



Protect

The Right to International Protection

Governing migration through vulnerability at
Spain's southern maritime border



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Governing Migration through Vulnerability at Spain's Southern Maritime Border

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Abstract

Vulnerability has emerged as a central policy concept in migration governance. Despite its growing importance, the concept remains contested and ambiguous. As multiple notions of vulnerability circulate in the context of migration and asylum governance, it becomes crucial to gain a better understanding of how vulnerability might shape practices on the ground. In this article, I explore how different actors in the province of Cádiz, located at Spain and EU's southern maritime border, understood, and operationalised 'vulnerability'. The aim is to advance understandings of vulnerability as a mechanism of governance in the reception of people on the move in the context of so-called 'mixed movements'. My focus is as such on the interplay between the concept of vulnerability and the conceptual distinction between asylum seeker/ political refugee and irregular/economic migrant. Through the analysis, I show how attempts to define and prioritise forms of vulnerability was constantly changing. For actors on the ground, the vagueness of the notion of vulnerability thus constituted a continuing on-the-ground challenge as well as an opportunity to challenge categorical and legal distinctions. Still, civil society organisations' engagement with vulnerability did not only represent a 'push-back' of restrictive policies, but also a way to adapt and survive in a marketised regime.

1. Introduction

Vulnerability has increasingly emerged as a central policy concept in migration and asylum governance. The adoption of the United Nations in 2018 of the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM) exemplify this trend. Whereas the GCR stress the specific needs of particular asylum seekers and refugees, the GCM includes as one of its key objectives addressing and reducing the vulnerabilities that migrants face, at the different stages of their journey and regardless of their migration status. In the EU context, vulnerability is emphasised in the Common European Asylum System (CEAS) and the new Pact on Migration and Asylum. Similarly, to the GCR, EU's legislative instruments emphasise certain subcategories of asylum seekers who are perceived to have specific needs that should be accommodated in the asylum system.

Despite the growing importance of vulnerability in migration governance, the concept remains contested and ambiguous and its practical relevance remains unclear. As noted by Leboeuf (2022, 3), vulnerability is 'one of those fuzzy notions that generate broad acceptance precisely because their vagueness allows them to be mobilised in varying ways depending on the political agenda.' The vagueness of the concept has served to conceal how vulnerability has come to harbour different meanings in different contexts (Brown et al. 2017), and even within the same policy text (Jacobsen et al 2022). As multiple notions of vulnerability circulate in the context of migration and asylum governance, it becomes crucial to gain a better understanding of how vulnerability might shape practices on the ground.

In this article, I seek to advance understandings of vulnerability as a mechanism of governance in the reception of people on the move in the context of so-called ‘mixed movements’. ‘Mixed movements’ is a fraught concept that has been used by the EU and member countries to justify securitisation practices at the Southern maritime border to deter ‘bogus asylum seekers’ (Oelgemöller, 2021). Hence, my focus is on the interplay between the concept of vulnerability and the conceptual distinction between asylum seeker/ political refugee and irregular/economic migrant in migration governance. Empirically, the article is based on qualitative research into how different actors in the province of Cádiz, located at Spain and EU’s southwestern maritime border, understood, and operationalised ‘vulnerability’. Southern Spain provides a particularly interesting case as the country has established two separate reception programs for those arriving by sea, one for asylum seekers and one for migrants in a ‘vulnerable situation’. Hence, the distinction between irregular migrants and asylum seekers in the Spanish case is not a demarcation that exclude the former from access to basic social protection. However, the system still maintains the categorical distinction and thus differential treatment. Through the analysis I show how attempts to define and prioritise forms of vulnerability was constantly changing. For actors on the ground, the vagueness of the notion of vulnerability constituted an opportunity to challenge categorical and legal distinctions. However, it also represented a continuing on-the-ground challenge. Civil society organisations’ (CSO) engagement with vulnerability did as such not only represent a ‘push-back’ of restrictive policies, but was also a way to adapt and survive in a marketised regime. By invoking categories of vulnerability to raise funds to maintain their activities, CSOs this risked further reifying normative boundaries between migrant categories deserving or not of protection.

Following this introduction, I will offer an overview of the rise of ‘vulnerability’ within migration governance globally and the related scholarship. Subsequently, I will present the context and methodology of the study, before turning to the concept of vulnerability in Spanish law and policy. In the last section, I analyse perspectives and practices of key actors involved in field level governance in the province of Cádiz.

2. Vulnerability in migration governance

The governance of international migration relies on different and often overlapping labels that either facilitate or criminalise the movements of certain people. The most basic distinctions made, is between ‘voluntary’ and ‘forced’ migration, and ‘regular’ and ‘irregular’ migration. In this context of labelling people on the move, vulnerability has become a new crucial classifying label that overlap with and fragment previous labels (Sözer 2020). In Europe, for example, the CEAS creates a distinction between vulnerable categories of asylum seekers and refugees on the one hand and non-vulnerable irregular/economic migrants on the other hand. Sözer (2020), sees this as an outcome of a shift in the humanitarian use of vulnerability around the early 2010s in which a previous concern with refugees, asylum seekers, and irregular migrants’ collective vulnerability began to yield to the humanitarian concern with only those designated ‘vulnerable.’ However, after the ‘long summer of migration’ in 2015 there has been a renewed attention both academically and in policy terms towards the broader notion of ‘migrants in a vulnerable situation’ (La Spina 2021), and what this might add or

imply in terms of protecting people on the move, particularly in the context of so-called ‘mixed migration’ found in the Mediterranean (Garlick and Inder 2021).

Mixed migration is a contested concept that initially emerged in the 1990s, both within scholarly analysis and policy (van Hear et al 2009). The concept has, on the one hand, been used by scholars to highlight the complexity of human mobility that makes it difficult to differentiate between refugees and migrants in practice. On the other hand, the concept maintains the distinction between refugee and migrant categories and has in the policy arena, been closely associated with the agenda of governments in the global north and their perception that large scale abuses of the asylum system are taking place. As argued by Oelgemöller (2021, 250) ‘mixed migration’ is ‘the condition of possibility for “illegal migration” to be intelligible in policy terms.’ References to mixed migration have therefore been used to justify border externalisation. Within this policy framework, vulnerability emerges as a way to mitigate ‘protection’ gaps’ produced by such policies.

Particularly, the adoption of the Global Compacts on Refugees and for Migration revitalised concerns regarding ‘mixed migration’ and potential ‘protection gaps’. Although, the Global Compacts acknowledge that refugees and migrants face similar challenges and vulnerabilities, the adoption of two separate compacts rather than one compact addressing both refugee and migration issues, has been criticised (Oelgemöller 2021). This criticism, as noted by Garlick and Inder (2021), is grounded in concerns regarding the validity of the refugee-migrant distinction, and the potential for vulnerable individuals to fall into a perceived ‘protection gap’ between the GCR and the GCM. The GCM, though, contain an explicit commitment to respond to the needs of migrants who face situations of vulnerability, including in responses to ‘mixed movements’ (objective 7). Advocates of the compacts therefore see the notion of ‘migrants in vulnerable situations’ as a way to address the needs of people on the move who may need protection and assistance but who do not otherwise qualify for ‘international protection’ (Garlick and Inder 2021). However, the precise meaning and implications of ‘migrants in vulnerable situations’ in the compact is not clear (Atak et al 2018, Jacobsen et al. 2022). Scrutinizing the GCM for example reveals that it does not provide a consistent definition of or approach to vulnerability. On the one hand, the compact applies a categorical approach to vulnerability by listing categories presumed to be in need of special treatment. On the other hand, the compact suggests a dynamic approach to vulnerability by emphasising a gender-, age-, and disability-responsive approach.

The lack of clarity of the concept of vulnerability in the context of migration is not exclusive to the Global Compacts. Both the definition and the application of the concept in EU law and policy as well as UNHCR and IOM’s policy documents is inconsistent (Hruschka and Leboeuf 2019, Flegar 2018). For example, the categories perceived as vulnerable vary between different CEAS directives and the reasons for why someone is categorised as vulnerable are not always clearly distinguishable (Hruschka and Leboeuf 2019). Scholars have made key analytical distinctions between conceptions of vulnerability that see it as a product of either inherent characteristics (e.g. gender), situational factors (e.g. victims of violence) or structural characteristics and dynamics (Gilodi et al 2022). In policy documents and practice, however, these conceptions are often implicit and arbitrary.

An expanding body of scholarship has further highlighted the challenges and pitfalls of migration and asylum governance increasingly relying on the concept of vulnerability. While

advocates of the concept see it as a way to address diversity among protection seekers and contextualise decisions, research suggest that the concept instead tend to reinforce stereotypes (Turner 2019, Sözer 2019), facilitate social control (Sahraoui 2020), and result in exclusionary practices (Rozakou 2021, Camminga 2021). Vulnerability discourses have been particularly criticised for the association between (female) gender and vulnerability (Turner 2019), and for linking deservingness of protection with innocence and the lack of individual agency (Ticktin 2016). By making the promise of protection conditional upon individuals fitting specific social roles or stereotypes, scholars have argued, migrants must behave and present themselves in specific ways to be categorised as ‘vulnerable’ and to gain access to the particular protections that this status bestows (Ikanda, 2018). Another concern related to how protection organised around the notion of vulnerability may work to negate state responsibilities to provide universal, rather than targeted, care (Fassin 2016).

Within feminist scholarship, there have been various attempts to develop a more nuanced and intersectional understandings of vulnerability (Gilson 2016). There have also been efforts to reconceptualise vulnerability more fundamentally as both a shared, constitutive and connective feature of our existence, and as an effect of social, economic and institutional relationships (Butler 2014, Finemann 2008). Cole (2016) labels this approach as ‘vulnerability-as-interconnectivity’ rather than the more traditional ‘vulnerability-as-harm’ that has dominated policy work. While some believe that a a recognition of shared vulnerability may constitute the basis for ethical responsiveness and shift the focus towards the responsibility of the state (Hesford and Lewis, 2016), others have questioned the practical value of this way of conceptualising vulnerability (Cole 2016), seeing it as a risky strategy which might open avenues for state power to expand further (Brown 2017).

3. Context and methodology

The article draws on research conducted in the Province of Cádiz, Spain, as part of the PROTECT research project (2019-2023). This research did not start from one particular definition of vulnerability but sought to explore how vulnerability was understood and operationalised on the ground. Particular attention was paid to how field level governance took into account gender and legal status, and how actors collaborated in regard to mechanisms for identification, access to legal information and assistance, and access to healthcare and shelter.

The analysis is based on online data collection and document analysis, and an in-site three-month fieldwork during the Autumn of 2021¹. The website and document analysis included a broad scope of written sources (law and public documents, reports and other published literature by key actors, websites and social media sites, local online media). During fieldwork, 26 in-depth interviews were carried out with 34 individuals involved in different ways, areas, and phases of the reception of migrants and asylum seekers in 4 different cities in the province (Cádiz, Jerez de la Frontera, El Puerto de Santa Maria, and Algeciras). 9 of the interviews were with migrants, and 12 of the interviews were with people involved in a broad range of CSOs. Interviews were also carried out with representatives from two municipalities

¹ All translations from Spanish texts and interviews were done by me if not otherwise stated. Names on those interviewed have been anonymised.

(political and administrative staff), regional authorities in the province, Guardia Civil, and UNHCR.

Its location by the Strait of Gibraltar and its proximity to the coast of Morocco has made Cádiz one of the primary access points for migrants arriving to Europe by sea since the late 1980s. Just 14 kilometres separates northern Morocco from Spain at the Strait's narrowest point. However, the numbers of sea arrivals have fluctuated over the years, reaching an historic high in 2018 with over 20 000 migrants arriving by sea². In 2019, numbers of arrival decreased considerably, with about 5600 persons crossing the Strait to Cádiz. Reported numbers for 2020 and 2021 were 1970 and 3339 accordingly. Nationally, though, the numbers of boat migrants have remained high (with over 41 900 in 2021) as the decrease in arrivals at the coast of Cádiz have been coupled with a significant increase in sea crossings to the Canary Islands. While Cádiz remains an important point of entrance for migrants, it is also primarily a point of transit. Few migrants stay long term.

The reception of migrants and asylum seekers in Cádiz involves a complex interaction between a range of actors at different levels of government, international and regional organisations, and CSOs with different spatial reach (see Karlsen et al. 2022). People who arrive by sea, depending on circumstances, can therefore go through different institutional circuits including centres such as the police run Centre for the Temporary Assistance of Foreigners (CATE) and Foreigners Detention Centre (CIE), the Centre for Emergency Assistance and Referral (CAED) managed by the Spanish Red Cross, Centres for minors overseen by the Regional Government of Andalusia, as well as humanitarian and/or asylum reception centres managed by various CSOs. This means that a range of different actors are expected to identify and assess an individuals' vulnerabilities at various stages and settings of the reception process. The Spanish Red Cross, though, plays an important role as they have had a formal collaboration agreement with the Spanish Government since 2002 regarding assistance in response to migrant arrivals by sea. This means that an EIRE (Equipos de Respuesta Inmediata en Emergencia) team of the Spanish Red Cross carries out a clinical, humanitarian and social assessment of migrants at arrival and during the 72-hours migrants can be held by the National Police.

Scholars have highlighted aspects such as an extensive bureaucratic procedure and low probability of obtaining some kind of legal protection status as factors that have discouraged migrants arriving in Spain from applying for asylum (Moreno Amador 2021). However, asylum applications have risen markedly in Spain since 2015, reaching a historic high in 2019 with 118,264 applications. The increased numbers of asylum applications is not primarily explained by the rise in sea arrivals at Spain's maritime border during the same period. Indeed, most applications for asylum come from Latin Americans, particularly Venezuelans and Colombians, arriving by plane to cities such as Madrid and Barcelona. The policies pursued by EU and Spain at Spain's southern maritime border have, as argued by López-Sala, and Moreno-Amador (2020), importantly been shaped by the labelling of African migrants primarily as labour migrants (or as 'bogus' asylum seekers). This has resulted in an emphasis on surveillance, containment and deterrence mechanisms that has prevented access to the

² UNHCR provide weekly numbers of sea arrivals and asylum applications. These are available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5226>

Spanish protection system. The arrival of Syrian citizens at the southern border in 2015 did prompt efforts to strengthen access to, and awareness of, the asylum procedure at the maritime border (Moreno Amador 2021). For example, UNHCR has been carrying out monitoring and training activities through a physical presence in **Algeciras**, which covers the province of **Cádiz and Ceuta** since May 2016.

4. Vulnerability in Spanish reception policies

The labelling of African migrants arriving by sea as predominantly labour migrants prompted the construction of two distinct reception programs at Spain's southern border that interestingly utilises different definitions of vulnerability. The humanitarian reception program, which started in 2005, is aimed at migrants who are 'in a situation of vulnerability due to physical deterioration and lack of social, family and economic support' (Royal Decree 441/2007, of April 3). In this program, the irregular travel across the sea is considered a situational condition of vulnerability and basic social protection is linked to needs rather than legal status. Assistance within this program can consist of accommodation, language learning, education, as well as legal guidance. However, the focus is on providing basic care rather than on facilitating access to legal status. The program generally lasts three months, with the possibility to extend it for 'particularly vulnerable cases'. These are defined by the Ministry of Inclusion, Social Security and Migration and the criteria have varied over time.

The reception and integration program for international protection seekers defines specific vulnerable categories of asylum seekers that in theory should be given specialised treatment (Law 12/2009 of 30 October 2009, hereafter the Asylum Act). As an EU country, the transposition of the Reception Conditions Directive importantly influenced the introduction of a category-based approach to vulnerability into Spanish asylum law. Hence, Article 46 of the Spanish Asylum Act of 2009 refers to categories such as 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. This indicative list is similar to the one defined in EU's Reception Conditions Directive, which as previously noted contains ambiguities related to the reasons for why someone is categorised as vulnerable. However, whereas the Reception Conditions Directive states that 'Member States shall take into account the specific situation of vulnerable persons', the Spanish Asylum Act refers to 'applicants or beneficiaries of international protection in a situation of vulnerability'. The phrasing in the Spanish Act thus goes further in indicating that the vulnerabilities of for example minors and pregnant women should be understood as circumstantial rather than inherent.

However, as highlighted by CSOs and other critical voices, Article 46, and other provisions in the Asylum Act, was not really implemented in practice due to a continued lack of a regulation on the implementation of the 2009 Act (Garcés Mascareñas and Moreno Amador 2019). This meant for example that Spain did not implement a systematic bureaucratic process to identify 'vulnerable' protection seekers and assess their specific needs. Instead, the Ministry of Inclusion, Social Security and Migration updated on a regular

basis a management handbook (Manual de Gestión). This handbook provided the possibility to extend the maximum period asylum seekers and beneficiaries of international protection could reside in the reception system from 18 months to 24 months for the vulnerable profiles referred to in the Asylum Act. The handbook also stipulated a continuous identification and assessment of an applicants' vulnerabilities and specific needs, and how these circumstances should guide the allocation of specialised places. As such, there was an effort to place protection seekers in the reception place which best fits their profile and needs. However, as noted by CSOs, the capacity within the reception program was not sufficient to effectively achieve this (ACCEM, 2020).

The much-awaited regulatory framework for the Asylum Act was finally approved in March 2022 (Real Decreto 220/2022, de 29 de marzo). As this occurred after the interviews for this study was carried out, it had not informed practices on the ground. However, the regulation is an interesting example of the increased importance of vulnerability in migration and asylum governance. The document refers to vulnerability no less than 25 times. The regulation also appears to address some of the critique that has been raised concerning the notion of vulnerability. First, the regulation explicitly defines a 'situation of vulnerability' as 'the convergence of circumstances that increase the probability of the person suffering contingencies that diminish their most basic well-being'. This is in line with the traditional 'vulnerability-as-harm' framework (Cole 2016). The regulation also expands the list of categories to include, in addition to those already mentioned in the Asylum Act, people with serious illnesses, victims of any manifestation of violence against women, people belonging to ethnic or national groups subject to discrimination, people with mental health problems, and LGBTBI+ persons. It further makes explicit that the list is open-ended. Moreover, the regulation consistently emphasises the importance of assessing vulnerability at various stages, and the importance of a gendered and intersectional approach. However, the regulation states that the 'assessment will be carried out in accordance with the criteria established by the Secretary of State for Migration and its *corresponding gradation*' (my emphasis). Also, in terms of allocating resources, the recipients will be referred to the accommodation that is considered most appropriate according to 'the age, sex, disability and family situation, as well as, *to the extent possible*, other characteristics associated with their possible vulnerability and any specific reception needs that are detected' (my emphasis).

The reception and integration program for international protection seekers and the humanitarian reception program are both managed by the Director General for Inclusion and Humanitarian Assistance (Dirección General de Inclusión y Atención Humanitaria, DGIAH), which is under the Ministry of Inclusion, Social Security and Migration. Whereas DGIAH fund and allocate reception places, the services are mainly managed by different CSOs. As Spain has not increased sufficiently the capacity and resources to meet the influx in asylum applications and sea arrivals since 2015, the reception system has suffered overcrowding. In response, Spanish governments have increasingly limited the criteria for entry into the programs. For example, the criteria for entering the reception program for international protection seekers changed in 2015 from having expressed the desire to seek asylum, to having formalised the asylum application with the first interview. In July 2017, the government further restricted access for those not categorised as vulnerable and who had spent more than six months in Spanish territory at the time the asylum application was

accepted for processing (Garcés Mascareñas and Moreno Amador 2019). The changing criteria also increasingly blurred the distinction between the two reception programs, with vulnerability becoming a hierarchising tool. For example, in 2019 the government introduced an amendment (Royal Decree 450/2019, of July 19), which made it possible to refer applicants and beneficiaries of international protection arriving by sea to reception facilities within the framework of the humanitarian reception program. In September 2021, the Minister of Inclusion, Social Security and Migration, José Luis Escrivá, further announced the intention of limiting access to the humanitarian reception program in situations where there are not enough places by prioritizing people who, based on new requirements, were considered ‘truly vulnerable’ (Sánchez, 2021). In an instruction letter sent to CSOs the Ministry sought to establish the following order of priority: first, people in a situation of vulnerability, that is ‘single women, women with children, sick people, people with disabilities, and other vulnerabilities detected in the screening carried out’, second, asylum seekers, and third, nationals of countries with which there is no repatriation agreement.

The reasons for defining these groups as ‘truly vulnerable’ is unclear. The prioritisation plan was criticised by CSOs for being designed to mainly exclude single, healthy men from Morocco and Algeria by defining them as ‘not vulnerable’ without an individual assessment. These were the two most numerous nationalities among sea arrivals, and those who could more easily be deported to their countries of origin due to bi-national agreements. Although, the instruction was quickly put on hold after criticism from regional authorities and CSOs, the Minister maintained the need for a system of prioritisation. Studies of Spanish reception policies (Boza Martínez, and Pérez Medina, 2019), as well as actors interviewed in Cádiz for this study, also criticised an already established practice of discriminating migrants on the crude 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 individual assessment of potential vulnerabilities.

5. Overlapping and contested notions on the ground

As outlined so far, the concept of vulnerability remains ambiguous despite attempts to define and prioritise forms of vulnerability in international and national policies. Different actors in Cádiz were also not necessarily sure or clear what was meant by it. They would for example stress that ‘vulnerability is a very broad concept’. There was furthermore a consensus across differently positioned actors that irregular migration across the Strait of Gibraltar in fragile boats - or ‘pateras’ as they have become known as in Spanish - constituted in itself a source of vulnerability. As Luis, a government 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.*

Although, there was to some extent a shared categorisation of irregular migrants travelling by sea as vulnerable, the different actors interviewed would diverge on the reason why this was a source of vulnerability. Whereas government actors and some CSOs would highlight how the context of irregular migration and migrants’ lack of legal status exposed them to exploitation and abuse by smugglers and traffickers, more critical CSOs would foreground

how migrants were rendered vulnerable by border control measures implemented and the refusal of states to afford migrants their human rights. This is significant as it is not only the recognition of vulnerability, but also what is recognised as the source of vulnerability that shapes responses. The recognition of irregularised travel by sea as a source of vulnerability were, for example, used by state actors to justify security measures such as the extensive surveillance of the coast, which other actors again highlighted as a source of vulnerability.

CSO actors interviewed also foregrounded vulnerabilities as produced and/or exacerbated by inadequacies in the reception system that led to a continuing production of ‘protection gaps’. Actors were here critical of what they saw as a narrow and rigid approach to vulnerability found in Spanish law and policies. Paula, a CSO volunteer providing legal guidance, explained it in the following way:

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.

Although Paula acknowledged the potential vulnerability of categories highlighted in Spanish reception policies (e.g., women, victim of trafficking), she foregrounded situational characteristics such as unfamiliarity with a new context and lack of networks, factors not recognised in the legal framework. Cádiz, as primarily a point of transit for migrants, meant that those who had networks and resources would continue their journey to other areas of Spain and EU fairly quickly.

Similar understandings of vulnerability as Paula’s were also expressed by service providers working within the two reception programs. They tended to favour a more flexible discretionary-based approach to vulnerability than the category-based approach found in Spanish law and policy. As Camila, who worked at a CSO-run centre for asylum seekers explained:

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 recognised 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.

Camila’s and Paula’s situational understanding of vulnerability that do not rest on predefined categories opened a space for recognising that those usually not considered as vulnerable, that is young single men, could be rendered ‘vulnerable’ by social circumstances and context. Taking gender into account, though, generally meant ‘helping women’. For example, although the categories of single-parent families with minors, victims of human

trafficking and sexual and gender-based violence were framed in a gender-neutral way in the law, they tended to be associated with women by actors in the field. Although gendered assumptions of women as ‘particularly vulnerable’ was widespread, it was not always clear if all women, or just some (and if so which) were seen as ‘particularly vulnerable’ and whether women were seen as vulnerable due to inherent characteristics, circumstances, or structural factors. Often actors combined these factors, as seen in this quote by Sofia, a CSO service provider who worked within the framework of the humanitarian reception program:

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.

Camila was a rare voice in this regard, questioning the gendered assumption, although implicit, that everyone within the category of women was inherently or equally ‘vulnerable’. As she explained: *‘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.*

The quotes illustrate that ‘vulnerability’ remains an ambiguous and contested concept among actors in the field. It also shows that while the academic literature has made key analytical distinctions between conceptions of vulnerability that see it as a product of either inherent characteristics, situational factors or structural characteristics and dynamics (Gilodi et al 2022), actors draw on and combine these understandings in sometimes contradictory, sometimes complementary ways.

6. Vulnerability in practice

CSO actors in Cádiz remained largely critical towards the way the notion was operationalised by the Spanish government, that is as a tool of prioritisation within a system marked by scarce resources. Rather than provide customised support for certain groups or individuals, vulnerability served to exclude ever larger groups from the reception systems. In the following I will address two central aspects of the socio-political context that shaped the way in which the notion was deployed, that is the securitisation of the border and the outsourcing of services to CSOs.

6.1 Uneasy alliance of care and control

The reception of migrants arriving by sea to Cádiz closely combines practices of assistance and surveillance. Whereas sea rescue is generally carried out by Salvamento Marítimo (SASEMAR), Spain’s public and civil sea rescue service, it is Guardia Civil, Spain’s military police that is responsible for coordinating both surveillance and rescue operations. In Spain, all migrants arriving by sea that are detected are further placed in police facilities for up to 72 hours while the Spanish National Police and the European Border and Coast Guard Agency (FRONTEX) identify and register them (in EURODAC). In Cádiz, they are held at a

specialised Centre for the Temporary Assistance of Foreigners (CATE) established in 2018 and located in the municipality of San Roque, close to the city of Algeciras. Vulnerability assessment is initially carried out by the EIRE team of the Spanish Red Cross as part of their triage on arrival and during the 72-hours migrants can be held in police custody. Their report is used to allocate reception places based on the different profiles of the recently arrived migrants. Several other actors can also be present at disembarkment and in the CATE, such as lawyers from Cádiz Bar Association that provide legal assistance, and organisations such as Save the Children, CEAR (The Spanish Commission for Refugees) and the UNHCR that monitor activities and provide information on international protection.

Previous research on humanitarian practices in maritime border areas has argued that there is not necessarily any contradiction between the securitisation and humanitarian discourses and practices at the border (Pallister-Wilkins, 2017). However, this ‘uneasy alliance’ could create tensions in the day-to-day collaboration between actors with different objectives. CSO actors in Cádiz pointed for example to the ways in which a lack of shared framework and coordination created a fragmented approach in which there was no comprehensive engagement with the vulnerabilities faced by those arriving by sea. Assessing vulnerability was a peripheral aspect of many of the actors’ main duties, and the interviewees highlighted a lack of competence and appropriate facilities as key obstacles for detecting vulnerabilities at the initial phase of the reception. Moreover, the framework of police custody for all recently arrived complicated the identification and assessment of vulnerabilities, as it created time pressure for carrying out the different tasks. As Inés, a CSO actor present in the CATE explained:

The reality is that we have the National Police always rushing us, because they have 72 hours to complete the expulsion order, which is what they normally issue. The 72 hours start counting from when the person touches the ground. (...) So, the Police are always in a hurry and do not let us do our job well. But we try. (...) We have the fight of “not you first”, “me after”, “let me ask you a question”, “you have to come here first”. That’s a continuous fight.

The overall result of the different obstacles was a focus on practical needs which can be easily and quickly identified through short interactions.

The dilemma posed by the temporal frame of police custody has been highlighted in other studies, particularly in relation to the provision of healthcare and identification of vulnerabilities (Granero-Molina, 2021). The actors interviewed for this study also stressed the challenges the 72-hour deadline posed for legal aid. During police custody, migrants have the right to legal assistance from a lawyer paid for with government funds. The Cádiz Bar Association organises legal assistance through a rotation scheme. While some lawyers provided individual council in person in the CATE, others did this in group or by telephone, which limited what could be addressed in the sessions.

6.2 Commodity in a reception market

After the initial securitised phase, the reception of migrants became characterised by what López-Sala and Godenau (2019) have called a ‘reception market’. The Spanish reception system is highly centralised in the sense that it is the state that allocates places, and thus define the criteria for inclusion in the two reception programs. The state also defines its duration, which is demarcated by strict time limits. Penelope, a CSO service provider problematised for example how their work was affected by the government’s changing and narrowing vulnerability criteria for extending the stay in the humanitarian reception program:

They can request extensions based on certain vulnerability criteria. Health is one such vulnerability factor. What happens? These criteria change. [...] 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.

CSOs are mainly drawn into migration governance as sub-contractors, and as such as competitors for public funding. CSO actors interviewed in this study, raised similar concerns to those raised in López-Sala and Godenau’s research regarding how funding and sub-contracting relations with public authorities could influence CSO’s agendas (such as categories of migrants receiving attention and assistance), their internal structure (e.g. more professionalisation and bureaucratisation), and their willingness to oppose state policies. As Sara, who worked for a CSO focusing on advocacy and legal assistance, noted:

The organisations that work with programs of this type, such as [name of CSO] 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.

Sara here points to how CSO running reception programs have little room to manoeuvre in a rigid top-down system. These types of concerns were not only raised by those associated with CSOs not receiving government funding for reception programs, but also came from those working in CSOs that received such subsidies. As Gabriela explained: ‘*We must also bear in mind that those of us who have decided to work in this sphere have this drawback. We have decided to work with what we are not satisfied with. (...) From our perspective it generates a continuous questioning, also of ourselves.*’ Still, the system did cause certain friction between CSOs. For example, while CSOs in the field collaborated both formally and informally, the system of sub-contracting and the competition for scarce public resources that it involves, could create obstacles for collaboration. As Sofia, who worked in a CSO running a humanitarian reception program noted: ‘*Many times the unity is missing, and what we do is duplicate services because each one wants to have their territory and their power*’.

Penelope, Sara, Gabriela and Sofia all call attention to the political, economic and institutional structures within which the CSOs operate and the constraints and pressure this creates for them in their work. Central aspects of the Spanish reception system in this regard, I suggest, are the competitive structure created by the funding system, as well as ‘the protection gaps’ the rigidity of the system and the lack of resources create (e.g., strict time limits, overcrowding and lack of sufficient places). CSOs attempt to fill these ‘gaps’ but must compete for EU and public funds in an environment inhabited by numerous organisations. In this marketised setting, vulnerability becomes a commodity (Dadusc and Mudu 2020, Bird and Schmid, 2021).

The malleability of the concept, though, means that ‘vulnerability’ can be mobilised by various actors for different agendas, that is to both justify and contest exclusionary practices towards certain migrants. As vulnerability signals an ethical duty for taking action (Brown 2017), invoking the term can legitimate expanding assistance to for example groups or individuals who lack legal status. However, as noted by several scholars, who is recognisable as vulnerable tend to depend on prevailing gendered, classed and racialised social norms. This means, according to Mesarič and Vacchelli (2021), that essentialised notion of vulnerability can be more easily mobilised in accessing support and resources.

In Cádiz, CSOs mainly directed their attention at two ‘protection gaps’, migrant women ‘in a vulnerable situation’ and so-called ‘ex-tutelados’, that is unaccompanied youths that find themselves in an irregularised situation after turning 18. Here, the CSOs strategically invoked essentialist understandings of vulnerability related to (female) gender and age to ensure these groups incorporation into the support network as well as sustaining their own organisational existence. This strategy was made possible in large part by the support of local and regional government, in addition to EU funding schemes. For example, the Andalusian government’s annual funding program for CSOs working with migrants prioritised funding initiatives particularly for these two groups.

The attention to ‘ex-tutelados’ or ‘ex-custodial youth’ was largely a result of grassroots mobilisation, which in this way succeeded in expanding support for a group of young men usually labelled as irregular/economic migrants. By focusing on ex-tutelados, rather than young men in general, the campaign benefitted from the recognition of vulnerability already afforded to unaccompanied migrant minors. However, the campaign also gained sympathy and support by drawing attention to how the system itself vulnerabilised the youths (e.g. by not adequately addressing their legal situation while under care). Furthermore, ‘ex-tutelados’, were not only framed as vulnerable, but also as a potential labour resource. This proved effective in terms of opening up pathways to legal status, and not only social assistance.

Several scholars have highlighted how Spanish migration governance has traditionally been informed by labour demands for formal and informal labour, and how this co-exist with the securitisation focus on the maritime border (Moreno Amador, 2021). For example, the distinction between irregular migrants and asylum seekers that characterises the reception policies and practices at the maritime border, importantly does not exclude migrants in an irregularised situation from access to certain basic social rights such as health care or to register in a municipality. The Spanish system also offers pathways for migrants to regularise their status. While the ‘arraigo’ 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 strong emphasis on employability was problematised by Sofia, a CSO service provider, 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.* However, for the ‘ex-tutelados’ in Spain, their perceived combination of vulnerability and employability opened up new pathways to legal status. For example, at the beginning of the COVID-19 pandemic Spain introduced temporary agriculture work permits to former unaccompanied minors between 18 and 21 years old. In October 2021, the government further announced a reform to the Alien Act that would relax the requirements required for unaccompanied minors and ‘ex-tutelados’ to get work and residence permits.

7. Conclusion

The concept of vulnerability is often poorly understood despite its increased centrality in migration and refugee governance. Much scholarly attention has therefore been given to the ambiguities of the concept. The inconsistent use in migration and asylum law, for example, has led to calls for better and more concise definitions (Purkey 2022). However, as noted by Leboeuf (2022), it remains doubtful that the challenges related to ‘vulnerability’ can be tackled through legislative modifications. Attempts at ‘fixing’ the vulnerability label by creating new taxonomies and categories of vulnerability, or by twisting the terminology by using terms such as ‘specific needs’ or ‘in a situation of vulnerability’ has not necessarily led to substantial changes (ECRE 2017, Sözer 2019). For example, the term ‘in a situation of vulnerability’, which is favoured in the Spanish legislation, was in many ways a response to the criticism of the (gender) essentialism of naming certain categories (such as women) as inherently vulnerable. As this criticism resonated in academic and policy circles, the term ‘situational vulnerability’, signalled a shift from this earlier essentialism to acknowledging these groups’ socially induced vulnerabilities. However, as argued by Sözer (2019), the use of the same categories only with different grounds still has biological essentialism underneath. One effect of this shift thus seems to be to fragment and narrow the scope of the vulnerability label. Now it is not any women who are vulnerable, but pregnant women, single-parent women and gender-based violence-victim women.

This article examines field level governance of vulnerability, not to advance clearer definitions, but to advance understandings of what the concept does for various stakeholders on the ground. From this view, the problem of the vulnerability concept is not necessarily its vagueness. I make two key observations from interrogating the role the concept of vulnerability has come to play in the reception of people on the move at Spain and EU’s southern maritime border. First, perceptions and operationalisation of the concept were importantly shaped by the political, economic, and institutional structures within which local actors operate. In Cádiz this entailed a close combination of assistance and surveillance, but also the emergence of a ‘reception market’. The two reception programs were notoriously under-resourced, creating a competitive environment for CSOs as well as ‘protection gaps’ that needed to be filled. CSO’s engagement with vulnerability thus does not only represent a ‘push-back’ of restrictive policies, but also a way to adapt and survive in a marketised regime.

Second, vulnerability is a powerful albeit double-edged sword. Vulnerability works as a power-laden way of framing social issues and to signal an ethical duty for action to be taken (Brown 2017). This, combined with the concept's malleability, means that it can easily be seized by various actors and groups to support at times opposing claims. In Cádiz, the same ambiguities and inconsistencies found in international and national policies were present, but there were also other conceptualisations circulating. Particularly more structural understandings of vulnerability were drawn upon to criticise and oppose government policies. In some cases, such framing succeeded in expanding the protection space beyond the categories usually defined as vulnerable (e.g., the case of the 'ex-tutelados'). Yet, the pragmatic turn to vulnerability risks further narrowing entitlements in favour of targeted interventions and detracts attention from the state's inability to provide for all due to the insufficient assignment of resources. As noted by Gilson (2016), the dichotomous character of the notion, means generally that the deployment of vulnerability to the advantage of some requires disadvantaging others.

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