



Protect

The Right to International
Protection

How key actors and stakeholders apply
the notion of vulnerability in Europe,
Canada, and South Africa



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**How key actors and stakeholders apply the notion
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Africa**

**Christine M. Jacobsen, Marry-Anne Karlsen, and Jo
Vearey (eds.)**

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Introduction

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Summary/abstract

This introduction serves to contextualize six PROTECT country case study reports from the EU Horizon 2020 PROTECT research project. Drawing on ethnographic studies in selected arrival ports in France, Italy, Spain, Greece, Canada and South Africa, the reports discuss how actors and stakeholders in the field level governance of migration and international protection understand and operationalise the notion of vulnerability. In this introduction, we first discuss how the notion of vulnerability is understood in the Global Compacts for Migration and on Refugees. We go on to present some analytical approaches to vulnerability to frame the reports, and end by drawing out some cross-cutting themes from the case studies. In particular, we highlight certain structural challenges and adverse effects related to the increasing centrality of vulnerability in migration governance.

Introduction

In WP 4 of the PROTECT project, we conducted fieldwork in selected migration arrival ports in Greece, Italy, Spain, France, South Africa, and Canada to explore the role of the notion of vulnerability in the field level governance of international protection. Specifically, we explored how key actors and stakeholders in the selected field sites 1) understand and apply the notions of vulnerability, and 2) collaborate to address and reduce vulnerabilities. Particular attention is paid to how field level governance takes into account gender and legal status, and how actors collaborate in regard to mechanisms for identification, access to legal information and assistance, and access to healthcare and shelter.

The aim of this report is to present a preliminary analysis of different understandings and deployments of notions of ‘vulnerability’ among actors in the different country case studies. Although the concept of vulnerability is becoming ubiquitous in migration and refugee governance, we see from the country case studies that its meaning remains ambiguous and contested. Defining, ascribing and claiming vulnerability are embedded in relations of power. Tensions between a securitarian approach to migration, which tends to criminalize immigrants, and a humanitarian approach which is based on notions of suffering and innocence, are crucial to how vulnerability is understood and deployed across the country case studies, as are the socio-economic and material conditions of migration governance in the various countries.

This is the second of two reports based on the research conducted in WP 4. The first report presented the preliminary analysis of how actors collaborate to address and reduce vulnerabilities. The analysis in both reports is based on an initial identification and mapping of relevant actors in each site, and - to the extent that it has been possible given the context of the Covid-19 pandemic - on on-site ethnographic fieldwork including participant observation, interviews and collaborative methodologies. For more details of methods used in each case, see the individual case studies in the first report (Jacobsen et al. 2022).

Vulnerability in the Global Compacts

The overall objective of the PROTECT-project is to assess the impact of the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM) on the international protection regime. Vulnerability and the related concept of specific needs are central notions in both Compacts. However, the two Global Compacts do not provide a consistent definition of or approach to vulnerability. On the one hand, the compacts recognize that migrants face multiple and intersecting forms of vulnerability, and emphasize a gender-,

age-, and disability-responsive/sensitive approach. This could open for a dynamic approach to vulnerability. On the other hand, both Compacts invite States to pay particular attention to specific categories presumed to be in need of special treatment, thus applying a categorical or group-based approach. As categories with potential vulnerabilities, both Compacts mention for example women, children, including unaccompanied minors, persons belonging to minorities, victims of violence, including sexual and gender-based violence, victims of trafficking in persons, older persons, and persons with disabilities.

Atak and Nakache (2018), note that the list of categories referenced in the GMC is an improvement compared with the Zero Draft in which only children and women were identified explicitly as vulnerable groups. However, they point out two important problems with the final list: 1) it does not mention that the list is open-ended and necessarily non-exhaustive, 2) the list was drafted without consideration of the various sources of vulnerability (e.g. inherent characteristic or structural factors).¹ Notably, neither of the Compacts explicitly mention vulnerability related to sexual orientation or gender identity. Hennebry (2018) also notes that despite the broader list provided in the GMC (23 b)), the Compact's Objective 7, the main clause outlining the commitment to address and reduce vulnerabilities in migration still remains heavily focused on protecting women and children (boys and girls). Guild et al. (2019) are further critical of how the GMC tolerates a number of state practices that render migrants vulnerable. Examples they point to are single-employer-tied work visas and the omission of firewalls on the sharing of information about migrants among state authorities.

The ambiguities related to the Compacts approach to vulnerability pose some challenges in terms of assessing to what extent the Compacts shape understandings of and approaches to vulnerability in field level governance. In the country case reports, we therefore investigate how actors interpret, assess, and use the concept of vulnerability, and whether they do so in relation to the Compacts. Do the Compacts contribute to increased attention to vulnerability, to expanding the scope of who is considered vulnerable, or to reducing the presumed validity of asylum claims by closing down the definition/prescription of what constitutes 'vulnerability'?

Gender

Both Compacts include an overarching commitment to a gendered approach. For example, both Compacts incorporate gender concerns related to border crossing and arrival, including gender-responsive referral mechanisms at borders (GMC, 28c) and reception and transit areas sensitive to gender (GRC, 54). Gender-responsiveness is also integrated into objective 3 of the GMC on providing accurate and timely information at all stages of migration, including gender-responsive support and counseling; information and legal guidance on their rights and obligations; and highlight risks associated with irregular migration. No such commitment to providing gender-responsive information can be found in the Refugee Compact. Moreover, only the GMC recognizes explicitly *gender-responsiveness* as a cross-cutting and interdependent guiding principle. The meaning of gender-responsiveness is described as follows:

¹ For a more thorough discussion on vulnerability in GCM see also Atak et al. 2018

The Global Compact ensures that the human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed and they are empowered as agents of change. It mainstreams a gender perspective, promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood (GMC, 15).

Hennebry and Petrozziello (2019), who provides a thorough examination of the way gender considerations are incorporated into the two Compacts, argue that there are important differences between them, both in terms of attention to gender and in their articulation of it. In general, their analysis suggests that the GMC goes much further in terms of mainstreaming a gender-responsive approach to migration. The GRC mentions the concept of gender-responsive (for example in relation to Complementary pathways for admission to third countries, 94), but tends to treat gender as a variable similar to age or disability. According to Hennebry and Petrozziello (2019), the GRC's primary mode of understanding gender appears to be: (1) identifying women and girls as a group with specific needs and flagging them as an "area in need of support" in section B; and (2) adding phrases such as "including women" or "especially for girls" to priority action areas, such as education, employment, training, and protection. Hennebry and Petrozziello (2019) see this as a kind of 'add-women-and-stir' approach, typical of 1980s Women-In-Development (WID) thinking. The result is that gender is reduced to one of many 'special interests' rather than a cross-cutting, guiding principle as implied by the term gender-responsiveness. An example used by Hennebry and Petrozziello (2019) is the call for safe spaces sensitive to gender and other needs as part of the immediate reception arrangements (GRC, 54). As they point out, gender is here articulated as a need and not as a lens of analysis or power relation, much less a question of rights. Despite a more thorough incorporation of gender-responsive language and commitments in the GMC, Hennebry (2018) also notes that the use remains vague and inconsistent, and its operationalization through the institutional apparatus of the UN Migration Network remains weak.

Two other important aspects relating to gender that Hennebry and Petrozziello (2019) draw attention to are: 1) Both compacts adopt a binary conception of gender. Neither of the documents include any consideration of LGBTQI+ people on the move. 2) Although, both compacts incorporate gender in relation to the improvement of migrants/refugees' access to basic services, such as health, there is no mention of sexual and reproductive health at all in either compact.

Legal status

The GCM pays attention to how different stages of the migration process may affect the situation of migrants, including how vulnerability may arise in destination states. The GCM underlines that states may distinguish between regular and irregular migration status, but also stresses that the human rights of all migrants should be ensured at all times 'regardless of their migration status' (GCM, para 15). This is consistently stressed throughout the objectives of the Compact (Guild et al 2019).

One notable commitment in the Compact in regard to legal status, is the pledge to develop appropriate procedures to prevent migrants from becoming irregular by facilitating transitions from one status to another. This commitment is found in the following sub paragraphs to Objective 7, 23:

- h) Develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination, to reduce precariousness

of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion

i) Build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population

Atak and Nakache (2018) see the acknowledgment in the Compact that there are ‘legal and practical impediments’ in destination states that produce irregular migration as a positive step on a politically sensitive issue. First, because the responsibility of States’ policies and practices in constructing the irregular status of migrants is highlighted; second, because the lack of legal status is acknowledged to be a factor creating migrants’ vulnerability. WP 4 will pay attention to what extent this is also acknowledged in field level governance, or to what extent the Compact contributes to such acknowledgments among the actors and to what effect. Or, does an emphasis on ‘safe orderly and regular migration’ mean that further securitized/ bureaucratized administrative systems will be developed and enforced to prevent movement into and within States?

The GMC also addresses the question of access to basic services in relation to legal status through the following subparagraph to Objective 15, 31:

b) Ensure that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or unlawfully infringing upon the human rights to privacy, liberty and security of person at places of basic service delivery.

A reference to establish firewalls to block information sharing between immigration enforcement agencies and service providers in the Zero Draft, was not included in the Compact. Moreover, Hennerby (2018) believes the language in the final document assumes that information sharing will continue. The lack of firewalls may deter migrants from accessing basic services, thus exacerbating their vulnerability.

Analytical approaches to vulnerability

While the use of vulnerability in international and domestic responses to migration has by its proponents been seen as a way of closing protection gap and creating more inclusive and context-sensitive approaches, it has been criticized as potentially stigmatizing and paternalizing, and thus potentially detrimental and damaging to those being identified and categorised as vulnerable (Gilson 2016, Flegar and Iedema, 2019). The classification of a person as vulnerable within the protection regime can translate into special procedural and reception guarantees. However, to be recognised as vulnerable, one must be successfully identified as such through an external evaluation. This requires one to produce a set of acts that are both declarative (affirming one’s vulnerability) and performative (acting in a manner that is consistent with bureaucratic expectations) (Serughetti 2018, Ikanda, 2018). Research has thus highlighted how dominant vulnerability discourses within the protection system requires one to place oneself in a passive and helpless position and in need of benevolence as these discourses tend to link deservingness of protection with innocence and the lack of individual agency (Jacobsen and Skilbrei 2010, Ticktin 2016).

Research has highlighted how the use of vulnerability in migration and refugee governance also entails exclusionary effects, as vulnerability is increasingly used to highlight distinctions between refugees who are deemed to deserve legal and/or forms of social protection and those who do not (Janmyr and Mourad 2018, Pallister-Wilkins 2019). The use of vulnerability in migration and refugee governance may thus justify the restriction of some rights and services to those identified as ‘particularly vulnerable’, thus allowing for more restrictive policies towards ‘non-vulnerable’ or ‘less vulnerable’ persons (Hruschka and Leboeuf 2019). Based on the research conducted as part of the VULNER-project, Leboeuf (2021) has also stressed the risks of excessive reliance on standardised ‘vulnerability’ checks, which fail to account for the actual position of protection seekers and the complex ways in which their life challenges intersect. The VULNER country reports studied the manifestations of ‘vulnerability’ as a legal concept under domestic law related to the refugee status determination procedure as well as those related to the reception conditions of asylum seekers pending the examination of their application in Belgium, Germany, Italy, Norway, Uganda, Lebanon, and Canada.

The prevalent approach to vulnerability in asylum and refugee law, policy and practice is to attempt to distinguish vulnerable categories or groups. For example, the United Nations High Commission for Refugees (UNHCR) has issued various sets of guidelines concerning specific groups of refugees distinguished by gender, age or disability, and recommend special treatment for these groups in relation to a set of vulnerabilities determined by UNHCR. Who is recognised as vulnerable and in need of specific protection have become more diverse and complex in recent years. However, the reasons for why someone is categorised as vulnerable and the obligations flowing from the label of vulnerability are not always clearly distinguishable, nor is it consistent who is included (Flegar and Iedema, 2019). Moreover, the adoption of categories of ‘vulnerability’ has been criticized for relying on simplistic and essentialised categorisation, which is also highly gendered and racialized (Freedman 2019).

The categorical or group-based approach to vulnerability is increasingly seen to clash with overlapping migratory experiences that generate fluid and complex identities (Serughetti 2018). This has led to calls for more flexible, and dynamic approaches that acknowledge the reality that people’s circumstances are constantly in flux and that vulnerability is not a static condition but a multidimensional state. Focusing on sources of vulnerability, Mackenzie et al. (2014), for example, distinguishes between inherent and situational vulnerability. Inherent refers to vulnerabilities that arise from our corporeality and dependence on others (e.g. hunger, sleep deprivation, social isolation). While some of these may be constant, others vary according to a range of factors such as gender or age. Situational vulnerability refers to vulnerability that is context-specific, that is caused or exacerbated by the personal, social, political, economic, or environmental situations of the person or group. Both inherent and situational vulnerability may be dispositional (potential) or occurrent (actual). In her taxonomy of vulnerability, Mackenzie et al. further identifies *pathogenic* vulnerability as a subset to situational vulnerability. This source stems from ‘morally dysfunctional or abusive interpersonal and social relationships and sociopolitical oppression or injustice.’ (2014, 9)

Mackenzie et al.’s taxonomy builds on efforts by feminist scholars to reconceptualize vulnerability more fundamentally as both a shared, constitutive and connective feature of our existence, and an effect of social, economic and institutional relationships (Butler 2004 and 2014, Finemann 2008). While some have questioned the practical value of this way of conceptualizing vulnerability (Cole 2016), others believe it may enable a recognition of how shared vulnerability constitutes the basis for ethical responsiveness (Hesford and Lewis, 2016). Furthermore, the emphasis on how unequal access to resources and recognition exacerbates some people’s vulnerabilities, may shift the focus towards the responsibility of the state in relation to the production of conditions of vulnerability, and on the need for resources to address and mitigate such conditions.

WP 4 does not start from one particular definition of vulnerability but seeks to explore how vulnerability is understood and operationalized in field level governance. How is vulnerability understood – by both migrants and migration governance actors - on the ground? Are there conflicting/converging understandings between different actors? Are there any adverse effects related to how vulnerability is operationalized in the different contexts?

Cross-cutting themes

In all country case studies, understandings of migrant vulnerability and specific needs are shaped through mechanisms such as funding opportunities, training, production and dissemination of knowledge, and civil society advocacy.

- In the EU countries, harmonisation through EU directives have influenced the introduction of and the way vulnerability is introduced into national legislation, that is by defining specific vulnerable categories (e.g. a pregnant woman, a minor, a victim of trafficking, etc.)
- The largely category-based approach to vulnerability introduced through EU directives, funding and training, was contested by actors on the ground that understood vulnerability as a broad and elastic term that could encompass a wider range of complex individual situations, including the situation faced by most people on the move.
- Actors on the ground also highlighted a broader range of factors that would be relevant for assessing vulnerability. These included in particular migration-related factors such as lack of knowledge about language and legal procedures, and lack of social network and means of living in the place of arrival. Vulnerabilities produced and/or exacerbated by the country of arrival's institutional and legal context (e.g. inadequate reception system and asylum procedure) were also emphasised.
- The lack of legal status was widely recognized as a key source of vulnerability, but the cases varied significantly when it came to opportunities to regularize and initiatives taken to mitigate vulnerabilities related to legal status.
- The understanding of gendered vulnerability focuses mainly on women (in their reproductive capacities as child bearers and mothers, and as potential victims of gendered and sexual violence). Although the vulnerability of women and children was discursively foregrounded, it was still contested in terms of how it was operationalized.
- Tensions between a securitarian approach to migration, which tends to criminalize immigrants, and a humanitarian approach which is based on notions of suffering and innocence, are crucial to how vulnerability is understood and deployed across the country case studies, as are the socio-economic and material conditions of migration governance in the various countries.
- The notion of vulnerability increasingly implies selective rather than additional assistance due to a structural lack of resources. The operationalization of vulnerability indicates a shift in humanitarian concern from the vulnerability of all people on the move to the vulnerability of only some.
- The need to 'perform' vulnerability in a legible way due to difficulties of accessing provisions and services reserved for the vulnerable was problematized by actors on the ground
- The Compacts have not had much impact in the way actors work or on the conception of migrant vulnerability and special needs, and there was little expectation that much would change in practical terms.
- The pandemic is generally seen to have exacerbated vulnerabilities and accentuated the shortcomings of the asylum and the reception system to deal with these. However, in some cases the pandemic provided new opportunities to address vulnerabilities.

Country case studies

The draft analysis from the six country cases covers the following points:

- 1) Context – Vulnerability in national laws and policies
- 2) Understandings of vulnerability in field level governance
 - a. Gender
 - b. Legal status
- 3) Vulnerability and governance networks
- 4) Impact of the Compacts
- 5) Impact of Covid

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Notions of vulnerability in field level governance in Marseille, France

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Context – Vulnerability in national laws and policies

Marseille is the second largest city in France, with close to 900 000 inhabitants. Due to a long history of immigration from Southern Europe and the Maghreb countries, Western Africa and beyond, Marseille is known for its ethnic and cultural mix. The number of persons seeking asylum in the PACA-region increased threefold between 2015 and 2018, with 7200 demands in 2018 up from 5118 the year before.² 41% of them were subjected to the Dublin regulation, having passed through mainly Italy but also through Spain. Per March 2019, the SPADA in Marseille had registered 2021 convocations to the *Guichet Unique pour Demandeurs d'Asile* (GUDA) of which 1870 were first-time applicants and 151 persons in re-examination. The number of persons seeking asylum decreased during the COVID-19 crisis.

In 2015, the transposition of the EU directive on reception conditions of asylum seekers (2013/33/EU) into French legislation introduced the notion of 'vulnerability' in an article of the *Code of entry and residence of aliens and the right to asylum* (CESEDA) entitled 'needs assessment'. This notion is related to the provision of accommodation, material support, and specific procedural guarantees for asylum seekers considered 'vulnerable'. The CESEDA mentions that vulnerability assessments aim at identifying minors, unaccompanied minors, persons in a handicap situation, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons suffering from serious illnesses or mental troubles, and persons having been subjected to torture, rape or other serious forms of psychological, physical, or sexual violence, such as female genital mutilation.

Since 2018, the overall reception politics has increasingly been articulated discursively around the access of refugees and asylum seekers to rights, and the need to take vulnerabilities into account (see e.g., *Schéma national d'accueil des demandeurs d'asile et d'intégration des réfugiés et du dispositif d'orientation régionale 2021-2023*). The regional schema for Provence-Alpes-Côte d'Azur (*Arrêté relatif à l'actualisation du schéma régional d'accueil des demandeurs d'asile et des réfugiés pour la période de 2020 à 2022*) focuses less on vulnerability but stresses the need to identify and assist vulnerable people while they wait for an appointment at the one-stop reception desk (GUDA).³ To assess 'special needs', the officials of the *Office français de l'immigration et de l'intégration* (OFII), present at the GUDA, currently use a brief questionnaire to assess the 'accommodation needs' and 'adaptation needs' of people with so-called 'objective vulnerabilities'. However, the focus on 'objective' vulnerabilities considerably reduces the scope established by the EU directive and the CESEDA, mainly to serious medical conditions, disability, and pregnancy.

In 2020, France was condemned four times by the European Court of Human Rights. The applicants, categorized by the French administration as 'isolated asylum seekers' (i.e., single men) and thus not considered as 'vulnerable', were recognised as victims of degrading treatment and the state deemed to be showing a lack of respect for their dignity. The Court concluded that the French authorities were responsible for the conditions in which the applicants had been living for several months: sleeping rough, without access to sanitary

² Préfecture de la région Provence-Alpes-Côte d'Azur 'Arrêté relatif à l'actualisation du schéma régional d'accueil des demandeurs d'asile et des réfugiés pour la période de 2020 à 2022'.

³ See Jacobsen (2020), Messini and Dahdah (2021) and Observatoire Aisle Marseille (2018) for discussions of the vulnerabilities produced during this waiting time.

facilities, having no means of subsistence and constantly in fear of being attacked or robbed. Yet, despite those condemnations, France continues to fail in the execution of its duties under domestic law, forcing thousands of people to live on the streets or in squats.

In 2021, the Interior Ministry adopted a 10 point Vulnerability plan to reinforce the *pris en charge* of refugees and asylum seekers' vulnerabilities. The plan states that: 'The women, men and children who seek asylum in France have often fled atrocities and come to us at the end of a long and difficult journey of exile, which has left a lasting impression. Whether they are suffering from psycho-trauma, victims of violence, unaccompanied minors, people with physical disabilities or applicants who are vulnerable because of their sexual orientation and/or gender identity, these profiles are now more numerous and their vulnerable situation requires appropriate care from the moment they arrive.'⁴ While intending to strengthen the accompaniment of vulnerable people, the understanding of vulnerability in the action plan continues to focus on so-called 'objective' or 'innate' vulnerabilities, while the structural vulnerabilities addressed by the European Court of Human Rights produced by the treatment to which asylum seekers are subject in France remains beyond the policy scope.

Understandings of vulnerability in field level governance

Due to the structural lack of means dedicated to the reception of asylum seekers, the assessment of 'vulnerability' in relation to reception conditions has been understood and operationalized in a restrictive manner by the authorities. Several interviewees reported that the OFII based their evaluation on an understanding of vulnerability that was clearly more limited than the one enshrined in the *Code of entry and residence of aliens and the right to asylum* (CESEDA) as well as in the EU directive dedicated to reception of asylum seekers (2013/33/EU). For instance, the possibility to enter the local emergency housing programme dedicated to asylum seekers in Marseille has since 2018 been limited to families with children under the age of 3, women who are more than 8 months pregnant and in possession of a medical certificate, trafficked or abused women, and seriously ill persons. Some of the migrants we interviewed said that they had not been asked about their vulnerabilities or special needs during their appointment with the OFII. Others stated that despite declaring their needs, they had not been offered any accommodation in dedicated reception structures.

The identification of vulnerability conducted by the OFII and the SPADA (first reception desk) focus on what they call 'objective' vulnerabilities. These forms of vulnerability belong to what Atak et al. (2018) define as 'inherent vulnerabilities.' Structural vulnerabilities in their present situation are not systematically assessed. However, both the French literature and our interviewees stressed structural dimensions in the production of vulnerability. Musso (2017), for instance, in discussing how an anthropological focus on health can throw light on questions related to migration, argued that vulnerability is not intrinsic to migrants. Rather, vulnerability is produced by the political, legal, economic and social constraints that shape contemporary mobilities, and affects migrants in a non-homogenous way.

The CSOs we interviewed largely corroborated this reading and mentioned a number of concrete structural barriers that were producing vulnerability. Importantly, the precarious housing situation and the fact that many asylum seekers live on the street was highlighted by almost all interviewees in all three categories. As one CSO representative put it, '*They are*

⁴ 'Les femmes, les hommes et les enfants qui recherchent l'asile en France ont souvent fui des atrocités et nous arrivent au terme d'un parcours d'exil long et difficile, qui les a durablement marqués. Qu'il s'agisse de personnes souffrant de psycho traumatismes, de victimes de violences, de mineurs non accompagnés, de personnes en situation de handicap physique ou encore de demandeurs vulnérables à raison de leur orientation sexuelle et/ou de leur identité de genre, ces profils sont aujourd'hui plus nombreux et leur situation de vulnérabilité nécessite, dès leur arrivée, une prise en charge adaptée.' La Direction général des étrangers en France, 'Plan Vulnérabilités' 10 Actions pour renforcer la pris en charge des vulnérabilités de demandeurs d'asile et de réfugiées.

necessarily vulnerable, because they live on the street'. In an interview with a representative from the municipality, they stated that *'the most important question for people in a situation of exile is the one of accommodation. Obviously, if health problems did not already exist, they will develop as a consequence of unsanitary housing conditions.'* The fact that French law prevents asylum seekers from working was also frequently mentioned. As one CSO representative put it, *'All those people who have no means of living except humanitarian assistance or resorting to illegal work, they are in a vulnerable situation.'* Recourse to sex work as an income was also mentioned as a consequence of asylum seekers and irregularized migrants being prevented from working to sustain a living for themselves and their families.

When it comes to juridical constraints, some interlocutors mentioned that the 'acceleration' of procedures implied by the asylum law reform of 2015 and the law for 'controlled immigration, an effective right to asylum, and successful integration' of 2018 as productive of vulnerabilities. The 'acceleration' of procedures involves a redistribution of time taken and given by the state, notably a considerable reduction of the time to apply for asylum (from 120 to 90 days upon arrival), and the time to appeal the decision (from 30 to 15 days), as well as an extension of the 'detention and deportation regime' (see De Genova & Peutz 2010, Jacobsen 2020). The practice of issuing removal orders (in French *Obligation de quitter le territoire* – OQTF) together with rejections left very little time for reception centres or other institutions or CSOs to prepare appeals, one interlocutor at a reception centre told us.

The Dublin agreement was also mentioned by several as implicated in the production of vulnerability. Among those who are Dublined, some, for various reasons – often related to attachment to France (family, friends, language), or negative experiences in Italy (racism, living conditions in the camps, work exploitation) – choose to stay in France. This means that for 18 months (until they can apply again under the 'normal' procedure) they do not have rights to the material reception conditions otherwise accorded to asylum seekers (place in an asylum reception centre, *Allocation pour demandeur d'asile*, ADA) and that they are deportable.

Being recognized as vulnerable may in some cases allow a person to be moved from the Dublin to the normal procedure. However, many of the interviewees gave examples of the structural barriers associated with such changes of procedure. This relates not least to the 'regime of truth', in which asylum seekers are demanded to 'perform' vulnerability in a legible way and to provide extensive proofs of their vulnerability be it age, gender-sexuality, medical, economic, or other factors. The difficulties of accessing provisions and services reserved for the vulnerable because of the extensive demand of 'proofs' was mentioned by many as a more general challenge.

Interviewees also highlighted a number of more 'technical' and practical issues related to how the reception and governance of international protection is organized. One example is the elevated price of train tickets to go from Marseille to Paris for the interview with OFPRA and the fact that the ADA card does not allow one to purchase online – which often gives a considerable price reduction. One CSO thus assisted some asylum seekers in buying train tickets online to ensure affordable fares. Another practical issue was that the financial aid (ADA) only allows particular forms of purchases, identified by the authorities as necessary. To work around this limitation, some shops offered to charge more on the card than the actual purchase to return the rest in cash, often against a substantial commission.

During participant observation, we noted various ways of problematizing, negotiating and contesting how vulnerability was understood and operationalized. One important moment of contestation was when a self-organized group of asylum seekers (Association of the Pada's Users, AUP) were performing their political claims, hailing the OFII and questioning the very meaning of 'vulnerability' and about its legal obligations to support their reception conditions: "Isn't a destitute person vulnerable? OFII, tell us what's vulnerability? We don't understand. Who are the vulnerable people? OFII, take your responsibility. Respect our rights!"

Our migrant interlocutors also tended to stress how vulnerability was contextual and produced under particular structural circumstances. For instance, one young man with whom we talked about his understanding of the notion of vulnerability explained that ‘as a minor you can be vulnerable but not necessarily. It depends on the context.’

When I lived in [country name] with my parents, and my mother was still with my father, and even after my father died, before all the trouble started, I could not consider myself vulnerable. I ate when I was hungry, and I studied. I was not part of the ‘vulnerable persons’ but as time went by, I went from being a non-vulnerable person to being vulnerable. Still, even here now, I may consider myself vulnerable. Since I do not receive any financial support, I will fall back to being vulnerable if my host family [family who hosts informally] stops supporting me. In a sense I think all asylum seekers are vulnerable, in that they are not allowed to work so that they can support themselves autonomously.’

Gender

Across the three categories of authorities, CSOs and migrants, interviewees uniformly presented ‘women (in their reproductive capacities in particular) and children’ as the most self-evidently vulnerable. Some interviewees related this to women’s exposure to gender-based violence, which exposed them to (sexual, conjugal and other forms of) violence in their countries of departure, during the journey and also in the receiving country. A few interviewees also pointed out the tabus surrounding men’s experience of gender and sexual violence, especially during transit in Libya, and especially men with non-normative gender expressions and sexuality.

The identification of women and children as particularly vulnerable, while uniformly shared at a discursive level, still was contested in terms of how it was operationalized.

The march organized by the AUP mentioned above was illustrative of the sexualised and gendered dimensions that frame public assistance policy and reflected the contradictory practices of the OFII regarding the foremost moral imperative to protect ‘women and children first’. Two banners dedicated to women and mothers at the front of the march asked: ‘*Isn’t a pregnant woman vulnerable? Isn’t an isolated woman with children vulnerable?*’

While the vulnerability of women and children was universally foregrounded, the adverse effects of focusing on gendered (and sexual) differences as grounds for protection and access to services was also discussed. A couple we interviewed told us about their struggle to get accommodation for themselves and their two children (a baby and a toddler). Initially seeking refuge in a squat while waiting for a place in a reception centre, they were subsequently offered emergency housing in a hotel. However, the offer was not renewed after the initial 10 days and the family was left to sleep on the street. Joy explained that someone had taken her to a shelter for women victims of violence,

If this association knows that you have no problem with your husband or that you are still living with your husband, they don't house you’. Even if Joy and Important were still together, Joy was allowed to stay while they looked for another solution, but Important was not allowed to stay with her, ‘They said they can’t take care of me, only my wife and children. I accepted that because... Sometimes I slept outside, I slept at my friends’ houses, but at least they [my wife and my kids] were safe.

The understanding of gendered vulnerability focuses mainly on women (in their reproductive capacities as child bearers and mothers, and as potential victims of gendered and sexual violence). The national schema mentions the need to create adapted reception places for

a ‘vulnerable LGBT public’. Unlike trafficking victims, this is not mentioned in the regional schema, and vulnerabilities related to non-normative gender and sexuality is not addressed in the vulnerability assessment conducted by the OFII. Some CSOs seem to mobilize around this issue locally, though, to assist LGBT persons in their effort to obtain protection. They reported a growing professionalization and awareness at the OFPRA around such issue. LGBT asylum seekers we interviewed highlighted how non-normative gender and sexual orientation made them vulnerable not only to inadequate reception conditions, but also to processes of exclusion from more informal networks of support among compatriots, that many rely on for getting by. Many were ‘afraid to tell their story’ since they were uncertain how people would react and did not feel safe.

Legal status

Several interviewees mentioned legal status as an important dimension of the production of vulnerability. In particular, they pointed to the need to extend rights and services beyond those already recognized with a refugee status. Even more than asylum seekers, migrants who have been ‘irregularized’, are exposed to political, juridical, economic and social constraints that produce vulnerability. In an interview with the municipal authorities, the interviewee thus stated that although the city had no way of intervening in processes of regularization for groups or individuals, as this remained the prerogative of the state, they were aiming to widen the scope of services so as to include people who had ‘not-yet’ obtained refugee status or who were in the process of appealing a rejection.

French policies enforce a distinction between refugees and economic migrants, which also translates into a discursive split between the ‘asylum seeker’ and the ‘undocumented migrant’ (*sans-papier*). Recent policies are geared at separating these groups as swiftly as possible by granting asylum to those deemed as fulfilling the criteria of international protection and expelling those failing to fulfil the criteria, who are accordingly identified as ‘foreigners in an irregular situation’, and thus detainable and deportable (de Genova and Peutz 2010). Self-organisation has accordingly also mainly been separated between *sans-papiers* collectives (in periods of mobilization supported by labour unions in particular or CSOs focused on children and their parents such as *Réseau éducation sans frontière*) and associations of refugees and asylum seekers.

Despite the fact that irregularization produces vulnerability, possibilities for regularization for rejected asylum seekers remain limited and in some cases have been further restricted. In response to an increase in demands for regularisation on medical grounds (which provided a possibility for regularisation to some rejected asylum seekers),⁵ procedures for evaluating medical vulnerability based on medical grounds changed in 2016. A medical certificate issued by the medical services of the OFII needs to be submitted within 3 months of the first registration with the GUDA (Hammadi, Legeay and Lamailloux 2018/2019). Since a majority of pathologies are discovered (or develop) at a later point, this time limit reduces the possibility of regularisation for rejected asylum seekers on humanitarian grounds.

Vulnerability and governance networks

The way in which vulnerability is operationalized by the administration to some extent influenced which cases CSOs chose to follow up on, even if their approach was one of ‘unconditional assistance’. As one of our CSO interlocutors told us:

A woman with children will move the administration much more easily, and the administration has certain capacities to support women and children. So we certainly

⁵ Of the 4000 foreigners who get stay on medical grounds each year, 40% are rejected asylum seekers, a proportion that reaches 90% in certain regions (Hammadi, Y. C. Legeay and A. Lamailloux 2018/2019).

examine the situation more carefully when a woman and children knock on our doors than when a young person asks for support because we know that he has no chance and that we'll waste our time looking everywhere for something that is impossible [...]. For a young man, it's true that we are not really searching that much, because we know that he won't get anything.

This quote resonates with Söze's (2021) analysis of Syrian refugee men as 'designated invulnerable' within a paternalistic and patriarchal understanding of gender and vulnerability.

Financing is another dimension that may influence how notions of vulnerability inform governance at the local level, both through the 'calls for tender system' through which the state outsources tasks related to the governance of migration to CSOs (see Jacobsen and Chappart 2022), and through the orientation of other funders (EU, private foundations) towards certain forms of vulnerability. Financing mainly remains related to inherent (age, gender, sexual orientation), or situational vulnerability (which renders some individuals vulnerable to power abuse by others, e.g., human trafficking). For instance, trafficking has been identified in France and more globally as a particular challenge, and women trafficked into the sex industry as particularly vulnerable (Plan Vulnérabilité)⁶. Locally, this translated into money being available for creating reception places for trafficking victims.

In an interview with a CSO state operator, the interviewee stressed the financial dimension of how governance at the local level is directed towards particular pre-established (and often essentialized) categories of vulnerability: *'In 2018 they made plans for specific reception facilities [for victims of human trafficking], with securitized entrances, but these initiatives, although much talked about, disappeared quickly. It suits the Prefecture to open places for trafficked women because it gives more money.'* While finances were made available for targeted reception places for asylum seekers identified as vulnerable, these places remain underfinanced. One interlocutor told us that when raising this problem with the authorities, she had been told that they should 'reckon with' (*prendre en compte*) vulnerabilities, rather than offer support and care (*prendre en charge*).

Some CSO interviewees deplored how initiatives that came 'from above' were often maladapted to realities on the ground and argued that identification of vulnerability and special needs should rather be articulated from below. Articulations from above in pre-established categories of vulnerability, several interlocutors charged, failed both to take into account development in individual situations of vulnerability over time, and the complex intersection of vulnerabilities. An employee with a state operator told us that her attempts to draw the attention of the state authorities to the needs of asylum seekers who did not fit the pre-established categories of vulnerability had been met by an unwillingness on the part of the OFII to share its prerogative in identifying those considered vulnerable with local actors on the ground.

Many of our interviewees pointed to the adverse effects of how vulnerability was understood and operationalized by the OFII and the SPADA. These included: a) the fact that the notion of vulnerability tended to function as a way of managing insufficient resources so that only those identified as vulnerable could access rights that in the law are given to all asylum seekers 2) the fact that some categories of people (notably single young men) were seen as 'invulnerable' and struggled to access their rights 3) the fact that vulnerability criteria were not transparent and left asylum seekers with the impression that the assessment system was unfair 4) the regime of truth and suspicion that the operationalization of vulnerability as a filtering mechanism gave rise too. As one of our CSO interlocutors put it, *'When the very idea of vulnerability was introduced in 2016, it made people even more precarious. It's about sorting*

⁶ La Direction général des étrangers en France, 'Plan Vulnérabilités' 10 Actions pour renforcer la pris en charge des vulnérabilités de demandeurs d'asile et de réfugiées.

some people out and then excluding everyone else.' The notion indicates a shift in humanitarian concern from the vulnerability of all refugees to the vulnerability of only some, a shift that many of our interlocutors problematized.

Impact of the Compacts

In Marseille, the Compacts are very little known among the various actors who are involved in the governance of international protection as well as by migrants themselves. Of the interviewees, authorities at the municipal level had some knowledge of the Compacts, as did the CSO contracted to run the SPADA, and reception centres interviewed. Together with the absence of any references to the Compacts during participant observation, interviews suggest that the Compacts are little or not at all known to other civil society actors or to migrants, and that they have little impact on how vulnerability is identified, operationalized and contested on the ground. It is the operationalization of 'vulnerability' by the OFII that is seen as limiting its scope and closing down the definition (to exclude structural vulnerabilities) by CSO and migrant actors. Reference to the Compacts is not used as a leverage by local actors to broaden this scope, not least because the Compacts are not legally binding. In contesting the operationalization of vulnerability, actors thus rather refer to rights guaranteed by French and EU law.

Impact of Covid

The COVID-19 pandemic exacerbated structural vulnerabilities. Interviewees pointed in particular to the accentuation of the precarious housing situation of asylum seekers, as many remained without shelter during lockdown despite public efforts to increase the emergency housing capacity. Others were housed in poor conditions in which social distancing was impossible to uphold, for instance in the emergency housing shelters, in squats or in private overcrowded apartment. Food precarity was similarly exacerbated, both because some CSOs providing basic needs to migrants were forced to shut down or limit their activities because of lock down restrictions, and because it became increasingly difficult for migrants to sustain a living from informal labour.

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Notions of vulnerability in field level governance in the Province of Cádiz, Spain

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Context – Vulnerability in national laws and policies

International protection in Spain is regulated by Law 12/2009 of 30 October 2009 (hereafter the Asylum Act). This law distinguishes between two types of international protection. The first is the right to asylum for those recognised as refugees based on the terms defined in Asylum Act and in line with the Refugee Convention of 1951 and its Protocol of 1967. The second, is the right to subsidiary protection for non-EU nationals or stateless persons who, without qualifying for asylum or being recognised as refugees, would face the risk of serious harm if they were to be returned to their country of origin. The Asylum Act also foresees the possibility of authorising residence for humanitarian reasons of a person requesting international refugee protection, who does not qualify for refugee status and subsidiary protection.⁷

Article 46 of the Asylum Act refers to specific categories of vulnerable persons. The categories included are minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single-parent families with minors, persons who have suffered torture, rape, or other serious forms of psychological, physical or sexual violence and victims of human trafficking. Except for in the case of unaccompanied minors, the Act does not foresee specific procedural guarantees for vulnerable protection seekers, but states that the necessary measures shall be adopted to give specialized treatment to protection seekers that fall within the above-mentioned categories. Specialized treatment is to be made both in relation to protection measures and assistance. However, according to NGOs, Article 46, as other provisions, is not implemented in practice due to the lack of a regulation on the implementation of the Asylum Act (ACCEM 2020).

According to the Asylum Act, applicants for international protection that lack financial means shall be provided shelter and social services. The reception and integration program for international protection seekers is managed by the Director General for Inclusion and Humanitarian Assistance (Dirección General de Inclusión y Atención Humanitaria, DGIAH). DGIAH allocate places either in state-run Refugee Reception Centers (CAR) or centres and apartments managed by NGOs with public funding. Asylum seekers and beneficiaries of international protection can reside for a maximum of 18 months in the reception system. This period can be extended for up to 24 months for the vulnerable profiles referred to in the Asylum Act. Although, the Spanish reception system does not guarantee specialised reception places, efforts are made to place protection seekers in the reception place which best fits their profile and needs. The reception Management Manual (Manual de Gestión), for example, stipulates a continuous identification and assessment of an applicants' vulnerabilities and specific needs,

⁷ Law 4/2000 (the Aliens Act) specify the following conditions as possible reasons for granting a temporary residence permit for humanitarian reasons: a) being a victim of a workplace crime; b) being the victim of crimes motivated by racism or other grounds of discrimination; c) being a victim of domestic violence, provided that a judicial decision has established the status of victim; d) having a serious medical condition requiring specialized health care, not accessible in the country of origin, where the interruption of treatment would pose a serious risk to health or life; e) facing a security risk in case of return to the country of origin, when the requirements for temporary residence are fulfilled. The Spanish Supreme Court has further ruled that, in addition to the categories listed in the Aliens Act, residence permits for humanitarian reasons may be granted taking into account the migrant's personal circumstances (Supreme Court, Judgement 4256/2012 of 24 February 2012).

and how these circumstances should guide the allocation of specialised places. However, the capacity within the reception program is not sufficient to effectively achieve this (ACCEM, 2020).

In addition to the reception and integration program for international protection seekers, Spain also has a humanitarian reception program. This program is primarily aimed at migrants arriving by sea who are ‘in a situation of vulnerability due to physical deterioration and lack of social, family and economic support’. The humanitarian reception program is also managed by DGIAH, with services outsourced to NGOs. The Royal Decree 441/2007, of April 3, which governs the granting of subsidies to NGOs that provide the humanitarian reception services, provides the regulatory framework for the program. In 2019, the government introduced an amendment through the Royal Decree 450/2019, of July 19, which made it possible to refer applicants and beneficiaries of international protection who are ‘in a situation of vulnerability due to physical deterioration and lack of social, family and economic support’ to reception facilities within the framework of the humanitarian reception program.

Assistance here is generally provided for three months, with the possibility to extend the stay for up to six months for particularly vulnerable cases. During the COVID-19 pandemic, stay was generally extended to six months.

Understandings of vulnerability in field level governance

There is a consensus among actors involved in the reception of migrants and asylum seekers in the Province of Cádiz on the contextual nature of vulnerabilities. In this case, that is in particular migration across the Strait of Gibraltar in fragile boats or ‘pateras’ as they have become known as in Spanish. As one state actor explained:

In the scenarios in which we work, everyone is vulnerable. Who is not vulnerable? (...) So, to your question. Do we identify vulnerabilities? Yes, but I insist, everyone is vulnerable. (Interview T)

Other interlocutors would stress that ‘vulnerability is a very broad concept’. However, there was a divergence, and at times tension, between the more rigid **category-based approach** to vulnerability found in Spanish law and government practice, and a more flexible **discretionary-based approach** favored by the service providers and activists interviewed in this study, as the following quotes illustrates:

There is a distinction between what the government and the legislation understand as vulnerability and what we understand as vulnerability. They are different concepts. We detect people who are vulnerable, very young people, who do not know if they will have relatives who can pick them up, people who do not know Spanish or another language with which they can defend themselves. (...) In terms of vulnerability, what I detect, apart from the vulnerability that comes with being a woman, being a victim of trafficking, etc. I detect that these young people do not know where they are, they do not understand what is being explained to them, they know that they have lawyers, but either they have not explained anything yet, or they have not understood. (...) They seem to me to be very vulnerable people in the sense of total ignorance (interview B).

From my perspective, when I am doing a social report, I think that if a young man does not know any Spanish it is a huge vulnerability in truth. He is very vulnerable because anyone can deceive him. This is not recognized neither by the Red Cross nor by the Ministry. Is a single-parent family more vulnerable? Well yes, I can accept this, but you have to study the specific cases. (...) I see myself as a social worker, and I look at each case in a

specific way, it is very difficult for me to study them based on generalities. It is difficult for me to understand how a social worker can understand vulnerability in the same way that the Ministry or the Red Cross understands it. In truth, these institutions limit it a lot. (...) When a migrant boy arrives, he is vulnerable because he has arrived alone, without money, without network, without clothes. This is a very vulnerable person. But what happens? In six months, perhaps he will learn Spanish, he will have his basic needs covered, and perhaps he feels capable of looking for a job. For me vulnerability should be understood as something evolutionary.’ (interview M).

For us, all the people who arrive come under certain parameters that mark a situation of vulnerability. (...) Every person who comes is vulnerable and we think so, because when you leave your country, you leave your family, friends, and all of these are things that they do not have when they arrive here. All of this is vulnerability (interview C).

These quotes illustrate how the legal vulnerability categories do not necessarily cover needs encountered on the grounds. Our interlocutors would highlight a much broader range of factors that would be relevant for assessing vulnerability. These included in particular migration-related factors such as lack of knowledge about language and legal procedures, and lack of social network in the place of arrival. Our interlocutors also highlighted vulnerabilities produced and/or exacerbated by the country of arrival’s institutional and legal context (e.g. inadequate reception system and asylum procedure). In particular, the situation of so-called *ex-tutelados* were highlighted. That is unaccompanied migrant youths that find themselves in an irregularised situation after turning 18.

The tension between the category and individual-based approaches is not only linked to standardization versus flexibility, but also to a distinction between a narrower legal and bureaucratic definition, and a potentially broader and more inclusive discretionary one. Vulnerability functions primarily as a **tool of resource allocation and prioritization** within the reception system in Cádiz and Spain, a system which suffers from a scarcity of resources. For the past decade, the Spanish reception system has struggled to cope with a significant increase in both asylum applications, primarily from Latin Americans arriving at airports, and an increase in migrants arriving by boats at the maritime borders (see Karlsen et al. 2022). In this context, the notion of vulnerability has gained a slightly different function within the reception system for asylum seekers, and the humanitarian reception system. Whereas vulnerability in the former system is mainly proposed as a basis for adapting reception services to specific needs (e.g. specialized reception places), vulnerability is increasingly linked to questions of who should get access to the latter system. For example, in September 2021, the Minister of Inclusion, Social Security and Migration, José Luis Escrivá, announced the intention of limiting access to the humanitarian reception system by prioritizing people who, based on new requirements, are considered ‘truly vulnerable’ (Sánchez, 2021). In an instruction letter sent to NGOs that manage humanitarian reception programs, the Ministry defined people in a situation of vulnerability as ‘single women, women with children, sick people, people with disabilities, and other vulnerabilities detected in the screening carried out’ after their disembarkation. In the letter, the Ministry seeks further to establish an order of priority in situations where there are not enough reception places. The list of priorities was as follow: first, single women, women with children, sick people, people with disabilities and other vulnerabilities detected, second, asylum seekers, and third, nationals of countries with which there is no repatriation agreement.

The prioritization plan was criticized for being designed to mainly exclude single, healthy men from Morocco and Algeria, the two most numerous nationalities among recent sea arrivals. Although, the instruction was quickly put on hold after criticism from regional authorities and

NGOs, the Minister maintained the need for a system of prioritization. Our interlocutors in Cádiz, however, highlighted and criticized an already established practice in the Province of discriminating on the basis of nationalities, with sub-Saharan Africans admitted to the humanitarian reception program and people from the Maghreb region automatically sent to the detention centre (CIE) after disembarkment, without any assessment or recognition of potential individual vulnerabilities. However, during the COVID-19 pandemic, people from the Maghreb region would also be included in the humanitarian reception program due to the challenges of deporting migrants and the partial closure of the CIE.

Our interlocutors also pointed out how the vulnerability criteria for extending the stay from three to six months had frequently been changing in the past, as the following quote shows:

They can request extensions based on certain vulnerability criteria. Health is one such vulnerability factor. What is happening? That these criteria change. The ministry sends you some indications, and they are the ones who mark those vulnerabilities [recognised for an extension]. There are times when a single vulnerability is reason enough for granting an extension and there are other times when the same vulnerability is no longer considered a reason for an extension. For example, for a while young age was considered a reason for being vulnerable, and women and men between the age of 18 and 21 could get an extension. After a while this stopped. The criteria tend to vary depending on demands. The criteria that never changes is health, and women with minor children (Interview F).

The discussions around vulnerability as a tool for prioritization, and the specific inclusion criteria, point to how vulnerability largely is used as a shorthand or **marker of deservingness**. The notion is as such mobilized by various actors involved in field level governance for different agendas. Whereas the government has mobilized it to limit access to humanitarian reception places, NGOs and local and regional governments have justified inclusive practices beyond the state reception programs by references to the ‘vulnerable’. For example, the Andalusian government has an annual funding program for CSOs working with migrants. In recent years, this has supported initiatives aimed at supporting migrant women in vulnerable situations and unaccompanied migrant youths that find themselves in an irregularised situation after turning 18 (referred to in Spanish as ‘*ex-tutelados*’). Cádiz City Council also signed in 2019 a four-year collaboration agreement with CEAR for a centre for women in vulnerable situations. However, utilising the notion of vulnerability to expand the scope of those eligible for services, still risks reifying social boundaries between migrant categories.

Gender

To the extent gender is taken into consideration when considering vulnerabilities and specific needs in the reception of migrants, the focus has been on women in vulnerable situations. In practice, the vulnerabilities and specific needs of migrant women in vulnerable situations, together with accompanied and unaccompanied minors, receive more attention than the other categories listed in the legal framework. Although, the legal framework only specifies pregnant women, the categories of single-parent families with minors, and victims of human trafficking and sexual and gender-based violence also tended to be associated with women. There has also been a practice of separating mothers and children from fathers on disembarkment until DNA-tests confirm paternity. The attention to migrant women in vulnerable situations can be related to cultural and moral views on womanhood, and to funding priorities at the level of EU and the autonomous government of Andalusia, as well as capacity-building initiatives. Despite the attention, NGOs continued to highlight protection gaps particularly in relation to victims of human trafficking and sexual and gender-based violence within the Spanish system.

There was a general consensus among our interlocutors that migration as a context was disadvantageous for women as a group. As one of our interlocutors put it:

Yes, we identify that the fact of being a woman is another reason of vulnerability. It is that the women during the journey that they make, they have suffered violations or violence for being a woman, and we, although we do not work with women directly, we know that there is a double or triple or more vulnerability due to the fact of being a woman. (Interview D)

Several of the organization included workshops on gender equality and/or feminism as part of their training program during the reception period. However, some were also critical of what they saw as an underlying assumption in the category-based approach to vulnerability of women being understood as inherently vulnerable, as the following quote illustrates:

Well, for me, I don't understand that women are considered vulnerable in and of themselves. That just the fact of being a woman makes them vulnerable. There are times that women are overprotected in migration. Women are not always vulnerable. This is a super paternalistic vision. (Interview M)

The discretionary-based approach to vulnerability represented as such a way to recognize that vulnerabilities could be related to individual men.

LGTBI+ migrants and asylum seekers are not included among the categories defined in the Asylum Act as being in a situation of vulnerability. However, there has been an increased awareness and training focusing on sexual orientation or gender identity as a reason for international protection.

Legal status

The lack of legal status is widely recognized among the different stakeholders interviewed as a key source of vulnerability. As two of our government interlocutors stated:

For me it is the issue of legal documentation. It is fundamental. And also language. (...) The fact of being a foreigner does not make you necessarily vulnerable. There are many more variables, but above all is the question of documents, language, and knowing the cultural norms of the place where you live. (Interview T)

As long as you persist in an irregular situation, you are vulnerable. I do not care if you have arrived irregularly. If you have arrived irregularly, the most important thing is that you become protected by a social and legal state, which is Spain and the EU. (Interview Y)

Although, there are different local requirements across Spain, irregularized migrants can in general register in the municipal census ('empadronamiento'), which is key to access municipal services. In 2018, the Government also reinstated universal access to the Public Health. Spain has further three pathways to legal residence for irregular migrants regulated by the Organic Law 4/2000, of 11 January; 1) *arraigo laboral* can be obtained by foreigners who have resided in Spain illegally for 2 years, and can demonstrate an employment relationship of at least 6 months, 2) *arraigo social* is the regularization procedure by which someone who has lived in Spain continuously for 3 years can obtain legal residence, 3) *arraigo familiar* is a mechanism for those who have a close relative that is a Spanish citizen. The mechanisms provide the person with a renewable permit to live and work in Spain for a year.

While these measures are important to mitigate vulnerabilities caused by the lack of legal status, our interlocutors also pointed to obstacles to access these rights in practice. As one CSO interlocutor explained:

For an immigrant to register (in the municipal census) here is very difficult. First, because they don't know about it, and second, because if they rent, many times the landlords don't want them to register, because they are afraid. (...). Sometimes the city council causes problems (for example if you do not have a fixed address). Also, we have sought to register children in our own headquarters. The registration law, in its article 3.3., says that any person in a situation of substandard housing or who lives on the street or without a fixed address, has the right to register.

And:

The law says that health care is universal and free for everyone. But, in practice, we have gone to the health centers and many times, due to the lack of knowledge of the officials themselves, they tell you that they do not attend to you and that you need to register. And the boys are already overwhelmed because they don't understand. (Interview Q)

The *arraigo social* was seen by our interlocutors as the most accessible regularization procedure, and one that worked fairly well. However, access to this procedure has become more complicated by the introduction of a labour requirement. To be eligible one needed, in addition to three years continuous residence, a full-time offer of work for one year. Hence, although the procedure could be seen to address the vulnerability associated with lacking legal status, it is not based on a notion of vulnerability, but employability. This focus on employability was problematized by one of our interlocutors when asked whether the current legal framework was sufficient:

We are critical, because they [the government] do not see the migrant as a person, they see them as labour resource. In fact, all the changes that have occurred in the legislation have always been linked to employability. (Interview D)

In October 2021, the government announced a reform to the Alien Act that would relax the requirements required for unaccompanied minors and so-called ‘*ex-tutelados*’ to get work and residence permits.

Vulnerability and governance networks

The reception of migrants and asylum seekers in the province of Cádiz involves a complex interaction between various actors as the reception has come to involve not only actors at different levels of government, but also international and regional organizations, and NGOs with different spatial reach (see Karlsen et al. 2022). This also means that different actors are expected to identify and assess an individual’s vulnerabilities at different stages of the reception process. Whereas funding opportunities and capacity workshops have contributed to increased awareness and attention around certain categories of vulnerabilities among the different actors, our interlocutors further underlined that lack of coordination and shared framework created a fragmented approach in which there is no comprehensive engagement with the vulnerabilities faced by those arriving by sea, as the following quotes indicate:

In the end, we can do training workshops, but if there is no legal framework that establishes that this has to be done, all there is, is specific coordination agreements

between institutions. And it is up to you to decide. And there is a lot of difference between a child who is in Huelva and another who is in Cádiz. We see that the reception of people depends on the place where they are and the means that the police have. Here, the police have very few means to attend to the person. They do not have facilities staffed to allow such identifications. There are other places where there are more means and where they do this. There should be unified reception systems. No matter where the person arrives, they should have a series of identification and referral mechanisms assigned to all the actors that are present, from Rescue, Red Cross, National Police, Civil Guard, public defenders, etc. (Interview O)

Here the organizations have spent years proposing that at arrivals, there should be a multidisciplinary team from the administration that assumes this responsibility, that they detect from the beginning and refer to specialized resources. Because you have at arrivals, apart from the security bodies, you have entities with specific themes, UNHCR-CEAR international protection, Save the children, minors. But you don't have a global vision to detect all vulnerabilities. So, we say that there should be a multidisciplinary team that detects and quickly decides, because you cannot keep, for example, the victims of trafficking with those who control them. All the people that have arrived on the boat, they all go together to the same place. (Interview L)

Vulnerability assessment is initially carried out by the EIRE (Equipos de Respuesta Inmediata en Emergencia) team of the Spanish Red Cross as part of their triage on arrival and during the 72-hours migrants are held in police custody. Their report is used to allocate reception places based on the different profiles of the recently arrived migrants. However, our interlocutors emphasised that the framework of police custody complicated the identification and assessment of vulnerabilities, as it creates time pressure for carrying out the different tasks. The result is a focus on practical needs which can be easily and quickly identified through short interactions. Vulnerability is also a peripheral aspect of many of the actors' main duties, and a lack of competence, time, and appropriate facilities were highlighted as key obstacles at this stage.

The system, though, foresees a continuous identification and assessment of an applicants' vulnerabilities and specific needs through for example interactions with workers in the reception facilities. In the reception phase, our interlocutors raised in particular concerns regarding the rigidity of the system, both in terms of the categories included and the timeframe of the reception programs, as the following quote illustrates:

The organizations that work with programs of this type, such as [name of NGO] in this case, they really have their hands tied because they cannot welcome any person who does not have the approval of the Ministry. (...) However, it is frustrating when you encounter people who are living on the street' (Interview K)

The Spanish reception system is highly centralised in the sense that it is the state that allocates places. Non-governmental actors are included in the system as sub-contractors. During our fieldwork, CSOs reported available places in the humanitarian reception programs in Cádiz. At the same time, they encountered migrants, including so-called 'ex-tutelados', sleeping on the streets.

Impact of the Compacts

The two Global Compacts for refugees and on migration have so far had a minimal impact on the understanding and usage of vulnerability in the reception of protection seekers in Cádiz. In the report submitted by the Spanish Government for the UN Network on Migration regional

review of the implementation of the Global Compact for Migration, the Spanish Government focused on the two groups that are already prioritized when it comes to addressing vulnerabilities, that is women in a situation of vulnerability and unaccompanied minors. This suggests that there will be a continuation of the approach already established.

Impact of Covid

The pandemic is generally seen to have exacerbated vulnerabilities and accentuated the shortcomings of the asylum and the reception system to deal with these. Our interlocutors also highlighted how access to legal and social services were limited by pandemic related restrictions that limited the provision of in-person services. Lawyers, for example, were not able to have in person meetings with migrants in police custody in the CATE before October 2021. Digitalization also complicated the contact with public offices and services. However, some of our interlocutors also highlighted that the pandemic provided new opportunities. As one interlocutor explained.

Starting with the positive, thanks to the Decree that was approved to solve the agricultural labour shortage, we found an opportunity for eight of our boys to work harvesting strawberry in Huelva. For doing this job, the government regulated their situation for a year, and gave them authorization to work. Bear in mind that when these boys left the centres for minors, the cards they were given did not authorize them to work. In this sense, the pandemic was positive. With respect to other issues, the pandemic did have a negative influence. (Interview S)

Spain introduced early additional measures to combat ‘new vulnerabilities caused by COVID-19’. These included extending administrative deadlines for individuals to request and submit applications, automatically extending the validity of documents expiring during the state of emergency, allowing asylum seekers to request or continue receiving assistance from the system without valid documents, facilitating elements of proof and documentation in the procedures for *arraigo social*, temporary agriculture work permits to former unaccompanied minors between 18 and 21 years old with valid residence permits, and expanding Guaranteed Social Income for adults experiencing a social emergency as a result of COVID-19, regardless of their administrative situation (Spanish government 2020).

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Notions of vulnerability in field level governance in Lesvos and Diavata, Greece

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Context – Vulnerability in national laws and policies

The concept of vulnerability is introduced in national legislation with Article 14(8) L 4375/2016. The relevant provision in national law states that all newly arrived persons should be subject to reception and identification procedures, including medical screening and psychosocial assessment (Asylum Information Database, 2017). In the aftermath of the EU-Turkey Statement of 2016 different identification/asylum/vulnerability procedures are implemented on the Greek islands (like Lesvos) and different and parallel procedures are implemented on the Greek mainland (ECRE, 2017). The different and special procedures on the islands are introduced in the Fast-track Border Procedures policies (Article 60(4) L 4375/2016), they were framed as exceptional and justified as a state of exception (Iliadou, 2019b, 2019a). Vulnerability attribution consists of an administrative border procedure and assessment which takes place alongside asylum procedures. Through these procedures vulnerable cases are detected, assessed, and prioritised to be allowed to move from Lesvos to the Greek mainland⁸. According to Article 14(8) L 4375/2016 the definition of vulnerable groups includes:

unaccompanied minors; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particularly survivors and relatives of victims of shipwrecks; victims of human trafficking.

A vulnerability assessment must take place before refugees can apply for international protection. In order for refugees to be assessed as vulnerable, they must go through a vulnerability screening. Screening, assessment, and identification procedures were initially performed by medical and psychosocial staff of the NGOs Doctors of the World (Mdm), PRAKSIS and MEDIN, but from mid-2017 onwards the responsibility was assigned to staff of the Ministry of Health and the Centre of Disease Control and Prevention (KEELPNO). During 2016 a hierarchical classification/segregation between persons with ‘evident’ and ‘non-evident’ vulnerabilities was applied during the vulnerability assessment by excluding many people in need from the scheme. Between 2017 and early 2018, KEELPNO was replaced by the National Organisation of Public Health (EODY) and a new medical vulnerability segregation has been introduced in respect to vulnerability. Three levels of vulnerability are introduced which also define the support that the person should receive. It must be noted that such a classification/medical terminology is not provided by law but it is provided into a Guidelines document by the Ministry of Migration Policy (Reception and Identification Service, 2019). The vulnerability classification is the following:

⁸ In the light of the EU-Turkey Statement, a geographical restriction rule was enforced for all refugees arriving through Turkey to the Greek islands, like Lesvos and/or to Europe. The current situation on Lesvos (overcrowded facilities and the overall misery) are at great extent the outcome of those two specific policies and practices. The situation in Diavata is mildly better due to the size and nature of the facility (former military camp site).

1. High vulnerability, when the occurrence of vulnerability is obvious, and the continuation of the evaluation and the adoption of a care plan are recommended. Further referral is needed for immediate support.
2. Medium vulnerability, which could develop if no precautionary measures are introduced and
3. No vulnerability

In 2018 the law was amended and in Article 20 L 4540/2018 more categories of **vulnerable groups** were introduced - such as persons with mental disorders and victims of female genital mutilation. However, persons with PTSD were not explicitly mentioned in this list. Article 23 L 4540/2018 has also amended the procedure for certifying persons subject to torture, rape or other serious forms of violence. In January 2020, the International Protection Act (IPA) (L 4636/2019 adopted on 1 November 2019) came into force, amending the definition of vulnerable persons and persons in need of *special procedural guarantees*. According to Articles 39(5)(d) and 58(1) IPA relating to reception and identification procedures and reception of asylum seekers the following groups are considered as vulnerable groups:

children; unaccompanied children; direct relatives of victims of shipwrecks (parents and siblings); disabled persons; elderly; pregnant women; single parents with minor children; victims of trafficking; persons with serious illness; persons with cognitive or mental disability and victims of torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation.

Persons with post-traumatic stress disorder (PTSD) have been excluded from the vulnerability definition. This is interesting given that according to the NGO practitioners who we have interviewed so far, PTSD have been highlighted as a major factor of vulnerability of refugee populations whose needs are not addressed, and they do not receive adequate psychological support. In the aftermath of the fires in Moria hotspot on 8 September 2020 (Exadaktylos and Iliadou, 2020; Guild and Allinson, 2020; UNHCR, 2020) the vulnerability assessment and the asylum procedures were suspended again.

On April 2020, the International Protection Act (IPA) (L 4636/2019) was reformed with the draft law ‘Improvement of Migration Legislation’ (Ministry of Migration and Asylum, 2020). This reform is significant as it exempts the prioritisation of vulnerable persons from the fast-track border procedures, implemented on the Greek Aegean islands, by weakening the protection of vulnerable people. Also, the vulnerability classification is revoked on Lesbos, but it is applicable on other Aegean islands. According to ECRE (2021, p. 9), ‘The amendments do not simply change the way the cases of vulnerable applicants are handled but have restricted the very definition of a person with special procedural needs’. Consequently, vulnerabilities are often underassessed and missed, with individuals going through the asylum procedure without having their vulnerability assessment completed first (AIDA, 2021). Reports have already emerged on how this amendment can further exacerbate the applicants’ state of health and procedural position by requiring them to stay on the islands and go through the procedure while being in a disadvantaged situation.

Understandings of vulnerability in field level governance

Both migrants and NGO practitioners’ understandings of vulnerability converge to a great extent. They understand vulnerability as both: (i) an inherent condition related to the risks and traumas of forced displacement (e.g., refugees say ‘we are all vulnerable’ and similarly NGO practitioners make the same assertion); (ii) and a structural condition (related to external circumstances and conditions). For instance, refugees have also pointed out that their

vulnerabilities or the exacerbation of their vulnerabilities vary depending to the different periods or seasons (e.g., extreme environmental conditions during winter and summer, overcrowded facilities, Covid-19).

On the other hand, migration governance actors' (such as the Asylum Service) understandings of vulnerability converge with the legal definition of vulnerability – that is, as it is stated in the Greek legislation. Therefore, their understanding of vulnerability is narrow. However, one must consider that the interviews with migration governance actors took place in a formal setting and the interviewees were acting as spokespersons. Therefore, there was a limitation here that they could not freely express their own views and understandings on vulnerability. Also, most of the migration governance actors repeatedly said that vulnerability is not applicable in practice in the RIC facilities.

Gender

Although the Greek legislation includes provisions for vulnerability, neither gender nor specific needs are adequately taken into consideration in practice. There are many shortcomings in the ways that the vulnerability assessment procedure is taking place by negatively affecting refugees. For instance, the reception and identification procedures are often considered as concluded before the individual has undergone a medical check and vulnerability assessment (Refugee Support Aegean *et al.*, 2021). Also, during the assessment, caseworkers certify as vulnerable only very 'evident' vulnerabilities without assessing the applicability of other vulnerabilities specified in legislation, and which may not be visible e.g., victims of violence or torture (*ibid.*). Consequently, many vulnerabilities are underassessed and missed. This has also been confirmed by most of the research participants during fieldwork on Lesbos (October-November 2021) who said that vulnerability is not operationalised in practice.

Legal status

All refugees arriving in the Greek Aegean islands are subjected to the fast-track border procedures (Law 4375/2016,) a nationality-based approach which was introduced as an 'extraordinary' and 'temporary' measure for all refugees arriving after the 20th of March 2016 (Greek Council for Refugees, 2016). The fast-track border procedure is applied only to people who are subject to the 2016 EU-Turkey Statement, and facilitates, in practice, the immobilisation of refugees to the Greek islands and their readmission to Turkey on the grounds that Turkey is a safe third country. Therefore, all refugees arriving in the Greek Aegean islands are obliged to seek international protection, otherwise they face the danger of deportation or readmission to Turkey on the grounds of the 'safe country' concepts. Vulnerability assessment is part of the reception and identification procedure, along with medical screening. Consequently, the legal status is not considered as all migrants are asylum seekers upon arrival.

Vulnerability and governance networks

In the Greek case the notions of vulnerability and specific needs neither inform nor are informed by local governance networks. The notions of vulnerability and specific needs are informed at the national levels and the local governance networks only facilitate the decisions made at the national level. For instance, Kara Tepe camp (which was not operational during fieldwork in October/November 2022) was coordinated by the Municipality of Lesbos and was hosting vulnerable refugees and families. The facility in Diavata is run by the Ministry of Migration and Asylum.

Impact of the Compacts

Provisions for the identification of vulnerable people are included in the Greek legislation with the adoption of the Presidential Decree 220/2007, which was introduced in compliance with the

EU law, as well as the L 3907/2011 which introduced a reform of the reception and asylum system. As mentioned in the beginning, provisions for vulnerability are explicitly introduced in Hellenic legislation since 2016, with Article 14(8) L 4375/2016. Therefore, the concept of vulnerability is incorporated in the national legislation before the adoption of the Global Compacts for Refugees and Migrants in 2018. Also, provisions of the two Global Compacts are not included in the Hellenic legislation as the Compacts are a non-binding pact. According to (Gammeltoft-Hansen *et al.*, 2017, p. 7), 'The 'compact' as a choice of instrument further seems to place emphasis on political and practical cooperation as opposed to legal commitments'. Therefore, there is no evidence confirming or indicating the contribution of the Compacts to the attention to vulnerability or the expansion of the notion of vulnerability in the Greek case.

However, what is significant to mention concerning the Greek case is that there are shifting definitions of vulnerability across time. The shifting definitions of vulnerability in the Greek legislation and policies reflect more an ongoing attempt of the Greek state of harmonisation with the EU standards and directives in respect to vulnerability, as well as reception, identification, and asylum procedures. Even so, there are concerns from CSOs that Greece is failing to comply with EU law and cannot guarantee the protection of vulnerable populations (ECRE, 2021).

Impact of Covid-19

The impact of Covid-19 on refugees is significant as it exacerbated an already vulnerable population. Due to serious political developments and tensions between Greece and Turkey (on the land borders) and the Covid-19 pandemic outbreak, the Greek Authorities issued an Emergency Legislative Order by suspending the access to the asylum procedure for persons entering the country during March 2020. According to the Emergency Legislative Order, those persons were about to be returned to their country of origin or transit 'without registration'. During that period due to the quarantine restrictions which were implemented for refugees in Moria hotspot, the assessment of vulnerability was not adequately taking place. In the name of Covid-19 the Greek state introduced multiple measures in order to constrain the spread of the coronavirus by imposing a 14-day quarantine on new arrivals and suspending access to the Asylum Service. Therefore, refugees arriving during the suspension did not undergo any identification procedure, were not allowed proper registration in accordance with EU law, and procedures commenced only after the suspension was lifted. Since March 2020, the Greek state has extended the lockdown restrictions for refugee populations living in Moria and Kara Tepe camps multiple times.

The new facility (hereafter Moria 2.0) which was established in the aftermath of the Moria hotspot disaster has exacerbated the vulnerabilities of an already vulnerable population. Preliminary findings indicate an exacerbation of sexual violence inside the new camp against girls, women and children (Belanteri *et al.*, 2020; Iliadou and Exadaktylos, 2020; The National Herald, 2020). Also, our preliminary findings indicate the appalling, inhumane and degrading living conditions inside Moria 2.0 which exacerbate harm and inflict further vulnerability. Finally, there is escalation of state violence. Similar incidents have been recorded in the RIS facility in Diavata, and violence has been frequently brought to the spotlight on local media.

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Notions of vulnerability in field level governance in Catania, Italy

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Context – Vulnerability in national laws and policies

In Italy, the right to asylum is enshrined in the Constitution (Art. 10.3). However, asylum is not regulated by an organic legislative framework, but rather by several fragmented legislative acts. The main law on the subject is the ‘Consolidated Immigration Act’ (*Testo Unico sull’Immigrazione*) of 1998, which has since been subject to multiple reforms. These have mostly resulted from the changes made by different governments with more or less securitarian positions, and because of the adoption of European Union (EU) directives on international protection into the national legal framework¹⁰.

In the early versions of the Consolidated Immigration Act (those in place between 1998 - 2005), the term vulnerability does not appear while the adjective ‘humanitarian’ does. In 1998 the legislator indicated that a residence permit could be directly given by Police Authority (*Questura*) when, even if Geneva-related protection cannot be applied, there are ‘serious reasons, particularly of [a] humanitarian sort’. In the current version of the Act, it is under the section ‘Humanitarian provisions’ that the words vulnerability and vulnerable groups now mainly appear. Vulnerability is contemplated in three sections of the law with reference to different rights and alternatively being referred to different migrants’ legal status. Firstly, it is stated that if refugees are in ‘condition of vulnerability’ they can have economic benefits concerning housing (art. 9); secondly, migrants’ ‘conditions of vulnerability’ are acknowledged as a prioritising criteria in allocating the resources in ‘voluntary repatriation’ programs (art. 14-ter); and, finally, is affirmed that migrants deemed to be part of a ‘vulnerable category’ cannot be repatriated and refouled (art. 19).

Within the legal corpus, the notion of vulnerability seems to oscillate between an identifying and substantive quality (the vulnerable groups) and a situational one (the conditions of vulnerability). It should also be noted that, in the context of the recognition of national and international protection, Italian legislation does not present a closed list of subjects defined as eligible for a residence permit because they are vulnerable, but rather identifies areas of vulnerability. The law determines as legitimised risks of persecution in the country of repatriation the ones related to ‘race, sex, sexual orientation, gender identity¹¹, language, citizenship, religion, political opinions, personal and social conditions’. A residence permit is directly granted to unaccompanied minor migrants, and pregnant women or in the six months after the birth of the children. Persons with disabilities, the elderly and ‘victims of serious psychological, physical or sexual violence’ may be entitled to an individualised assessment of whether they should be repatriated and thus whether they are eligible for a ‘special protection’ residence permit. This constitutes an open list of the conditions why people can have access to this permit, leaving to the Territorial Commission, the *Questura* and the judges to assess whereas the repatriation of the foreigner could lead to ‘situations of vulnerability’.

⁹ With the supervision of Francesca Longo and Mara Benadusi, University of Catania.

¹⁰ Martelli Law n.39/190; Turco-Napolitano Law n.40/1998; Bossi-Fini Law n.189-2002. Decree n. 18/2014, transposing the ‘Qualification directive 2011/95/EU; Decree n. 142/2015 transposing the ‘Procedures’ directive 32/2013/EU and the ‘Reception Directive’ 33/2013/EU), the Directive on Reception Conditions (2013/33/EU), the Directive on Asylum Procedures (2013/32/EU), the Qualification Directive (2011/95/ EU), and the Returns Directive (2008/115/EC).

¹¹ Sexual orientation and gender identity have been added in 2018.

Nevertheless, this institutional approach – which articulates the vulnerability of the individual migrant with the right not to be returned – is also ambiguous. With regard to EU-funded repatriation programmes, for example, many people with a diagnosis of a psychiatric condition have been beneficiaries over the years. Sociological and anthropological literature has discussed the opacities between the volunteer and the forced in this area (Andriasevic & Walters 2010), exemplified by the words of a practitioner employed in such projects: ‘the person wanted, had to return’ (NGO practitioner/5). However, vulnerable people are no longer targeted by such programmes because it is too costly: the return of vulnerable people required several medical examinations and a health worker or social worker who had to accompany the vulnerable person back to the country of departure. As we will discuss in the following sections of this report, in fact, the identification of vulnerabilities in practice depends substantially on the presence of specific funded projects – mainly with the UE fund allocated by the Italian government through the Asylum, Migration and Integration Fund (FAMI) –, which therefore can provide the resources of linguistic-cultural mediators, ethno-psychiatrists and adequately trained doctors, legal and social operators in sufficient numbers. These positions are often unfilled or under-resourced in the national health system.

A more categorising approach to the issue of vulnerability is found in policies. With respect to the accommodation condition and welfare services, the 2005 decree-law¹², which implement the 2003 EU directive¹³ and regulate Italian reception policies, identify vulnerable persons and persons with specific needs in ‘children, disabled people, elderly people, pregnant women, single parents with minor children, persons who have been identified as having suffered torture, rape or other serious forms of psychological, physical or sexual violence’ (art. 8). In their regard, within the Reception and Integration System (SAI), there are few centres specifically dedicated to ‘vulnerable persons’, i.e. with ‘mental distress or physical disability.’ SAI centres are differentiated into facilities for: single men; families, women or single-parent households with a mother as head of household; unaccompanied minors; persons with mental distress or disabilities, generically defined as centres ‘for the vulnerables’¹⁴. In 2022, out of 5628 places in the SAI in Sicily, 228 are for the vulnerable groups, of which only are 13 in the province of Catania (which has a total of 1150 places)¹⁵. In addition to being few in number, these centres also have critical issues of their own (see Altin & Sanò 2017).

The other figures of subjects recognised as having specific needs to which specialised structures in terms of accommodation facilities and specific social, health and educational services are dedicated are minors and so-called victims of trafficking. As regards minors, in 2017 Italy adopted the Zampa law, with special provisions for the protection of unaccompanied children. The legal framework clarifies as a rule that age assessments are conducted by a multidisciplinary team in public health facilities. In situations of doubt, therefore, the minor’s age should be certified through social interaction, a paediatric evaluation and a psychological or neuropsychiatric evaluation, in the presence of a cultural mediator and in accordance with the principle of the best interests of the child. More generally, this law provides that the word of the minor who declares him/herself to be a minor must be accepted as true and extends up to 21 years of age the possibility of legally residing on Italian territory to those who arrive as minors, in order to allow an effective integration, including educational, of those who arrive unaccompanied.

As regards women victims of trafficking, a national anti-trafficking plan has been in place since 2014, in accordance with the relevant European directive. But already since 2002, thanks

¹² Decree n. 140/2005, transposing the 2003/9/EC

¹³ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

¹⁴ https://www.retesai.it/wp-content/uploads/2021/06/Rapporto-SIPROIMI_SAI_leggero.pdf

¹⁵ <https://www.retesai.it/wp-content/uploads/2022/02/2022-01-SAI-DEPLIANT.pdf>

to the Department of Equal Opportunities, there are projects dedicated to supporting women victims of sexual and labour exploitation, also in the provinces of Catania and Messina. In fact, in the 1998 version of the 'Consolidated Immigration Act', Article 18 already recognised the possibility of obtaining a residence permit to 'enable the foreigner to escape the violence and conditioning of the criminal organisation and to participate in a programme of assistance and social integration' in cases of violence or serious exploitation. Lastly, we would like to point out that, with regard to 'vulnerabilities' linked to gender transition and sexual orientation, there are no specific reception structures in Sicily.

Understandings of vulnerability in field level governance

In Italy, also due to the existence of the 'residence permit for special protection' - until 2018 the 'humanitarian residence permit' -, vulnerability is a priority criterion in migration governance. This is also recognised by migrants when they are asked about the effects that the notion of 'vulnerable categories' has on access to international protection and the forms of support that derive from it. In the interviews with asylum seekers and holders of a residence permit for protection, there emerges a considerable awareness of the effects of exclusion that arise for those who cannot perform as vulnerable, particularly with reference to their age. The logic of priority, therefore, becomes the main ground on which the agency of migrant subjects themselves is expressed, even with apparently paradoxical consequences. In this regard, we report an ethnographic episode collected during the fieldwork, during a conversation in English that a man with a residence permit was having with a younger compatriot who had arrived a few days before. In the identification at the time of disembarkation, the young man had been given a rejection notice because, coming from a safe country, he had been given a different age than he actually was, making him a major. However, the boy seemed doubtful about declaring his real date of birth, because he was afraid of the form of restriction on his autonomy that would result from entering a centre for unaccompanied minors. 'You are a *bambino* (child)', you cannot say that you are not, the permit holder kept repeating to the new arrival: 'I understand that you are not used to this, that in Africa you are a man, but here you must think of yourself as a *bambino*. You have to go to school, study. Yes, you will have to obey what they tell you to do, you will have that life... going to school, playing football, and that's it. But you have to be able to do the right things. You have to study, get help, build a future, you can't choose the street.'

The logic of prioritising vulnerable people, which in fact very often also becomes the discriminating factor in recognising or not recognising a form of residence permit, structures the actions and practical norms of the actors involved in asylum governance. In particular, staff and medical experts of NGOs, operators of reception centres, lawyers engaged in the defence of asylum seekers, and volunteers of socio-legal offices are constantly engaged in finding ways to be able to demonstrate the vulnerabilities of their beneficiaries. While trying to comply with the certification criteria required by Territorial commissions and police forces, the greatest effort is made to make those vulnerabilities that are not directly visible provable. For example, one problematic factor is that the reports of psychiatrists or doctors that are relevant to the Territorial Commission must be produced by people from the national health system, thus excluding NGO professionals. The authority granted exclusively to the public also becomes relevant for obtaining a residence permit for health reasons. Doctors are asked to sign certifications obliging them to declare under their responsibility that diseases cannot be treated in the health systems of the countries of departure, whereas these doctors may not be competent to do so.

The main discrepancy highlighted between the institutional recognition of the condition of vulnerability and that promoted by civil society actors engaged in the defence of migrants' rights is the lack of state recognition of the 'invisible wounds', which are allegedly shared by

all those arriving by sea. This expression, which refers to the psychic suffering incorporated as a result of the risks and violence experienced during the journey, was developed by an NGO of doctors working in Sicily who have for many years carried out diagnosis and referrals of post-traumatic stress conditions in hotspots and reception centres, also training many of the operators currently on the ground in the field of reception. The vulnerability created during the journey is an aspect that, moreover, would also be underlined by the Global Compact for Safe, Orderly and Regular Migration - in its seventh objective - which Italy has not signed. What is recorded in our ethnography of eastern Sicily is in line with the literature that has investigated other situations on Italian territory (see Beneduce 2015; Pinelli 2019).

The professional and voluntary actors also underline the arbitrary dimension with which vulnerability, and therefore the forms of protection and assistance, are recognised. The interviews indicate the different levels and thematic areas in which this instability occurs. Some highlight that a member of a Sicilian Territorial Commission used to give relevance to experiences of violence in Libya and during the journey, recognising them as sufficient motivation to obtain a two-year residence permit (the humanitarian protection permit), an attitude that changed with the transfer of this public official to another service (NGO practitioner 2). On the other hand, some lawyers point out that some judges of the civil court in charge of assessing appeals against refusals given in the first instance by the Territorial commission are much more willing to recognise the rights of LGBTQIA people. Unlike the Territorial commissions, the judges would adopt a less investigative tone, guided by the principle of the inviolability of privacy. The minutes of the hearings of the Territorial commissions often show inquisitorial and symbolically violent questions towards those who declare themselves homosexual. It seems that the audiences do not take into account the anthropological complexity that the experience of homoerotic sexuality entails for the subjects (see Rebutini 2013; Carnassale & Spada 2019), nor the forms of discrimination, not only recorded in terms of criminal law, to which they are subjected in their countries of origin. This lack of competence on the part of the institutions also has legal implications. In the words of a lawyer interviewed:

It's one thing to talk about the legal conditions, about the access to protection, but it's another thing to hinge and qualify the personal experience. Let me give you an example of a Gambian person, who was actually persecuted by the government of his country of origin because he was considered homosexual. This person was not aware of his sexual orientation. In the sense that he had several times had sexual experiences and also, let's say, sentimental stories, more or less sentimental, with subjects of the same sex, mainly for reasons of poverty. He needed to support his family and therefore, through these expedients, he managed to support himself and his family. So the moment he comes here, and he says no, I am not homosexual. Or at least I don't know if I'm homosexual... when faced with such a declaration, that person is automatically discarded. OK, you are not declaring yourself homosexual. But the question remains as to what was the factual basis for the persecution. Because in Gambia it is not so much the sexual orientation to be, how to say, persecuted, but more the act itself (Lawyer 3).

Gender

Since 2018, in Italy, gender violence and exposure to homo-lesbian-transphobia are apparently undoubted conditions of vulnerability. Yet, as indicated above, many problems arise in the institutional practices in which the recognition of international protection should take place for the so-called SOGI cases (Sexual Orientation and Gender Identity Claims of Asylum). Considering gender with respect to vulnerability, this is mainly addressed in relation to femininity, as masculinity as such is not generally conceived as a dimension of

vulnerabilisation. When research participants were asked about vulnerability related to gender-based violence, women were identified as the social group affected by the issue. The experience of a racialised and subalternised masculinity, often deprived of work, exposed to discrimination in Italy and not able to become fully adult (also from the point of view of 'married' and sexual-affective life), is not identified as a condition of vulnerability. On the contrary, this aspect became visible during the ethnography involving migrant men, also in some moments of discussion between migrants and social workers. Another element that did not emerge explicitly in the interviews with public officers are the experiences of sexual violence and abuse experienced by men during the journey, instead widely underlined for women. This genderised violence emerged in some cases in the ethnographic interactions with some male migrant subjects, and sometimes was not evoked by the psychiatrists and psychologists with whom we spoke. Women are generally identified as suffering people and read as a more fragile social group, especially by those voluntary organizations linked to the Catholic world. This is in contrast to the discourses that could be heard about femininity in some African Christian churches attended by some beneficiaries of international protection, which focus on the strength of the feminine. Anyway, gender is conceptualized both by migrants and by most actors active in the governance of international protection, under the lens of binarism. Fortunately, this does not seem to be fueling neo-patriarchal competing logics and discourses, as is the case in other contexts affected by gender mainstreaming policies (see Awando 2019; Cavatorta 2021).

In the laws, and more importantly in policies and practices, women are brought back to a 'social aesthetics of vulnerability' (Cabot 2014) which is composed of three main figures: the pregnant woman or with a child of a few months, the 'trafficked' woman, the woman with Female Genital Mutilation. The processes of victimization that are substantiated around these figures have been extensively studied in the anthropological literature on Italy (see Taliani 2011; Fusaschi 2015; Pinelli 2019; Quagliariello 2021), particularly considering that this imagery of women is both 'salvific and exclusionary' (Pinelli 2021). On the topic of gender-based violence, there have been many training activities carried out and organized by the various projects that have invested, thanks to EU funds (the FAMI projects) and UNHCR, the eastern part of Sicily. However, the fieldwork has revealed that there is a poor understanding of the gender dynamics involved, as well as of the simultaneity of the axes of oppression that structure the experience of violence. On the other hand, ethnocentric and morally scandalized readings of gender-based violence against women, especially African women, are still widespread among health and social workers, especially with regard to FGM.

The institutional actors involved in the recognition of asylum, both at the stage of the Territorial commission and at the court, consider they pay extreme attention to women victims of gender-based violence, also as a result of the training courses that have been organized thanks to the EASO agency. Listening instead to migrants, even women reveal experiences of discomfort, believing to have been the object of an attitude of suspicion with respect to their words. This happens in particular in the cases of 'trafficked' women, especially when they decide not to cooperate in the investigation procedures against those responsible for trafficking.

A number of projects have been developed in recent years in Catania, promoted by UNHCR, to address gender as a guiding principle of aid and social work. One involved the local feminist-led women's shelter, with the aim of training operators to understand the specific needs of migrant women and provide a linguistic-cultural mediation service. The other involved a local association led by medical doctors working on HIV and harm reduction in substance use; the aim was to visit asylum seekers' and refugees' reception centers and those excluded from shelters in order to identify forms of gender-based violence, and to collect and address migrants' sexual health needs. Although the sustainability of the intervention beyond the end of the project is an important objective for UNHCR, the associations are experiencing problems in continuing their activities due to a lack of funds.

Legal status

From a legislative point of view, the main factor affecting the access to the application for international protection and therefore compromising the initial vulnerability assessment is related to the introduction of the concept of ‘safe country of origin’ and the so-called accelerated procedure. Since 2018, as a result of the Salvini’s Security Decree, people coming from the 14 countries that currently make up that list, where they manage to apply for asylum, are the recipients of an accelerated procedure that prevents the assessment of non-visible vulnerabilities, but only those related to pregnancy and, to a lesser extent, minor age. On this last point, in fact, ethnography and some interviews point to the arbitrariness with which the dates of birth of African subjects from these countries are recorded at the time of disembarkation. Considering, instead, the accelerated procedure that should concern not only those coming from safe countries but also the so-called vulnerable persons, other critical issues are detected. In fact, given the short timeframe, many operators stressed the impossibility of adequately preparing the person for the hearing with the commission, and therefore the emergence of any vulnerability, especially those related to psychological suffering as well as those related to the SOGI category.

Another case of a specific figure relevant to the link between vulnerability and legal status is that of people accused of ‘*scafismo*’, human smuggling. Unlike the European landscape, the practices related to the prosecution of this crime represent a key vulnerabilisation factor for asylum seekers and migrants in Italy, and mainly in Sicily. A recent report of several NGOs and lawyers working in this region shows and denounces the arbitrariness of the investigation procedures and the ways in which the civil and legal rights of those indicted for the crime of smuggling are denied during the identification procedures. Volunteers and social workers met through ethnography and who have interfaced with people accused of smuggling point to the condition of extreme psychological fragility experienced by these people, who find themselves in the situation of being accused, detained in prison pending trial and possibly serving years in prison. The suffering is exacerbated by the fact that most of these people have either been forced to drive the boat or have done so voluntarily in the last few miles to avoid shipwreck, putting their navigational skills to the benefit of all the passengers. Quoting a lawyer active in an NGO operating in Sicily whom we interviewed:

These people, we believe on the basis of international law, and I refer in particular to the European Anti-Trafficking Convention, should be considered victims of trafficking, in particular of trafficking in human beings (...) because they are people who in most cases have been hostages of traffickers for years, who have been bought and sold by traffickers or organizations that manage trafficking in Libya or other transit countries, who have been sold for extortion, who have been subjected to forced labor repeatedly over a long period of time, and who in the end, as the last episode of this system of exploitation, are forced to drive these boats. (...) On the one hand, they are subjected to criminal proceedings, with the risk of a fairly significant sentence and, on the other hand, there is the exclusion, the obstruction of this sentence with respect to the possibility of requesting and obtaining a form of international protection. (...) These vulnerabilities, together with the traumas they suffered during the journey, the crossing and often the imprisonment in Libya have not been recognized as relevant for protection. Therefore, they are subjects who remain on our territory without any care for their special needs. These problems, these vulnerabilities, above all at a psychological level, become chronic, as they are not treated or cured. And then, of course, the subjects exacerbate their mental discomfort up to psychiatric situations, which are more irreversible (Lawyer 4).

Vulnerability and governance networks

Not only immigration laws, but a heterogeneous corpus of different documents, directives, guidelines, best practices, and even the very absence of written indications can now control the definitions of how vulnerability can be acknowledged in the Italian international protection governance. Furthermore, the application of the law, and the regime of truth around vulnerability, both entails and implies the intervention of different actors, discourses, practices, and knowledge. At different times of the procedure, NGOs staff, police forces, social workers, volunteers, lawyers, and judges can play a role in allowing vulnerability to be assessed, or conversely, hidden. It is the case, for example, of the so-called Female Genital Mutilation, which is a criterion strongly highlighted by UNHCR guidelines which, at least in court appeal, can easily allow women to get a refugee status. Yet, its certification entails several obstacles in the local context we considered, including the necessity of staff of reception centers who know that this has legal relevance, a lawyer who is competent in migration legislation and who is also trained to adequately tackle the subject with her client, a medical staff who produces an adequate and well-detailed certification that is lacking in the Sicilian context we investigated.

The dimension that seems to us most significant in structuring the network work that the recognition of vulnerability and special needs implies is the verification regime that defines the approach of institutions to the self-assertion by the asylum seeker of a situation of vulnerability. EASO's involvement in Italy's governance of international protection in 2017 can thus be read as another step in the state's need to use qualified knowledge, be well informed about the context of departures, and determine where the 'moral economies of lying' (Beneduce 2015) are effective. Being professionally culturally sensitive in vulnerability assessment has thus become an indicator of the competence of the institutional approach toward asylum seekers. Expertise is sought to strengthen the state regime's ability to maintain its assessment of asylum claims beyond any questioning of it. This approach also implies that prefectural officials take a substantive and victimizing stance on vulnerability, viewing asylum seekers' agency as a sign of their lack of vulnerability.

On the other hand, in most of the interviews with social workers, the staff of NGOs and various professionals there is an awareness of the stratification of vulnerability factors in individual personal trajectories, therefore of the simultaneous positioning of gender, age, work, subaltern condition - even if the problem of racialization, which emerges more clearly in the interviews with migrants, is almost omitted. Yet, the recognition of the full agency of asylum seekers and refugees becomes a challenge also for the operators, particularly when these people shy away from the expectations of 'integration' that are projected onto them. This becomes evident in the way even the staff of some NGOs sometimes address the specific needs of minors. On the one hand, by trying to discourage those they consider being 'really' minors from leaving reception facilities to try their lives in other European countries, and on the other hand, by insisting on the criminal relevance of age concealing with those whom individual operators consider not to be 'really' minors. These types of ambivalence are sometimes also found among lawyers, where their choices of whether or not to 'believe' those who intend to appeal against the denial decisions are also linked to a cost-benefit analysis. Particularly for those who offer to practice under legal aid, the potential winnability of the case is often weighed against the compensation that will then be provided by the state, which in turn is rarely a punctual debtor in providing this type of payment.

The hardening of this kind of inquisitorial approach also undermines the recognition of areas of vulnerability that are instead acknowledged as such by the UN Global Compacts. As one interpreter working in the Territorial commission hearings put it:

Before, the minutes were much more open, much freer. Now there are questions that tend to go much deeper, to understand deep motivations. Protection is no longer given

on the basis of what happens during the journey. Whereas before, what the young people experienced in Libya or Niger was fundamental. Now it is totally secondary, because the motivations, and unfortunately we keep repeating this during the hearing, are the reasons why you left your country. So if you left the country for economic reasons, but then in Libya you had a trafficking path, paradoxically what counts is the motivation for leaving your country, not that you had a trafficking path. This happens with everybody. Obviously, women are then listened to for the journey, because then women are also followed here on the territory from a monitoring point of view as victims of trafficking. But it is a different matter (cultural mediator 2).

Impact of the Compacts

As we have illustrated in the previous sections, as far as the Italian context is concerned, the main contribution that the UN Global Compacts could bring in terms of expansion of who is considered vulnerable concerns the recognition of the experience of vulnerability given by the journey. That is, towards those ‘who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination’ (GMC: 23). This vulnerability factor, which was previously recognized in Italy at least until the securitarian turn brought by the Minniti-Orlando (2017) and Salvini (2018) Decrees, is now not recognized as relevant. We cannot state that it is because of this point that the GMC has not been signed by Italy, even though its adoption on a global scale coincides with the moment when the securitarian turn is most evident in contemporary Italian political life. However, we would like to underline that in order to evaluate the impacts of soft laws, attention must also be paid to the reversibility of institutional and political attitudes, as well as to the practical norms adopted in the services that make up the governance of international protection. In other words, we suggest that the changing historicity of the regimes of immobility in specific contexts should be constantly considered, not viewing the adoption or non-adoption of soft law as a decisive and definitive process.

Impact of Covid

The Quarantine ship is a device that the Italian government developed and implemented in response to the COVID-19 pandemic. Since April 2020, several private cruise ships have been rented by the Italian government,¹⁶ anchored off Sicilian harbours. Rescued people, as well as COVID-positive people previously living in hotspots, are kept in those ferries for a period of roughly 10 days, depending on logistical needs. The Red Cross is entrusted with the task of taking care of survivors on those surveillance ships during the quarantine period, granting health care assistance, cultural and linguistic mediation, psychological support, and vulnerability identification. Different professional roles are implicated: medicine, psychologists, cultural mediators, and a worker dedicated to Restoring Family Links (RFL) activities. This latter service denotes the importance acknowledged by this humanitarian action to a qualified life and social existence, considering a factor of vulnerabilisation the lack of available social links.

However, in practice, several misidentifications of persons in vulnerable situations have occurred in the Quarantine ships daily governance. Early in their introduction, minors were detained in such facilities. In addition, quarantine ships are often experienced as a period of forced detention on a ship at sea and this exacerbates the suffering of people who are survivors of shipwrecks and have previous experience of detention in Libya. In 2020 Bilal Ben Massaud, Abou Diakite and Abdallah Said died during or as a result of their stay in this ‘humanitarised’ space. The first, a 28-year-old Tunisian, drowned after trying to escape and swim to the coast. The second, a 15-year-old boy from the Ivory Coast, initially spent eight days with the other

200 survivors on the NGO ship that had rescued them at sea and had to remain there while waiting for permission to dock. Here Abou received initial medical attention due to fever and dehydration. Ten days after he was transferred with an IV to the quarantine ship, his companions desperately called the Red Cross doctor because he had not eaten for three days. Two days later Abou was taken to the hospital, where he died. Abdallah, on the other hand, is a 17-year-old Somali boy who died of encephalitis, as his tuberculosis had not been considered. In the fall of that year, nine Tunisians self-mutilated with razor blades and pieces of glasses¹⁷. As the list of ‘safe countries of origin’ *de facto* suspends State’s duty to vulnerability assessment, people coming from Tunisia, through the self-mutilation acts, reacted to the effects of this classification by using their last resource: their ‘bare’ body.

Moreover, in recent months, following the introduction of the need for the ‘Green Pass’ to access the police headquarters where to apply for asylum and, more recently, the ‘Super Green Pass’ – which requires vaccination – to have access to public transportation, the assistance of people with vulnerable situations is even more compromised. The research also reports the failure to issue the ‘Green Pass’ after recovery to people found positive for Covid on quarantine vessels, who would instead be entitled to obtain this document upon disembarkation.

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¹⁷ <https://www.theatlantic.com/magazine/archive/2021/06/quarantine-ships-italy/618712/>

Notions of vulnerability in field level governance in Toronto, Canada

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Context - Vulnerability in national laws and policies

Vulnerability is not formally defined in Canadian immigration-related legislation, policy or regulations (Kaga et al., 2021). Purkey (2020) points out that the concept is rarely mentioned in case law. As one respondent commented, ‘. . . *there isn’t a definition of vulnerability in the legislation . . . a lot more is in the operational manuals, instructions, and guidelines*’. Echoing these findings, the recent VULNER report identifies four situations where a definition of vulnerable persons and/or vulnerability is relied upon in **processes concerning migrants - including asylum seekers - in Canada**: during the refugee eligibility examination;¹⁸ at procedures before the Immigration and Refugee Board of Canada (IRB); at a Preremoval Risk Assessment (PRRA) hearing; and in relation to immigration detention (Kaga et al., 2021). Even in these four contexts, the concept is limited to specific circumstances and is not uniformly operationalized.

For instance, in the processes to **determine refugee eligibility**, IRCC and CBSA define a vulnerable person as an individual ‘who has significant difficulties coping with the refugee eligibility examination, due to a specific condition or circumstance’ (IRCC, 2019). Regarding the processes of **refugee determination** and **immigration detention review**, the IRB *Guideline on Procedures with respect to Vulnerable Persons before the IRB* (2012) defines vulnerable persons as:

Individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, women who have suffered gender-related persecution, and individuals who have been victims of persecution based on sexual orientation and gender identity (para. 2.1).

According to the Guideline, ‘in certain circumstances, close family members of the vulnerable person who are also presenting their cases before the IRB may qualify as vulnerable persons because of the way in which they have been affected by their loved one’s condition’ (2012, para. 2.2).

Of note, the IRB’s Guidelines on Child Refugee Claimants (1996), Women Refugee Claimants Fearing Gender Related Persecution (1996) and, more importantly, Proceedings before the IRB involving Sexual Orientation, Gender Identity and Expressions, and Sex Characteristics (SOGIESC, formerly: SOGIE Guidelines) (2017, revised 2021) acknowledge the vulnerability of certain groups within the refugee status determination process.

Finally, a vulnerable person in the **detention context** is defined as a person for whom detention may cause a particular hardship. Vulnerable persons must clearly be identified on the

¹⁸ A refugee claimant can make a claim for refugee protection in Canada either at a port of entry when he or she arrives in Canada, or at an inland office. At a port of entry, it is the officer from the CBSA who decides whether the claim is eligible to be referred to the IRB. At an inland office, it can be either a CBSA or an IRCC officer who decides on the claim’s eligibility.

Once the claim is deemed eligible, it is sent to the Refugee Protection Division (RPD) of the IRB to start the claim process for refugee protection (IRPA, ss 99–100).

National Risk Assessment for Detention (NRAD) form (IRCC, 2020, p. 26). The NRAD introduces a point scale based on nine factors: eight pertaining to risk and one to vulnerability (Zyfi & Macklin, 2022). The form itself does not offer an explanation of how risk or vulnerability are assessed. Factor #9 is the only one related to vulnerability. If an individual is deemed to be a vulnerable person, only two points are deducted from the overall score. Included under this category are pregnant women and nursing mothers, minors, victims of human trafficking, those suspected or known to have a mental illness, those suffering from a disability or a severe medical condition, and those suffering from restricted mobility (IRCC, 2021a, para. 6.13.). In assessing vulnerability, the CBSA officer is also required to consider the available services in the facilities. As Factor #9 is a dichotomous question, only one vulnerability category may be selected even if more than one category is applicable. Although detention should be a last resort after various possible alternatives have been considered, the notion of vulnerability does not permeate the NRAD and carries little weight in comparison to the other factors.

In addition, even when vulnerability is acknowledged in the context of detention or during the asylum proceedings, this acknowledgement does not necessarily affect the outcome of the asylum process. That is, being identified as vulnerable may lead to procedural considerations and/or accommodations – for example at the IRB— but does not equate to a specific status for claimants. Further, since no official process exists to request accommodations for those identified as vulnerable, the provision of procedural accommodations is inconsistent among vulnerable persons. However, such a recognition for **refugee claims made abroad** increases one’s chances of **resettlement** and assists in the preparation of resources and services to meet necessary needs (Kaga et al., 2021). In these cases, IRCC applies the UNHCR conception of vulnerability which is centred on risk and physical safety. According to IRCC, ‘vulnerable means, ... that the person has a greater need of protection than other applicants for protection abroad because of the person’s particular circumstances that give rise to a heightened risk to their physical safety or well-being’ (IRCC, 2020). Refugees abroad who are identified to have certain vulnerabilities are offered a higher degree of flexibility to assist with the potential of resettlement.

As evident through our interviews, the conceptualization of vulnerability varies among stakeholders and is not encapsulated by a single definition. Further, its application in Canada in relation to migrants is inconsistent and is in great part constructed by state policies and practices.

Understandings of vulnerability in field level governance

The research participants expressed a complex and multidirectional understanding of vulnerability. They remarked that a migrant’s vulnerability can stem from factors inherent to that person, such as gender identity, sexual orientation or age, as well as from a multitude of external factors, in particular, state policies and practices. Participants cautioned against assigning that vulnerability to migrants as part of who they are. They pointed out that migrants are not inherently vulnerable, but the circumstances they find themselves in and the systematic issues they face create vulnerability. A refugee lawyer pointed out that:

one thing that is often missing from research and the Global Compact language is that people who manage to survive and flee persecution and trauma and war and find a new home, and lose trust in humanity and build it up again and build a new home in a new land and learn new languages, new cultures, you know, open their minds to new opportunities and new ways of life, that’s nothing but resilience. That’s resilience. That’s not vulnerable, right? It’s our systems that render people vulnerable when they’re in fact resilient.

Everyone agreed that vulnerability is very often constructed by immigration and border policies and practices and other system-related factors. Some participants noted that vulnerability emanates from a continuum of hardship and barriers migrants face pre-departure, during their journey, and post-arrival in Canada. A representative from the Canadian Centre for Victims of Torture noted that some of their clients *'suffer from loneliness because of exile. I call it the trauma of loneliness. They have nobody in the world. Nobody in this town.'*

Legal status

Legal status is an important factor for civil society organizations and other stakeholders when considering migrants' vulnerability and specific needs. A person is considered to be vulnerable by virtue of being an asylum seeker. As a participant put it:

Refugees who come to Toronto, or to Canada in general, they suffer from the trauma of exile, the trauma of abruptness and 35 % of them, according to our experience, have experienced either torture or what we called other inhuman degrading treatment or punishment. ... they carry scars of torture, physical or psychological, and they need our help. And some come as family members. But family members of survivors of torture also carry traumas with them.

In addition, legal status is key for the enjoyment of rights and services available to migrants in Canada. For instance, undocumented migrants are not eligible for settlement and integration services funded by the Federal government since they do not legally reside in Canada. Similarly, undocumented migrants are excluded from provincially-funded services, such as education, health care, housing and social assistance. The lack of legal status exposes them to an elevated risk of marginalization and exploitation (Magalhaes *et al.*, 2010). They are reluctant to report crimes to the police and live in constant fear of being turned over to border enforcement officers for detention and removal from Canada (Hudson *et al.*, 2017). Consequently, undocumented workers are likely to suffer from high levels of anxiety, depression and stress-related physical illnesses (Toronto Public Health and Access Alliance Multicultural Health and Community Services, 2011, p. 116).

In a similar vein, legal status is a factor of vulnerability for asylum seekers who are not eligible for most settlement services funded by the federal government. Examples include training programs run by employment agencies and employer incentives to hire workers. More generally, issues faced by migrants around deskilling and the recognition of academic and professional qualifications have been flagged by one participant:

most people who come to us are professionals in some way in their country of origin. So then, like going from, you know, running a large NGO in Afghanistan to like applying for a job at 7/11 outside of Toronto is very challenging to support your family.

A participant defined the concept of vulnerability as the lack of options:

that can culminate lack of financial options, lack of safety options, lack of food, lack of housing, lack of mental health support options and so, when I see someone, I think to myself that is a vulnerable person it's because they often just don't have any other choices.

As this quote illustrates it, the majority of participants defined vulnerability in relation to access to rights and the availability of settlement and integration services, which are conditional on a person's legal status. A refugee lawyer observed that 'migrants experience violence, poverty

and homelessness and a lot of spaces are not designed for their needs.’ According to that participant, it is the lack of the spaces and the lack of services that create vulnerability.

Another legal status-related vulnerability mentioned by participants concerns access to the refugee status determination system. System inefficiencies and backlogs have worsened during **the COVID-19 pandemic**. In March 2020, the Canada-US land border was closed to asylum seekers. As well, few people have arrived at airports to claim refugee status. Despite the steep decline in the number of claims, asylum seekers faced considerable delays for their eligibility determination (that is, whether the claim can be referred to the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB)). The Canada Border Services Agency (CBSA) and Immigration, Refugees, Citizenship Canada (IRCC), in charge of conducting eligibility interviews, were already experiencing a sizeable backlog before the pandemic. A refugee shelter representative told us they had residents who have been in Canada for almost a year without their eligibility determined. It should be noted that without the eligibility decision, an asylum request cannot be referred to the Immigration and Refugee Board of Canada (IRB) and the claimant cannot apply for a work permit.

Most participants agreed that the process put in place for in-land claimants -i.e., those who seek asylum from within Canada and not at a port of entry- during **the pandemic** has aggravated asylum seekers’ vulnerability. In-land claimants were required to email their application to Immigration, Refugees, and Citizenship Canada (IRCC) which sent back an acknowledgment of claim form. Although the document provides access to some services, such as the Federal Interim Healthcare Program, it remained largely unknown to frontline workers in service providing agencies and institutions. For instance, some walk-in health clinics and schools refused to recognize the validity of the IRCC document. In other cases, access to services has been delayed:

We had a family arrived in the summer of 2020 that was seven months pregnant, and it took them almost an entire month to see an OBGYN because, partially it is so much harder in covid to get physical appointment with people but just figuring out the whole system of like you have to go to primary care first to get a referral to OBGYN. Is that first thing going to accept your federal health papers? So, I think figuring out that whole system is quite difficult.

Similarly, the backlog before the Immigration and Refugee Board of Canada (IRB) has been amplified during the pandemic. Some asylum seekers had to wait for two years for their hearing at the IRB. The delay forced families to live in limbo for extended periods of time with limited access to resources. As a participant underlined: “*extended period of being in limbo, really does hold families back from kind of, you know, settling more quickly and successfully in Toronto.*”

Effective enjoyment of rights and services is essential to address migrants’ vulnerability, regardless of legal status. In Toronto, the lack of safe and affordable housing means the length of stay in shelters gets longer for refugee families. When families leave shelters into housing, they usually move into deep levels of poverty. A refugee shelter representative estimated that families they serve are typically spending 70 to 75% of their monthly income just on rent, with not much left for food and other basic needs.

Vulnerability emanating from mental health is an issue mentioned by several participants working with asylum seekers and undocumented migrants in Toronto. Some emphasized how the challenges migrants face in accessing housing and other social rights have a magnifying effect on their mental health. Nevertheless, most migrants struggle to gain access to adequate mental health care. They either have to pay out of pocket for regular therapy sessions or, if eligible, they will be placed on a long waiting list to receive government-funded mental health care.

Challenges experienced by migrants are exacerbated by factors such as **gender** and race. The vast majority of migrants in Canada originate from the Global South and women represent a growing percentage of forced migrants (IRCC, 2021b). The representative of a refugee shelter in Toronto said that most families they serve are single parent motherhood households and having often very young children to look after, these single-parent households may not be able to move forward in terms of employment and settlement.

Gender

Gender has generally been taken into consideration when assessing vulnerabilities and specific needs. Actors avoid a binary conception of gender and include vulnerability related to sexual orientation or gender identity. The IRB representatives we interviewed underlined that the IRB's understanding of vulnerability has evolved in the last 10 years, starting with the Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender identity and Expression (SOGIE, 2017 (revised in 2021)):

they really were groundbreaking in the sense that for the first time they were providing very specific definitions, for example the impact of shame and stigma on a person's ability to even understand their own sexual identity.... And how important it is to not use stereotypes in adjudication. So previously we applied the credibility model ...the truth of the story lies in how consistent is the claimant in their testimony. And the SOGIE guidelines really brought us to understanding how it is very hard for people to have necessarily a consistent narrative. For example when they've hidden their sexual identity their whole lives or they've been experiencing their own internalised persecution... we have a much more broad and deeper understanding of the challenges facing individuals who come before the board, where we have to kind of assess their credibility. They may have had all kinds of experience that deeply impacted their ability to give a coherent narrative'.

Some research participants emphasized how intersectionality compounds migrants' vulnerability. They underlined that racialized refugee women, for instance, face extra hurdles finding housing and accessing social services. As a result, the call on settlement workers' time and the challenges they face in providing services become more complex given the vulnerability that their clients are facing. Participants also complained about the lack of resources for settlement workers and agencies to tackle these complex cases.

Moreover, despite the IRB Guidelines and a sophisticated case-law on gender-related vulnerability, some participants pointed out that authorities continue to have a stereotypical conception of gender and fail to recognize certain vulnerabilities, especially when it comes to young men who can be associated with risk and danger and bogus claims. A legal clinic representative noted that:

certain men might express stress and depression through anger or resistance or refusing to eat, or even aggression. And that is taken, in a fundamentally different lens, right? That's understood as dangerous person rather than a vulnerable person trying to survive through these incredibly stressful situations.

That participant called for a paradigm shift in the system to address bias and prevent that prejudice can take root in decisions impacting people's lives upon arrival in Canada and afterwards. Likewise, a refugee lawyer referred to the shortcomings of the refugee adjudication system in assessing vulnerabilities when an asylum seeker is not able to clearly articulate what happened to them or when omissions or contradictions in the story are identified by the decision

maker. A participant criticized the way vulnerable asylum seekers' credibility is assessed by decision makers:

Sometimes mental health issues are not clear. Sometimes the vulnerability of the person is not clear, and it doesn't necessarily manifest itself very easily. That's when it becomes more challenging as a lawyer in representing someone. Because you don't know if someone is changing their articulation of their experience from meeting A to B to C. Why is that? If there's no kind of clear kind of stereotypical signs of trauma, how do you identify these things? So I think there's where the bigger challenge lies, really.

Gender is among the intersectional factors that may negatively impact a migrant's ability to meet the system requirements and expectations to secure permanent legal status in Canada. A participant defined this phenomenon as vulnerability to decision makers expectations.

Vulnerability and governance networks

Our findings mainly focus on the operationalization of vulnerability by the IRB, civil society organizations, and lawyers.¹⁹ The ways in which these actors understand migrant vulnerability and associated, specific needs, are shaped through a range of mechanisms including funding opportunities, training, production and dissemination of knowledge, and civil society advocacy.

Within the refugee status determination process, the IRB guidelines contributed to a better understanding of vulnerability. Despite the above-mentioned shortcomings, the implementation of the guidelines played an important role in the operationalization of the notion. The IRB representatives highlighted that the recent and revised IRB guidelines dealing with vulnerability have been shaped by research in social sciences. For instance, the SOGIE guideline provides direction on how to deal with certain vulnerabilities, the effect of vulnerability on the assessment of the evidence and an asylum seeker's capacity to present their case.

Training is another factor informing the notion of vulnerability. The IRB representatives suggested that not only the guidelines, but also the IRB members' training are now focused on trauma informed practice which creates '*a levelled playing field for vulnerability, whether it is gender identity, gender itself, mental health issues or any other matter.*' Decision makers are now urged to consider factors such as, having to conceal one's identity in certain countries, the person's ability to tell a story about, for example, their sexual identity, to provide the space that the claimants need to build their stories and assess the evidence within that context.

The IRB representatives noted that the majority of the vulnerable person designation requests come from counsel and asylum seekers who are required to fill in an application form and can attach a report from a psychologist or a psychiatrist, and occasionally a social worker or another person. The requests need to be approved by the IRB. If a person is found to be vulnerable, they are provided with procedural accommodations and sometimes additional legal measures need to be put in place, such as a designated representative who makes certain decisions on behalf of the claimant who cannot appreciate the nature of the proceedings. Even when the designation is not granted, the IRB can make accommodations for the asylum seeker, including: the possibility to take the hearing in a less intimidating setting, forming an all-female panel with a female interpreter. Finally, the IRB member can actually identify vulnerabilities at the hearing itself, in particular when a claimant is not represented by counsel and when upon starting the examination, the member will become aware that the person does not seem to be able to represent themselves, or may have mental health problems.

¹⁹ Our team has just completed 16 interviews with migrants. We are hoping to offer a fuller picture of understandings of vulnerability and governance networks, after the analysis of the data collected.

Of note, some refugee lawyers we interviewed pointed out that the IRB is often reluctant to grant vulnerability designation, instead they prefer procedural accommodation. They pointed out that procedural accommodation does not necessarily tackle challenges stemming from vulnerability.

To implement the vulnerability guidelines, the IRB put in place a gender-based taskforce in 2020:

It was specifically to deal with trauma informed practice, and the effect that trauma can have on an individual's capacity to remember. And this was new to us because in '93 when the guidelines came out, I don't think there was as much research in that area. So we would realize that the guidelines did recognize that it was difficult for claimants to testify, particularly about sexual violence, but there wasn't necessarily the social science research in place to show that people can actually lose those memories because they've dissociated or have PTSD. And since that has been proven now by social science research, we can apply it to the refugee context, and so we developed training of the members around trauma informed practice, as it applies particularly to women in the claimant process. Now the guidelines were revised.

The IRB representatives noted that they train all the members to have the ability to compassionate adjudication that includes a contextual analysis of cases based on the individual circumstances of the claimant. The training also aims to enhance the decision makers' ability to set up an inclusive and safe hearing space.

The most profound accommodation is actually the attitude of the member. And it's being able to establish that outside of the hearing, trust with the claimant, and this is something that you can't necessarily quantify, but it's having that respectful tone, the empathy, the understanding, and when you set the tone from the outside, using the appropriate language.

Civil society organizations, e.g., the Canadian Council for Refugees (CCR)²⁰ and professional associations, e.g., the Canadian Association of Refugee Lawyers (CARL)²¹ have been instrumental in these developments through advocacy and making submissions to the IRB's revision of their guidelines. Both CCR and CARL use litigation, public and political advocacy, and education to shape understandings of vulnerability. A representative from CARL explained that:

We see whether there's a need for a test case litigation. Sometimes we engage in more quiet political discussion with ministers and ministerial staff in Ottawa, to advance our ideas about unfair laws or policies. Sometimes we engage in media campaigns, and sometimes we comment in the media, sometimes we do op-eds. So all of these kind of tools are useful depending on what the particular circumstance warrants. So, for example, for the pandemic border restrictions and as well the safe third country agreement we launched social media campaign called 'Refugee travel is essential', and we actually work with a social media company to develop videos and shareable digital images, and we use Twitter to put that forward.

²⁰ CCR is an organization active across Canada to address issues of refugee protection and immigrant and refugee settlement. Its membership includes refugees, immigrants, representatives of NGOs, government, UNHCR, academics and international guests.

²¹ CARL is a national organisation with over 400 members, including practitioners, academics, and law students.

This participant also referred to the training sessions and webinar series that CARL organize for their members in addressing gender-related and other vulnerabilities and to train them for successful vulnerability designation requests.

Civil society advocacy has been an effective means to address the vulnerability of unaccompanied children migrants in Toronto. The Unaccompanied and Separated Children Network, launched in 2017, advocates for a more transparent and supportive system to shed light on and to tackle the vulnerability of this population. The Network mobilized several tools. An access to information request revealed that on average about 450 unaccompanied children made refugee claims in Canada every year from 2017 to 2019. The Network also documented that the CBSA and IRCC do not necessarily distinguish unaccompanied children from accompanied migrant children when they process the eligibility of a refugee claim and special needs. These findings allowed them to make a case for a better mechanism for identifying these children and connecting them to support in terms of proper legal counsel and to the Children Aid Society. In addition, a specialized program was developed by the Network to ensure the safety of unaccompanied and separated children and they are supported through the refugee process.

Impact of the Compacts

Canada played a lead role in the development of the Compacts and has been historically lauded for its role in the international protection regime. Therefore, one of the aims of our fieldwork in Toronto has been to investigate the understanding and application of vulnerability and specific needs in local governance and the protection system in light of the Global Compacts. As for the GCR, in 2019 at the Global Refugee Forum, Canada made a commitment to introduce innovative refugee streams, increase complementary mobility pathways, and expand community sponsorship programs. In addition, Canada was invited to be one of the ‘Champion countries’ for the implementation of the GCM as it is considered as one of the Member States that leads by example. As such, Canada committed to incorporate a GCM lens in all its migration measures. However, thus far the ardent discourse has not led to meaningful action. Ultimately, our preliminary fieldwork also reveals a chasm between Canada’s official response to the Compacts and its implementation ‘on the ground’. The reason for the discrepancy in implementation is the government’s belief that Canada’s policies and practices already capture and conform to the objectives of the Compacts. Hence, little effort is being made to propel policy changes or introduce new practices, including in terms of migrant vulnerability. Most civil society representatives remarked that thus far the Compacts have not had much impact in their work or on the conception of migrant vulnerability and special needs, and there was little expectation that much would change in practical terms.

Impact of COVID-19

Not surprisingly, the COVID-19 pandemic has had a profound impact on migrants, asylum seekers, and refugees in numerous ways. Existing barriers contributing to their precariousness intensified in nature while new ones became apparent. First, the closing of the border to asylum seekers entering Canada irregularly deepened concerns about the Safe Third Country Agreement on the basis that the U.S. could no longer be considered safe. This decision also risked breaching the obligation to uphold the non-refoulement principle of the Refugee Convention, making Canada directly responsible for those returned to the U.S. and facilitating a process that results in human rights abuses and often in detention. Second, citing public health as a priority, the Canadian government also reduced resettlement spaces during the pandemic. These actions not only contravene Canada’s commitment to the GCR, but also left many refugees in densely populated camps and detention centres—conditions that actually heightened their vulnerability to health risks. In fact, service providers and advocates were

openly critical of these government decisions. Many of the respondents believed in the feasibility of simultaneously protecting refugees and public health.

The onset of the pandemic also underscored the acute risks of COVID-19 to those in detention. In March 2020, immigration detainees wrote an open letter demanding their release, and detainees at the Laval IHC launched a hunger strike (Kestler-D'Amours, 2020). The following month, the CBSA released more than half of immigration detainees from IHCs and provincial jails. Specifically, the number dropped from 353 to 147 detainees. Of these individuals, 117 remained detained in provincial jails (Browne, 2020; Global Detention Project, 2021). Individuals who remained in IHCs and tested positive for COVID-19 were held in solitary confinement to prevent the virus from spreading. However, Solidarity Beyond Borders reported that detainees inside the Laval IHC informed them that *all* males were held in solitary confinement regardless of their test results (Global Detention Project, 2021).

It is significant that decisions to release were not a consequence of a broader release policy enacted in light of the risks presented to detainees by the virus. Rather, they were the result of individual detention review hearings (Browne, 2020; Global Detention Project, 2021). Those detainees who were released—many of whom were awaiting deportation—were enrolled in alternatives to detention (ATD) programs, and some were subject to electronic ankle monitors. Although this surveillance practice was harshly criticized by NGOs and civil society, the pilot electronic monitoring program in Toronto was quickly and quietly expanded to include Quebec instead of turning to less invasive and coercive options (Khaikin, 2020). As noted by one respondent,

they [CBSA], under the pretext of the releasing people from detention because of the pandemic, ended up using a lot more electronic monitoring, and I think this was especially an issue in Quebec, in Laval, and so using ankle bracelets for people is a pretty controversial form of alternative to detention.

By the end of November 2020, the government resumed deportations even though Canada was in the midst of its second wave of the pandemic. According to Reuters, by the end of 2020, CBSA had deported a total of 12,122 individuals which represents the highest number of deportations since 2015 (Paperny, 2021).

As previously mentioned, the pandemic measures caused significant delays to processes that were already characterized by long backlogs as well as cancellation and delays of refugee hearings and eligibility hearings. In addition to policy and bureaucratic related barriers, many respondents also spoke of practical challenges that people faced which contributed to or intensified their precariousness and sense of isolation. For instance, many spoke of difficulties with maintaining or accessing affordable housing, healthcare and settlement services. The provincial government provided temporary financial assistance through gift cards at the beginning of the pandemic, but no long-term strategies or increases in resources have been implemented to date.

Overall, the complexities presented by the pandemic have been immense. Although at this point in time most service providers and government offices are currently operating on a hybrid model, barriers to access are continuing to cause hardship and to exacerbate migrants' vulnerability.

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Notions of vulnerability in field level governance in Musina, South Africa

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The enunciation of vulnerability in national laws and policies

Refugees as a vulnerable group

The Refugee Act (1998) regulates asylum seekers and refugees' rights to enter and live in South Africa. An asylum seeker's permit, often referred to as a Section 22 permit (Refugees Act No. 130 of 2008), allows asylum seekers to stay in South Africa, and work or study, while their application for Refugee status is being processed. The Refugee's permit, often referred to as a Section 24 permit (Refugees Act No. 130 of 2008), officially recognises an asylum seeker as a refugee in South Africa. It is valid for a period of two years and must be renewed no less than three months prior to the expiry date. All Section 24 permit holders may apply for a refugee identity document and a travel document. People who have refugee status can access most of the same rights as South African citizens (except the right to vote). Having a refugee status means that the person has the protection of the South African government and cannot be forced to return home until it is deemed safe to do so. However, DHA has published finalised refugee regulations that enable implementation of the Refugees Amendment Act (December 27, 2019), effective January 1, 2020. The Refugees Amendment Act drastically limits the rights of refugees and asylum seekers in SA such as: losing their refugee status for voting or participating in any political activity in their countries of origin and seeking any consular services from their country of origin (e.g. requesting a birth certificate at a consulate); tightening the administrative rules for applying for asylum; and limiting asylum seekers' right to work and study in South Africa.

The health facets of vulnerability

Policy-makers are coming to grips with the idea that South Africa cannot achieve positive health outcomes for its own citizens while neglecting those of vulnerable migrant communities who are often defined in terms of where they fall within the broader definition of 'key populations' (HRW, 2009: 3). However, policy responses to communicable diseases and other non-communicable ones have not adequately engaged with mobility (Walls et al, 2016; Vearey, 2014). Several policies were incomplete or inapplicable to mobile patients. Section 27 of the South African constitution includes the provision that everyone has a right to health care, but national citizenship continues to play a key mediating role in the experiences of individuals that interact with South Africa's public health care system. Clauses in policies like the Patients' Rights Charter entitle 'everyone' to access health care services including patients living with HIV or AIDS. The National Strategic Plan on HIV, STIs and TB, 2012–2016 considers migrants as a key population and gives migrants access to antiretroviral therapy (ART). According to the National Health Act, Primary health care facilities (clinics and community health centres) must provide free care to everyone, except for people covered by medical aid schemes, or receiving payment from the workers' Compensation Fund. Refugees are entitled to the same access to treatment and 'basic health care services' as citizens in public health care facilities (Section 27 (g) of the 1998 Refugees Act). The same also applies for undocumented migrants who are citizens of any SADC country. However, migrants and refugees experience denial and delay in accessing these services. Those who earn certain amounts are means tested, which links health vulnerability to income levels.

Gender re: Trafficking

Although gender equality is an important aspect in the government's rhetoric, there is a disjuncture between the gains of women in the public sphere and their daily lives as indicated by increasing levels of poverty, gender-based violence, and HIV infection among women (Albertyn, 2003). Human trafficking in South Africa is widely associated with – and even conflated with – migration, in public discussion and media coverage – which in turn is a process conflated with sex work. South Africa has a range of laws and policies relevant to migrant women sex workers. These include the Prevention and Combating of Trafficking in Persons Act (2015), the Immigration Amendment Act (2014), Section 20(1) (a) of the Sexual Offences Act (SOA) of 1957, and its 2007 Amendment, which criminalises sex work, and the new White Paper on International Migration (2017). While these may appear to be gender-responsive policies that recognise the potential vulnerabilities faced by migrant women in South Africa, these policies fail to further the rights and meet the interests and needs of migrant women sex workers because of the widespread tendency to conflate trafficking and migration, and/or to see a cause and effect relationship between the two. These laws and policies perpetuate and build on stereotypes of vulnerable women without agency or choices, and draw on ideas of sex work as an activity that should be prevented and criminalised. They are policies that apparently respond to gender issues, but do so in ways that fail to understand the complex realities that migrant women face. They draw on a view of migrant women as trafficked women, inherently vulnerable, and in need of rescue and protection.

Understandings of vulnerability in field level governance

There are tensions relating to the ways in which different actors approach the field of refugee protection. This includes differing opinions on how to provide assistance to those most in need, e.g. the way in which UNHCR operates and how its funding drives operations of implementing partners' under-funded/under-resourced local organisations and more independent, more financially viable international organisations.

We chose Future Families because it actively runs the Refugees and Asylum Seekers Social Assistance Project which it is implementing on behalf of the UNHCR. Under this project it provides social assistance (food vouchers and transport subsidies) to newly arrived asylum seekers and refugees, who are largely from DRC, Burundi, Somalia and Ethiopia. Future Families is responsible for assessing cases and based on these assessments, allocating of services through material support, psychosocial support and referrals for refugees and asylum seekers across the Limpopo province. They also record and do assessments of 'hidden refugees' (these are unrecognised yet often genuine asylum seekers who choose to be invisible from the state) in Limpopo in places like Lephalale, Mokopane, Thabazimbi. These are popular destinations for the majority of migrants in the province but there are no organisations that respond to their plight, hence they remain hidden, unknown and 'they are suffering their corners without nobody responding.' (*Social Worker, Future Families, 2 November 2021*).

Another focus of Future Families is to provide services to Orphans and Vulnerable Children (OVC) and people infected and affected by HIV/AIDS in South Africa. Under this scope of work, the organisation is also managing a project on protection of children on the move which is funded by a UNICEF project: 'to get global good practices when it comes to the protection of migrant children, whether they are unaccompanied, separated or with parents' (*Social Worker, Future Families, 2 November 2021*). The project sets out to inform programming. For example, in some parts of Malamulele, the majority of Mozambiquans cross the border and remain and Future Families identified that a great number of people are not documented, as a result children don't even have birth records. In these instances:

Some migrants' families gave birth in South Africa and then they were just given the Road to Health booklet they were just given the handwritten or that documentation lapsed. And therefore, the processes because the mother is not documented. The process of documenting this child is so tedious that the mothers end up giving up. End up not following through the process. So, it's bringing those needs or highlighting that to the relevant bodies that will then have to engage the governments. (Social Worker, Future Families, 2 November 2021).

Future Families also runs social cohesion programs for the Catholic Church through different activities to bring the youth together in a context where competition for resources pits them against each other in response to the economy as one of the major divisive elements. This initiative entails facilitating discussions on an agreed project and working from there to run an income activity project or any other relevant project to respond to the needs of that community.

Future Families had little say in how they spent the funding from UNHCR. For example, while they had many people without documents who needed assistance, one managerial requirement for the UNHCR was that migrants are legally in the country to receive that assistance. Hence, they were constrained in who they could assist. This is in spite of the observation that 'people who face the most challenges are migrant population, not asylum. Asylum seekers they have an option, even when Home Affairs are open, they can approach Home Affairs and apply for their documentation but what about the majority of Zimbabweans, what about the majority of Mozambiquan, Malawian and the like?' (Social Worker, Future Families, 2 November 2021). In such instances, Future Families would have to write motivation letters citing their reasons for defaulting assistance to UNHCR non-persons of concern. This was often acceptable for the UNHCR in instances when the latter had critical health-related needs and challenges related to chronic illness or serious injuries, for example:

So, I'm saying that normally based on the needs assessment we normally start categorizing you know, the vulnerability of the person. The person could be living with disability or has a family member with disability, or they are chronically ill. They could be HIV positive, and they are not even have started on their treatments. So, we have those indicators or those target populations that this is what we are looking for (Social Worker, Future Families, 2 November 2021).

There's a guy who was mauled, who was eaten by some dogs, he's from DRC and he is not documented. And because he is not documented I cannot say 'I cannot provide you with a service'. (Social Worker, Future Families, 2 November 2021).

In some of these exceptional instances, the care would be limited to psycho-social support. These layers show how vulnerability operates in such a way that those in extreme cases and fall out of the categories get help, as if to say one must be near extreme danger or even death to qualify. This is despite the acknowledgement that all people on the move are vulnerable. Future Families did try to offer psychosocial support regardless. Future Families would also give families with bigger numbers of children preference. These families also undergo best interest case assessments to determine 'maybe the family is at risk, maybe there is torture, maybe the children are subjected to child labour, exploitation, and the like' (Social Worker, Future Families, 2 November 2021).

Legal status

Legal status also played a key role in the work done at the advice office. At the time, the UNHCR gave the office a project on case management, general management and queue

management. The advice office would facilitate the Zimbabwean migrants' access to shelter, and then from there advise them to find ways of regularising themselves. This approach reveals that the advice office's understanding of vulnerability is centred on legal status. The office quickly picked up that the main reason these migrants were considered to be vulnerable was that there was no reception office in Messina to process their asylum claims, which led them to take riskier routes:

..... a lot of Zimbabweans, once they arrived here, they stayed for two, three, four, five days trying to understand the geographical areas of South Africa and then move on. But now with the advice that they were getting from us that you need to regularise yourself. And the first point of call is Pretoria, Marabastad. So, this is why you got a lot of Zimbabweans traveling on foot along the N1 and some because they were afraid of being arrested, then they will avoid the N1 but go through the farms and in the process many there, they fell victim to animals on the farms [...]. And because they didn't have the necessary documentation then they will be easily arrested. [...] we discovered that they were getting lost on the way, being mugged and they were being subjected to habitual arrest by the law enforcing agencies. We then decided towards the end of 2008 to visit the Department of Home Affairs, the refugee section, and at the time the head office was Pretoria. So, we had to make an appointment with the current Public Protector [...] And then we sold them the idea that, look, Messina has no reception office we need to have a reception office in Messina. She bought the idea and in 2009, it didn't take long, and in 2009 we opened up a refugee office. (Legal Advocate, Messina Legal Advice Office, 18 November 2021).

In the case of the advice office, Legal status was an important focus in ensuring that people were documented so they could be protected from physical harm but it was also a gateway to exclusion of migrants from accessing services provided by UNHCR implementing partners like Future Families reserved for documented asylum seekers. Recognising these limitations, working on two other projects (UNICEF and Catholic Church) allowed Future Families to address some needs specifically related to migrants, which was a key gap in the UNHCR project.

Length of stay was also another determinant of vulnerability in the work of Future Families which saw newly arrived asylum seekers also given priority over those who had been residing in the country for longer.

Gender

Gender was also an important consideration on the organisations's work as women are also important and Future Families seems to acknowledge their vulnerability as greater than that of men, which is compounded by age and legal status. Future Families conduct focus group discussions which have weekly activities with adolescent migrant children in the shelters:

I find that women are more vulnerable because of the circumstances they find themselves in. Either they are the primary caregivers, or they have other dependants. They are victims of GBV and especially those who are in the women's shelter like right now; we have several who are victims of GBV. Either from their countries of origin, during transit and also in Messina itself, they are being exploited when they go to work and just because of just being a woman you are subjected that you have no say, this is yes please, and I'll pay you this and you don't ask questions. Like one that told me that I was told to go and wash the curtains. When I went there, things changed. This guy just wanted to sleep with me. So, you can see that they are so much at risk of being

abused or exploited by their employer, their smugglers, their hosts in the country. So, when it comes to gender, women, the scale of women is weightier than that of a man (Social Worker, Future Families, 2 November 2021).

When it comes to their assessments, Future Families also consider LGBTQI people as a risk category. But, asked if sexual orientation is something that stands out as well in this context in terms of layers of vulnerability from the experiences they had, the social workers interviewed expressed the view that these groups often chose to remain invisible rather than seek protection on that basis:

No, it doesn't stand out. It's not even obvious and it's unfortunate in some cases that people who have different sexual orientation, come with that and they know in their hearts this is their claim but because they don't have that information that you can seek asylum, or you can seek protection based on this. They either change their claim at Home Affairs or don't even say a word and they remain in these communities without documentation not knowing that this is one of the requirements for international protection. (Social Worker, Future Families, 2 November 2021).

This is consistent with a [recent report \(published in April 2021\) on LGBTQI+ asylum-seekers in South Africa](#). The report reviews refugee denial letters involving sexual orientation and gender identity over the past ten years in the country. The report found that when engaging with LGBTQI+ refugees and asylum-seekers claims, many officials within the South African Department of Home Affairs (DHA) saw them as duplicitous claims and frequently denied them based on the assumption they were fabricated. In total, 67 denial letters are analysed (all of which set out the reasons for the denial) from individuals from Uganda, Zimbabwe, Cameroon, the Democratic Republic of Congo (DRC), Malawi, Kenya, Tanzania, Jordan, Nigeria, Sudan and Zambia.

South Africa extends protection to LGBTQI+ people fleeing persecution through national legislation. In contrast to other countries on the continent, this protection is not provided by UNHCR or via *international protection*. In other countries such as Kenya, Morocco and Tanzania, there are parallel legal systems, whereby UNHCR provides international protection to LGBTQI+ refugees and asylum-seekers even though national law continues to criminalise these populations. In South Africa, the 1951 Refugee Convention is read into national law and no national law exists that criminalises these populations. Nevertheless, the report shows that there are clear issues of religious and cultural prejudices that exist as barriers to protection. For example, there is a perception amongst some in the DHA, that if the country of origin is predominantly Christian, then it is not possible for a person from there to be seeking asylum for being gay, as it is not possible to have homosexuals in that country. In extreme cases, claimants retold incidents of bibles being used in Refugee Reception Offices and paragraphs being read out about the types of 'sins' the applicants were engaging in.

Overall, the refugee status denial letters highlight patterns of disdain, apathy and a deep-seated prejudice towards LGBTQI+ claimants. There is an absence of clear and applicable guidance for Refugee Status Determination (RSD) officers in South Africa. In addition, the new South Africa Amendment Act 11 of 2017 and the Refugees Act Regulations of 2019 make clear that anyone with a criminal record is now not eligible for asylum in South Africa. Yet at the same time, we know that many countries of origin for LGBTQI+ refugees in Africa criminalize LGBTQI+ persons, thus many who arrive in South Africa to seek asylum and sanctuary will have a criminal record. In terms of the DHA, members of Nyasha's collective noted that regardless of letters from civil society and lawyers, officials often still asked them if they wanted someone from the department to 'check on their sexuality' or which sex organs they

had. One client was told they could not be gay and ‘had to find a way of proving it’. As a result, that person has been in South Africa for four years without documentation. A number of their members are now not interested in going to the DHA’s offices to try and obtain papers or renew papers because of hearing these stories from others or having their own bad experiences (Expert Forum Report 2021).

Vulnerability and governance networks

The notion of vulnerability in the Musina context is largely informed by the government’s reading of who is an asylum seeker, which reflects on the work of the UNHCR and those it funds. The main adverse effects of the kind of vulnerability here is its emphasis on labelling Zimbabweans as economic migrants. Since they don’t qualify for asylum, they are also cut off from UNHCR aid, such as the social assistance provided by Future Families. Vulnerability in the work of Future Families is framed along lines of migrant/asylum seeker, women/men and children, youth/adult dichotomies although assessments are free to everyone on the move. The question of gender as a key aspect of vulnerability also means that the protection of men’s shelter is more precarious. There is now a sentiment from Musina Legal Advice Office that the vulnerability has gone down but xenophobia has been on the rise.

Impact of the Compacts

The impact of the compacts on the ground was very limited. In our interview with the legal advocate from the advice office, he made no reference to any of the compacts. These documents were useful in ensuring that practice was aligned, but it was also felt they were inaccessible, which makes one wonder who they are for:

You know, the UN comes up with beautiful documents neh, but the people who are supposed to know as I say... we are the people on the ground, we are the people who have to generate what is happening down here so that it’s got bottom whatever, so I like now I am feeding into you so that you can feed into policy or something right? But these beautiful documents they are just left somewhere sitting, so you find like the majority of us don’t even bother or we hear it in meetings, and we find oh my god this looks so complex, you know (Social Worker, Future Families, 2 November 2021).

The Compacts insistence on safe, orderly and regular migration means they can only work best in contexts where migrants are documented. On the contrary, they have been accompanied by border securitisation, militarisation and greater enforcement. Their insistence on legal status has meant that Future Families feel ‘defeated’ when it comes down to access to other services that require people to have documentation. In our webinar for the 2nd Expert Forum, entitled ‘Expert Forum on the Contemporary Issues Relating to International Protection for Persons on the Move in South(ern) Africa: Exploring the Boundaries of International Protection and Human Rights Instruments in South(ern) Africa’ held on Wednesday 22 September 2021 James Chirwa from MLA0 observed how many migrants do not use the official border crossing when coming into or leaving South Africa. Every day, they have to write a letter to the hospital or to the clinics for at least 10 undocumented people, working together with Red Cross. ‘Please allow this person to access healthcare, they are undocumented, these are their names, [these are 47.28] their issues’ (Social Worker, Future Families, 2 November 2021). In spite of these limitations, Future Families has used them in one project and in building an office manual:

But when I told you that I’ve worked and engaged with refugees in my [inaudible 53:23] especially with the Catholic Church, so they’re usually very interested in these documents. So, in every meeting they keep on hammering us with these documents,

and them I was compiling a manual for the office for our internal use for Future Families on social cohesion and I was like what does a global compact for refugees and migrations say about social cohesion like when I come up with this manual it's from an informed, and also to look at what is informing migration and refugee aspect right now (Social Worker, Future Families, 2 November 2021).

The social worker from Future Families also stated that in as much as when it comes to vulnerability the Compact says that in every step of the migration journey information needs to be given, that doesn't happen. These things are difficult to implement because the protection space is shrinking because there is a lack of funding, 'people are exhausted, or they are fatigued with this migration issues or issues of migrants because the dynamics change every day'. This limits the mechanisms of ensuring that migration is legal because migrants do not know the 'protection avenues' available to them such as the ways to access documentation if you are an unaccompanied and separated minor. There was almost an expectation from the informant that the Compact could help answer all these questions.

However, evidence presented at the previously cited expert forum suggests otherwise. In terms of the GCR, there remains several concerns for African countries. First, African countries typically lack the financial and technical resources to host large numbers of refugees. Second, social tensions can hinder or prevent the integration of refugees and may lead to violence against them. Third, cumbersome national regulatory processes (with many states having a lack of staff and funding), can lead to long delays in processing asylum claims. Fourth, there remains little in the way of a clear role for local governments in refugee reception and protection. When they are involved, little resources are given to support integration, job creation and social services roll-out for refugees and migrants. Fifth, large data gaps still exist in Africa around displacement and mixed migration patterns. It will be interesting to see how the Global Compacts are rolled out further in the coming years. In particular, it will be important to see whether their 'influence' will reach border areas such as Messina. However, it appears that many within civil society still remain sceptical about how the Compacts will be able to advocate for positive responses/improved protection on the ground for all refugees and migrants in South Africa (Expert Forum Report 2021).

Impact of Covid

In South Africa, the pandemic has affected everyone, regardless of citizenship or migration status. Social relief schemes have been insufficient (Mlambo et al., 2021); job losses from the initial hard lockdown have not been recuperated (Statistics South Africa, 2021); routine healthcare has been disrupted (Hoffman and Shabir, 2020); and the vaccine roll-out has been consistently undermined by administrative and political problems. However, for non-citizens this has been compounded by their exclusion from social relief schemes and the vaccine roll-out; ongoing xenophobia, including the looting of foreign-owned shops, police brutality against non-citizens, and the proliferation of xenophobic rhetoric on social media platforms; uncertainty around documentation; the continued closure of Refugee Reception Offices (RROs) and Department of Home Affairs (DHA) offices; and arrest, detention and deportation, or fear thereof (Vearey et al., 2021).

South Africa's response to migrant and mobile populations during the pandemic has mirrored the state's pre-existing approach to migration - one that is characterised by a lack of migration-aware and mobility-competent policies (Vearey et al, 2017), with implications for both non-citizens who move into South Africa and for South Africans who move internally (Vearey et al., 2016); xenophobia; and the securitisation of movement into and out of the country. This kind of response is, however, not unique to South Africa, fitting squarely

within global trends of nationalism and securitisation (Tesfai, A. and de Gruchy, T., 2021: p9; Vearey et al., 2021).

In Musina, the RRO Closed down during Covid and we're seeing challenges of access to services among refugees and asylum seekers because of lack of documentation which affects livelihoods.

Look, migrants will always be vulnerable but because of the issues that relate to levels as a result of COVID-19 there hasn't been much movement if you like, in terms of your physical movement. So necessarily meaning that we do have clientele that are coming through, but it is not as much. So, I guess that it is for the simple reason that the restrictions that have been in place are as a result of COVID-19 have limited their movement and secondly, the employment space has been bad because few people are being employed as a result of COVID-19 that limits the resources in terms of finances. So, then traveling then becomes a bit of a challenge because now you have to take care of your food and accommodation, and you don't have the luxury of traveling really because you don't have the necessary resources to do that. So there have been limited movements because of such and there's also perhaps fear that once you are open to a lot of movement then you become vulnerable you know (Legal Advocate, Musina Legal Advice Office, 18 November 2021).

Lockdown presented opportunities to make exception and provide more comprehensive blanket protection. When the lockdown was announced, they had 267 men at the men's shelter and 74 women at the women's shelter. Since those shelters are usually very crowded and there was no livelihood, Future Families was concerned 'what are they gonna eat? Where are they gonna sleep and?' (*Social Worker, Future Families, 2 November 2021*). Regardless of their documentation status, Future Families was able to motivate for 'a budget that' sustained them until October and provide like some sort of transport money to wherever they wanted to go, cause they had been placed at the showground in by the municipality to ensure social distancing, which later said that we are closing down their show ground, raising the need for an exit assessment for the men' (*Social Worker, Future Families, 2 November 2021*) (and women, albeit they were asked to volunteer among themselves who could go to an alternative accommodation). 'It was cause for us to push some of these documentation needs aside so that we can respond to the needs of the people' (*Social Worker, Future Families, 2 November 2021*). For those remaining, Future Families still continued to support them with food especially with meals and then Red Cross has stepped in to provide a meal once a week or twice a week, depending on what they have.

The Department of Home Affairs was slow to respond to lockdown. They only did so through mounting pressure by creating online systems. But these don't work for everyone:

...the asylum seeker system now is clogged. They might tell you that they don't have backlog but when you look at the issue of COVID in terms of the renewal of permits has the technological platform been user-friendly? No, it hasn't been. And because of restricted movements, is there good communication? Offices are also closed. They Don't pick up their phones. (Legal Advocate, Musina Legal Advice Office, 18 November 2021).

Concluding remarks

Vulnerability is used by state and non-state actors to offer protection to migrants, asylum seekers and refugees but this framing can also limit the rights of these groups. For example, while the state considers refugees as a vulnerable group deserving of protection, this has been recently overlaid in amendments to the Refugees Act in such a way that it can also undermine their agency. As shown, the same applies for questions of gender as demonstrated by the case of the Trafficking in Persons Act. Meanwhile, the acknowledgements of health vulnerabilities of migrants are more progressive on paper than in practice, and tend to be awarded relative to income levels of migrants.

These paradoxes are no different when we consider the articulations of vulnerability in field level governance. There are tensions relating to the ways in which different actors approach the field of refugee protection, particularly through the distinction between migrants and refugees. This tension generates differing opinions on how to aid those most in need. This shapes the work of under-funded/under-resourced local NGOs at the border because of the way in which UNHCR operates and how its categorical funding drives operations of implementing partners. Emphasis is placed on the legal status of aid recipients, which becomes a source of exclusion for migrants who cannot get refugee protection from the state in the form of asylum or refugee papers. In turn, the Compacts insistence on safe, orderly and regular migration means they can only work best in contexts where migrants are documented.

Gender is also a key consideration in determining vulnerability that tends to accord women and children protection from state and non-state actors. This means that sometimes illegal migrants who are women and/or travelling with children can access social services from Future Families. In this context, Covid-19 has also presented opportunities for non-state actors to make exceptions to provide social services to men and illegal migrants by placing motivations to UNHCR that subvert the organisation's mandate. However, the pandemic has also compounded access for asylum seekers to apply for asylum papers or renewing existing ones. In this way, it has simply reinforced pre-existing securitisation efforts by the state.

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