was subjected. In support of her application, the applicant invoked her fear of forced marriage and FGM in the event of her return to the country. She added that she was sexually assaulted in Mauritania at the age of seven and testified to abuse in Belgium by her employer. The CGRS deemed that there was no serious breach on the part of the applicant that could lead to protection. On appeal, the claimant’s lawyer insisted on the claimant’s psychological vulnerability, attested to by various medical reports and psychological certificates. The Council acknowledged, after considering the applicant’s statements and the medical documents, that the applicant suffered particularly traumatic events

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156 Article 1, section C, 5 of the 1951 Geneva Convention.

157 CALL, 20 October 2020, No. 242.577, point 4.5.

158 *Ibid.*



in Mauritania. It ruled that these assaults constituted major psychological trauma, which was rekindled by the sexual assault she experienced in Belgium. The Council inferred that the more recent incidents in Belgium undeniably triggered her exacerbated fear, which justified that she can no longer be forced to return to her country of origin<sup>159</sup>.

Moreover, the Council also used the notion of exacerbated fear in cases involving *politico-ethnic conflicts*. Thus, in judgment **No. 231.582 of 21 January 2020**, the Catholic applicant of Guinean origin submitted an application for international protection on the grounds of ethnic persecution in his country. The CGRS refused to grant protection on the grounds that the main facts invoked by the applicant are outdated. On appeal, the applicant argued that his profile was particularly vulnerable, due to his young age, his lack of family support and the violence he encountered on his migratory trip. The Council deemed that the applicant's file lacks essential elements, which implied that it can neither confirm nor overturn the CGRS decision without additional investigative measures. It sent the application back to the CGRS, specifying that it must re-examine the application, in particular "the existence, on the part of the applicant, of an exacerbated fear which prevents any reasonable prospect of return to Guinea, if necessary by conducting a new hearing"<sup>160</sup>. Thus, the case was returned to the CGRS.

In light of the aforementioned judgments, it is of note that while vulnerability is central to these judgments, in that it allows protection to be granted under certain conditions, it remains subject to the burden of proof. In other words, exacerbated fear must, like any other fear, be and remain *well-founded*. To support their claims of fear then, the claimants use medical certificates which must also be recognised by the Judge as having probative value. However, as noted above, the Judge has considerable leeway in the probative value he or she grants to medical certificates. The assessment of vulnerability in the context of exacerbated fear therefore remains subject to a *variable and shifting* assessment of medical certificates.

#### 6.4. LGBTQIA+ community: particular vulnerability, caution in the examination of the asylum application

The vulnerability of those seeking asylum from the LGBTQIA+ community is repeatedly noted in the CALL judges' rulings. In the judges' view asylum applications from members of this community must take into account the individual situation of the applicant and the society in which they grew up. Vulnerability is mainly used to justify that an application must be (again) analysed with caution.

This is clearly the case in judgment **No. 222.105 of 28 May 2019**. The applicant of Moroccan origin lodged an asylum application in Belgium. In support of his application, he claimed that he wished to live as an openly gay man without being harassed in public. He also mentioned having been raped by his uncle when he was seven years old. He also expressed his fears that his father would discover his homosexuality and force him into an arranged heterosexual marriage to preserve the honour of the family. The CGRS refused to grant protection on the grounds that the applicant's statements lacked credibility. While the claimant considered that "homosexuals in Morocco" constitute a particularly vulnerable group, the CGRS insisted on the claimant's "resourceful and fit for work" profile in his country of origin<sup>161</sup>. On appeal, the CALL did not agree with the CGRS rationale for denying the application. It saw no reason

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<sup>159</sup> CALL, 30 November 2018, No. 213.357, points 5.10 and 5.11.

<sup>160</sup> CALL, 21 January 2021, No. 231.582, point 3.2.

<sup>161</sup> CALL, 28 May 2019, No. 222.105, point 5.4.

to question the applicant's alleged homosexuality, which was sufficiently established by his statements and by documents attached to the file. The Council emphasised that "homosexuals in Morocco" must be considered as a vulnerable group and that particular caution must be exercised in examining their applications. The Council recognised his particular vulnerability and granted him refugee status.

Even if an asylum seeker manages to convince the Council that they are in need of protection, they may be faced with a different burden of proof. If the persecutor is not the state authority of the country, the applicant will have to prove that the State of the country of origin cannot provide adequate protection and that internal relocation is not possible. Therefore, in the Royal Decree of 15 February 2019, Belgium established a list of countries considered as safe<sup>162</sup>. Applications from these countries are processed via an accelerated procedure. People coming from safe countries of origin will not normally be qualified as refugees (since, by definition, they can benefit from the protection of their country of origin). Sometimes, however, the vulnerability of a particular profile, in combination with other factors, may play a considerable role in granting a protection that was not necessary initially apparent.

#### 6.4.1. Safe country of origin, homosexuality and trans-identity: the double vulnerability

In judgment **No. 217.865 of 22 August 2017**, the applicant of Albanian origin and born with a male gender identity submitted an application for international protection on the ground that they<sup>163</sup> suffered from gynecomastia (excessive development of the mammary glands in humans). In support of their asylum application, the applicant alleged constant harassment by a Mafia group and death threats due to their physical differences. The claimant claimed they were regularly insulted and suffered from permanent discrimination, including in the professional sphere, where they had difficulty finding a job. In support of their application, the applicant also referred to their gender identity<sup>164</sup>.

With its decision **No. 172.742 of 1 August 2016**, the CALL had already annulled the decision of the CGRS, requesting that it hear in greater depth about the discrimination experienced by the applicant. On appeal, the CGRS was still not convinced by the claimant's account. The applicant submitted, with the help of documents attached to the file, that transgender persons are among the most discriminated against and vulnerable people in Albania. The claimant also pointed out that they were subjected to a particularly long hearing, lasting more than seven hours, and that they still do not seem to have been understood by the CGRS. On appeal, the Council disagreed with the position of the CGRS. On the contrary, it considered that the claimant is clear about their transsexuality. For the Council, this also explains the imprecisions raised by the CGRS. The claimant places themselves in a situation of "transidentity"<sup>165</sup> or "fluid gender"<sup>166</sup> which justifies their hesitations when it comes to defining themselves. In addition, the Council also pointed out that many reports show that Albanian society remains very "traditional in terms of gender"<sup>167</sup>. It recognised them as a refugee on the basis of their gender identity.

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162 Royal Decree of 15 December 2019 implementing Article 57/6/1, § 3, paragraph 4, of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, establishing the list of safe countries of origin, *Belgian Official Journal*, 3 February 2020.

163 Gender neutral pronoun is used here to refer to the applicant given their fluid gender identity.

164 The applicant believes that the fact of having breasts that are "more visible" than what is considered normal for a man would perhaps reveal their identity as a woman. See CALL, 22 August 2017, No. 217.865, point B.

165 CALL, 22 August 2017, No. 217.865, point 6.7.1.

166 *Ibid.*

167 *Ibid.*, point 6.7.5.

In judgment **No. 177.994 of 21 November 2016**, the applicant, a minor of Albanian origin, lodged an application for international protection on the grounds of his homosexuality. In support of his application, the applicant submitted a death threat because of his attraction to a boy from his school. The CGRS refused to grant him protection. The claimant considered himself to be particularly vulnerable due to his sexual orientation, but the CGRS determined that the claimant's account was too "laconic"<sup>168</sup>, particularly in view of his profile as an educated young man. During the applicant's appeal, the Council reasoned differently. It underlined the particular profile of the applicant, whose young age must be taken into account and must lead to caution in the examination of his asylum application. At the same time, it also underlined that during his hearing, the claimant explained in detail the difficulties he had experienced in speaking openly about his sexual orientation. This was due to the presence of an Albanian interpreter during the hearing but also to the feeling of shame that the applicant felt when he spoke on this subject. The Council reminded the CGRS to take into account "the specific circumstances of the asylum seeker"<sup>169</sup>, particularly when they belong to a vulnerable group. The Council determined that the young man has a "singular profile"<sup>170</sup> and urged the CGRS to hold a new hearing. It thus referred the case back to the CGRS.

In judgment **No. 177.154 of 27 October 2016**, the applicant of Albanian origin lodged an application for international protection. She claimed to have been forced into a marriage with a violent and jealous man. She also cited the fact that she was in a relationship with a female co-worker. The CGRS doubted the credibility of the claimant's story. It highlighted a number of contradictions between the claimant's statements as set out in the Immigration Office questionnaire and the claimant's statements made before the CGRS. The CGRS also emphasised that although Albanian society is very conservative, positive measures have been taken in recent years to improve the rights of homosexuals. The Council disagreed with the CGRS decision. On the one hand, it highlighted on the succinct nature of the Immigration Office's questionnaire and underlined the applicant's reservations regarding its content. Indeed, starting with her first hearing, the claimant pointed out her difficulties in filling out this questionnaire coherently. Furthermore, the Council recalled that the claimant was questioned for more than seven hours, and that the imprecise language she is accused of using can be justified in this context. The Council further mentioned that the applicant is in an "extremely vulnerable"<sup>171</sup> position (the Council recalled that the applicant is here alone with two children, that she is being medically monitored and that for the time being she has no news of her girlfriend in Albania). For the Council, these elements make any access to proceedings in Albania totally illusory. Given the vulnerability of the applicant and her situation, there is no internal alternative for protection. Thus, they recognised her as a refugee.

The "singular" or "particularly vulnerable" profile of the applicants in the aforementioned judgments therefore played a fundamental role, in that it runs counter to the presumption of "security" established for Albania. In this sense, it also puts the notion of a safe country (*safe for whom?*) into perspective by challenging the idea that certain countries are indeed safe for homosexuals.

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168 CALL, 21 November 2016, No. 177.994, point B.

169 *Ibid.*, point 5.9.

170 *Ibid.*

171 CALL, 27 October 2016, No. 177.154, point 5.7.4.5.

The case law is not consistent at this level, however. In judgment **No. 207.047 of 20 July 2018**, an Albanian national of Catholic faith, applied for international protection on the grounds of her homosexuality. In support of her application, she claimed that she had kept the fact that she was a lesbian a secret. The applicant was regularly beaten by her husband, who repeatedly refused to divorce her. The CGRS refused to grant her status. On the one hand, it considered that homosexuality and the problems she encountered lacked credibility. On the other hand, with regard to the domestic violence cited, the CGRS noted that the nature of this violence was unclear.

The Council agreed with the CGRS position in this case. It noted that the claimant did not provide any convincing evidence of her sexual orientation. The medical certificates provided did not make it possible to determine whether she suffered from a psychological disorder so serious that it would prevent her from being able to answer the questions coherently. On the contrary, the certificates provided point instead to a positive change in the applicant's mental state. The CALL also determined that the applicants' supporting documents outlining the shortcomings of the Albanian regime did not establish that Albanian authorities were "so corrupt, conservative and/or failing"<sup>172</sup> that they could not guarantee effective protection. The Council refused to grant her refugee status. The CALL case law is variable and does not allow for general conclusions on the consequences of vulnerability. Nevertheless, it highlights the roles that vulnerability can play at two levels. On the one hand, vulnerability can be used to justify inaccuracies in an asylum narrative. On the other hand, vulnerability can serve to reinforce well-founded fears that prevent a return to the country of origin. The judgements also show that the assessments of Juges from the CALL vary. While in some cases they clarify who is considered vulnerable, they also highlight who cannot be considered as such. The case law can therefore be seen as valuable indications of the judge's perception of what a vulnerable profile is.

## 7. Appeal in front of the Council of State (CS)

The jurisprudence of the Council of State has evolved in parallel with legislation that tends to take vulnerabilities into account.

The vulnerability of claimants was sometimes ignored in older cases. For example, in decision **No. 77.316 of 1 December 1998**, an Indian minor appealed the CGRS decision to refuse to recognise him as a refugee. The CGRS determined that his application was fraudulent. Above all, the claimant insisted on the fact that the judgment failed to consider the young age of the claimant (16 years old) and his inability to participate in the hearings as an adult. The Council of State, answered the questions raised in a very technical and brief manner. It emphasised that "it does not appear from any documents to which the Council of State may have regard that the applicant experienced any difficulty whatsoever in understanding and answering the questions put to him"<sup>173</sup>. By confining itself to considering that there was no evidence that the applicant required a particular procedure and in the absence of specific binding provisions, the CS did not assess the applicant's vulnerability. The request for suspension was thus rejected.

Over time, the Council of State's jurisprudence has changed in parallel with legislative improvements in taking vulnerability into account. Some trends can be drawn from its consideration of vulnerability.

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<sup>172</sup> CALL, 20 July 2018, No. 207.047, point 6.12.

<sup>173</sup> See C.S., 1 December 1998, No. 77.316.

### 7.1. Vulnerability of minors and unaccompanied minors in CS case law: considering youth and the guarantee attached to minors' status to assess vulnerability

The case of minors is relevant when studying the case law of the Council of State in order to determine how the Judge mobilises the concept with regard to a group of individuals recognised as particularly vulnerable.

Very early on, the case law of the Council of State was faced the issue of vulnerability linked to the age of majority. In 1998, the Council of State held that a minor applicant was legally capable of lodging an appeal in his or her own name without being represented by a guardian (and that he, like an adult, could provide a coherent and detailed account of his experiences).<sup>174</sup> Gradually, with the advent of the guardianship Law and the guarantees granted to (unaccompanied) minors in the asylum procedure, the jurisprudence of the Council of State has evolved. The Council has gradually started to take the specific vulnerability of minors and UMs into account in its decisions.

Thus, in judgment **No. 115.489 of 6 February 2003**, the Council of State had to rule on an application to annul a CGRS decision to refuse the applicant residence. The CGRS had denied the application stating that the applicant's statements were "confused"<sup>175</sup> and inconsistent statements. The applicant pointed out that she was a minor and, as such, that special provisions should have been made in the examination of her application. To the vulnerability of the status of candidate refugee, isolated in a country with which he is not familiar, the applicant added her psychological vulnerability, due to the trauma resulting from the rape and her resulting bed rest. In its judgment, the Council of State recognised that these vulnerabilities should have been considered. The Council of State stressed that factors such as the applicant's minority status and her psychological fragility (attested to in a detailed certificate) were not taken into consideration by the opposing party. The Council of State concluded that the opposing party had committed a manifest error of assessment in determining that the applicant's psychological problems could not explain the inconsistencies in her testimony. It thus annulled the decision to refuse residence.

The insistence on the importance of considering elements relating to vulnerability in the introduction of an asylum application can be found in other CS decisions. In decision **No. 236.371 of 8 November 2016**, the Council of State overturned a decision from the CALL and insisted that the CGRS must taken into account proof of psychological vulnerability in international protection applications. It ruled that the CALL should not have concluded that the account was not credible without conducting a psychological assessment. The Council therefore insisted that vulnerability be taken into account in the burden of proof of an asylum seeker<sup>176</sup>.

Vulnerability among minors is also involved in cases related to the real or assumed age of migrants. If there is any doubt as to the real age of the minor and, if after undergoing a bone test to determine his or her age, the minor is declared to be 18 or older, he or she can no longer be accompanied by a guardian. They therefore lose a series of guarantees, which the Council of State takes into account when assessing vulnerability in its rulings.

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174 C.S., 1 December 1998, No. 77.316.

175 See C.S., 6 February 2003, No. 115.489.

176 See C.S., 8 November 2016, No. 236.371, point IV.

Similarly, in judgment **No. 244.050 of 28 March 2019**, the applicant requested the suspension and the annulment of the decision automatically terminating his assumption of responsibility by the Guardianship Service. The Immigration Office doubted the age of the applicant. Following a series of medical examinations, the opposing party decided to automatically terminate the applicant's coverage by the Guardianship Service. This decision constituted the contested act before the Council of State.

The applicant argued that the doubt does not benefit the applicant under examination, whereas the conclusions of the age test determined an age of 20.2 with a margin of error of 1.5 years. He concludes that the medical report should have "retained the lowest age for the conclusions of the dental test"<sup>177</sup>. The Council of State confirmed that given the dental exam, it cannot be ruled out that the applicant is under 20 years of age. It argued that the plea is serious in that the opposing party does not explain how it concluded that the applicant is indeed of age. Furthermore, under a tight deadline to issue its decision, the Council of State emphasised that the decision of the Guardianship Service seriously prejudices the interests of the applicant "in that it deprives him, before the time, of all the protective measures and advantages to which minors of age can be entitled in Belgium, and in particular, of the benefit of the assistance of a guardian [...]"<sup>178</sup>. It then echoed the arguments of the applicant, who stressed the particular vulnerability of an applicant wrongly classified as an adult, who would be "[...] neither assisted nor represented in his administrative [...] and judicial proceedings and in the day-to-day management of his property"<sup>179</sup>. The CS concluded that the execution of the decision automatically terminating the applicant's care by the Guardianship service should be suspended<sup>180</sup>.

## 7.2. Assessing multiples vulnerability

In addition to recognising the vulnerability of certain profiles and the guarantees that must be attached to them, the CS has also, in certain cases, been called upon to rule on profiles with multiple vulnerabilities. In its assessment of these vulnerabilities (and, above all, of the consequences attached to them), the CS has remained cautious. The judgments below are an illustration of this.

In judgment **115.489 of 6 February 2003**, the accumulation of vulnerabilities and the impact this has on the applicant's profile is clear. In this case, an unaccompanied foreign minor was denied refugee status because doubts existed as to her real age. The applicant argued that the Council of State should take into account the "particular vulnerability"<sup>181</sup> of her specific case, which is due to multiple factors: physical and ontological issues (her status as a minor), psychological trauma following her rape, and procedural elements which arose when she lodged her asylum application. The Council of State concluded that these multiple vulnerabilities, taken together, justified inconsistencies in her narrative, which had to be assessed in the light of the particular profile of the applicant.

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177 C.S., 28 March 2019, No. 244.050, point IV.

178 *Ibid.*, point V.

179 C.S., 28 March 2019, No. 244.050, *op. cit.*, point V.

180 As for the annulment of this decision, the costs are reserved. C.S., 28 March 2019, No. 244.050, *op. cit.*, point V.

181 C.S., 6 February 2003, No.115.489, *op. cit.*



Applicants often refer to an “accumulation’ of vulnerability, in other words, a series of intersecting vulnerabilities that create a *complex* vulnerability profile. Accordingly, we see that in judgment **No. 238.386 of 1st June 2017**, the applicant stressed that the asylum seeker was in a state of extreme vulnerability due to an “accumulation of factors”<sup>182</sup>. Similarly, in judgment **229.570 of 16 December 2014**, the applicant stressed that the fact “asylum seekers are administratively very vulnerable”<sup>183</sup> should be taken into account.

Faced with this “multiple vulnerability” argument, the Council of State sometimes has to deal with vulnerabilities arising from the implementation of a particular procedure to examine an asylum application.

The vulnerabilities relating to the procedure inherent in the lodging of asylum applications are particularly apparent in Judgments **No. 228.902 of 23 October 2014** and Judgment **No. 231.157 of 7 May 2015**. These two judgments are particular in that they both deal with the notion of a safe country of origin, which happened to be the type of country where both applicants came from.

In judgment **No. 228.902 of 23 October 2014**, the applicant was denied refugee status on the ground that she came from a safe country (in this case, Albania). The applicant argued that the concept of safe country of origin is incomplete (*for whom* is Albania safe?) in that it does not take into account the situation of women and the specific violence to which they may be subject to there. It then highlights a type of vulnerability inherent in the procedure applied to applicants from safe countries: the vulnerable profile of these asylum seekers may also result from the fact that it is difficult, in this situation, to reverse a presumption of “safe country of origin”. Applicants (particularly those that are female) are given few means or few legal channels to demonstrate, that a country of origin is not safe for them and especially, *how* it is not safe for them. In this sense, asylum seekers are made very vulnerable by a procedure that makes it difficult if not impossible to *reverse* the presumption that certain countries are inherently safe.

In judgment **No. 231.157 of 7 May 2015**, the applicant brought a case to annul the 2012 Royal Decree that establishes the list of safe countries of origin. The applicant complained that the countries on the list “generally” respect fundamental rights but that most of them did not provide guarantees with regard to “the situation of women and sexual minorities”<sup>184</sup>. As with the previous judgment, this one highlights a particular vulnerability resulting from the procedure that was applied.

Faced with these arguments, the Council of State adopted a very cautious position. The Council of State did not deem that these vulnerabilities were inherent in the procedure. In the two judgments cited, it ruled that the type of vulnerability cited by the applicant “is not supported by any evidence such that it is pure speculation”<sup>185</sup>. At the same time, the role of the Council of State in dealing with this type of vulnerability is questionable. Is it *legitimate* to notify these kinds of vulnerabilities? Is *it up to the Council of State* to recognise them? As far back as 1991, the UNHCR, emphasised that with regard to the concept of country and refugee status that it is “extremely difficult”<sup>186</sup> to make a judgement on the “safety” of a situation given the instability of human rights situations and the inevitable distortion that internal or foreign policy considerations impose on the judgement.

182 C.S., 1 June 2017, No. 238.386, point IV.

183 C.S., 16 December 2014, No. 29.570.

184 C.S., 7 May 2015, No. 231.157, point VI.1.

185 C.S., 7 May 2015, No. 231.157, point VI.2.2 and C.S., 23 October 2014, No. 228.902, point V.2.2.

186 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Background Note on the Safe Country Concept and Refugee Status, EC/SCP/68, 26 July 1991, point 10.



In 1999, in the General Conclusion on International Protection No. 87, the UNHCR highlighted the difficulties that can arise from the application of the safe third country concept and the accelerated procedure that follow. It stressed that the concept must be applied adequately so as not to lead to unacceptable denial of access to asylum procedures or violations of the principle of *non-refoulement*<sup>187</sup>. It can be assumed that Belgian legislators are aware of the shortcomings of the procedure and the complexities that it can create for asylum seekers who are *vulnerable because* of it. The Council of State can be vigilant regarding the mistakes made by legislators, but its role is to “safeguard the legislative work”<sup>188</sup> as much as possible. What legitimacy and, above all, what issues would arise for the Council of State from the recognition of a type of vulnerability directly created by the accelerated procedure, and more broadly, the law?

### 7.3. Prudence of the Judge of the Council of State and vulnerabilities

Faced with the politically sensitive issues raised by vulnerability, the Council of State has been cautious. The Council’s hesitations in using vulnerability can be seen in many judgments. The Council of State usually confines itself to referring to the legal provisions of the case in hand without applying the notion of vulnerability, that is sometimes inherent in them. In the aforementioned judgment **No. 238.386 of 1<sup>st</sup> June 2017**, the applicant considered that the CALL did not take proper account of the international reports appended to the applicant’s file on the fate of single women in Guinea who had been subjected to FGM and fell ill as a result, which testified to the applicant’s particular vulnerability. The Council pointed out that it is incompetent to re-examine the reports that led the first Judge to rule that there was no risk to the applicant<sup>189</sup>.

In the same vein, in judgment **No. 244.190 of 4 April 2019**, relating to the Royal Decree of 22 July 2018 modifying the conditions of detention of foreign nationals on the territory, the applicant considered that the particularly vulnerable state of minors and the best interests of the child justified excluding their detention. The applicant is concerned about the possibility of detention in “family homes” provided for in the draft regulatory order, including for “vulnerable among the vulnerable”<sup>190</sup> children (sick children, etc.). It also criticised the legislation unit of the Council of State on the grounds that it was unable to carry out a full examination of the draft decree in view of the large number of files to be processed<sup>191</sup>.

With regard to very sensitive political subjects (*asylum, detention of under-age children*), the Council of State responded in a very technical manner. Thus, it stated at the outset that when a request for an opinion relates to a draft regulatory decree, the Council of State may decide not to give an opinion<sup>192</sup>. It emphasised that in the present case, it chose to issue an opinion and stated that the opinion is “necessarily incomplete”<sup>193</sup>, warning that “nothing may be inferred from any silence on its part with regard to certain provisions or issues”<sup>194</sup>.

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187 EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER’S PROGRAMME, General Conclusion on International Protection No. 87 (L) ,50<sup>th</sup> session, A/AC.96/928, 8 October 1999, point j.

188 The expression is taken from the book: GRANDJEAN G., “Les fonctions politiques des juges : propos introductifs sur le pouvoir politique des juges dans l’exercice de leur fonction”, in GRANDJEAN Geoffrey, WILDEMEERSCH Jonathan (dir.), *Les juges : décideurs politiques ? Essais sur le pouvoir politique des juges dans l’exercice de leur fonction*, Bruxelles, Bruylant, 2016, page 42.

189 C.S., 1 June 2017, No. 238.386, *op cit.*, point IV.

190 See C.S., 4 April 2019, No. 244.190, point VI.2.

191 *Ibid.*, point VI.1.

192 According to Article 84, § 4, paragraph 2, of the coordinated Laws on the Council of State.

193 C.S., 4 April 2019, No. 244. 190, *op.cit.*, point 18.

194 *Ibid.*

The CS goes on to recall that it is not for the Council to “decide in place of the King”<sup>195</sup> how to ensure that the best interests of the child are respected when minors are detained with families. It stressed that it cannot decide on concrete measures in this regard. It can only verify that all the guarantees provided for by the Directive and the Convention on the Rights of the Child are taken up and provided for in the contested decree. Although the judgment orders the suspension of the confinement of children in centre 127 bis, due to the noise pollution to which children are subject to in particular, Anne-Catherine Rasson, in her Article, emphasised that the judgment does not formally prohibit the confinement of children in Belgium<sup>196</sup>. It simply prevents this confinement from taking place in *places unsuitable* for them. This position (*what constitutes a suitable place for children in the context of detention?*) may still be questioned, particularly when the UN Committee on the Rights of the Child, in its joint general comment No. 23, considered that the detention of a child on the grounds of the migratory status of his or her parents constitutes a violation of the rights of the child and is contrary to the principle of the best interests of the child<sup>197</sup>. Moreover, Belgium has already been condemned for detaining children in unsuitable conditions three times by the ECtHR<sup>198</sup>.

In the above-mentioned rulings, the Council of State is therefore gradually being led to take a stance on the consequences of the vulnerability of certain applicants, but also on the multiple vulnerabilities that may intersect. Aware of the sometimes political stakes of asylum and vulnerability, the Council of State nevertheless remains cautious in its assessment of vulnerable profiles.

## 8. Conclusion: vulnerability in Belgian law - first observations

This report examined how the notion of vulnerability is defined in Belgian asylum Law. The notion of vulnerability is taken up by several instruments of Belgian law. The notion of vulnerability is included in the Law both in its own right and through the specific term “special procedural needs”, often without direct and explicit reference.

There are two lessons to be learned at two distinct levels.

Firstly, there is the level of the *definition of vulnerability* in Belgian law. The analysis of Belgian legal instruments carried out in this report makes it possible to identify two distinct definitions of vulnerability: On the one hand, a categorical (majority) definition, which understands vulnerability as a set of target groups, so-called vulnerable categories. This is the case in Belgian reception policies (and more specifically, in the non-exhaustive list of so-called vulnerable persons in Article 36). Here vulnerability is understood as a subjective, inherent characteristic of the person, and it is because the person possesses this characteristic that certain rights are granted. On the other hand, there is a factorial, situational definition of vulnerability. This definition understands vulnerability as a set of (risk) factors that can, in a given situation, *make* a person more or less vulnerable, *expose* him or her to vulnerabilities. This is particularly the

<sup>195</sup> *Ibid.*, point 34.

<sup>196</sup> RASSON A-C., “La détention des familles avec enfants mineurs dans le centre 127bis suspendue par le Conseil d’État: un premier (petit) pas en faveur des droits de l’enfant”, 17 July 2019, *Justice online*, available at: <https://www.justice-en-ligne.be/La-detention-des-familles-avec> [accessed 15 December 2020].

<sup>197</sup> UN COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (CMW), Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, points 9, 10 and 11.

<sup>198</sup> See among others: ECHR, 19 January 2010, *Muskhadzhiyeva e.a. vs Belgium*, No. 41442/07 and ECHR, 13 December 2011, *Kanagaratnam e.a. vs Belgium*, No. 15297/09.

case in the case law reviewed in this report, where other vulnerability factors (education for instance) are taken into account to assess the ability of the asylum seeker to tell a story, or to evaluate the risk they may incur if they return home. In these different cases, vulnerability is assessed through a set of concordant elements that make the person vulnerable, beyond his or her own characteristics.

It is relevant to point out that in some cases, this situational vulnerability is created by the very institutions that are trying to combat it, or at least consider its effect. People with an already fragile and precarious profile are made even more vulnerable by the lack of an adapted legal and political regime. Vulnerability, in this sense, is the absence of legal protection, built and maintained by a system responsible for its non-implementation. This type of vulnerability (system-generated) also stems from the fact that vulnerability is a meaningful concept politically. The former Secretary of State for Asylum and Migration Theo Francken, in justifying his asylum Law reform project says he wants to “limit abuses, defend vulnerabilities”<sup>199</sup>. In his opinion, the Secretary of State seems to use a dichotomy which does not reflect the complex reality and the multiple vulnerabilities of asylum seekers. This discourse refers to an imaginary “securitisation” of migration policies, which has certainly existed for a long time at European level, but which continues to raise questions when it is brandished to protect and safeguard vulnerable people. This particular “type” of vulnerability will need to be further studied and developed in another report<sup>200</sup>.

Secondly, there is the *consideration of vulnerability* in Belgian law. Across the asylum policies, and in particular during the reception of asylum seekers, a particular vision of vulnerability is put forward and should be highlighted. In Belgian law, vulnerability is taken into consideration from a “management” perspective; that is, it is often represented as a logistical and financial challenge. In this view, the understanding of vulnerability appears to be a “capacity of the state to organise reception arrangements”<sup>201</sup>, to take charge of certain profiles on its territory, which may later be qualified as refugees. This is clearly seen in the taking into account of the vulnerabilities of UMs, women victim of sexual violence or people with disabilities. Taking into account the vulnerabilities of such groups is first and foremost reflected in their placement in suitable places, supervised as much as possible by specialised staff.

In conclusion, it should be noted that none of the classifications and categories mentioned in this report can claim to be absolute, as they do not provide an exhaustive definition of vulnerability that is always true. However, these classifications make it possible to highlight how vulnerability becomes a notion that is above all *constructed*, and as this report tends to show, evolving and shape shifting, according to political agendas, the concerns of administrations, States and, finally, the law.

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199 VALLET C., “Francken a l'asile fragile”, *Alter échos* No. 452, 3 October 2017, available at <https://www.alterechos.be/francken-a-lasile-fragile/> [accessed 23 June 2021]

200 Namely, the second research report of the VULNER project, focusing on vulnerabilities, analyses how the protection seekers perceive and experience their own vulnerabilities in the face of the legal and policy frameworks and implementation practices.

201 AGIER M., MADEIRA A-V., *Définir les réfugiés*, Paris, Coll. La vie des idées, March 2017, page 8.

## IV. IMPLEMENTING PRACTICES

### **1. The meaning(s) of vulnerability: relativity, potentiality, contextuality, resilience**

Vulnerability is as complex as it is relevant. At first glance, we almost instinctively perceive what the notion covers: vulnerability is the wound that weakens, that makes us waver, that puts us in difficulty. In the field of asylum, however, and as the subsequent sections of this report show, vulnerability seems to carry a very heterogeneous meaning. Although vulnerability is gradually acquiring an important place in asylum matters, it still seems to suffer from a lack of concrete meaning.

This vagueness surrounding vulnerability in the Belgian and European right of asylum has not only been highlighted by doctrine and scientific Articles. It was also immediately highlighted by the actors interviewed in this study (namely, asylum judges, protection officers, social workers and civil servants from the Immigration Office). Thus, vulnerability in terms of asylum has regularly been described as “*complex*”<sup>202</sup>, “*a particularly broad and vast concept*”<sup>203</sup> and its definition as a “*particularly difficult question that requires reflection*”<sup>204</sup>.

Faced with the lack of a homogenous content of vulnerability, some of the actors interviewed also considered that they were unable to define the notion. In this sense, Judge Verdickt, a Judge at the Council of Alien Law Litigation, considers that “*we cannot really give a meaning to vulnerability*”<sup>205</sup>, nor a precise definition of it. Judge Declerck also emphasised the difficulty of speaking of vulnerability as a “*notion*” in law, in that vulnerability is above all a moving object in many forms and not fixed in its content<sup>206</sup>. In this respect, she points out that the law only sheds light on vulnerability through “*some groups of people that might be vulnerable or might not be*”<sup>207</sup>. In the same vein, several protection officers mention the difficulty of explaining what vulnerability consists of. One protection officer emphasised in this respect that “*it is impossible to define it*”<sup>208</sup>, stating that he “*never had a clear definition of vulnerability in mind*”<sup>209</sup> and that there was no need to define it specifically. A social worker from the Red Cross Centre in Ans finally mentions: “*I find it very difficult to define vulnerability. I see ‘the thing’ but I find it very difficult to explain it [...]*”<sup>210</sup>. A key concept in any discourse on taking into account the special procedural needs of asylum seekers, vulnerability suffers from a lack of definition leading to a non-exhaustive list of vulnerable categories whose needs are assessed exclusively by States.

However, several constants seem to emerge from this vagueness emanating from the notion of vulnerability. Indeed, various elements mentioned in the interviews allow the notion of vulnerability to be further qualified and its outlines and scope to be clarified.

202 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

203 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

204 Interview n° 34, social worker, Jette Red Cross reception centre, Jette, 09.09.2020.

205 B. Verdickt, CALL Judge, Brussels, 09.07.2020.

206 K. Declerck, CALL Judge, Brussels, 01.07.2020.

207 *Ibid.*

208 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

209 *Ibid.*

210 Interview n° 40, social worker, Ans Red Cross reception centre, Ans, 21.09.2020.

## 1.1. Vulnerability: a relative concept

Vulnerability, as defined in the interviews, is seen as a *relative* concept, compared to a “non-vulnerable” situation or person. Vulnerability therefore exists “with regard to an antonym of reference”<sup>211</sup>. Asylum seekers become vulnerable in *relation* to ordinary citizens. This relativity of vulnerability can be found in the comments of the various actors interviewed. Thus, Judge Hayez mentions that a vulnerable person is:

*“[...]A person to whom we must pay more attention, in terms of listening, time, and the consequences we attach to the fact that they are vulnerable”<sup>212</sup>.*

In the same vein, another actor interviewed defines vulnerability as

*“Any psychological or medical situation or experience of the person that makes him or her more sensitive, more fragile than an ordinary individual”<sup>213</sup>.*

A protection officer also develops the notion of vulnerability by specifying that it refers to a person who is not “in a position of strength”<sup>214</sup>. Hippolyte Kinsonde, the Deputy Director of the Fédasil centre in Rixensart, adds:

*“A vulnerable person is a person who needs to fight more than another to face the procedure and the outside world”<sup>215</sup>.*

Carmen Salgado, the Deputy Director of the Red Cross Centre in Uccle, emphasises the same:

*“For me, vulnerability is more a question of increased and relative fragility, which means that a person needs more specific, particular attention, adapted to these vulnerabilities”<sup>216</sup>.*

Farid Khali, the Director of the centres in Uccle and Jette, agrees stressing that a vulnerable person is first and foremost:

*“Someone, who, in relation to society, in relation to access to something, in relation to the norm, has weaknesses which are different from the majority”<sup>217</sup>.*

According to some actors, the result is that we find ourselves faced with people who are “*fragile from the outset*”<sup>218</sup>.

### 1.1.1. Vulnerability as an intrinsic characteristic of the asylum seekers

These assessments of vulnerability suggest that there may be ‘more’ vulnerable people (in this case asylum seekers) who would require more assistance. It is also worth pointing out that almost all of the actors interviewed, with a few exceptions, recognise the intrinsic and inevitable vulnerability of asylum seekers: for example, a Judge from the CALL clearly states that “*everybody is vulnerable in the asylum system*”<sup>219</sup>. Judge Verdict, along the same lines, stresses that

211 REVETT, “Rapport de Synthèse” in ASSOCIATION HENRI CAPITANT, *La vulnérabilité*, Bruxelles, Bruylant et LB2V, 2020, page 10.

212 J-F. Hayez, CALL Judge, Brussels, 14.07.2020.

213 Interview n° 5, 14.07.2020.

214 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

215 H. Kinsonde, Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

216 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020

217 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

218 M. Tassoudis, Deputy Director of Rocourt Red Cross reception centre, Rocourt, 3.09.2020.

219 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

*"The migrant, whether they are asylum seekers or migrants, it does not matter, is in a situation of vulnerability as soon as they leave everything they know and arrive where they know nothing"<sup>220</sup>.*

A magistrate from the Labour Court of Liège further specifies:

*"I think that everyone is well aware that the population of asylum seekers is vulnerable in itself, because for them the right to reception is almost a matter of life or death, in any case, of life or survival in very bad conditions"<sup>221</sup>.*

The protection officers go in the same direction when they detail how vulnerability is taken into account in their interviews: one of them mentions starting from the principle that the asylum seeker being interviewed *"already has a form of vulnerability, basic and in itself"*<sup>222</sup>. The social workers in the centres are unequivocal on this subject, describing asylum seekers as *"basic vulnerable groups"*<sup>223</sup>, without reference points and dependent on the social workers in the centres.

Although the interviewees define all asylum seekers as vulnerable, the European Directives seems to mean something else in its wording: by developing broad categories of people who are *a priori vulnerable* to be paid attention to, it suggests that there are *vulnerable among the vulnerable*. The legal provisions show a desire to individualise the processing of asylum applications according to the type of vulnerability and their seriousness, with a view, for some authors, to *"prioritise suffering"*<sup>224</sup>. The interviewees seem to be aware of this embarrassing issue: on what criteria should the granting of a "vulnerability" status be based? Also, if everyone is considered vulnerable, no one is really vulnerable. Some interviewees also define vulnerability in terms of specifically or more exclusively vulnerable groups or categories, equating vulnerability with these particular groups. For example, to the question "What do you mean by vulnerability in asylum matters", a Judge answers:

*"If you had to make categories, then I would think as particularly vulnerable: minors, children, people who have medical conditions either physical, or mental, or you could say maybe single women..."<sup>225</sup>.*

Judge Hayez also points out that vulnerability includes: *"[...] minors, mentally disabled persons, persons who have been victims of violence, particularly sexual violence, [...]"<sup>226</sup>* An interviewee uses this categorical definition again, defining vulnerability through typically vulnerable people:

*"When we talk about vulnerability, for me, vulnerable people are really people who are either in psychological suffering or people who, because of their age, such as children for example, do not have the capacity to discern"<sup>227</sup>.*

220 B.Verdickt, CALL Judge, Brussels, 09.07.2020.

221 Interview n° 41, Labour Court Judge, Brussels, 23.09.2020.

222. Interview n° 17, CGRS protection officer, Microsoft Teams Platform 26.08.2020.

223 T. Zinck, Voluntary return counselor, Liège, 02.09.20. and Interview n°51, social worker, Sugny, 25.09.20.

224 BOUBIL Élodie, WOLMARK Laure, « Vulnérabilité, soin et accueil des demandeurs d'asile », *La Revue des droits de l'homme* [Online], n° 13, 2018, available at: <https://journals.openedition.org> [accessed 7 January 2021]

225 Interview n° 6, CALL Judge, Brussels, 16.07.2020

226 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

227 Interview n° 18, 28.08.2020.



Another protection officer admits to trying to grasp the notion of vulnerability by starting with vulnerabilities they can identify the most: *“it’s important to start with the most obvious ones, like being non-accompanied minors or being a single woman [...]”*<sup>228</sup>. For some of the actors interviewed, these categories therefore represent “the vulnerable among the vulnerable” to whom particular attention must be paid. One actor interviewed is very clear on this subject:

*“If all migrants are vulnerable, then our public is vulnerable by definition. So, if we want to adapt the procedure to a vulnerability, it will automatically be to a particular vulnerability”*<sup>229</sup>.

Another Judge speaks about “layers”<sup>230</sup> of vulnerability that can combine in one single vulnerable profile. Finally, it is rather the concept of “particularly vulnerable”<sup>231</sup> that is important. A social worker from the Uccle centre emphasises this along the same vein:

*“That’s how I understand it and that’s how it is often presented: there are people who are even more vulnerable among those who migrate [...]”*<sup>232</sup>.

### 1.1.2. From a categorical approach to the individual approach: towards a contextual vulnerability

While vulnerability can be defined in terms of the category of person who is fragile, it is not limited to that. However, a more *individual approach to vulnerability* seems to be emerging from a categorical approach to vulnerability. Several of the actors interviewed emphasise the non-exhaustive nature of the categories as found in the law. In the end, it is an individual and subjective approach to vulnerability that is retained throughout the procedure. Thus, Judge Hayez specifies:

*“That’s complicated too. You can have a young man in perfect health, strong, apparently strong in any case and resistant, and then you realize that during a hearing this person breaks down, because he hasn’t seen a psychologist [...] In this case, there’s nothing in the file that attests to vulnerability, but it is clear from the statement, from the posture of the person at the hearing, even though the person doesn’t clearly fall within the categories predefined by the law”*<sup>233</sup>.

Another interviewee agrees:

*“Whether we say fragility or vulnerability, I think we’ll have the same difficulties, I don’t see a word that would be clear to everyone, that would tell us what to watch out for, especially since for asylum seekers it’s often on a case-by-case basis [...]”*<sup>234</sup>.

Another protection officer further emphasised:

*“I think that categorising vulnerable people is complicated, especially as it usually comes from past experiences that make them vulnerable and different from people who have not lived what others*

228 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

229 Interview n° 2, 07.07.2020.

230 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

231 Interview n° 2, 07.07.2020.

232 Interview n° 23, social worker, Uccle Red Cross reception centre, Uccle, 31.08.2020.

233 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

234 Interview n° 5, 14.07.2020.

*have been through*<sup>235</sup>.

A protection officer mentions along the same vein that focusing on vulnerability should lead to not restricting the notion and, above all, to taking into account the *"varieties of vulnerabilities that may exist"*. This protection officer adds:

*"Independently of wanting to use 'a term', I think it is appropriate to think about the person's situation, their background [...] A cat is a cat. But a cat is also a feline, which has a tail, pointed ears, four legs, which can be stroked..."*<sup>236</sup>.

Olivier Peeters, Director of the CAMPO Red Cross centre of Ans<sup>237</sup>, in the same vein, specifies:

*"It's complicated by the fact that you have to know people too ... How can you determine the vulnerability of a person using criteria like that? It's very, very complicated ... It's difficult because it's still a specific profile, each time ... with a story"*<sup>238</sup>.

## 1.2. Vulnerability: a negative potential

Vulnerability, in the comments gathered in the interviews, is also hypothetical and possible: it does not exist *as such* but can be realised, revealed and appear. In this sense, they are a potentiality that can happen and that would have negative effects. In this sense, Judge Declerck mentions that *"vulnerability is the potential to be fragile"*<sup>239</sup> and to suffer the consequences attached to it. Another interviewee further mentions in the same vein that vulnerability would be *"a set of individual characteristics of an application for international protection that make them more likely to be denied their rights"*<sup>240</sup>.

In this perspective, Julian Knittel, the Deputy Director of the Red Cross Centre in Jette, Brussels mentions:

*"I would say that being vulnerable is more a potential that can be realised, but a negative potential, I mean, for me there is the risk factor that is present. So, a vulnerable person is a person at risk and there are all kinds of risks"*<sup>241</sup>.

In the same sense, Benoît Fockedeý from Jette underlines:

*"Vulnerability would be a set of factors and resources that a person has or does not have, and which creates a greater or lesser risk for a person not knowing how to defend themselves"*<sup>242</sup>.

Olivier Peeters also stresses that vulnerability is *"the need to be more protected"*<sup>243</sup>. He explains:

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235 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

236 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

237 This CAMPO centre was set up in an emergency at the beginning of 2020 to provide additional reception. This centre has been built to offer temporary supplementary reception places, which are not supposed to last in time (but only for a period of "crisis").

238 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

239 K. Declerck, CALL Judge, Brussels, 01.07.2020.

240 Interview n° 18, 28.08.2020.

241 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

242 B. Fockedeý, "referee" for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

243 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

*"To be vulnerable is to be more fragile or more easily destabilised in life compared to the living conditions we have. It is not being able to defend oneself against difficult living conditions"<sup>244</sup>.*

### 1.3. Vulnerability: a matter of context

In the definitions given of vulnerability, vulnerability is context dependent. Thus, the negative potential of vulnerability does not develop on its own but is closely connected to a milieu, an environment that favours it. A large number of the actors interviewed associated vulnerability and context in our interviews: Thus, Isabelle Plumet, Director of Petit-Château Fédasil reception centre, emphasises:

*"I'm going to put it like this, for me vulnerability can be linked to a particular place and a particular time"<sup>245</sup>.*

Owen Miossec, "referee" for unaccompanied minors of the Red Cross centre of Uccle, specifies in detail two facets of vulnerability in context: on the one hand, it can be linked to the person as such in a foreign country with "[...] a whole series of reference points to be re-created because the environment is not the same [...]"<sup>246</sup> and on the other hand, to an asylum system "that is not thought out in terms of comprehensive care for people"<sup>247</sup>. Elisabeth Lejosne, a nurse at the Jette centre, adds:

*"Vulnerability is a state [...] which, in a context, puts the person in a situation where they could be physically or morally injured"<sup>248</sup>.*

A protection officer further emphasises:

*"It is true that the situation of applicants for international protection in Belgium is a special situation [...], which places people in a potentially vulnerable situation"<sup>249</sup>.*

The situation and context can so condition vulnerability that it can make a person vulnerable. A nurse interviewed agrees:

*"I don't like to say that asylum seekers are all vulnerable people, I think it's above all the person in the context where they are, the conditions where they are that make them vulnerable"<sup>250</sup>.*

The importance of context in creating vulnerability is also underlined by Hippolyte Kisonde, who points out that "A person is not vulnerable if they are given the means to cope with what they lack"<sup>251</sup>.

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244 *Ibid.*

245 I. Plumet, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

246 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

247 *Ibid.*

248 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

249 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

250 Interview n° 58, 12.10.2020.

251 H. Kisonde, Deputy Director of Rixensart Fédasil Red Cross reception centre, Rixensart, 28.09.2020.

The context, in the above definitions, covers two elements: on the one hand, it includes the new environment with which the applicant has to become familiar: it is often said that the applicant is “*in a new environment*”<sup>252</sup>, “*another culture with other rules*”<sup>253</sup> and without knowledge of the language. On the other hand, it also includes the asylum procedure as such: life in a centre, the expectation of status and the resulting administrative precariousness in terms of status, are all situations and contexts that make the person vulnerable. They are the subject of subsequent sections in this report.

#### 1.4. Resilience: the other side of vulnerability?

The fact that vulnerability is connected to context invites some people to think that asylum seekers should not be reduced only to their condition as vulnerable people. Some actors interviewed repeatedly highlighted the resilience of asylum seekers. Thus, rather than focusing on their vulnerability, they demonstrated their strength to stand up and continue to live.

This aspect of resilience is underlined by Isabelle Plumat:

*“Not all people are vulnerable. My vision, and not only mine, [...] is that they have a lot of resources, people who for one reason or another have decided to leave their country because they are in danger, and who have found the resources to do so”*<sup>254</sup>.

Carine Vansimsen further argues in this sense:

*“There is a proverb that the public often uses: all the fingers on your hand are different. And yet there is the group of hands, but all the fingers are different [...] the person who has experienced something catastrophic in their life may still have the resources in their gut to get up, move, move forward [...] I don’t like people talking about a vulnerable group”*<sup>255</sup>.

Florence Opdebeel, a relief nurse, also mentions her surprise at the resilience of people considered vulnerable a priori:

*“But in contrast to that [to their vulnerability], we also realise that they have an absolutely supernatural strength in them too, because if we really look at them and realise how isolated they are, alone and far from any reference point, on the contrary, they develop supernatural resistance [...] That they simply stand up to what some people have experienced... For me it’s supernatural”*<sup>256</sup>.

Another nurse explains in the same vein that some asylum seekers think that their vulnerability “*can be a strength too*”<sup>257</sup>, as they have the feeling that they are now “*strong people [...] who have gone through all this*”<sup>258</sup> and resisted the violence of the migratory journey.

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252 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

253 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.07.20.

254 I. Plumat, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

255 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

256 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

257 Interview n° 58, 12.10.2020.

258 *Ibid.*

Social workers are sometimes even surprised by the resilience of some asylum seekers. This is particularly the case with regards to women asylum seekers (a public considered particularly vulnerable). Two social workers from the Red Cross and Fédasil reception centres say in that sense:

*"I am surprised that they are still here [...] They have made the migratory journey through Libya, Algeria, they have lived through millions of things, and I find them much stronger, even, it is their strength that amazes me! It's not their vulnerability that jumps out at me, on the contrary [...] I have the impression that there is so much strength in them, rather than vulnerability"<sup>259</sup>.*

In the same vein, a social worker points out:

*"[...] I think it's very important to recognise their suffering [...] But what we have to recognise is that they are there, that they are still alive, that they have come this far and that [...] It shows that deep down inside of them, there is a kind of impressive power"<sup>260</sup>.*

For this worker, this is "proof that they cannot be reduced to poor, vulnerable victims"<sup>261</sup>.

Carine Vansimsen underlines in the same vein: "We have female warriors too, who are armed with super tools, who know the way..."<sup>262</sup>. Judge Declerck adds in this sense, with regard to women asylum seekers, that she finds them above all "very courageous"<sup>263</sup>.

## 2. Identification of vulnerability: a matter of observation and listening

Vulnerability is a difficult concept to define. For those working in the field, it is nevertheless essential that the vulnerable people are identified so that they can be considered, both in the course of a hearing and in the reception centre. In the interviews conducted, observation seems to be the preferred method for detecting vulnerabilities throughout the asylum procedure.

The CALL Judges insist a lot on the importance of the hearing, which allows the identification of the applicant's vulnerabilities. Judge Hayez is very clear on this point:

*"I attach a great deal of importance to the hearing [...] it's really the opportunity to realise the vulnerability of the person. Even if you only talk to the person for 10 to 15 minutes, it's often enough. I've been dealing with this subject for almost 17 years, I've read hundreds of asylum stories, I've seen hundreds of people, and so [...] we have personal and professional experience, [...] we know how to see at the hearing when we're dealing with a vulnerable person [...] The time of the hearing is very important to realise this and the hearing can really change everything and plays a big role"<sup>264</sup>.*

In the same sense, another interviewee emphasizes the importance of the hearing to notice certain vulnerabilities that are not a priori indicated in the file of some asylum seekers. Thus, the hearing becomes a moment to truly identify previously unknown vulnerabilities. The interviewee takes a specific example to illustrate this case:

<sup>259</sup> Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

<sup>260</sup> Interview n° 32, 09.09.2020.

<sup>261</sup> *Ibid.*

<sup>262</sup> C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

<sup>263</sup> K. Declerck, CALL Judge, Brussels, 01.07.2020.

<sup>264</sup> J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

*"It reminds me of a case I had recently. An Afghan who had grown up in Iran. He had not grown up in Afghanistan. Obviously, he had drug addiction problems. In fact, at the hearing I realised that he was not coherent [...] I mean, it was really not right. And I annulled the decision[...]"<sup>265</sup>.*

While observation is important, for some people, certain information present in the file is also essential in order to identify, at an early stage, what type of vulnerability can be detected in the asylum seeker. The Judge will therefore rely on the profile of the person but also on their asylum story to detect vulnerability even before the hearing. Another interviewee explains to this effect:

*"To identify them [the vulnerabilities], first of all I'm going to see the documents I received, there are still a lot of files where we have medical or psychological documents so that warns us about vulnerabilities. Then I'm going to see the person's story, so I already have an idea of their profile: is it a young academic or is it a young woman fleeing a forced marriage? And so there already, based on their profile, I know that they will be more or less fragile or vulnerable. And then I'm going to see which persecutions are also put forward as a justification for fleeing one's country [...] It also warns me about the vulnerability of the person in view of what they have gone through"<sup>266</sup>.*

The importance of observation can also be seen in the protection officers. They attach particular importance to the interview and the external signs of vulnerability that may be observed. A protection officer is clear in this regard:

*"There may also be attitudes of the applicant during the interview. Hyperventilation, a great form of stress, absences, crying when certain subjects are discussed. You can see it immediately, you are faced with someone who changes their attitude, you feel that it is a sensitive subject and that obviously in writing you don't know how to see it, it is during the interview that things will sometimes come out"<sup>267</sup>.*

Another protection officer testified in the same vein about vulnerable people:

*"When we have the person in front of us, we can feel it. That's something you can't put words to..."<sup>268</sup>*

From this intense observation and "case-by-case" approach, based on the individual characteristics of the person, a twofold feeling also emerges among the actors interviewed. On the one hand, a recognition of the subjectivity of the assessment of vulnerability, which is particularly marked in decision-making bodies such as the CGRS and the CALL. A protection officer emphasised this:

*"There is a whole aspect of feeling [...] it's difficult to give a directive that says, 'well, if the person reacts like that it's OK [he or she is vulnerable]'; you see? So, we're in the realm of feeling"<sup>269</sup>.*

Judge Hayez agrees:

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265 Interview n° 2, 07.07.2020.

266 Interview n° 4, 14.07.2020.

267 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

268 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

269 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.



*"I think the posture people have in court, the way they answer questions, plays and says a lot about the person in fact. Even if again, it is subjective [...]"<sup>270</sup>.*

On the other hand, there is a need to objectify vulnerability. Since vulnerability is not definable or reducible to *a priori* vulnerable criteria or target groups, whether it is "felt" or "seen", it must be given objective content during the procedure. Another interviewee notes more broadly that this need for objectification is more widely felt within the asylum procedure:

*"Even so, the courts have also become aware [...] that in asylum matters, it is still necessary to move away from the 'I believe/I do not believe in it' approach. It's much too subjective, it's much too vague in relation to people who still come to ask for international protection having fled their country, so it is fine to have a margin of error, we will always have one, but we must still objectify everything we do as much as possible"<sup>271</sup>.*

This desire to objectify can also be found with protection officers. Thus, one of them emphasises:

*"The reason why we mention all these moments of silence, all these moments of emotion in our notes of the personal interview, is also because in the end we have to objectify vulnerability"<sup>272</sup>.*

Social workers also use their observation and listening skills to detect vulnerabilities in the field. Lindsay Billet, a social worker at the Ans Red Cross centre is very clear on this point:

*"It's a lot in observation, in fact, I see the person every day, and I actually talk to them. And I identify how the person is at the beginning and I see the evolution, and from my personal background, I see, for example, everything that is non-verbal, the person who physically closes up, who doesn't speak, who isolates themselves, or the anxiety attacks, the people who self-mutilate... Yes, you can see that it evolves"<sup>273</sup>.*

Carla Pannemans, a social worker at the Broechem Fédasil centre, also explains that vulnerabilities can be observed in sudden, unexpected moments. To this end, she explains how a very one-off event within a centre can draw the attention of social workers to an applicant's vulnerabilities:

*"You can notice by their behaviour or when something occurs, when there's a situation, the way that they react to it, you can notice it [...] I had it once with a girl from Rwanda, she was a good girl, [...] she was always happy, then one day I was in the refectory with her, she was working, and there was a situation, that was a big fight between some Albanian guys and one Nigerian boy and I tried to stop the situation and suddenly [...] the cook said to me 'Carla, look at this girl' and the girl was holding herself at the desk and she could not move, she was like paralysed, she was like...and then I was thinking, 'okay Rwanda...,' maybe, she was in a genocide before, you know, all these things. And she couldn't go, it took me 10 minutes to calm her down and talk to her before she really could leave her hands and then you see, I think, that people are vulnerable, in situations like this..."<sup>274</sup>.*

270 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

271 Interview n° 4, 14.07.2020.

272 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

273 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

274 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

Social workers say that these very punctual moments are precious and should not be missed. One social worker says:

*"Sometimes you get frustrated because you don't want to miss the boat, there is one who may come to talk to you once and if you miss the boat, they may never come to talk to you again! So the whole thing is to be observant, because there is everything behind it, the non-verbal, and if we don't grasp it, we risk missing it! There are residents who are more discreet, so I'm going to go more towards them, but it's something we learn, a sensitivity that we develop by working here"<sup>275</sup>.*

In the centres, the identification of vulnerabilities is also done with the help of "individual support" (also called "individual accompaniment"), a service set up to guarantee individual follow-up for each resident. Concretely, the resident is assigned a "resource person" or a support person to whom they can ask all these questions and share their needs and issues, through interviews scheduled at regular intervals. In addition to this, observations and more "informal" meetings within the centre are also key moments of identification. For Sébastien Quoidbach, an individual support coordinator at the Rocourt Red Cross centre, this tool is essential in detecting vulnerabilities. However, he insists on the added value of working together as a team within the centres to share his observations on the vulnerability of the residents:

*"Every two months [...] we will ask the resident, 'come and let's have a formal, individual meeting'. But outside the two months, we meet all the time. In the restaurant, in the corridors, outside... [...] this is an informal meeting. That too counts, being able to observe the resident and that is very important in the life of the centre in an informal way. But what will be important is to meet the resident in a formal way. Every x times. And also, to be able to take breaks and say to yourself, 'How do I feel about the resident?' Then the person in charge of individual support might see that something is wrong. Then they will go and meet the social worker, the medical office, the management... and little by little we will talk about it more formally in a team meeting or morning briefing, to have a closer look at the person"<sup>276</sup>.*

## 2.1. Minding the vagueness of vulnerability: power of appreciation and (the need of) guidelines to address vulnerabilities

While vulnerabilities are assessed on a case-by-case basis and cannot be apprehended using a fixed analytical grid, they do, by definition, imply a wide discretionary power on the part of Judges and protection officers.

For some of them, this room for manoeuvre is precisely what guarantees a conscious and humane approach to vulnerabilities. Judge Hayez is very clear on this point:

*"I was saying earlier that too many rules kill the rule, so in the end we have to leave a little bit of freedom of appreciation, not too many guidelines, because I mean, it must remain something natural to grasp a story, it must not be mechanical. We are not machines. And that's the big trend at the moment, and it's very dangerous, we're going to stop the procedure as it is at the moment, we're going to dehumanize it, and we're going to entrust it to machines in fact"<sup>277</sup>.*

The Judge specifies that it is "this absence of a framework" that allows people to work more freely:

<sup>275</sup> Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

<sup>276</sup> S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

<sup>277</sup> J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

*"The fact that it is not fixed perhaps is better. Because it opens up the field of possibilities and it allows us to be more flexible, more mobile, in the way we approach a case"<sup>278</sup>.*

At the same time, and in the face of this wide margin of appreciation, some Judges also express their discomfort, faced with a notion (vulnerability) whose practical consequences on work they find difficult to see. Thus, the lack of clear guidelines on the identification of vulnerabilities often leaves the Judge powerless. A Judge explains:

*"I think everything that is guidelines or tools is always, always very helpful and especially in this field because it's something that's quite new for us, I think it goes back to the 2013 asylum Procedures Directive, which we transposed too late. So, for Belgium it's only been a couple of years since we had this notion in the legislation. That is it is still quite a new concept to work with and I am also trying to find my way [...] I don't have these guidelines or these toolkits that you were speaking of...what does it mean having you know, 'special procedural needs', what does it mean? How broad is it? Where you put the threshold?"<sup>279</sup>*

Judge Hayez shares the same question, when it comes to understanding vulnerability. For the Judge, what matters most is the practical consequences attached to the word "vulnerable", rather than the fact that the term is enshrined in the law as such. These consequences in the way of addressing vulnerability are actually very limited:

*"[...] In fact, we are given a definition of categories of vulnerable persons in the law and in the Directives, we define categories of vulnerable persons, but we feel like saying after 'So what'? At least for us? Because here, at the Council for Alien Law Litigation, no consequences are drawn. We are told 'that's a vulnerable person', but what do we do with that?"<sup>280</sup>.*

This lack of concrete involvement of vulnerability on the part of Judges is particularly apparent in that the introduction of categories of vulnerable persons into the law has changed their practice very little. Judge Declerck is clear on this point:

*"Honestly, even before the CEAS we were doing the same thing... as a Judge, at a time, I was doing exactly the same as I do now...except that now we have the law, which is better than before, and it is clear that things already existed and they were put into law, but they didn't innovate anything...it was already there ... so in that sense I mean that this is nothing new under the sun... it already existed and so it meant also that as it existed we took it into account"<sup>281</sup>.*

In the same vein, another interviewee commented:

*"Personally, it's true that I don't have the impression that it has changed my practice so much that we're talking about it, that it's enshrined in Law. Because it was already in the making since the beginning. It's a problem of fact-finding and it seems logical to me that we adapt to the person we hear. I have the impression that we were already doing it, I have the impression that it was already being done before we wrote about vulnerability"<sup>282</sup>.*

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<sup>278</sup> Ibid.

<sup>279</sup> Interview n° 6, CALL Judge, Brussels, 16.07.2020.

<sup>280</sup> J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

<sup>281</sup> K. Declerck, CALL Judge, Brussels, 01.07.2020.

<sup>282</sup> Interview n° 2, 07.07.2020.

The same comments were made by the protection officers interviewed. Thus, while some of them recognise the added value of obtaining guidelines, others feel that they are not useful in assessing vulnerability. One protection officer also explained that these guidelines would not be useful in that they would never allow the full complexity of a vulnerable profile to be identified:

*"It is not impossible to define vulnerability, but it is difficult to make a list of elements that can say in that situation, the person is vulnerable, in that profile, the person is vulnerable [...] It's a double-edged sword because, if you say in this context, in this situation, there will be such, such, such vulnerability, it's a bit like side effects in drugs that you can read about. Just because we've read them all doesn't mean we're going to get them all"<sup>283</sup>.*

From this perspective, one protection officer emphasises the importance of leaving a flexible assessment: *"there is also this need also a bit to leave it open because you cannot always perfectly describe it, I guess"<sup>284</sup>.*

Interestingly, in the same way as the Judges, the protection officer stresses that the inclusion of vulnerability in the law has not really changed the practices of the CGRS. The officer emphasises that the specific needs of the applicants were already identified and considered before provisions were written to their effect:

*"In my experience, most protection officers, even if you had this guideline, would already have acted on it or followed it [...] That is I guess why I said that the name or the term for me it is not so...if you interview somebody you always need to take into account how they reacting, what they are saying and if what they are saying makes sense or not and and, if it does not make sense, find the reason why [...] I guess it is always something that you try to take into account even without it being said in the law, that you need to do it or not"<sup>285</sup>.*

On the way vulnerabilities are addressed in the law, two conclusions can be drawn from the above: on the one hand, there is a tension between the desire to obtain more insight into the application of the concept of vulnerability and the willingness on the part of Judges and protection officers to keep a certain power of appreciation to define, consider and give a certain weight to vulnerability. On the other hand, the inclusion of vulnerability does not seem to have changed that much. *What does it change and why is it included in the law, then?* As Julian Knittel, Deputy Directors of the Red Cross Centre in Jette mentions, vulnerability in Law requires concrete implications, otherwise it remains an *"empty shell"*.

For the interviewees, the fact that vulnerability is enshrined in law is above all a written guarantee that vulnerability must be taken into account. A protection officer says in that sense:

*"[...] if the person provides us with the information related to their vulnerable data, we need to make sure that we take it into account when we write a negative decision [...] we need to show that we have assessed it"<sup>286</sup>.*

If the law is clear for the CGRS (in particular, in that it gives indications to adapt the hearing to the special procedural needs of the person questioned), it is nevertheless much less clear for the asylum Judges.

<sup>283</sup> Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

<sup>284</sup> Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.07.2020.

<sup>285</sup> *Ibid.*

<sup>286</sup> *Ibid.*

**Summary Box 1. Meaning and identification of vulnerability**

The fieldwork showed that the concept of vulnerability is difficult to define. It is also challenging for asylum Judges and protection officers to apply this concept to their cases. Besides a few exceptions, interviewees considered asylum seekers to be vulnerable *per se* because of their experience as migrants and during the asylum procedure. Some categories of persons that are usually defined as vulnerable (e.g. minors, women, elderly or disabled people, etc...) are considered to be the *vulnerable among the vulnerable*. Vulnerability is a vague concept which is generally detected by Judges and protection officers during the review of the person's file and through observation during hearings. Vulnerability is assessed on a *case-by-case* basis and shows a high level of flexibility leading to subjectivity and discretion. Therefore, some actors interviewed welcomed the idea of guidelines, although their usefulness is disputed. A thorough observation is also used to identify vulnerability in reception centres. These vulnerabilities sometimes can emerge at inopportune time.

From the interviews conducted, we established that vulnerability in asylum seekers is a *relative, potential and context-dependent* concept.

- *Relative* because asylum seekers can be defined as vulnerable since they are more fragile, weaker and not in a position of strength compared to *ordinary* citizens;
- *Potential* because their vulnerability does not exist as such, but it can be revealed;
- *Context-dependent* because the terrible experiences and precarious circumstances lived heavily influence the applicants' personal situation.

It should be underlined that fieldwork has clearly demonstrated that asylum seekers should not be reduced to their condition as vulnerable people. They have a great strength and manifest a high level of *resilience*.

### 3. Vulnerable people: from legal categories to empirical realities

This part of the report aims at examining the different categories of vulnerability, as established in the EU Directives and in Belgian law<sup>287</sup>. Specifically, it tends to explore how these categories are understood and dealt with on the ground. This section focuses on vulnerability of gender, age (including minors and the elderly), health (disability, serious illness, mental disorders) and victims of human trafficking.

#### 3.1. Gender and vulnerability

##### 3.1.1. Women: a journey of vulnerability

Single, with children or unaccompanied, girls and women have come to be known as a “vulnerable” group. An inclusive reading of the notion of refugee has resulted in the categorisation of women seeking international protection as *a priori* vulnerable. This is due to two factors: on the one hand, as Freedman points out, the already existing representations of women perceived in *the* collective imagination as fragile and extremely dependent (on help, on a husband, in any case, with little autonomy). Pittaway notes in this sense that women seeking international protection suffer twice from this imaginary: their condition as “women” refers to a lower social status, their condition as protection seekers, an absence of legal and political status and a relative autonomy<sup>288</sup>. On the other hand, this is due to the messages conveyed by institutional discourse and legal texts.

Prior to the 61<sup>st</sup> session of the United Nations Commission on the Status of Women, the NGO network “Dianova” recalls that migrant women “are more vulnerable” and underlines the “forms of pre-existing vulnerabilities to women”<sup>289</sup>, which are exacerbated in conflict zones. While the network stresses the need to empower women, it also emphasises the vulnerable nature of women “and other minority groups”<sup>290</sup>. In addition to not specifying the particular types of vulnerabilities to which women are exposed (vulnerable *to what?*), the network’s communication also depicts a definition of particular vulnerability (*why* are they vulnerable?). This categorisation of so-called vulnerable people is also found in the recent global compact on migration. Objective 7 “Addressing and reducing migration-related vulnerabilities” includes among the people to whom attention should be paid, women, the elderly, people with disabilities and children<sup>291</sup>. At the European level, the Reception and Procedures Directives require Member States to assess and respond to the vulnerabilities of certain asylum seekers from the earliest stages of their procedures. The general principle of taking into account vulnerability is mentioned in Article 21 of the Reception Conditions Directive. The Article establishes a non-exhaustive list of so-called vulnerable persons, among whom women and gender-specific sexual violence (e.g. female genital mutilation) are systematically mentioned<sup>292</sup>. Furthermore, the Procedures Directive establishes in its recital the need to establish special procedural guarantees necessary for certain applicants on the basis of their age, sex, sexual orientation or gender identity<sup>293</sup>.

287 See Article 36 of the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners, *op.cit.*

288 PITTAWAY E., PITTAWAY E., “Refugee woman: a dangerous label”, *Australian Journal of Human Rights*, No 10.1, 2004, page 128.

289 DIANOVA, “Les femmes migrantes sont plus vulnérables”, 27 octobre 2016, disponible à l’adresse suivante: <https://www.dianova.org/fr/advocacy-Articles/les-femmes-migrantes-sont-plus-vulnerables/> [Accessed 5 January 2021]

290 *Ibid.*

291 GENERAL ASSEMBLY OF THE UNITED NATIONS, Draft outcome document of the Conference A/CONF.231/3, 30 July 2018, objective 7.

292 See Article 21 of the Reception Directive.

293 See Recital 29 of the Procedures Directive.



The categorical approaches mentioned below, based on the category “woman” as a priori vulnerable, can be found in the comments of the interviewees. Indeed, women are very often cited as examples by the actors interviewed to give content to vulnerability. However, this “a priori” categorisation is lacking, in that it does not answer the question which interests us more directly in this research: *what* are women vulnerable to? *Why* are they described in this way?

### 3.1.1.1. Women asylum seekers: a form of continuing vulnerability

By asking the actors in the asylum procedure, it became clear that women’s vulnerabilities are difficult to objectify once and for all, in that they are manifested throughout the asylum process. If the content of these vulnerabilities is mainly connected to the “female” gender and is rooted in the flight from the country of origin, it takes on different forms and its consequences impact on the entire asylum procedure. Four key moments of “vulnerability” have therefore been identified on the basis of what the interviewees said. These moments are cumulative and juxtaposed to arrive at a multidimensional vulnerability, a continuous product of vulnerabilities.

*First*, vulnerability is perceived in the reasons for leaving the country of origin. Here and at this stage, vulnerability appears to be connected to the grounds for persecution. It is mainly at the level of gender violence in the private and intra-familial sphere (typical examples being forced marriage and female genital mutilation). Judge Hayez confirms this in these remarks, with respect to the ground of persecution of women asylum seekers: *“In the case of women, most of the things they invoke are gender-related issues”*<sup>294</sup>. An interviewee points out, along the same lines:

*“It is true that the category of women comes back very quickly [...] it is certain that women can be more often, in patriarchal societies, subjected to problems that concern them: I am thinking of forced marriage, sexual violence, excision, prostitution”*<sup>295</sup>.

These last remarks highlight the place in society in which a woman lives and evolves and the consequences this creates on her vulnerability: the applicant would be made vulnerable by a social and cultural context that she is fleeing. Another protection officer agrees:

*“I would say in general terms, it is the prevailing masculinity that makes these women vulnerable, with fewer resources in these societies, in which you are not able to say no, to defend yourself and negotiate”*<sup>296</sup>.

In the same sense, Julian Knittel, the Deputy Director of the Red Cross Jette reception centre, also specifies that these vulnerabilities are from the outset the product of a situation which compromises access to certain rights:

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294 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

295 Interview n° 18, 28.08.2020.

296 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

*“In fact, I know very well why it is said that the female public is a priori vulnerable. It is because already in many countries, the status of women is, if not deplorable, in any case inferior to that of men. And from there, in terms of education, in terms of violence suffered, in terms of human rights, they have already been made precarious, or in any case, there is a much greater risk that they have been made precarious. And therefore, they are more ‘damaged’, too. Already from this point on, we are dealing with a more vulnerable public”<sup>297</sup>.*

For many of the actors interviewed, the “context”, which is understood in our interviews as “the country of origin”<sup>298</sup>, the more or less traditional environment<sup>299</sup> or even “the culture”<sup>300</sup> from which the female asylum seeker comes, is a determining factor. It is also interesting to note that almost all of the people we met refused to describe a woman as vulnerable a priori but preferred to assess her vulnerability *in terms of the context* from which she hails. “It is not because you are a woman that you are vulnerable” is a statement shared by the Judges, protection officers and social workers interviewed for the study. A case-by-case assessment is also favoured here.

The context, however, is difficult to grasp objectively and is ambivalent. On the one hand, it makes it possible to go beyond the categorical approach of women as *a priori* vulnerable (since vulnerability becomes *relative and personal*). On the other hand, it sometimes comes into tension with the fact that an asylum application remains *individual*: it is the fear of the *individual* as an individual that is going to be assessed. The fact that the individual is part of a system or structure that may continue to make him/her vulnerable (e.g. continuing to evolve in an ultra-patriarchal society) is only of secondary importance. This tension between profile and background is particularly evident in Judge Hayez’s comments:

*“If the young woman says, for example, ‘I come from a hyper-traditional, very rigorous, even Islamist ‘milieu’, and then we see from the statements or documents she submits that she actually studied at university, she worked as a journalist [...] in any case, she has had a good position in her country, so we will inevitably wonder how one can come from a background from which she says she hails and at the same time be able to enjoy a freedom that is ultimately contradictory to the idea that one can have of a very patriarchal background”<sup>301</sup>.*

Another interviewee emphasised the impact that the context can have as an environment in which the individual evolves. She then speaks of the “threshold of seriousness to be reached” which will be reached more or less quickly in view of the vulnerability profile:

*“I think that even an educated and autonomous woman risks suffering like any other woman if she does not fit into the boxes of the behaviour expected of a woman. It’s going to be complicated. It’s all a matter of knowing what kind of difficulty she will suffer from and if the threshold of seriousness is going to be reached. For someone who is not educated, the threshold of seriousness will be reached much more quickly than for a woman who has more tools to defend herself”<sup>302</sup>.*

Context in this sense can “balance” the vulnerability of the person by determining whether the person’s

297 J. Knittel, Deputy Director of Red Cross Jette reception centre, Jette, 18.09.2020.

298 Interview n° 4, 14.07.2020.

299 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

300 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

301 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

302 Interview n° 2, 07.07.2020.

reality is not undermined. The interviewee points out in this sense:

*"In fact, in Guinea, women live on the hook of their husbands. So if a marriage ends, the woman comes back to live with her parents. Usually that's how it works. But some autonomous women are no longer dependent on their families. They have relationships, means... they are no longer dependent on their family. So they are less vulnerable"<sup>303</sup>.*

It is also interesting to note in the interviewee comments that vulnerability is assessed on the basis of a person's *autonomy*. According to her, being vulnerable means being in a relationship of dependence:

*"For me, vulnerability and autonomy are two notions that are linked. I mean, someone who is autonomous will be less vulnerable. Finally, vulnerability is a factor of dependence, that is, someone who is dependent"<sup>304</sup>.*

This notion of autonomy comes up several times in the interviews conducted on vulnerability. Women, single or not, with or without children, turn vulnerable above all because of their position and status. Elisabeth Lejosne emphasises this perspective:

*"In general, they are vulnerable because of their position in society, in a patriarchal society above all. For example, excision is practiced by a woman, it is done between women, but it serves men. The vulnerabilities of women asylum seekers are therefore made unique, not because of their gender difference, but mainly because of the pervasive gender discrimination and women's resulting inferior position in most societies"<sup>305</sup>.*

Secondly, and in addition to these vulnerabilities in the country of departure, the actors interviewed also identify vulnerabilities created by the migratory journey. The same vulnerabilities, linked to gender, and in particular to sexual violence, are found in the comments made by the actors interviewed, but this time they are added to the reason for departure and the fears that led them to flee the country of origin.

Julian Knittel, in this perspective, mentions:

*"Then there are the aspects that will be added during the trip to Europe, we know that women are much more prone to sexual predation, among other things, that's a fact. Men also suffer from sexual predation, but the probability is lower"<sup>306</sup>.*

Another interviewee in the same sense stresses that *"a single woman on a migratory journey who does not have a brother, a father or a husband to protect her will be exposed to more violence than a man"<sup>307</sup>*. Another protection officer specifies that their vulnerability will also depend on *"what their road and trip were"<sup>308</sup>*. A social worker underlines this reality of sexual predation, which could determine which road women are taking in their migratory journey:

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303 *Ibid.*

304 Interview n° 2, 07.07.2020.

305 E. Lejosne, nurse, Jette Red Cross centre, Jette, 18.09.2020.

306 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

307 Interview n° 18, 28.08.2020.

308 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

*“A woman knows that she will be raped during her journey into exile. She knows it. And if she doesn’t, she soon finds out. For example, it’s silly, but she knows that when the smuggler takes her away from her family, away from people who could physically protect her, that she arrives by plane, bus, car, it doesn’t matter: from the moment he takes her in, even if it’s only for one night before she asks for asylum, he’ll tell her: ‘but do you really think it’s free? [...] Open your eyes, my child, you are sleeping with me tonight!’”<sup>309</sup>*

If the traumas experienced on the way seem to be dissociated from the reason for persecution which pushed these women to take asylum, this trauma is sometimes so great that it overshadows the primary reason for fleeing. Carine Vansimsen explains in this sense:

*“There are traumatic events already in their childhood and, on top of that, things happened during the migratory road, and [the arrival in the reception centre] is the last straw that breaks the camel’s back, as I often say: it is sometimes less important than what they experienced in their childhood but it is this event that will make them say ‘I don’t know who I am anymore, I don’t know what I want and I don’t know what is happening to me’”<sup>310</sup>.*

Isabelle Plumet agrees:

*“Sometimes the weaknesses along the way are more important than the weaknesses or the reasons why the person has left their country”<sup>311</sup>.*

Thirdly, vulnerabilities and their implications continue to influence people’s arrival on the territory in two different ways. On the one hand, at the level of their asylum procedure. Among the actors interviewed, this is reflected above all in women’s capacities to support their statements in a credible manner and sometimes to tell the unspeakable. Judge Verdickt on this subject underlines’ vulnerability:

*“There are things to be particularly attentive to, perhaps even more so for women [...] I had a case, it was a young Guinean girl who invoked excision and forced marriage [...] And so this young girl was interviewed, she didn’t dare to say she wanted a female interpreter. And so she found herself with a male interpreter and the interpreter told her, because she was talking about forced marriage, and the fact that she had been excised as a child, the interpreter told her to shut up, and that it was a shame. And so, at the end, she didn’t dare to say anything”<sup>312</sup>.*

Another interviewee confirms this “difficulty of saying”, reinforced by the vulnerabilities of female asylum seekers who are victims of gender violence:

*“But it is true that if a woman who has experienced an assault, she does not particularly want to say this in front of other asylum seekers. [...] They don’t particularly want to tell this in front of others”<sup>313</sup>.*

A protection officer also testifies to the difficulty for vulnerable women to figure out what to say during a hearing by specifying that “it is a great difficulty for protection officers to hear a woman from certain coun-

309 Interview n° 32, 09.09.2020.

310 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

311 I. Plumet, Director of Petit-château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

312 B. Verdickt, CALL Judge, Brussels, 09.07.2020.

313 Interview n° 2, 07.07.2020.

tries<sup>314</sup>. The officer adds, on the subject of the difficulties created by the vulnerabilities of women asylum seekers:

*"[...] A woman who comes for a hearing at the CGRS, and who comes, let's imagine, from Afghanistan: this woman never spoke for more than two hours, she was never asked for her opinion. They don't ask her about the difficulties she is encountering, they don't ask her whether she agrees or not [...] And then she arrives in Belgium, she is called to the CGRS and she is asked 'tell me about your life' for 4 hours. They've never talked so much! And when we tell them 'What do you think of this and that' they look at us with zombie eyes and say 'Me, talk? Me, think?'"<sup>315</sup>.*

On the other hand, at the level of their autonomy in a society whose codes they do not know. A protection officer testifies in this sense:

*"Arriving here, it's not always easy either, eh, to know the codes, and to get out of it, if they are accompanied by children, it makes them vulnerable"<sup>316</sup>.*

Another protection officer adds:

*"The difficulty of adapting to the culture will also be a problem: the fact of having to adapt to other norms, other rules in this new society in which they have come to live also makes them vulnerable because they ask themselves questions, they are also attached to their traditions, so it's not easy to erase habits, or customs like that, at a snap of a finger. And that also makes you vulnerable because it requires adaptation, it requires questioning [...]"<sup>317</sup>.*

More broadly, Julian Knittel wonders about the reality of these women who have arrived in Europe:

*"And then we must also ask ourselves about the reality of women and the fact of being in Europe, is it that they are more vulnerable or not? I think they are less vulnerable than at home, one can hope, but this is not a certainty"<sup>318</sup>.*

As for their situation upon arrival, a social worker is formal and expresses vulnerabilities to fall back into patterns that make these women precarious, due to a lack of choice:

*"We have young women who arrived in Europe through prostitution networks and who think to themselves that when they arrive in the centres, they will go for a normal life to stop a job that they do not find 'normal'. But very soon, the living conditions here in a centre mean that they have little income. In terms of consumption possibilities, there is nothing left! Then very quickly, we are afraid, we fear, we suspect that they fall back into these prostitution networks, because suddenly we see that they have high consumption levels, that they come home later than usual at night in nice cars [...]"<sup>319</sup>.*

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314 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

315 *Ibid.*

316 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

317 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

318 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

319 Interview n° 32, 09.09.2020.

These last points concerning women's autonomy for their asylum journey are not only related to gender but also to the *consequences of gender*. It is because these women have been socialised in a certain way that their vulnerability is exacerbated in what they are expected to adopt as behaviour. In fact, it is above all these gender consequences that are noted by the interviewees during the interviews.

### 3.1.1.2. "What do we expect from a gender": women and gender expectations

Expectations related to the status of "woman" would impact on women's autonomy throughout the process, in that this gender "weight" would still not guarantee them control over life, even after exile. As Julian Knittel points out:

*"There are women who apply for asylum and whose family or people they know here in Belgium are not expecting them to become autonomous at all! They expect them to remain obedient because there are people who have a project for them [...]"<sup>320</sup>*

In the same perspective, Carine Vansimsen explains that the women have almost "integrated" the fact that they are not developing their autonomy and that this complicates the follow-up work of these people in the centres:

*"They have had no power over their own lives since they were born [...]. And then when they decide to leave, and the initiative may not even come from them [...]. In general, it is really very difficult to get these women back on their feet and to give them the keys to their lives"<sup>321</sup>.*

In the same sense, Elisabeth Lejosne also speaks of "limiting beliefs" which are obstacles to self-determination. They refer to the gendered beliefs to which the asylum seekers are attached and which, in the end, make them vulnerable in spite of themselves. The nurse mentions in this regard:

*"There are also all these limiting beliefs related to women, for example, being married at 20, or having a child at that age. This is what makes her vulnerable because she remains in these beliefs, there is no notion of "evil" but they are beliefs she prevents herself from moving forward, evolving, getting better [...]"<sup>322</sup>.*

Many of these limiting beliefs revolve around gender-based violence affecting women, primarily forced marriage and female genital mutilation. For example, Carine Vansimsen mentions the vulnerability of the excised residents:

*"Some people tell me on arrival, 'a clean woman is a woman who is excised'. It's really when they are confronted with culture shock or other local residents that they begin to understand [...]. They look at this issue differently after, let's say, six months in Belgium"<sup>323</sup>.*

A social worker agrees, emphasising that women's lack of awareness on this subject:

*"We have to explain to them very gently, carefully, that excision is in fact something that is a bit forbidden here, because it is dangerous for women's health...Some people only learn here that excision is not a religious practice but a cultural one, that not everyone is excised. They have never even asked themselves the question! 'I was excised, that's all, that's how it is!' We have a lot of Eritrean women who don't even think about talking about their excision, they don't see it as bad treatment"<sup>324</sup>.*

320 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

321 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

322 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

323 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

324 Interview n° 32, 09.09.2020.



Elisabeth Lejosne explains that vulnerability can come precisely from this awareness:

*"In fact, in some cultures, excised women must not make noise when they go to pee [...] So, the first time she went to the toilet, when she was operated on, it was a tragedy: she was shocked, she wasn't ready to see that. She went to the doctor to ask him to sew her up again, she said 'What did you do to me, I pee like a cow!' So, this change of mentality, this relationship that you don't have with your body hadn't been built. And for her it was a trauma. Some traumas can be very violent, even more so than excision itself"<sup>325</sup>.*

She then speaks of "awareness of vulnerability" which can also weaken the person, who has to rebuild herself in her head and body.

She suggests starting from the person to avoid giving a "culturally centred" definition of vulnerability. Another interviewee also emphasises this aspect in relation to forced marriages and insists on the culturally connoted vision of the vulnerable:

*"Often the women with whom I spoke did not see the problem too clearly. They had not chosen their husband, they were not in love, but it was a good marriage, he had protected her, he had allowed them to arrive in Belgium [...] It was their father who had decided everything, but if they were asked if they were vulnerable, they would not have qualified as such because they were married, precisely because they had the protection of a man. So, it is true that what we sometimes call vulnerability is culturally connoted"<sup>326</sup>.*

The weight of gender does not only lie in whether or not awareness of gender violence is late in coming. It also affects access to certain services and rights, such as training. This is particularly noticeable for single women with children. Thierry Pire, the Director of the Rixensart reception centre, which specialises in the reception of women and UMs with children, clearly points out that single women with children find themselves limited in the development of their autonomy. He explains that they are vulnerable due to their situation as single women who have to take care of a child by themselves:

*"There are all the problems that have led to them being alone, so we need to see why they are alone too, each with their own story. It is more difficult to look after 1, 2, 3, 4 children alone. Afterwards, it also limits their possibilities in terms of training, for example. There is the whole question of childcare. So, the French courses, the professional training that we could offer to other parents, when there are two of them it's easier, when there is only one, they don't have access to it because we don't know how to look after their children when they are not old enough to go to school, for example"<sup>327</sup>.*

A social worker in the same vein underlines the deprivation of rights created by the lack of places in crèches for the care of children:

*"There are many who become adults and who would like to continue school, but with children who cannot... We close the door to training for them, but also to socialisation and finally to integration"<sup>328</sup>.*

The women do not remain passive facing this observation. The social worker therefore explains the "resource" systems that these women create among themselves and implement to try to keep control over their lives:

*"They create a system where one woman looks after the other's babies, in return for payment from the*

325 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

326 Interview n° 18, 28.08.2020.

327 T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

328 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

*centre... It's a bit like the 'dark' side of the centre [...] some of them, I think, work and pay other residents to look after their children"<sup>329</sup>.*

The allocation of the educational load exclusively to women and the impact this can have on their access to the labour market is also highlighted by Julian Knittel. He considers that the dedication required of mothers for childcare is an additional vulnerability factor, combined with the identity of women and asylum seekers:

*"Often the children stay with the mother, so either they have children here or they come with children. But for a woman with children it's more difficult to have access to trainings, because you have to find time, you have to find someone to look after the children, for work [...] There is discrimination in hiring, on the one hand because she is a woman and on the other hand because she is a woman with children, and on top of that, because she is a migrant woman with children, which is complicated! And we can see that the factors of vulnerability come together..."<sup>330</sup>.*

Another social worker also mentions the lack of autonomy in the wake of "unwanted pregnancies" among UMs as a particular gender vulnerability that prevents women from moving forward:

*"There's this whole pregnancy that is gone through with a lot of problems, I mean, how do you manage an unwanted pregnancy? Accepting that the child will perhaps look like the father who is often the torturer? We have girls on the delivery table who closed their legs and categorically refuse to give birth, and who put themselves and the baby in danger! There's all that. They are child-mothers... how can we make them responsible for the child they have? How can we help them in their daily care? Often, finally, we often say, that there is a God for the children here, in this centre! They are girls who are not ready to be mothers at all"<sup>331</sup>.*

Farid Khali, the Director of the Uccle and Jette centres, mentions the specific support to be put in place for UMs faced with unwanted pregnancies:

*"There are many children who are, let's say, children of rape. There is this problem, with women who have children but just don't want to even touch their baby! [...] There have even been two or three cases of denial of pregnancy! Women who don't even want to know they are pregnant! It's terrible to see things like that. Because they are such vulnerable women! There are even girls who have been raped - they didn't even know what it was like. They look at their pregnant bellies and say 'What's that?' They don't feel like..."<sup>332</sup>.*

In this perspective and because they are not ready to be mothers, one social worker still mentions an apprenticeship in motherhood which is more or less difficult to build up among the women she supervises. This highlights another gender bias, which consists in assimilating women to beings who are *naturally* inclined and willing to take care of their children. The reality of the centres is not uniform and identical for all women asylum seekers in this respect. Some of our interviewees mentioned the vulnerability of women with children because they want and have to take care of them while others stress the same vulnerability for women with children, who are vulnerable precisely because they do not want or *cannot* take care of them<sup>333</sup>. The social worker therefore mentions her role in learning the daily gestures of caring, which like everything else is acquired:

*"We had a young girl who didn't know, her child had a blocked nose, and she came to bring her to us*

329 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

330 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

331 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

332 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

333 Interview n° 44, 24.09.2020.

*to put serological serum on because she was afraid of hurting her! On the other hand, there are others who leave their children completely alone, thinking that there is nothing to worry about and so many fell on the ground [...] Or another who only gave fruit juice to her child, I said to her, 'Do you want me to peel the fruit and vegetables for you? Do you want me to explain how to cook them?' [...]"<sup>334</sup>.*

One conclusion can be drawn from the preceding paragraphs: women's vulnerability is not identified at a particular point in time as a given factor but as a progressive continuum that varies in intensity throughout their asylum journey.

In the same sense, women's vulnerability must be understood in a multi-dimensional way. "Migrant women" cannot be defined as a "catch-all category" that forever defines their relationship to power in terms of access to law. The category of women as defined in the law is exercised through a gender perspective that ignores the complexity of women seeking asylum and instead reduces them to a series of pre-defined roles. One may ask: do women *really* constitute a particular vulnerable group? Is this group ever cohesive or rather crossed by various and multiple differences between the conditions, status, origin and background of each woman? Understanding women's vulnerability in a multidimensional way, rooted in the structural and contextual causes that create their vulnerability, also allows women to be relocated in their political and social context, to see the variety of experience they live through and the multiple layers of oppression that their claims carry. However, this approach also brings challenges, particularly with regard to the "categorical" approach to vulnerability, which is also a "prevention" approach aimed at *anticipating* the needs of people defined as vulnerable and tailoring their social support accordingly. It also complicates the analysis of Judges and protection officers in considering multiple vulnerabilities and the consequences they attach to each of them in terms of protection.

### 3.1.1.3. Addressing women's vulnerabilities

Women's vulnerabilities are multifaceted during the asylum process. In order to face them, and to take them into account, the actors of the asylum procedure put in place different things at various steps of the procedure.

For Judges and protection officers, it is above all a question of *adapting certain practices* during the hearing, notably its development. Also, one interviewee is clear about the questions he is going to ask when faced with a vulnerable woman's profile:

*"Already there are delicate questions where I think twice, to see if it's worth going back to at the hearing. If it's sufficiently established, or if it's not contested, or if I have medical documents, etc, there's not always a need to come with this kind of...topics that will be difficult in the hearing in addition to the public, with the interpreter...There are often requests for closed sessions, and we pay attention to that as well...and that's something we can already implement. After that, there are also questions that I'm not going to ask, for some cases I'll have to ask really delicate questions about the person's experience. And then I'm going slowly, gradually, if the person collapses afterwards, it's useless to insist, I'm not here to persecute people. It's a little bit according to the person's reaction"<sup>335</sup>.*

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334 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

335 Interview n° 4, 14.07.2020.

This way of dealing with vulnerability during the audience can also be noticed in the words of the protection officer. Dealing with vulnerable women, one protection officer underlines how they pay attention to the vulnerability by *adapting the framework of the hearing* to the vulnerabilities of the person and their difficulties.

*"I always see with the person if she is able to go on with the interview, if she wants to continue to address the subject because sometimes, especially for sexual violence, it is not always necessary to address it, the context is more important than the event as such [...] I always make sure that the person has understood our approach, that it's important to address certain elements in order to know their story, because their asylum application is essentially based on their statements [...] that the exercise is not easy, but it is important that we understand her history, that we can discuss the details, to ensure that the person understands what makes it the objective of these questions, it is certainly not a question of value judgment"*<sup>336</sup>.

Therefore, Judges and protection officers use their margin of manoeuvre to adapt the hearing to the vulnerability profile they face (in this case, women). The difference between their practices lies mainly in the fact that the CGRS officers are legally obliged to take into account the vulnerabilities of the applicants, to assess their special procedural needs in advance. For the CALL, vulnerability does not have such direct implications. As Judge Hayez puts it:

*"For the CGRS, which is the body in charge of examining asylum applications, there are guidelines, they are told here you have to face such and such a person applying for asylum, a vulnerable person, you have to hear them with specialised and trained people, you have to pay attention to her procedural needs, you have to put in place a whole series of things so that they are heard in good conditions, and you also have to take this into account when analysing the merits of her statements. This is for the CGRAS, but for us [...] we don't organise the hearings differently because we know that we are dealing with vulnerable people. We don't say, for example, as is the case in other matters, [...] that all hearings are held behind closed doors. Here, we can decide this, well, I personally do, but it is not provided for by the law"*<sup>337</sup>.

More generally, this margin of manoeuvre is very much used by Judges in the way they decide to simply "deal with" a vulnerable profile. This can sometimes lead to difficulties in terms of *how far* vulnerability can be dealt with in court and how far it can be "accommodated" to asylum seekers' procedural needs. Judge Declerck is very clear on this point:

*"The way you approach them, the way you talk to them, the way you ask questions or not ask questions [...] You know, the idea in a courtroom is not that you make people cry, not make things difficult for them. On the other hand, I very much think that a person also needs to be able to explain why she has or hasn't an answer to that"*<sup>338</sup>.

The vulnerability of women is also addressed by the social workers in the centres. For women, these vulnerabilities are considered at two specific points in the procedure.

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336 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

337 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

338 K. Declerck, CALL Judge, Brussels, 01.07.2020.

Firstly, in the choice of the centre where they will be sent to. Social workers repeatedly stress that women's vulnerability is considered in the way they are placed in the reception centres (mostly because these are centres reserved for women only or because they have the specific infrastructure for special needs that single women may have, for example, a day-care centre for children). Thierry Pire, the Director of the Fédasil Centre of Rixensart, mentions this clearly:

*"Specialising the centres on certain problems also means taking into account people's vulnerability. Afterwards, the resources we receive also help to deal with vulnerabilities [...] So we take this into account, but in the end, I think it is rather at the local level, the culture of the centre, the policy of the centre that can best take vulnerability into account. Now there are issues about the location of the centre. Here, if we have people who are vulnerable and need to be sent to a health service, or a hospital or other, we are close to everything, to Brussels, Louvain-la-Neuve, Ottignies. We have a large psycho-socio-medical network around the centre"<sup>339</sup>.*

Secondly, in accompanying these women in their life in the centre. This accompaniment is done *outside* the centre, with the help of specialised associations where women asylum seekers can talk about the gender violence that was inflicted on them. Elisabeth Lejosne, a nurse at the Red Cross Centre in Jette, testifies in this respect:

*"Once we actually do an interview, I can identify the problem... for example, that she ran away from a forced marriage or that she is at risk of re-excision too, so I know what type of association I'm going to direct her towards [...] A girl who is, for example, homosexual, I think I will recommend that she goes towards the 'Rainbow House' [...]. I don't make an appointment right away [...] Sometimes, talking with a professional outside the structure reassures and helps [...] when there are workshops or things like that that are organised, that's something I propose. Little by little there are girls who don't come for a while, but when they come back, they ask me for new dates or there are some who continue to go spontaneously. There, I get feedback, for example, from my colleagues on the spot who tell me that it is going well with one specific girl [...] whereas I was not aware that she was going there. Sometimes they just go by themselves, without asking, and it's very nice!"<sup>340</sup>.*

In terms of support, a specific service for women called GAMS (*Groupe pour l'Abolition des Mutilations Sexuelles – Group Against sexual mutilations*) also provides specialized support *inside* the centres, for women who are victims of gender violence. Each centre can get one or more referent person in charge of dealing with this specific topic as well as addressing women's gender-based vulnerability through specific support (workshops, discussions, etc).

### 3.1.2. LGBTQIA+ people and vulnerability: negotiating gender, cultural norms and a safe place to stay

The gender issue does not only cover the category of women. In our interviews it also includes people from the LGBTQIA+ community. Because of their different sexual orientation these people are very often considered vulnerable a priori, from the very first "vulnerability screening" at the dispatching service. Difficulties arise, however, in detecting this particular type of vulnerability, in that sexual orientation is an intimate and private matter and asylum seekers at first sight do not openly testify to their sexual orientation.

<sup>339</sup> T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

<sup>340</sup> E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

### 3.1.2.1. Homosexuality: the double silence

In the interviews conducted, the “silence” or “taboo” surrounding homosexuality in asylum matters regularly recurs in the comments of the interviewees. People cannot or do not want to talk about their homosexuality for security reasons, even if it is the basis of their asylum application.

In this perspective, Daniel Legreve, when discussing the possibility of setting up LGBTQIA+ hotlines in the Red Cross centre in Ans, mentions that the team at the centre did not keep this idea. He says: *“If we post LGBT hotlines, they will never come!”* explaining that residents will not take the risk of being “frozen as gay” by other residents by going to the permanence centres, because they will not be ready to come out openly<sup>341</sup>.

Julian Knittel in the same vein evokes the secrecy surrounding homosexuality by mentioning the “increased risks”<sup>342</sup> that the person would run if it was to become known by other residents within the centre. If homosexuality is not revealed to other people in the centre, it is not always revealed to the social workers either:

*“For example, in the Red Cross centres, I know that some people are gay, I know it, but I shouldn’t know, if I can say so. It’s the kind of thing that people in that community keep a lot to themselves”*<sup>343</sup>.

From this taboo surrounding sexual orientation, Carine Vansimsen also evokes the difficulty of verbalizing homosexuality for some asylum seekers:

*“When people have been repressed all their life, they are told it’s wrong, it’s the devil who pushes them to do that, they obviously have a hard time verbalizing it! [...] I had a Guinean, and he couldn’t say the word to me. He would say ‘No, I’m different’, and I would deliberately say ‘Yes, you have black skin and I have white skin’ and he would say ‘but no, I’m different, you know...’ ‘No, I don’t know...’ And it wasn’t [...] It was really too much cultural pressure for years, saying ‘I’m gay’, it just wasn’t possible”*<sup>344</sup>.

Another social worker also emphasises the difficulty of providing appropriate support for this public within the centre, due to the taboo surrounding the sexuality of homosexuals. The worker explains that the people never really say that they are gay or lesbian so that it is very hard for workers in the centre to give them the proper tools or to go on what they feel, because they simply “don’t say it”<sup>345</sup>.

The weight of silence on sexual orientation that continues in the country of arrival is somewhat paradoxical, since it is precisely in the perspective of being able to break this silence that people have come to seek asylum. Benoît Fockedey reacts to this paradox of “double silence” to this effect:

*“[...] I think that people keep this secret to protect themselves, and that at a certain point it is a bit peculiar to get into this dynamic - I keep it secret to protect myself in the centre from the other residents who could cause me problems in relation to this - while at the same time I have come to Belgium to be able to be gay or lesbian if I feel like it and not have problems with it [...]”*<sup>346</sup>.

341 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

342 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

343 *Ibid.*

344 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

345 Interview n° 54, 24.09.2020.

346 B. Fockedey, “referee” for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.



This paradox seems to be reinforced by two elements identified in the analysis of the interviews conducted: on the one hand, the discriminatory societal view that continues to weigh on homosexuals in the country of arrival, and on the other hand, the infrastructure of the centres and the resulting community life that allows this more or less moralizing view to be exercised everywhere.

### 3.1.2.2. Perceptions of LGBTQIA+ in the reception centres

The societal judgemental perspective continues to influence the behaviour of people in the centres. Isabelle Plumat mentions it directly:

*"It's a rather violent issue here, the types of sexual orientation. People think to themselves, 'Ok, I'm coming to Belgium, anything is possible!' and yes, sexual orientation is free here, but that doesn't mean that it isn't seen by others"*<sup>347</sup>.

Judge Barbara Verdickt emphasises this by pointing out the homophobia present in the country of arrival:

*"The profiles linked to everything that is sexuality (homosexuals, transgender people, etc.) are people who have a more vulnerable profile, also because they are often a source of...well, have problems, even in a country where there is more tolerance. We can see that there is a lot of homophobia here too..."*<sup>348</sup>.

On the subject of trans-identity, other social workers emphasise this "view of society" which takes shape and materialises in the behaviour of other residents in the centres: A social worker tells us:

*"Sometimes we see heads that unscrew...Or there're residents who say, 'The Madam, well, the Sir...' or they call him 'The Girl-Boy'. Or they would call a gentleman 'Madame-Mister' so we would say 'No, it's Sir!' and they would say 'But you see, he's...' and I would say 'No, I don't see, what's so special about him?'"*<sup>349</sup>.

In the same vein, Carine Vansimsen underlines the difficulty of bringing this trans-identity into a centre where communities may still be reluctant to accepting this other identity:

*"We had a resident here who was planning to undergo his transformation and it went down very badly with the residents... Because we had known him as a 'man', the residents said, 'he's dressing up and he thinks he's at Carnival' and it was revolting for the person who was leaving his country where he had been discriminated against all his life [...] and then he comes to Belgium and that's what he still gets!"*<sup>350</sup>.

Maria Tassoudis also underlines the weight of the "community's gaze" which continues to castigate trans-people in the centres. On the subject of a resident with a trans-identity, she also expresses the difficulties that the staff have, as mentioned above, in supervising these people appropriately. The director stresses that she feels "destitute" in dealing with this kind of situation and to address this specific vulnerability:

347 I. Plumat, Director of Petit-château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

348 B. Verdickt, CALL Judge, Brussels, 09.07.2020.

349 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

350 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

*"[...] When you are a man and you behave like a woman or you feel like a woman, this is very, very badly perceived by other men and it is also persecution, insults, attacks, mockery, ... that's it... that's it. And this is also new for us, at least for the team, we don't know how to do it either, I lived through a situation with a man who considered himself a woman and he absolutely wanted to go to the women's party. Absolutely, he was dressed as a woman but he was told 'no'. The other ladies were veiled, they were among themselves and so he couldn't go. And so we thought to ourselves, 'Yes, but basically he feels like a woman...' It's complicated for us"<sup>351</sup>.*

Hippolyte Kisonde, the Deputy Director of the Fédasil Rixensart reception centre, chooses to focus on the presumed vulnerability of these people. He specified that the way these people are viewed in society in general and in the centres in particular, reflects society's vulnerability which cannot integrate this type of profile into its midst without resorting to a discriminatory attitude:

*"I don't think they are vulnerable, because the roles are reversed to a certain extent: these people when they arrive here, they are vulnerable in relation to the way people look at them. It's not them that are vulnerable; it's the way society looks at them, whether it's a religious or cultural view that thinks that loving a person of one's own sex is wrong. But are they vulnerable or is it society that is vulnerable? Vulnerability is found in society itself"<sup>352</sup>.*

This view of others, wherever it is exercised (in the country of origin and/or in the country of arrival) and the resulting imposed and continuous silence, then stems from the difficulties for asylum seekers from the LGBTQIA+ community to live together, mixed with other applicants mainly in the structure of the centres, which are by definition collective institutions, where communities and their "views" on homosexuality and trans-identity are confronted on a daily basis.

### 3.1.2.3. The centre as a mirror of society on LGBTQIA+

Various interviewees spoke of the difficulty of living one's homosexuality at a reception centre. This difficulty is reflected in the structure of the centre where all the living (and therefore intimate) spaces are shared. Thus, the vulnerabilities of homosexuals are often revealed in the way they occupy the spaces when they arrive in a centre. Isabelle Plumet emphasises this problem at the arrival centre:

*"One element is the collective organisation, which means that nothing is private here (rooms, sanitary facilities...) this is not easy to manage for people who are different and who are confronted with other people"<sup>353</sup>.*

Daniel Legreve, from the centre of Ans, underlines in the same way:

*"We have some residents who have fled their country for these reasons, here, there is a gentleman, he is afraid, we know it because he is in a room with twenty men and he is afraid that they will find out [...]"<sup>354</sup>.*

351 M. Tassoudis, Deputy Director of Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

352 H. Kisonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

353 I. Plumet, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

354 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

Carine Vansimsen underlines it again:

*"Here the public is mixed up, in a room with 6 to 8 men... It's a deal or a deal breaker! There are men who experience discrimination, daily remarks. It happens that the public is threatened by other residents here [...]"*.

In the same sense, Carmen Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, evokes the difficulty of living one's homosexuality in the structure of a centre, including for young UMs:

*"Living your sexuality in a centre is extremely difficult. We don't have rooms for them, even if they don't want to say that they are homosexual. At the same time, the young person has to integrate as well as possible and above all the others must not be aware of it. At the same time, you have to make others aware, to say that here there are values... It's very difficult to experience homosexuality in a centre"<sup>355</sup>.*

The Deputy Director therefore underlines this ambiguity present in the centre: keep the secret in the respect of the person's choices and, at the same time, educate for tolerance.

On this subject, Julian Knittel once again underlines the restrictions on the "individual freedom"<sup>356</sup> of the residents who find themselves limited in their choice to create a relationship outside the centre and once again, limited in the sharing they can do of their experience inside the centre:

*"They also have increased risks in relation to the frustration of the individual freedom of choice of partner, by this I mean that the UMs for example in Uccle, can boast of knowing girls outside the centre, they can talk about it freely! But I don't think they can freely say 'I met a boy I like', it's difficult...because they share a room together, so if the person with whom they share a room is not homosexual, they don't know if he is tolerant, so they will perhaps hide it. It's still hard for the resident to bear the fact of being homosexual"<sup>357</sup>.*

The same observations are made in our interviews with regard to transgender people. Maria Tassoudis underlines the inadequacy of the centres for these people, while specifying that no "ghetto" or centre reserved exclusively for transgender people should be created<sup>358</sup>. Carla Pannemans also takes up this challenge: she underlines that this systematic placement of gay and/or transsexual people in other structures can create a "ghetto" system:

*"I think in Holland they have [this] system, they have separate centres for LGBT...Sometimes I think it is better in a way; but, on the other hand, I don't think it is better, because one thing is that they are more protected, there are less aggressions and those things against them, but, on the other hand, by having the people like that in the centre, it can be also an eye opener for other people...why should we hide them in one centre?"<sup>359</sup>*

To address their specific vulnerabilities, Julian Knittel refers to potential transfers from one centre to another which is better geared up to meet the needs of this specific public:

355 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

356 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

357 *Ibid.*

358 M. Tassoudis, Deputy Director of Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

359 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

*"I remember that we also received a transgender person once, who had been put in a collective room with other men, because her gender was male, but...she felt like a woman, I mean! And she was moved to another centre, she came to Yvoir, because it was more adapted to this problem, because there she didn't have to share the room with men, and the showers were more private, and there was a series of things that made it easier. But the risk was high. Moreover, there were problems with other residents who did not understand that a person could be transgender [...]"<sup>360</sup>*

Carine Vansimsen emphasises that this transfer solution remains a last resort for people whose life in the centre is no longer tenable, for instance, when people "are harassed". Cristina Valenti in this sense also mentions:

*"But it also happens sometimes that a man who is in a centre, and who is in a room with other heterosexual men, it happens that for cultural reasons, they make fun of him! And life becomes a bit of a hell, the person does not feel protected but there too, we can always resort to order measures which are transfers to other centres, for example, to protect a person from threats"<sup>361</sup>.*

Aware of this problem, the dispatching service emphasises that it addresses the difficulties inherent in living in a centre, by placing homosexual asylum seekers in more suitable centres: the dispatching service mentions the Kapellen centre with smaller-capacity rooms, which is better suited for this type of profile. The dispatching centre also offers to place transgender people directly in private accommodation, in specific LRIs designed for this purpose, which include suitable places. The information is confirmed by a social worker at the LRI foreigners' service who emphasises that LRIs are favoured over group living for transgender people.

The placement of transsexual people in specific housing may raise questions: it is certainly a response that allows people from LGBTQIA+ communities to avoid seeing their vulnerability reinforced by the "residents' view" on which centres can hardly intervene upstream. On the other hand, placement in LRI also includes a more distant follow-up of the applicant who is not surrounded by specialised staff in the same way and with the same frequency as in a reception centre. This isolation in private housing, while lifesaving, can in turn lead to increased vulnerability in that it does not guarantee the same follow-up as in the reception centre. A social worker emphasises this advantage of "close follow-up" in the centre, which is necessary for dealing with vulnerabilities:

*"I find that there is an interest in these centres, because I find it very relevant that there is a social worker, a nurse, individual support.... Whether you arrive in a place where you are taken care of [...] I think it's not bad in fact to arrive here rather than being immediately placed in individual places where it's more difficult to meet people, where perhaps it's more difficult in terms of procedures"<sup>362</sup>.*

As for women, the vulnerabilities of people from the LGBTQIA+ community are also addressed through associations working outside the reception centres. For some social workers, this allows asylum seekers to speak more freely about their gender vulnerability, outside the institution of the Red Cross centre and their asylum procedure. Daniel Legreve emphasises:

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360 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

361 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

362 Interview n° 32, 09.09.2020.

*“So, it’s true that we’ve had a few cases, and with my colleague we wanted to set up LGBT support system. The director proposed, as there is the Rainbow House, that if they need to talk about it, they know that there is the association and it’s up to them to do it, we let them manage. Now, if we start to set up a women’s rights office, during the day we’ll have women here, that’s different, its awareness raising. But for homosexuality as for transsexuality, it’s touchier...”<sup>363</sup>.*

### 3.1.3. Gender bias

When discussing gender categories during the interviews, several of the actors interviewed pointed out that gender did not only include people from the LGBTQIA+ community but that it also included men, especially single men. Vulnerability happens to be a notion more easily associated with migrant women, in that they would be according to a categorical approach, a “typical” model, which is inherently more fragile. Men who are described as vulnerable, on the other hand, find themselves almost “outside the dominant male model”. Because they are perceived as naturally strong and valiant in the collective imagination, and unlike women, because they are considered “not vulnerable *a priori*”, single men also suffer the consequences of their gender, at different levels.

#### 3.1.3.1. About the *a priori* identification of their vulnerability

The imaginary of the male condition represents the man alone as strong, independent and necessarily the master of his own emotions. Single male asylum seekers do not escape this representation. Their masculine condition describes their place in the social space as well as in the representations that can be made of their vulnerability. These representations continue to influence the discourse of the actors interviewed. Men’s vulnerability seems to be less visible and, at first sight, “less obvious”<sup>364</sup>.

In this perspective, Judge Hayez underlines: *“It’s very caricatured, but a young man of 30 who looks healthy and strong, well, he needs to show his vulnerability”*<sup>365</sup>. In the same vein, an interviewee emphasises: *“Sometimes we come across men on their own, isolated men, whom we don’t necessarily categorise as vulnerable at first sight, because they are men”*<sup>366</sup>.

In the same sense, Cristina Valenti, from the dispatching service, underlines this influence, as well as the categorisation of people as vulnerable during the dispatching:

*“An isolated woman could be considered more vulnerable than an isolated man [...] There is no real reason for this, it is common practice”*<sup>367</sup>.

Isabelle Plumet also points out that this prejudice of the “non-vulnerability” of isolated men is used as a recurrent reading in reception policies:

*“We do it a little too quickly, I think, in reception policies and procedures, to say to ourselves ‘OK, an isolated man, a young man between 20 and 40 years old, he’s someone without any particular prob-*

363 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

364 M. Tassoudis, Deputy Director of Rocourt Red Cross reception centre, Rocourt, 03.09.2020

365 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

366 Interview n° 18, 28.08.2020.

367 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

*lem, so he'll be fine*<sup>368</sup>.

The Director of the CAMPO Red Cross centre of Ans, Olivier Peeters, emphasises that this imaginary of the “strong man” also influences the centres in which applicants are placed. He specifies that the centre, because of this characteristic, does not comply with the standard reception centre rules laid down. He points out that these more rudimentary conditions of comfort (presence of sanitary facilities outside the centre, dormitories for 20 people, etc.) do not allow the centre to accommodate all kinds of people. Thus, he specifies that it is especially suitable for single men, considered *a priori* less fragile and able to withstand these harsher living conditions:

*“These reception conditions mean that we cannot welcome a mixed public, but only single men and rather a priori profiles who are not too vulnerable. Afterwards, we realise that in any case, all applicants for international protection, in fact the vast majority, have vulnerable profiles due to their background, but here it is more men, young and healthy, to put it simply”*<sup>369</sup>.

Another interviewee spoke of a hierarchy of vulnerabilities indexed on a gendered reading:

*“In fact, the concern is that there is a slight hierarchy of vulnerabilities. And I think that, yes, in terms of hierarchy, single men will stand at the bottom of the list. But they are still vulnerable people, but it’s true that when we talk about asylum seekers and we talk about single men in terms of vulnerability, we say to ourselves: that’s fine!”*<sup>370</sup>.

Although this imaginary representation of the male condition is present in the discourse of some of the actors interviewed, it does not prevent the same actors from being aware of the gendered approach and the gender bias it reflects. Instead of insisting on men’s *natural predisposition* to be more courageous than women on the path to asylum, some of the actors interviewed pointed out the vulnerabilities specific to single men and emphasised the need to highlight this group, which is *a priori* excluded from the field of vulnerability.

These vulnerabilities intervene and accumulate mainly at the level of the expression of vulnerability among single men. If this imaginary of the “strong man” is found in the discourse of the interviewees, they also seem to have an effect on the male asylum seekers themselves who have integrated them. In this sense, and from a constructivist perspective of emotions, the feelings of male asylum seekers are not just an arbitrary expression, independent of society and the codes in which the individual was socialised but are above all *“a product of that society”*<sup>371</sup>. The weight of social opinion and the judgement on the role that a man - asylum seeker or not - must play is therefore decisive in the expression of the vulnerability of isolated men and implies a necessary - but imaginary - restraint in demonstrating it. Lindsay Billet, a social worker in the Red Cross centre of Ans, sums up this impossibility for the single man to admit his vulnerability:

368 I. Plumet, Deputy Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

369 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

370 Interview n° 58, 12.10.2020.

371 FREEDMAN J., “Fear, Shame, Humiliation? The complex emotions of asylum seekers and refugees in Europe”, *Centre for Information and Studies on International Migration*, *Migrations Société*, No. 168, 2017/2, page 25.



*"I have the impression that there really is this idea that a man must be strong, must be resistant. And I can see here, in the group of men that we have, we had some who had chronic post-traumatic shocks, so they started breaking windows for example... And they are really pointed at by the others who say, 'but this one is crazy', or 'he's not ready'. I have the impression that isolated men have to manage their difficulties and their journey alone."<sup>372</sup>.*

Lindsay Billet points to the individual interviews, which are designed, among other things, so that residents can confide in each other and talk about their worries out of sight of the other residents. Even in a private setting, the worker emphasises that there is no room for visible and assumed emotion:

*"I think they have to wear a mask actually! All the time. I don't think there's any room, at least in a group setting, for the expression of difficulty. There are none of them crying, for example [...] People don't cry here. Even in interviews, they just don't cry"<sup>373</sup>.*

A social worker further emphasises the impact of "culture", which prevents a man from voicing these difficulties. Culture is understood here as in a sociological conception as a set of "collective representations beliefs and feelings common to a certain number of people within a society"<sup>374</sup>.

*"It is just as sad, but it manifests itself in a different way. The way it is expressed is different for men. But it's not less considered, it's just managed in a different way. With all these things connected to culture, some men are unable to say they are vulnerable, that they don't get it out so easily. Because there are aggressions against men, and rapes too... and it's not something easy for them to admit to"<sup>375</sup>.*

A social worker at the Fédasil centre in Sugny speaks more broadly of a "duty to assert oneself"<sup>376</sup> and a necessary virility to be assumed by men in the centres.

The taboo surrounding the sexual assault of the male body also recurs several times in our interviews. Although it is one of the so-called "classic" vulnerabilities of a female public, some of the actors interviewed underline the particularity of this kind of violence that increasingly affects a male public. The latter find themselves doubly constrained to silence: firstly, in that gender and their previous socialisation forces them to keep their emotions silent; secondly, in that the feeling of humiliation and degradation attached to rape reduces all genders to silence. In this sense, a social worker emphasises the impact of sexual violence on young boys who have been abused during their migratory journey and the difficulty of putting it into words:

*"For the girls we know it, we come to know it quickly, but for the young men who are raped along the way, it's much more [...] Many, when I was still working at the Neder-Over-Hembeek centre, many could not describe, but they spoke of places, of a kind of 'jungle' they said, of the wild camps in Greece..."<sup>377</sup>.*

Farid Khali, the Director of the Red Cross centre of Uccle for UMs and Jette, points out that this problem already affects the UMs, against whom "we feel that something has been done":

372 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

373 *Ibid.*

374 DESOUCHES O., "La culture: un bilan sociologique", *Idées économiques et sociales*, 2014/1, n° 175, page 53.

375 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

376 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

377 Interview n° 32, 09.09.2020.

*"There are a lot of boys who have been raped on their way here, even sometimes here. In the centre, we feel that there is this problem [...] We feel it"<sup>378</sup>.*

Gender-based violence, whether sexual or not, traditionally linked to women in that it obviously and disproportionately affects them, also seems to be a reason for men's vulnerability. As one social worker points out:

*"There are men who do not agree to marry a girl from the village, there are men who have a different vision of marriage. It's true that as vulnerable people we are talking about children, women, but there are also men who want to have their choice with regard to this marriage, which is not in fact theirs. Neither do they want to marry a girl they don't know! [...] So yes, there are men who don't accept forced marriage [...]"<sup>379</sup>.*

### 3.1.3.2. About the autonomy of isolated men and their life project in Belgium

Men who are isolated, according to the interviewees, are under pressure to succeed. Their ultimate goal is to become as autonomous as possible in order to quickly become self-sufficient. This is due on the one hand to the fact that single men are by definition alone on the territory and often have family members back home. This solitude is also raised by several actors as a vulnerability of their own. A social worker from the Sugny centre emphasises this:

*"I think for the men, there are quite a few of them with families back home, in fact they came alone there with the aim of bringing over their family there afterwards. The fact of being alone, they have a weight on their shoulders too, that's it. They may have the impression that everything rests on them too, that their family's life depends on them, so that's a pressure they have"<sup>380</sup>.*

Isabelle Plumet in the same sense underlines *"the vulnerability of the lack of family support"*<sup>381</sup> specific to isolated men. It is also the lack of a *"family lifestyle"* and the resulting intimacy that is lacking among some residents and which makes them vulnerable, particularly in the community structure of the centres. Daniel Legreve explains on this subject:

*"When you were in a house with a mother and a child, in a small house and you find yourself in a room with 20-30 residents [...] I think that plays a big role. They are men, so men have needs, desires, things... and now they are completely cut off. They have the impression that they are no longer men, in fact, it's something that often comes up"<sup>382</sup>.*

This loneliness and the responsibility that comes with it put a particular pressure on single men. This issue was raised several times in the interviews. Once again, this feeling of pressure is neither arbitrary nor individual. It is the product of a society which projects a successful plan on the male asylum seeker, for which he cannot fail. Julian Knittel talks about an *"autonomy project"*<sup>383</sup> specific to the single man:

378 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

379 Interview n° 40, social worker, Ans Red Cross reception centre, 21.09.2020.

380 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

381 I. Plumet, Director of Petit-château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

382 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

383 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

*"There are men who come to Europe, migrants, who have the idea that a man must be an enterprising person, who must find work in Belgium, who must build his autonomy... It's a bit like his 'man in Europe' project, you see?"<sup>384</sup>.*

Daniel Legreve emphasises this subject:

*"For men it's really more of a pressure, they must absolutely succeed. Because if they come back home and they haven't succeeded, it's a shame... And then if they don't, they feel the pressure from the family back home, too"<sup>385</sup>.*

Carla Pannemans also mentions the feeling of loyalty that men sent here have towards their families, which pushes them to cling to their project of autonomy, especially through work:

*"They are sent by the families, for them it is more... they say it also: 'I cannot go back, my father sold the farm, he sold the cows'; you know, there is a lot of pressure on these people to make it in Europe and sometimes they lose themselves because Europe is not a bed of roses [...] They have something like 'I have to make it because my family is depending on this, my family wants this' [...]"<sup>386</sup>.*

This project of autonomy for men takes shape very early on. It can already be found among the UM boys, who, as some actors underline, have a project of autonomy which differs very strongly from the UM girls. This is the case of Julian Knittel, who emphasises that there are many women seeking asylum in Belgium from whom *"we don't expect them to be autonomous at all"*<sup>387</sup>. The expectations projected on young UMs are therefore also the product of created and constructed norms, which girls or boys, in their differentiated socialisation, are supposed to meet. Thus, Elisabeth Lejosne and Daniel Legreve both stress the need for young UMs and adult girls and boys to *"enter the ranks of gender"*, which takes on very different roles. The nurse says about young adults who get pregnant:

*"Sometimes making a baby is not a way to get a status and stay in the country, but also because she says to herself, 'I'm 20 years old and I don't have a child yet and I'm not totally a woman, etc.'. And what is the community going to tell me?"<sup>388</sup>.*

Daniel Legreve emphasises the need for young adults and UMs to find a job and the objective of autonomy to be achieved in the country of origin:

*"Some UMs are sent by their family. They say 'my child, you're going to go there, in this country, you're going to find a job and you manage things for us to come'. So, when they arrive here they say, 'I came here to work!' But they don't know that school here is compulsory. So they leave. Or they run away"<sup>389</sup>.*

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384 *Ibid.*

385 D. Legreve, multipurpose employee, Ans Red Cross Fédasil reception centre, Ans, 14.09.2020.

386 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

387 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

388 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

389 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

### 3.1.4. Gender and identity abuse

Gender is not only a vulnerability factor. In our interviews, it also repeatedly emerged as a strategic tool mobilised by claimants in order to obtain protection. This is particularly evident in relation to the sexual orientation of claimants. Since this is more difficult to prove and persecution on the grounds of sexual orientation can lead to protection, some claimants decide to declare themselves as homosexuals in order to be granted protection. Judge Verdickt is lucid on this point:

*“We are not naive either. I also know this thanks, for example, to my Senegalese friend. At one point, when I was still working in the asylum section, it was a time when there were a lot of homosexual Senegalese asylum seekers. And my friend used to laugh at me because she used to say to me, ‘but you recognise a lot of people and I [...] I even have friends who have applied for asylum as homosexuals and they are not.’ Well, ok, that’s your information. I don’t want to know. What is true is that we know that there are networks that are organising themselves. And for the moment, what works well to apply for asylum if you are Senegalese, is to say that you are homosexual”<sup>390</sup>.*

Judge Declerck fully agrees with that:

*“A lot of Africans think that if they can say they are homosexuals they stand a better chance of getting the refugee status [...]”<sup>391</sup>.*

Social workers on the ground are also confronted with this type of strategy implemented by some applicants in the centres. Olivier Peeters underlines this:

*“I remember a case of a man who said he was homosexual and in fact...he could hardly hide the fact that he was not homosexual, especially with female colleagues [...] Well, it’s funny there, it made the team laugh...but afterwards it’s less funny for people who are really homosexual and who are really persecuted in their country of origin”<sup>392</sup>.*

In the same vein, a social worker points out:

*“We had young boys here who were very badly affected by their sexuality... Then there was a girl who moved around and naturally they started to look at her [...]. So we used to tell them ‘you know that the procedure you have chosen is not going to be easy because if you get into this idea of homosexuality, you can be bisexual but well... Here we see that at the centre there are no boys that you look at”<sup>393</sup>.*

Carine Vansimsen pointed out that this strategic use of sexual orientation is also often made by people whose nationality leaves little chance of recognition of possible protection. She explains:

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390 B. Verdickt, CALL Judge, Brussels, 09.07.2020.

391 K. Declerck, CALL Judge, Brussels, 01.07.2020.

392 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

393 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

*"There are nationalities that have few criteria to be taken into consideration in the law. I am thinking of two countries: Morocco and Tunisia, for example. Well, the political problems are not taken into account too much for these two countries and few go through the asylum application but, when they do, they either invoke, in general, the absence of religion or the fact that they are gay"<sup>394</sup>.*

The social assistant also mentions the strategic use of documents in this sense, which would aim to prove their sexual orientation. Thus, she emphasises that many of them ask to have a certificate of attendance from certain NGOs dealing with issues of homosexuality and trans-identity, as the ultimate proof of their sexual orientation:

*"I also hear many people who frequent the Rainbow House and who say to me, 'Here, I have my certificate that I can use for my asylum application!' But no... [...] It is not because you have your certificate that you went to the Rainbow House meeting that you will be believed. We know that very well, people come and ask us for a certificate that they have taken part in our information sessions, our meetings for that [...]"<sup>395</sup>.*

In the above, homosexuality is used as a means of ensuring security of residence in the territory. It is worth noting that asylum seekers additionally use certificates and play the game of "proof" at all cost. This also shows how important it is for the applicant to correspond to a subjectivized homosexuality in the eyes of the protection officer, *in other words*, to the image that a protection officer has of the 'real' homosexual (here, for example, going to certain associations).

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394 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

395 *Ibid.*

**Summary Box 2. Gender and vulnerability**

The fieldwork confirmed that *gender* is among the main sources of vulnerability. At the same time, gender is often used as a strategic tool to obtain protection. Migrant women are generally considered as vulnerable not "*because they are women*", but for a wide array of reasons that stem from their gender:

- the condition in the country of origin – both in the family environment (e.g., female genital mutilation or forced marriage) and in the more general traditional context – could render them vulnerable and become push factors into leaving the country;
- the migratory journey is a factor of vulnerability for women who are often victims of (mainly sexual) violence along the way. Even though this vulnerability is not connected to the reasons of persecution, it can overshadow the primary reasons for fleeing the country;
- women also experience vulnerability after their arrival in Belgium both because of the asylum procedure itself and the difficulties in conforming to a society whose codes they do not know, and because of the risk of falling into patterns that would worsen their precariousness and dependency, such as prostitution networks. In addition, motherhood, especially in the case of unwanted pregnancies, and taking care of children could represent an additional vulnerability factor.

The multifaceted vulnerabilities of women require asylum Judges and protection officers to adapt their practices during the hearings. These vulnerabilities need to be considered when assigning a reception centre and during these women's life in the reception centre.

Asylum seekers who belong to an LGBTQIA+ community are generally considered vulnerable. However, their specific vulnerabilities are not easy to detect given the taboo on this matter, even when they represent the basis for the asylum's application. These vulnerabilities cannot always be adequately addressed. In addition, bringing an LGBTQIA+ identity in the life of a reception centre could be intimidating and can even lead to intolerant or mocking behaviours. One option would be transfers to more suitable centres where LGBTQIA+ profiles are more easily accommodated, or LRI (Local Reception Initiative). Interestingly, the fieldwork showed that "gender" should also include male asylum seekers. Although men are typically seen as strong, independent, and able to control their feelings, they are also vulnerable. Their vulnerabilities are simply less visible because of gender bias and the imaginary of the "strong man".



## 3.2. Age: from minors...to elderly

With regard to vulnerable groups, special reception needs as well as special procedural guarantees, the category of *age* is not mentioned, as such, neither in the Reception Conditions Directive nor in the Qualification Directive (with the exception of the Procedures Directive<sup>396</sup>). However, both categories (minors – accompanied and unaccompanied – and the elderly) are referred to in these texts, separately. During our fieldwork, questions were asked with regard to the minors and the elderly, but in the present part of the report the two groups are examined simultaneously, for two reasons. First of all, *ex ante*, the *ratio* behind the Work Packages of the VULNER project, since a unique thematic WP is devoted to “Age” (under the supervision of the Norwegian Team) with the aim of exploring how age, as a factor giving rise to vulnerability, is specifically framed both at international level and in the national legislations, implementations and practices. Secondly, *ex post*, in the fieldwork we recognized that, even though minors and the elderly are almost at the extreme of the human lifetime, these two categories seemed to have many features in common that are examined hereunder.

### 3.2.1. Minors: vulnerable by definition<sup>397</sup>...but why?

With regard to minors, our fieldwork clearly shows that they are a group that should be considered vulnerable *a priori* because of their age. An interviewee affirmed at the outset:

*“Well, yes, there is a lot of talk about vulnerabilities at the moment. So, the first category I am thinking of is that of unaccompanied minors”<sup>398</sup>.*

This is something shared by all experts interviewed. It is clearly affirmed by the Judges of the CALL:

*“I think the cases I have had who were particularly vulnerable are mostly non-accompanied minors”<sup>399</sup>.*

Likewise, a protection officer mentions:

*“I think it’s really age which makes these people vulnerable. They don’t have the same resources as an adult”<sup>400</sup>.*

On the same vein, a social worker at the Red Cross centre of Uccle for male UMs says:

*“There are even more vulnerable people among the vulnerable people who migrate, and children are clearly among them, not only UMs, but children in general”<sup>401</sup>.*

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396 Recital (29) of the Procedure Directive states: “Certain applicants may be in need of special procedural guarantees due, inter alia, to their age. COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)”, *Official Journal of the European Union*, 29 June 2013.

397 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

398 Interview n° 2, 07.07.2020.

399 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

400 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

401 Interview n° 23, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

The fact that a child is considered vulnerable *per se* is taken for granted. This is something clearly visible in the legislation, both at the European and the national level, but it is something that arises indisputably from our fieldwork too. Therefore, when we ask what a minor is vulnerable to in order to understand why a minor immediately falls into this category, also in the words of those working on the ground, the interviewees were generally “surprised”, as this was a self-evident question. Interestingly, Judge Declerck of the CALL said: “for the minors, I think it is obvious”<sup>402</sup>. In the same vein, another Judge affirmed “it is a bit of a weird question because you accept as evidence that a child is vulnerable”<sup>403</sup> and stressed how the experiences that a person had as a child can impact all his or her lifetime. In her words:

*“He is in a full development of becoming what he has to become and that’s a vulnerable process [...] What you have experienced as a child is very determining for what you would become later on, I think, so, I think it is more related to that question”<sup>404</sup>.*

Notwithstanding, during our fieldwork interesting reasons were put forward with regard to the specific vulnerability of minors in the immigration process and the asylum procedure. They will be examined chronologically through the words of the experts interviewed.

### 3.2.1.1. The migratory road: “Their confidence for adults is lost on the road”<sup>405</sup>.

First and foremost, alongside their age, what makes minors vulnerable is the migratory experience itself and the emotional burden connected to the different experiences linked to migration: the situation in the country of origin, the separation from their family and the migratory road. The difficult realities they had gone through before departing from their country of origin can have a great impact. In the words of an interviewee:

*“When you experience traumatic events, there is already the fact of fleeing your country, the persecution of refugees, but depending on whether you are a minor, it is experienced even more strongly. So, it is more fragility that makes them more vulnerable”<sup>406</sup>.*

The separation from their family (especially in the case of unaccompanied minors) and, more in general, from their homes and countries could be difficult. Maria Tassoudis, the Deputy Director of the Red Cross centre of Rocourt, said:

*“The children sometimes abandoned everything they had in the country from one day to the next. Sometimes they didn’t have time to say goodbye to their grandparents. It’s a great shock for children to leave their environment, their school, the parents, the grandparents [...]. It is not easy”<sup>407</sup>.*

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402 K. Declerck, CALL Judge, Brussels, 01.07.2020.

403 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

404 *Ibid.*

405 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

406 Interview n° 4, 14.07.2020.

407 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

Lastly, the migratory road to Europe can be very long, up to a couple of years, and traumatizing. Judge Declerck shared a clear example:

*"It all depends on how they grew up, where they grew up, what happened in between if they have been...if they left their home, let's say, at 16 with an older brother and came overland through Turkey and Greece, and so on, to Belgium and they missed out on two years of their lives and then they come here and they are not minors, they are 19 years old, perhaps...that's not the same as a normal minor who grows up in a stable environment"<sup>408</sup>.*

In the same vein, a protection officer of the CGRS stressed:

*"It's really, I would say it's...it's the very principle by definition. A minor is someone who is more vulnerable than another person because they are younger, not as mature, more likely to suffer...to encounter difficulties more quickly because they are less able to defend for themselves [...] These are people who can encounter...more than others, difficulties on the...on the way, on their journey [...] So that's more at the level of the...unaccompanied minors. Several times, I have had the opportunity to meet [...] a certain number of them, in particular Afghan minors and, um...well, I happen to have a particular memory of them. It was really, I would say, interesting exchanges with these people. But, in fact, it means that...that these people had had a very difficult experience in terms of...the journey [...]. So that's the journey through Afghanistan, the passage to Iran, it was still, frankly, it was complicated for them, quite often it was complicated"<sup>409</sup>.*

On this point, Farid Khali, the Director of the Red Cross centre for UMs of Uccle and Jette, said:

*"The path of migration, for many, many, we don't talk about it perhaps, but between the departure of the young people and their arrival at my reception centre, it is unimaginable what can happen. The destruction, and I'll say the 'mental massacre', that's where it happens. [...] That lapse of time, is terrible, one can only imagine the atrocities through which these young people [passed], [...] During that period of time, they are people who have almost no weapons to protect themselves. Against the smugglers, against the cold, against injustice, they are like a prey for all actions...all actions, and that for me is a vulnerability"<sup>410</sup>.*

The experiences and the difficulties encountered over the migratory road can leave an enduring mark on minors. As Innocent Ntamuhanga said: *"Their confidence for adults is lost on the road"<sup>411</sup>.*

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408 K. Declerck, CALL Judge, Brussels, 01.07.2020.

409 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

410 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

411 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

### 3.2.1.2. The asylum procedure: “The asylum procedure can be traumatic in itself”<sup>412</sup>

Another ground mentioned with regard to the vulnerability of minors is the asylum procedure itself, with all the issues connected. This is clearly stated by Judge Hayez of the CALL, who affirmed that the asylum procedure could be traumatizing for them. Even though the Belgian immigration and asylum system takes into account the distinctive aspects of a child as an asylum seeker and provides them with higher guarantees solely for the fact of being minors, he underlined that the minors are ultimately vulnerable to the procedure both with regard to how the procedure is conducted and for all the related issues at stake. In his words:

*“They are vulnerable to the procedure because it is the asylum procedure, something that can be traumatic in itself. And then when you are a child, even if you are [...] In a country that attaches importance and takes into account the processing of asylum applications of minors, because I think that in Belgium they are well taken into account compared to some European countries – the minors have a guardian and a lawyer, they are heard at the CGRS by people who do their job well, who are specialised in listening to minors – they are vulnerable in relation to the procedure because it is something that can sometimes overwhelm them, both in the way the procedure is conducted and what is at stake in the procedure”<sup>413</sup>.*

Consequently, with specific regard to his work, he was claiming for a greater attention by the Judges of the CALL not only with regard to the way the hearings are conducted, but also in the language of the decision itself. He stressed the importance of writing decisions in a language that could be easily understood also by young people<sup>414</sup>.

Furthermore, Judge Hayez stated at the outset that he preferred to deal with this topic not using the term “minor” – since it could include very different life stages, from children to adolescents – but addressing the issue starting from the maturity and mental and cognitive development of each person.

*“What does ‘minor’ mean? A 17-year-old minor will not be the same as a seven-year-old or a ten-year-old minor. So, I actually don’t like to speak in terms of minors. I speak in terms of the maturity and degree of mental development of the person, because that’s what’s at stake. Because we can have adults who are ultimately very poorly educated, very immature, and who in their behaviour are children. And on the other hand, we can have minors who have above-average degrees of maturity”<sup>415</sup>.*

Likewise, a protection officer affirmed: “I would say that it’s a question of maturity that makes these people more vulnerable”<sup>416</sup>. Therefore, being a minor could impact also their hearing and the credibility assessment during the procedure. Minors do not express themselves as adults because they (in particular children) do not always have the education, the training and the adequate level of insight to fully describe and express what they have experienced<sup>417</sup>. In addition, they lack the same chronological and analytical

412 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

413 *Ibid.*

414 As an example, CALL judgment No. 206.213 of 28 June 2018 uses more informal language. The first paragraph of the judgment states: “This judgment is written in such a way that the applicant, who is 13 years old, can understand us, whether or not he is assisted by an adult”.

415 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

416 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

417 Interview n° 4, 14.07.2020.

capacity as adults when they tell their story for the asylum application or there are fears connected to their condition in their country of origin<sup>418</sup>. In the words of a protection officer: *"They do not have the same resources as an adult person [...] in relation to the way they express themselves, in relation to their memories"*<sup>419</sup>.

Therefore, the credibility assessment of minors could not be the same as the one for adults and, what is more, it should be adapted also to the different ages in this category. An interviewee said:

*"The criteria for assessing the credibility of a minor will absolutely not be the same as with an adult. Therefore, we do not believe that we can expect the same from...a child of twelve, eight or twenty-one years of age. And there, once again, we can also have to deal with...cases of young men of 17 years old who have an incredible maturity for their age, as we can have a young woman of 22 years old with whom we will really have to adapt our hearing technique"*<sup>420</sup>.

As a result, according to Judge Hayez, the Judges should be flexible when confronted with minors, while giving them the benefit of the doubt and looking at the objective elements coming up in their dossiers, such as medical certificates or psychological counselling reports. These objective factors appear to be of utmost importance because minors, according to the Judge, are not always fully aware of the importance of their declarations for the procedure and they, for example, often remain silent. He said:

*"It's obvious that it's a permanent balancing act between objective and subjective elements, and for a minor one might think that too much importance will be given to subjective elements because of their age, as they might be less credible than someone else. It's not pejorative what I'm saying, they simply express things less well than others. The minor's hearings at the CGRS, sometimes it's three pages long. They don't speak, they are not open to talk, they don't understand what is at stake. So now we're going to look for what is objective in the file"*<sup>421</sup>.

On the same wavelength, but more critically, other Judges stressed the behavioural issues in relation to minors who, because of their age, are not always fully aware of what is at stake and the seriousness of the asylum procedure<sup>422</sup>, especially if they go through the complex phase of adolescence, as the majority of the minors in the asylum procedure. In the words of Judge Declerck:

*"It is like they need a little bit of a push, especially when they are adolescents. They are no different from any other adolescent [...] you know that they will say foolish things"*<sup>423</sup>.

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418 Interview n° 2, 07.07.2020.

419 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

420 Interview n° 18, 28.08.2020.

421 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

422 K. Declerck, CALL Judge, Brussels, 01.07.2020 and Interview n° 4, 14.07.2020.

423 K. Declerck, CALL Judge, Brussels, 01.07.2020.

A difference is reported with reference to the hearings of younger children because they appear to be more spontaneous, providing that they are at ease while telling their stories. This last point plus the fact that more adapted premises should be used in the hearings of minors are elements that were often mentioned<sup>424</sup>. In addition, a protection officer stressed the necessity of clarifying at the outset of the hearing the role and importance of that moment. She said:

*“The guardian has not prepared them properly and, sometimes, they are like ‘well, I am here because I need to be here’, so they do not really have a core [...] Then I would explain what I expect from them or how our work will proceed, but that depends also on how the minor has been guided before... It’s something I start my interview with, before I give an explanation, I ask them ‘What do you expect from today?’ or ‘What have you been told [that] you need to do today?’ and then, based on that, I will first give more details and information about what I expect from them”<sup>425</sup>.*

The aim is to create a trusting environment for the minors to tell their stories without fear of the authorities. An interviewee said:

*“[There are] suitable premises to create as much as possible a climate of trust and um...and encourage a young person, or even a child to open up without...without fear of the adult, without fear of authority”<sup>426</sup>.*

As a protection officer confirmed: *“You just have to pay attention to the fact that it’s not like the police behind the computer”<sup>427</sup>*. At the same time, another protection officer underlined that for him it is important not to address the minors in a way that could be interpreted as paternalistic, but to treat them *“on an equal footing (d’égal à égal)”<sup>428</sup>*.

A common factor of vulnerability for minors that is somehow connected to the asylum procedure is the attainment of majority. Turning eighteen without having received a positive decision by the CALL marks the loss of many guarantees that are reserved to minors and it represents a stressful phase for them<sup>429</sup>. Carmen Salgado Gaeta, the Deputy Director of the Red Cross centre of Uccle for UMs, stressed: *“at eighteen and one day, everything changes overnight. From hyper-protected to not at all”<sup>430</sup>*.

### 3.2.1.3. Minors’ vulnerability as a factor of persecution in itself

Thirdly, minors are vulnerable because the fact of being minors could be a ground for persecution in itself, taking as example the girls who are entitled to the status of refugee if they come from countries where female genital mutilation (FGM) is systematically practiced or the children from war zones where they are forcibly recruited as soldiers by paramilitary and guerrilla groups. In the words of Judge Hayez:

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424 Some interviewees stressed that premises suited to child are not always adapted to all the minors given that those considered minors in Western countries are deemed to be adults in the country of origin, as will be examined in the section entitled “What does it mean being a minor?”

425 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

426 Interview n° 18, 28.08.2020.

427 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

428 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

429 Interview n° 32, 09.09.2020.

430 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.



*"[With regard to] the vulnerability of minors should also be borne in mind that the youngster's vulnerability can be a reason for persecution of themselves [...] Well, why is it that young girls and women from countries where excision is systematically practised are systematically recognised as refugees? Because we know very well, a young Guinean girl at birth, we know very well that 98% of them will suffer the persecution of mutilation. They are vulnerable, nobody helps them, these are things that are decided by the family, that society lets them do, even when it is forbidden by law, there is no association fighting against excision or they do their job very badly, because it goes on. What other examples do we have? In the war-torn countries of Afghanistan and Iraq, if you have a young person, a minor, of course we will pay attention to the whole problem of child soldiers, of forced recruitment by rebel groups." He continued: "A city where there is generalised blind violence, if there is a vulnerable person – whether it is because of her status as a woman, as a minority, or because of psychological disorders – we will say that he or she is more exposed than another person to this blind violence which rages in his/her region of origin"<sup>431</sup>.*

On the same point, as mentioned above, many interviewees underlined that minors do not have the ability to defend themselves adequately and therefore being a minor could represent an additional factor of danger during the migratory road<sup>432</sup>, especially in terms of sexual abuse of both males and females. An interviewee affirmed:

*"The young Afghans suffer the same horrors on their journey. And it's true that, it's even more...well for the women we know it, we know it fairly quickly, but for the young men who are raped "on the road", and it's horrible what I'm saying, it's above all almost even more impactful, because there is also the homosexual character of the aggression, and that can be much more destructive in terms of the identity of the young man"<sup>433</sup>.*

Minors could be subjected more easily to forced labour or sexual exploitation and, in the worst cases, also to slavery. An interviewee mentioned:

*"An accompanied or unaccompanied minor on a migratory journey through a country where there is a risk of persecution...will be...because of his or her young age...more helpless. Minors um...can be more easily trafficked, exploited, whether it be in the context of labour, slavery or sexual exploitation"<sup>434</sup>.*

### 3.2.1.4. Minority and life in the reception centres

Fourthly, a factor of vulnerability for the minors is also the life in the centre. Even though the difficulties (but also some positive aspects) of the life in the centre will be fully explored later in the report, here it is worth mentioning some issues with regard to the minors specifically. Maria Tassoudis, the Deputy Director of the Centre Croix-Rouge of Rocourt, talking about minors' vulnerabilities, stressed that minors, especially children, live a world that push them to grow up quickly<sup>435</sup>. Undoubtedly, a great role in their "world" is played by the life in the centre. Likewise, life in the centre can be particularly burdensome also for the adolescents, given the peculiarities of this phase of life, especially with regard to all the rules that need to be followed. In the words of Owen Miossec:

431 J-F. Hayez, CALL Judge, Brussels, 16.07.2020. Child soldiers were mentioned also in Interview n° 2, 07.07.2020.

432 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

433 Interview n° 32, 09.09.2020.

434 Interview n° 18, 28.08.2020.

435 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

*"Speaking of daily life, it's the same: we are in collective accommodation centres, so we have rules for living in a collective...they also have to comply with them, they have no choice, so [...] I'm not questioning our internal organisation, it's a fact, we need this organisation. I'm just trying to say that perhaps for a minor who arrives in the centre, it can be violent, all these things to learn, all these things to understand and all these rules to which they have to conform"<sup>436</sup>.*

Moreover, life in the centre could be complicated because during adolescence the relationship with others could be something burdensome, in particular when the comparison with peers is made. One of the reference persons for UMs of the Red Cross of Uccle affirmed:

*"Life in the centre makes them vulnerable. So it's like, well, being with young people of our own age all the time, well that...and being at school when you're a teenager exposes you to vulnerabilities, so there's that aspect of having 70 teenagers in the same place and because they're teenagers, there are going to be differences that are going to be created, then there are those who are already taller and better trained, and those who are less sure of themselves, and I think it's super important when we work with them, it's that they are teenagers, not children, not young adults either, they are teenagers and it's not a particularly easy time in the lives of human beings"<sup>437</sup>.*

On this point Julian Knittel, the Deputy Director of the Red Cross centre in Jette, stressed that many residents are usually ashamed of living in a reception centre. He said: *"There is a social fragility in relation to that"<sup>438</sup>*. Minors could be embarrassed at school or with peers when they are confronted with the fact of living in a centre. He gave the example of the little girl at school who is required to draw her house:

*"Here we have a little girl for example, she is about ten years old, she goes to school, and often at school they ask 'where do you live? Draw your house', and she lives in a centre and she doesn't dare to say it...she's a little girl"<sup>439</sup>.*

Moreover, he mentioned the "practice" of minors who get off at the bus stop after the centre to avoid showing where they live when they are coming back from school:

*"Where I worked in Uccle, we have a tram stop in front of the centre, so all the children coming home from school can get off in front of the centre, they are ten metres away, they get to the door, they are in the centre. A lot of them get off at the next stop, to walk, because they don't want to be there, they don't want others to know they live there, well, it's something embarrassing for them"<sup>440</sup>.*

At the same time, life in the centre is also the time where young people receive mentoring and guidance as well as give positive reasons to continue their life paths. As Farid Khali affirmed:

436 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

437 Interview n° 23, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

438 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

439 *Ibid.*

440 *Ibid.*

*"There is a need for a strict framework, it's another way of thinking, there is a need for a strict, orderly framework, there is also the need to show them a desire to continue living, it's schooling, it's the hope it gives them, so they need to see something. They have to have a reason to continue. To believe in something. There has to be something to believe in order to keep going"<sup>441</sup>.*

All these factors of distress connected to the migratory road, the procedure and their integration in a new country could be expressed in different ways, sometimes also through aggressive and violent behaviour<sup>442</sup>. Farid Khali mentioned that the minors are often unaware of being vulnerable and, in case they are, they do not talk about it even with the doctor or the nurse. However, they show their profound malaise through self-injuring, aggressive attitudes or prohibited behaviour, such as smoking in the centre's premises<sup>443</sup> or fighting. As affirmed by Innocent Ntamuhanga, the reference person for UMs in the Red Cross centre of Uccle:

*"There are cases like that where they are looking for a fight, but [there is a need to] try to understand why they are looking for a fight. Everybody is looking for a place, and it's their way of expressing themselves, of knowing what they want, you have to understand, the fight is their communication"<sup>444</sup>.*

### 3.2.2. Unaccompanied and accompanied minors: specific factors of vulnerabilities

#### 3.2.2.1. Unaccompanied minors

Many interviewees made a clear distinction between minors that are accompanied and the ones that are unaccompanied. In some cases, the interviewees immediately refer to the unaccompanied children and their vulnerability is considered obvious<sup>445</sup>. As defined in the Qualification Directive, unaccompanied minor is "a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States"<sup>446</sup>. Fieldwork, most notably in the centres, has made it clear that the minors often have connections on the Belgian territory with members of their family or their community<sup>447</sup>, but that they are always afraid to declare it because they fear that it can have a negative impact on the outcome of their asylum procedure<sup>448</sup>. In the words of Farid Khali:

*"That doesn't mean that all the residents here have no one, it's not true. There are people who have family here. There are people who say so, there are people who don't, why don't they say so? It's not because they are liars [...] it's normal that they didn't say that! When the smugglers brought them, they said 'do not talk', people are afraid!"<sup>449</sup>.*

441 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

442 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

443 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

444 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

445 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

446 Article 2(l) of the Qualification Directive.

447 This appeared clear for many residents, not only minors, during COVID-19 period when they were authorized to spend the lockdown in other places given that many of them left the centres.

448 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

449 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

The interviewees underlined the difficulties of being an unaccompanied minor during the migratory path<sup>450</sup>, in the asylum procedure and, and more generally, in a foreign country. In the words of a Judge of the CALL:

*“They are unaccompanied, so they do not have anybody who protects them like a parent would protect their child and a parent would normally act in the interest of the well-being of the child, but when you are alone you do not have anybody who does that for you and so that is why they are vulnerable”<sup>451</sup>.*

Likewise, Julian Knittel, the Deputy Director of the Red Cross centre in Jette, affirmed that a major part of the vulnerability of unaccompanied minors is due to the fact that they are separated from their communities during adolescence, a crucial period in the development of a person<sup>452</sup>. Therefore, even though adolescence could be considered a Western concept that is not shared in all cultures, as underlined in an interview with a social worker, minors undergo a process of identity formation where reference points are of utmost importance<sup>453</sup>. At the same time, Carmen Salgado Gaeta, the Deputy Director of the Red Cross centre of Uccle, stressed that the fact of being unaccompanied during the migration path is a source of vulnerability, but, on the one hand, being forced to take care for themselves made them resistant to any supervision and guidance in the centre, even connected to the daily routine. She said:

*“We can see that and that makes it difficult for the UMs in particular to adapt to the setting [the rules of the centre]. So, at the same time they need a setting, and at the same time they reject it because they have been left to themselves from their country of origin, they had to assume the journey alone, and then they arrive here and we tell them, ‘you are minors, we will take care of you’, there is a setting. And then they have a lot of difficulties with that, and that makes them more fragile because when you don’t fit into the setting, you have more difficulty integrating, to follow schooling normally, to go to your appointments, so there are a series of things that result from that, from these difficulties to fit into the framework from day to day, such as insomnia”<sup>454</sup>.*

With regard to the asylum procedure, a protection officer highlighted that the unaccompanied minors could be much more vulnerable due to the information they receive from friends; that might have also an impact on the story that they tell during the hearing. The lack of an adequate level of discernment to distinguish between real and false information could make them tell a different story that is considered likely to receive a positive decision for their asylum application. She stressed:

*“I think...unaccompanied minors are a lot more vulnerable to information from the others...For them it’s quite hard to distinguish between what’s correct information and what’s not, so there might be information that they have from the authorities in Belgium and then there might be a lot more information coming from their friends and...then for them it is very hard to know what they need to believe or to make a distinction between what information is correct and what is not and I guess that makes them a lot more vulnerable...people try to inform them in saying A or B or C instead of telling what has happened to them...so I think that...in my experience I see that a lot...hem...in the sense that, for example, in their first request they tell a story which is very unlikely and then they get a neg-*

450 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

451 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

452 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

453 Interview n° 32, 09.09.2020.

454 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

*ative decision and then, in their second request, they say: 'Well, people in the centre or my friends told me to tell this because I have this that I can't document [...] but something completely different happened to me'; so I think that is something very important that we see a lot, to what minors are much [emphasis added by the interviewee] more vulnerable"<sup>455</sup>.*

Therefore, in this regard, the role of the guardians is crucial because they become the reference points in the Belgian territory for the unaccompanied minors for the preparation of the hearing, for the administrative issues and more in general for life in the country. In order for the UMs to have a good guardian, it is important that language skills are taken into account, as far as possible. Carmen Salgado Gaeta shared with us the example of an unaccompanied deaf-mute minor who was followed by a guardian who knew sign language. She stressed: *"he was lucky to have an excellent guardian who knew sign language. So, they identified this vulnerability in advance for the appointment of guardians"<sup>456</sup>. Many social workers stressed the positive (or sometimes negative) impact that the quantity and quality of the guidance provided by the guardians can have on minors. The latter feel abandoned if the guardian does not care much about them. Carmen Salgado Gaeta underlined:*

*"And so, the guardians sometimes, there are guardians who come once a month to meet the young person. Sometimes they go for a walk with the young person and call him from time to time. They ask how you are; they ask for news, how things are going at school, then they make an appointment with the lawyer who prepares the interview. And there are guardians, you never see them, they are just there to prepare a hearing, for the minimum. But we always try to inform them about school, about how the young person is doing, and when it goes well, it's very important. Because that creates a lot of self-confidence, having a guardian who takes good care, you can see that. That's the vulnerability that is very important among young people, the fact of not seeing the parents. And we often see that young people who have a bad guardian, it's as if they had a father, a mother who didn't take care of them. They want it, they want it terribly. They are angry at their guardians when they see that their friend's guardian calls him, sends him Whatsapp messages, comes to see him, and that his guardian doesn't answer e-mails, never comes. It really makes them feel like they're not worth much. But it's really not good for them. You can really see that they become very fragile when the guardian is not present at all and they compare themselves to others who have their guardian close. Because, in addition, they clearly identify the guardian with the procedure"<sup>457</sup>.*

### 3.2.2.2. Minors within families

With regard to accompanied minors, our fieldwork showed how they can also be vulnerable, due to their age, to the experience of the migration or of the status of the family in the country.

First of all, a source of vulnerability for the minors could be the illegal status of the family in the country for an extended period of time<sup>458</sup>, especially if, at the end, they are obliged to leave the country, after having undertaken their school career in Belgium and they speak one of the two languages, French or Dutch. In this situation, the child could be put under constant and intolerable pressure.

455 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

456 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

457 *Ibid.*

458 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

The linguistic proficiency of the children is an aspect coming up in many interviews, especially in the ones in the reception centres. Florence Opdebeel, relief nurse of the Red Cross, affirmed: *“The children were learning the language at an incredible speed”*<sup>459</sup>. The children largely demonstrate a good language proficiency, thanks to the obligation to get schooling in Belgium or, merely, the fact of being exposed to a foreign language<sup>460</sup>. Even though their language proficiency proves their ability to integrate in new contexts, to a certain extent, it can also be pointed to as problematic, especially for the accompanied child. This is explained by the fact that the children often become the *translator* of their parents for the practical issues coming up in their daily life in Belgium, connected (or not) to their asylum procedure, but also in the communication between the parents and the Directors and the social workers in the centres. The role of child as a translator makes them *“a little bit older”*<sup>461</sup> or, as affirmed by Maria Tassoudis, the Deputy Director of the Red Cross Centre of Rocourt, *“children who are parenting (des enfants parentalisés)”*<sup>462</sup>. Becoming the translator of their parents, forces them to get to know complex facts in light of their young age and puts them at risk of being the ones to eventually break bad news to their parents, thus absorbing even more stress and pressure. A Judge of the CALL said:

*“They also feel the pressure or the stress their parents are under; it also comes to them, they sometimes speak the language so, I think, if someone has to speak Dutch for any communication, they come on them”*<sup>463</sup>.

Therefore, Maria Tassoudis adopted the practice to seek the help of the translator to communicate with the adults that do not master the language, without allowing the children in the office. She stressed:

*“And there you see that the child is no longer a child, and you can tell the parents no sir, we are not going to receive your child. Several times I’ve asked the children to go out, I don’t want them to hear. Afterwards, if dad will explain, mum will explain, that’s their choice. [...] And so I refuse, I call in a translator, either a colleague or by telephone”*<sup>464</sup>.

The same issue is mentioned by the Deputy Director of the Fédasil centre of Sugny, Dorian Louys, who adopts the same practice, at least when the communication at stake is not easy. In his words:

*“Personally, I don’t mind a parent coming with their child to translate in my office, if it’s for a non sensitive subject... we’ll say, but for a subject like the procedure or... behavioural problems or... sanctions or other problems, I prefer to take a translator then, and leave the child out of it, because I think it can really create a vulnerability in the child [...] Even unconsciously, the parent, as it’s the child who will translate it [...] will transfer their bad mood to the child, will finally see the child as being guilty perhaps of the bad news while the child has nothing to do with it”*<sup>465</sup>.

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459 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

460 On this point, it is worth noting that during our fieldwork we had the opportunity also to visit the nursery of the Fédasil Centre of Rixensart, attended by children of a very young age. We got the info that when their period at the centre comes to an end, they are able to interact, as children of that young age interact, with the workers and the volunteers of the centre and of the nursery, in French.

461 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

462 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

463 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

464 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

465 D. Louys, Deputy Director of Sugny Fédasil reception centre, Sugny, 25.09.2020.



### 3.2.3. What does it mean being a minor?

As mentioned earlier, Judge Hayez from the CALL stressed that he prefers not to talk of “minors”, in general, but to refer to the level of maturity and mental development of each person. This is something that was also coming up in other interviews, especially in the centres. However, from the interview also emerges that considering them as minors discloses a European, ethnocentric approach, since they are often considered “fully adults” in their country of origin. Therefore, they work, get married and, sometimes, they have also children before turning eighteen. A protection officer stressed:

*“When he arrives in Belgium, he is a minor, he knows he is a minor, he knows he has other rights, whereas in his country of origin it’s...come on, at thirteen-fourteen, he’s a man. He accompanies his daddy everywhere, his daddy asks his opinion, his daddy takes his opinion into account. He is considered a man. At 16-17, they are married. And then they arrive here, and they are considered as children, as minors. So, there is a double standard”<sup>466</sup>.*

Being considered as adults also leads to practices that are not socially accepted in Western countries, that, in some cases, could even be punished (such as marriage or pregnancies under a certain age) while they are usual habits in the country of origin. An interviewee said:

*“I think for example next week, I’m going to audition a young woman, Syrian, who is fifteen years old, who comes here with um...her husband, who is twenty and their child. So, she is already married, mother of a family at fifteen. We consider her as a minor who needs special protection because, as a result, questions are raised about the problem of child marriages because if she is already a mother at fifteen, she was probably married at fourteen. We will have to determine under what circumstances, because in the eyes of Belgian law...in our country, even consensual sexual relationship under the age of fourteen, um... can be considered rape and could be qualified as a serious crime under ordinary law and therefore be an obstacle to the granting of refugee status to her husband, whom I will also hear and who is of legal age. And often, these questions are really connoted, um...culturally”<sup>467</sup>.*

Elisabeth Lejosne, a nurse of the Red Cross centre in Jette said:

*“It shocks no one to save a girl for a man when she is only 5 years old. It shocks no one to be married at 14. There is a certain ‘abnormal normality’ that weighs on them”<sup>468</sup>.*

Even though in the centre the residents try not to disclose much of their life in the country of origin<sup>469</sup>, the fact of having the life of adults there can come up. The Director of the Red Cross centre for UMs, Farid Khali, shared the story of two minors married in the country of origin who came to Belgium with their children. Since they are both minors, they have been separated in Belgium and placed in two different centres and they have to seek for the permission of the Director to see each other, even though they are legally married<sup>470</sup>. Judge Declerck from the CALL was particularly critical when it comes to reading the reality – especially with regard to minors – according to Western habits and customs, without taking into account that in some cultures minors are treated differently:

466 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

467 Interview n° 18, 28.08.2020.

468 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

469 O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

470 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

*"You are weighting their cultural habits against yours and you think that we are always right [...] every parent anywhere in the world wants their children to grow up"<sup>471</sup>.*

We could conclude that undertaking the migratory road to Europe is linked to the issue of being considered as adults and make clear that, on the one hand, minors could become breadwinners also at a very young age and, that, on the other hand, there is also the pressure that they feel to get a status in Europe.

Being considered adults and growing up rapidly in the country of origin makes them generally unaware of belonging to a group that is treated as vulnerable, even though they often know that there are rights and guarantees that are recognised to them thanks to their age. As a protection officer said: *"Above all, when he arrives in Belgium, he is a minor, he knows that he is a minor, he knows that he has other rights"<sup>472</sup>.*

One of the consequences of being minors with regard to the asylum procedure is that the place where the hearings are conducted are usually "adapted" to minors. However, this could be embarrassing for the protection officers because they are confronted with people who are considered adults in their country of origin and they have to treat them as children. A protection officer affirmed:

*"We can see that he is more an adolescent than a child or more an adult than a child and therefore, we are not going to offer him a ball at the end of the hearing. I remember a nine-year-old kid when I asked him to choose a little present because we used to give him a little something nice, now it's more cuddly toys, it's little balloons etc. I said to him 'Here, what colour do you like?' 'Blue'. And I said, 'Here, do you want a blue balloon?' 'No.' [...] 'But I'll give it to you anyway and you can play at home. But you can give it to your little brother.' 'No'. And so, I insisted. But no, he was a man, and he was done with balloons, that's for children. Yes, that's an example that I can give outside of the hearing because I remember that even his answers were uh...we felt that he had been brought up in...in his education, he had been considered as an adult or that he had more responsibility than a child of his age in Belgium. Because his way of thinking, his way of responding was quite different, was different. He was much more mature for his age"<sup>473</sup>.*

Another interviewee said:

*"Sometimes, we're almost embarrassed when, um...well I don't know, when an Afghan man of seventeen years old, [...] but who is, a father and with whom we propose to sit on a sofa in a room with childish drawings, or something. Uh...It's part of the procedural guarantees and sometimes we say to ourselves 'Oh dear'. Hum...But there are indeed people who don't see vulnerability the way we do"<sup>474</sup>.*

Despite the fact that there is this difference in viewing minors in the country of origin and in Europe, many interviewees gave more importance to the level of maturity than to the age of the person. Protection officers but, in particular, the workers in the centres, whose activities take place side by side with the minors, underline that they are often more mature compared to their peers in Europe. Certainly, the level of maturity is linked to the character of the person, but it is also due to the fact that they are considered adults in their country of origin and to the experiences on the migratory road and as asylum

471 K. Declerck, CALL Judge, Brussels, 01.07.2020.

472 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

473 *Ibid.*

474 Interview n° 18, 28.08.2020.

seekers. More specifically, the social workers of the centre for UMs in Uccle underlined that their maturity makes them well equipped to adapt to their situations and to adopt a resilience strategy. A social worker said: *“they remain immature in many ways, but in their ability to adapt, they remain hyper-mature, I think!”*<sup>475</sup>. However, they also underline, how the same minors can “suddenly” embrace normal childish attitudes such as asking money for an expensive pair of shoes or waking up late in the morning even during school days. In the words of two social workers of the Red Cross centre of Uccle for UMs:

*“Something that always strikes me right away here [...] I’m surprised how quickly they become children again! So, is it because we keep telling them that they are UMs, that they are minors, ‘Hold your schoolbag, go to school!’ etc.... Or is it because they finally get back a little bit the possibility to become the children they are? I see this sometimes, when someone comes to ask me all day long: ‘Can have money because I need to buy trainers, but I need more, because I want also this [...]’ In fact, [I think personally] it’s really nice! Because I say to myself, ‘in fact, inside you’re a teenager-child, who has all these immature demands!.. And I can see that it takes a few weeks, but they’re going to have these demands, totally legitimate ones... demands they probably would never have had in their country”*<sup>476</sup>;

*“They still behave a lot like adolescent boys ...and really like adolescents. The group of guys who really do...who play at looking at who is going to be the most masculine, who is looking for a leader”*<sup>477</sup>.

This is due to the fact that in their countries of origin they had to grow up quickly. As underlined by Farid Khali:

*“So, the minor comes here, but at home he was not allowed to live his adolescence, it’s a reality. And if you don’t live your adolescence, at some point you have to live it, even at 30 years old, you have to live it to accomplish your life’s path”*<sup>478</sup>.

The discussion concerning age also comes up with regard to the young adults, namely the persons that have just turned eighteen. As will be explored in the section entitled “Are there other categories of vulnerable people? Feedback from the fieldwork”, Judges but, especially, social workers in the centres stressed the vulnerability of this group because they are suddenly treated as adults immediately after they turn eighteen. Judge Barbara Verdickt said:

*“The young adults, those who are just 18 years old that we take as adults, they are potentially young people, more vulnerable people too, in my opinion”*<sup>479</sup>.

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475 Interview n° 23, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

476 *Ibid.*

477 O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

478 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

479 B. Verdickt, CALL Judge, 09.07.2020.

In other words, from one day to another they lose the guarantees that the Belgian asylum system provides to minors. In essence, “you go from having everything to nothing”<sup>480</sup>. Thus, turning eighteen is a moment of great stress for the minors. Therefore, the social workers establish institutional solutions to allow this transition to be as smooth as possible<sup>481</sup>. By way of example, Carmen Salgado Gaeta, the Deputy Director of the centre for UM’s in Uccle, proposed to establish six months of transition after the residents turn eighteen in order to avoid that they suddenly go from being hyper-protected to nothing. She explained:

*“We see a great stress also around the age of 17, 17 and a half. There they become very impatient for everything because everything has to go fast. Everything has to go fast. At 18, you don’t have a guardian, if your file is negative, you don’t have the right to a reception, you don’t have any papers, you have nothing. So, you go from having everything to nothing. And so, there are some young people who manage to prepare themselves for the future, whatever it might be, there are others who are absolutely lost [...] Besides, I wonder why guardians have to stop at 18 and one day? Why not continue for more than 6 months? Because there should be a transition period. Finally, it’s hard to say that at 18 and one day everything changes from one day to the next. From hyper-protected to not at all”<sup>482</sup>.*

#### 3.2.4. Minors as asylum seekers: needs, pressures and “strategies”

Besides the vulnerabilities of the minors that are in the asylum procedure, the fieldwork also showed the needs of the minors, the pressures the minors can be subjected to as well as some strategies they could put in place.

A Judge of the CALL underlined the importance of paying attention to the best interest of the child and how this important principle always comes into play. She mentioned, by way of example, the situation when the child has a legal permit but may be prevented from having contact with one of their parents who has not, harming therefore the right of the child to have contact with both parents.<sup>483</sup> However, she also underlined that keeping a child in an unstable situation in Belgium does not represent the best interest of the child because spending years in a non-defined situation could also have an impact on them<sup>484</sup>. On the same point, another interviewee critically highlighted that the lawyers often argue that there is a presumption that granting the qualification of refugee to the children is in full compliance with the best interest of the child. She said:

*“I’ve already been confronted with a big difficulty several times, it’s when we are asked to take into consideration the interest of the child. Lawyers systematically talk about the presumption of the interest of the child to be recognised as a refugee. I don’t agree with that at all. I’ve had several times, hem... cases where we didn’t know who the child’s parent was, and it’s very difficult in this case to say where the child’s interests are when we don’t know who the father is, who the mother is”<sup>485</sup>.*

Undoubtedly, minors feel the pressure of their families of getting a status in Belgium and to get a positive result in the asylum procedure<sup>486</sup>. More specifically, Judge Declerck of the CALL advanced the hypothesis that minors are sent to Europe by their families:

480 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

481 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

482 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

483 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

484 *Ibid.*

485 Interview n° 2, 07.07.2020.

486 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

*"Unaccompanied minors often... they are sent by their parents, they do not come here by themselves, but they are sent by the family, most of them. So, they are extremely loyal to the parents, which is normal, and they will lie all around, and it is really sad because they are so vulnerable"<sup>487</sup>.*

The Judge is referring to the *lying* because these minors would feel the pressure of their family to get a status in Europe and, according to her opinion, this could also affect how they tell their stories. On the same point, a protection officer said:

*"We have to admit, we sometimes have the impression that in cases where the minor acknowledges that they are in contact with their family, we sometimes have the impression that there is a form of expectation on the part of the family, there is a relationship with the family, there is almost certainly family pressure that we feel in some cases. And so, there is a real burden in relation to the minor, a real burden, um... also in relation to possible integration in Belgium"<sup>488</sup>.*

Some Judges of the CALL were highly critical and identified as a form of strategy the practice of lodging an application for asylum in the name of the children, after the parents have received a negative decision, claiming for asylum on the basis of the exact same story of the parents who got a refusal. In the words of Judge Hayez:

*"What bothers us is the whole process of introducing a new asylum application, which is in fact a new asylum application introduced by the children. And here what bothers me is not so much that there is a procedure, it is that children are used in the procedure. It bothers me terribly. And we see that a lot, we see it often. [...] Parents who apply for asylum, which is refused, and within a month the children apply for asylum on their behalf, invoking the same thing as their parents. And that's not good. They don't invoke anything personal, they invoke exactly the same facts, and there is an instrumentalization of the children that I don't like. And so, we have to be a little more severe in our decisions, reminding them that we must not use children to appeal against a decision that has already been finally handed down"<sup>489</sup>.*

Helping the family in their country of origin is a constant thought for the minors. They have always in mind, on the one hand, their aim to get a status and then pursue the family reunification and, in the meantime, other ways to send money home and sustain their families. Carmen Salgado Gaeta stressed:

*"It creates a lot of stress and it's clear that it weakens them enormously, it has an enormous weight on their shoulders, especially as there are all the expectations of the families in the country and so they feel super responsible for them"<sup>490</sup>.*

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487 K. Declerck, CALL Judge, Brussels, 01.07.2020.

488 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

489 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

490 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020

These are among the reasons why the minors do not fully appreciate the value of attending school. Even when they acknowledge its importance for their future in the country, they know that they need to work to send money to their family. For the very same reason, many youngsters desire to go to centres in Flanders because of the scholarship granted by the Flemish Government<sup>491</sup>. This part is specifically developed in the section of the report on “Education and vulnerability”.

An issue that lies between pressure and strategies is the age-test. Given that it is well-known that minors get more guarantees during their asylum procedures, it might happen that people that are not minors allege being underage. While awaiting the result of the test, the person stays in a centre for minors, like the one in Uccle that has been visited during fieldwork. In general, the age-test had not often been mentioned during our fieldwork. A brief reference has been made by the staff of the centre for UMs of Uccle who stressed that the waiting period for the test is very difficult for the person concerned<sup>492</sup>.

Carmen Salgado Gaeta mentioned:

*“The age test is already a problem. [...] There is already a questioning of age, of being a minor. Afterwards, it’s not clear whether this age test is just to determine they are minors or whether it’s to determine their age, and so there are already some young people who are already experiencing it very badly. When they arrive at the centre, there are few of them, but they still arrive with doubts about their age”<sup>493</sup>.*

Another factor of pressure mentioned by protection officers and social workers is their integration in Belgium, especially, but not only, with regard to school<sup>494</sup>. There is a high demand on the minors to be a good student and integrated in the country, while living in a constant uncertain condition linked to the outcome of their asylum procedure. A social worker stressed:

*“In addition, we ask them to be super good pupils, because if the procedure doesn’t work, then they could ask for a residence permit saying that the best durable solution for them is to stay in Belgium! And for that they have to prove that they are super well integrated, that they are super good pupils, that they have a real project... but just look at a class of 4th secondary school pupils! Are they good pupils with lots of projects? Are they already well integrated? So, they will be asked to be ‘super super’ when their future is uncertain, when the procedure is hard, so they live the same violence as adults and all that and they still have to find the energy to work well at school and all that!”<sup>495</sup>.*

### 3.2.5. On the other side of the “lifeline”: the elderly asylum seekers

#### 3.2.5.1. The elderly in the asylum procedure

The group of elderly people had not often come up during our fieldwork since this is a group that is not very present in the asylum procedure. This is explained by the fact that the elderly do not often embark themselves in the long, dangerous and tortuous migratory journey. In the words of a protection officer:

491 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020 and Interview n° 46, 24.09.2020.

492 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

493 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

494 Farid Khali underlined the important role of school for the integration. F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020. Julian Knittel also mentioned that sometimes unaccompanied minors that already master English language are less keen on learning French or Dutch at a Belgian school. J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020. On this point, see also the section entitled “Education and vulnerability”.

495 Interview n° 32, 09.09.2020.



*"I have the impression that it doesn't happen very often...because...I'm not far from thinking, without being cynical at all...I'm not far from thinking that people who are really very very old...I'm afraid that they don't make the long migratory journeys. And so very very old people, I really haven't met many of them"<sup>496</sup>.*

However, both in the interviews with Judge of the CALL and the protection officers of the CGRS as well as in the reception centres, interesting aspects came up with regard to elderly people and their specific vulnerabilities.

As for the minors, what is important is to establish who is considered elderly. People who in Western countries would not fall in the elderly's category – such as people of fifty or sixty years old – would be considered as such in the countries from where the immigrants and the asylum seekers come. Moreover, another similarity with the minors is that they are considered to be a vulnerable group throughout. Judge Hayez said: *"old age is recognised, at least in my view, typically as vulnerability"<sup>497</sup>*. Likewise, Elisabeth Lejosne, a nurse of the Red Cross, affirmed: *"they [the elderly] are even more vulnerable for me, just like minors"<sup>498</sup>*.

At the outset, it should be mentioned that the asylum procedure for the elderly is not often "autonomous", but it is linked to the paths of their children or relatives, either they are together in the asylum procedure or they apply in order to join their children that already live in Belgium and that, sometimes, cannot take care of them. In the words of one of the interviewees:

*"We often had the impression that these were applications from people who came to join their child who was living here and who had not been granted family reunification. And who relied heavily on their children"<sup>499</sup>.*

Certainly, this reason is not openly put forward in the elderly's application for asylum where they stress the persecution suffered in the country of origin. This is not always the case, as reported by an interviewee:

*"I mean that there are people who may really have personal fears of persecution, and flee their country for that reason, but who already have children who have fled, and who may even have already settled in Belgium for their own reasons, but who will not tend to put forward their own reasons for persecution and who will insist above all on the fact that they are coming to join their children. The CGRS will therefore perhaps take this aspect into account, and perhaps focus on the fact that Mr or Mrs comes here to join their children, and not especially focus on the personal persecution that is put forward"<sup>500</sup>.*

In case they migrate with their children and they suffer from dementia or memory issues, their statements are evaluated together with the ones of the family members. A protection officer said:

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496 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

497 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

498 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

499 Interview n° 2, 07.07.2020. On the same point see also Interview n° 4, 14.07.2020.

500 Interview n° 4, 14.07.2020.

*“Most elderly people come with younger family members who have experienced or lived in the same household, for example, you know that this elderly person has memory issue, their statements are really not reliable so you would go, for example, on the statements of the children, but that is, of course, only possible if they are here together in my experience this is mostly the case when you have elderly people, especially with memory issues that they don’t... that they rarely arrive here on their own...”<sup>501</sup>.*

The elderly’s network (also in the country of origin) appears to be relevant in the evaluation of the elderly’s vulnerability, but it can also have an impact on the outcome of their asylum procedure in Belgium. In some cases, it could even be determinant. For example, the fact that the elderly is completely reliant on the family and the latter already got refugee status in Belgium should be put in the balance<sup>502</sup>. A protection officer said:

*“One of the determining elements will be to see if the person has a network in the event of a return to the country of origin [...] If we find that the person is really, um... old, and that they are no longer working, that they are unable to work, let’s imagine that this is because of health problems, physical problems, which are [...] age-related, then the central question in my opinion is going to be the question of the network on which to rely in the event of a return [...] And this is an element of the assessment of vulnerability”<sup>503</sup>.*

### 3.2.5.2. Elderly and vulnerabilities

Even though the elderly are not highly represented, three main factors were mentioned with regard to their specific vulnerabilities: ageing and the related health issues, practical and linguistic frustration in dealing with the procedure, difficulties in the perspectives while awaiting the result of the procedure or at the end of the procedure.

First of all, the elderly suffer from health problems ranging from the ones that naturally stem from ageing to more serious ones. It can happen that they have very poor health even if they are not very old. Many interviewees underlined that the health conditions of the asylum seekers are sometimes so deteriorated that they look older. In both cases, they can represent obstacles for them as immigrants and asylum seekers. Quite simply, elderly people can have mobility problems that render them less reactive in the context of indiscriminate violence. A Judge of the CALL affirmed:

*“Being old age makes you more likely to become a victim of indiscriminate violence because you don’t have the ability to react appropriately when you’re in a situation of indiscriminate violence”<sup>504</sup>.*

Therefore, even though the refugee status cannot be issued just because of their age, all the issues connected to age and poor health are usually taken into account and carefully balanced. Likewise, ageing and poor health conditions can render the elderly less autonomous in their life at the reception centre given that, by way of example, it is not always located in a city or there are no elevators.

501 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

502 K. Declerck, CALL Judge, Brussels, 01.07.2020.

503 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

504 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

Secondly, elderly people face more difficulties in dealing with the procedure and the life at the centre. They do not often have the background, the training and the linguistic skills to understand and unravel the complexities of the asylum procedure. In the words of Judge Hayez:

*"Finally, we come back to the concept of mental development, the degree of maturity, because a very old person can be considered like a minor. Because an elderly or very elderly person can also have difficulty expressing themselves, or expressing a feeling, they have a life course that is necessarily much longer and more eventful than a young person"<sup>505</sup>.*

More specifically with regard to the hearing, as underlined in many interviews, elderly people can have problems in expressing themselves or, most commonly, issues with their memory and thus they do not always remember correctly the facts and details of their stories. As an interviewee said:

*"Older people may not have the same memory capacity, mix up the chronology more and inevitably [we need] to adapt"<sup>506</sup>.*

Therefore, very specific questions should be asked and, in general, it is complex to establish if an old person's story should not be considered credible or if he or she suffers from dementia. An interviewee said:

*"The difficulty is that we often have to go back and ask specific questions about specific events, and for me an elderly person's memory would often be limited. And so, it's going to be more of a difficulty for me [...] for credibility... yes, essentially for credibility"<sup>507</sup>.*

Likewise, another interviewee stressed: *"You just wonder if the person is a bit senile and a little bonkers or... or if their story is simply not credible and maybe they're just making it up"<sup>508</sup>.*

According to a protection officer, if dementia is diagnosed, the story of an old person must be taken with a pinch of salt. She said:

*"We see cases where we have elderly people with specific dementia issues, for example, and then it occurs we need to take it very much into account because you cannot expect from this person who has dementia, that has been diagnosed with specific memory issues to be able to tell on a full account their experience"<sup>509</sup>.*

Differently, Judge Declerck of the CALL considered the old people to be more knowledgeable because of their experience in life. She affirmed:

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505 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

506 Interview n° 2, 07.07.2020.

507 Interview n° 4, 14.07.2020.

508 Interview n° 18, 28.08.2020.

509 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

*"I think that the elderly...it depends. Generally, I don't think that plays a big role, because elderly people are usually [...] they understand things better, they have been able to learn and know what's going on, what the evolution in the countries [...] so they will be more knowledgeable very often and I think if I have elderly people in front of me, then I usually take that into account and I tell them and I say 'you must remember that'..."<sup>510</sup>.*

In general, the elderly are spectators rather than key players of their asylum procedure. A social assistant from the Fédasil centre of Rixensart:

*"I don't think they're interested in having even a status actually. Well maybe just for comfort, for example the Hispanic lady [who lives here], she would just want to have the papers to do her medical treatment here, which is not available in the country. The old Armenian lady, well, she doesn't have anyone left in the country, she's accompanying her son, so that's it. The Iraqi lady, the mother, it's because I don't think she really knows what she's doing here...Well, I have the impression that they more spectators than key players. And we also have old people, but pff they didn't give a damn! They were into other things, they just wanted to deposit their pocket money at a certain time...it wasn't the same objective! There wasn't the idea of starting everything from scratch, of finding a job, it's more of a comfort thing, of finding health care, well in the cases we saw, it's usually the same for the older people. A health care system that they may not have, from what I've seen...or less accessible there in the country so they stay here but uh, there's not really a will to integrate. Even the French click courses, they don't take part in them, well, they're not really concerned!"<sup>511</sup>.*

She continued saying that the elderly are like bit disconnected from reality:

*"They are in phases of, I don't know if everybody when they get old becomes like that, but I don't know, an old Armenian lady [who lived here] used to get all the sugar because she felt she was going to need more. An Hispanic lady [who lives here] is in this mood of wearing her sheets as clothes. Well, these are things in a community life that are not very manageable, she has cats that she feeds outside, so she goes out, so she has little habits. She has her dressing gown that matches the furniture, she has her cream, her castor oil, well I have the impression that they live out of time in fact! The lady, for example, she knows that her procedure is over, she's going to stay here until it's all over, and then she'll leave, she'll go over there, she just wants to make sure she'll have enough castor oil and vitamins to continue her cure afterwards. So the realities are not the same. After a certain age, I have the impression that they are hovering, they are on another, on other realities, or other objectives..."<sup>512</sup>.*

Because of their age and reduced competences, life in the centre can prove to be burdensome for them<sup>513</sup>. Florence Opdebeel, relief nurse of the Red Cross, affirmed:

*"[The elderly] are people who find it difficult to move around in the centres. In Jette, I was thinking of two women who have to crawl almost to get around and I was asked to look for places that are perhaps more suitable for this type of problem"<sup>514</sup>.*

510 K. Declerck, CALL Judge, Brussels, 01.07.2020.

511 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

512 *Ibid.*

513 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

514 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

Moreover, sharing space with younger people who can be noisy is proven to be something difficult<sup>515</sup>. The elderly are often helped in their family and communities back in the country of origin, but in Belgium these aid sources are absent, if they have not undertaken the migratory trip with their children. It can happen that other people in the centre tend to take the task of offering some help to the eldest, since in other cultures elders are very much respected. A nurse of the Red Cross mentioned:

*"In many cultures, it is necessary to take care of the elderly. And as a result, they are better helped by other people because they are seen as elderly people and as a result, they are people that we must take care of [...] So, yes, they are vulnerable in relation to their age, but here in the centre, for many cultures, the elderly are the ones who need to be taken care of and so they are a bit pampered"<sup>516</sup>.*

However, the help the elderly receive from another resident is not the same as they would have received in their own household. As Julian Knittel stressed:

*"So often we notice that there are residents in the centre who take over, who help the older people and all that, but it's not worth the help they get from the children, it's not the same thing"<sup>517</sup>.*

Furthermore, it is proven to be more difficult for them to learn French since sometimes they do not have sufficient energy to learn a new language. In the words of Julian Knittel:

*"I also saw these older people who didn't understand anything about the procedure and couldn't manage to learn French, because they are very old, a bit slowed down and already worried with medical problems, so they can't manage for the rest"<sup>518</sup>.*

It is worth mentioning too that in the centre the elderly can play a central and important role. For cultural reasons, the elderly people are very much respected in the country of origin of the residents in the centre. Thus, social workers underlined their role in avoiding conflicts or fights among residents or, in such a case, in helping to resolve them<sup>519</sup>. Interestingly, an interviewee mentioned<sup>519</sup> the fact that old people expect that they are respected for the sole fact of being old can lead to a culture clash at the hearing: an elderly person became surprisingly aggressive because the person talking to her was actually looking at her. This behaviour was considered disrespectful by the elderly person<sup>520</sup>.

Thirdly, for all the reasons that have already been mentioned, the elderly face more difficulties with regard to their perspectives while waiting during the procedure or at its end. According to a protection officer, the elderly suffer from a psychological vulnerability since they do not have many perspectives for their future and their life is "behind" them. Moreover, unlike minors, the elderly are less resilient. In her words:

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515 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

516 Interview n° 58, 12.10.2020.

517 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

518 *Ibid.*

519 Interview n° 46, 24.09.2020.

520 Interview n° 2, 07.07.2020.

*"Now I know that there are countries where this is more the case, such as Syria in particular, since a lot of people have fled regardless their age. What I have heard that is difficult is that these people [the elderly] have their lives behind them, they have abandoned everything, and if there is a lot of resilience in children, there is none in the elderly. What they lack is perspectives for the future, that's what makes them vulnerable. I have never been confronted with this, but from what I have been told, there is this lack of life perspective for these older people. And so, in my opinion, vulnerability is essentially psychological"<sup>521</sup>.*

Life in the centre can be more burdensome for them given that, even though they potentially have the possibility to work while living in the centre, they basically have less opportunities on the job market because the jobs that are usually offered to asylum seekers are manual labour that is physically demanding and for which young people are preferred<sup>522</sup>. At the same time, the mobility problem deprives them of the opportunity of doing community service in the centre to earn extra money. Moreover, life after the procedure can be hard for them. If they get a positive status, they know that they have to continue to work for all their life, even though they have already reached retirement age. Daniel Legreve, employee of the Red Cross centre of Ans, said:

*"The lady is maybe 60 years old, she got her papers and she works tirelessly! But at 62 you don't work like that! But she has no choice, she has to pay her rent, she has to make herself something to eat. And she won't even have a decent pension because she's just arrived! So it's even harder for them! They're going to continue to work, work, work when they're normally at an age where they should benefit, I think they should find a solution for elderly asylum seekers, because there's not much that's set up for them, I think they should have benefits, given their age"<sup>523</sup>.*

If their application gets a refusal, on the one hand, they could try to remain in the country illegally because they can rely on the family connections even if in some cases, they could be less keen on embarking on this path or try alternative strategies. A social worker shared with us the story of an old lady who, after receiving a negative decision, decided to go back to her country of origin in order to avoid becoming a burden for her family. In her words:

*"After two negative decisions, yes, that's very, very rare, but she decided... and she told me: 'I'm too old to say, ok, I'm waiting a little, I find a good husband, I have the papers through marriage, no, I can't try the adventure like that anymore! and with my health problems I don't want to be a burden for my sister who lives in Belgium'...And she's taking the risk, and she says, well, she's very religious, she thinks God will protect her and that He will probably protect her for as long as possible, but she prefers to go back home, even if it means dying at home, rather than staying here and being a burden for her family..."<sup>524</sup>.*

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521 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

522 Interview n° 46, 24.09.2020.

523 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

524 Interview n° 32, 09.09.2020.



### Summary Box 3. Age and vulnerability

Minors and elderly people are indisputably considered vulnerable *by definition*. Age itself already makes both accompanied and unaccompanied minors vulnerable, even though the concept of “minor” is sometimes different in Europe than in the asylum seekers’ country of origin. Alongside age, four main and general reasons are put forward to assess vulnerabilities in minors:

- 1° the migratory experience together with the difficulties faced, the violence suffered and the atrocities witnessed on the road leave an enduring mark on minors;
- 2° the asylum procedure itself is traumatizing for minors, notwithstanding all the procedural and reception guarantees established in the law. In addition, the fieldwork also shows that the effectiveness of the hearing and, more specifically, the credibility assessment are heavily impacted by the maturity of minors;
- 3° being a minor could be grounds for persecution in itself. The most common examples are: being subjected to female genital mutilation and being recruited as a soldier by paramilitary and guerrilla groups;
- 4° life in reception centres could have a strong impact on children and adolescents.

In addition, specific grounds for vulnerability pertain both to minors with their family and those who are unaccompanied. A lack of reference points and guidance, during their journey and once in Belgium, over a crucial period for the person’s identity formation is the major source of vulnerability for unaccompanied minors. Although children who come with their family are generally more protected, they can become vulnerable because of the precarious status of the family, together with the risk of being “parentalized” since they quickly learn to speak French or Dutch and become translators for their parents. Given their particular profile, minors are granted specific guarantees during the procedure. Unaccompanied minors are hosted in specific reception centres or in a separate wing of the collective centres. They have access to a guardian until their majority. However, like gender, minority can be used as strategic tools to obtain protection. Children are sometimes also used “strategically” in case of multiple asylum applications.

At the other end of the lifeline, elderly people are also considered a vulnerable group *by definition*. Even though they are not very present in the asylum procedure – they are less likely to embark on a dangerous migration path – three reasons are put forward for their specific vulnerabilities: ageing and age-related health issues, practical and linguistic difficulties during the procedure and in the reception centres, frustration with regard to the perspectives during or at the end of the procedure. Both the procedure and more specifically the hearing, as well as the accommodation in reception centres could be adapted in light of the health and age of elderly people, such as hosting them in centres close to a hospital.

### 3.3. Health and vulnerability

European Directives<sup>525</sup> on immigration and asylum mention *health* as one of the grounds that should be given due consideration with regard to vulnerability. Moreover, some applicants are defined as vulnerable (or as having special (reception) needs or in need of special procedural guarantees) in the Directives<sup>526</sup>. Among them, *disabled, persons with serious illnesses, persons with mental disorders* could be subsumed in the more general category of *health*. In this report, all these issues are examined together under the health heading, for two main reasons. First of all, the objective is to give a more comprehensive and complete picture of the relevance of the physical and mental wellbeing of the asylum seekers both during the procedure and at the reception centre. Secondly, our fieldwork proved that health and vulnerability often overlap. An asylum seeker with a specific medical condition is automatically regarded as vulnerable. An interviewee said:

*“A person who is ill or psychologically suffering, that is an indication of vulnerability [...] to be taken into consideration and evaluated”<sup>527</sup>.*

In addition, the medical office (*bureau médical*) and the nurses of the centre are often considered by the social workers as the reference persons to have to deal with residents considered vulnerable. Thus, health as such appears to be particularly relevant with regard to vulnerability both in the asylum procedure and also in the life at the centre.

#### *3.3.1. Health-related problems and the asylum procedure: special procedural needs*

At the outset, health-related problems are taken into account in the procedure *stricto sensu*, for the so-called special procedural needs (*besoins procéduraux spéciaux*). Some applicants can benefit from a different organization with regard to time and space, given their specific health problems. Some Judges and protection officers point this out during the interviews.

A Judge from the CALL mentioned that the cases of very sick people could be prioritized in order to determine their situation as quickly as possible. She said:

*“At a certain moment we said like we have... many of the files for people who are sick and then we wonder whether we should prioritize these cases because we also saw that there are some very ill people, not all so serious, but there are some files with very ill people and we prioritized them”<sup>528</sup>.*

Furthermore, health issues could impact on the organization of the hearing in case there is an applicant with special procedural needs (e.g. a person with reduced mobility or in a wheelchair, a woman who is at the end of pregnancy or has just given birth)<sup>529</sup> on how the Judge or the protection officer conducts the hearing (e.g. particular attention paid to stutterers)<sup>530</sup>. As explained by a protection officer:

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525 E.g. Article 11 Reception Directive.

526 Please, see the Qualification Directive, the Procedures Directive and the Reception Directive.

527 Interview n° 18, 28.08.2020. On the same point also Interview n° 4, 14.07.2020.

528 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

529 K. Declerck, CALL Judge, Brussels, 01.07.2020. On the same point also Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020 and Interview n° 18, 28.08.2020.

530 K. Declerck, CALL Judge, Brussels, 01.07.2020.

*"Yes, in any case, in my experience it is mainly the certificates that are decisive. And this form from the Immigration Office on which specific needs can be followed up. So, for example, someone in a wheelchair, a woman who is pregnant, these are things that should be noted for the interview, so that they can be taken into account, and also to avoid calling a woman in a wheelchair or a month after giving birth without providing any facilities, for example. If someone is in a wheelchair, they should be given a room that is easy to access, and so on"<sup>531</sup>.*

The Judges and the protection officers do their best to take into consideration these issues, also when they are not communicated in advance, even when they are only declared (or discovered) at the hearing<sup>532</sup>.

### 3.3.2. The health-related vulnerabilities: decisive for the refugee status?

People with a disability or affected by physical and mental health problems are considered to be in a vulnerable position *per se*. In the words of Judge Verdickt:

*"People with psychological and physical disorders, yes, these are people who are a priori more vulnerable"<sup>533</sup>.*

Likewise, the social assistant of the Local Reception Initiative affirmed: *"when we talk about vulnerabilities, I think a lot about medical and psychological concerns"<sup>534</sup>*. In addition, as affirmed by a Judge from the CALL, the elderly as a group could be considered even more vulnerable because of underlying health problems<sup>535</sup>.

However, if health problems make a person vulnerable, it should not be taken for granted that they automatically lead to the recognition of the status of refugee. According to Judge Declerck of the CALL, health problems are related to the person but that does not necessarily mean that they can play a role in the asylum procedure<sup>536</sup>. Undoubtedly, health is relevant aspect that needs to be taken into account when evaluating the profile of the person for granting refugee status<sup>537</sup>.

In some cases, however, health issues could be decisive for the asylum procedure. Some examples were given by the Judges of the CALL. A Judge mentioned the case of an elderly and disabled applicant who was completely dependent on the family that had already been recognised as refugees in Belgium<sup>538</sup>. Another Judge mentioned a case where the whole family was recognised vulnerable<sup>539</sup> because they were from the Gaza strip and the daughter, who was not a minor, was severely disabled and completely dependent on the care of her parents who were getting old and could not take good care of her. In her words:

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531 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

532 *Ibid.*

533 B. Verdickt, CALL Judge, 09.07.2020.

534 Interview n° 60, social assistant LRI, 21.10.2020.

535 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

536 K. Declerck, CALL Judge, Brussels, 01.07.2020.

537 K. Declerck, CALL Judge, Brussels, 01.07.2020; Interview n° 16, CALL Judge, Brussels, 24.08.2020; Interview n° 18, 28.08.2020.

538 K. Declerck, CALL Judge, Brussels, 01.07.2020.

539 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

*"I have said in my judgement that the whole family had to be regarded as vulnerable because for instance the parents said that they couldn't give their daughter the care that she needed, the care that if they were younger they could give to her, but now that they're ageing and they are themselves coping with a lot of medical conditions with regard to their old age, they are not able to give her the care that she needed [...] And moreover here you have certain institutions that can take care of disabled people, these institutions are no longer in place in the Gaza strip because the financial means are no longer there"<sup>540</sup>.*

Furthermore, health issues were deemed decisive in the case of people who suffer from severe mental problems and, in the case of indiscriminate violence, they are not able to react properly to seek safety. A Judge of the CALL stressed:

*"People who had very serious mental problems maybe would not be able to react appropriately when they are in a situation of indiscriminate violence, so they would, for instance, maybe freeze and not think of, you know, running, and seek safety"<sup>541</sup>.*

Another relevant example is the people that suffer from HIV who could be stigmatized in the country of origin. Judge Verdickt underlined:

*"People, who are sick, who are HIV-positive, who are sick with AIDS, are people with obvious health problems. However, it could be something else, as people with AIDS are stigmatised in some countries"<sup>542</sup>.*

Another Judge mentioned a potential case when a health issue could be relevant as a ground if combined with socio-economic background, namely when it is necessary to check if a treatment is available in the country of origin and, in that case, if it is accessible to the applicant. She said:

*"For example, on health issues, case-law has evolved a little bit there as well... you also go and look like if someone needs medical treatment, we will look at 'Is that treatment available in your country?' We will also look at 'is it accessible to you?' So there the economic-social aspect can come into play"<sup>543</sup>.*

An interviewee shared the story of a family whose child was affected by a serious illness. The family belonged to a nomadic community where there is also a problem of consanguinity, thus the family had already lost a child for the same health issue. Even though family members had already been recognised as refugees in another European country, that status was also recognised in Belgium, given the specificity of the case at stake (the serious health issue of the child, the general situation of vulnerability of the family and the lack of appropriate medical treatment in the other European country)<sup>544</sup>. She mentioned:

*"There was really a very special medical setting and the little girl was undergoing medical treatment.*

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540 *Ibid.*

541 *Ibid.*

542 B. Verdickt, CALL Judge, 09.07.2020.

543 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

544 Interview n° 18, 28.08.2020.

*And, this little girl, if she didn't receive her medication on time or if she wasn't followed up well, [...] I had Belgian medical documents which indicated that the vital prognosis could be started after only two days. Um...In that family there was already a child who had died from that disease, another little girl, so there was also the trauma of the parents who had already lost a child to that disease and the mother had just given birth in Belgium to another little boy with the same disease. Their socio-educational level was again very, very low and the medical problems were so specific that even if they were recognised as refugees in Greece [...] there were not necessarily the available experts or medical staff, that you can find in Belgium there, um... So all that was properly taken into account, the medical profile of this family with several children who were affected"<sup>545</sup>.*

Apart from these cases where the health conditions are decisive, psychological problems appear to be the ones that are the most difficult to detect and evaluate ("what surprises us the most are psychological problems")<sup>546</sup>, even though they are considered a factor of vulnerability. On this point, Judge Verdickt stressed:

*"It doesn't matter the person, man, woman, child, the psychological state can be potentially a vulnerability, in any case a huge warning signal that says what it leads to. Sometimes it doesn't lead to anything, because unfortunately, what I find a lot is people with serious physical or psychological after-effects, but which are sometimes linked to the asylum process, to the migratory process, and it is sometimes desperate to realise that, in fact, we don't know how to do much about it in terms of asylum, in any case, because it doesn't meet the criteria"<sup>547</sup>.*

Lastly, it should be mentioned that health was also mentioned during the fieldwork with regard to the risk of abuse of the asylum procedure. As mentioned by some interviewees, there are cases of applicants who came to Belgium mainly for medical reasons for them or for their children or to get fertility treatments, making up a story to apply for asylum. This is especially the case for elderly people who try to find to reach Belgium where they can get medical care while being surrounded by their family.

Judge Declerck gave some examples:

*"A lot of people come for medical care. [...] somebody in my courtroom had a heart attack and fell and so we called the ambulance and, of course, immediately they [ambulance people] asked [...] 'had you had any precedents?' and he says 'yes, I came here several years ago, I had a heart transplantation at the Brugmann University Hospital' and, of course, he didn't say that in his asylum procedure and I was not supposed to hear that because that was medical detail but it just happened in front of me in my courtroom so I heard it. Of course, I did not use it against him, but it's clear that this is abuse. He came, he was treated one time, he had come again, he learned that if you are in an asylum procedure, you get medical care. It's abuse of the procedure, but there are many people who come for medical reasons."<sup>548</sup>.*

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545 *Ibid.*

546 *Ibid.*

547 B. Verdickt, CALL Judge, 09.07.2020.

548 K. Declerck, CALL Judge, Brussels, 01.07.2020.

### 3.3.3. Medical certificates: bone of contention

Medical certificates are of particular importance for evaluation of the applicant's profile, for the detection of the vulnerability<sup>549</sup>, but in some cases also for the decision on the asylum applications. A medical certificate could be drawn up when the person arrives. This would be the case if the medical staff of the centre see wounds and blows or if the residents come from specific countries (e.g. Afghanistan or, specifically for women, Eritrea and Somalia) or war-zones or have passed through some areas that are known for mistreatment and cruelty towards migrants. However, it should be considered that it takes time and a relationship of trust for the applicants to reveal their experience in the country of origin or on the migratory road<sup>550</sup>.

Asylum seekers can ask for a certificate themselves because it has been requested by their lawyers or following the advice of others in the centres. A nurse of the Red Cross mentioned the residents are aware of the experience of peers and friends in the centre that the medical certificate can be an important tool for the asylum procedure. The nurse reported that the residents sometimes are grateful to her because they affirmed that they got a status thanks to the medical certificate. She reported:

*"I've already had residents who came to see me saying 'ah thanks to your paper, thanks to the paper we made together', so the medical certificate, 'thanks to that I can stay'"<sup>551</sup>.*

Therefore, there are instances where a person makes a request for a certificate, but there are no blows on the body, or they ask to get an appointment with a psychologist because they got word that it could be helpful for the outcome of the procedure. In these cases, it is important for the medical staff to be professional and explain that it is not possible to prepare such a medical attestation. She said:

*"If they can do things to speed up... it's like the people who come to ask me for a certificate of assault and battery when they don't have any assault. It's normal for them to try, it's normal for them to try because 'nothing ventured and nothing gained' and I think we would all have done the same thing in their place [...] That's normal. It's normal for me anyway, but afterwards it's up to the professionals to remain professional and to explain to them that we understand their approach but that unfortunately it's not possible and to put things a little in their place [...] There are also a lot of people who will ask me to see a psychologist, but not necessarily because they feel the need, but because a friend told them: 'ah well, if you see a psychologist, it can help you'. [...] I also noticed it because I sent them to psychologists who didn't give them reports, so it was really a psychologist 'to get rid of the pain'. However, when they came back, they did tell me 'not that psychologist, I need another one because what I really need is a report'. I believe that it is also a combination of two useful things: the fact of seeing a psychologist, I believe that for many of them, they really need one, and if in addition they could make a report and help in their procedure, I believe that it is an even more useful thing"<sup>552</sup>.*

549 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

550 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

551 Interview n° 58, 12.10.2020.

552 *Ibid.*



There are different types of certificates. Beside the ones delivered by the specialists, such as psychologists or psychiatrists, there is a general one with the health record of the person and possibly the treatments followed. However, most frequently a medical certificate is intended to be the one that vouches for the presence of wounds and blows or FGM (Female Genital Mutilation). The doctor of the centre is in charge. As explained by the nurses interviewed, measurements and photos of the scars are taken as well as x-rays and other necessary medical examinations in order to prove what is stated in the certificate<sup>553</sup>. Moreover, there is a section where the doctor can explain the physical and psychological consequences on the person. In addition, medical certificates can also be made by associations and non-profit organizations – such as Constats, Exil, Solentra – whose mission is to help the asylum seekers with regard, more specifically, to their medical and psychological monitoring and, where appropriate, also in preparing medical reports. More specifically for FGM, a nurse mentioned the centre CeMAViE (*Centre Médical d'Aide aux Victimes de l'Excision – Medical Help Centre for Victims of FGM*)<sup>554</sup>. Their reports are usually more accurate because they are prepared after many meetings and medical consultations with the person concerned. On this point, Elisabeth Lejosne stressed:

*"I resort to CeMAViE because all doctors can give medical certificates, but not all doctors give good medical certificates, that's more difficult."*<sup>555</sup>.

Moreover, these organizations have the objective of finding a connection between the medical conditions of the person and what she or he has experienced in the country of origin. The website of the association Constats says: "[O]ur association addresses refugee candidates and asylum seekers seeking protection in Belgium, having suffered from torture and maltreatment in their home country" and later on: "[T]he association aims to make a medical and psychological assessment, and to produce, if necessary, a specific medical report concerning the torture and its consequences. This is meant to be done at the request of juridical and social mediators, of medical-psychological services or of the victim itself"<sup>556</sup>. However, as underlined by Florence Opdebeel, there are long waiting lists to be monitored by one of those organizations and get a certificate<sup>557</sup>.

Both Judges and protection officers made it clear that the certificates do not have a determining role in the outcome of the procedure. A protection officer affirmed:

*"They explain that this is what they were told at the centre, that the lawyer advised them to bring attestations, and so on, but here we are...now it's not decisive in the analysis in the person's profile"*<sup>558</sup>.

Indeed, even though the certificate ensures that the vulnerability is supported by a document, the latter does not play a determining role with regard to the recognition of refugee status. Again, as in the case of the vulnerability caused by the migratory path, health issues are not in themselves sufficient for granting refugee status. In the words of a protection officer:

553 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020 and F. Opdebeel, relief nurse, Brussels, 23.09.2020.

554 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

555 *Ibid.*

556 See the website: <https://constats.be/en/> [accessed 7 January 2021].

557 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

558 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

*"In a certain number of cases, the vulnerability is...recorded, if I can say so, it is corroborated by a document...I would say...of a medical nature, of a psychological nature, which will tend, I would say, to attest to an uneasiness, a difficulty, but, for reasons... for different reasons. It will nevertheless reached the conclusion that this vulnerability, these problems are not sufficient to consider that there is a uh...a fear in the country...a well-founded fear of persecution or a real risk of suffering serious harm in the country of origin and therefore uh...there are obviously different weights that can be given to documents"<sup>559</sup>.*

However, an interviewee mentioned that medical certificates are often attached to the files where vulnerability, even though it does not represent a criterion established in the Geneva Convention, could be a decisive factor<sup>560</sup>. She made an interesting example with regard to the asylum seekers whose application has already been evaluated by other EU countries. She said:

*"Vulnerability is not, uh... a criterion included in the Geneva Convention. It can't be that because a person is vulnerable that they are going to be granted a refugee status. But, for some cases more than others, it is taken into consideration. I am thinking, for example, of the files of people who have a status in another Member State of the European Union. It is assumed that all the States of the European Union are States under the rule of law, respectful of human rights, etc...and because there is mutual trust between the Member States, it is assumed that we cannot...we cannot talk about persecution. [...]Now, for this kind of cases, we make exceptions because we consider, for example, that the aggravating and individual circumstances of a person who has experienced very difficult things in a particular country and is in psychological suffering lead to the recognition of a second international protection in Belgium, especially if the person does not have the psychological capacities to reason [...] in order to assert their rights in a specific country, given the weakness of social support for migrants."<sup>561</sup>.*

During our fieldwork, both the Judges from the CALL and the protection officers of the CGRS underlined that medical certificates are much more frequent nowadays than in the past. Even though they could play a relevant role in the detection of the vulnerability (*"there are still a lot of files where we have medical or psychological documents, so that warns us about vulnerabilities"<sup>562</sup>), Judge Hayez of the CALL underlined that they are attached (quasi) systematically to the dossiers. He advanced the hypothesis that the high number of certificates is due to the fact that, in the case law of recent years their role in the procedure has been discussed a lot so that the applicants (*rectius* their lawyers) consider them to be *prima facie* evidence<sup>563</sup>. In the word of another interviewee:*

*"In particular, medical and psychological certificates are starting to be included in all files. Indeed, there is a weariness [...] it's a lot of work, sometimes for files that seem weak, so sometimes it's a little frustrating. I'm not saying that it's systematically like that, but what I find is that there is a risk of weariness when you use this argument systematically"<sup>564</sup>.*

559 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

560 Interview n° 18, 28.08.2020.

561 *Ibid.*

562 Interview n° 4, 14.07.2020.

563 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

564 Interview n° 2, 07.07.2020.

By way of example, many asylum applications are supported with medical certificates attached to testify that a person has suffered specific violence along the road or that he or she is under the supervision of a psychologist or a psychiatrist. However, this can be problematic with regard to the decision on the refugee status. As an interviewee stressed:

*"More and more we are seeing that there are vulnerabilities, whether physical or psychological, which are due to the migratory journey and not to the flight from the country. And somehow, stricto sensu, since we have to see why the person has left his country, in theory, we are not interested. But afterwards, as soon as it affects the person and makes them more vulnerable, it influences them today, it influences their experience, their life, how they will tell their story. So, I'm uncomfortable with that: because on the one hand it's none of my business, on the other hand it has an impact on the person in front of me who has to convince me that they left their country either because of a risk of persecution or a risk of serious harm"<sup>565</sup>.*

However, many interviewees stressed that, given the high number of dossiers that are accompanied by a certificate, it becomes of utmost importance that the certificate is complete and detailed in order to be valued as evidence<sup>566</sup>. A protection officer affirmed:

*"While for a certificate to have probative value, we should know for how long the person has been monitored, the frequency, the disorders observed, etc... We are not going to question a psychologist's or psychiatrist's analysis, but we need to have some information, to know who we are dealing with [...] it is certain that a certificate that is not detailed, that indicates that the person has begun to make contact one week before the interview, will not have the same probative force as one of the person who is supervised very regularly"<sup>567</sup>.*

Another interviewee also mentioned the elements that make a medical certificate more complete: the method used by the doctor, the frequency of the appointments, the starting time of the treatment, the eventual medication treatment and so on. A Judge of the CALL mentioned that a certificate could make a difference according to whether it is made by a general practitioner or by a specialist<sup>568</sup>.

However, some interviewees also view critically the certificates that are too detailed. More specifically, there are some certificates where the doctors go beyond their medical role and they try to build connections between the illness, the disorders or, in many cases, the scars and the experiences encountered by the applicant (e.g. wounds caused by war, persecutions or torture suffered during the migratory road)<sup>569</sup>. As one of the interviewees affirmed:

*"We really have to be careful that doctors and psychologists, when they intervene, remain in their field of competences. And I do think, I do think that they can give an opinion on the compatibility of the pathologies that they observe but they cannot do more than give an opinion"<sup>570</sup>.*

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<sup>565</sup> Interview n° 4, 14.07.2020.

<sup>566</sup> J-F. Hayez, CALL Judge, Brussels, 16.07.2020 and Interview n° 4, 14.07.2020.

<sup>567</sup> Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

<sup>568</sup> Interview n° 6, CALL Judge, Brussels, 16.07.2020.

<sup>569</sup> J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

<sup>570</sup> J-F. Hayez, CALL Judge, Brussels, 16.07.2020 and Interview n° 2, 07.07.2020.

Judge Hayez took as an example the fact that many medical certificates directly refer to “persecutions” or to “risk of new persecutions” without using a more doubtful attitude. He said:

*“I would prefer to be told that it is possible or it is not obviously implausible, it is plausible, it is possible that it comes from a weapon, it is probable”<sup>571</sup>.*

Moreover, when a certificate refers to very precise circumstances it can be problematic because it vouches for facts and events that could not be proven in another way. Thus, issues are likely to arise when the medical certificate relates to facts that are not confirmed by the story told by the applicant or are slightly different<sup>572</sup> (e.g. wound caused in a prison on the migratory road while it was caused in the country of origin). Judge Hayez stressed:

*“You have to be careful, you have to be careful how things are written, because sometimes it contradicts what the person declared, so sometimes it can even be detrimental to them. We have decisions, rulings, we use what is written in the medical certificate to say that it doesn’t correspond at all to what the person initially declared”<sup>573</sup>.*

In these types of situations, according to Judge Hayez, a more accurate analysis of the case should be carried out<sup>574</sup>. Another Judge from the CALL highlighted that the medical certificates should be evaluated together with the declarations of the applicant and the country of origin information<sup>575</sup>.

Therefore, according to an interviewee, what appears to be difficult with regard to the medical certificates is also their interpretation. Two issues are at stake: *a)* if the certificate can prove that the story of the applicant is true; *b)* if the certificate can influence the asylum procedure and, above all, the credibility assessment. In addition, with specific regard to the certificates by psychologists, it is questionable if the person is able to link in a coherent way the story and the facts that underpin his or her application. If not, the Judge has to rely only on objective facts, such as the country of origin information<sup>576</sup>.

### 3.3.4. The medical office (bureau médical): the reference point of vulnerabilities in the centre

The events lived in the country of origin, combined with the long and, often, traumatizing experiences of the migratory road, leave physical and mental scars that can play a relevant role for the asylum procedure, but also for life in the centre.

At the outset, it should be mentioned that if the applicants have health problems or specific needs linked with their health condition (e.g. a wheelchair) or are under treatment (e.g. dialysis, treatment for tuberculosis), he or she will be placed in a centre that is not far from the hospital. For example, the centre for women in Jette, being close to many hospitals in Brussels, receives many applicants with medical needs. As affirmed by the Deputy Director, Julian Knittel:

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571 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

572 *Ibid.*

573 *Ibid.*

574 *Ibid.*

575 Interview n° 6, CALL Judge, Brussels, 16.07.2020

576 Interview n° 2, 07.07.2020.

*"We are well aware of that [referrals by the dispatching unit for medical reasons] here in Jette. Because we are in Brussels and here there are many hospitals, thus we receive many cases of special medical needs"<sup>577</sup>.*

In addition, there is the centre CARDA (*Centre d'accueil rapproché pour demandeurs d'asile – Specialized care reception centre for asylum seekers*), run by the Red Cross, which is specialized in accommodating people with psychological difficulties. The latter group suffer significantly and there are not enough places for them to be accommodated in specific structures<sup>578</sup>.

The medical office, and its doctors and nurses, are considered the reference point for all the issues that concern vulnerabilities or more vulnerable cases. During the fieldwork, the nurses of the centres, both Red Cross and Fédasil, have been interviewed. Their role is to take care of the health of the residents, understood in a global sense. As stressed by a Red Cross nurse, the health conditions are not only linked to a specific illness but can be the result of a more general malaise, both physical and mental<sup>579</sup>, that residents often experience once in the centre<sup>580</sup>. Therefore, the nurses interviewed highlighted that it is true that they usually become the reference point not only with regard to the physical well-being of the residents, but also, more in general, for their vulnerabilities. A Red Cross nurse also underlined that they establish more easily a relationship of trust with the asylum seekers because the latter are aware that the nurses and the doctors are obliged to respect their professional confidentiality, so they feel more at ease to talk and to open up. She said:

*"So yes, I agree, and I think that the fact that the medical office is a separate office and that there is the nurse, in fact [...] there is the professional secret, and that the asylum seekers know this and it's something that I repeat and that I also say on the first day, so I say that they can really come and file a whole story or come and file a lot of things and I repeat that as a nurse, I don't tell anybody. And that in itself, I think it already gives them a bit of confidence. Afterwards there is a relationship of trust with the residents. So, they won't come to the first appointment or to the second one to drop off difficult things. But as I see them and even in the centre...well, they identify me a little as a person they can trust. So yes, we know how to see vulnerable people more easily, even if we're not necessarily with them in their daily life, but because they will come and open up more easily to us"<sup>581</sup>.*

Florence Opdebeel, Red Cross relief nurse, mentioned that the residents are usually more influenced by the role of the nurses and the doctors and they are keener to follow their advice or, also very simply, recommendations<sup>582</sup>. Nurses sometimes underline that this reflex to send residents immediately to the medical services is, many times, inappropriate, as people, rather than being sent to the doctor, simply want to be listened<sup>583</sup>. Elisabeth Lejosne was very clear on that point:

*"For me, it's true that it's easy to send back to the medical office and that's good. But maybe at that moment the person, maybe they just need active listening. If everyone could feel concerned, we could already help some people to get much better"<sup>584</sup>.*

577 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

578 On this point, see the section entitled "Are there other categories of vulnerable people? Feedback from the fieldwork".

579 Interview n° 58, 12.10.2020.

580 On this point, see the section entitled "Life in the reception centre: "The straw that breaks the camel's back".

581 Interview n° 58, 12.10.2020.

582 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

583 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020 and Interview n° 58, 12.10.2020.

584 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

In the view of dealing with vulnerabilities, Florence Opdebeel underlined the role of teamwork. She gave the example of the regular meetings between the members of the social office (*bureau social*) and the medical office (*bureau médical*) where the various needs of the residents, with regard to the procedure and to the medical and social spheres, are discussed<sup>585</sup>. More critically, Elisabeth Lejosne said:

*"I think that it is a collaborative work, it is teamwork, because there are individual counsellors, who also have to be sensitive to the vulnerability of these young girls. Sometimes I find that we offload ourselves a little too much, we send them back to the medical office and that's enough"*<sup>586</sup>.

The number of nurses varies according to the size of the centre. Indeed, the proportion is very high, and each nurse is in charge of many residents. The workload is quite heavy taking into account that they are usually in charge of all the administration concerning health issues. Obviously, this can lead, on the one hand, to difficulties in providing for all the demands and requests of the residents (in one of the centres visited they were looking for an extra nurse<sup>587</sup>) and, on the other, to distress on the part of the nurses themselves. Florence Opdebeel mentioned the "*loneliness of the nurses*" given that the nurses are often alone in the centre with lots of responsibilities<sup>588</sup>. However, a Red Cross nurse underlined that even though being the only one in the centre comes with a big workload, this allows her to have a clear picture of the medical conditions of each resident. She said: "*When they come [into my office], I already know why they are coming*"<sup>589</sup>. She deemed this to be the positive side of being the only nurse.

At the arrival in the centre, the nurse usually introduces the asylum seekers to the medical office. This brief presentation of the person and the role of the medical office can also happen a couple of days later in order to allow the newcomer to settle down<sup>590</sup>. The residents have the right to do a blood test and can fix appointments with a general practitioner, a psychologist and a dentist. When the health issues, both physical and mental, need to be addressed by a specialist or at the hospital, the medical office refers the person to them. In particular, when the residents go to the nurses to complain of certain problems – such as insomnia, loss of appetite, digestive disorders, dermatological problems – which are all very common among asylum seekers, the nurses try to recommend consulting a psychologist. The residents are not always keen on that because the idea that starting therapy is for serious mental illness only is still very widespread, even though there are exceptions, as reported by Florence Opdebeel<sup>591</sup>. Psychological counselling could be very important for asylum seekers who often suffer from Post Traumatic Stress Disorder (PTSD), trauma and depression. Therefore, some centres have a psychologist on-site, like the centre of Sugny, which is in a remote area in Wallonia. Another social worker in the centre mentioned that among the improvements that should be done in the reception system is also the psychological help offered. He affirmed that, even though Fédasil supports the therapy financially, the fees are based on the ones established a long time ago and are not up to date<sup>592</sup>. Getting a psychiatrist is sometimes more complicated because the issue of the language gap should also be taken into account<sup>593</sup>.

585 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

586 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

587 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

588 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

589 Interview n° 58, 12.10.2020.

590 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

591 *Ibid.*

592 Interview n° 46, 24.09.2020.

593 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.



In addition, sometimes the residents can be redirected to associations or no-profit organizations whose mission it is to raise awareness or provide support with regard to certain issues that might be connected with health and, more generally, with physical and mental well-being. Even though, at the beginning, the residents in the centre are not always eager to attend meetings with non-profit organizations or associations, in the long run they might appreciate it and give positive feedback<sup>594</sup>. What is important is to give the residents time to think about the proposal. In the example given by Elisabeth Lejosne:

*"A girl who is, for example, homosexual, I will refer her to the Rainbow House [...] It's an association that in fact takes care of refugee homosexuals or transgender and that's very important because the fight is not the same, and the feeling of unease is not the same either. And I propose to the girl, I discuss it with her, I don't make an appointment right away, I always let the idea germinate"<sup>595</sup>.*

As will be explored in the section on the life in the reception centre ("Life in the reception centre: 'The straw that breaks the camel's back'"), it is important to ensure the empowerment of the residents. This is true also with regard to issues connected to health. In the words of a Red Cross nurse: "*Residents are actors of their own health, not spectators*"<sup>596</sup>. She offered some examples. It is the responsibility of the residents to go and see the medical office in order to discuss the results of the blood tests or other medical exams and not the other way around<sup>597</sup>. In addition, the residents themselves should go to the pharmacy to get medications, except when it is not possible for them to go<sup>598</sup>. In cases where the medical certificate is requested by the lawyers, the medical office hands it to the residents personally because it is up to them to decide what to do with their medical certificate<sup>599</sup>. Moreover, not all the residents want their social assistant to be aware of their health problems. On the same vein, other examples were given by Elisabeth Lejosne. She said that she pushes the residents themselves to make an appointment with the doctors when needed and, obviously, if they have the language skills. Moreover, in an effort to empower the asylum seekers in the centres, carried out by the medical staff as well, specific "penalties" could be envisaged. For instance, when the residents do not show up at a doctor's appointment, the visit could be paid with their pocket money<sup>600</sup>.

In the words of their interviewees, there is therefore a kind of tendency to "responsabilize" the resident with regard to their own health. Dealing with the vulnerability of health in a centre seems not to be the matter of the nurse only, but a kind of "shared responsibility" with the residents.

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594 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

595 *Ibid.*

596 Interview n° 58, 12.10.2020.

597 *Ibid.*

598 *Ibid.*

599 *Ibid.*

600 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

### 3.3.5. Asylum seekers and medicine therapy: risks and practices

Another issue connected with health is the use of medicine by the residents in the centre. A Red Cross nurse shared with us the impression that because the residents come from countries where they do not have the full access to medical care or they cannot afford it, once in Belgium they try to get access to medication as much as they can (*"They have the impression that is a miracle product"*<sup>601</sup>), also in situations when there is no need, for example to heal sore muscles after sporting activities. Likewise, the residents ask for a global check-up once they are in the centre, meaning, often, an x-ray of the whole body to make sure that they are in good health. The nurse said:

*"When they arrive, they will ask for a general check-up, so for me, a general check-up is a general blood test, but not for them. Then they will ask for x-rays, they will ask for an x-ray of the whole body. You see, we don't do that in Belgium. We don't necessarily take an x-ray of the whole body, and sometimes, well yes, it's something they don't understand enough: 'for twenty years I didn't have access to health care, now I'm here, I want to do a global check-up, I really want to see inside my body if everything is ok'"*<sup>602</sup>.

However, residents in the centre can be dependent on medication, such as paracetamol (*"every day they come to get paracetamol because they have headaches all the time"*)<sup>603</sup> or other medication that, for example, could help them to sleep. Asylum seekers often get addicted to medicine before their arrival in Belgium. Once here, it is very common that the residents in the centre ask for medication, but many social workers in the centres affirmed that the doctors try to get the situation under control without prescribing medication or, at least, prescribing progressively less medication<sup>604</sup>. Florence Opdebeel affirmed:

*"It's medicine that destroys life more than anything else, I think it's medicine that should only be given for a certain period of time, and unfortunately it lasts, it lasts, it lasts and... these people for me it's very difficult to make them reborn"*<sup>605</sup>.

To avoid that residents take medication chronically, she tries to keep track of the length of time when medication is taken. Moreover, she always pushes the people to do some sport both in the gym or outside to relieve stress and to acquire physical and mental energy<sup>606</sup>. Nevertheless, it can happen that the residents manage to get medication either buying them outside the centre or through illegal trading within the centre<sup>607</sup>.

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601 Interview n° 58, 12.10.2020.

602 *Ibid.*

603 Interview n° 32, 09.09.2020.

604 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

605 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

606 *Ibid.*

607 Interview n° 46, 24.09.2020.

#### Summary Box 4. Health and vulnerability

European Directives on immigration and asylum mention *health* as one of the grounds that should be given due consideration with regard to vulnerability. Some applicants are defined as vulnerable (or as having special (reception) needs or in need of special procedural guarantees) in the Directives. Among them, *disabled, persons with serious illnesses, persons with mental disorders* could be subsumed in the more general category of *health*. The fieldwork proved that health and vulnerability often overlap:

- health-related problems come into consideration in evaluating the special procedural needs, that could impact the hearings (e.g. people with reduced mobility or with specific pathologies);
- both Judges and protection officers considered mentally or physically disabled applicants as vulnerable *per se* and stressed that, even though health-related issues do not automatically imply the recognition of the refugee status, they are considered in the assessment of the applicant's profile. However, on the one hand, health issues could be used as a strategic tool to be recognised as a refugee and, on the other hand, applicants could try to receive a status in Belgium in order to gain access to the health-care system (medical regularisation);
- medical certificates are a bone of contention in the asylum procedure. Medical certificates (e.g. certificates of assault and battery or female genital mutilation) from specialists or those who have access to an applicant's medical file are an important tool in the detection of vulnerabilities, the evaluation of the applicant's profile and the decision on the asylum application. They can be made by the medical staff of the centre, by a specialist or by associations and non-profit organisations who deal with medical and psychological monitoring and can also access medical reports. In the light of their importance for the procedure, medical certificates are much more frequently alleged to the asylum seekers' applications. However, asylum Judges and protection officers have criticized the frequent use of medical certificates and their additional and potential difficulties. Because they are so common in asylum applications, medical certificates need to be complete and precise. Nevertheless, medical certificates should not go beyond their role in building connections between the applicants' physical and mental health and their past experiences (e.g. persecution or violence in the country of origin or on the migratory road);
- the medical conditions of an applicant could have an impact on where they will be accommodated, such as close to a hospital or medical centre if they are under a specific treatment;
- medical staff in reception centres is always considered the reference point for assessing and addressing the vulnerabilities of the residents in the centre;
- asylum seekers' need of medication therapy or, in the worst cases, addiction to medications (e.g. paracetamol) are considered one of the consequences of their fragility and deep-rooted vulnerability.

### 3.4. Vulnerability and human trafficking

Trafficking human beings is the exploitation of individuals for profit. In Belgium, the Law of 10 August 2005 introduced the specific criminalisation of trafficking in human beings into the Penal Code and amended Article 77bis of the 1980 Aliens Act to make it the basic Article on trafficking in human beings. Since 1994, victims of trafficking who agree to cooperate with the judicial authorities have been able to benefit from a specific residence status<sup>608</sup>. The “trafficking procedure” is therefore a specific procedure that allows, under certain conditions (in particular, leaving the network where the person is exploited and filing a complaint against this network), to stay on Belgian territory temporarily. Depending on the progress of the investigation, the residence permit may be extended. If the person is recognised as a victim, a residence permit for an indefinite period will be granted.

Safeguards are provided in the reception of trafficked persons during the procedure. At the time of application, the victim is placed in a specialised, secure and appropriate reception centre. In the same sense, and insofar as his or her condition so requires, the victim is entitled to receive medical, psychological, linguistic and social support<sup>609</sup>. There are three specialised centres in Belgium for these profiles<sup>610</sup>. Minors will be referred to centres that are always specialised, but adapted to their age, i.e. centres for UMs. Our interviews led us to meet Christian Meulders, Director of the Sürya centre in Liège.

#### 3.4.1. Vulnerability and trafficking: which definition, which approach?

Christian Meulders provides a twofold definition of vulnerability with regard to human trafficking: on the one hand, it is a situation of “break-up” and dependency from which a third party will be able to benefit. In this sense, the person has “vulnerabilities” that will be exploited. On the other hand, vulnerability is also understood in terms of the procedure, particularly in view of the lack of predictability of the procedure. The director explains:

*“The other side of vulnerability is in the procedure because we don’t have control over what it is going to happen. There is a risk that the person may or may not be victimized. For people undergoing administrative regularization, every six months, a sword of Damocles remains when there is an application for an extension of the residence permit. File closed or not? How is the magistrate going to interpret it? Here there is vulnerability even if the person is accompanied, because there is no guarantee”<sup>611</sup>.*

The lack of guarantees and the resulting vulnerability is also reflected in the limited possibilities of residence, if the case is dismissed or closed without further action. The Director specifies that a person who is now without a valid residence permit may apply for regularization on humanitarian grounds (Article 9 bis of the 1980 Act) or opt for the Voluntary return procedure. Nevertheless, he remains lucid about the effective possibilities that these people have of remaining on the territory:

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608 Circular of 7 July 1994 concerning the issue of residence permits and work permits to foreigners who are victims of trafficking in human beings, *Belgian Official Journal*, 7 July 1994.

609 See CARLIER J-Y., SAROLEA S., *Droit des étrangers*, op.cit., page 548.

610 Pag-Asa in Brussels, Sürya in Liège, and Payoke in Antwerp.

611 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

*"We are working on the question of return, or there is the risk that people will stay here illegally. We don't know how to work miracles [...] I prefer to be clear with people from the outset so as not to set off into the unknown with a probability of success close to zero. It's violent to give someone a taste of the happiness of becoming legal again, of having a certain administrative life and then to tell them that it won't work anymore!"<sup>612</sup>.*

With this in mind, the Director explains how Sürya works. The aim of the reception centre is first of all to check whether the person falls within the legal framework of the definition of human trafficking and the procedure laid down by the legislator. Secondly, the aim of the centre is to obtain compensation for the damage suffered, by allowing the person to lodge a complaint with the competent services. To this end, the Director emphasizes:

*"We are a bit like an ISO procedure"<sup>613</sup>. It's not the result that counts, it's hard, but we work with humans and if we worked with the results, we would aim for the results and we could jeopardize the very existence of the procedure. What we're going to check is if the person has really been exploited, if he really has said everything right, if he has had meetings with his lawyer in time, if we have been able to have clear exchanges with the magistrate, if we have been able to accompany him to the court hearings if necessary, if we have been able to give him French lessons to better understand his situation, that's what we're going to evaluate. We are not going to assess that after 6 months, 1 year, 2 years, when they have a definitive residence permit, a B card. That's not the aim of the game"<sup>614</sup>.*

The Director specifies that this role is important to remember because *"the philosophy of the fight against trafficking is first and foremost a philosophy inscribed in the law on foreigners"*. In this perspective, it aims above all at the establishment of a residence permit for migrants.

The Director emphasizes that this imaginary is ubiquitous and has been repeatedly mentioned in the political discourse that links trafficking issues exclusively to migration issues. He takes the example of the positions of the Flemish conservative party, the *Nieuw-Vlaamse Alliantie* (NVA):

*"The NVA has taken an interest in migration issues in Belgium and the fight against trafficking is something the NVA strongly supports. Why is this? It was the party's good conscience that said: 'we are not against migration, nor against foreigners, look at everything we support in terms of trafficking!' It shows that we can use certain definitions or categorizations in political terms, to say that we are doing something"<sup>615</sup>.*

In this sense, the Director says:

*"We are not going to say that we are encouraging people to talk to get papers. We are asking them to speak so that there can be redress for the disastrous situation they were in"<sup>616</sup>.*

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612 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

613 The ISO standards have been developed by the International Organization for Standardization (ISO) in order to create best practices for businesses. They are standards a company must comply with.

614 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

615 *Ibid.*

616 *Ibid.*

This way of perceiving trafficking is all the more significant as the trafficking procedure is also used by people residing illegally on the territory, precisely in order to obtain a residence permit. To this end, the Director underlines that many cases do not lead to success, since most of the time they deal with questions of “*complicated lives*” but not necessarily trafficking. He says:

*“It is mostly about people who are desperate to find administrative solutions and think that the solution of trafficking could be an option [...] because they see themselves well in the profile of the exploited people”.*<sup>617</sup>

Beyond the procedure, the vulnerability of trafficked persons lies above all, according to the Director, in a system that allows trafficking to go on. The role of the political and economic context in the production of vulnerabilities is therefore paramount. This is detailed in the sections that follow.

### 3.4.2. Economic system, trafficking atmosphere

Christian Meulders identifies external factors that foster a “*trafficking atmosphere*” and the resulting vulnerabilities. Firstly, he mentions the “*creation of a climate of trafficking*” with, among other things, drastic border controls that imply a significant expenditure of energy and money for people who are “*indebted to have come here and have to pay back what they borrowed*”, at any cost. Also, the Director underlines the vulnerability that stems from this situation of economic precariousness:

*“People put so much energy, money and hope into a migratory journey that even when they arrive if the conditions are not what they hoped for, they won’t complain. If I have come here, I’m going to send a positive image back home by sending money. I will do everything to be able to earn a minimum amount of money and send back small sums that may be huge in the country I come from. I am not going to be dependent on them, I have to find a solution. The exploitative solution is used by others who know very well that people won’t complain”*<sup>618</sup>.

This exploitative situation echoes other comments collected in the reception centres. Daniel Legreve talks about the *exploitation of vulnerability*, including among the centre’s residents:

*“I’ve already had cases where people from the population were quite happy to take advantage of the vulnerability of certain residents, saying ‘come I’ll make you work’ and then they didn’t pay them, and anyway, they would never have complained, you understand... Among residents too: ‘Come I’ll make you work’, the resident is happy, he goes to work, goes to work, and the man in question took advantage, and he never pays him. What do you want him to do? He’s not going to go to Court...”*<sup>619</sup>.

Secondly, apart from migration issues, the Director also mentions the system of free movement of persons and workers as a factor favouring a climate of trafficking. Within the European continent itself, this system creates an imbalance in the labour market for people who come to work under less favourable conditions. At the same time, the Director is aware that this is maintained by the dominant European economic model. He stresses that “*trafficking is first and foremost a response to a failing economic system*”. Therefore, he raises a paradox of a State that wants to fight against the result of policies that it continues to implement itself:

*“If we allow this kind of system to be put in place, is the fight against trafficking to give itself a clear conscience?”*<sup>620</sup>

617 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

618 *Ibid.*

619 *Ibid.*

620 *Ibid.*



For the Director, this is particularly evident in the COVID-19 context. Christian Meulders takes the example of the temporary reopening of the borders which allowed some workers to come to Europe to pick fruit and vegetables:

*“When we saw that the borders were opened in the crisis to allow people from the East to come and pick fruit with us, it was not at all right, it had to stop. And it’s a badly paid job, because people don’t want to pay the right price in the shops. So we accept people who are not paid a fair salary, it’s not right”<sup>621</sup>.*

The Director’s reflection is interesting, especially when you look at the new Migration Pact presented by the European Commission. In the staff working documents, the Commission mentions the socio-economic vulnerability of workers who come to work in the agricultural sector during periods of confinement<sup>622</sup>. At the same time, recognizing that their help has been essential, the Commission stresses the need to strengthen legal migration channels for seasonal workers.

This paradox, in the collective representations of human trafficking, is not really an issue. For Christian Meulders, it is maintained by people and practices that on a daily basis accept and trivialize trafficking:

*“Our lifestyles make us accept more and more that we are in a multi-speed society, it doesn’t matter! We know very well that if you don’t eat expensively in a restaurant, it’s not normal. An all you can eat buffet for nine euros gives rise to questions. But we don’t call ourselves into question. The precarious work situation doesn’t bother us and so we’re not going to redirect people towards our services”<sup>623</sup>.*

The Director stresses that trafficking is so common place that it is no longer “a disturbing phenomenon”<sup>624</sup>. He warns in this respect that this excessive minimization risks making the fight against trafficking meaningless.

This trivialization is seen above all in terms of economic exploitation. For the Director, it goes hand in hand with the fact that trafficking is very often associated above all with sexual exploitation:

*“Speaking of trafficking, people will talk about slavery in the most extreme forms [...] So we associate trafficking with sexual exploitation. Few people are aware of the economic exploitation aspect. Most of them will say that it’s black labour!”<sup>625</sup>.*

Christian Meulders then believes that a sort of hierarchy is established between the different forms of exploitation and the resulting vulnerabilities. He points out, for example, that sexually exploited women are systematically considered more vulnerable, before asking:

*“Is a sexually exploited woman more vulnerable than an economically exploited woman? I don’t see why we differentiate. For me, sexual exploitation is a form of labour exploitation, just like someone who is exploited in a Chinese restaurant, in a night shop... it is the use of the person, of their body to produce money [...]”<sup>626</sup>.*

The Director is therefore critical of the categorization of some people as *more vulnerable* than others. He points out that these categorizations are mainly the result of politically connoted choices:

*“It’s mostly political definitions, to say that we’re not going to help everyone”. He adds: “By wanting increasingly precise categories, we are going to limit access to aid [...] defining extra-vulnerability more and more means defining a tiny part of the people who could be helped. These are very political issues. We are go-*

621 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

622 See COMMISSION STAFF WORKING DOCUMENT Accompanying the document PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC)2003/109 and the proposed Regulation (EU)XXX/XXX [Asylum and Migration Fund] SWD/2020/207 final, page 19.

623 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

624 *Ibid.*

625 *Ibid.*

626 *Ibid.*

*ing to say that we are extra-vulnerable, but isn't everyone entitled to this specific project? Should we have 'extreme' situations and who will evaluate them? A social worker? A lawyer? Who is going to tick the right boxes to define the extra-vulnerability of the person?"<sup>627</sup>.*

### 3.4.3. Preparing for autonomy, addressing vulnerabilities: limited time in the centre and compulsory language learning

People staying in the centres are accommodated for a six-month period. This duration is ideal for Christian Meulders. On the one hand, it allows the person to make the necessary savings to pay their future deposit and their first rent. On the other hand, it also prevents the structure from overburdening the person psychologically. The limited length of time spent at the centre is thus a means of addressing the vulnerabilities, by preventing that they become institutionalized:

*"Six months is the period before people start messing around because it's not too long yet [...] People are quite independent, they need to live their lives on their own, it's the right time [...] before people start messing around"<sup>628</sup>.*

This period also allows the centre not to be overwhelmed and to be able to guarantee places for people in need. The Director explains: *"We are small, but not overwhelmed!"<sup>629</sup>.*

The size of the centre is also essential in view of the people who live there. Christian Meulders explains:

*"It's better to have several small structures than one big one. Why? Because you never know who the people who come to us are. You get the feeling that they may have been victims from what they say [...] but behind these victims a perpetrator or trafficker could be hiding, so it is better to have a small centre with few people than a big one with many people who would be put in danger more quickly. It's a centre with a discreet address, so no one else can enter the centre. The smaller, the better".*

During their stay in the centre and in order to counter their vulnerability, people are subject to compulsory language learning. For the Director, this is part of their autonomy project, which is essential in order to avoid falling back into exploitation and above all not to depend on another person to understand a situation. To this end, he specifies:

*"There is an obligation to learn the language, it is not debatable. If they don't master the local language, the door is left open for them to be exploited again. Being autonomous also means understanding what you can and cannot do, being able to find the right person at the right time. Mastering the language will enable them [...] to understand better, without having to go through a third person who could modify things. Often, the people close to them are also the people who have exploited them"<sup>630</sup>.*

### 3.4.4. Vulnerability and lack of control: impact of the COVID-19 crisis

In addition to the process and context that can create and maintain the vulnerability of trafficked persons, the lack of sufficient monitoring to detect victims also plays a role. While Sürya has been funded by the anti-trafficking policy for the purpose of fighting against trafficking, controls in particular have diminished, especially in the COVID-19 period. For example, he cites the closure of places of prostitution during the period of confinement to illustrate:

*"We see it in terms of sexual exploitation, we close places in Brussels, there is no longer any control, but it does not mean that there will be no sexual exploitation anymore. It's going to happen in the private sector, which will be much less controllable..."<sup>631</sup>.*

627 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

628 *Ibid.*

629 *Ibid.*

630 *Ibid.*

631 *Ibid.*

In this vein, the Director emphasises that priorities have been placed in crisis situations and that the fight against trafficking was clearly not one of them:

*"There are other priorities, in times of crisis, we choose something else, we have to assign policemen to Covid patrols, we are not going to have them control restaurants"<sup>632</sup>.*

This lack of control has led the centre to rethink its missions and to become a real *"awareness-raising actor"* to make the political sphere aware of this issue. From this perspective, the Director underlines the privileged position occupied by the heads of the reception centres for victims of trafficking, as they are regularly in contact with the Government to discuss the relevance of the policies being implemented.

The vulnerability of trafficked persons is therefore the result of three elements. Firstly, a very unpredictable procedure and the precarious residence conditions that can result from it. Secondly, an economic and political context that favours, in its organisation, a trafficking atmosphere. Thirdly, a limited monitoring approach on the ground, particularly in the COVID-19 period.

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632 C. Meulders, Director of Sürya reception centre, Liège, 12.10.2020.

**Summary Box 5. Human trafficking and vulnerability**

Human trafficking is the exploitation of an individual for profit. The fieldwork proved that trafficking is commonly associated with sexual exploitation, while victims of economic exploitation – in agricultural work or in the food service industry – are much less considered as victims of trafficking. Therefore, higher awareness about the trafficking system as well as its monitoring is essential.

Belgium has established a specific procedure for recognized victims of human trafficking who are entitled to an indefinite residence permit. Specific guarantees are also established for the reception of victims of human trafficking. For these reasons, some people who are illegally in Belgium claim they are victims of trafficking.

Victims of human trafficking are vulnerable by definition because of their dependency to a third party who exploits them. In addition, the fieldwork shows that three other grounds are likely to make these people more vulnerable:

- 1° a very unpredictable procedure and, as a result, precarious residence conditions;
- 2° an economic and political context that favours trafficking;
- 3° a limited monitoring approach on the ground, particularly during the COVID-19 period.

Three reception centres in Belgium (Pag-Asa in Brussels, Sürya in Liège, and Payoke in Antwerp) specialise in receiving victims of human trafficking, for a limited period of time. Given the peculiarities of victims of human trafficking's profile, these are smaller centres which ensure a high level of control and protection and that try to focus on residents' empowerment.

#### 4. Beyond the categories: additional factors of vulnerability

Interviews revealed that other factors played a major role with regard to vulnerability. They are not mentioned in the EU Directives or in Belgian law, but they, nevertheless, are relevant to examine as they have an impact on the asylum seekers' experiences. Those factors can themselves be a source of vulnerability.

##### 4.1. The migratory road: the "indicible"<sup>633</sup> and the "inimaginable"<sup>634</sup>. The impact of the migratory road experience: vulnerability and strength

The fieldwork proved that the migratory road constitutes a major source of vulnerability for asylum seekers. It is often long, tortuous and characterized by violence – physical, sexual and psychological – forced labour and enslavement. This is particularly the case for those who travel through some specific countries and regions such as Libya or the Balkans. Moreover, an extra-layer of complexity and related difficulties could come for those who fall within the application of the Dublin Regulation. The latter determines the criteria and the mechanisms in order to identify the EU Member State responsible for examining the asylum application of third country nationals. Normally, this is the State where the asylum seeker first entered in EU. Thus, the asylum seeker shall be transferred to the Member State responsible of the asylum application. However, as will be explored in the section on vulnerabilities connected to the asylum procedure ("Vulnerability of the procedure: when the asylum procedure itself is a factor of vulnerability"), the fieldwork showed that the asylum seeker recoil at the idea of returning in the so-called "Dublin country", namely the country responsible for their application. As reported by Tristan Zinck, Voluntary return programme counsellor in Liège:

*"People who have to return to Dublin countries and who would prefer to return to a conflict area outright rather than to return to their Dublin country"<sup>635</sup>.*

Conversely, the journey is certainly less difficult for those who manage to reach Europe by plane<sup>636</sup>. All these experiences leave those involved feeling profoundly shocked and deeply traumatized, which can lead to stress, severe depression and sleeping problems, as well as absolute mistrust in others and low self-esteem<sup>637</sup>, just to name a few.

Even though this is a common experience for all the migrants along the road, some categories are usually more exposed, such as women and minors. With regard to the latter group, a protection officer from the CGRS stressed how traumatizing the trip to Europe can be for minors, especially those who are unaccompanied<sup>638</sup>. Innocent Ntamuhanga, "referee" for UMs in the Red Cross centre of Uccle, affirmed that minors lose trust in adults on the road<sup>639</sup>. The mistrust coupled with fears of adults remains also when the youngsters arrive in the centre where they refuse to be helped. A recurring example is the difficulties by minors on the road from Afghanistan. A protection officer from CGRS affirmed:

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633 Interview n° 32, 09.09.2020.

634 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020

635 T. Zinck, Voluntary return counsellor, Liège, 02.09.2020.

636 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

637 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

638 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

639 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020. On the same point also C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

*“These people had a very difficult experience in terms of...the journey, [...] So that’s the journey through Afghanistan, the passage to Iran, it was still...frankly, it was complicated for them, quite often it was complicated”<sup>640</sup>.*

Likewise, in the centre, many interviewees mentioned that Afghan minors suffer terrible experiences along the road<sup>641</sup>. In this regard a social worker mentioned:

*“The young Afghans suffer the same horrors on their journey. And it’s true that, it’s even more...well for the women we know it, we know it fairly quickly, but for the young men who are raped “on the road”, and it’s horrible what I’m saying, it’s above all almost even more impactful, because there is also the homosexual character of the aggression, and that can be much more destructive in terms of the identity of the young man”<sup>642</sup>.*

Similarly, women<sup>643</sup> are generally considered to be more exposed to the dangers on the migratory path in particular if they travel alone<sup>644</sup>. Again, the protection officer stressed:

*“I also add that, in terms of migration, uh...without obviously having any statistics...in this matter... [...] I have the feeling that women are subject to an increased risk of violence, especially sexual violence, um...which is...quite problematic in terms of the vulnerability of the person and their...previous experience”<sup>645</sup>.*

A social worker underlined that the vast majority of women who do not arrive with their family are subjected to regular sexual abuse by the smugglers. She even assumed that these women are aware of this potential threat and, if not, they soon come to realize that it exists<sup>646</sup>. However, categories that are usually considered to be in less danger, like men, can become victims of violence as well. Maria Tassoudis says:

*“The treatment suffered during this journey indeed... [they say] ‘During our journey, we met slavers, we worked on the black market, we were sometimes not paid, we were raped, women as well as men, we were treated as less than nothing’, and it comes out very strongly in some of the stories I have heard and especially in translations – as I am Greek – I have had to translate medical documents that were mostly made in Greece and which reveal the torture and mistreatment that people have endured either in their country or during the journey. In the past it was many women who were victims of it, or perhaps men were not mentioned, but at the time it was more the women who were affected, today there is no difference, there are as many men as women who are affected by these abuses and rapes”<sup>647</sup>.*

As in the case of Afghani minors, when men are violated, it emerges as something very harmful both to accept and to deal with, which is particularly connected to sexual violence whose impact could be even deeper because of the homosexual nature of the aggression.

640 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

641 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

642 Interview n° 32, 09.09.2020. This was confirmed also by Farid Khali, Director of the Red Cross centres of Uccle – where only UMs man are hosted – and Jette. F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

643 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

644 Interview n° 18, 28.08.2020.

645 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

646 Interview n° 32, 09.09.2020.

647 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.



Social workers in reception centres firmly asserted that the migratory path is extremely tough for the migrants. The words used by social workers to describe the migratory road are particularly powerful. Farid Khali, Director of the Red Cross centres of Uccle and Jette, said:

*“The path of migration, for many, many, we don’t talk about it perhaps, but between the departure of the young people and their arrival at my reception centre, it is unimaginable what can happen. The destruction, and I’ll say the ‘mental massacre’, that’s where it happens. [...] That lapse of time, is terrible, one can only imagine the atrocities through which these young people [passed], [...] During that period of time, they are people who have almost no weapons to protect themselves. Against the smugglers, against the cold, against injustice, they are like a prey for all actions...all actions, and that for me is a vulnerability”<sup>648</sup>.*

Typically, the residents in the centre do not talk about what they have gone through during the trip to Europe<sup>649</sup>, and they need time to be able to share what happened. Elisabeth Lejosne affirmed:

*“If a girl went through Libya, I’m not going to ask her right away if she was raped. You really have to go step by step, to find out when she left her country, generally I ask instead the age, the year, which country she passed through at that time. From that I can guess what might have happened. We’ll stay a little while, we’ll ask the question differently and then we’ll go”<sup>650</sup>.*

Nevertheless, the story of the events that can happen on the road can sometimes come up in the most diverse circumstances. Carla Pannemans, social worker of the Broechem Fédasil centre, gave us the example of a resident who, while doing his community service and working with her, saw some images of Libya in the computer and suddenly started to share with the social worker the terrible experiences he lived there and showed her where his back had been burned<sup>651</sup>. Innocent Ntamuhanga, “referee” for UMs in the Red Cross centre of Uccle, affirmed that some of the painful events happened on the road can be disclosed when the residents are transferred from a centre to another for disciplinary reasons. That could be the time when residents open up about their stories and it becomes clear why they were acting in a certain way<sup>652</sup>.

The suffering experienced during the migratory trip comes out one way or another<sup>653</sup>, usually after the arrival of asylum seekers in the reception centres. Some interviewees often referred to the so called “decompensation phenomenon” that might affect those who have lived a very stressful and traumatizing period, such as on the migratory road, combined with all the traumatizing events that the asylum seekers might have experienced in the country of origin. An interviewee said:

*“Decompensation in general is: the people they have had a lot of tension...well already in their countries, let’s imagine someone who leaves a war zone, taking Syria as an example...who has fled, for example, the advance of the Islamic state, who has had bombings, or who has perhaps seen his family or a member of his family killed and then left and who has really been in a state of enormous tension in my opinion on his way, who has perhaps had to cross the Mediterranean and everything. And at*

648 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

649 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

650 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

651 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

652 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

653 B. Fockedey, “referee” for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

*some point, they arrive in a centre that is a place that offers more security. I'm not a psychologist, so maybe I'm getting a bit ahead of myself, but I think that's it...and so they arrive and at the moment they are put down, when they realise that they are safe, the floodgates open and people... [we say] decompensate and this can manifest itself in different ways"<sup>654</sup>.*

Thus, following the arrival in the centre, together with the feeling of being in a secure place, severe psychological issues can arise. However, residents also demonstrate aggressive behaviour or break codes of conduct. Farid Khali shared with us the example of a man who was discovered smoking in the shower of the centre, where smoking is forbidden. The man admitted that he had started to smoke after his trip through Algeria and Libya<sup>655</sup>.

The fact of living through a very harsh experience while on the migratory road makes the asylum seekers particularly strong and resilient and, in the case of minors, forces them to grow up quickly. Innocent Ntamuhanga said:

*"The young people who arrive here have a certain maturity, even if they are UMs. After they crossed the sea, they become a little more mature, a little more responsible"<sup>656</sup>.*

On this point, a nurse of the Red Cross mentioned that, even though the migratory road can make the person more vulnerable, it can also make the person to be and feel stronger. Indeed, being aware of having overcome all the difficulties, the pain and the suffering of the road make them realize their strengths and that they are able to cope with any situation<sup>657</sup>. For this reason, the asylum seekers are seen as being extremely vulnerable as well as incredibly strong. One of the nurses interviewed said:

*"I believe, I am sure that their migratory journey can even make them vulnerable, because then, to be tortured in a country, knowing that you have already left your country [of origin], that you have passed through such and such a country and that you are being tortured there, well yes, I believe that makes them vulnerable. There are already people whose arms you can only touch and you can feel that there are...you know. You can see that the person has been tortured. And yes, that makes them vulnerable, yes. And frankly, even without torture, leaving a country and going through other countries, to arrive somewhere that we don't know anything about, I think it does make them vulnerable, yes. Then I believe that vulnerability can be a strength too, because I think that there are residents who see this as a strength and say 'ah well, if I've gone through all this, it's because I'm a strong person. If I've got through it, it's because I can do it. If I've got through all this, it's because I can do it.' "<sup>658</sup>.*

#### 4.1.1. What impact does the migratory road have on the asylum procedure and in the reception centre?

After having briefly explored the great difficulties experienced by the asylum seekers while on the road, we can now turn our attention to what the decision-makers and social workers say.

654 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

655 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

656 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

657 Interview n° 58, 12.10.2020.

658 *Ibid.*

The social workers in the reception centres are well aware of these experiences and try to cope with them. While they have the responsibility to accommodate individuals during the asylum procedure, they do not question whether trauma occurred. In the words of Carmen Salgado Gaeta:

*"For me, personally, in what concerns us, it doesn't matter, so they come here with X number of vulnerabilities and so we don't ask ourselves how it is like that, we take it that way. Because, we are very, very careful, particularly careful with their history, their reasons for being in Belgium because we are not supposed to get into it [...] Our mission is really to welcome them as they come and to do what we can do at our level"<sup>659</sup>.*

All the experiences that have been lived on the road are perceived quite differently by Judges from the CALL and CGRS protection officers. They generally recognise the intense sufferings that the asylum seekers experienced on the road (*"these people, from their country of origin, for reasons X, have made a rather long journey. I think we all remember the march of the Syrians and the Iraqis in the countries of the Balkans. All their experiences and so on... they walked for days and days"<sup>660</sup>*) and acknowledge that the migratory path can make the person vulnerable<sup>661</sup>. A protection officer underlined that it is taken for granted that the migratory road makes the person vulnerable<sup>662</sup>. The violence and the complexities on the way to Europe are established as a fact, in particular with regard to specific countries and regions. Regarding this point, a protection officer said:

*"I think, indeed, yes, [...] the people who arrive, indeed, are vulnerable because they have often had quite difficult journeys now, as I tell you, it is in my opinion necessary to bring a certain number of nuances and we can think that the journey of someone who has arrived, I would say, legally from certain countries, from a Balkan country with his car or with a bus is not the same as the person who comes, I would say, from an African country and had to spend six months in Libya, you see? There's a... there's a uh... a difference that is, I would say, quite obvious here. And so yes, indeed, on the one hand, there is this path that can... that can be taken into account and that explains the difficulty they encounter... that shows forgiveness for the difficulties that all the claimants encounter... which is a sign of vulnerability, indeed"<sup>663</sup>.*

Therefore, as affirmed by another protection officer, in assessing the vulnerability of the applicant it is important to take into consideration the overall situation of the individuals, including their paths to Belgium. She said:

*"You have to take into account the situation of this person, his or her background, what he or she went through to reach Belgium, Germany, France, where, even if only up to the point where he or she was able to leave his or her country of origin, that is, I think, really important"<sup>664</sup>.*

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659 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

660 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

661 Interview n° 6, CALL Judge, Brussels, 16.07.2020; Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020; Interview n° 16, CALL Judge, Brussels, 24.08.2020; Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020; Interview n° 18, 28.08.2020.

662 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

663 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

664 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

However, what has proved difficult is establishing the actual impact that the migratory road has on the asylum procedure. The difficulties encountered during the journey cannot play a determinant role in the recognition of refugee status. The reason is simple: people are recognised refugees if they are persecuted in the *country of origin*. Therefore, on the one hand, the migratory road should not be relevant for the outcome of the asylum procedure. On the other hand, the vulnerabilities created, resulting from the trip to Europe, nevertheless play a role. This dichotomy is clearly explained by an interviewee:

*“More and more we are seeing that there are vulnerabilities, whether physical or psychological difficulties, which are due to the migratory journey and not to the flight from the country. And somehow, we, sensu stricto, since we have to see why the person has left their country, in theory, we are not interested. But afterwards, as soon as it affects the person and makes them more vulnerable, it influences them today, it influences their experience, their life, how they will tell their story. So I’m uncomfortable with that: because on the one hand it’s none of my business, on the other hand it has an impact on the person opposite me who has to convince me that he or she left his or her country either because of a risk of persecution or a risk of serious harm”<sup>665</sup>.*

Barbara Verdickt, Judge of the CALL, echoed:

*“It’s difficult to make the distinction. Sometimes it’s clear, sometimes it’s rare that it’s clear, the person arrives and says clearly that it’s during [the journey], sometimes it happens: ‘in Libya I was detained, I was put into slavery’, so we know that all the after-effects, both physical and psychological, can be linked to that. But sometimes it’s very difficult to distinguish between the two and people come up with their stories. We can assume that there are things that happened and things that did not happen in the country”<sup>666</sup>.*

Similarly, a protection officer stated:

*“For the protection, yes indeed it is a problem, since the person is supposed to have left his country because of persecution, so the fear has to be in his country of origin. So sometimes it’s true that we learn that a person who has been to Libya. Then all of a sudden, we are faced with someone who has obviously experienced traumatic events, it triggers a state of post-traumatic stress disorder etc..., which is supported by a good number of certificates etc..., we are in front of an extremely vulnerable person. And indeed, this vulnerability is caused by his or her migratory journey”<sup>667</sup>.*

Therefore, what happened on the migratory road does not have any relevance for the asylum procedure, apart from a few rare exceptions. An interesting example was given by a protection officer who mentioned that the post-traumatic stress disorder resulting from the arduous trip to Europe could be interpreted as being the effect of a spell cast on the person, putting him/her in possible danger upon return to the country of origin<sup>668</sup>. Moreover, the stress and the depression due to the migratory road could play a role for the person’s recognition as a refugee if his or her psychological status undermines his/her return to the country of origin<sup>669</sup>.

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665 Interview n° 4, 14.07.2020.

666 B. Verdickt, CALL Judge, 09.07.2020.

667 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

668 *Ibid.*

669 *Ibid.*

**Summary Box 6. Vulnerability on the road**

The migratory road is one of the major sources of vulnerability for asylum seekers since it is often long, tortuous, and characterized by physical, sexual and psychological violence as well as forced labour and enslavement. Women and minors are more exposed than others, even though some interviewees stressed that men are more confronted to abuse nowadays than in the past. These terrible experiences leave applicants extremely vulnerable with deep-rooted trauma that can lead to stress, depression, mistrust in others and low self-esteem. These consequences are often visible in the form of decompensation once in reception centres. However, the migratory road can also make a person become aware of their strengths after having overcome all the difficulties along the way. The impact of the migratory road on applicants is perceived quite differently by asylum Judges and protection officers. They acknowledge the difficulties experienced by asylum seekers along the way and recognise that they can leave them with deep-rooted vulnerabilities.

Nevertheless, the actual impact of the migratory road on the asylum application is difficult to assess, given that applicants are recognised refugees if they escaped persecution in their *country of origin*, not along the way. Thus, both asylum Judges and protection officers face a clear dichotomy: on the one hand, the migratory road should not be relevant in the outcome of the asylum procedure, on the other hand, the vulnerabilities created by the journey to Europe necessarily play a role.

#### 4.2. Life in the reception centre: *"The straw that breaks the camel's back"*<sup>670</sup>

Life in the centre has been the subject of much attention during the fieldwork for three main reasons. First of all, centres were included in the fieldwork and the interviews were carried out there (four from Red Cross and three from Fédasil), with one exception<sup>671</sup>. In three of the seven centres included in the study, the interviews were followed by a tour of the facilities<sup>672</sup> led by a social worker. Secondly, all the people that apply for asylum have the opportunity (not the obligation) to live in the centre if they do not have another place to stay. In the best-case scenario, the asylum seekers spend, a couple of months there<sup>673</sup>, but their stay can last up to several years. Therefore, centres represent a privileged point of view of the stories and the experiences of protection seekers in Belgium and the opportunity to detect and explore their vulnerabilities. Thirdly, the centre itself can represent a source of vulnerability for the residents. This possibility was mentioned already by the CALL Judges, the protection officers at the CGRS and by most of the reception centres' employees.

Judge Hayez affirmed:

*"I think that we must place people in the best possible conditions, whether it is in terms of reception, once again we must not forget that the asylum seekers in front of us, most of them live in community centres, it can't be easy, they sleep in dormitories, [...] we must not forget all that"*<sup>674</sup>.

Likewise, a CGRS protection officer stated:

*"I confess to you very frankly that these are...what I am going to tell you here is practically the result of assumptions, I will say, but I presume that life in a...in a centre, is a generator of...of...suffering"*<sup>675</sup>.

Carine Vansimsen, social assistant at the Red Cross centre of Rocourt said:

*"I think the reception system in centres can make people more vulnerable...or make them become vulnerable. Sometimes it's the last straw that breaks the camel's back...so there's already so much accumulated experience...then there's one in the room and he's going to talk at 1am and... [another one] is going to explode..."*<sup>676</sup>.

In other words, there are asylum seekers whose condition in the centre is so difficult that even a small thing can affect them.

670 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

671 Petit-Château, the Fédasil arrival centre in Brussels.

672 In these occasions the pictures of present report were shown.

673 The three-stage reception model adopted in Belgium provides that after four months in collective reception structures, the asylum seekers can ask to be transferred to individual accommodation. EUROPEAN MIGRATION NETWORK [NATIONAL CONTACT POINT BELGIUM IN COOPERATION WITH THE FEDERAL AGENCY FOR THE RECEPTION OF ASYLUM SEEKERS (FÉDASIL)], *The organisation of Reception Facilities in Belgium* [Study], August 2013, page 4.

674 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

675 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

676 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.



#### 4.2.1. The reception centre: the (“institutional”) home for the asylum seeker

At the outset, it should be underlined that the centres are usually placed in buildings that in the past were used for other purposes. In some cases – e.g. the Red Cross centre of Rocourt and the centres Fédasil of Broechem and Sugny – the centres are located in unused military facilities. As a result, the concrete buildings (“the blocks”) all look alike and are generally not very welcoming. Furthermore, even though lots of space is available, all the blocks are separated, therefore the residents have to walk outside to reach the refectory and all the common living spaces<sup>677</sup>. Although all the centres visited for this study do their best to avoid the use of tents, the lack of accommodations and structures sometimes requires their use by the residents. In addition to being used as “rooms”, tents can also be employed as places for common activities. It is worth mentioning that due to COVID-19, tents are used as separate spaces for people who have tested positive or who are obliged to quarantine.

The centres visited during the fieldwork have a number of residents that range from less than one hundred to more than three hundred. The difference in running big and small centres is self-evident. First of all, smaller centres are usually in ordinary buildings that look more welcoming and are usually located close to residential areas. As previously said, however, this is not the case for bigger centres. Secondly, small centres run more smoothly, as everybody knows everybody, and the atmosphere is more familiar. This is very different than in bigger centres, which become a kind of “little world” or “little village” where all kinds of relationships and activities can be found and where there is a higher chance that illegal activities take place, such as drug dealing and prostitution. In the words of Farid Khali, Director of Uccle and Jette Red Cross centres:

*“I’m lucky because I have a small centre, we know each other, we’re small. We know everyone by name [...]. Do you understand what I mean? But it’s true that in a centre where there are 700 people everything can happen. There are swindles, prostitution, there’s everything. There’s even prostitution among them...”<sup>678</sup>.*

In the same vein Julian Knittel, Deputy Director of the Red Cross Centre of Jette stated:

*“I think that one centre is not the other, in a centre of 500 people, the dangers are greater” and he continued: “it’s all well and good to talk about vulnerable people, but you have to see how the centres are structured! For example, here we are a small centre, we are in the city, and here we have 60-70% of the women who are in training, which is a rate that breaks the ceilings, quite frankly. So, it’s small, everyone knows each other, we know the residents by name, so when we see them we know them, we talk to them, they’re people! In centres with 500 people, when people go to the canteen, we scan their badges to see if they’ve eaten! Can you imagine? You don’t experience the same thing when you’re in a centre here, or there!”<sup>679</sup>.*

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<sup>677</sup> Due to COVID-19 and the related rules on distancing, at the time of the fieldwork, the refectories were usually closed, and the residents had to eat in their rooms.

<sup>678</sup> F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

<sup>679</sup> J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

The residents sleep in shared rooms and dormitories with a minimum of two or four occupied beds, but there are also cases of eight or even more beds, given the lack of single and double rooms. Each room is equipped with beds (usually bunk beds), small lockers and a little table and is where people spend most of their day given that usually there is no lounge area (besides the spaces for common activities). Some centres provide sport facilities in internal and external spaces. Access to the gym is sometimes subjected to reservations and has recently been limited due to the restrictions connected to COVID-19. In centres in the countryside or outside city centres, there is usually also a football field.

The centre premises lack the basic comfort both in the private rooms than in the common spaces. A recurring example is the Wi-Fi<sup>680</sup>. Even though, access to internet is essential for the residents for a wide array of activities – such as communications with families at home, translations, jobs or house hunting or, more simply, amusement – it is not always accessible to residents. It could be limited at specific places or timeslots.

In all the centres included in this study, the people that share a room are not chosen depending on their nationalities, but according to the system “one leaves, one arrives”<sup>681</sup>; however, if possible, personal and cultural affinities are taken into consideration<sup>682</sup>. This random system aims to mix the residents as much as possible (e.g. nationalities, ethnicities, cultures, religions and generations) within the centres, without creating ghettos. Innocent Ntamuhanga said on the subject:

*“My principle is to put people as they arrive. Without being able to change room, maybe change room but not at their request, otherwise we won’t get out of it”<sup>683</sup>.*

Exceptions are allowed, but only under certain conditions and refusals to share the room with other people for discriminatory or trivial reasons are not accepted. As stressed by Farid Khali:

*“If I can help people, I usually help them. If, for example, I can put friends together, I put them together. I don’t see why I should separate, honestly, I don’t see why. But if I don’t have a place, if he comes and says ‘I don’t want that one’ I say ‘My son, you take your luggage and leave the centre, you’re not going to make your ‘cinema’ here.’ But when I can help them, I help them, we want them to feel good, because here it’s still a place where they will spend eight months, one year, one year and a half, I have young people who have been here for two years”<sup>684</sup>.*

Families typically have their own room. This is a way to guarantee family units in the centre. As observed during fieldwork, remaining with one’s family is a source of security for the residents:

*“With the exception of the family unit which is generally a big advantage...because you are with your family, you have a room for yourself...the unit is maintained so you have this security that the vast majority of people don’t have, they are alone”<sup>685</sup>.*

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680 Interview n° 46, 24.09.2020.

681 *Ibid.*

682 H. Kisonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

683 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

684 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

685 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

Even though placing a family in one room could be perceived as something positive, it could still be very different to what the residents were used in the country of origin. This point was specifically raised by Maria Tassoudis, Deputy Director of the Red Cross centre of Rocourt, who affirmed:

*"The children sometimes abandoned everything they had in the country overnight. Sometimes they didn't have time to say goodbye to their grandparents. It's a great shock for children to leave their environment, their school, the parents, the grandparents [...] It is not easy. And then to arrive and to be in a room with mum, dad, maybe 'I had a big house', maybe 'I had my own room', and now 'I have to live in a room with my parents', that's it"<sup>686</sup>.*

The bathroom and the shower are shared. In the centres that accommodate single men and women, families and unaccompanied minors, the corridors are divided according to gender and age with the aim of keeping these groups separated. However, this is not always possible, and the high level of promiscuity can be difficult to deal with in the long run and can undermine the sense of security of some groups in the centre, namely women. Els Van Santvliet, nurse of the centre Fédasil of Broechem said:

*"Women are afraid that men are coming in their room, when women have to go in the night to toilets... they have to go sometimes... they are afraid [...] I think that women who had some trauma from violence in their country or on the way they are very afraid... Now a lot of people don't feel safe no"<sup>687</sup>.*

On the same vein, Carla Pannemans, as spokesperson for Sensoa<sup>688</sup> in Broechem Fédasil centre, has always advocated for women-only corridor close to the toilets<sup>689</sup>.

Centres stand at the forefront of the reception systems; thus, the work carried out by Directors and their staff is always urgent, since problems need to be dealt with on a daily basis<sup>690</sup>. Anticipating problems and finding adequate solutions, although preferable is not always possible. Owen Miossec, "referee" for UMs in the Red Cross centre of Uccle affirmed:

*"Our job, of course, is also to make sure that everything goes well, that's why we're here too; to make sure that everything goes well, to look for solutions [...] we look for solutions so that everything goes as well as possible. Then there are sometimes problems where we can't answer and we have to say to the young person 'deal with it, I'll stay here to support you in this, but deal with it'. And that also allows us to focus on pedagogy and to tell them to take responsibility and to anticipate...I think of someone here who once came directly to talk with his referee person because he felt that something was going to happen"<sup>691</sup>.*

686 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

687 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

688 Sensoa is the Flemish center of expertise for sexual health. See the website: <https://www.sensoa.be/> [accessed 7 January 2021].

689 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

690 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

691 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

#### 4.2.2. Centres as sources of vulnerability

Life in the centre is not a comfortable one. As confirmed by the fieldwork and by all the experts interviewed, life in centres can become a source of vulnerability for several reasons that will be explored in the section that follows. It is necessary to note that all the reasons that will be examined are undoubtedly heightened by two issues that are always present for all the centre's residents.

*First*, asylum seekers arrive in the centre after their migratory road that, in the majority of the cases, is long, tortuous and absolutely traumatizing. Moreover, the suffering and shocks of the trip are likely to come out over time following their arrival in Belgium, leading to severe distress and acute depression among the centre's resident. On this point, as previously mentioned by an interviewee, a "decompensation phenomenon"<sup>692</sup> tends to occur. During this phenomenon, people who have lived a very stressful and traumatizing period – such as war, bombings, and/or travel across the Mediterranean Sea – arrive in the centre and upon realizing that it is a safe and secure place, have psychological issues.

*Second*, the residents spend a long period of time in the centre – much longer than the one established in the Belgian reception system<sup>693</sup> – while waiting for the decision on their status to be made by the authorities. This time in the centre is particularly stressful because it is characterized by a great number of uncertainties.

First and foremost, the residents are worried about the outcome of their asylum procedure and, more generally, about the future. Olivier Peeters, Director of the CAMPO Red Cross centre of Ans:

*"This anguish of waiting and uncertainty about their future, I think it makes them vulnerable [...] afterwards it depends on the resilience of each person and... it's still a question of individuals. There are some who get out of it very quickly and very well, there are some who tell themselves that they'll never get out of it and then, a year later, everything is fine"*<sup>694</sup>.

In the same vein, Els Van Santvliet said:

*"I think the most stressful thing in their life is that they are not sure of what is going to happen... [they asked themselves] 'Will I have a house next week, next month, next year for my children? Can I have some food to give to my children? People really panic because they don't know what will happen for their lives. A lot of people cannot stay in Belgium [...] They cannot go back to their country either. What do they have to do? So, that it's one thing that gives a lot of stress"*<sup>695</sup>.

As articulated by Maria Tassoudis, Deputy Director of the centre Red Cross of Rocourt, residents have the impression that in the centre they do not make any progress in their lives<sup>696</sup>. This can lead, again, to despair and anguish. This situation can lead the asylum seekers to become addicted to drugs, alcohols and medications<sup>697</sup>.

692 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

693 EUROPEAN MIGRATION NETWORK [NATIONAL CONTACT POINT BELGIUM IN COOPERATION WITH THE FEDERAL AGENCY FOR THE RECEPTION OF ASYLUM SEEKERS (FÉDASIL)], *The organisation of Reception Facilities in Belgium* [Study], *op. cit.*

694 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

695 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

696 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

697 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

With regard to minors, a great source of stress is the age test<sup>698</sup>. If authorities have doubts about their age, they are put in a centre for minors but they have to undergo an age test. While waiting for the result of the test, the residents are under pressure because their reception in Belgium can drastically change if they are deemed to be minors or adults. Carmen Salgado Gaeta, Deputy Director of the Red Cross centre for UMs in Uccle said:

*"The age test is already a problem. Age test is done because there is a doubt about the age. Afterwards, it's not clear whether this age test is just to determine their minority or whether it's to determine their age, and so there are some young people who are already experiencing it very badly. When they arrive at the centre, there are few of them, but they still arrive with doubts about their age. And this is going very badly"*<sup>699</sup>.

In addition, the asylum seekers' family, left in the country of origin, could represent a source of apprehension and, at the same time, also a source of pressure. The residents are always worried about their families who remained in the country of origin. A social worker told us:

*"We have a mother who arrives here, who made the no-choice<sup>700</sup>, because it's never a real choice, to have to leave her children in the country, in sometimes terrible conditions, sometimes they made me hear the bombings in their village 'Look, yesterday we were here, Madame X, listen, listen how it is in my village in Syria! That's my husband who records the bombs that fall!'"*<sup>701</sup>.

Moreover, families left behind put lots of pressure on the migrants because they have great expectations that the person travelling in Europe should meet. Olivier Peeters, Director of the CAMPO Red Cross centre of Ans said:

*"Another factor is the pressure from people who have stayed behind and who are expecting a lot... that's another factor...I guess you've heard about that too...a lot of people need money, need it to move forward because their relatives, their families back home are waiting with a lot of pressure [...] But with all the imaginary that there is about Europe, you generally fall down when you get here..."*<sup>702</sup>.

On this complicated basis, life in the centre unfolds.

In the following subsections, the four main reasons of vulnerability will be explored: a) the hurdles of cohabitation; b) the tension and clashes among residents with different background; c) the lack of autonomy and d) (lack of) security.

698 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

699 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

700 Emphasis added.

701 Interview n° 32, 09.09.2020.

702 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

#### 4.2.2.1. The hurdles of cohabitation

All social workers mentioned that the first factor that makes life in the centre difficult is cohabitation in small spaces for a long time with strangers<sup>703</sup>. Besides those who arrive with their families, all other residents are entirely alone. Being all alone in a centre and surrounded by strangers, without knowing who you can trust can make the residents vulnerable. Olivier Peeters, Director of the CAMPO Red Cross centre of Ans:

*“Life in the centre is really a factor of vulnerability because there is a loss of reference points too. With the exception of the family unit [...] they are alone...so that’s really a factor of vulnerability, being alone in a place full of strangers...”<sup>704</sup>.*

The reception centres are “small worlds” where there are people who speak different languages and have diverse cultural, social and economic backgrounds. Thus, cohabitation can prove to be difficult. Sébastien Quoidbach, individual accompaniment coordinator in the Red Cross centre of Rocourt stated:

*“We really do have all the profiles. That’s what is complicated. It’s being able to manage all these temperaments, profiles, egos, all these cultures”<sup>705</sup>.*

However, surprisingly, the fieldwork showed that the main reasons for arguments amongst residents are individual behaviours and daily routine problems because it is difficult for residents to adapt and compromise both of which are essential for communal living<sup>706</sup>. Social workers shared many examples: noises, in particular during night by those who suffer from insomnia, speaking on the phone too loudly, listening to music during the night, cooking meals<sup>707</sup> while other residents are asleep, not doing the cleaning or having poor hygiene standards<sup>708</sup>, to name just a few.

This is even more true if one considers that there is a total lack of privacy and it is very difficult to find a place for yourself in the centre. Therefore, difficult moments, stress and depression are more challenging when there is no space to get some alone time and you are constantly surrounded by other residents. Julian Knittel, Deputy Director of the Red Cross centre of Jette said on this point:

*“Managing frustration, stress and negative effects in general is much more difficult to do in a centre, because you don’t have the private space to be alone with yourself. And that is important for a person and it makes him or her more fragile”<sup>709</sup>.*

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703 Among others: C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020; O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020; O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020; S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020; Interview n° 46, 24.09.2020.

704 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

705 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

706 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

707 Cooking meals in the room is strictly forbidden in the centres. However, it is a common practice among the residents. M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

708 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

709 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.



There are some categories of residents who suffer more than others in the centres. As abovementioned, some interviewees emphasized that children and adolescents were more powerfully affected by life in the centres. It should also be mentioned that minors often feel ashamed to live in a centre<sup>710</sup>. With regard to woman, being obliged to share bathrooms and showers is something that, in the long run, could prove to be difficult and dangerous<sup>711</sup>, especially if they have to walk down the corridor reserved for men.

#### 4.2.2.2. *The whole world in a centre: tension, clashes and solidarity among residents from different backgrounds*

Certainly, arguments connected to cultural and ethnic differences can come up. Many examples were shared by the social workers in the centre: residents from Sub-Saharan African countries do not always get along with people from the Middle East or Eastern Europeans view some behaviours of African residents as disrespectful<sup>712</sup>. Thus, racism exists in the centres but fights among communities are not as frequent as one would expect. As confirmed by Julian Knittel: *“I have often heard ‘attention to problems between communities’, but in reality, I have rarely seen them”*<sup>713</sup>. This was echoed by the Red Cross relief nurse Florence Opdebeel:

*“They find themselves surrounded by people who are not always from their culture, who may not have the same ideologies [...] there are people who sometimes find themselves in a centre together, living together, whereas in their country they would kill each other [...] and it’s true that it’s going well, it’s going really well”*<sup>714</sup>.

One of the explanations is that the residents realize that they are all in the same situation. Dorian Louys, Deputy Director of the Fédasil centre of Sugny said on this point:

*“Yes, there is clearly racism inside the centres, there are communities that do not support or respect others. We try to intervene. Yes, there is, but I don’t find it shocking either. Finally, it’s not ‘shocking’, I mean it’s not uncontrollable and I think that in general people understand that they are in the same boat and therefore they are there for the same reason”*<sup>715</sup>.

Some interviewees stressed that at their arrival in the centre, the newcomers might refuse to share a room with people of different nationalities or ethnicities, but in the long run they learn to live together, and this ends up not being a major issue. On the contrary, as underlined by Carmen Salgado Gaeta, Deputy Director of the Red Cross centre of Uccle, they accept one another and, actually, living together in the centre is a way of learning also to accept others. In addition, it could represent a useful step for the integration into Belgium. In her words:

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710 Please see the section entitled “Minority and life in the reception centre”.

711 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

712 *Ibid.*

713 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020 and O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

714 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

715 D. Louys, Deputy Director of Sugny Fédasil reception centre, Sugny, 25.09.2020.

*“Often there are young people, when they arrive at the centre, they say ‘ah no, me with a black man? I don’t sleep with a black man’, maybe there’s an Afghan who says that, or the Arabs. Sometimes [there are issues] between communities [and they say], ‘I don’t want to be with that one’...or even from the same country, between different communities, it can happen. And then they are confronted with the reality of the means at hand, so they have no choice, and then they learn to live together, and I think that this brings something positive”<sup>716</sup>.*

When discussing life between communities in the centre, one of the nurses interviewed confirmed that fights are very rare. She also added that there could be acts of solidarity among the residents with different backgrounds. She cited the example of a French-speaking resident who helped a fellow resident who only spoke Arabic to go to the hospital<sup>717</sup>.

Religion, for example, can create tensions, but it is often linked to daily routines. For example, the fact that Muslims have to pray five times per day can bother roommates at night<sup>718</sup>. Another example is that, during Ramadan, Muslims fast from dusk until dawn and therefore they are allowed to eat during *suhoor*, before sunrise, and *iftar*, after sunset, when most of the other residents are sleeping. Accordingly, some centres reserve a specific space for Muslims over Ramadan<sup>719</sup>. Furthermore, the rigorous respect of Ramadan allows practicing Muslims to exert pressure on non-practicing Muslim residents during this period<sup>720</sup>. Carine Vansimsen reported:

*“A Muslim can also be judged by other Muslims: ‘What are you doing? You eat! You drink? You see the time? You don’t do Ramadan?’ And there you go, big discussion...then maybe the one who refuses to do Ramadan has left his country because he was already persecuted because he didn’t fit the mould and so he explodes here because he is still being reprimanded for his choice”<sup>721</sup>.*

Religious symbols can also be a source of discrimination. Maria Tassoudis, Deputy Director of the Red Cross centre of Rocourt, shared the story of an Afghan resident, but of Christian faith, singled out by the other residents because he had a tattoo of a cross<sup>722</sup>. It is of note that the Red Cross centres place great importance on the organization’s seven principles, which include neutrality, thus religion should stay a private matter and tolerance towards others must be observed<sup>723</sup>.

At the same time, it has been noted that tensions linked to religion could dissipate in the long run. As reported by the representative for UMs of the Red Cross centre of Uccle:

*“They come from different groups and so I think that this phenomenon can marginalise some young people on arrival. But in any case, from my observation, it’s very very quickly that they forget these differences that there could be in the country, they find themselves here and finally they interact very quickly, and they forget these differences for example of religion”<sup>724</sup>.*

716 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

717 Interview n° 58, 12.10.2020.

718 Interview n° 46, 24.09.2020.

719 *Ibid.*

720 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020 and C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

721 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

722 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

723 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

724 Interview n° 23, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

Tensions amongst the communities can be also connected to the experiences in the country of origin or on the migratory road. For example, asylum seekers from Sub-Saharan countries that have passed through Libya and who have been imprisoned or enslaved could be more sensitive about Arabs<sup>725</sup>. An interviewee shared the story of a resident who had been tortured by an Islamic group and then, once in the centre was traumatized by the sight of another resident, with whom he was sharing the room, who wore the long dress typical of Islamic countries<sup>726</sup>.

Education, socio-economic background and societal status in the country of origin are also sources of arguments or tensions in the centres. As affirmed by an interviewee, it is more likely that problems in the centre are linked to the socio-cultural background of the residents than to their belonging to a specific community<sup>727</sup>. For example, residents who belonged to the upper class in their country of origin may not accept being addressed or treated as equals by those residents belonging to a lower social class. Maria Tassoudis reported:

*"[The residents say] 'I have not the same level of education as you, I am not from the same social class as you. How dare you? Back in our country you wouldn't talk to me that way – I've heard it –, you wouldn't address me like that'. And I say: 'we're not in the country here, we're all calm and equal here'"<sup>728</sup>.*

Others made fun of those who belonged to a higher social class in their home country. Carine Vansimsen, social assistant of the Red Cross reception centre of Rocourt, said:

*"They bicker, they bicker: 'Oh yes, you know...Ali was a lawyer in the country! the lawyer ha ha!' here... they laugh at each other like in a schoolyard and yet they all live the same thing, they are all on a professional level and they will all have to come down from their professional level and the fact that their fellow citizens laugh at them because of this, it's also important for them"<sup>729</sup>.*

Another source of vulnerability is sexual freedom and expression<sup>730</sup>. Specifically, the LGBTQIA+ community can be discriminated against, on the basis of religion or mentalities and attitudes in residents' country of origin. Carla Pannemans, social worker in the Fédasil centre of Broechem, shared with us the example of a man forced to sleep outside his room by fellow residents because he was homosexual<sup>731</sup>. Therefore, generally speaking, residents do not "come out" about their sexual orientation and hide their LGBTQIA+ status as much as possible<sup>732</sup>. On the other way around, when the residents come out as transsexual, it might cause problems for other residents in the centre. Maria Tassoudis shared the story of a man who

725 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

726 Interview n° 46, 24.09.2020.

727 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

728 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

729 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

730 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

731 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

732 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020. On this point, see also the section entitled "LGBTQIA+ people and vulnerability: negotiating gender, cultural norms and a safe place to stay".

wanted to join a women-only party, dressed as a woman. His request was not accepted because the women were by themselves, and thus unveiled, and the presence of a man was not welcomed<sup>733</sup>. With regard to transgender residents, they usually are accommodated in Local Reception Initiative, whose characteristics will be explored in the following, given the potentially challenging nature of their status.

More generally, individuals who belong to the same community tend to stay together, even though some interviewees reported that coming from the same country of origin is not a guarantee that they would get along. On the contrary, conflicts can arise among residents who belong to different communities or ethnic groups in the country of origin<sup>734</sup>. Disputes can occur when there is a majority national or religious community in the centre<sup>735</sup>. Taking as example the Afghanis in Belgium who tend to speak the same language, to stay among themselves and to exclude others<sup>736</sup>. Farid Khali underlined: *“Communities are good and bad. When there is a small one it’s ok, when there is a dominant community it’s not ok”*<sup>737</sup>. When a community in a centre is very small, they tend to “join forces” with other small communities and spend time together. Julian Knittel said on this point:

*“They have a tendency to gang up on each other, to defend their interests, one has the impression that they feel threatened, that they had to hold their ground”*<sup>738</sup>.

In most of the cases, social workers are not aware if there are underground tensions amongst the residents or bullying behaviours (e.g. taking a resident’s shoes or bed when he/she is absent) or, more simply, constant acts of teasing. It took time for residents who experienced discrimination or victims of abuse to open up to a social assistant or a member of the staff and he/she may never do so. Maria Tassoudis affirmed: *“So there are conflicts, but we don’t know everything, people don’t come and confide in us easily”*<sup>739</sup>. Nevertheless, it is very important that the staff of the centre is present and attentive because the residents who are facing problems with others could be afraid of speaking up and could express their difficulties in other ways.

#### 4.2.2.3. Lack of autonomy: life in the centre as a source of dependency

The lack of autonomy also contributes to feelings of vulnerability. When asked whether the centre could intensify feeling of vulnerability, Julian Knittel immediately replied:

*“Well, it’s simply because in a reception centre they don’t have any autonomy”*<sup>740</sup>.

733 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

734 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

735 O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

736 *Ibid.*

737 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020 and T. Zinck, Voluntary return counsellor, Liège, 02.09.2020.

738 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

739 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020. On this point also C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

740 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

This lack of autonomy can be seen at different steps in the reception procedure. First and foremost, the asylum seekers cannot decide which centre they will go to in order to wait for the end of their asylum procedures<sup>741</sup>. Some centres are better located than others. The location of the centre is very important because it can play a relevant role with regard to the empowerment of the asylum seekers, the assistance that they can receive (e.g. presence of an association or non-profit organization in the area, specialized doctors, etc...) and the opportunities for recreational activities and, most importantly, for education, trainings and jobs. It is evident that residents in centres located in cities, or close to urban centres, have an easier time getting around than those in centres with rural locations. This could play a role in the quality of the life of the residents. Julian Knittel stressed:

*"So, you see there's an infrastructure aspect, there are centres in cities and others that are completely off-centre. I worked in Yvoir, it's a small village an there, there are spaces, for the children it's nice, it's the countryside, but here we are in the city, if people are a little stressed in the centre, they go out! They go for a walk, they go to the shops, they take the train, there's the bus, it's easy, you see, they acquire autonomy more easily! When you're in a centre far away, how can you cultivate your autonomy? A train ticket already costs ten euros! A resident doesn't know how to pay for that... So that's it, this is the problematic aspect of the system"*<sup>742</sup>.

During fieldwork, the centre Fédasil of Sugny was visited. Sugny is an isolated location in the Wallonia region close to the French border and the centre is in the wood. The mass transit (namely by bus) is very limited. Only a handful of busses stop per day, and the closest train station is twenty minutes away by car. As confirmed by the social workers, being so isolated makes the life in the centre more complicated because the residents do not have many employment opportunities outside the centre. A social worker said:

*"It's the geographical situation for me, it's a real brake for the resident, a brake in the sense that many residents try to look for work for example and it's not in Sugny that they're going to find work, not easily in any case, so many have contacts, a network in Brussels, in Antwerp, so we're still very, very far away. And no matter how hard you try... well, some residents can work on the black market, it's not necessarily something that's well declared, so, yes, here there's not really any opportunity, we don't have a lot of restaurants, we don't have a lot of markets, [...] the choice is much more limited"*<sup>743</sup>.

Also, trainings, other than the ones offered in the centre, and recreational activities are impacted, she said:

*"They are frustrated because they don't know how to go out as they want either because we don't easily give them transport tickets, so we can't do it [...] A train ticket to Brussels costs about twenty euros I think and not everyone has the same means so it's difficult [...] Obviously we are no longer so limited in terms of training here, let's say that here we have things that are very basic, mechanics, catering, things like that, but perhaps a much more specific training becomes more complicated here [...] it's that logistically speaking it's difficult for us to handle. There are even a lot of people who take training courses outside, where they work, and we tell them 'you have to manage by yourself to get to your workplace' because we can't provide the journeys"*<sup>744</sup>.

741 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

742 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

743 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

744 *Ibid.*

Moreover, trips to CGRS audiences and doctors' appointments should be carefully planned and take much time. The social worker continued:

*"Even for all the official things, organising the journeys is a sinecure, at the end there are three buses a day, during the holidays it's even worse, so we always try to manage with the van or public transports. And for me it can be quite heavy for an appointment at the office where they have to arrive in Brussels at 8 am, we need to leave from here at 4.30 am, so when it comes to getting the children ready, it's very complicated"*<sup>745</sup>.

This is one of the reasons why the centre has hired a psychologist full time so that the residents' can have their therapy sessions onsite. Fabien Borowiec who works in Sugny and, more specifically, for the *Observation and Orientation Centre for unaccompanied children (OOC)*<sup>746</sup> mentioned that sometimes young people who are not asylum seekers decide to leave the centre immediately upon their arrival:

*"That's often the reason why some children [who are not asylum seekers] leave the centre, because they get there and they say: 'Where I am, I'm in the middle of the woods, there's nothing at all'... often, they see that and they leave straight away... It's even happened that some arrived by taxi, they got off and say 'no, no, I don't want to stay there, I want to leave right away' [...]. It's already happened, it's happened once or twice... it doesn't happen all the time, but it's already happened"*<sup>747</sup>.

In addition, there are areas of the country that are more welcoming towards refugees and asylum seekers where the presence of a reception centre is not seen as a threat. Thus, the centre receives lots of donations and many volunteers want to help out. On the contrary, some areas are less welcoming, especially those far from urban centres. A social worker of the Fédasil centre of Sugny said:

*"And even I think that the difficulty also lies in the local mentality [...] which is sometimes rather closed [...] the centre is well integrated, it's been here for years, but [...] in general [there are] rather closed person, that's it, and so it can be difficult for them [the asylum seekers] here compared to big cities like Brussels [where] there are all kinds of people, so it's much easier for them to integrate there than in places like here. That's it. I mean here, if there are... it's a bit the same prejudices, of course, but if on the side of the road you find beer cans lying around, or rubbish, it must be the refugees from the centre, well, there are quite a few prejudices. If there have been robberies and we have seen a swarthy guy, 'he must be a refugee', it's not necessarily the case. I think it would go much more unnoticed in a more urban environment, in fact. Less pointed, less labelled in any case"*<sup>748</sup>.

Moreover, opportunities for asylum seekers vary according to the region in which the centre is located. For example, the Flemish government gives scholarship to minors under certain conditions and residents living in centres located in Flanders also have access to these scholarships<sup>749</sup>.

745 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

746 Article 40, Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners, *Belgian Official Journal*, 7 May 2007, establishes that unaccompanied minors are accommodated in special Observation and Orientation centre where they do a first medical, psychological and social examination of the minor (observation) to refer them afterwards to a suitable reception centre (orientation).

747 F. Borowiec, "referee" for unaccompanied minors, Sugny Fédasil reception centre, Sugny, 25.09.2020.

748 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

749 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020 and Interview n° 46, 24.09.2020.



Secondly, in addition to the centre's location, the residents' lack of autonomy is impacted by the centre's rules and regulations, of which there are many to ensure that life inside the centre runs as smoothly as possible<sup>750</sup>. Fabien Borowiec mentioned that there are residents who sometimes complain because the centre's rules make them feel like they are in "prison". In the same vein, Farid Khali provocatively affirmed that the reception centres could be considered a *total institution*, and this would be necessary because the centres accommodate all kinds of people. As Farid Khali put it:

*"Here I welcome the angel, the devil, it's true, I welcome the cop, the judge, the terrorist, the serial killer, the rapist, the coward, I welcome the mentally weak, I welcome everything, I don't sort it out. And that's like in a prison environment, if I may say so it has nothing to do with it, but we welcome very different types of people here"*<sup>751</sup>.

The lack of autonomy stems also from the fact that the centre's rules and the procedures are likely to disempower its residents. Dorian Louys, Deputy Director of the centre Fédasil of Sugny, stressed that residents in the centre are rendered completely dependent on the staff ranging from very basic issues, such as eating and doing laundry, to more important ones, such as attending a language course or vocational training. He used a very strong image to define this phenomenon: "institutional violence". The residents have to follow a "procedure" for every daily errand, and they need an appointment to get their needs met. For example, except for emergencies, residents generally need an appointment to see the nurse or the doctor in the centre; they cannot go directly to their offices<sup>752</sup>. One of the interviewees shared with us the simple example of doing the laundry. She stressed that the residents cannot do their laundry when they want; instead they have to register at reception, see if any machines are available and, if not, wait for one to be free<sup>753</sup>. Even though this kind of organization is necessary for a centre where many residents have to be supervised, it can be burdensome for residents in the long run. This is even truer if one considers that the centre is the "home" for the asylum seekers and they can stay there for several years. In other words, since the residents do not entirely plan and manage their lives, they feel like they cannot control their lives<sup>754</sup>. Julian Knittel shared a simple example to stress that residents in the centre do not have much decision-making power:

*"You don't decide what you eat, it's ok if you do it for 4-5-6 months but for 2 years! Every morning you have the same white bread, with the same chocolate and the same cereals.... Well, people go crazy..."*<sup>755</sup>.

In the same vein, Sébastien Quoidbach underlined that fundamental freedoms are undermined in the centre. In his words:

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750 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

751 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

752 Interview n° 58, 12.10.2020.

753 *Ibid.*

754 F. Borowiec, "referee" for unaccompanied minors, Sugny Fédasil reception centre, Sugny, 25.09.2020.

755 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

*“All the responsibilities they [the asylum seekers] had, all that has been swept away because we are putting them in the hands of the Belgian authorities, of collaborators who will tell you when you eat, when you do this...you no longer have the freedom you used to have. [...] The freedom that you have, your fundamental freedom, is really restricted. You no longer do what you want to do and when you want to do it”<sup>756</sup>.*

On this point Julian Knittel affirmed that the centre can be “infantilizing” for the residents<sup>757</sup>. An example is the system of cards (red and green) given to residents to determine whether rooms were clean or not<sup>758</sup>. It is difficult for social workers to find the balance between the autonomy of the residents and their potential infantilisation. It should be underlined that this difficulty lies also in the fact that social workers actually work in a place that asylum seekers call home.<sup>759</sup>.

As previously mentioned, the asylum seekers are not able to decide what to eat and when to eat. In the reception centres, there is usually no private or common kitchen to share for the residents. Among the centres visited, the Fédasil reception centre of Rixensart was an exception. There, at the time of the visit, private kitchen were being completed but were not yet in use. In addition, the food was served in the cafeteria at a specific time, when the residents could be outside of the centre for work and which, in general, may not be a traditional meal time in the residents’ country of origin. The residents are allowed to cook only on very special occasions that are connected to specific activities of the centre<sup>760</sup>. Even though this may appear as a small detail, fieldwork showed that everything connected to food can acquire considerable importance. Hippolyte Kisonde, Deputy Director of the Fédasil centre of Rixensart, affirmed that having the possibility to cook according to one’s habits and traditions could reduce what he defined the “food stress” (*le stress alimentaire*)<sup>761</sup>.

First of all, cooking and shopping for food in a foreign country are basic skills with which residents can acquire self-confidence. As underlined by Julian Knittel, Deputy Director of the centre Red Cross of Jette, preparing food allows residents to engage in a wide variety of tasks such as getting groceries, talking with people in a foreign language (e.g. in order to pay in the shop), finding shops in a new area, comparing products and getting value for the money and so on<sup>762</sup>. These are all essential for living in a foreign country. Secondly, deciding meal times is essential to a person’s daily routine and if they are not in the cafeteria at the appointed time, it might be more difficult for the residents to get their meals. Thirdly, food has a cultural value. As affirmed by Carine Vanmissen, social worker at the Centre Red Cross of Rocourt:

*“The way people cook is very important, because people can rely on their traditions, their culture by eating what they want to eat”<sup>763</sup>.*

The meals served in the refectory are Western-style and the residents are not used to them. For those who have children, food can be of great importance because it is an essential element in the growth of the child. Els Van Santvliet, nurse at the Fédasil centre of Broechem, told us on this point:

756 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

757 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

758 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

759 H. Kisonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020 and Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

760 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

761 H. Kisonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

762 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

763 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

*"Some people with children say 'it's not good food for my child, I want good food for my child' but it's not possible and that's giving a lot of stress"<sup>764</sup>.*

For all these reasons, residents cook in their rooms, even though it is strictly forbidden.

Another recurring example of lack of autonomy is with regard to parents' relationship with their children<sup>765</sup>. Parents can feel as they would lose their authority over their children because they themselves are dependant and subjected to staff authority<sup>766</sup>. Dorian Louys stressed that when children are reprimanded by a member of the staff it reflects negatively on the parents, representing by itself a lack of autonomy<sup>767</sup>.

Interestingly, all the social workers in the centre emphasized their efforts to change this situation and to make the residents more autonomous. This might appear contradictory because reception centres are organised in a way that can make the residents dependent: they have very little leeway to decide how to run their lives. Therefore, the staff in the centre does its best to empower residents. The first step is to help residents develop the ability to express and communicate their needs<sup>768</sup>. Secondly, residents who have mastered one of the official Belgian languages (French or Dutch) or English are encouraged to look for jobs and trainings, parents are encouraged to take care of their children (e.g. keep in contact with school) or, residents are simply encouraged to make appointments with doctors, or to go and visit a flat<sup>769</sup> etc... by themselves. As underlined by Carine Vanmissen, self-empowerment plays an important role when it comes to building residents' self-esteem<sup>770</sup>.

On this matter, it is worth mentioning that the centres have established so-called individual accompaniment. According to Julian Knittel, this can act as a springboard for a higher level of autonomy for the residents<sup>771</sup>. Individual accompaniment means that each resident or family unit works with a specific case worker who becomes their point of contact. Even though the case workers are in charge of many residents, they try to support them to the best of their abilities when it comes to administrative and non-administrative procedures. Moreover, they promote their empowerment and autonomy and, as much as possible, become their touchstones with regard to their emotional and affective well-being<sup>772</sup>. The case workers' tasks can range from ensuring that the life of the residents goes on as smoothly as possible to making sure that the residents attend their appointments (e.g. with social services lawyers and doctors). From time to time residents should have a meeting with their case worker but, in practice, as confirmed in the interviewees<sup>773</sup>, this is really something that is done on a daily basis through informal meetings and this system appears to be working well.

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764 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

765 On this point, see: LIETART I. et al. "Families on Hold : How the Context of an Asylum Centre Affects Parenting Experiences," *Child and family social work*, vol. 25, no. Supplement 1, 2020, pages. 1–8.

766 I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

767 D. Louys, Deputy Director of Sugny Fédasil reception centre, Sugny, 25.09.2020.

768 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

769 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

770 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

771 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

772 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

773 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020 and I. Ntamuhanga, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

Moreover, the centres' staff do their best to organise activities to keep the residents busy as much as possible and encourage their discovery of the country through short trips in Belgium. There are as language courses and trainings<sup>774</sup>, but also sporting activities and general entertainment. Residents can suggest activities and, sometimes, there are special courses or spontaneous events that are set up thanks to the dedicated social workers. For example, Els van Santvliet mentioned that she offered a course on biodanza initially only to the women and children of the centre but, later on, also to the men<sup>775</sup>. Likewise, Carla Pannemans shared with us all the activities that the centre organises, such as movie screenings and informative or leisure gatherings for special occasion (e.g. International Women's Day, World AIDS Day)<sup>776</sup>. However, it should be mentioned that the participation in the activities organized at the centres is voluntary, and the residents are not always eager to join. As affirmed by Sébastien Quoidbach: *"there are people who are going to remain passive despite their efforts"*<sup>777</sup>. Els van Santvliet echoed: *"they constantly think of how to survive and how to save their lives"*<sup>778</sup>. This is even truer if the residents have already been in the centre for a considerable amount of time and have already participated in the activities (which tend to be repeated). In addition, if the residents find a job, they are likely to quit language courses or training programmes because their ultimate aim is to work and, if necessary, send money back home<sup>779</sup>.

#### 4.2.2.4. Nights in the centre: "a different world"<sup>780</sup>

Even though the centres are always kept under surveillance, it is not always perceived by the residents as a secure place. Residents can be harassed, raped and subjected to violence while in the centre<sup>781</sup>. A Judge from the CALL shared the story of a little girl who arrived with her family in Belgium and who had been harassed while in the reception centre<sup>782</sup>. Prostitution is likely to occur in the centres for both sexes<sup>783</sup>. This is especially the case for bigger centres. However, in general, security issues exist in all the centres, in particular at night because there are fewer workers. For example, for a centre of more than 300 residents there are only up to three employees. Therefore, surveillance is significantly reduced. Moreover, the staff covering night shifts is different from the one during the day. In many interviews, the workers mentioned that at night, the centre transforms and residents change their behaviour. According to a social assistant, the centre at night is a catastrophe<sup>784</sup>. Dealing and illegal trading of all kinds and prohibited behaviours are likely to happen overnight. Lindsay Billet, a social worker at the Red Cross centre of Ans said:

*"Well, what I can tell you is what my colleagues tell me, that some people drink, some people go to sleep at 10pm and others at 5am, so sleep times are not respected and that leads to frustration, plus alcohol and drugs, because yes, some people take drugs and therefore are no longer in control of their behaviour and let their frustration come out, and that leads to fights... even with regard to authority"*<sup>785</sup>.

774 Please, on this point see also the section entitled "Education and vulnerability".

775 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

776 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

777 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

778 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

779 Interview n° 46, 24.09.2020.

780 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

781 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

782 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

783 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

784 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

785 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

An interviewee shared the story of a SIM cards trading overnight in the centre. Due to the recently adopted anti-terrorist measures<sup>786</sup> asylum seekers cannot buy Belgian SIM cards because they do not have the necessary identity documents and the orange card (the temporary residence permit card for asylum seekers that allow them to work) is not useful for that purpose. Thus, in this centre there was trade in foreign SIM cards, usually, overnight.

However, a social worker at the centre Fédasil of Sugny underlined how the residents are likely to open up to employees during the night. In her words:

*“And I think this is one of the times of the day when the worker can have much more informal contact with the resident [...] a resident who doesn’t sleep, will come and talk with social workers, these are the kind of things you don’t see much during the day”<sup>787</sup>*

#### 4.2.3. Dealing with vulnerabilities in the centre and necessary improvements for the future

Dealing with the vulnerabilities of the residents is something on the daily agendas of the Directors, Deputy Directors and social workers in all the centres we visited. However, it should be underlined that there is no training on the overall management of such vulnerabilities; instead, training is available only on specific topics (e.g. gender, minors, radicalization) that are usually connected to vulnerabilities. Likewise, there is no point of contact for vulnerability; rather the most complicated cases are discussed in teams’ briefings and meetings or with the migrant’s case worker. As mentioned in the section on health<sup>788</sup>, in all the centres, the employees with the main responsibilities for dealing with vulnerabilities are the ones working at the medical office<sup>789</sup>. There are the nurses at the forefront and, if the case is more serious, the doctors. Both nurses and doctors could work full time in the centre or simply have office hours certain days of the week. It depends on the size of the centre and, in some cases, on the centre’s location, as it is the case for the Centre Fédasil of Sugny. Moreover, both the *bureau médical* as well as the social workers in the centre turn to specialists outside the centre especially those specialized with “vulnerabilities”, from psychologists and psychiatrists to associations and non-profit organizations that deal with more specific issues such as GAMS (*Groupe pour l’Abolition des Mutilations Sexuelles – Group Against sexual mutilations*) and *Rainbow House* (homosexuality).

Life in the centre is not a comfortable one and it can make the residents even more vulnerable. Lack of autonomy, security and privacy, forced cohabitation, the feeling of losing control over their life are among the main reasons that make the residents vulnerable.

However, it should be underlined that during our fieldwork, many positive aspects emerged. First and foremost, the residents’ resilience and the capacity to adapt was often remarked upon. Sébastien Quidbach said:

<sup>786</sup> See, for instance, chapter 2 of the Royal Decree of 27 November 2016 on the identification of the user of public mobile electronic communications services provided on the basis of a prepaid card, *Belgian Official Journal*, 7 December 2016.

<sup>787</sup> Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

<sup>788</sup> See the section entitled “The medical office (*bureau médical*): the reference point of vulnerabilities in the centre”.

<sup>789</sup> O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

*“We also realise that many [residents] adapt [themselves]. Adaptation is something that fascinates me. Human beings have the capacity to adapt to many things and therefore adapt quickly. I have two ladies for example, who come from Eastern Europe and who [...] They are so well adapted in the centre, they have their habits, their tricks...”<sup>790</sup>.*

Moreover, social workers in the centre tried to envisage problems and anticipate, as much as possible, solutions. For example, it was reported that in one centre, during Ramadan, a specific place was reserved for Muslims with the objective of respecting a religious practice while, at the same time, avoiding potential acts of intolerance by other residents. In addition, social workers made considerable efforts to improve residents’ autonomy even though ultimately the centre and its rules and procedures are likely to reinforce residents’ dependency. The social workers pushed the residents to take control of their lives and empower themselves by taking responsibility for issues associated with their daily routine.

Some other positive aspects can be attributed to the size and location of the centre, as well as specific efforts and initiatives undertaken by the social workers. Finally, some came down to pure luck. As noted by Carmen Salgado Gaeta, in general the situation of the centre is positive, and this is very surprising since she works at an all-male centre for UMs:

*“At the same time here, you would be surprised in a centre like ours, strong young boys of 16-17 years old almost 18, they are about sixty and they almost never fight. Almost never. Really, it goes well in general, so in the end there are some positive things in community life.”<sup>791</sup>.*

During the fieldwork, one of the final question for the interview was whether the interviewees had any suggestions for improvement that they thought should be included in the asylum procedure as a whole. During the interviews with the social workers, the majority of them mentioned actions and measures to improve the quality of life in the centre as well as improve the quality of time. The most frequent requests included a greater number of rooms housing a smaller number of residents (single or double rooms, in particular)<sup>792</sup>, common kitchens for the residents to prepare their meals<sup>793</sup>, food of higher quality, more facilities such as bathrooms and showers<sup>794</sup>, and Wi-Fi throughout the centre’s premises<sup>795</sup>. Improvements in the skills and training of centre staff were also mentioned. These skills are essential for an effective understanding of vulnerabilities.

#### 4.2.4. Addressing vulnerabilities in a reception centre: training challenges

The difficulty for staff sometimes stems from the fact that they are not trained to deal with certain situations. The need to “*professionalise*” the role of the social worker in identifying and addressing vulnerabilities is therefore echoed in the comments of the interviewees.

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790 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

791 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

792 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

793 *Ibid.*

794 F. Borowiec, “referee” for unaccompanied minors, Sugny Fédasil reception centre, Sugny, 25.09.2020.

795 Interview n° 46, 24.09.2020.



Lindsay Billet, a social worker at the Ans Red Cross centre, is clear on this point: *“What I am about to say may be a bit harsh, but I think we really need to professionalise certain positions [...]”*<sup>796</sup>. She emphasises the fact that not all social workers in the field have the same training or professional background and that disparities can therefore arise. Carine Vansimsen, in that perspective, emphasises that the individual support programme is just aimed at bringing all the social workers up to standard and training them so that they have a common *“knowledge base”*:

*“[...] There is also a whole category of professionals to be trained because... here the multi-skilled workers do not all necessarily have a “social-science background”, linked to social relations and new training has been developed for workers”*<sup>797</sup>.

Sébastien Quoidbach, individual support coordinator at the Rocourt Red Cross centre speaks of the need for *“continuous training”* in the care of vulnerabilities by social workers, including in the individual support programme:

*“It’s true that this is something that I struggle with in my coordinating role, to provide continuous training in relation to the countries of origin from which the residents come. Continuous training could be useful to keep up to date on various aspects such as how to conduct an interview, how to ‘receive’ difficult cases [...]. This is really professionalizing the individual accompaniment a little bit. This is something I would like to work on and that I will work hard on”*<sup>798</sup>.

More broadly, Owen Miossec explains that it is a question of guaranteeing a coherent professionalisation of all the social workers in the reception centres in order to create a common knowledge and real expertise in their work:

*“I think that there would be major adaptations to be made. There is a need [...] to train as many professionals as possible who are in contact with people during their procedure [...] People in the centres must feel safe in order not to worsen situations that are already difficult and make the workers able to propose the best answers in relation to the traumas and the vulnerabilities of these people [...] Training must be strengthened. We should learn from our experience in caring for people to make it more precise and more effective.”*<sup>799</sup>.

Daniel Legreve explains that it is precisely this continuous training or learning by experience in the field that is lacking today. He explains that training on *“emotional management”* is mandatory for all Red Cross staff<sup>800</sup>. According to Legreve, however, this training is not sufficient, as it remains very theoretical and does not always prepare for the reality in the field. On the subject of this training, he emphasises:

796 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

797 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

798 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

799 O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

800 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

*“My colleagues will do it because they are new Red Cross employees and there are compulsory training courses for new Red Cross employees. I think that this way of reacting is learned through the emotional management training [...]. We are put in situations where we may be shown certain tricks, but we manage a situation, we don’t manage the resident at all [...] So I really make the difference between living a situation and managing it and living something with a resident on a daily basis, it’s not the same thing. It’s not the same thing at all. We’re not at all prepared for it”<sup>801</sup>.*

In the same vein, Dorian Louis, Deputy Director of the Sugny Centre, expresses his perplexity about the training courses on vulnerability which do not have any concrete implications on the ground. Some social workers felt that the training given remains *“a little short”* or that it is not systematic. Other social workers nevertheless mention that Fédasil remains committed to providing regular training to workers, even on demand. Other social workers sometimes stressed the need to seek *“other sources of training”*, provided by other agencies within the centres, to fill certain gaps and complete their knowledge.

In connection with the above, Thierry Pire, Director of the Fédasil centre in Rixensart, also points out that certain types of training are lacking for social workers to address vulnerabilities, in particular, training focused on understanding certain *“cultural codes”* in a less ethnocentric way. He explains:

*“I think there is a lack of training on these codes for the staff working in the centres. The approach, how to address this or that person according to their customs [...] Staff need to know that when you talk to someone from this or that place, you can expect this or that kind of reaction [...], that you know that someone from this culture might receive this remark or that comment in a very different way, it would be interesting to increase this knowledge for the staff”<sup>802</sup>.*

Beyond the lack of training or knowledge, some social workers feel that they simply do not have the time to put their expertise to good use. The *“emergency”* climate in which social workers work does not allow them to exploit the resources of training and professional background to recognize vulnerabilities. Centre workers are caught up in the day-to-day management of life in the centre, which sometimes leaves little room for the application of practices learned in training. In theory, although this training can be of added value, in the field it is much less so. Lindsay Billet is clear on this point:

*“I notice for example that my training as an educator, in fact, I see that there is a lot to work on, there are a lot of things that can be done, but I don’t have the means, because I don’t have the time, because I have all my basic work to do, so I have to take care of the restaurant, take care of the community cleaning service, etc. There are always little things to do here and there [...] And really, in terms of individual support, I don’t have the time. I really don’t have enough time for that [...] At the same time, the basic work in the field allows me to observe many things, but once I have observed them, I can’t do anything with those things it’s totally impossible at the moment”<sup>803</sup>.*

#### 4.2.5. The Local Reception Initiative

During the fieldwork, a social worker from the Local Reception Initiative was interviewed. The LRIs are reception facilities that are organized in apartments and are operated by the Public Centre for Social

801 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

802 T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

803 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

Welfare (hereinafter, PCSW) or NGOs. The LRI included in our fieldwork accommodated individuals who have already received a positive status or those who are still awaiting official status, and have specific needs (e.g. medical reasons, school reasons). More generally, asylum seekers are placed in the LRI if there is good chance that they will be recognised as refugees in Belgium.

The differences between life in the collective reception centre and in the LRIs are self-evident.

First of all, the LRIs are located in private apartments (for one person or family or in cohabitation) that allow the resident to have more intimacy and privacy. Even though the condition of the apartment is not always the best one, they have the possibility to have a place of their own. Interestingly, after the COVID-19 outbreak, the apartments were provided with internet connections. Residents feel safer and more reassured in private apartments, even though they continue to experience residual trauma associated with their country of origin or to their transit to Europe. As affirmed by the social worker:

*"The person feels safer in a smaller structure [...] but I have a family who, every time we have to go to their home, we have to warn them. That way, they are sure that it is the PCSW, they know the people, etc... Because they have problems with religion, with forbidden marriages, with the family that could persecute them, that could find them, so they have a bit of a fear about that. No, they don't necessarily feel safe in LRI apparently, because otherwise they would feel more comfortable and they would be trustful, so I think there's still that little fear. I have a young person here who arrived not long ago, who has a psychological follow-up, and he told me once his psychologist told him 'don't worry, you're safe now in the accommodation, nobody can find you to kill you', so... I don't know if with their journey and their life path, they can feel safe even in a small structure there. I think it takes a long time to feel safe"<sup>804</sup>.*

Problems and tensions can arise also in the LRIs, especially in the case of cohabitation where there could be issues connected to communal life or, less often, due to cultural clashes<sup>805</sup>. As already mentioned, people sometimes feel ashamed to live in the centre and to ask for help; thus, they see the support of the PCSW as a form of charity<sup>806</sup>. The social worker told us:

*"They are ashamed to ask, because for them the PCSW is charity. And they are ashamed to ask to come to me and say, 'Mrs X, I need this'. Yes, OK, I have to make the request to the committee, it's either yes or no...it's a delicate position...We put ourselves in a bit of a position a bit superior to them, it's us who decide whether or not..."<sup>807</sup>*

Secondly, being in private apartments gives residents the opportunity to organize their lives and be more autonomous when it comes to basic daily life – such as cooking meals – that are generally absent in the collective reception centre. At the same time, the work to improve the level of autonomy is always present. Indeed, the residents are assisted on a daily basis in Belgium by PCSW social workers who periodically visit their housing. However, as underlined by the interviewee, it is important to make clear from the outset that the social workers will help individuals administrative and non-administrative steps and procedures, but they will not do things in their place:

<sup>804</sup> Interview n° 60, social assistant LRI, 21.10.2020.

<sup>805</sup> *Ibid.*

<sup>806</sup> *Ibid.*

<sup>807</sup> *Ibid.*

*“So here we inform them that they have the right to a social follow-up, so I explain to them, I am here to accompany them in their steps, I say accompany and not to do instead”<sup>808</sup>.*

As in the collective reception centres, making the residents more autonomous is something perceived as very important for the social workers, especially if they are granted refugee status in Belgium. It was emphasized that:

*“They know they can call on me whenever they want, I am always there. It’s not because I push them a little to do the steps themselves that I wash my hands of it and... No, I’m always there, I accompany them, but I let them do it a little more themselves, because I think that’s it, it will help them later on”<sup>809</sup>.*

However, certain rules need to be respected in the LRI apartments. Moreover, the social workers carry out routine checks during weekly visits. The rules range from a general invitation to cooperate with the social worker for the smooth processing of the persons’ different dossiers’ (e.g. asylum procedures, meetings with lawyers, doctors’ appointments) to the number of days per month that they are allowed to live outside the facilities. In addition, some behaviours are specifically prohibited (e.g. smoking, taking drugs, possessing weapons).

Thirdly, the residents are encouraged to contact private and State-run associations or non-profit organizations for all activities, such as language courses, job trainings or leisure activities. However, it is up to the individual to request to participate in those activities that interest them. For the time being, and according to the PCSW interviewees, no extra-activities are organized internally by the LRI.

#### 4.2.6. The impact of COVID-19 on the reception centres

Social workers in reception facilities have also been impacted by the health crisis. An Article dated 29 April 2020, published in a Belgian newspaper with the headline “Asylum seekers and social workers are the forgotten heroes of this crisis”, highlighted the difficulties encountered by the centres in confining “300 people of different origin, language, culture and history in the same place”<sup>810</sup>.

Aware of the challenges that this health crisis may pose, we asked social workers to gather their experience and views on this unprecedented period. In their comments, COVID-19 pandemic, particularly during its most severe period (i.e. the confinement periods), has accentuated and created new vulnerabilities for asylum seekers caused by the compliance with health instructions in the centre and the resulting cessation of all activities as well as the obligation of locking down the centres.

##### 4.2.6.1. Compliance with health rules in times of pandemic: an impossibility for the centres?

The first impact of the COVID-19 in the centres was seen in their internal reorganisation in order to comply with health regulations. This has been not always an easy task. The nurse of the Fédasil centre of Broechem, Els Van Santvliet, underlined the difficulties of complying to the (fast) changes in regulations:

808 Interview n° 60, social assistant LRI, 21.10.2020.

809 *Ibid.*

810 LA LIBRE (EXTERNAL CONTRIBUTION), “Les demandeurs d’asile et les travailleurs sociaux sont les héros oubliés de cette crise”, *La Libre*, available at: <https://www.lalibre.be/debats/opinions/les-demandeurs-d-asile-et-les-travailleurs-sociaux-sont-les-heros-oublies-de-cette-crise-5ea947da9978e21833018c1b> [accessed 23 June 2021].

*"First they give me every two or three weeks 250 pages of instructions. [...] Of course, it is not every two or three weeks a whole new thing [but] things are changing and they are writing the text new so... but I have to read it, I do it at home I cannot do it here and I make something for my colleagues, something practical from it. I cannot say [to them] read every two weeks 250 pages"<sup>811</sup>.*

Moreover, from one day to the next, the social workers had to set up systems to comply with the rules of the National Safety Council within the centres. Overall, the centres complied very quickly introducing social distancing rules and proper hygiene practices. Florence Opdebeel, relief nurse working for the Red Cross stressed:

*"I was really amazed by everything that happened, both for the staff and the residents. So, I went from one centre to another, because there were regular needs, so I could really see every day what was going on in which centre. And at the management level the procedures were put in place, I would arrive in a centre and the next day the posters were already put up everywhere, everything was set up, the procedures were put in place, the residents had special contracts to help support and set up hand washing, door cleaning, and everyone, everyone was there, everyone was doing it"<sup>812</sup>.*

However, several social workers spoke of the difficulties and inconsistencies of implementing these types of rules within a structure that is by definition community based. For example, Farid Khali stated that:

*"I've been told to wear a mask in the centre, to keep social distancing, but how are you going to tell the young people to distance themselves, 1.5m? They are always together at 5-6 in their room! [...] I've done everything downstairs, distances to the refectory and all that... But as soon as they go upstairs, they're together, all the time, they're together all the time! And me downstairs I say 'no, 1.5m to eat!' It's delicate, there are contradictions like that"<sup>813</sup>.*

Similarly Maria Tassoudis underlined a "series of terrible inconsistencies" in the daily management of the centre:

*"We had to tell them 'You can't be with four people in the little kitchen where you are cooking'. They would reply: 'But madam, we are in the same room, we sleep in the same room. How can you tell us that?'"<sup>814</sup>.*

Olivier Peeters, Director of the CAMPO Red Cross centre of Ans, also raised the following question:

*"[...] How can you explain to someone that in the line for the meal they have to stay 1 metre away from the other person when they are 20 in a 35 m<sup>2</sup> room? It doesn't make sense"<sup>815</sup>.*

Thierry Pire further explained that the difficulties were reinforced by the lack of space in the centres. For the Director of the centre of Rixensart, it is therefore not only a health crisis but also, more broadly, a crisis in the reception of asylum seekers, which does not allow for the optimal implementation of health measures:

811 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

812 F. Opdebeel, relief nurse, Brussels, 23.09.2020.

813 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

814 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

815 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

*“When you are Covid-positive and you are in a room of 4 or 6 people, you cannot isolate yourself, the beds are not even 1.5 metres apart in the rooms. For a moment, Fédasil told us, because in addition we were lacking space so we couldn’t manage to isolate ourselves, so we received an instruction which said that if we couldn’t guarantee 1m50 between the beds, we had to tell people to sleep in the lower bed with the head in one direction, over there, and in the upper bed with the head in the other direction. So, there you have it, with Fédasil the problem is that there is a double crisis: lack of space and Covid”<sup>816</sup>.*

Transfers have been organised for individuals who are at high risk and unable to fully respect social distancing measures, given the lack of space in some centres. The Director specifies:

*“We have transferred a maximum number of people to individual housing. People who were at risk, such as those at risk of heart disease or diabetes [...] so we try to send them to individual housing to avoid putting them at risk of Covid”<sup>817</sup>.*

The difficulty of respecting social distancing rules also arose on a daily basis with some residents who suddenly seemed “colder” and more “distant”. A social worker noted this during individual follow-up sessions with residents. They explained that it was difficult to have an intimate and informal conversation with a resident when constantly reminding them to keep the necessary distance and to wear their mask correctly. Innocent Ntamuhanga mentions the same difficulty in the supervision of young UMs in the centres:

*“When the confinement started, I stayed at home for two months. When I arrived here people were jumping on me! So, well, social distancing... They used to take me in their arms because emotion comes before anything else. We can’t tell young people not to hug us, or to touch us...”<sup>818</sup>.*

As stated by Sébastien Quoidbach, the centre’s social workers were the most dangerous during the strict lockdown because they were the one that were in and out of the centre and were at greater risk of spreading the virus<sup>819</sup>.

One positive but unintended consequences of the first wave of the COVID-19 was that centres became less crowded, given that Fédasil allowed the residents to spend the lockdown with their family or friends who were in Belgium. In the words of a social worker:

*“Then afterwards, well, Fédasil tried to take measures, because there were some residents that could be confined elsewhere, with friends or family, and they were encouraged to do so because it’s easier to be confined to friends or family than in a centre. So here we found ourselves with very few people... with 45 people in all, so it was great because they were confined but they were only two per room, so that was really great for them I think”<sup>820</sup>.*

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816 T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

817 *Ibid.*

818 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

819 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

820 *Ibid.*



#### 4.2.6.2. Life in the centre during COVID-19 crisis: lack of activity, isolation and vulnerability

In order to ensure that safety standards were enforced during the lockdown, all of the centre's activities were cancelled practically overnight, which had a negative impact on residents' quality of life as well as their mood.

On this subject Julian Knittel mentioned:

*"We were talking about precariousness, about being vulnerable, Covid is a good example, because many people here had to follow training courses for example, in French, things like that, with Covid, it's all over, it's impossible! So these people for several months did nothing, they couldn't learn French, they just 'hung around' in the centre, pretty much!"<sup>821</sup>*

The Deputy Director also specified the difficulty of not doing anything coupled with the rudimentary comfort of the reception in the centre:

*"We have television at home, here there is no television in the rooms! We already know how difficult it was for the Belgian families to live in confinement with the children and all that, but we have showers, electricity, TV, books, comics... There is less of all that in the centres for asylum seekers, so there it still had a rather strong impact"<sup>822</sup>.*

Similarly, Thierry Pire explained:

*"And so, the problem is really more for the residents. All the activities have stopped, the children don't go to school, the parents don't go to school, they cannot use public transport [...] The parents don't know how to keep the children in their rooms, and here, they don't necessarily have a TV to watch... There are volunteers who come here every day and who do workshops and activities with the children, who give them a bit of guidance during the day to help the parents a bit. But all that was over"<sup>823</sup>.*

A social worker from the Uccle centre in the same situation pointed out:

*"It's like if you light a fire and then you pour a lot of water on it [...] There are all the frustrations of the fact that everything was stopped... in terms of procedure, in terms of learning the language, in terms of employment contracts"<sup>824</sup>.*

A social worker also pointed out the complexity of being able to offer activities to the centre's residents to keep them occupied during the COVID-19 period, when social workers are busy dealing with problems related to the health situation. In the same vein, Daniel Legreve, underlined the difficulty of carrying out the centre's activities when they had to respect a considerable number of health measures:

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821 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

822 *Ibid.*

823 T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

824 Interview n° 23, social worker, Uccle Red Cross reception centre, Uccle, 31.08.2020.

*"We come to work, well that's our role, but on top of that we have to absorb their pain, but I, in my job [...] I was overwhelmed by these Covid measures because I'm responsible for logistics, I was overwhelmed..."<sup>825</sup>.*

Isabelle Plumet stated that the focus of her job at the Petit-Château centre had shifted to the "hotel business" (managing the linens, the queues to serve food, the meal schedules, etc...). She specified that this "hotel management" of the centre has had an impact on the missions of the social workers: it has left less room for individual interviews and close monitoring of asylum seekers. The Director explained that it was really a question of "[...] refocusing on how we are going to manage a community, a large community, while respecting the rules of social distancing"<sup>826</sup>.

Benoît Fockedej highlighted that the lack of activity caused the residents to lose their daily rhythms, as they were idle by default:

*"They are 4 per room, they sometimes have access to Wi-Fi, which doesn't always work very well, so the possibilities of the things they have to do here are quite limited. I think it hasn't been easy for them because they found themselves in a kind of confinement where they went around in circles a lot in fact, and it's perhaps also a question of rhythm that got lost, too"<sup>827</sup>.*

The lack of rhythm linked to the lockdown was also found in the case of the UMs. As Carmen Salgado Gaeta reported, school teachers' presence was super important. They were coming to the centres to give and take the homework; thus, the students were motivated on keeping studying<sup>828</sup>.

Owen Miossec pointed this out in his interview. He spoke about the UMs they supervise:

*"[...] That is to say that they were in slow motion, they were completely out of step with their sleep rhythms, they spent more than ten hours a day on their telephones playing games, [...] they tried to kill time by all means [...] I think that for them it was quite violent"<sup>829</sup>.*

Sébastien Quoidbach also underlined the hyper-vulnerability of the residents, which resulted from their loss of a daily schedule:

*"In a reception centre, to make it as easy as possible, and to [...] feel safe, what is good is also the ritual side. There are a lot of people who sign up for this. They know that at 7 o'clock they go to lunch, etc... [...] at such and such a time there is this and that. They follow a very precise rhythm. Here [because of COVID-19] the rhythm has been totally swept away. And so, we have seen the vulnerable become hyper-vulnerable. Because we swept away their daily life, their rhythm, and we had to face people who developed symptoms that were previously managed [...] But this imprisonment [...], this rather special atmosphere made them lose their bearings"<sup>830</sup>.*

825 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

826 I. Plumet, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

827 B. Fockedej, "referee" for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

828 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

829 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

830 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

This lack of activity and social contact has led to a deep sense of isolation in the centre, which has increased residents' vulnerability. Hippolyte Kinsonde was very clear about this:

*"I think the most difficult thing is isolation...the people who come here are people who need contact, who need closeness, it's really something that for me has been difficult because people were isolated in their rooms, eating alone, living alone [...] It's something difficult because the activities are no longer organised, the conviviality has given way, if I can put it that way, to a kind of health distrust [...]"<sup>831</sup>.*

By the same token Carine Vansimsen stated: *"Here the public was already very isolated, and it was obviously even worse with the ban on going out, on receiving visitors"<sup>832</sup>. Daniel Legreve pointed out: *"Psychologically, frankly, it's exhausting, as much for them as for us, because their confinement they experienced it as if they were in prison"<sup>833</sup>.**

A social worker also stressed that this lack of contact linked to health restrictions can also lead to difficulties in detecting residents' vulnerabilities, that emerge among residents sometimes at inopportune time. She added:

*"They can eat in their rooms and no longer eat in restaurants, even though it is a restaurant, so we lose a sense of community and the possibility of keeping an eye on potential violence or other problems. So, we don't always have access to that, it's a loss"<sup>834</sup>.*

Isabelle Plumet and the dispatching unit also emphasised the difficulties encountered by applicants who were no longer welcomed at the Petit-Château centre. The Director mentions: *"On 17 March the doors closed.... For three weeks, so that means that a whole series of people who wanted to apply for protection found themselves left apart..."<sup>835</sup>. Cristina Valenti questioned whether the service set up to register asylum applications could continue to carry out its mission, particularly as the info point could no longer inform asylum seekers about the procedures to follow. She mentioned:*

*"They set up the online registration system, but this was criticised by civil organisations and NGOs because not everybody has access to internet! And on top of that the form was only in French and Dutch! How do you want a person who speaks Arabic to be able to fill in this document by themselves? And then the info point was closed for all that time, so for several months, they didn't have access to information, so that was quite complicated"<sup>836</sup>.*

Moreover, she mentioned that individuals who were unable to register their application were vulnerable from an administrative point of view. The inability to register for asylum and the resulting lack of residence permits, meant that such individuals were forced into illegal status, which made them vulnerable. As Cristina Valenti explained:

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831 H. Kinsonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

832 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

833 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

834 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

835 I. Plumet, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

836 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

*"They are in a limbo, they are neither asylum seekers nor a public for social services, so who will take care of them? Nobody! That's it! In addition maybe you'll fill the forms today, September 23<sup>rd</sup>, but it's possible that you will only be invited to the Immigration Office on October 24<sup>th</sup>! Or the first week of November! It's not as if you submit the form online and the next day you're invited, not at all, you have to wait!"<sup>837</sup>.*

While waiting for the official registration of the application at the Immigration Office, a "pre-acceptance" system had to be put in place, but its flaws were immediately apparent. As Cristina Valenti pointed out:

*"I don't know exactly how it works, but I know that anyway, it's not for everyone, just for the most vulnerable...but in a situation like that can you tell who is more vulnerable than another? Come on, we are here in front of Passchendaele [name of the street where arrival centre for asylum seekers is located and where their application should be registered], we have a lot of people, how can you judge? Who is more vulnerable? Come on, it's complicated!"<sup>838</sup>.*

#### 4.2.6.3. Reception and COVID-19: from open centres to closed ones

This sense of "imprisonment" of asylum seekers has been exacerbated by the implementation of coercive measures to enforce the government's health-related restrictions. This has resulted in stricter control by the centres over its activities as well as the entry and exit of residents. This control has been noted by several social workers as particularly infantile and authoritarian for asylum seekers in open centres. An interviewee explained the difficulties inherent in having to deny adults locked up in the centre the vast majority of their daily activities in the name of sanitary measures, particularly when these are essential for the well-being of residents<sup>839</sup>. This is all the more difficult given that idleness was perceived by social workers as a source of vulnerability in reception centres. Olivier Peeters mentioned the particular tension around entering/exiting the centres during the first lockdown due to COVID-19. The Director recalled that his staff had a difficult time getting residents to respect the measures planned by Fédasil:

*"For a whole period, we could no longer give out public transport tickets, people could not leave or if they left, they had to leave for a minimum of three weeks. Then they would say 'ok, I'm leaving for three weeks, give me the tickets' but they would come back after one week..."<sup>840</sup>.*

The Director went on to underline another dilemma: the restriction (or even prohibition) of freedom of movement during the first lockdown in a reception centre which technically remained an open centre. Olivier Peeters explains:

*"The Red Cross centres are all open, I'm not going to lock the door. And even during the Covid it came up: at some point what do we do? Do we close that door? [...] But people want to get out and our goal is really to be open centres"<sup>841</sup>.*

Carmen Salgado Gaeta explained that she was aware of this reality:

837 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

838 *Ibid.*

839 Interview n° 44, 24.09.2020.

840 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

841 *Ibid.*

*"From one day to the next [...] they could only go out for 15 minutes in the morning and 15 minutes in the afternoon. The door was closed. And we wrote down who was going out and when. It was like a closed centre for two or three weeks [...]"<sup>842</sup>.*

Benoît Fockedeij also emphasised the problems raised by this continuous need to control residents' movement in an open centre, which was exacerbated by the fact that residents view the centres as "home" during their asylum procedure:

*"I remember we had authorised them to go out for one hour throughout the day and not to go beyond the park and wear the mask. We had made a sheet, you go out, we set the time, we give you the mask and we set the time for you to return. You are only allowed one hour a day to go out. For one hour you won't go into town, you won't go far, so it's just to get some fresh air here in the park"<sup>843</sup>.*

Faced with these strict measures, several social workers stressed that their job became one focused on "controlling residents", which was far removed from their primary mission of assisting residents during their transition to life in Belgium:

*"We had to start acting like cops... to make a list, to say you can go out for two hours a day, maximum, we locked the door and they had to ask for the key to get out and we wrote it down...if they stayed longer, we had to tell to the Director, and they would get shouted at [...] So I said to myself 'I'm locking them up, come on...I'm doing a job as a cop, a control job, and that's really not why I was hired"<sup>844</sup>.*

Fabien Borowiec also emphasised this aspect of control during the first COVID-19 lockdown: *"It's not the best time [the Covid period], because it's really only police work. It's the police all the time"<sup>845</sup>.*

This work of permanent control has been reinforced by the fact that some residents doubted that COVID-19 actually existed. This doubt made it more difficult for social workers to get residents to comply with the health measures during lockdown. One social worker explains:

*"We could explain that it was not nothing in March when this thing happened, we could explain to them the measures, the things to do, 'we don't kiss each other anymore, we wash our hands when we get home' [some residents would reply] 'God will help us, God will help us! Yes, yes, of course, of course, but we're still going to help him to help us!'"<sup>846</sup>.*

Another social worker evoked in the same idea:

*"Social distance was terrible to explain. Also, it was difficult for them especially for young minors [...] they were saying 'Oh Corona, Corona is invented, it's for money, it doesn't exist! Go to Greece and you'll see...' You know, they find it's not so serious. I think, so social distance was so difficult for them to learn"<sup>847</sup>.*

842 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

843 Interview n° 30, 09.09.2020.

844 Interview n° 32, 09.09.2020.

845 F. Borowiec, "referee" for unaccompanied minors, Sugny Fédasil reception centre, Sugny, 25.09.2020.

846 Interview n° 32, 09.09.2020.

847 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

Maria Tassoudis emphasized: *“For some, there is no such thing as Covid as they say, for others it can’t reach them”*<sup>848</sup>.

#### 4.2.7. Life beyond the centre: the hurdles after the decision of the asylum authorities

During our fieldwork, some interviewees mentioned that the life after the centre may be difficult for individuals whose applications are refused (the “negative”), but also for those individuals who were ultimately granted refugee status (the “positive”).

If an individual’s application is refused, there is no follow-up or mentoring provided. Social workers help these residents deal with their feelings of anxiety and uncertainty related to their impending departure. In these cases, the residents often rely to their network of family and friends who can help them or, in the worst-case scenario, to black markets<sup>849</sup>.

On the other hand, being awarded refugee status results in a big life change and presents lots of new challenges: leaving the centre, finding a new place to stay, looking for a job and, more generally, dealing with daily life on their own. One of the nurses interviewed mentioned that while waiting for the decision of the Belgian authorities, the residents often ask themselves what their lives will be like once they receive their decision (either positive or a negative), which results in feelings of anxiety<sup>850</sup>. This is the moment when the work on the autonomy carried in the centre is put to the test because the applicants have to cope with everything by themselves. At moments like these, language skills are essential. This is the reason why the social workers in the centre try to get the residents to be autonomous. With reference to this, Julian Knittel said:

*“There are people for whom we worry, even the day they have a positive! Here they are going to be able to leave the centre, but we are still a little worried for them, because we can see that there are certain things on which euh... for example there are people who stay several months or even several years in a centre, well they don’t speak French! We see them leaving the centre afterwards, going to LRI where they don’t speak a word of French and we say to ourselves ‘ouch ouch, how is he going to deal with the administration, the papers, the work, it’s someone who hasn’t learnt French in two years, it’s still very worrying! You can see that the person is heading towards big difficulties at the front, towards the PCSW, towards housing, all that...you have to understand the instructions, you see, otherwise... you have to understand the steps you take with the PCSW, otherwise you won’t receive your living wage, and if you don’t receive your living wage you can’t pay your rent, in short, the stakes are high! And you can see that when you talk to people, they don’t worry any more than that. And it’s not that they have a lot of money or anything, it’s just that they are a bit blind to this kind of problem”*<sup>851</sup>.

However, some residents who seemed completely lost in the centre, are way more motivated once it is time to build their lives outside the centre. On this point Maria Tassoudis shared with us a relevant example:

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848 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

849 Interview n° 44, 24.09.2020.

850 Interview n° 58, 12.10.2020.

851 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.



*"And then there are profiles that we consider vulnerable and not able to cope and we ask ourselves questions, and finally we are surprised! I am thinking of a woman who left us very recently, she is recognised as a refugee, and while she was under psychiatric care, she finds a flat, and she settles down and she is organised, she plans, and you think, well, 'I'm discovering this lady', and we were honestly worried about her looking for accommodation, and no, she turned out to be a woman who planned, who organised herself, who asked her questions and we didn't bother about her, she'll be fine"<sup>852</sup>.*

Moreover, even though lack of privacy was often cited as a negative aspect of living in the centres, being alone on a daily basis can be stressful as well. As explained by Sébastien Quoidbach:

*"It's probably people like that who when they have to leave, [...] it's going to be much more complicated because they've adapted. These are people who are given status recognition, who can look for a flat and who are freaked out at the idea of finding themselves in a flat on their own afterwards"<sup>853</sup>.*

Indeed, when they leave the centre there is not any follow-up from the centre itself<sup>854</sup> or the LRI point of contact.<sup>855</sup>

Finding an apartment is particularly burdensome for various reasons. First of all, house hunting is the first important test of life outside the centre. Social workers push for them to ask for appointments and visit housing options on their own. However, not all the landlords are willing to rent their properties to refugees<sup>856</sup>.

The burden of finding housing concerns refugees leaving the centre, but also for those who live in the LRI. There, they can be in a very precarious and stressful situation as they have to find a proper housing in a very limited period of time. If they do not find a place in the four months that they are accommodated in the LRI, they could be allowed to stay for two extra-months, but at the end of this period, they must leave<sup>857</sup>. That is the reason why the PCSW social assistant in charge of the LRI stressed that, on the one hand, she is obliged to push them to find permanent housing but, on the other hand, she warns residents that house hunting is a long and complex process and that they need to prepare themselves to be turned down<sup>858</sup>. In her words:

*"So, I am going to explain to them that we are going to start looking for housing, I am going to register them in social housing even though I know that there are very few chances...I am also going to explain to them that, when they leave, they will be entitled to a departure bonus according to our internal rules, it is the PCSW of X that helps them for the first rent, it is a refundable aid. The PCSW where they are going to go will ask for a rental guarantee, so here are the steps to be taken. [...] Afterwards, if I see that the person is capable, I let them make an appointment at a particular PCSW, because they will have to do it later. [...] I prepare them - is someone ready for that, I don't know - but I warn them. I say, 'Listen, we're going to have to look for a lot of housing because it's going to be a lot, a lot of rejection'... 'No PCSW, no PCSW', that's to be expected. They don't expect it, I think it's a bit difficult for them*

852 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

853 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

854 Interview n° 44, 24.09.2020.

855 Interview n° 60, social assistant LRI, 21.10.2020.

856 *Ibid.*

857 *Ibid.*

858 *Ibid.*

*to receive refusals every time, it's a bit like us, we apply when we leave school for a job, and we apply to thousands of... And we receive letters at home saying refusal, refusal, refusal. It's demoralising and we give up at some point. So, I try to stand behind them and say we're not giving up, we're here, but it's complicated...complicated"<sup>859</sup>.*

Life after the centre showed that migrants in general and asylum seekers in particular can exist in a constant and continuous state of vulnerability. This is especially evident when refugee status is denied. Likewise, even applicants are granted residency in Belgium, they have to face many challenges that can put them in a vulnerable position. Finding housing is very complicated for a refugee who relies on the help of social aid. In addition, having a job acquires utmost importance after a person has left the centre. While residents may have worked while living in the centre in order to have additional cash at their disposal or to send money back home, afterwards a job is absolutely necessary. To this end, knowledge of Belgium's two main languages (French or Dutch) become essential to building a new life in a different country.

#### 4.2.7.1. Life after centre and the decision to return in the country of origin: the Voluntary return programme

In the case of a negative decision, life beyond the centre does not necessarily take place in Belgium. For various reasons, asylum seekers whose applications have been rejected can decide to go back to their country of origin, with help from the Voluntary return programme. During fieldwork, we interviewed the employees in charge of the Voluntary return programme at Fédasil. It is a programme managed by Fédasil, IOM and Caritas International that provides support for those who decide to return to their country of origin or to a country where they already have a residence permit, for example a neighbouring country or another country in the European Union. In this case, administrative assistance is provided and travel costs are covered. Fieldwork revealed that this is a programme is suitable for a wide range of individuals, including those in vulnerable situations.<sup>860</sup> The Voluntary return counsellors shared with us some examples: those who became homeless or women who came to Belgium hoping to achieve permanent refugee status via marriage status, but ends up in a complicated situation (*"a woman who comes here to marry someone. But she lives in her husband's family home and it's going really badly, there is pressure on her"*<sup>861</sup>). Another interesting example are the UMs who receive a special assistance given their young age. It is important to note that the same assistance is extended until 21 years of age. Thus, young adults can receive the same advantages as minors.

The Voluntary return programme includes financial assistance and reintegration support for those who want to start a business as well as for other possible expenses in the country of origin. For specific countries, the subsidy is granted automatically while, for others, it depends on the person's profile. In this case, vulnerability can play a major role because it is taken into account when granting additional material help. In the words of Tristan Zinck, Voluntary return programme counsellor in Liège:

<sup>859</sup> Interview n° 60, social assistant LRI, 21.10.2020.

<sup>860</sup> T. Zinck, Voluntary return counsellor, Liège, 02.09.2020.

<sup>861</sup> *Ibid.*

*"I would say it's this kind of vulnerability... And also, sometimes, the vulnerability also comes from what they have lived here, not just in terms of asylum procedures and all that, I take the example of a marriage that went badly here, well, they left everything, it was perhaps a mixed marriage, so perhaps it went badly with the family [...] so sometimes I also go and ask for additional help. [...] All these requests are exceptional requests, so we have to motivate them."<sup>862</sup>*

For the individuals who return to another country in the European Union, only the cost of the trip is covered. If a person joins the Voluntary return programme, he or she cannot join the programme again before five years have passed. This is a measure established in order to avoid the abuse of the programme<sup>863</sup>.

Voluntary return can in itself be a source of vulnerability for two main reasons. First of all, there are the cases of individuals who do not want to return to their country of origin. They have spent a long period of time abroad during which they have worked hard to integrate into the local culture and community. As affirmed by Tristan Zinck:

*"It also makes people vulnerable when they don't really want to go back, when they come here out of spite. On the other hand, there are some people who are really convinced of the Voluntary return programme and who think that in the end it is the best solution. But we have had a few cases with people who were really well integrated here, who had a house and a job that paid their bills, who were really model citizens, I was going to say, well, returning home is difficult because they have returned to a country we don't know, we don't know anymore. So, in these conditions, Voluntary return also makes you vulnerable. Voluntary return for me is an alternative, it is not an end in itself. We are not obliged to do it"<sup>864</sup>.*

Another factor of vulnerability is linked to the financial assistance that they receive from the Voluntary return programme; this might make them somehow dependent, again. In the words of the counsellor for Voluntary Return:

*"So, in terms of procedure, firstly... well... what can create vulnerability is the material help we give people here [...] I think it's very very good, I would say the fact of being here and waiting because the asylum seeker is just waiting for an answer, they become dependent on this help and once they have to live by themselves it becomes really very complicated"<sup>865</sup>.*

The health crisis did not stop at the asylum procedure. It has also had an effect on the possibilities for Voluntary return after the asylum procedure has been completed. Tristan Zinck mentioned three types of repercussions that the COVID-19 crisis may have had on this programme. Firstly, it impacted the vulnerability of people confined to family or friends, who were sometimes abused. Tristan Zinck points out that Fédasil offers "return" spots under certain conditions, to enable people to benefit from a roof over their heads while they undertake their procedures and preparations for return. The social worker specified that these spots were suspended during the COVID-19 period, leaving people in a precarious housing situation:

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<sup>862</sup> T. Zinck, Voluntary return counsellor, Liège, 02.09.2020.

<sup>863</sup> *Ibid.*

<sup>864</sup> *Ibid.*

<sup>865</sup> *Ibid.*

*“People who have been confined with friends or family members, they are so dependent on these people, that if during the confinement it went badly, they don’t have a place in the reception centre and we can’t give them a place either. So, these people are homeless. Day and night shelters for the homeless are also closed. So, there is no choice. In Liège what have we done, is that the municipality has given tents, but for people who were at their friends’ place, sleeping in tents is not the same thing...”<sup>866</sup>.*

Idriss Ali, a counsellor for the Voluntary return programme, underlined the difficulty of finding suitable housing for people who are already vulnerable in this COVID-19 period. Apart from shelters for the homeless, very few possibilities are offered:

*“[We send them] everywhere, to day shelters, to associations, [...] There are extremely vulnerable people, but that’s it... We don’t leave them alone, we recommend that they go to day shelters. But even sometimes in the night shelters it’s not easy, there are rules to be respected”<sup>867</sup>.*

Secondly, according to Tristan Zinck, COVID-19 has also placed people in a situation of administrative vulnerability, since some of them have been forced to stay in Belgium illegally, due to the absence of return flights to their desired destination/home country:

*“There is also the fact that the people who are here, have an order to leave the territory and return home, but cannot. And at the same time, they don’t have papers to stay here. So, it’s a bit of a de jure or de facto situation if they can’t work and at the same time they can’t return home because the country is still under quarantine because there is no flight”<sup>868</sup>.*

Thirdly, Tristan Zinck pointed out the security difficulties involved in returning home with strict and very authoritarian quarantine measures, especially for people who would like their return to be unknown to the authorities:

*“There are states that organise quarantine themselves. So, let’s imagine for someone who wants to return, but who wants to do it discreetly, knowing that that the state will be watching you for 14 days, even if it’s for COVID-19 reasons, you never know, a drift can happen quickly, and so it’s a source of stress, but since there’s no solution to stay here, it’s a risk that the person accepts”<sup>869</sup>.*

Tristan Zinck nevertheless recognised positive aspects to this health crisis, notably in terms of the extra time now available to prepare for the return:

*“There are many people who made a request for Voluntary return during the confinement, but as there were no flights, they couldn’t leave, so they had time to refine their project, to think about another project, to hire another lawyer, to try another procedure... Because of COVID-19, they couldn’t flight so they still had the right to reception, well that gave them time to think, whereas maybe in a month they will come here to finally tell me I want to go back, but at least it gave them time”<sup>870</sup>.*

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866 T. Zinck, Voluntary return counsellor, Liège, 02.09.2020.

867 I. Ali, Voluntary return counsellor, Liège, 30.07.2020

868 T. Zinck, Voluntary return counsellor, Liège, 02.09.2020.

869 *Ibid.*

870 *Ibid.*

### Summary Box 7. Reception centres and vulnerability

Reception centres are a privileged point of view to fully understand the stories and experiences of asylum seekers in Belgium and to detect and explore their vulnerabilities. At the same time, centres are a source of vulnerability for residents. The centres become the “institutional” home for asylum seekers who have the opportunity (not the obligation) to live there while waiting for a decision on their application. Life in the centre is not comfortable, and it can make residents even more vulnerable. A lack of autonomy, security, intimacy as well as forced cohabitation and a feeling of losing control of their life, are among the main reasons that make the residents vulnerable. Some points need to be mentioned:

- life in a collective centre is not easy in the long term. Life in a centre should be temporary, but the reality shows that asylum seekers live there between a couple of months and years. Close contact with unknown people for a long time is difficult. The fieldwork shows that disputes among residents explodes because of individual behaviours and routine problems connected to cohabitation;
- centres are “small worlds” where people with diverse cultural, social, religious and economic background live together. This can lead to frequent tensions and clashes among the different groups (but also acts of solidarity). Social workers try to address these tensions by recalling that all residents in the centre are on the same level;
- residents in the centres have no autonomy and, in addition, are dependent on the smallest actions (e.g. preparing food as most centres do not have kitchens) to the most important ones (e.g. attending language courses or vocational trainings). In addition, reception centres are similar to *total institutions* since many rules need to be followed for the life in the community to run as smoothly as possible. However, they can disempower asylum seekers who already live a period of uncertainty connected to the asylum procedure and end up having the feeling that they cannot plan and manage their own life. Moreover, the location of the centre can make a difference in the residents’ autonomy. Centres that are in or near a city offer more opportunities such as courses, vocational trainings, job, and recreational activities. Empowerment is key in the life of the applicant once they are granted refugee status. Social workers in centres try and follow the residents and empower them as much as possible through individual accompaniment;
- social workers reported that residents in centres do not always feel safe, especially at night and in larger centres. Centres are monitored at night, but staff is reduced. Centres become a “different world” at night: harassment, violence and illegal activities are more likely to happen;
- the fieldwork showed that the COVID-19 pandemic has heavily affected the life of centres. The strict confinement has accentuated existing vulnerabilities and has created new ones due to, on the one hand, the difficulties in respecting the measures and, on the other hand, the cessation of all activities.

Belgian reception system is organised in collective reception centres and Local Reception Initiative (LRI). The latter are reception facilities organised in apartments and are operated by the Public Centre for Social Welfare (PCSW) or NGOs. The LRI visited accommodate people that have already received a positive status or, if their application is still pending, they have specific needs and thus they live in an LRI (e.g. medical reasons, school reasons). More generally, asylum seekers are placed

in LRI if there is a good chance that they will be recognised refugees in Belgium. Even though there are differences in the quality of life between collective reception centres and LRIs, problems are also likely to arise in the latter (e.g. cohabitation problems in collective apartments, lack of autonomy, rules that need to be followed).

Life after the decision of asylum authorities shows that vulnerabilities could be something constant and continuous for asylum seekers and migrants in general. This is clear when a refugee status is denied since there is no follow-up or mentoring provided. Moreover, in case of negative decision, life beyond centre does not necessarily continue on the Belgian territory and migrants can decide to take advantage of the Voluntary return programme. This programme is managed by Fédasil, IOM and Caritas International and provides support to those who decide to return to their country of origin or to a country where they have a residence permit. Likewise, even when asylum seekers get a status in Belgium, they have to face many challenges, starting with house and job hunting, that are likely to put them again in a vulnerable position.



## 4.3. Vulnerability of the procedure: when the asylum procedure itself is a factor of vulnerability

The asylum procedure as such was repeatedly mentioned as a vulnerability factor in the interviews conducted. The delays, the complexity of the procedure, its uncertain outcomes and the resulting emotional burden, as well as the lack of communication between the different asylum bodies are all elements, which, for the actors interviewed, make asylum seekers vulnerable. Indeed, they are exposed to numerous risks: depression, loss of bearings, and in all cases, exacerbated fragility and additional vulnerabilities. This section therefore focuses on vulnerabilities which are not intrinsic to asylum seekers, but which are created, produced or maintained by the procedure for granting protection. It is part of a relational perspective on vulnerability which is understood as a relationship between the individual, the procedure and the asylum bodies which operate in a dynamic configuration. The impact of the asylum procedure is highlighted in the following sections.

### 4.3.1. Asylum procedure: complexity, uncertainty, vulnerability

The vulnerable nature of the asylum procedure has been first mentioned by the Judges interviewed. Although they are bound by the procedure, they are aware of the demands and difficulties it poses for asylum seekers in an already precarious situation. For example, one asylum Judge pointed out the difficulty of correctly expressing a very personal story in a very “bureaucratic” procedure:

*“[It’s] difficult it is bureaucratic and administrative and we work in this field and we understand the terms that we are using and in the procedure and so on, but when you come from the outside, it is a very strange world, with words being used that you don’t quite understand, even if you speak the same language, and so I think that fact alone, being in administrative procedure bureaucratic procedure makes it difficult and what’s extra hard here is that it’s a very ‘personal’ procedure where you have to tell your story to a stranger with the anxiety that this brings, not everybody has the same capability of expressing themselves very well [...]”<sup>871</sup>.*

The Judge added that the fact of having to seek a lawyer and/or of working with interpreters who are not always available or who are not accurate in their translations are also factors of vulnerability. This can create the “potential risk” that individuals will be less easily able to defend themselves in an asylum procedure, which adds to the precarious situation of the applicant.

These potential risks inherent in the procedure were highlighted by Judge Hayez in relation to minors and unaccompanied minors, when he stressed that they are vulnerable to *the procedure as such*. The Judge explained what he meant as follows:

*“They are vulnerable to the procedure! They are vulnerable to the procedure because it is the asylum procedure, something that can be traumatic in itself. And so when you are a child, even if you’re not alone, if you’re equipped to face this, even in a country that attaches importance and takes into account the processing of asylum applications from minors [...], you are vulnerable to the procedure because it is something that can sometimes overwhelm you, both in the way the procedure is conducted, but also in the issues at stake in the procedure”<sup>872</sup>.*

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871 Interview n° 6, CALL Judge, 16.07.2020.

872 J-F. Hayez, CALL Judge, 16.07.2020.

Judges pointed out that the assessment of vulnerability also depends on the *type of procedure* put in place to deal with an asylum application. This is particularly the case with regard to the accelerated processing of certain asylum applications, a process which leaves some Judges perplexed, especially with the way in which these procedures take – or do not take – into account the vulnerability of asylum seekers. An interviewee specifies that a rapid procedure is always favourable to the applicants, but that this *rapidity* can raise questions precisely when it is a question of *taking the time* to assess a profile in order to detect vulnerabilities:

*“It’s true that when you have an applicant who really has psychological problems, you say that he needs time to talk about what he’s been through [...] in certain types of cases [...] And it’s true that that the accelerated procedure could be problematic because it’s systematic and it does not take into account the ‘vulnerability’ argument. For me, a procedure can only go fast if the case at stake is clear. And when you have someone who is vulnerable, it’s not clear, so it shouldn’t go fast”<sup>873</sup>.*

Similarly, another interviewee also stressed the vulnerability of the situation inherent to the application of the Dublin mechanism<sup>874</sup> in the case of some asylum seekers:

*“When we used to pass in the Brussels north station on our way to work, we saw all these people from Ethiopia, who are not applying for asylum, and who were waiting to be able to go to England... They become vulnerable [...] because they don’t want to be identified in Belgium, because they have already made their mark in Italy, and they know what the situation of the centres in Italy is like [...] They will still be more vulnerable than another people because they also knows how to apply for asylum in Belgium, they will be automatically sent back to another country, and therefore they don’t have access to the reception centre in Belgium [...] I think that this kind of thing between those who fall within Dublin rules and those who don’t, it can create vulnerability”<sup>875</sup>.*

A magistrate from the Liège Labour Court also mentioned this vulnerability linked to the Dublin procedure, particularly with regard to disputes concerning the reception centres designated by Fédasil for “Dublined persons”. If Belgium determines that it is not competent to examine an applicant’s asylum application and wishes to have the application examined by another Member State, Fédasil can move the applicant to a centre with “Dublin” spots, special spots provided precisely for this purpose. The magistrate explained that many applicants appeal these transfer decisions in the hopes of remaining in their original reception centre. The magistrate emphasised that the Court Judges have real leeway in such cases to prevent these transfers and thus force – or not force – Fédasil to keep the applicants in the centre. In particular, the Judge may request that the transfer does not take place when he or she has doubts about the type of support that will be provided to the transferred applicant. He explained that the applicants could receive support there *“which it is not clear whether it is very strong or excessive pressure to accept the transfer to the country designated for them. Often the countries with which there is tension are Italy, Greece or Spain [...]”*<sup>876</sup>. The magistrate explained that case law is divided as to how to assess these transfers:

*“At this level, case law is somewhat divided. There are Judges who say: transfer decisions are legal; people have to go there. And other Judges who say ‘no, we’re not sure that there is no undue or abusive*

873 Interview n° 2, 07.07.2020.

874 Dublin mechanism in a European regulation that establishes which European Member State is responsible for the examination of an asylum application.

875 Interview n° 4, 14.07.2020.

876 Interview n° 41, Labour Court Judge, Brussels, 23.09.2020.

*pressure, so we're obstructing those decisions*<sup>877</sup>.

Also, even though the term “vulnerability” is not used as such in the magistrate’s reasoning and he does not draw any direct consequences from it, he points out that “*the idea of vulnerability*” is the reasoning behind the suspension of transfers:

*“I don’t think that’s how we think, but it’s true that there is a bit of the idea of vulnerability behind it. Don’t asylum seekers risk being put under pressure so that their vulnerability is used as a excuse to transfer them to those reception centres?”*<sup>878</sup>.

Similarly, another asylum Judge mentioned the multiple and particularly psychological vulnerabilities that may result not from the reasons for leaving the country of origin, but more broadly, from the situation of stress and uncertainty in which the plaintiffs find themselves during the proceedings. The Judge specified:

*“The longer the uncertainty, the more difficult it can be for you, the more stress it can cause [...] Often many things come together, but uncertainty and living conditions is also one of the reasons for mental stress and mental problem [...] it is also sometimes linked to long periods of illegal stay or drugs abuse or there are many things that can be linked”*<sup>879</sup>.

A difficulty then arises for the asylum Judge in determining the *source of the vulnerabilities* and, as a result, the consequences flowing from them. The question arises particularly when the vulnerabilities are *multiple* and have their origin in various sources (personal vulnerability, linked to the status in the country of origin, linked to the precariousness of residence in the territory, etc...). One Judge clearly illustrated this difficulty in assessing the interlocking vulnerabilities for the granting of protection:

*“I have a case now of a young girl and she has her fourth asylum application already and she brought as psychological certificates saying that she has PTSD and trauma and, again, you don’t know whether it, you know, is related to something in Iraq or to the fact that she has been here already for like six or seven years, living quite precariously...”*<sup>880</sup>.

For another interviewee, the difficulty arises particularly from the fact that the multiple vulnerabilities as experienced by the individual in question are not always linked to the Geneva Convention, which in the end remains the decisive instrument for granting protection. The interviewee cited the case of an autistic Albanian minor to illustrate this difficulty:

*“His vulnerability was attested [...] The complexity was rather to know in which legal framework I was going to put him. [...] He was persecuted at school, but it was not because of his religion, because of his ethnicity, his race. Also there are still specialised institutions in Albania for autistic people even if the number of places is insufficient, even if it would have been difficult for them [...] The question was whether we could go as far as to create ‘a social group of autistic people in Albania’, or could we not go that far? But then if we couldn’t go that far, then I couldn’t get him into the Geneva Convention. So, the difficulty was rather there, the vulnerability was established and was not contested by any of the*

877 Interview n° 41, Labour Court Judge, Brussels, 23.09.2020.

878 *Ibid.*

879 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

880 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

*parties. The difficulty was above all to see in which legal case I was going to be able to place him”<sup>881</sup>.*

Judges therefore consider that asylum seekers can be vulnerable to the *requirements* of the procedure (in particular, the restitution of their story and the understanding of what is at stake in the asylum process) but also to the *consequences of the type of procedure* put in place (in particular, in the case of an accelerated procedure or a Dublin procedure).

The protection officers interviewed also noted the vulnerability resulting from the asylum procedure. This, in their view, was apparent at different points. First, there was the vulnerability that the asylum procedure created in life, which can only be “day to day”, without projection. At the same time, there was vulnerability associated with the excessively long procedural delays, which plunge asylum seekers into a situation of prolonged stress.

Referring to the lack of a clear perspective on the future of the applicants, a protection officer cited the example of an applicant for international protection:

*“And then, when they arrive in Belgium, there is a procedure to follow. [...] It also generates stress [...] During this whole period, the applicants are going to put their children in school but with the question always in mind: will they be able to continue their studies here? Maybe start renting a flat, maybe start working, learn the language. But are we going to be able to stay here? And this uncertainty...in the end, they had received a negative decision so they explained that during the whole procedure, they were ‘pretending to live’, to integrate, to take their children at school, to do their shopping... so this situation, yes, it’s desperate, it’s not finding a solution so necessarily, it leads to a vulnerability in this situation”<sup>882</sup>.*

Another officer underlined the same difficulty of remaining in prolonged uncertainty by highlighting the lengthy waiting times:

*“A person who is waiting to be heard, vulnerable, traumatised etc... faced with this waiting, it must be hard to live with uncertainty. Waiting can be a very stressful thing, even if it is a refusal, sometimes it is good to have a decision [...] The delays are too long”<sup>883</sup>.*

If the hearing is a much-awaited moment for the asylum seeker in that it brings to an end to an often lengthy period of uncertainty, it is also a moment of great pressure. A protection officer emphasised the significant stress that is seen in applicants when they are called into their CGRS hearing:

*“The simple fact of being at the CGRS, you can see it directly [...] We tell them ‘Do you want some water?’ they say ‘No’ and then they say ‘Yes, I do’. We tell them ‘Sit down’ and they keep looking at us because they’re afraid, they don’t know [...]”<sup>884</sup>.*

Prior to the CGRS hearing, another protection officer also mentioned the passage through the reception centre as a source of vulnerability, particularly when the applicant spends a certain amount of time there.

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881 Interview n° 4, 14.07.2020.

882 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

883 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

884 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

According to the officer, “*life in the centre generates suffering*”<sup>885</sup> and it happens that asylum seekers come before the CGRS with different or even additional degrees of vulnerability, resulting from their stay in the centre:

*“In the centre, there can be all sorts of difficulties, interpersonal problems... It generates suffering. For example, I met someone who expressed his concern about the virus and the fact that living together in a centre could increase the spread of the virus. How can we prove him wrong in the end, how can we prove him wrong in the current context?”*<sup>886</sup>.

#### 4.3.2. The reception centres during the procedure: a catalyst for all vulnerabilities?

The vulnerabilities resulting from the procedure are also noted by the social workers we met in the centres. They correspond to the shortcomings noted by Judges and protection officers. They also go beyond and complement them, in that the centre becomes, in an increasingly lengthy procedure, the place where vulnerabilities linked to waiting and uncertainty find expression in the long term sometimes in a violent manner.

With regard to the length of the procedure, Sébastien Quoidbach mentioned the difficulty of maintaining a semblance of life in a centre:

*“Personally, at any rate, I can see that the resident who has been there for a month will not be at all the same as the one who has been there for a year. It’s fluctuating. We have residents who have been there for three years. Others who say, ‘I’ve been waiting four months for my interview, my first interview only. And then you see him again three months later’, and then what about the interview? ‘I still don’t have it’ and so we’re in uncertainty because we have no link with the CGRS, we’re as helpless as they are, in uncertainty [...] they have been here too long, you can see that. They don’t feel like moving again. Because it’s very nice what we offer here, but you know, they know it by heart...”*<sup>887</sup>.

Julian Knittel was clear on this point:

*“As for the length of the procedure, yes, it makes people fragile, people go completely crazy, I must say! It messes them up [...], it worsens the fragility they had, that’s undeniable! I think that spending too little time in a centre sometimes doesn’t help either, but it rarely happens, usually you stay too long in a centre, and yes [...] it messes people up! And rightly so! You have to take 1-2 years from someone’s life, you don’t live 5000 years, you live, if you live well, you live 80-90 years! So, when you lose 2 years of your life in a centre, well ‘you lose’, you do things, but you don’t choose voluntarily to stay in a centre, you would like to do things in your life, you see the time that passes and you can’t do them. We still see a lot of people who have emotions, who are depressed because of that”*<sup>888</sup>.

It is interesting to note that these *indefinite* periods of stay in the centre are in tension with the primary message that the reception centre, which is by definition a *temporary* place of passage, wants to disseminate. Carla Pannemans also pointed out that she continues to remind residents that their stay in a reception centre is not going to last:

885 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

886 *Ibid.*

887 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

888 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

*"I always [tell] them, 'you're not going to stay here forever! It's temporary! I know that you're feeling bad now, that you're crying, but you're not going to stay here!' One day you'll come and look back and say 'this was Broechem...'"<sup>889</sup>.*

By the same token, Hippolyte Kisonde specified that some residents find it difficult to understand that this is a "moment in time"<sup>890</sup>.

Thierry Pire explained that feelings of vulnerability are even greater because asylum seekers do not expect to have to wait so long. This sometimes prevents them from undertaking certain activities or training courses on their own initiative (activities which, paradoxically, the centres encourage them to undertake). The Director also mentions that the centres feel helpless in relation to this feeling of vulnerability which comes with waiting, and which they cannot easily address:

*"I think the main source of stress is waiting for a decision. There are people who have been there for a year and who still haven't been summoned for their first interview... They don't expect to have to wait, so [...] they are told it's time to take advantage of the fact that you are here to take French classes for example or to do training courses. They are often in the idea that their case will be dealt with quickly and they wait for the answer before embarking on an integration process. There are many who think this, and after a few months, they say to themselves 'I'm waiting, I'm waiting, and finally am I going to do all these things, when am I going to attend the French course or the vocational training?' [...] We don't have much to offer against the stress of waiting"<sup>891</sup>.*

Owen Miossec spoke more generally of an "abusive system" when assisting individuals with their application. In this respect, he criticised the lack of predictability of the procedure, which is essential in lessening the impact of their feelings of vulnerability:

*"[...] Ideally, they should be able to have an idea of how long an application will take ... They should be warned, not at the last minute, but perhaps in the next few months, so that they can see the end of this waiting period ... Something like: today you submit your asylum application. We'll give you dates in about a month or so. You will be called for your interview, your first interview, your second interview and the approximate date when you will have your answer. And we're committed to that. That way, people can project themselves. And it already allows them to remember that their situation is temporary, because sometimes waiting makes them lose their minds that we're not here forever and that there's an end to it...that their stay here is temporary. And it also allows them to anticipate the after... Whether they're protected or rejected, it makes that future tangible [...]"<sup>892</sup>.*

This impact of the asylum procedure is also felt in the context of specific procedures, particularly Dublin applications. Daniel Legreve explained the impact that a Dublin procedure can have on the psychological vulnerability of an asylum seeker in a centre, which he considers to be one of the major sources of vulnerability:

889 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

890 H. Kisonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

891 T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

892 O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.



*"I see it on a daily basis with Dublin residents, I still take the example because we have a lot of Dublin cases here, we've had good news these two weeks with Dublin cases that didn't go through, and I see a real difference between how they felt before and how they are now [...] There was a gentleman who was really not well and hadn't slept for months, and last week his Dublin was annulled, the first thing he did was to come and tell this to me with a big smile, he was happy, he signed up, he could do a training course, he could do a lot of things, he found his smile again. And he's more confident too, because I think there's also a lack of confidence on their part, in relation to the states and administrations [...] So yes, there's a real link. And I even wonder if this is not the first cause of their vulnerability, the procedure"<sup>893</sup>.*

These comments illustrate the importance for asylum seekers to have a fixed status before undertaking a project, whereas the dynamics of the centres are the opposite: individuals are encouraged to undertake activities *beforehand and without certainty*, as a way to pass the time. This is also the way reception centres try to address vulnerabilities coming from the length of the procedure.

At the same time, Benoît Fockedeý talked about the indirect consequences of being in an asylum procedure which can weaken a person, notably in terms of access to certain rights and resources:

*"A silly example is the difficulty asylum seekers have in opening a bank account, even if in theory it's legal, all banks should allow them to do so, it is very complicated for them. And it's these little things like this that make them vulnerable, because they are unable to access the labour market for most of the time of the procedure, which gives them an inability to have a kind of financial autonomy that creates a vulnerability in relation to the financial resources that someone can have to live decently"<sup>894</sup>.*

#### 4.3.3. Communication between the different asylum bodies: the cacophony

The centres' dismay at residents' lengthy wait times during which residents have no choice but to stay in the centre is also explained by the fact that no communication is established between the different asylum institutions. On several occasions, social workers expressed on the one hand, their attempts to communicate with the CGRS and the asylum bodies and, on the other hand, their wish to establish real communication with other asylum bodies over the long term. More generally, it is the lack of communication between asylum authorities on the vulnerability of asylum seekers that is singled out.

Concerning the lack of communication with the CGRS, Benoît Fockedeý underlined:

*"The fact that the delays are long is indeed a problem. But beyond the length of the deadlines, it is also the absence of communication from the CGRS... We see residents who are going to wait sometimes for a year before being called for their first interview, or who between the first and second interview, are going to have very long delays, [...] And finally these are things to which, well, the social worker can't give an answer because he doesn't have one either!"<sup>895</sup>.*

Another social worker stressed in the same vein:

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893 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.07.2020.

894 B. Fockedeý, "referee" for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

895 B. Fockedeý, "referee" for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

*“The procedure doesn’t make you vulnerable on ‘paper’ but in practice, that’s for sure! [...] Just to give an example, we have seen that young people have their procedure postponed for six months or more because of the virus, so it’s just a matter of chance! So, we also take care not to give any guarantees, [...] apart from telling them ‘we don’t know how long it will last, but as long as you’re 18, you can stay with us’, we can’t reassure them! So that’s what’s ‘vulnerable’ [...] We have young people who have been here for a very long time or who have gone to other countries and who are clearly in the process of... well... who are more vulnerable just because of the procedure in fact!”<sup>896</sup>.*

Similarly, a social worker described the CGRS institution as a “black box”<sup>897</sup> to illustrate the little contact the institution has with the centres.

Nevertheless, contacts are sometimes attempted between the different bodies. For example, a social worker indicated that she wanted to pass on information to the CGRS with the aim of alerting them of the potential vulnerability of a claimant. She emphasised the difficulty of establishing a credible relationship with the CGRS and of providing information that it would take into consideration. She explained as follows:

*“I have already contacted the CGRS in one or two cases. And then in the decision it was written: ‘Mrs [X], who works in a centre, observations which cannot be taken into consideration since she is not even a psychotherapist’. So, I say ‘ok, ok, I’ve known her for two years, you’ve seen her for three hours, but you know better than me who she is’... well... that doesn’t make you want to do it again, obviously, because in the end it’s so badly received! But the certificates of the psychotherapists are also very badly received, whatever the CGRS protection officers have told you... It is difficult to be considered credible by the CGRS”<sup>898</sup>.*

Carine Vansimsen also highlighted this difficulty in establishing credibility in the information transmitted to the CGRS. She cited the example of a resident who experienced regular anxiety attacks. The social worker mentioned that she had sent information to the CGRS indicating that the resident had special needs, which should be taken into account during the interview. She explained:

*“They asked questions to this lady for more than four hours and without necessarily taking into account the fact that this person is fragile...The lady had a crisis of decompensation [...] And we did inform the CGRS, who told us “yes, we will take this into account for the hearing” but they did not take this into account in the way they conducted the interview [...] But we know them, we know our public here, we know who can be in control of themselves, who can channel their frustrations or tensions and we know who can explode”<sup>899</sup>.*

A social assistant we interviewed also deplored the absence of a definition of vulnerability that would be common to asylum authorities: “Our definition is not the same...For the asylum authorities, for dispatching and for us, workers of the field”<sup>900</sup>. She particularly emphasised the lack of communication with the dispatching unit, notably in that no information can be given on vulnerable people placed in centres by the dispatching unit. She explains:

896 Interview n° 23, social worker, Uccle Red Cross reception centre, Uccle, 31.08.2020.

897 Interview n° 30, 09.09.2020.

898 Interview n° 32, 09.09.2020.

899 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

900 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

*"I don't know, we could make an analysis report after two or three months of stay in the centre to say 'here we are, indeed, the person you referred to us is very vulnerable' and we explain why ..."*<sup>901</sup>.

Dorian Louis, Deputy Director of Sugny reception centre, also stressed that communication would be necessary to ensure *"real monitoring of vulnerabilities"* which at the moment is very *"disjointed"*<sup>902</sup>. In this respect, he specified that the main problem is that asylum authorities do not have the same *"vulnerability analysis grid"*<sup>903</sup> and that this can also vary from one centre to another. He explained that the approach to vulnerabilities is for the moment mainly a matter of *"labeling"*, a *"one shot"*<sup>904</sup> approach which in truth does not guarantee the most important thing, i.e. not only a real monitoring of this vulnerability throughout the procedure, but above all, a clarification of the term's meaning and consequences<sup>905</sup>.

While the lack of communication between the CGRS and the centre may pose a problem, it guarantees that the two institutions are viewed as distinct, which avoids applicants perceiving that the centre has any influence on their application for protection. In this sense, some social workers stressed the importance of not communicating excessively with the CGRS to avoid this kind of confusion. One social worker stated:

*"Frankly there is no, I would say, there is no communication. The CGRS communicates with the person's lawyer but not with the centre"*<sup>906</sup>.

Another social worker added:

*"We assume that we are an accommodation centre and that we are supposed to remain neutral. [...] We have our own word, we're not sure that it's going to work in the long run to testify every time for everyone. So, we don't get involved, we remain neutral in this, because we don't want to be used in this kind of thing either, because it raises questions for the residents too, [...] it would distort the relationship we have, I think... At the very beginning when we started, we had a briefing book when the service was not yet computerized, the residents had the impression that what was written in this book could send them back to the Immigration Office [...] So it made them feel totally insecure, and I'm not sure it's even an asset for the person to know that we can testify there"*<sup>907</sup>.

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901 *Ibid.*

902 D. Louis, Deputy Director of Sugny Fédasil reception centre, Sugny, 25.09.2020.

903 *Ibid.*

904 *Ibid.*

905 *Ibid.*

906 Interview n° 30, 09.09.2020.

907 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

It is interesting that this communication between the centres and the CGRS is perceived neither as effective nor as necessary by those working in the field, even though the law explicitly provides for this possibility. Indeed, Article 22 paragraph 1.1. (*amended*) of the Law of 12 January 2007 stipulates that the reception centres can make recommendations relating to the special procedural needs of the applicant to both the Immigration Office and the CGRS<sup>908</sup>. Based on a prior individual examination, the recommendations may in particular concern “signs not detectable a priori of possible vulnerability” (art. 22 paragraph 1.2.). In practice, however, very little use is made of this provision.

The indirect transmission of information from the centres to the CGRS is mainly established through the lawyers, a “relief” person who came up repeatedly during our interviews. A social worker emphasised this: *“So social assistants have the task of warning the CGRS of people who are vulnerable, but often this has to be done through the lawyers, it’s mainly the lawyers who do this”*<sup>909</sup>. Olivier Peeters also mentioned that social workers have not adopted a common practice when it comes to passing along information as some of them do not consider it to be a priority in their work and prefer to delegate this task to the lawyer. As a result, he highlighted the differences in the support provided to residents<sup>910</sup>.

#### 4.3.3.1. Asylum process: a constant lack of communication

This lack of communication is not only evident in the report of the centres to the CGRS. It is a constant throughout the asylum procedure defining the relationship between the authorities and the centres.

For example, the civil servants from the Special Unit for Aliens, Minors and Victims of Human Trafficking (*Bureau Mineurs et Traite des Êtres Humains*, hereinafter MINTEH) explained the complexity of having several asylum bodies dealing with different parts of the procedure, each with *“their own way of communicating”*. Officials pointed out the division of labour between each institution prevented the creation of *“common channels of communication”* that, in their opinion, should exist in order to make the procedures clearer. Particularly in the case of the UMs, where the officials feel that the different modes of communication of the different bodies were confusing:

*“We don’t communicate in the same way... [...] First at the Petit-Château, then at the Immigration Office, then at the CGRS. At the MINTEH unit here... [The young man] explains his situation multiple times. He goes completely mad! [...]”*<sup>911</sup>

The officials immediately point out the problem that prevents further communication between the Immigration Office and the CGRS:

*“It’s impossible because the CGRS is independent, that’s it. And they are independent, and that’s always their argument, and it’s true, it’s an independent body so we don’t talk about that [...] We’ll never arrive at a correct, common communication channel, adapted to young people. It will remain complicated, separate, fragmented”*<sup>912</sup>.

908 Law of 21 November 2017 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, *op.cit.* Article 22, paragraph 1.1. (*amended*).

909 Interview n° 32, 09.09.2020.

910 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

911 Interview n° 55, Civil servants, MINTEH unit, Brussels, 01.10.2020.

912 *Ibid.*

Judges from the CALL also mentioned in interviews a lack of information from the CGRS on certain choices made regarding the hearings of vulnerable persons. One Judge also mentioned the fact that the choice to recognize – or not – the need for special procedural needs is not motivated by the CGRS. Also, the Judge, at second instance, has no information on the motivations so he didn't consider that the applicant in question had special needs. The Judge cited the example of a young claimant with PTSD to illustrate his embarrassment at the lack of motivation from the CGRS.

*"In reading the decision of the CGRS, that she has psychological issues and but they don't really motivate why they did not give her the special procedure [...] and the law also says that they don't have to motivate whether they give somebody the special procedures or not. So, I [thought] something like 'okay, what does this notion mean? [...]' I think the CGRS should motivate why, if somebody asks for a special procedural guarantees, they should motivate why they don't give [...] from administrative law point of view [...] It's quite strange [...] I think it would be good if they would motivate so that in the appeal procedure it's clear for the Judge what were the reasons they didn't give them this special procedural guarantees as well as a Judge has to motivate the judgements why he takes it into account or not..."<sup>913</sup>.*

Interviews with protection officers allowed us to learn more about the motivations for special procedural needs. Protection officers provide a two-part answer. They first base their decision on the information they receive from the Immigration Office, where the special procedural needs have been identified. One interviewee explained:

*"It mostly would start with the information that we get from the Immigration Office there is a file in which different vulnerabilities can be mentioned and any special needs that should be taken into account [...] There is also the specific questions, for example, if the person wants to be interviewed by a man or a woman...so they get that question already beforehand"<sup>914</sup>.*

Another protection officer confirmed this:

*"Already when the applicants are going to file their application for international protection, they have a special procedural needs sheet where they are asked the question, do they have any special needs [...] Very often they answer no. The only time they usually have specific needs is when it comes to the gender of the protection officer and interpreter"<sup>915</sup>.*

Yet another protection officer pointed out that this initial information can then be overruled or confirmed by the protection officer, who has a margin of manoeuvre to assess the specific needs of the applicant during the interview<sup>916</sup>.

A different protection officer noted the importance of this specific room for manoeuvre, particularly with regard to asylum seekers who have not previously specified their particular needs to the Immigration Office. She pointed out that this shortcoming also stems from the fact that applicants are not always aware of what they should mention or that they simply do not understand what the notion of "special procedural needs" actually means:

*"[...]There is room for manoeuvre in the sense that they are not always aware of what it means, what*

913 Interview n° 6, CALL Judge, Brussels, 07.16.2020.

914 Interview n° 18, 28.08.2020.

915 Interview n° 7, GCRS protection officer, Microsoft Teams Platform, 27.07.2020.

916 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

*it implies. So that's why I say that they often answer in relation to the sex of the protection officer, because this question is put to them as it is. On the other hand, they are asked if they have special procedural needs, so necessarily, even if they have a translator, it doesn't mean much to them. I think the question in the questionnaire is this: 'do you have any special procedural needs, if yes, which ones?' But I once had an asylum seeker who was wearing a prosthesis, even if he was able to move around, I realised that we had put in a room as far away from the lift as possible, so when I saw that I checked for another room [...]"<sup>917</sup>.*

The protection officers in our interviews do not provide any insight into why special procedural needs are or are not motivated. They mainly provide information about how these needs are or are not recognized, on the one hand with information from the Immigration Office and on the other hand, with their personal observations.

Lack of communication is also sometimes felt between centres and the LRI in monitoring the vulnerabilities of a resident who is being transferred. Thus, according to a social worker working in LRI, the centres regularly fail to provide a complete file listing the applicant's physical and psychological vulnerabilities and, more generally the LRI's assessment of the individual they are transferred to individual housing. The social worker we met clearly expressed this:

*"Sometimes it's complicated, I have to start from the beginning... It would be good if the centres sometimes made a short summary for people like that, saying 'Mr. X is followed for such and such an examination at such and such a hospital'. But this is very rare. It hardly ever happens [...] for lack of time, lack of means, I don't know"<sup>918</sup>.*

#### 4.3.4. What place for vulnerability in the asylum procedure?

The vulnerabilities created by the procedure, coupled with the lack of communication between asylum authorities and the lack of a coherent idea of the implications of vulnerability, can sometimes give the impression that vulnerability is not considered in the asylum procedure, or only in an arbitrary and selective manner. This is what Carla Pannemans pointed out when she said that vulnerability is not really fully taken into account:

*"Because otherwise they would do more...That's what I said, in Greece and these countries, people like LGBT, they don't even see them as also vulnerable... They only take the disabled and people coming from war zone!"<sup>919</sup>.*

In the same vein, a social worker stated *"I think the CGRS and the Court take into account the vulnerabilities... until at certain level"<sup>920</sup>. Carine Vansimsen specified that vulnerability is mainly considered *"on paper, in theory"<sup>921</sup>* but that her work does not allow her to affirm that vulnerability is really taken into account.*

917 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

918 Interview n° 60, social assistant, 21.10.2020.

919 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

920 Interview n° 46, 24.09.20.

921 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.



Faced with this more or less established recognition of the vulnerabilities of claimants, Julian Knittel shed light on another dimension to these by distinguishing between the recognition of the victim at the *human* level and the victim at the *institutional* level. He explained that the victim and the vulnerability of the asylum seeker can refer to three dimensions. First, there is the subjective dimension, or the fact that an asylum seeker feels subjectively hurt by his or her trip into exile. Second, the objective dimension refers to the fact that the asylum seeker has been the victim of acts of violence along the way. Finally, there is the institutional dimension, or the recognition that society gives to the asylum seeker and his vulnerabilities by granting him/her refugee status. Specifically, Julian Knittel stated:

*"The people we receive here in our reception centres, in our eyes we recognise them as victims, as asylum seekers, and therefore [...] we recognise this right to a centre [...] But these three dimensions do not always go together. And I think that sometimes people can be objectively victims, but they are not recognised at the institutional level, you see? We'll say they're vulnerable, but the CGRS must recognise that they are vulnerable and grant them a status. There are people, for example, who are vulnerable but who do not fall within the Geneva Convention [...] What do we do then? So we, as a centre, can act on victimisation that is a bit institutional, we partly respond to that, you see, we recognise their right to be accommodated in a centre because they have needs, but that's where it stops. The rest of the institutional recognition will not be up to us. Unfortunately, it will not be our mandate"<sup>922</sup>.*

#### 4.3.5. Vulnerability, COVID-19 and procedure: when procedural changes due to a pandemic can be a source of vulnerability

The asylum procedure as a whole has been impacted by COVID-19. Various elements were mentioned as to the vulnerabilities caused by the COVID-19 crisis by the interviewees. The impacts of the health crisis were felt at different levels and therefore had various consequences for those involved in the asylum procedure.

##### 4.3.5.1. Implementation of a written procedure within the CALL and suspension of hearings at the CGRS: a brake on the detection of vulnerabilities?

The impact that the COVID-19 crisis has had on the way in which asylum appeals are exercised has been noted by several Judges. In concrete terms, various consequences were mentioned. Firstly, during the first phase of confinement, all CALL hearings were postponed, with the exception of those relating to appeals in extreme urgency and those concerning accelerated procedures. Secondly, and as of May 2020, Royal Decree of Special Powers No. 19 of 5 May 2020<sup>923</sup> provided that certain appeals would be dealt with by written procedure, without a public hearing. Thus, from an oral procedure where the Judge in a hearing receives the asylum seeker, the CALL started to operate through the written procedure exclusively, in which the asylum seeker is no longer invited to appear before the Judge.

For Judges, the public hearing can have a considerable impact in detecting and addressing vulnerabilities. In particular because the hearing is crucial in identifying vulnerabilities. How can we therefore guarantee a similar and continuous detection of vulnerabilities when the main channel for viewing them (i.e. the public hearing) is removed?

<sup>922</sup> J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

<sup>923</sup> Royal Decree of Special Powers No. 19 of 5 May 2020 concerning the extension of time limits for proceedings before the Aliens Litigation Council and the written procedure, *Belgian Official Journal*, 6 May 2020.

Judge Hayez is aware of the problem. He says:

*"I know that there were proposals circulating to abolish hearings, for example, and to generalise the written procedure. That would be a disaster [...] the hearing is where all the elements are taken into account: the statements at the hearing, and not only the statements, but also the posture of the person at the hearing, that's all that"*<sup>924</sup>.

Faced with the criticisms that the introduction of this procedure has aroused (the French-speaking Bar Association highlighted in particular in a forum last May, the lack of consideration given to lawyers and asylum seekers in the COVID-19 procedure<sup>925</sup>), another interviewee emphasised the room for manoeuvre available to the Judge to choose to hand over a file in the ordinary procedure. He explains:

*"In the coronavirus crisis, we proceeded much more in written procedure. And then came the Covid procedure, where we do not hear the person at all [...] So I can understand that the lawyers may have sometimes perceived that we had done things too quickly, and that it infringed the very rights of the defence. But we Judges can always decide to return to ordinary proceedings"*<sup>926</sup>.

Royal Decree No. 19 of 5 May 2020 on special powers is clear in the power it leaves to the Judge in this respect. Article 3 states: "It is therefore the Judge who is always ultimately in control of the procedure"<sup>927</sup>. The Judge is therefore entrusted with a very special power with regard to a decision that includes a "political charge" that is important in the COVID-19 period for the law on foreigners. Deciding well in these uncertain spaces is a delicate matter.

As a result of the restrictive health measures, one interviewee also mentions the restriction on the number of staff present at the hearing, especially interpreters:

*"[...] For the moment I have a lot of Guinean files, so I don't have to bring too many interpreters because there aren't many rooms available, it's also the Covid that does this..."*<sup>928</sup>.

In the area of migration, the COVID-19 context has also been used as a reason to request not to be sent back to the country of origin. To this effect, a Judge from the CALL mentioned that for the first time he had been confronted with "COVID-19 cases", in other words, applicants basing their appeal on the current health situation. The Judge underlined to this effect:

*"Now we get the first files where COVID-19 arguments are put forward [...] So now we have applicants saying like 'oh you gave me an order to leave the country but I cannot leave, because it's impossible to go back' [...] These are now the first cases we have with this argument. Concerning vulnerability, it is a little bit new...we have to see what they will bring on, if perfectly healthy man says 'oh, the Covid I am*

924 J-F. Hayez, CALL Judge, Brussels, 14.07.2020.

925 PICARD J-M., "Et s'il en reste encore, mais seulement s'il en reste encore, ce sera pour les nègres et les bicots", *La Tribune* [Online], available at: <https://latribune.avocats.be/et-sil-en-reste-encore-mais-seulement-sil-en-reste-encore-ce-sera-pour-les-negres-et-les-bicots/> [accessed 7 January 2021].

926 Interview n° 4, 14.07.2020.

927 Royal Decree of Special Powers No. 19 of 5 May 2020 concerning the extension of time limits for proceedings before the Aliens Litigation Council and the written procedure, *Belgian Official Journal*, 6 May 2020.

928 Interview n° 2, 07.07.2020.

*afraid; okay but you are healthy...But, for example, if someone with medical [issues], perhaps here you can invoke Covid to say like 'oh it has put me in a particular vulnerability because I already have some medical issues and then, in my country it is raging' [...] these are the first files with this argument we have now, for the moment [...]*<sup>929</sup>.

The protection officers interviewed also emphasise the difficulties inherent in the fact that the hearings were suspended at the CGRS. A protection officer at this level also emphasises the impact that the suspension of interviews with asylum seekers has had in identifying vulnerabilities:

*"[...] From the moment you don't see the person in front of you either [...] you can't say, what is the degree of vulnerability, what is the vulnerability of this person, you see?"*<sup>930</sup>.

Another protection officer emphasised the need for individual interviews to detect vulnerabilities. This detection cannot be based on an "a priori vulnerability" of the applicant, even in the COVID-19 period:

*"In our society, especially during the corona period, we have noticed that some people are more vulnerable than others because the centres were the forgotten ones of the crisis, people could no longer register, etc. But it is essentially within the interview that we will consider whether the person is vulnerable or not, often following a discussion, the attitude of the person, because physically or psychologically we feel they are vulnerable"*<sup>931</sup>.

Another protection officer is also reacting, upstream, to the online registration procedure set up by the Immigration Office in order to limit the gathering of people at the arrival centre. He points out how this exclusively electronic procedure can make people vulnerable if they do not have the computer tools to register their application online. He explains, about this system:

*"I mean, I can understand this system for the first couple of weeks maybe, but, even after that, it is a bit, it is like...it is kind of easy solution for the registration office to say, okay, register online first, but that makes people more vulnerable because not everybody has access, not everybody has the means, or understand how it works, how you should do it [...] I think that the system in that case has not done a very good job...And, of course, if you need to register online first it makes that a lot harder to identify your vulnerabilities than, I guess, if you see somebody in person to register"*<sup>932</sup>.

In the same vein, the MINTEH unit of the Immigration Office also insists on the vulnerabilities that can be created by this online registration procedure and the resulting delays, especially for those seeking international protection:

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929 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

930 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

931 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

932 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

*“For young people close to 18 years old, it has huge consequences in terms of asylum, international protection, immense [...] The National Security Council decides no more gatherings, that’s it. Everyone stays at home. But we are obliged to register the requests for protection, but they can no longer appear. So what? We’re going to try to set up an online registration as soon as possible [...] but it also creates extra administrative work that creates delays. And we’ve seen young people who have come in, who have registered online, who had to wait one or two weeks to be registered because we couldn’t get as many people in as before”<sup>933</sup>.*

The MINTEH unit also mentions the difficulties in managing hearings with minors within the framework of the durable solution procedure. On the one hand, they mention that hearings have been postponed. A civil servant highlights the consequences that this suspension could have had:

*“I believe that Covid has had so many consequences for everyone’s work, and I’m talking on a practical level, but also on a psycho-social level, that yes obviously, for the young people too. Because they were waiting for a decision, for an audition that couldn’t take place, for health reasons, we couldn’t do anything! That too had consequences, I’m sure it affected the young people”<sup>934</sup>.*

On the other hand, the officials also point out the difficulties that continued to exist once the hearings resumed, particularly for health reasons. If during the interview the officials insisted that the interview should put the minor “at ease” and that it was not an “interrogation”<sup>935</sup>, the health measures and constraints to be respected also undermined this informal atmosphere. Officials explained:

*“At the level of the interview, for example, at the organisational level, it has its consequences because it becomes stricter. And we used to have this room for manoeuvre. Now, if a lawyer, for example, is late, it’s often a pity, but you can’t go in because the rules are so strict, regarding entry, internal circulation in the building, sanitary hygiene, if they say ‘listen, I’m too late’, the doors are closed to prevent people from gathering in front of the door. As far as hearings are concerned, it’s much more complicated to do an audition with plexiglas, to be separated by 1.5 metres”<sup>936</sup>.*

Another official adds:

*“It makes it even more austere. And the mask, [...] because there is the distance and fortunately we can take off our masks, but sometimes if the guardians are in and that they have more problems or risks, they keep their masks on and that perhaps adds an additional anguish”<sup>937</sup>.*

The civil servant concluded: *“The atmosphere of a hearing has changed. And it’s stricter, it’s not so informal, friendly, I may be exaggerating...The rules are the rules”<sup>938</sup>.*

Finally, the officials interviewed mention the vulnerability that can arise from the lack of follow-up between guardians and minors in proceedings. The COVID-19 period did not allow them to meet on a regular basis and sometimes isolated them from their contacts and information about the procedure:

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933 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

934 *Ibid.*

935 *Ibid.*

936 *Ibid.*

937 *Ibid.*

938 *Ibid.*

*"We have guardians in fairly recent applications, who come to us with very little information, and they say 'ah I haven't been able to meet the minor I'm in charge of during the whole period due to the confinement'"<sup>939</sup>.*

Another official points out:

*"But it's true [...] the Fédasil centres were also closed at one point. You don't go out anymore. Confinement is for you, it's for us, it's for everyone. And that means that the guardian cannot come to the centre to see their minors. And that's it, it really has an effect..."<sup>940</sup>.*

The civil servant mentions that a lack of follow-up was also noted between the minors who spent their confinement with relatives, outside the centres, and the guardian:

*"For young people who live with their relatives outside the centre, the guardian also has a right of supervision over what is happening and can give warnings. In this case, he did not see what was happening for sometimes months in the families. And there are more precarious families who don't necessarily have access to Skype [...]"<sup>941</sup>.*

The protection officer points out that this lack of information has been exacerbated by the COVID-19 crisis but that it is not new. It also sometimes depends on the family's relationship with the guardian.

To sum up, in the words of the actors interviewed, COVID-19 would have had two impacts. A visible and immediate impact, that of suspending the hearings and audiences. A second impact, less obvious, but which is equally relevant in terms of vulnerabilities is the postponement of hearings and audiences. On the one hand, it prevents *early detection of vulnerabilities* (in particular, in that neither Judges, nor protection officers, nor Immigration Office officials could receive the applicant and they all insist on the importance of the physical meeting with the latter). On the other hand, it *creates* new vulnerabilities (in particular, linked to the wait inherent in the suspension of hearings and the online registration mechanism).

#### 4.3.6. Procedural abuse and vulnerability

While the procedure and its requirements make applicants vulnerable, our interviews repeatedly showed that applicants can make strategic use of the procedure and the possibilities it offers, with the aim of being granted protection. Judges are the primary witnesses of this abuse of procedure. The strategies put in place by asylum seekers at the procedural level therefore take different forms in the hands of Judges. In all cases, the techniques put in place make strategic use either of *people* (in particular, when it comes to filing a subsequent asylum application on behalf of a child family member) or of *time limits* (in particular, when it comes to using all available procedures). The notion of vulnerability itself is also sometimes used for strategic purposes, in particular to further advance a person's need for protection.

Judge Hayez and Judge Verdickt both specified that abuse is not *a priori* a notion that guides their legal reasoning. Thus, Judge Hayez clarified:

<sup>939</sup> Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

<sup>940</sup> *Ibid.*

<sup>941</sup> *Ibid.*

*"I will never open a file and say 'Oh dear, there is abuse here', I don't care what people do, they ask for asylum, they ask for asylum! It's their right! They have the right, they are doing it. And I never think in terms of abuse, but, well, for us, there are things that irritate us, we'll say, that annoy us [...]"<sup>942</sup>.*

Similarly, Judge Verdickt stated:

*"The procedure is being exploited because there are many people who use the asylum application, because they obviously know that they will be able to stay on the territory as their file has not been closed. So, they won't be deported and they use the current procedure to try to stay here. So, they won't be deported, and so they use the current procedure to try to do so. But I can understand if you've left your country, etc... You say to yourself: 'What do I have to do here to stay?' because what I want is to stay here [...] so I'm uncomfortable with this concept of abuse"<sup>943</sup>.*

However, both Judges identified strategies put in place by asylum seekers to remain in Belgium. They singled out the subsequent applications made on behalf of the children. As Judge Hayez explained:

*"I don't know if my colleagues have already spoken about this, but what annoys us is the whole process of introducing a new asylum application, which is in fact a new asylum application introduced by the children. And here what bothers me is not so much that there is a procedure, it is that children are 'used' in the procedure. It bothers me terribly. And we see it a lot, we often see it [...] Parents who apply for asylum, which is refused, and within a month the children apply for asylum on their behalf, claiming the same thing as their parents. And that's not good"<sup>944</sup>.*

By the same token, Judge Verdickt pointed out:

*"For example, the fact that a Guinean child is granted refugee status because there is a risk of excision. Are the parents not instrumentalizing the procedure to obtain a status? [...] I once had a couple at the hearing [...] who had met in Belgium [...] and they each had their own story. We had both files at the hearing and so the file was really not good for either of them. And then the lawyer still says to me 'There you go, the lady is pregnant'. In fact, she was seven months pregnant. And he tells me maybe it would be a little girl [...] Well, yes, of course, if it was a little girl, did they use the procedure as an instrument, thinking that they were going to make a child in order to...? It's difficult to say [...] The lawyer was well aware of it and so he said, maybe we'll see each other again"<sup>945</sup>.*

Elisabeth Lejosne, a nurse at the Red Cross centre in Uccle, highlighted that when they are the result of malicious behaviour, these strategies have negative consequences for the asylum seekers' vulnerabilities, and ultimately end up harming them:

*"Above all, you should not underestimate someone who is desperate. Because then you are ready for anything, really anything, both positive and negative. I mean, for example, to have a child with a Belgian is useful for the procedure [...] But at that moment I mean it is an overflow for all the traffickers. You can meet malicious men who will make you believe that you need to be pregnant to get a status,*

942 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

943 B. Verdickt, CALL Judge, Brussels, 09.07.2020.

944 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

945 B. Verdickt, CALL Judge, Brussels, 09.07.2020.



*but it's not just like that, it's more complicated. I was involved in a very special psychosocial follow-up, dealing with the mother-child bond. Because she had a little boy. She came from a country where excision was practiced, she wanted a girl. The girl could never have been repatriated to her country, because she would have been at risk of being excised in turn. She had a boy, and I really had to take care of all the emotional side, the relationship between mother and child. Sometimes it can be complicated. That's why, I think, you shouldn't underestimate someone's despair."*<sup>946</sup>.

Other interviewees identified other types of abuse, this time more related to procedural delays. Asylum seekers could abuse these delays in order to stay longer in Belgium. One interviewee explained that he avoids postponing hearings as much as possible, except in cases where it is strictly necessary because of an applicant's specific need. He elaborated:

*"There is a whole administrative machinery, so if hearings have to be sent back, there are already subsequent hearings scheduled, in short, it's a whole administrative burden, which does not mean it's not possible or that it's never done. But we also know that if the lawyer comes with a slightly light reason for postponement, and that it works, we risk falling back into slightly abusive practices, I am not saying that it is automatically the case, but it is in the idea of avoiding that too"*<sup>947</sup>.

Some Judges have witnessed individuals use several procedures – including, among others, the asylum procedure – in order to be able to stay in Belgium at all costs. Judges therefore identify abuses in the type of procedure chosen to regularise the right to residence. For example, Judge Declerck cited people who apply for asylum to cover, for example, special medical needs. Asylum seekers would therefore choose the asylum procedure strategically, with a view to obtaining medical care, even when the asylum procedure is not the appropriate procedure for their application, in this case. Judge Declerck illustrated this with an example:

*"I had a case [...] somebody in my courtroom had a heart attack and fell, so we called the ambulance and, of course, immediately they asked [...] 'had you had any precedents?' and he says 'yes, I came here several years ago, I had a heart transplantation in Brugmann University Hospital' and, of course, he didn't say that in his asylum procedure and I was not supposed to hear that because that was connected to health issues but it just happened in front of me in my courtroom so I heard it. Of course, I did not use it against him, but it's clear that this is abuse. He came, he was treated one time, he had come again, he learned that if you are in asylum procedure, you get medical care"*<sup>948</sup>.

Aware of the strategic use of the different procedures of regularization, another Judge proposed to simplify and standardize these same procedures with the aim that asylum seekers would use them in a coherent fashion. She hoped that this would save time and result in a different outcome:

*"Sometimes I think it would be better if [...] you had like one general procedure for all the rest... because now, what they do is that they try this, they try that, and that perhaps, I think, it is easier if we have one general procedure [...] apart from the asylum, because the asylum procedure is very specific, I think sometimes it is better to have one procedure and they just bring on everything they can think of and we will investigate it and then...they have an answer and then they know "okay we have brought*

946 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

947 Interview n° 4, 14.07.2020.

948 K. Declerck, CALL Judge, Brussels, 01.07.2020.

*everything we had and that is the answer*<sup>949</sup>.

Judge Declerck is clear on the use of vulnerability in asylum matters. She explained: “*Vulnerability is a notion that is used and abused*”<sup>950</sup>. She then mentions the role of the lawyer who will defend her client by drawing attention to these vulnerabilities, before expressing her discomfort as a Judge, when this vulnerability does not correspond to the criteria required to obtain protection:

*“[The lawyers] will say ‘this is my client, this person is vulnerable’ for one reason or another [...] I am not saying that the lawyers are necessarily wrong in saying so, it is just that it is not what we look for. Well, it certainly means that there is something not right for that moment, but does it mean that this necessarily [...] impacts your whole asylum procedure, that’s another question. It could, but it could not*”<sup>951</sup>.

Cristina Valenti, a former worker in the Dispatching department, has a different point of view of the multiple recourse to different procedures, which, according to her, is more a matter of choice by *default* than a real *strategy*. According to Cristina Valenti, people in an irregular situation would be forced to persist in applying for asylum if they want to stay in Belgium. They therefore become asylum seekers by default, out of lack of choice, rather than due to strategic choice. She explained:

*“There are also asylum seekers who apply for asylum a lot, and it is not that it’s an abuse, it’s how to say it... It’s that there is no other way to regularise their situation, in fact. Because I think you already know that Article 9a on regularisation [...] it is not easy to get it, there are quite strict criteria, it is a quite complex procedure and often it is not granted. Then there is Article 9ter, for medical reasons, but that too is very complicated to obtain! So afterwards, obviously a person has to apply for asylum 10 times, what do you want them to do? It’s the only way for them to stay, let’s say legally, on the territory*”<sup>952</sup>.

The strategies put in place by asylum seekers at the procedural level therefore takes different forms in the hands of Judges. In all cases, the techniques put in place make strategic use either of *people* (in particular, when it comes to filing a subsequent asylum application on behalf of a child) or of *time limits* (in particular, when it comes to using all available procedures). The notion of vulnerability itself is also sometimes used for strategic purposes, in particular to further advance a person’s need for protection.

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949 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

950 K. Declerck, CALL Judge, Brussels, 01.07.2020.

951 *Ibid.*

952 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

**Summary Box 8. Asylum procedure and vulnerability**

The fieldwork has shown that the asylum procedure itself is a relevant factor of vulnerability for applicants. Its length, complexity and uncertain outcome with the resulting emotional burden are likely to create, maintain or worsen the vulnerabilities of asylum seekers. Some points need to be mentioned:

- the asylum procedure is long and its time frame is unpredictable. Applicants feel helpless during the long waiting period in the reception centres that can literally change them. Language courses, vocational trainings, sports and leisure activities are organised or suggested by the staff of the centres to make the most of their time there. In addition, residents can also work in the centre (e.g. cleaning the common spaces, working in the restaurant or in the clothes “shop”) to earn extra-money;
- the uncertainty of the outcome causes the applicant extended suffering and stress and is likely to prevent them from undertaking useful activities such as courses or vocational trainings. Despite the efforts of social workers in the centres through individual accompaniment and activities, they have limited power in addressing this problem;
- the complexity of the asylum procedure and its unfolding is difficult to handle. An extra-layer of complexity is added in case of a Dublin procedure. The asylum procedure is not always able to address multifaceted vulnerabilities in an applicant’s profile because they are not always linked to the grounds in the Geneva Convention;
- the various asylum institutions do not communicate enough during the procedure. As a result, identifying, assessing and addressing vulnerabilities is more likely to be ineffective;
- the COVID-19 crisis has changed some practices of the asylum procedure (such as suspending the hearings and using a written procedure in certain cases, using masks and plexiglas in court rooms, limiting meetings with guardians and lawyers). This created new vulnerabilities and added new layers of complexity in the identification and recognition of vulnerabilities;
- the fieldwork has also shown that there are strategic uses of the asylum procedure by those who cannot be recognised as refugees. However, the interviewees underlined that these strategic practices are a symptom of the system’s failures to establish legal pathways of entry outside the asylum procedure.

#### 4.4. Education and vulnerability

If one chooses to approach vulnerability in a more individual rather than categorical way, the categories of vulnerable persons, as set out in the EU Directives (namely age, gender, disability and physical, sexual or psychological violence), are not sufficient or complete. These categories need to be complemented by other factors of vulnerability, i.e. other elements which may, in the context of an asylum procedure, impact on the vulnerability of asylum seekers. Education, understood here as the body of intellectual and cultural knowledge acquired in a field of activity, is one of these other factors. Our interviews revealed that education exerts obvious influence on determining whether a profile qualifies as vulnerable and, indirectly, on the need to grant protection.

The impact of the education variable is wide ranging. Our interviews showed that this impact also varies according to the type of institution interviewed and the role they play in the asylum procedure. Thus, the assessment of whether education impacts the vulnerability of an individual varies between the decision-making bodies (i.e. the CGRS and the CALL) and the reception bodies (i.e. the centres). Their assessment of the education factor is set out in the following sections.

##### *4.4.1. Education and vulnerability in the eyes of asylum Judges*

According to the Judges interviewed, education can generally reinforce or distort the vulnerability profile of an asylum seeker. The impact of education on a person's vulnerability is therefore twofold. On the one hand, it ties into the qualification of the person as vulnerable as such. On the other hand, the education factor may also have an impact on the expectations of the restitution of the asylum story.

Firstly, concerning the qualification of an individual as vulnerable, interview data suggests a correlation between the degree of education and vulnerability: the more educated one is, the more resources one is supposed to have, the more likely it is that the "vulnerable" nature of the asylum seeker's profile will be contested. Conversely, the absence of any education may, on a case-by-case basis, reinforce the vulnerable nature of a profile.

This is clearly expressed in the words of an interviewee about women fleeing domestic violence and gender violence:

*"There is a general idea that when you are educated, when you have been able to work, you have been able to be confronted with other people, you have more knowledge of the law and therefore you are still more likely to be able to resist pressure from the family. If a person has education, it will be easier to resist because they already know that they can rely on other people and on the law."<sup>953</sup>*

Judge Hayez, still on the subject of gender violence, confirmed this:

*"If we note that the person is not educated, that she was put to work as a child because she had to help her mother or her stepmother with household chores, if we note for example that she is illiterate and that is proved, [...] this will somehow establish her seriousness and reinforce her story and the life conditions in which she lived"<sup>954</sup>.*

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953 Interview n° 4, 14.07.2020.

954 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

Similarly, another asylum Judge emphasised:

*"I think there's a difference when a woman has university degree, a university diploma, comes from a well-established family, has a network, has worked, has had a professional career [...] I think in those cases you cannot say [...] that they are vulnerable because you know they have a lot of tools and they were able to take care of themselves [...]"<sup>955</sup>.*

The Judge's words here link education to the maintenance of a "network" in the country of origin and having contacts that can also put the vulnerability of a profile into question. The question of vulnerability can therefore also be assessed in terms of the environment from which the educated person comes. Judge Verdickt added: *"the lack of education will also often be linked, although not always, to the lack of socio-economic means and therefore to the lack of a network"*<sup>956</sup>.

An interviewee underlined the obvious vulnerability of illiterate people more broadly. She mentioned that the latter *"do not have the same assets as the others"*<sup>957</sup> which in an asylum procedure can be a real handicap. Accordingly, the interviewee mentioned that education is often only one of the "added vulnerabilities" and that it can qualify a profile as vulnerable:

*"Naturally, the vulnerabilities add up [...] Finally, they are often things that come together. With a victim of conjugal violence who has a high level of education, we may be more demanding, saying 'yes you had a violent husband, and we don't question that, but now you are divorced, and you can do something'"<sup>958</sup>.*

Thus, women must be described as being *less* educated to be described as *more* vulnerable. One interviewee, aware of this correlation, pointed out that it is not always established. He explained, referring to educated women:

*"If the pressure increases or if the law in the country makes the police ignore this kind of complaint and say, 'it's a family matter', the fact that she has been educated is not going to protect her in particular"<sup>959</sup>.*

Another interviewee emphasised:

*"I think that, indeed, even an educated and autonomous woman risk suffering like any other woman if they do not fit the image of a woman's behaviour. [...] It's all a matter of knowing what kind of difficulty she will suffer from and whether the threshold will be reached: for someone who is not educated, the threshold will be reached much more quickly than for a woman who has more tools to defend herself"<sup>960</sup>.*

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955 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

956 B. Verdickt, CALL Judge, Brussels, 09.07.2020.

957 Interview n° 2, 07.07.2020.

958 *Ibid.*

959 Interview n° 4, 14.07.2020.

960 Interview n° 2, 07.07.2020.

Education and its impact on the vulnerability of the person therefore plays an important role here, in that it can influence the potential recognition of a protection status.

Secondly, interviews show that education can also have an impact on the expectations of telling one's asylum story accurately. The fact of being more or less educated and the resulting vulnerability – or lack thereof – may also influence how accurate the individual's narrative is. Specifically, it is a question of adapting the questions asked and the way in which they are asked to the level of education of the asylum seekers. An interviewee was very clear on this point: *"We have to assess the credibility of a story and if we have a person who has no education, we will adapt our questions to this person"*<sup>961</sup>. She cited the example of a highly educated asylum seeker to illustrate how the question format can be adapted to the person's profile:

*"At my hearing today, I had two people who were mentioned political issues. They were both academics, one of whom spoke very well in French. And I was asking very specific political questions that I don't usually ask. So, one was on an electoral list...How is it that you are on an electoral list when you are in prison at the time the list is drawn up? How long does an election campaign last? These are not questions that I usually ask [...] But here I knew what I could expect from them... I knew that I could ask for answers because of their profiles. They said they were academics and that they had been candidates in the elections. So, I asked more questions. And they didn't seem at all confused by my questions [...]"*<sup>962</sup>

Similarly, Judge Declerck recalled the higher requirements in terms of story restitution that can be expected from a claimant with a high level of education:

*"If somebody has a higher education and pretends that he has been, for instance, very politically involved, then you can expect that person to be clear on that. But it is not because you have a higher education in chemistry that you will be a good politician, so in that sense it all depends a little bit on what they say and what they pretend their profile is [...] If they say: 'okay, I have done this and that' you can imagine that somebody who has been in secondary education will be able to explain that correctly. Somebody [with] a higher education even more"*<sup>963</sup>.

While education can influence how sophisticated the questions are, it can also impact the level of sophistication expected in the *answers*. Judge Verdickt pointed out that a lower level of education can help to justify the more or less imprecise or incomplete nature of a narrative:

*"If you want to give to the status to someone, it can help to say that there were certain contradictions in their narratives due to the fact that they hadn't had any proper education."*<sup>964</sup>.

The impact of the level of education on the vulnerability level of a profile is assessed on a case-by-case basis. In this sense, and because there is no framework for defining the impact that education can have on vulnerability in *all* cases, some Judges refer to the difficulty of assessing a profile in terms of the education factor. In the words of Judge Declerck:

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961 Interview n° 2, 07.07.2020.

962 *Ibid.*

963 K. Declerck, CALL Judge, Brussels, 01.07.2020.

964 B. Verdickt, CALL Judge, Brussels, 09.07.2020.



*"When you talk about vulnerability then this is black and white, but there are so many situations in between where somebody [...] maybe know how to read and write, but you know, I always look at the signatures and you see that this person knows how to read and write...But he wouldn't be able to write a book, something like that"<sup>965</sup>.*

#### 4.4.2. Assessment of vulnerability by protection officers

The same assessments of vulnerability are found among protection officers. With regard to the *qualification of the person* as a vulnerable person, the CGRS adopted the same point of view as the CALL. Interviews revealed that the more intellectually precarious the person is, the more likely he or she is to be subject to multiple and cumulative vulnerabilities. On this subject, a protection officer mentioned:

*"I would say a woman who came by land, who comes from a small village, who has never been to school, who can barely read and write, all these are clues that will strengthen her vulnerability profile"<sup>966</sup>.*

The degree of precision in the questions asked by the protection officer and expected in the answers of the asylum seekers also varied according to education levels. Protection officers therefore adjust the content and manner of asking their questions to the education level of the claimant. A protection officer explained:

*"In my experience [it] may [play] a role in the level of information that I expect from them and I also adjust my questions to the person in front of me [...] for example, people who are less educated or, for example, do not have any notion of dates or time because have never been to school, they have never learnt how to read a calendar[...] I would expect less details or precise date information because you can't expect that from a person that does not know how to read a calendar"<sup>967</sup>.*

In contrast, another protection officer put into perspective the impact that the level of education can have on the vulnerability profile of a person in an asylum procedure:

*"The level of education, I'm not going to say I don't care, but it's not the most important thing. It is not because a person has gone to University that [...] they can give me a clear answer, no. Even for some protection officers, if we had to hold a hearing, I don't think we could give a very clear account of what happened and say: 'This is the link with the Geneva Convention and here are the details, the details to say that it is credible or not credible'"<sup>968</sup>.*

She underlines the decisive role of the asylum seeker's background against which to assess the person's level of education. Thus, regarding a woman claimant who is educated in a traditional society, the protection officer explained:

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965 K. Declerck, CALL Judge, Brussels, 01.07.2020.

966 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

967 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.07.2020.

968 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

*“Being educated still generates vulnerability because if in her family, things go well, and she is well respected [...] society does accept it. And therefore, the behaviour of society towards this woman and her family will generate another form of vulnerability”<sup>969</sup>.*

The importance of the “environment” and its assessment is also mentioned by another protection officer, who insisted on the ability of having a “network in the country of origin”, which can be a major issue in the case an individual return.

Thus, according to Judges and protection officers, vulnerability and education are linked in two ways. Firstly, they are correlated in an approach that emphasises the individual and their capacities. Vulnerability and education refer primarily to the resources and capacities available to the individual (e.g. being a woman who has had the means to study), and less to the environment in which the individual is embedded and the type of relationship the woman has with those around her (e.g. being a female academic in a highly traditional society). Therefore, the special needs of people in light of their education seems to be thought of *outside* social configurations. This is so even though the qualification of a person as vulnerable implies the recognition of the situations of social vulnerability in which they find themselves (in particular, the presence or absence of a network). It is very revealing in that the Judges and protection officers we interviewed mentioned the importance they attached to “the network” (for instance, family relationships) that the vulnerable person may or may not have.

Secondly, in the light of the above, according to Judges and protection offices, a vulnerable person, seems to be understood as someone being dependent, destitute and without resources. Such an approach to vulnerability sets aside other more relational approaches to vulnerability, which perceive vulnerability as a “capacity to be harmed”, for example. This assessment, on the other hand, mainly influences *procedural* needs, which are distinct from *protection* needs.

Thus, the Judges’ willingness to take education into account when assessing vulnerability ranges widely. It also seems to stem from the fact that there are no established criteria on which to base the attribution of the status of “vulnerable person”.

#### *4.4.3. Impact of education on assessing vulnerability profiles in the centres: a completely different perspective*

The impact of education in determining an asylum seeker’s level of vulnerability occurred in the centres, as was noted by several social workers. While Judges and protection officers established a correlation between the degree of education and the degree of vulnerability in the asylum procedure, social workers, through their observations in the centre, have a somewhat different reading of vulnerability. Vulnerability is assessed at different levels and has a variable impact on educated and uneducated profiles. Interviews revealed that education can reinforce and create vulnerabilities during an individual’s stay in the centre, during their asylum procedure and for the integration of asylum seekers. The interviews conducted highlight how the education factor can create particular vulnerabilities within the centres.

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969 *Ibid.*

#### 4.4.3.1. Education as a tool to navigate Belgian asylum system

Similar to Judges and protection officers, many social workers we interviewed described people with lower levels of education as vulnerable. Illiterate profiles are regularly mentioned as the paradigm of vulnerability. These people are said to be more vulnerable, particularly in terms of understanding the asylum system and its intricacies.

Thus, Julian Knittel underlined it:

*"I mean, educated people perhaps understand better the functioning of an institution, of an administration, perhaps understand better the habits and customs all that, whereas an educated person, the steps to the municipality, to understand what to do, it is perhaps a little more complicated..."<sup>970</sup>.*

Along the same lines, a social worker from the Sugny centre spoke of the *"fragility to take on administrative procedures"*<sup>971</sup> among the less educated. Carla Pannemans also stressed that illiterate people are very regularly *"lost in the system"*<sup>972</sup>. Julian Knittel pointed out that this vulnerability in relation to the administration and its procedures is continuous and keep on going in life after the centre, once residents have obtained refugee status:

*"On how to find a job afterwards, I know that it's not easy for illiterate people, as everything has to be done on the internet, like the search for accommodation [...] I know that it's sometimes difficult for them [...]"<sup>973</sup>.*

Additionally, a social worker mentioned the impact that the level of education – and the resulting ease of understanding – can have on the degree to which a resident's asylum application is prepared:

*"The main part of my job is to explain the Geneva Convention to them, and basically what is at stake, what they have to prove! I'm going to explain this to a lady who has a high level of education, who is a University student, she will immediately understand, she will immediately understand how to defend her case, what to base it on since I tell her and she understands! It's not really a question of translating words into her language, it's really about understanding [...]"<sup>974</sup>.*

Similarly, a nurse stated:

*"I would say that people who have been more educated, who have been lucky enough to have access to a better education, I think they just understand better the things they are told here"<sup>975</sup>.*

Beyond understanding the asylum procedure, Isabelle Plumet highlighted the impact that education can have on understanding how a reception centre works. According to interviews, education is a resource that people can easily use in order to manage the waiting period linked to life in a centre and find their own place in a community structure. Isabelle Plumet states the following about these people:

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970 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

971 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

972 Interview n° 44, 24.09.2020.

973 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

974 Interview n° 32, 09.09.2020.

975 Interview n° 58, 12.10.2020.

*"In the centre they will understand how everything works, they will be able to find one or another job in the centre more easily, I will say, they will be able to help others [...] So they become a bit like coaches for certain people..."<sup>976</sup>.*

Daniel Legreve also underlines the resources mobilised by educated people to find their way in the labour market:

*"I think that those who have an educational background, generally they don't need help, they don't need training. They come out of the centre, they'll find it on their own. But those who don't have any educational background, they are the ones who come to us [...]"<sup>977</sup>.*

Illiterate people would be in a much more "established relationship of dependence on the centre and the centre's residents"<sup>978</sup>, according to Olivier Peeters.

A social worker specified that this mobilisation of resources also makes it possible to make the individual feel more secure at the centre and to maintain reassuring control over his or her life while at the centre. She takes the example of one resident, a former career military officer:

*"We have a gentleman here, his survival technique, which is to stick to the reception desk all the time to be sure to hear everything, to understand what's going and to be able to live here with the control he always had [...] He knows how it is managed here, by hearing the conversations. These are basic things, but I think they make him feel safe. [...] It allows him to put things in order, to see how things work, [...]"<sup>979</sup>.*

At the same time, the poorly educated are not without resources. On the contrary, our interviews revealed that their resources simply take other forms. Those with little education develop their own "compensation" tools and their own knowledge network. Julian Knittel was clear on this point:

*"I don't think you can reduce everything to education anyway. There are illiterate people who have a lot of contacts and who can sometimes find other ways of doing things [...] we get information on the internet, I mean, we get information from the administrations, well, there are people who get information from their friends"<sup>980</sup>.*

Julian Knittel also specified that these people can create their own information network with the risks of "not always reliable"<sup>981</sup> information and "not always well-advised"<sup>982</sup> people. Isabelle Plumet also cited individuals who mobilised their resources to find their place within a centre:

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976 I. Plumet, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

977 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

978 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

979 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

980 J.Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

981 *Ibid.*

982 *Ibid.*

*“There are people who have a lower level of education and who also have abilities, who are not necessarily vulnerable for all that, let me put it this way. There some people here who work in the centre, because they have particular abilities, so they can find a way here. So, it’s not a barrier”<sup>983</sup>.*

More broadly speaking, a social worker mentioned a “resource system”<sup>984</sup> set up by people with little education to simply continue living in a system they do not understand and in a context that is unfamiliar to them after exile, so that they can cope with it.

In order to access the labour market more quickly and without discrimination, some also hide their lack of education, hoping to conceal their vulnerability. For social workers, things as obvious as illiteracy can first pass unnoticed and reveal themselves at inopportune moments. Several experiences of social workers testify to this. For example, Carla Pannemans mentioned that illiterate people are sometimes “[...] Very good in hiding it, so you will not notice it straight away that he cannot read or write”<sup>985</sup>. Similarly, a social worker at the Sugny centre pointed out that illiteracy is something that is always discovered “informally”<sup>986</sup>.

Sébastien Quoidbach cited the following example of this phenomenon:

*“It is through simple little things that you notice it. You make an appointment with someone and you realise that they are never on time. [...] They have to sign up for something, and then I see the person who can’t hold a pencil, he’s almost never seen one”<sup>987</sup>.*

This can also continue outside the centre. A social worker working at the LRI, mentioned the feeling of shame correlated to illiteracy. She gave the example of a resident that she supervised and to who she asked to call to make an appointment:

*“In fact, during the call, I realised that there was a problem: the fact that he was illiterate. He never told me [...] Afterwards, I totally agree that in some cultures, for some people, whether you are a man or a woman, it is sometimes a bit difficult to admit your weaknesses and failures. But if I had known that I wouldn’t have pushed him. All he had to do was tell me, ‘Madam, I’ve never been to school, I’m having difficulties’. And when I noticed it during the call, I picked up the phone straight away”<sup>988</sup>.*

The resources mobilised are therefore not the exclusive monopoly of the educated. What does vary, however, is the *type of* resources used: for illiterate people, it is above all a question of individual skills and behaviour, which are the result of the person’s personality and are not very closely linked to previous knowledge. These skills, which could be described as “generic”, develop when people carry out tasks within the centre (for example, community work). They are therefore by definition much more malleable and transposable. They can be grafted onto different tasks and functions, and paradoxically lead to a certain degree of flexibility on the part of residents with lower levels of formal education. In the words of Carine Vansimsen:

983 I. Plumet, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

984 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

985 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

986 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

987 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

988 Interview n° 60, social assistant, 21.10.2020.

*“People in rural areas say ‘I’ve always worked, I’ve done everything and anything’ [...] Often when I ask ‘what did you study?’ they say: ‘I’ve done everything and anything, I’ve done business, I’ve done this, I’ve done that, ...’ so they have an ability. The public in more rural areas is able to bounce back and adapt to the environment, whereas the public who had such and such a profession, it’s very difficult to make them understand that we can no longer do that, that we’ll have to go down a level”<sup>989</sup>.*

#### 4.4.3.2. Education, work: professional “death”

In the context of vulnerability related to education, some of the social actors we interviewed also mentioned individuals at the centre whose main aim is to be economically independent regardless of their level of education. Therefore, for illiterate people a real dilemma arises: to start working immediately in order to be financially independent or to first learn a national language and acquire skills to ensure financial stability *later on*.

While waiting for the outcome of the asylum procedure, which is by definition uncertain, Daniel Legreve underlined the impatience some residents felt to get to work:

*“[...] Among some residents, I realised that they can neither read nor write, and I know that their first desire is to work, but I first explain to them why the first thing is to get back on track [...]. You have to give them the tools to build their life, so at the beginning they don’t always agree, they say ‘no, I want to work, I want to work’”<sup>990</sup>.*

In the same vein, another social worker underlined the impact that the length of the training can have on their decision-making process: asylum seekers usually have no time to attend trainings; instead, they are preoccupied with short-term, immediate needs (for example, earning money quickly). Owen Miossec underlined the benefits a regular job could have on the psychology of asylum seekers who find themselves “busy” while waiting for their procedure:

*“It is a very positive thing in Belgium, that people can work. Because people, at least, while waiting for the answer to their application they do something...They can go to work in any case. They can create a daily life and a semblance of life in the place where they are”<sup>991</sup>.*

In addition to wanting to find work, some residents must accept, conversely, that they will no longer have the same job that they did in their home country. For some of the social workers interviewed, this professional “death” was also a major vulnerability factor. According to Daniel Legreve:

*“We’ll take the case of the gentleman who is a dentist. We explained to him: ‘You were a dentist in Afghanistan. You won’t be here anymore’”<sup>992</sup>.*

A social worker from the Fédasil centre in Sugny also underlined the feeling of low self-esteem that residents suffer due to the “social downgrading” that they undergo. Regarding highly educated residents, she stated:

989 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

990 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 17.09.2020.

991 O. Miossec, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

992 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 17.09.2020.



*"[...] They will never be able to practice medicine in Belgium unless they have some sort of equivalence in degree or training that they will probably never have, it's true that this makes them vulnerable too [...] They are diminished, they have to learn to give up what they were before"<sup>993</sup>.*

Lindsay Billet also said that she witnessed a form of distress among the highly educated:

*"[...] Here we have a gentleman who is highly educated, he's been taught to think [...] so he feels very diminished being here because they can't reach their full potential ... and he's trying, really, to do everything he can to educate himself, to train himself, to read articles, and he says it himself: it's very difficult in the end to go around in circles, to have nothing to do and to keep on thinking, reflecting"<sup>994</sup>.*

Another social worker also described a feeling of limitation that can occur in the centre<sup>995</sup>. Being prevented from performing the job you had in your home country makes you feel vulnerable. The social worker went on to point out that having to stay in the centre and having to start from scratch in order to continue living is also a form of vulnerability. Moreover, highly educated residents who can't find a job feel judged by their peers. Carine Vansimsen developed this point as follows:

*"I think it makes them more vulnerable when they realise that their social role or their profession cannot be the same here in Belgium. And so, when they arrive here, they are full of hope, full of dreams, we will quickly get our answer, we will quickly bring the family, we will quickly get work...and then people realise that not all training courses are accessible to them, that there is the language barrier, that a part of the budget is needed to launch their professional activity afterwards [...]"<sup>996</sup>.*

The impact that this occupational and social downgrading can have on vulnerability is significant. For many of the actors interviewed, it can itself be a vector and factor of vulnerability. It can therefore place a person in a situation of vulnerability. On this point, Julian Knittel is clear:

*"I can talk about highly educated people, and there are some who end up heavily medicated, or things like that, you know? So, you say to yourself: 'but my boy, you're educated, you understand what's going on!' But they don't do well in a centre. So it means that he was vulnerable and that we didn't notice it maybe, I don't know, but in any case, something happened"<sup>997</sup>.*

Similarly, Olivier Peeters, Director of the CAMPO Red Cross centre of Ans, stated:

*"I also saw some people who seemed to have a certain level of education but who still fell into addictions, things like that...Someone who becomes a big user, in the centre, who starts to do small trades, things like that... so is he vulnerable or is he just 'getting by'? It's still different..."<sup>998</sup>.*

993 Interview n° 51, social worker, Sugny Fédasil reception centre, Sugny, 25.09.2020.

994 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

995 Interview n° 30, 09.09.2020.

996 C. Vansimsen, social worker, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

997 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

998 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

These hopes of finding a job also concern the UMs. For the most part, these residents do not have previous work experience. At the same time, those with some level of education project themselves into higher social positions. A social worker mentioned this in her comments about the under-age girls she supervises:

*"I see they come, at first, with this energy, they say 'I'm going to be a lawyer, a doctor, a member of parliament, I'll work for the European Commission' all that... Then afterwards they are confronted with the expectations of the Belgian education system and there is still a lot of things to catch up, and then they realise that it wasn't... it wasn't that simple in fact, so they have to revise their project a bit"<sup>999</sup>.*

Hippolyte Kisonde explained the disillusionment felt by UMs who think they can make the most of their skills in Belgium:

*"I want to take a simple example. It was a young Afghan who came to us, he was, I think, 14 years old and as soon as he arrived, he told us: 'I have a job' [and we thought] Ok, we're going to try to valorise him. [He said] 'I don't want to go to school'... 'but what's your job?' 'I'm a shoemaker. I repair shoes very well...' [we said] 'Here, we don't repair shoes anymore... we throw them away...' His whole world collapsed when we told him that here he won't be able to do anything with his job... I think that people probably have to expect, get used to starting from scratch... and I think that's the biggest vulnerability because people come with expectations"<sup>1000</sup>.*

It is clear then that regardless of education level, residents have to renounce their professional past: either because they will not be able to work immediately as they wish (in particular, because of the administrative formalities or the language barrier) or because they will no longer have the job they did in their home country. In both cases, a feeling of not having control over their lives is in the minds of the asylum seekers and becomes a source of vulnerability.

With a view to guaranteeing access to the labour market, some asylum seekers try to enhance their skills by highlighting their qualifications. Here, training is mobilised strategically to create a gateway to the labour market. On this topic, a social worker said:

*"We had Syrians here who were convinced that they always had to tell us that they were engineers for example, well, they always came back with their degrees... I'm not impressed! [...] but it's really this valorisation, always showing the best part of them [...]"<sup>1001</sup>.*

In order to address this vulnerability factor, the reception centres offer training courses that residents can sign up for. There are contact people within the centres who offer different types of training, including French language courses. However, the choice of training courses remains limited. They are mainly in the fields of construction, sales or cleaning. A social worker was clear about the limited choice offered to residents. On the subject of women asylum seekers, she explained:

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999 Interview n° 32, 09.09.2020.

1000 H. Kisonde, Deputy Director of Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

1001 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

*“There are a lot of women who have studied here, they are not highly educated, they won’t be able to do everything they want right away but they will work in the cleaning trades, as a home helper... Well, these are very, very precarious jobs, we agree, but some of them will have enough money to find a job in the black market, and to get food and housing, and... that’s it”<sup>1002</sup>.*

Very little higher education or University training is offered to people who already have high levels of education. Some centres sometimes collaborate with certain Universities to set up specific courses for asylum seekers and refugees who would like to obtain specific training. Daniel Legreve explained that this is mainly arranged for very young and isolated asylum seekers, who do not have to provide for the needs of a family back home<sup>1003</sup>.

For educated and qualified adults, access to employment related to their previous training is more complicated. In addition, there is the question of the recognition of the diplomas migrants received in their home country. Innocent Ntamuhanga, was clear on this point: *“The migrant population also includes university graduates [...] But Belgium does not recognise any of their diplomas”<sup>1004</sup>.*

In terms of training, older people can also be vulnerable because they lack resources within the reception centres and no longer have the energy to learn. Julian Knittel expressed himself clearly on this topic:

*“What I have also seen are these older people who understood nothing about the procedure and who could not learn French, because they are very old, a little slowed down and already worried by medical problems, so they no longer manage to have no energy left for the rest [...] in general the community or their children help them, take care of them, but when they find themselves in a centre, these resources no longer exist! So, we often notice that there are residents in the centre who take over, who help the elderly here [...] but it’s not the same thing”<sup>1005</sup>.*

#### 4.4.3.3. Vulnerability and schooling for minors: which issues for which profiles?

The vulnerability of minors is also linked to schooling issues. At first glance, some interviewees say that the vulnerability of poorly educated minors is apparent in that they are not equipped to pursue quality education successfully, even preparatory classes for asylum seekers. They are therefore at a disadvantage when it comes to learning and getting integrated in school:

*“When we have Afghans, who have never been to school and who are not even used to sitting on a chair because at home they are more likely to crouch or sit on the floor, and we ask them to sit for six hours of classes that they do not understand and that they do not know how to manage, we have a problem with their integration in schools and classes.”<sup>1006</sup>.*

At the same time, the difficulties associated with schooling do not spare minors who have already been to school. Paradoxically, the interviews revealed that this group of minors is very vulnerable, particularly to dropping out of school, in that school is no longer an issue for them. Julian Knittel was very clear on this point:

1002 Interview n° 32, 09.09.2020.

1003 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

1004 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

1005 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

1006 T. Pire, Director of the Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

*“Among the UMs, this is very obvious. Among those who speak English, UMs who already speak English and are already literate, they have difficulty learning the language, French or Dutch, because they feel they already know English and that’s enough for them. They are bored with learning another language. Whereas for someone who comes down from their little mountain, who speak neither French nor any other language, for them it’s a real challenge to learn! They are much more punctual, they are much more committed...you see, they are held by a mutual stake! [...] We have young people who are much better educated, and they don’t find themselves in a centre, they don’t find themselves at school in Belgium, because they know what school is! Whereas a guy who comes from the countryside, for him, learning to read and write is a challenge, you see?”<sup>1007</sup>.*

A social worker highlighted how these literacy issues are perceived by the minors. He pointed out that the illiterate minors who arrive in Belgium have everything to gain, in that they obtain new opportunities (access to education) which reduce their initial vulnerability (the fact of not being able to read or write).

Regardless of their level of education, one social worker highlighted that UMs are under pressure to succeed at school and this is an additional source of pressure resulting from the procedure:

*“In addition, they are asked to be super good students, because if the asylum procedure does not work, then they could apply for a residence permit saying that the best lasting solution for them is to stay in Belgium! And for that, they have to prove that they are super well integrated, that they are super good pupils, that they have a real project... but just look at a class of 4th secondary school pupils! Are they good pupils with lots of projects? Are they already well integrated? So, they will be asked to be “super super” when their future is uncertain, when the procedure is hard, when they live the same violence as adults, and when they still have to find the energy to work well at school!”<sup>1008</sup>.*

The vulnerabilities associated with language are particularly problematic for people who are educated. On this subject, a social assistant working in LRI underlined the ambition then the disillusionment of some young people who wish to pursue their education. Speaking about an UM that she supervises this social worker emphasised:

*“I tried to guide him as well as possible, for example for his studies, he was turned on, which is very good because he wanted to go to University, etc., which is very good, but the reality was that he did not speak French well, at the level of comprehension, writing [...] he had serious shortcomings, and he did not have the necessary skills to be able to communicate in French. He didn’t want to hear that he had shortcomings and that was normal, and that there was no shame in it. I tried to explain it to him but no... Afterwards he stopped school, so now he has no school at all and that’s sad...”<sup>1009</sup>.*

Carmen Salgado Gaeta also spoke about “unrealistic expectations” in the case of the more educated minors:

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1007 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

1008 Interview n° 32, 09.09.2020.

1009 Interview n° 60, social assistant, 21.10.2020.

*“Sometimes we have young people who are very educated here but who have ideas or unrealistic expectations about what they can study here, about where they can arrive... So, they don’t make the effort to finish their French classes. After that, they find it difficult to access schools other than ‘vocational’ ones. [...] Having a very low level is automatically a vulnerability but having a very high level does not guarantee their ability to integrate into a training programme that will enable them to progress”<sup>1010</sup>.*

Farid Khali discussed a *structural* problem of access to education in general and to certain types of training for educated UMs, in particular:

*“I think that vulnerability is above all for those, if I may say so, who have a great background, who have prepared themselves well. It’s a pity. [...] I think that those who suffer the most are also those who were in good schools in their home countries. Because here, 99% of the young people I have, they go into the professional world. When they come from Syria, from Iraq, especially with the immigration we had from Syria we had the cream of the crop, it’s the upper class! And when the poor people arrived here, you feel that they have a very strong Arabic background, but they haven’t had time to learn French, so when they finish their schooling, you see them in butchery or mechanics. I’m not saying it’s not good. But I still think it’s those with an educational background who are the most vulnerable, compared to the system on the spot”<sup>1011</sup>.*

Innocent Ntamuhanga pointed out the same problem exists for the UMs they supervise:

*“In these schools they always direct these people to vocational courses [...] It’s the system that’s like that, I’ve never seen anyone who motivates a young migrant to continue school and do something. And the schools for newcomers where they go, they are not schools... They are not ‘leading’ schools either [...]”<sup>1012</sup>.*

Language learning can be a strategic choice for minors. Carmen Salgado Gaeta pointed out that the decision to learn a language is often guided by the job opportunities and whether the UM is connected to a community or network in one of Belgium’s linguistic regions. Many interviewees pointed out, for example, that many Afghans choose to learn Dutch even when they are in French-speaking territory, in order to forge links with the city of Antwerp, which has a strong community of people of Afghan origin. There is also a financial incentive for young minors to learn Flemish/Dutch. As Carmen Salgado Gaeta explained:

*“Something strange has happened recently. There are growing numbers of Dutch-speakers here, because for a few months now, the Flemish Community has been giving a grant to all Dutch-speaking students, depending on the parents’ resources, and so as young people are supposed to have no resources, they receive 3,000 euros a year as a school grant and so they have been spreading the word. And so, we have more and more young people here who decide to study Dutch [...]”<sup>1013</sup>.*

1010 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

1011 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

1012 I. Ntamuhanga, “referee” for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

1013 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

**Summary Box 9. Education and vulnerability**

The fieldwork has proved that education – the body of intellectual and cultural knowledge acquired in a field of activity – plays a relevant role in asylum seekers' profile and is likely to make them more or less vulnerable:

- the level of education could have an impact in the asylum procedure and its outcome since education plays a role in the vulnerability assessment of the person and on their account during hearings. More specifically, the more educated asylum seekers are, the more contested their vulnerability profile is. The education of a person can also impact the hearings both on the type of questions asked and on the level of accuracy required in the answers;
- the level of education has a completely different weight in reception centres. Likewise Judges and protection officers, social workers in reception centres take residents with a lower level of education as the paradigmatic example of vulnerability, especially in understanding the role of institutions or the intricacies of the asylum procedure and in getting used to the rules of the centres and life in a community. Reception centres themselves organise (or suggest) language courses or vocational trainings. However, they are not always adapted to the level or expectations of the residents;
- interviews conducted in centres stressed that the less educated develop their own compensation tools and are able to adapt more easily to a new environment. Interestingly, social workers in the centre highlighted that often the more educated residents would suffer from the life in the centre. Moreover, it is highly probable that they will no longer have the same profession and hold the same social position than in their country of origin because foreign degrees are often not recognised, there is a language barrier and higher education (University level) is hardly ever an option for asylum seekers;
- education can also have an impact when learning French or Dutch on two different grounds. On the one hand, the illiterate or the ones with a lower level of education can experience more difficulties in learning a new language while, on the other hand, they will be keener and more motivated.



#### 4.5. Socio-economic status and vulnerability

During our fieldwork, we interviewed with Judges from the CALL and the CGRS protection officers as well as staff in the reception centres about the impact that the socio-economic status of the asylum seekers could have on their level of vulnerability. The goal was to get more information on the factors that play a role on the overall experience of the asylum seekers as well as on their vulnerability. The questions on asylum seekers' socio-economic background ranged widely and included inquiries into the seekers' type/source of wealth, their social status in their country of origin, their professional status, their family context (which was particularly relevant where gender was concerned) as well as the place where they lived before leaving their country of origin, such as city or countryside. Like education, socio-economic background is generally considered a factor that can impact applicants' level of vulnerability. However, there are some differences between the opinion of Judges and protection officers on the one hand, and that of the centres' social workers, on the other. In general, responses about socio-economic background were less detailed than the ones on education<sup>1014</sup>.

Judges from the CALL usually acknowledged that socio-economic factors are part of each person's profile and, more specifically, that they can influence the person's resources or access to resources in the country of origin<sup>1015</sup>. For example, the availability of a specific medical treatments in the country and the possibility on the asylum seeker to get access to them could be relevant to the scope<sup>1016</sup>.

Even though the Judges generally affirmed that socio-economic background should be taken into account<sup>1017</sup>, they are not ultimately convinced that it can play a pivotal role in the asylum request, unless a very high threshold is reached. Speaking about poverty, a Judge affirmed that it can without question make someone vulnerable, but in order to be eligible for recognition as refugee on the basis of poverty, detailed supporting evidence is necessary<sup>1018</sup>. She said:

*"Threshold [is] quite high... [you] really have to prove that you will be in a situation where you cannot change [your situation] because it's completely – how to say – beyond your control and you're completely left alone by the authorities, you don't have access to basic things like food or a place to stay, but then the threshold is quite high, but it can be possible..."<sup>1019</sup>.*

Judge Declerck echoed that those who manage to arrive in Europe are usually not the poorest individuals, as it requires financial and practical means to embark on the migratory road. In her words:

*"This is not black and white...there is...most of it is in between, and they know certain things or they are poor, but not so poor, because finally they did come to Europe. We don't really have the very poor people here, they can't move, they don't have the possibility the very poor and illiterate, unless somebody brought them here"<sup>1020</sup>.*

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1014 In one interview in the reception centre, a social worker affirmed that he had no comment because he was not necessarily aware of the socio-economic background of the resident. O. Miossec, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

1015 B. Verdickt, CALL Judge, 09.07.2020.

1016 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

1017 Interview n° 6, CALL Judge, Brussels, 16.07.2020.

1018 Interview n° 16, CALL Judge, Brussels, 24.08.2020.

1019 *ibid.*

1020 K. Declerck, CALL Judge, Brussels, 01.07.2020.

She continued by underlining that both education and socio-economic background are not strictly intertwined with vulnerability *per se*, but they are part of a given person's profile and should be considered as such. She stressed:

*"I think these are two different questions... when you talk about socio-economic background and level of education, I don't know if this is really vulnerability, I would just say that this is part of that person"*<sup>1021</sup>.

In her opinion, everything that is connected to a person should contribute to an overall evaluation of the applicant, but it should not be given a specific weight in determining vulnerabilities. However, the same Judge admitted that individuals who had limited life experience would be at greater risk of suffering or getting into trouble during the trip to Europe than those individuals with more life experience<sup>1022</sup>. That being said, she stressed that, while these cases may exist, this is not a vulnerability that can play a role in an asylum claim. In her words:

*"You can also accept if a person has not been travelling a lot or has only been living in his own neighborhood that he will make mistakes along the way and that is what happens, I think, but even with people who are not poor, who have been, let's say, take an Ethiopian who does not live in Addis Ababa but somewhere else and...ehm...has never really, you know, has travelled to Addis Ababa maybe once or twice and then comes overland through Libya to Europe, the chances that they have problems in Libya are pretty big, so in that sense, they will arrive and they will be vulnerable because they definitely have lived through some nasty things and the chances of that are very real, but this is the something different, this is not a vulnerability in the sense of the asylum claim, it is not because of that vulnerability that they left, they are vulnerable and then they have to take that into account and there are now rules for that, the way they have to be interviewed and all this sort of things...but as such it doesn't mean that they left because of Geneva Convention reasons, they left for other reasons, but on the way, a lot of these people have had very bad times..."*<sup>1023</sup>.

Interestingly, socio-economic background, as well as education, can play a relevant role during the audience. An interviewee stressed the fact that both socio-economic and educational background can play a role in the hearings since the questions would be adapted to the person's profile. Therefore, depending on the case, she would be more or less demanding with regards to the completeness of the facts and the accuracy of the details in order to assess the evidence and the credibility of the applicants<sup>1024</sup>. Likewise, Judge Hayez stated that socio-economic factors could be relevant both to weigh a person's vulnerability, but also to evaluate the applicant's story, whether to determine its truthfulness or to reinforce their statements and corroborate them. He said:

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1021 K. Declerck, CALL Judge, Brussels, 01.07.2020.

1022 *Ibid.*

1023 *Ibid.*

1024 Interview n° 2, 07.07.2020.

*"In addition, beyond his vulnerability, is the socio-economic context in the country of origin coherent with the person's professional or educational background? [...] it can work in favour of the person too! If, on the other hand, we find that the person is not educated, that they were put to work as children because they had to help their mother or stepmother with household chores, if we find, for example, that they are illiterate and that is proved, or if they have attested psychological vulnerabilities, I'm obviously dealing with a person who is very immature [...] This will support their asylum story and the context in which they have lived. So, it works both ways"<sup>1025</sup>.*

The protection officers generally confirmed that the socio-economic background is important to trace the personal life of the applicant in all the dossiers. A protection officer said:

*"The first part of the interview is very important, [...] there is also the educational background, whether the person has been to university or not, the family profile, the socio-economic background. So, these are all indicators that may or may not constitute vulnerability, [...] I would say a woman who came by land, who comes from a small village, who has not studied, who can barely read and write, all these are clues that will strengthen her vulnerability profile"<sup>1026</sup>.*

On the same point another interviewee stressed:

*"In any case, the level of education, whether the person is illiterate...or educated at the University level or [...] comes from a rural area or urban, etc... are in any case elements that are taken into consideration for all cases"<sup>1027</sup>.*

Socio-economic factors – namely, the origin, the family context, the political affiliation, the religion – are key elements to complete the profile of the applicant. This can be useful for a wide array of reasons. First of all, knowing the applicant's background is crucial in order to adjust the way of conducting the hearing and ask the relevant questions<sup>1028</sup>. An interviewee:

*"It's also up to us to formulate questions that are intelligible...to ask questions that are close to the experience of the claimants [...] the socio-economic background is taken into consideration to adapt the hearing procedure and techniques"<sup>1029</sup>.*

In addition, asking question about the background could also become a way for the protection officers to detect the origin of a person without identity document. Certainly, if the applicant has a high socio-economic status the questions can range from the University attended to politics while, in case of an illiterate person, questions about food or lifestyle could be asked for the same purpose. On this point, the same interviewee highlighted:

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1025 J-F. Hayez, CALL Judge, Brussels, 16.07.2020.

1026 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

1027 Interview n° 18, 28.08.2020.

1028 Interview n° 9, CGRS protection officer, Microsoft Teams Platform, 28.08.2020.

1029 Interview n° 18, 28.08.2020.

*“When we are dealing with Syrian files and the person has no identity document, we want to check that they are indeed Syrian, for an academic, we’ll ask them to tell us about their University, we can ask them about the...political news of their country because we think that maybe they can...they can know or...or things like that. While with an illiterate farmer, we’re going to ask him questions about the crops, about his lifestyle, about the typical dishes his wife likes to cook”<sup>1030</sup>.*

Moreover, investigating on the person’s profile also helps to understand and interpret the responses and the reactions of the applicant and, lastly, identify the crucial points that need to be analysed in order to verify if there is any connection with the Geneva Convention. On this point, a protection officer affirmed:

*“We take into account all the facets of the asylum seekers at the time of the hearing because the gender of the person, the relation to his religion, [...] the country of origin, the region of origin, do they come from a village or a town? Have they done any studies or not? All that is taken into consideration and indeed the socio-economic conditions too, we take it into account, we take it into account to establish the profile of the person, to adapt our questions, [...] what happens is that we just have the framework of the Geneva Convention so...so with all the profile that we’ll have established, it will allow us to interpret, to understand the person’s answers and his way of being...what they say and what they mean. [...] And all these elements will allow us to carry out the...the...the hearing, to go and find the necessary elements and then to see if it fits into the Geneva Convention or not. However, we are not going to ask four hours of questions just on socio-economic issues”<sup>1031</sup>.*

Furthermore, socio-economic background could be crucial for the outcome of the application in some specific cases, such as a Palestinian applicant from the Gaza strip. In that case, the precarious conditions for the people who live in the region, the fact that they are stateless, that there is the Israeli embargo and the population has to rely on the assistance of the United Nations, linked to the personal situation of the applicant (e.g. family support in case of return home) could lead to the grant of the subsidiary protection under Article 15(b) of the Qualification Directive<sup>1032</sup>. An interviewee said on this point:

*“The socio-economic background [...] can be quite crucial, for example, for the Palestine cases. Why? Because a low socio-economic level in the Gaza Strip, in a country where the inhabitants are in fact stateless or dependent on the aid from the United Nations, can lead to what is called inhumane and degrading treatment and can lead to the granting, not of the refugee status, but of what is called in Article 15b, the recognition on the basis of subsidiary protection. So, for example, for the Palestinian cases [...] the socio-economic issue is quite crucial and it is true that there are many disparities in the Gaza Strip”<sup>1033</sup>.*

A protection officer pointed out that the economic situation cannot be considered decisive for international protection and, what is more, even though precarity can have an impact on vulnerability, it is important that the applicants prove how the economic situation affected their life in the country of origin. He said:

1030 Interview n° 18, 28.08.2020.

1031 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

1032 COUNCIL OF THE EUROPEAN UNION, EUROPEAN PARLIAMENT, “Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)”, *Official Journal of the European Union*, 20 December 2011.

1033 Interview n° 18, 28.08.2020.

*“It’s true that a person who would univocally invoke his economic situation as a reason for, um...asylum will not, in my opinion, be able to obtain international protection. So, having said that, it is true that depending on the person’s precariousness, it can have an impact on their vulnerability. Nevertheless, [...] it’s also the protection officer’s job to bring him to talk about these elements, but it will then be up to the person to demonstrate or illustrate how their situation of poverty has impacted their experience in their country of origin. We have to see how precarious it is, [...] There are different levels of precariousness. I would say, the socio-economic criteria as such, we are moving away from the right of asylum, from the matter of asylum, but the question is to finally see in what way, perhaps, this socio-economic situation which is an element of the profile, in what way it impacts one’s experience, what are the consequences of this situation, that’s it”<sup>1034</sup>.*

Interestingly, a protection officer underlined that on the one hand, the family context, low education and socio-economic background and education are all indicators that could express a certain level of vulnerability or, in any case, be helpful in detecting it; on the other hand, however, the fact that the applicants are well-off, educated and with a high socio-economic status does not always mean that they are not vulnerable. In her words:

*“On the other hand, it is not because the person comes from the capital and comes from a middle-class family that this is enough to finally rule out the person’s vulnerability”<sup>1035</sup>.*

In addition, the socio-economic background, in particular the family situation, together with education, is often evaluated by protection officers particularly where gender is concerned, e.g. women or members of the LGBTQIA+ community<sup>1036</sup>. Coming from a certain country, and more specifically from city or a remote village, or being part of a family that is particularly religious or not, can determine whether an individual is accepted (or not) by their family and/or by the larger community (e.g. single mothers, homosexuals, trans people). On this point, an interviewee said:

*“For example, we’ve also had many cases of single mothers, and according to the CGRS, even if it’s not yet well seen, there’s still an evolution in society and therefore this type of single mother in Conakry is more common and therefore more accepted than in a small provincial village. So that’s why it’s really a case by case situation for me, and I don’t know how to make general considerations. It depends on the country, the culture and where you are from in the country...and for the person, it depends on what kind of education. [...] So, it’s really case by case”<sup>1037</sup>.*

Therefore, a protection officer affirmed that education is not the most important factor to be established in order to evaluate the vulnerability of a person, but a greater role is played by the socio-economic background:

1034 Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020.

1035 Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

1036 Interview n° 6, CALL Judge, Brussels, 16.07.2020 and Interview n° 17, CGRS protection officer, Microsoft Teams Platform, 26.08.2020. Please, see also the section entitled “Gender and vulnerability”.

1037 Interview n° 4, 14.07.2020.

*“When I talk about vulnerable people, I don’t take into account their level of education ...in fact, because it may be important even if it’s not the most important thing. The most important thing is in which environment this person was born, in which environment this person grew up, what’s their family mentality [...]”<sup>1038</sup>.*

#### 4.5.1. Socio-economic status and life in the centre

Workers in reception centres generally confirmed that socio-economic background may play a crucial role in the life of the resident, as well as have an impact on their level of vulnerability. An interviewee said: *“It’s huge the fact of having a cultural or social background, a financial background! It changes everything of course!”<sup>1039</sup>*. Centres are institutions where all the residents are treated equally despite differences with regard to the country of origin, socioeconomic status and professional status. Yet, all these factors can play a role in two ways. On the one hand, some residents may require further assistance and help in navigating the application procedure and life of the centre because they do not have enough resources. On the other hand, residents may approach daily life in the centre differently according to their background.

People from poor backgrounds could face difficulties that might make them vulnerable. Carmen Salgado Gaeta, Deputy Director of the Red Cross centre of Uccle affirmed:

*“So young people who come from more rural areas can have problems integrating, but especially in the centre. Not outside, then. We’ve seen this happening often. There are young people from the cities who have even passed through Pakistan, who have lived in Pakistan for years. Very cultivated people, who play cricket, who have a high level of education, and then others who come from the mountains and so sometimes it doesn’t go well because they treat each other badly”<sup>1040</sup>.*

For example, such individuals cannot fully express themselves because they do not know the official language. Instead, they only speak in their dialect. In addition, they may have a different relationship with and towards woman. Julian Knittel, Deputy Director of the Red Cross centre of Jette said:

*“I don’t always know so well where these people [the residents] come from, so it’s not something I’m going to focus on [...] But indeed, I have already taken care of that, Afghani UMs, sometimes coming from rural, rather remote areas, they were certainly more in difficulty. [For example], on their relationship with women, on using public transports, things like that... it was more difficult for them. Yes...the ability to live together was perhaps a little more difficult, but I can’t be very categorical on this, there are also people in the countryside who have a very good mentality and for whom, for example, being in a town, having access to school, since they are UMs, represents, compared to their extremely precarious living conditions in the countryside, it represents a step forward”<sup>1041</sup>.*

Another interviewee mentioned that residents with low socio-economic status may not be able to deal with routine issues such as taking public transport or using the toilettes properly (this is even more important when there are children involved who have to attend school and use its common facilities)<sup>1042</sup>. On the other hand, sometimes residents from lower socio-economic groups can be more motivated to

1038 Interview n° 15, CGRS protection officer, Microsoft Teams Platform, 05.08.2020.

1039 Interview n° 32, 09.09.2020.

1040 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

1041 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

1042 M. Tassoudis, Deputy Director, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.



integrate into Belgian life by learning the official language or working hard to succeed in school<sup>1043</sup>. This may not be the case for those who belong to well-off groups and who, for example, are already fluent in a *lingua franca*, such as English<sup>1044</sup>. However, having a high socio-economic status and, more specifically being well-educated does not always lead to an easier life in the centres. Quite the contrary. Many social workers reported that people with high socio-economic status who, for example, had a profession in the country of origin or were generally well-off, were better able to understand certain aspects of the asylum procedure and how an institution works. A social worker of the Red Cross centre of Uccle said:

*"If you have a journalist or a lawyer who has to leave their country to come here, they have a background, they understand these things, unlike farmers or cooks. They have some sense of what a procedure is"*<sup>1045</sup>.

However, the same people could be completely lost in the centre. On this point, Julian Knittel said:

*"For example, I remember people we welcomed who came from Syria, really highly educated, I mean, academics, people who were very established in the country, really...But here, completely helpless in a reception centre, because they were people who had houses, who had cars, who had social conditions...and to be in a collective centre, to share a room with people, to eat what the centre gives you, many of them live it very very badly!"*<sup>1046</sup>.

While previously they had been used to a certain lifestyle, now in the centre they are forced to share rooms, to use common facilities and to be in a place where they cannot even decide what to eat, whilst, at home, they might have had the servants. In the words of one social worker:

*"And so, someone who lived with a certain buying power, well, who lived well in the country and who finally arrives here in my opinion is also vulnerable but in a very different way: he's going to find himself like that all of a sudden in a Red Cross centre with cockroaches! So I think it changes the way the person is going to be vulnerable, [...] So yes, it has an impact, it's not automatically the case for people who come from a privileged background [...] But I think it does have an impact on someone who has lived differently. They will arrive here and be vulnerable, compared to someone who has not know this kind of wealthy lifestyle!"*<sup>1047</sup>.

On the same vein, Sébastien Quoidbach, social worker in the Red Cross centre of Rocourt, underlined the feeling of humiliation that some residents can experience in the centre:

*"That's what's complicated. I have a resident who said to me, 'You don't know how humiliating it is to come to a restaurant with a tray and wait in the self-service area for someone to serve me. How humiliating it is for me'"*<sup>1048</sup>.

1043 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

1044 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

1045 Interview n° 23, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

1046 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

1047 Interview n° 23, "referee" for unaccompanied minors, Uccle Red Cross reception centre, Uccle, 31.08.2020.

1048 S. Quoidbach, individual accompaniment coordinator, Rocourt Red Cross centre, Rocourt, 03.09.2020.

A nurse of the Red Cross, underlined that residents who were well-off in the country of origin are sometimes less keen in respecting the rules of the centre and they have a feeling of superiority. She said:

*“You have a resident who was very rich or very, very important. You can feel it here, it’s a bit like someone who gives orders [...] He believes that everything is due to him because in his country he was a very rich person, someone who can be influential and so he wants to keep living that way. But here, unfortunately it doesn’t work at all like that [...] we remind him of the rules, ‘Sir, it doesn’t work like that here’. And so, I think that for him it must be difficult to live like that, but it’s no better for him because he’s more vulnerable because in his country he was a very rich person with a very high level of education [...]”<sup>1049</sup>.*

Elisabeth Lejosne shared the example of a woman who returned to her country of origin in order to be with her servants. She said:

*“It happened that once a woman arrived here, because she used to live in a big house in the country, she decides to leave. She left the centre to go back to her country because the gap between what she was living here, being in a room with several other girls, some of them not knowing how to read, not knowing how to write, for her it was too much, she went back to the country with her servants”<sup>1050</sup>.*

On the same point, Carmen Salgado Gaeta, Deputy Director of the Red Cross centre of Uccle underlined that sometimes non-accompanied minors who come from a well-off background have difficulties in adapting to the rules of the centre and believe that everything is given. These minors do not easily accept that at school they are the same as the other students. She stressed:

*“It sometimes happens that young people with a privileged background arrive here believing that everything is given and thinking that we are here to serve them but here they are confronted with the reality that here they are all the same at school. They have to go through the same stages as everyone else, it helps them to lower their profile. So, it can create tensions in the centre”<sup>1051</sup>.*

Lastly, it should be underlined that people who have a lower socio-economic background and who come from rural areas rebound more easily and they have a greater capacity of adaptation<sup>1052</sup>.

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1049 Interview n° 58, 12.10.2020.

1050 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

1051 C. Salgado Gaeta, Deputy Director of Uccle Red Cross reception centre, Uccle, 31.08.2020.

1052 C. Vansimsen, social assistant, Rocourt Red Cross reception centre, Rocourt, 08.09.2020.

**Summary Box 10. Socio-Economic status and vulnerability**

Asylum seekers' socio-economic status is generally a factor that can play a relevant role with regard to the vulnerability assessment. Socio-economic status is understood broadly and it includes the asylum seekers' wealth, position in society in the country of origin and professional status as well as the family context—especially when gender issues are at stake—and where they lived before they migrated, such as a city or in the countryside. Judges and protection officers stressed that the socio-economic background is relevant in outlining the profile of an applicant to adjust the ways hearings are conducted, both in adapting the questions and in interpreting the answers. However, they are not ultimately convinced that it is a central factor for the recognition of the refugee status or in assessing their vulnerability, even though some notable exceptions and examples were mentioned.

Social workers in reception centres highlighted that the socio-economic status plays a crucial role in the vulnerability of the residents on two different levels. On the one hand, residents with a lower socio-economic background may require further assistance and help in navigating the procedure and the life in the centre because they do not have enough resources. However, they bounce back more easily and they have a great capacity of adaptation. On the other hand, residents who had a profession in the country of origin or were more generally well-off could be completely lost in the centre because they could no longer have the same lifestyle as in their country of origin.

## 4.6. Are there other categories of vulnerable people? Feedback from the fieldwork

Various categories of vulnerable people were referred to in this research. Isolated women, minors, trafficked persons or victims of physical, psychological or sexual violence are all categories mentioned by the actors interviewed as vulnerable and fragile. They are also categories appearing in the EU Directives. These categories are usually used by asylum Judges and protection officer to assess vulnerability. Our interviewees found those categories useful as they draw attention to the specific needs of certain pre-defined categories of asylum seekers.

However, when talking about the most “classic” categories of vulnerable individuals, some interviewees mentioned *other and new* categories of vulnerability they have to deal with, which have not been established in the EU Directives. They go unnoticed because they don’t fall into the so-called “classic” vulnerabilities but nevertheless require specific attention. In our interviews, social workers were particularly talkative about these other categories of vulnerable people. Confronted on a daily basis with asylum seekers, they identified several groups of vulnerable people who are not usually considered as such. These included young adults (namely, adults who have just turned 18), people with severe psychological/psychiatric disorders, “invisible” people (very introverted people, whose presence in the centre is not noticed) and finally, isolated men. Isolated men are discussed in further detail in the “gender vulnerability” section of this report. The other categories are mentioned in the following pages.

### 4.6.1. Young adults: “At 18 years and one day, everything changes”<sup>1053</sup>

Several actors we interviewed mentioned the vulnerability of young adults who have just reached the age of majority. The interviewees emphasised the shock of a transition to adulthood that takes place too abruptly. This transition to adulthood has consequences for the young people in the centre: they are placed in a centre for adults, and no longer benefit from the help of a guardian to assist them with the application process. From a “privileged” status, where special assistance was granted to them in light of their vulnerability, the young adult is “downgraded” to “ordinary” status, without any transition.

As Carmen Salgado Gaeta, Deputy Director of the Red Cross centre in Uccle explained:

*“Why does guardians’ supervision have to stop at 18 and one day? Why not continue for another 6 months? Because there should be a transition period, well, it’s hard to say that at 18 and one day everything changes overnight. They are hyper-protected and then they have nothing at all”<sup>1054</sup>.*

Daniel Legreve also specified that one could too quickly consider these young people as “adults” and that this could create particular vulnerabilities for them, because they are still not mature enough to take care of themselves. On the subject of minors who become adults, he explained:

*“I think there’s also this approach of saying “you’re a big boy now” but no, it’s not because he’s 18 or 19 that he’s no longer vulnerable [...]! In the centre, we tell them ‘Now you’re 18, you’re an adult now’, but they still have needs. We consider them as adults way too quickly and I think that’s not good because that’s when they will be most vulnerable [...] I think that nothing is put in place for them”<sup>1055</sup>.*

1053 C. Salgado Gaeta, Deputy Director of Red Cross Uccle reception centre, Uccle, 31.08.2020.

1054 *Ibid.*

1055 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

Other issues connected to turning 18 were mentioned by the interviewees. Olivier Peeters, Director of the CAMPO Red Cross centre of Ans, also underlined the difficulty in dealing with young adults in reception centres for adults:

*“I see [...] very young people who arrive here, who are 18 to 19 years old, in other words, kids who find themselves in rooms with adults”<sup>1056</sup>.*

A social worker at the Red Cross centre in Jette mentioned that the centres try to prepare young people for this “from all to nothing” reality:

*“We really have to get organised otherwise the transition can be difficult for the young person. We try to make them as autonomous as possible so that at 18, they are ready! We try to make them understand that at 18 in the centre, we won’t go looking for them anymore to say, ‘do your homework!’, ‘you have an appointment at such and such a time!’, ‘how was your day?’ The assistant will be available, but he won’t really go to them anymore”<sup>1057</sup>.*

Farid Khali, Director of the Red Cross centres in Uccle and Jette, spoke more generally of a structural problem in caring for young adults, a problem that continues when UM’s asylum applications are rejected:

*“UM’s stay with me until they turn 18. When they turn 18, I receive them in my office and I say ‘My boy, thank you and goodbye’. Because I can’t keep them here. On their 18th birthday I say, ‘Happy birthday, tomorrow you might leave the country without any protection, maybe’. I think we need a more structural solution for these young people”<sup>1058</sup>.*

Aware of this reality, the Sugny Reception Centre has chosen to focus its efforts on young adults, particularly applicants aged between 18 and 25 years old. This group has therefore been recognised by Fédasil as needing additional support, but this care initiative is currently limited. As Fabien Borowiec, “referee” for UM’s, explains:

*“We were told that we were going to welcome this public in order to broaden our range of activities a little [...]. We had, for almost a year, vulnerable young adults... their problem was immaturity. You have to make sure they are on time for their appointments, just getting up in the morning... You really have to keep an eye on them”<sup>1059</sup>.*

Some interviewees also mention the vulnerability of applicants who have reached the age of majority “by default”, i.e. applicants who were considered adults after a test was carried out to determine their age. A social worker from the Red Cross centre in Jette mentioned this group:

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1056 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

1057 Interview n° 34, “referee” for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

1058 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

1059 F. Borowiec, “referee” for unaccompanied minors, Sugny Fédasil reception centre, Sugny, 25.09.2020.

*“There is another group of people that I find invisible, who in my opinion are very vulnerable precisely because they are invisible and because we don’t talk about them, they are minors who have been recognised as adults [...] These are people whose support leaves me extremely perplexed because I have the impression that they are just forgotten. They’re adults and it’s really ‘just get by!’, whereas some of them are 16 years old, and deserve to benefit from the same support as an UM. But they are not entitled to the same budget as an unaccompanied minor, they don’t have the right to a guardian, it’s like saying to them “Deal with it!” And I find that absolutely brutal”<sup>1060</sup>.*

Similarly, Olivier Peeters underlined the vulnerability of these youngsters who are prematurely qualified as adults, especially in the absence of adults who can care for them:

*“There are for example unaccompanied minors who are declared adults, and it is very debatable how they are determined to be adults with bone tests, which are also medically very debatable. So young adults for me in general are a very vulnerable group, really... They are the ones who can more quickly fall into addictive or even delinquent behaviour”<sup>1061</sup>.*

#### 4.6.2. People suffering from severe psychological disorders

People with severe psychological and psychiatric problems were also mentioned in our interviews as a particularly vulnerable group. The actors interviewed emphasised the lack of adequate care for these people within the reception centres. Although the Reception Conditions Directive specifies in Article 21 that Member States must take into account the particular situation of vulnerable people, including those with “mental disorders”, the reality on the ground is different<sup>1062</sup>.

On this topic, Olivier Peeters, Director of the CAMPO Red Cross centre of Ans, argued that there is already a problem detecting severe psychological problems in the dispatching department:

*“We can also discover what I call ‘shrink’ cases, people who don’t have a visible pathology... I can go and ask for asylum and be completely schizophrenic and nobody will notice it in Brussels! It’s only when I go to live in a centre that people will say ‘there’s a problem’. And the vulnerability may come from there, from the lack of response we can offer to face that”<sup>1063</sup>.*

Cristina Valenti underlined the fact that dispatching is well aware of this difficulty. As she explained:

*“With Fédasil, we don’t always have centres that are 100 percent adapted to these people with serious psychiatric problems”<sup>1064</sup>.*

Aware of this reality, she mentions that the dispatching network has set up a specific Red Cross centre, called CARDA (*Centre d’accueil rapproché pour demandeurs d’asile – Specialized care reception centre for asylum seekers*), which takes care of *certain* more fragile psychological cases. Cristina Valenti nevertheless highlights two problems relating to this centre. On the one hand, it has a *“limited number of places”<sup>1065</sup>*

1060 Interview n° 34, “referee” for unaccompanied minors, Jette Red Cross reception centre, Jette, 09.09.2020.

1061 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

1062 Article 21 of the Reception Conditions Directive.

1063 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

1064 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

1065 *Ibid.*



with “specific criteria”<sup>1066</sup>. Indeed, the CARDA centre cannot accommodate more than 40 residents and takes care of people with “serious illness”. As mentioned on the CARDA website, these are mainly people with depressive syndromes, a post-traumatic state or behavioural disorders<sup>1067</sup>. The centre therefore does not take care of all profiles, nor of the “heaviest” ones. On the other hand, the CARDA centre does not guarantee total care for the resident. Cristina Valenti explains:

*“In the centre, the person can stay the whole week, but not at the weekend. At the weekend they have to return to the reception centre, they cannot stay”<sup>1068</sup>.*

Therefore, these selection and placement criteria complicate the management of asylum seekers by the CARDA centre. Lindsay Billet, a social worker at the Ans Red Cross centre, is clear on this point when she explained how long it can take to place a resident in this specialised centre:

*“We had a resident here for whom the centre was not suitable at all. I realised that he needed much more specific support [...] So my colleague contacted CARDA to say that we observed certain behaviours in our resident, we are not psychologists, but we asked them to make a pre-diagnosis. And CARDA’s psychologists said that indeed, he needed to be followed up [...] Normally he should eventually be accepted, but... the psychologist has to talk about it as a team to see if they can accept such a person according to the current group present in the centre, to see if it’s possible or not... There are a lot of ‘but’ to be taken into consideration when accepting a person in psychiatry, even more for asylum seekers. So, we are still waiting for an answer...”<sup>1069</sup>.*

Aware of this problem, Cristina Valenti mentioned that Fédasil had tried to set up a specialised centre to meet this demand:

*“We had tried to open a centre only for psychiatric cases, but obviously it needs trained staff and a lot of staff too, because sometimes there are violent cases, and it is difficult to manage”<sup>1070</sup>.*

In our knowledge, the project has not yet seen the light of day.

In the reception centres, psychiatric case continues to pose lots of challenges. Daniel Legreve mentioned the unsuitability of the reception centres for certain individuals with psychological issues:

*“We have cases of residents who are psychologically very very unstable, there aren’t many, but it’s dangerous. And it’s not our role to manage them, we’re not psychologists! But we have to manage them because we don’t know where to put them”<sup>1071</sup>.*

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1066 *Ibid.*

1067 See the website: <https://accueil-migration.croix-rouge.be/2019/06/26/accompagner-les-personnes-victimes-de-violences-sur-le-chemin-de-la-migration/>

1068 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

1069 L. Billet, multipurpose employee, Ans Red Cross reception centre, Ans, 16.09.2020.

1070 C. Valenti, Fédasil Dispatching unit former employee, Brussels, 23.09.2020.

1071 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

Faced with the centre's inability to cope with this kind of applicant, transfers between reception centres can be set up. Daniel Legreve was also critical of such transfers. In his view, they simply shift the problem of applicants suffering from severe psychological problems to the centre, but do not provide any solutions. He explained:

*"These people stay in the centres. And when there is a crisis or when something happens, they are transferred, we just 'pass the buck' to the other centres. I mean, among asylum seekers, there will always be schizophrenics, bipolar people, psychopaths [...] but what do we do with these people? The problem is that nobody wants them. And that we have to deal with them even though we are not psychiatrists! We just pass the buck to each other, that's all we do! We carry them from one centre to another, but maybe they don't need that: maybe they just need to be treated!"<sup>1072</sup>.*

Julian Knittel also underlined this difficulty in handling applicants with severe psychological problems. He maintained that reception centre staff are not trained to deal with these types of applicants:

*"In the centres, psychiatric cases are difficult to manage [...] I think this is a category for which a solution should be found because otherwise it ends up in multiple transfers... I know that we face very difficult psychiatric cases in the centres, and for which we are not equipped. We are not equipped and above all, we do not have the staff and the infrastructure to deal with them in an optimal way!"<sup>1073</sup>.*

By the same token, Maria Tassoudis, Deputy Director of the Red Cross centre in Rocourt, underlined the fact that the centres feel powerless to deal with these cases. She also believes that social workers sometimes need the help of an ethnopsychiatrist to shed light on certain problems. As she explained:

*"We try, but we are often very, very powerless, especially in psychiatric follow-up. We don't have room in hospitals, we don't have enough psychiatrists, we don't have enough ethnopsychiatrist either"<sup>1074</sup>.*

More generally, Elisabeth Lejosne, a nurse at the Red Cross centre in Jette, underlined the essential role ethno therapy plays in understanding and healing these types of applicants:

*"The ethno therapist is really someone who will start from the beliefs of the person, their environment, where they comes from, and who will try to help and 'rebuild' the person from that"<sup>1075</sup>.*

Beyond the lack of infrastructure and staff in the centres, other actors also insisted on the lack of *societal care* for people with psychological difficulties in the asylum procedure. As a result, these people cannot be cared for either by the centres or by specialised institutions, as they do not offer adapted solutions. Olivier Peeters, Director of the CAMPO Red Cross of Ans centre was very clear on this subject:

*"I have a guy here who is crazy, he doesn't belong here, he needs to be supervised. When I call the hospital, they will ask me 'Is this man a danger to himself or to others?' [...] It's always people who are not fitting here, so for me it's a kind of extreme vulnerability to be mentally ill and to end up in a room of 20, [...] where you can't do optimal follow-up for this kind of person"<sup>1076</sup>.*

1072 D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, 14.09.2020.

1073 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

1074 M. Tassoudis, Deputy Director of Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

1075 E. Lejosne, nurse, Jette Red Cross reception centre, Jette, 18.09.2020.

1076 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

A social worker was also clear on this subject:

*“Here we have a very cheerful, nice young man who suddenly decompensated because his interview was cancelled [...]. He literally lost it and went down from the second floor through the window. We found him outside in his pants, making invocations... We’re quite limited here because people who put themselves in danger have to be interned but at the same time it’s not always easy, hospitals don’t particularly want to take care of these profiles”<sup>1077</sup>.*

Similarly, a social worker from the Sugny reception centre stated:

*“To give you an example, we had a resident here with behavioural problems, psychotic depression, etc., who was in danger of becoming ill. We had to isolate him, and it was almost institutional violence. At the same time, in a psychiatric hospital, they barely accept this type of person who has an asylum seeker status [...]”<sup>1078</sup>.*

Thierry Pire underlined that the centres feel very helpless when faced with this problem:

*“The biggest difficulty, where there is no solution, is for psychiatric people. We can’t force these people to be interned. But we don’t have any solution to supervise these people. And we have to wait for the accident to happen before we can put them under forced observation [...] I think this is the most obvious case where there is no answer”<sup>1079</sup>.*

The Director also mentioned the more “practical” difficulties in establishing follow-up for people who do not speak French:

*“There is also the problem of psychiatric care for people who do not speak the language. The psychiatrist is not going to want to receive a person because he feels he cannot do his job if he does not understand them. There are a lot of nationalities for which there is no easy way to get a translator [...]. It’s complicated to follow up on these people. They will generally not be taken care of”<sup>1080</sup>.*

By the same token, Els Van Santvliet, a nurse at the Fédasil centre of Broechem, argued that the centre has “very many difficulties to get a psychiatrist”<sup>1081</sup> and that language is always an issue that prevent psychiatrists from working with asylum seekers.

#### 4.6.3. The “invisible”

A third category of “forgotten” people was mentioned in our interviews. Isabelle Plumat called them “the little ghosts”<sup>1082</sup> or “Casper”<sup>1083</sup>. She explained that they are “people who go unnoticed, who are not proactive”<sup>1084</sup>. For the Director, they are a bit like “ghosts” in the sense that they are very discreet and do not participate in the centre’s activities:

1077 Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

1078 Interview n° 51, social worker, Sugny Fédasil reception Centre, Sugny, 24.09.2020.

1079 T. Pire, Director of Rixensart Fédasil reception centre, Rixensart, 16.09.2020.

1080 *Ibid.*

1081 E. Van Santvliet, nurse, Broechem Fédasil reception centre, Broechem, 24.09.2020.

1082 I. Plumat, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 7.10.2020

1083 *Ibid.*

1084 *Ibid.*

*"They are people who are not naturally going to go and see social assistants, to look for a doctor... They are people who go unnoticed in the centres and who don't ask for anything"<sup>1085</sup>.*

For the Director, the work of the reception centres aims precisely at identifying these particularly fragile people in order to guarantee optimal care for them. *How is this possible when "observation" remains the preferred method for detecting vulnerabilities, and these "little ghosts" are by definition invisible?*

Sébastien Quidbach is well aware of this difficulty and specified that these invisible people demand more attention in the centres:

*"[...] I'm not going to depict a perfect centre where everyone is busy [...]. No. There are people who are going to remain in passivity despite the efforts. They may not be in the mood for it [...] It doesn't matter as long as you still have keep an eye on them... I'm going to draw a rather silly parallel, but we keep them in 'intensive care', we keep an eye on them, we supervise them... so that they don't crumble afterwards"<sup>1086</sup>.*

Olivier Peeters emphasised that the "individual accompaniment" project set up in the reception centres was designed to help answer this question. Each resident is assigned a "resource person" or a support person who is there to answer all their questions. The Director explained this specific approach was set up in order to keep an eye on those invisible (and often very vulnerable) individuals:

*"The individual accompaniment project [...] comes from the fact that we realised that there were people in the centres who were a little invisible, especially in the large centres, and that among these invisible people there are certainly more vulnerable profiles [...]. There are many types of vulnerable profiles, or at least, people who express discomfort in the centres. Some of them do so with a lot of noise, their names are quickly known [...]. And then there are people who are just as or more vulnerable, but who are locked in silence. The aim of individual support is really to overcome this"<sup>1087</sup>.*

The ability of this monitoring to detect vulnerabilities depends very much on the size of the centre. In our interviews, several of the actors interviewed stated that vulnerabilities could be spotted more easily and thus addressed more quickly in smaller centres, where everyone knows each other. Julian Knittel, for example, is very clear on this point:

*"Here, it's small, everyone knows each other, we know the residents by name, so when we see them, we know them, we talk to them, [...] In centres with 500 people, when people go to the refectory, they scan their badges to find out if they've eaten! Can you imagine? You don't experience the same thing when you're in such a centre!"<sup>1088</sup>.*

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1085 *Ibid.*

1086 S. Quidbach, individual accompaniment coordinator, Rocourt Red Cross reception centre, Rocourt, 03.09.2020.

1087 O. Peeters, Director of Ans Red Cross reception centre, Ans, 01.09.2020.

1088 J. Knittel, Deputy Director of Jette Red Cross reception centre, Jette, 18.09.2020.

The quality of supervision also depends on the workload and the staff available in the centres. Most of the social workers we met sometimes handled a particularly high number of cases, which prevented in depth follow-up<sup>1089</sup>. Therefore, the ability to address and treat certain vulnerabilities depends on the number of staff members.

The actors we interviewed often mentioned being “confronted” with “invisible” individuals. Paradoxically, Farid Khali, Director of the Red Cross centres in Jette and Uccle, pointed out that their invisibility draws attention to their vulnerability:

*“You can see it, someone who never comes to eat, someone who is always alone, who never comes to the activities... All these are little alarm bells that tell us ‘look out, there’s something out there’”<sup>1090</sup>.*

Similarly, a social worker pointed that certain behaviours are revealing:

*“There are people who show nothing. Then when they are asked what they want to do, because they will have to spend time waiting here during the procedure, they don’t say much. Or they say, ‘Right now, I just want to sleep, right now I just want to get somewhere’. That’s not a good sign. When someone just wants to sleep, to do nothing more, to protect themselves, you tell yourself that they must have been through something really hard. And that gets our attention”<sup>1091</sup>.*

Isabelle Plumat, Director of the Petit-Château Fédasil centre, further explained the difficulty of identifying the vulnerabilities of such individuals through the usual means such as medical or social services:

*“We try to offer these services, but at the same time, the people who come are still those who can do it, who have more resources”<sup>1092</sup>.*

Carla Pannemans, stressed that the people who manage to get help are also those who are the most skilled and able to find their way:

*“I think that the weakest, the most fragile people, they don’t really get any help. Those who are strong, flexible, who know the language, they manage, they get what they need. But the weak people, who are suffering here, I think they don’t get the help they need here...”<sup>1093</sup>.*

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1089 As said for instance by L. Billet, multipurpose employee, Ans Red Cross reception centre, 16.09.2020 or in interview n° 34, “referee” for unaccompanied minors, Jette Red Cross centre, Jette, 09.09.2020.

1090 F. Khali, Director of Uccle and Jette Red Cross reception centres, Uccle, 31.08.2020.

1091 Interview n° 32, 09.09.2020.

1092 I. Plumat, Director of Petit-Château Fédasil reception centre, Microsoft Teams Platform, 07.10.2020.

1093 C. Pannemans, multipurpose employee, Broechem Fédasil reception centre, Broechem, 24.09.2020.

**Summary Box 11. Other categories of vulnerable people**

The fieldwork showed that besides the vulnerable categories mentioned in the EU Directives, there are other groups whose vulnerability is not adequately addressed in the asylum procedure and whose negative effects are often missed:

- young adults fall within the vulnerable groups because without any transition they go from a privileged regime – characterized by all the guarantees that are in place for (unaccompanied) minors – to an ordinary regime;
- people with severe psychological and psychiatric disorders are considered vulnerable because, even though mental health issues are included among the factors of vulnerability and some reception centres specialise in this matter, the system cannot guarantee adequate reception and assistance for those with severe pathologies;
- the so-called “invisible” are asylum seekers who are very discreet, passive and do not take part in the activities of the centres. Even though the “individual accompaniment” system established in centres could be helpful in addressing their specific vulnerability, they are often unnoticed by the social workers, especially in larger centres.



## 5. Vulnerability in other procedures

### 5.1. Durable solution procedure

The durable solution procedure is a specific procedure implemented in Belgium. It allows an unaccompanied minor to choose the “best possible solution” when he or she has not applied for international protection or has been denied refugee status, to regularize the situation of the unaccompanied minor. The law does not give a precise definition of what a durable solution is. Above all, it establishes a list of possible solutions, in priority order. The durable solution can therefore be understood as:

- family reunification;
- a return to the country of origin (in this case, the guarantee of appropriate reception and care for the minor in accordance with the needs inherent in his or her age and autonomy must be established);
- a residence permit to stay on Belgian territory.

In order to establish which durable solution is the most appropriate, the service has a series of tools such as the “*family assessment*”, which gives an indication of the family situation of the unaccompanied minor in the country of origin. In collaboration with the Foreign Affairs Department, the unit is therefore required to verify, on the one hand, the veracity of the account and, on the other hand, the presence of a guaranteed reception in the country of origin with adequate care. In the end, it is the civil servant from the Special Office for Aliens, Minors and Victims of Human Trafficking (*Bureau Mineurs et traite des êtres humains*), in coordination with the guardian, which decides which solution is appropriate in the light of the best interests of the child.

As part of our interviews, we met with the MINTEH unit to question the place that vulnerability can take in the durable solution procedure. It is interesting to note that the MINTEH unit is also known as the vulnerable unit.

Vulnerability occurs at two levels in the durable solution procedure: at the level of preparation for the hearing with the MINTEH civil servants and at the level of the assessment of the solution to be chosen for the young person. Above all, it is assessed and identified using information from the guardian as well as the reference person for monitoring the applicant’s vulnerabilities with the MINTEH unit. These points are further discussed below.

#### 5.1.1. *Durable solution procedure: what place is given to vulnerability?*

The MINTEH unit, like the other actors questioned in relation to asylum, reasoned that all unaccompanied minors are *a priori* vulnerable *per se*. Officials were clear on the issue:

*“For us, it is a completely natural, normal fact that an unaccompanied young person who is here on Belgian territory, alone without a parent, without parental authority, is vulnerable”<sup>1094</sup>.*

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1094 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

Being a minor as well as unaccompanied are already perceived as intrinsic vulnerabilities, associated with the vulnerable category of UMs. While the MINTEH unit considers unaccompanied minors to be vulnerable a priori, it also immediately emphasises their resilience and particular mental strength. For the officials, the vulnerability of minors coincides with the strength and courage they had to develop during their asylum journey. They underlined:

*"I cannot imagine my 19-year-old son making a trip from Kabul to Brussels in 3 months, without a passport, without money, without knowing the language. So, they are not fragile, they are still very strong physically but also mentally, the young people who are here in the Brussels-North station, who have nothing and sleep in the street"<sup>1095</sup>.*

Another civil servant emphasised:

*"There is really a double image in fact [...]. We had young Afghans who had a rather complicated migratory journey [...] what they were saying was really abominable. And at the same time, they had strength in what they were saying [...] but their hands were shaking all the time [...]. They seemed so strong, I think that's what I'm thinking too, maybe their journey gives them an incredible strength, but there are still hands that shake, that doesn't deceive"<sup>1096</sup>.*

While the Immigration Office operates on the basis of vulnerable groups, they are also prepared to adopt a case-by-case approach to detect additional vulnerabilities present in an already vulnerable public. Also, as in the asylum procedure, a more individualized assessment of vulnerability is employed in the case of UMs profiles. As one official emphasised:

*"There are profiles, as there are profiles in asylum, and there are lists of vulnerabilities, but this is not exhaustive"<sup>1097</sup>.*

The unit specifies that vulnerabilities are not *"fixed at a given moment in history, which will never change"*<sup>1098</sup> but that they are also subject to continuous evaluation that occurs while reading the file and during the minor's hearing. Officials first draw up a non-exhaustive list to determine the most "obvious" vulnerabilities (disability, pregnancy, etc.) in addition to those associated with being a minor and being unaccompanied. Then, for less visible and more discreet vulnerabilities, the MINTEH unit relies heavily on information provided by a third person, essential to the durable solution procedure: the guardian.

### 5.1.2. The guardian: a central role in identifying vulnerabilities

In the interviews we conducted, the MINTEH unit emphasised the guardian's role in detecting a minor's vulnerabilities. If the unit does not work with well-defined "criteria" of vulnerability, it is also because it uses the information provided by the guardian about the minor, which can nuance his or her profile as a vulnerable person and specify how the minor is - or is not - fragile. Officials were quite clear about the role the guardian played in identifying vulnerabilities:

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<sup>1095</sup> Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

<sup>1096</sup> *Ibid.*

<sup>1097</sup> *Ibid.*

<sup>1098</sup> *Ibid.*

*"I believe that [identifying] vulnerability is also the role of the guardian. It is emphasised that once a guardian is appointed, it is up to him or her to take responsibility and to warn us of every element that may be a vulnerability"<sup>1099</sup>.*

In this sense, the unit specifies that this information plays a key role in preparing for a hearing: it enables the minor's special needs to be identified beforehand and with the help of a reliable source (the guardian). As a civil servant pointed out:

*"So, the role of the guardian is also to inform us from the beginning of the procedure about the vulnerabilities [...] these can really all be things that are important for us to prepare for the hearing and ultimately to be able to take them into account in the analysis of the young person's situation, in order to take the best decision"<sup>1100</sup>.*

The place given to the guardian is essential here, since it is a person who, by definition, is supposed to have spent time with the minor, is familiar with their life experience and particular vulnerabilities. The MINTEH unit therefore believes that prior "expertise" is all the more essential as the hearing at the Immigration Office is short. As one official emphasised:

*"To organise the hearing, we will get in touch with the guardian, and if there are elements that seem unclear to us in the application, we ask them 'Are there things that we should pay particular attention to at the hearing?' We really ask the guardian to tell us if, at the hearing, there are certain aspects that could cause problems [...] since the guardian meets the young person several times. Whereas for us, it's a young person who arrives in front of us for the first time"<sup>1101</sup>.*

Similarly, another official stated:

*"In principle, we only see the minor once, during a hearing lasting, two hours, that's all. So everything else, all the other authorities, all the other people who have more contact, also have much more information than we do. That's why we depend on the guardians who tell us about vulnerabilities before we call them to the hearing"<sup>1102</sup>.*

The transmission of information by the guardian is particularly important. If vulnerabilities are identified, appropriate procedural changes can follow. As in the asylum procedure, drawing the MINTEH unit's attention to certain vulnerabilities can lead to specific procedural adjustments in order to consider the minor's vulnerabilities. The unit explained:

*"When we are aware of vulnerabilities well before the hearing, it allows us to adapt the questions we ask, since we always prepare the hearing, we really have a form, a canvas that we use for the hearing [...]. But the way we ask our questions adapts to the profile of the young person. If the guardian tells us that there are real difficulties, if the young person has difficulty expressing himself, if there are psychological problems, we will ask our questions differently than we would with a young person who is much more expressive and much less vulnerable"<sup>1103</sup>.*

1099 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1100 *Ibid.*

1101 *Ibid.*

1102 *Ibid.*

1103 *Ibid.*

A civil servant specified that more specific adjustments (such as interruptions or hearing reports) can also be foreseen in this perspective<sup>1104</sup>.

In terms of procedure, specific accommodations can also be made physically, for example, with regard to the place where the hearing is held. Officials speak of an “informal room” reserved for certain hearings in order to make the minor feel more comfortable, and make the situation less stressful:

*“If we are told that the young person has great difficulty expressing himself, that it is a child who is really struggling, we have an informal room [...] here on the second floor, which is a room that is not a room like here with a table, a PC, etc. There are armchairs, it’s been fitted out [...] It makes the youngster more comfortable. In a less formal context”<sup>1105</sup>.*

UMs are also sometimes interviewed in other places than the Immigration Office in order to provide a more relaxed and/or informal atmosphere<sup>1106</sup>.

While every effort is made to ensure relative trust between the unit and the minor, officials are aware of the climate of mistrust that can prevail during the hearing. Officials notify the minor beforehand “that their procedure is different from that of the CGRS and that here they can say anything”<sup>1107</sup>, they also emphasise that the minor can speak freely and that the hearing is not “an interrogation”<sup>1108</sup>. However, the fact that the officials identifies themselves as members of a Federal State agency instinctively arouses mistrust among the minors:

*“But it’s true that, I understand that for a young person, all the civil servants or agents in the CGRS, the Immigration Office, for them it’s all a bit... It’s a mix, it’s the State, it’s someone who will decide their future. And maybe they don’t all have good memories of everything that is the police, or a State or a Government”<sup>1109</sup>.*

This climate of mistrust is also present in the tools available to the applicant to make himself understood, especially interpreters:

*“And this is also a bit of a problem that translators and interpreters often have. Young people think they are linked to the Immigration Office, whereas they are freelancers and there is a code of ethics for interpreters, that they only translate what they are asked to do”<sup>1110</sup>.*

This reluctance to speak out is particularly felt in the case of more intimate and hidden vulnerabilities. The unit takes the example of sexual orientation, which is an obvious vulnerability that few minors mention at the hearing:

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1104 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1105 *Ibid.*

1106 *Ibid.*

1107 *Ibid.*

1108 *Ibid.*

1109 *Ibid.*

1110 *Ibid.*

*“These are elements that we analyse, but they are not things we are told directly, because we also have to realise that we are not ... we are federal agents, we meet the young person for two hours, even if we try to break the ice and put the young person at ease...it’s not possible, not all the conditions are necessarily met... and that’s part of privacy too”<sup>1111</sup>.*

These vulnerabilities are even harder to take into account than they are sometimes not even shared with the guardian.

### 5.1.2.1. Guardians: the challenges

If the guardian is a “key person”<sup>1112</sup> in the administrative life of the minor, their function is not without challenges and difficulties. As the main source of information for the MINTEH unit, the relationship established prior to the hearing is essential so that the unit can have the information necessary for a detailed analysis in order to reach the best possible outcome for the minor. Nevertheless, the interviewees noted a series of shortcomings in the guardians’ role: the involvement of different guardians whose monitoring of their minor may vary as well as different levels of training and experience among the guardians.

For example, a civil servant pointed out “the difference in quality”<sup>1113</sup> between the guardians. He explained that these differences are mainly reflected in the lack of regular monitoring by certain guardians:

*“I think that one thing that is important for the guardians is that they have regular contact with young people. And that’s not always the case, there are guardians who have sporadic contact, or who don’t really follow the young person closely, and that way things are missing, and it’s not in the interest of the child [...]. The guardian who, for example, has no contact for 3-4 months with the young person, how is he going to know how things are going at school? Or if there are any problems? If he is only present at official times, when the young person is intercepted by the police, when the young person is being interviewed at the CGRS or here, that’s not enough for me. There must be a closer contact and a real follow-up”<sup>1114</sup>.*

The civil servant went on to add that there are two distinct types of guardians: the so-called “professional” guardians and the “voluntary” guardians. According to the unit, the latter are sometimes less well equipped than the former to deal with certain situations and to guarantee a coherent follow-up of the minor:

*“This does not mean that professionals are better than volunteers, but at least they have a professional network, they have training, [...] they talk about some cases, they can talk about them with other professional guardians. Often a volunteer guardian is on their own and they have to know all the procedures, not only about the stay, but also about the school, accommodation, social security [...]. All the different aspects of a young person’s life, the guardian has to know them. So, it’s so complex and so much that it is normal that there are differences between guardians.”<sup>1115</sup>.*

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1111 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1112 *Ibid.*

1113 *Ibid.*

1114 *Ibid.*

1115 *Ibid.*

The official pointed out that although there are now European training projects for guardians and closer supervision of them, differences in “quality” persist in practice, i.e. in the daily monitoring of the minor<sup>1116</sup>.

The lack of contact with the guardian and the resulting lack of trust then prevents a relationship from developing between the minor and the guardian. Differences in monitoring by guardians can therefore pose a problem in terms of dealing with minors’ vulnerabilities and, above all, treating them in a uniform and consistent manner. The lack of contact established with the guardian can also have very practical consequences for the MINTEH unit’s ability to address vulnerabilities. It can, for example, lead to certain essential vulnerabilities only being discovered at the time of the hearing, which may become unsuitable for the specific needs of the minor. In this regard, an official from the unit explained his discomfort at discovering vulnerabilities during the hearing:

*“It is very annoying to discover during a hearing that there is something wrong, because of a vulnerability that we didn’t know about. It’s not only embarrassing, but also very annoying. And you have to adapt right away, as for the young person it is not pleasant to have an audition that is not adapted to his vulnerabilities, and yes, you have to decide at that moment, ‘Do we go on?’ ‘Do we change the context?’ ‘Do we do it at another time?’ ‘Do we plan other measures?’”<sup>1117</sup>.*

The unit also emphasises the “extra-vulnerability” of the minor created by these unsuitable hearings. In addition to the lack of contact established with the guardian, civil servants sometimes emphasised a certain “pressure” from the guardians with regard to the best of sustainable solutions for the minor. According to an official from the unit, guardians systematically interpret the best interests of the child as including some kind of residency in the territory. Officials mentioned the guardian’s distrust of decisions to return the minor to the country of origin, a decision which they consider as “negative”<sup>1118</sup>:

*“There are guardians who always say that the durable solution is in Belgium. Always, for everyone. And they argue ‘yes, but here, we have school, we have medical care, it’s still better than in Africa’. But being close to one’s parents is also a right for a child. It is an important, primordial right. And if you take a decision that the future and the lasting solution is still close to your family in the country of origin or in another country where the parents are legally resident, and that you have checked the guarantees of reception and care... For us it is not a negative decision. For guardians, it is often a negative decision. And there is a lot of pressure on us to take a decision, ‘Leave the child in Belgium, staying in Belgium is best for everyone!’ Guardians put a bit of pressure on us, lawyers put pressure on us, we feel the responsibility to take a decision on a child”<sup>1119</sup>.*

### 5.1.3. Establishing vulnerability in the durable solution procedure

As in the asylum procedure, the minor’s vulnerability can be proven, particularly if it is the result of psychological disorders. Medical certificates are therefore a privileged tool to substantiate vulnerability during the application process. One official was clear about the impact that these certificates can have in the durable solution procedure:

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1116 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1117 *Ibid.*

1118 *Ibid.*

1119 *Ibid.*



*"It immediately draws attention to a facet of vulnerability. It is a crucial element in the story"<sup>1120</sup>.*

Interestingly, however, one official pointed out that in the durable solution procedure there is not always a need for this type of evidence. Another official spoke about a "mentality" or "culture"<sup>1121</sup> around evidence to refer to the fact that minors, used to having to prove their vulnerabilities in asylum procedures and elsewhere, adopt the same strategies of proof as used during the asylum procedure when they meet the MINTEH unit. As an official explained:

*"Often people say yes, if you have evidence it's better. If these minors have gone through the asylum procedure, there they often ask, 'Do you have objective evidence?'; and here they are a bit used to it I think, the guardians too, they often go through the different procedures and they are used to bringing evidence in our procedure. It is also a shared responsibility to find a durable solution. But I think they really have the mentality [...] to say, 'If you have evidence, it's better. And if you have a document, that's good'"<sup>1122</sup>.*

The unit specifies in this sense that minors sometimes bring documents during the hearing "without necessarily being asked"<sup>1123</sup>.

While the assessment of these documents is important for civil servants, it can also pose certain difficulties. This is particularly the case when the medical certificates pertain mainly to violence and psychological or physical after effects that have appeared during the migratory road to Europe and which have little or no impact in deciding on a lasting solution. What then should be done with these medical certificates and, above all, what consequences should be attached to them? On this topic, one officer emphasised:

*"We let the young person express himself. In general, [...] they come at one time or another to give us explanations about how they arrived, and it's true that for asylum seekers, there are quite a few who say they have suffered violence in Libya for example. It's quite common. So yes, we take it into account, but in a general way. Our objective is not to analyse everything that happened during the journey, it's to see what consequences it also has [...]. We have a lot of young people who present medical reports, and in the medical reports, they often mention these difficulties"<sup>1124</sup>.*

Another officer also mentions the difficulty of taking into account these medical reports based on the violence during the journey in order to decide on a lasting solution: "I wonder how to take the journey into account in the work we do"<sup>1125</sup>.

If these documents are provided by some unaccompanied minors, the unit considers them as evidence that they are not entirely alone in Belgium. Indeed, officials refer to the fact that these minors are considered as unaccompanied because they have no parental authority in Belgium, not because they are really alone in all cases:

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1120 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1121 *Ibid.*

1122 *Ibid.*

1123 *Ibid.*

1124 *Ibid.*

1125 *Ibid.*

*"[...] It is not because they are unaccompanied that they are alone in Belgium, it is just that there is no parental authority. We have a lot of young people who are with family members who also take very good care of them, who take them to medical appointments and who keep the evidence of all this"<sup>1126</sup>.*

The fact that the minor is actually being looked after in a family may seem beneficial, in that the young person is less isolated and also less vulnerable or "at risk". For the MINTEH unit, however, the family present on the territory can bring a certain form of vulnerability. This is particularly the case when the family hosting the minor is reluctant to allow the guardian to intervene during the procedure, preferring to retain exclusive authority over the minor in their care:

*"We must also consider the place where the family lives in the event that the children come to join them [...] Sometimes the family is an obstacle to this relationship [...] because the guardian is a person who is sometimes seen as an outsider [...] a stranger who starts to follow the young person through all the procedures from one day to the next"<sup>1127</sup>.*

This creates a chain of vulnerability for the minor: if the minor does not have access to their guardian, their guardian will have little information to provide to the MINTEH unit about the specific needs of the minor, who may find them doubly vulnerable if these special needs are not taken into account during the procedure.

According to officials, family supervision can also impact the vulnerability of the minor when the family, rather than being reluctant to help the guardian, simply refuses to register the minor by not declaring the child in the territory. Officials also highlighted the situation of vulnerability and administrative precariousness in which these children are placed by this kind of decision. The minor effectively becomes illegal by default:

*"There are families who demonise our procedures, or the Immigration Office, or more generally the asylum authorities. They are afraid and [...] they do not declare the child. And so sometimes we have children who appear after 3, 4, 5 years, it happens. And so these children have been illegal, and when you don't have papers here in Belgium you don't have rights, or it's limited in any case [...]. These are children who, for us, don't exist, we don't know they're here. And we don't know either, nobody has been able to protect them [...]. And we often notice, when they come for a hearing, we see their passports, there have been entry stamps for years. We are in 2020, sometimes the stamps date from 2014, 2015. And these children have never left the country and have never been reported"<sup>1128</sup>.*

#### 5.1.4. Durable solutions, lies and strategies

In the durable solution procedure, the officials interviewed highlighted some of the strategies implemented by unaccompanied minors. This is particularly evident in the stories that the minors told in order to be able to stay in the territory. In these stories, the young person seems to be aware of having to portray a certain image of vulnerability and therefore uses strategies to fulfil these requirements of the procedure more easily. As one official explained:

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1126 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1127 *Ibid.*

1128 *Ibid.*

*"We have children who give us stories that do not correspond to reality, and it happens. Maybe to 'stick more' to our procedure. Not seeing your parents here in Belgium is a vulnerability, not having parents anywhere in the world, it's perhaps an even greater vulnerability. So, some people also play on this and add elements that are not always correct"<sup>1129</sup>.*

Aware of the stakes of being perceived as vulnerable, some minors did not hesitate to use the vulnerability criteria established by the Immigration Office (for example, the fact of being an orphan) as an asset in order to obtain residency.

At the same time, the officials we interviewed stressed that youngsters rarely implement such strategies on their own. In fact, the interviewees underlined the influence and pressure of exerted by the network of friend and the family to invent a story:

*"Often, one feels that it does not come from the young person. It comes from elsewhere. Either from their parents or from a network, or from the family here. Somebody says to them: 'Listen, tell this; you'll have better luck!'"<sup>1130</sup>.*

Some officials expressed scepticism about a minor's initial story and they described the sense of relief the minors experienced, when they finally decided to tell the truth:

*"We tell them, what you said at the CGRS, it doesn't matter, what you said at the CALL, it doesn't matter. Our procedure is totally different. And from time to time, it convinces them. They are relieved, because they have lived under this pressure to tell lies for so long, that in our case, at some point, they tell the truth [...]. And you really see the stress that goes away at the moment when they can really tell the truth. [...] But it's true, [...] because from the registration of the application to a final decision of the CALL, it can take 2-3 years, if they have to live with this invented story all their life, it's huge. I can't imagine the impact on a young person of living 3-4 years with a lie. In the end, it will completely change them psychologically, I think"<sup>1131</sup>.*

This psychological vulnerability due to lying echoes other comments made by social workers. For example, one social worker emphasised that minors can experience negative psychological consequences when they are forced to lie:

*"I think it's a great pity that we have to go through life stories that stick to us, that we have to go through life stories where we say our mother is dead, or our father is dead, when they are both alive... because the day they really die, how do we manage? There was a Guinean who was here, his father had died in his story. He came crying to my office one day, saying, 'My father is dead' and I said 'But your father was already dead, 5 years ago!' and he says 'No, no, in fact he's dead now!' So fortunately, he was able to tell me because there is a relationship of trust between us, but how do you want the person not to go crazy in the end? He has to deal with two stories, two narratives... [...]. What madness!"<sup>1132</sup>.*

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1129 Interview n° 55, MINTEH civil servant, Brussels, 01.10.2020.

1130 *Ibid.*

1131 *Ibid.*

1132 *Ibid.*

In conclusion, vulnerability in the durable solution procedure is taken into account in three ways. Firstly, it is considered during the analysis of the durable solution for the minor. Secondly, it is considered when the hearing is being arranged so that it is adapted to the minor's special needs. The adjustments made in the hearing (in particular, the "informal" nature of the hearing and the relationship of trust that MINTEH officials try to establish) are tools for dealing with the vulnerabilities of minors during the procedure. Thirdly, the minor is regularly monitored for vulnerabilities with the help of a guardian. The guardian is a valuable resource for the MINTEH unit when it comes to assessing and addressing vulnerabilities. However, fieldwork revealed that this supervision varied in intensity (some guardians are absent) and quality (some guardians are more involved than others in their role supervising the minor). These differences therefore pose a real challenge for officials in dealing with the vulnerabilities of minors, in that they sometimes lack information or simply discover on their own that a minor is vulnerable, with specific needs.

**Summary Box 12. Durable solution procedure**

Belgium has implemented the durable solution procedure to regularise minors' situation in the country, if they have not lodged an application for international protection or the latter has been refused afterwards. The solutions in the programme are: family reunification, return to the country of origin – as far as guarantees of appropriate reception and care for the minors are ensured – and residence permits in Belgium. Vulnerability is considered at three levels in the durable solution procedure: in the preparation for the hearing with the Government body responsible for the programme (MINTEH), in the arrangement of the hearings and in the assessment of the final solution. Information from the guardian is essential to identify and address the vulnerabilities of the unaccompanied minor since they are supposed to be aware of the minor's experiences in the country and their specific vulnerabilities. The quality of the guidance by the guardian to the minor, their mutual trust, and the role of their relatives are all determinant factors to respond to the needs of the unaccompanied minor in the durable solution programme.

## V. CONCLUSION

This research report analyses how vulnerability is considered in law and by the actors of the Belgian asylum process by answering the following question: how does Belgian law assess, address, shape and produce the vulnerabilities of the protection seekers?

There are three lessons to learn in this regard: on the meaning of vulnerability, its content, and its consequences.

Firstly, on the meaning of vulnerability. The research revealed that the definition and identification of vulnerabilities by actors in the field differed from the definition given in the European Directives and Belgian asylum law. In these, a categorical approach to vulnerability prevails, and a series of categories of vulnerable persons are cited. These categories are granted special guarantees both with regard to the asylum procedure and to the reception in the centres. The categories identified in the law are mostly used as a warning bell for the asylum authorities in order to pay attention to the applicants' protection and reception needs and, eventually, inform their decision. Judges, protection officers and social workers all opt for a case-by-case approach, based on the individual and particular profile of the potentially vulnerable person. This more fluid approach to vulnerability has two effects for those in charge of granting a status, namely asylum Judges and protection officers: an inclusive effect, since all those involved in the asylum procedure are free to extend the categories to others not specifically mentioned in the law, on the one hand, and an opposite exclusionary effect, given that anyone can be potentially excluded from the qualification of vulnerable, on the other hand. This flexible definition of vulnerability is of particular importance when actors on the ground, specifically Judges and protection officers, have to determine – and ultimately choose – who is vulnerable and therefore receives particular procedural guarantees. As a result, the asylum authorities benefit from a great deal of room for manoeuvre.

Secondly, on the content of vulnerability. Establishing the content of vulnerability is a difficult exercise because it is a vague concept whose boundaries are difficult to be established and inner characteristics are challenging to be grasped and set in stone.

Even though the law lists some categories and groups that are considered to be vulnerable, the reality proves to be much more complex. Vulnerabilities are multifaceted and difficult to assess and address. These categories are mostly relevant during the procedure and, more specifically, in establishing specific procedural needs to respond to the vulnerabilities of the applicants. The fieldwork has provided information on the content of vulnerability and three brief and preliminary points can be established: (1) vulnerability is an intrinsic feature of asylum seekers (*vulnerable per se*); (2) vulnerability is, in the majority of cases, multiple and intersectional; (3) vulnerability notion is not comprehensive in the way it is framed in the law and employed by decision makers and social workers.

The first point to be highlighted is that asylum seekers are considered a vulnerable category *per se*. This is a consequence of a wide array of reasons, among which the causes that forced them to flee their country of origin, the difficulties during the tortuous path to Europe and Belgium and the hardships of living in a foreign country. Thus, asylum seekers who fall within the vulnerable categories established in the law can be defined as “vulnerable among the vulnerable”. However, if everyone is vulnerable, the beneficial effect of establishing specific guarantees for some categories can be lost. Vulnerabilities should not be seen



in a logic of a presence/absence, but as different layers or degrees of vulnerabilities. This different perspective would completely change of pace, both in assessing and addressing the vulnerabilities during the procedure as well as in evaluating the role and weight of this notion in the asylum system as such. The second point is that multiple or intersectional vulnerabilities are the rule, not the exception. As we mentioned above, asylum seekers are already vulnerable *per se*. Moreover, a majority of asylum seekers fall within more than one category established into the law. As a consequence, it is more complicated to adequately assess their vulnerabilities and proportionately address them. The last point is the partial scope that is reached by vulnerability in the way is framed and employed at the moment. These categories are undoubtedly useful, in particular for the work of asylum Judges and protection officers. However, the fieldwork shows that this category system is not ultimately comprehensive for two reasons. On the one hand, some other categories are left behind and are not included among the vulnerable groups enshrined in the law. On the other hand, some factors could play a role in assessing the vulnerable profile on a case-by-case basis.

More specifically, there are at least four other categories of vulnerable people that are left behind: (isolated) men, persons with severe psychological or psychiatric disorders, young adults (those who have just turned 18), and the so-called “invisible” people (who do not join any activities and are left aside in reception centres). Gender stereotypes, insufficient economic and human resources as well as the climate of emergency in which the reception centres are placed prevent these four categories from being adequately taken into account.

The fieldwork revealed that the content of vulnerabilities is also found in distinct factors that can be assessed to outline the asylum seekers’ profile and identify who is vulnerable. The most recurring ones are: education and socio-economic status, the impact of the migratory road and of the asylum procedure, and the hurdles of life in reception centres. Higher or lower level of education and differences in the socio-economic status play a relevant role in the way asylum seekers cope with the asylum procedure and the life in the centre. Likewise, the migratory road itself is a source of suffering and vulnerabilities. Even though the recognition of refugee status is connected to the reasons that force the persons to flee the country of origin, it is indisputable that the journey to Europe and to Belgium leaves a mark of vulnerability on asylum seekers. Furthermore, the length and the complexity of the asylum procedure itself as well as the hurdles of the often long period that applicants spend in reception centres could make them vulnerable or exacerbate their vulnerabilities. These factors reveal that the applicants’ profile as a whole – including their life stories as well as their background and experiences, even if not strictly connected to the asylum application – should be considered to adequately assess and address their vulnerabilities. It is clear that some of these factors – namely the vulnerabilities coming from the procedure and caused by life in the centre – are particularly difficult to address because they are created by the asylum system itself.

COVID-19 has impacted the measures adopted, both in the procedure (e.g. the suspension of hearings) and in reception centres (e.g. the suspension of many activities). On the one hand, this has made detecting vulnerabilities more difficult and, on the other hand, it has exacerbated the already existing vulnerabilities and created new ones.

Thirdly, on the practical consequences of vulnerability. The concrete effects of qualifying an asylum seeker as vulnerable remain unclear for many of the actors interviewed. Only protection officers seem to attach particular consequences to vulnerability (notably, in adapting their hearings to the needs of vulnerable persons), in that these are explicitly mentioned in the law. The field research revealed that asylum Judges, those who also have the greatest decision-making power – since they are the ones who decide whether or not to grant status on appeal are also the most helpless in the face of the consequences they have to attach to vulnerability. The reality on the ground shows the difficulties that Judges face with this notion because, on the one hand, it is increasingly invoked in court but is not a ground for refugee status, and on the other hand, the law is silent on the actual weight to be given to vulnerability. The lack of practical consequences for vulnerability is also felt by social workers. Some call it an “empty shell” because it is not accompanied by concrete action or measures in the reception sector. Some social workers deplore the lack of human and financial resources to consider all the different aspects of vulnerability.

This report also highlighted how this absence was sometimes criticised in the sense that the consideration and “management” of vulnerabilities is sometimes more in line with Belgium’s capacity to deal with them than with the vulnerabilities asylum seekers actually suffer from. Also, because there are discrepancies between what the law provides (and does not provide!) and the needs on the ground, the “vulnerable” appear more as a category calibrated according to what the State can do (e.g. which public it can accommodate in which reception centre, what means it has at its disposal, what its political priorities are), than as a group that is identifiable by itself, whose needs are fixed and shared.

This lack of practical consequences is reinforced by a lack of consistent consideration of vulnerability throughout the asylum procedure. Because it is defined differently by the various institutions involved in the asylum procedure and because it does not have the same consequences – or even no consequences at all –, vulnerability seems inconsistent, which contrasts with the fact that it is also a key and central notion of the protection regime.

However, in this absence of practical consequences, vulnerability is sometimes used strategically. This report showed that asylum seekers may highlight their vulnerability to obtain a more favourable treatment. The field has revealed that some asylum seekers “stick” to a certain image of vulnerability that corresponds to the categories in the law (e.g. by pretending to be younger than their age). The fieldwork also revealed that this strategic use was very much in the minority and that it was the result of a lack of legal entry routes into the country and an overly restrictive system of protection. Asylum seekers are therefore somehow forced to resort to these strategies to successfully navigate the asylum procedure.

Viewed this way, vulnerability in asylum remains a fundamental, dynamic and complex concept. However, there is a need to clarify its meaning and its scope as well as to align its use throughout the asylum procedure and reception system, while making it more comprehensive. Moreover, vulnerability still needs to be studied and deepened, particularly in terms of the effects it may have on the asylum seekers themselves. In that perspective, the second VULNER research report will take into consideration protection seekers’ experiences and realities of vulnerability.

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