



# Protect

## The Right to International Protection

Compatible Compacts? The 'social life' of  
vulnerability, migration governance and  
protection at the Zimbabwe-South Africa border



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# **Compatible Compacts? The ‘social life’ of vulnerability, migration governance and protection at the Zimbabwe-South Africa border**

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## **1. Introduction**

Do the Global Compacts’ engagement with questions of vulnerability match with the realities of African migrants living on the African continent? In this article, we engage this discussion using South Africa as a case study to examine the representation of vulnerability in the Global Compact on Migration (GCM) and Global Compact on Refugees (GCR) and how these approaches interact with the everyday experiences of irregular migrants in South Africa. We examine this relationship by looking at a humanitarian border space that has been significantly shaped and transformed by migration and humanitarian interventions in the past two decades.

From around 2007, the border town of Musina became a base for several NGOs and international non-governmental organisations (IGOs) that began to slowly move there to establish their presence by opening local offices and building capacity in response to the crisis in Zimbabwe that left many with little choice than leave in search of livelihoods and protection. This context is well presented and documented by several scholars (Rutherford, 2008; Bourne, 2011; Compagnon, 2011; see Bolt, 2012, 2016). Migrants who came to or through Musina had access to a range of service providers, including local and international NGOs, faith-based organisations, legal service providers, local civil society organisations, humanitarian organisations, health care providers, and governmental and inter-governmental organisations (Elphick and Amit, 2012, p. 8). The programmes of these organisations were mostly framed along the lines of addressing the vulnerabilities of migrants, but other categories of vulnerability such as unaccompanied minors (pregnant unaccompanied minors, disabled or intellectually disabled unaccompanied minors) and survivors of sexual and gender-based violence were also incorporated (Elphick and Amit, 2012). The government did not assist these migrants so these non-state and international organisations began to provide humanitarian services, that shifted to minimal over time.

In recognition of the increased numbers of cross-border migrants arriving in Musina, the Department of Home Affairs (DHA) opened a Refugee Reception Office (RRO) in 2008. Zimbabwean displacement has resulted in many migrants remaining in Musina for extended periods of time whilst waiting for asylum documentation; particularly as the town was – initially – ill-equipped to respond to this increasing migrant population (Polokwane Observer, 2016). Recent years have seen increasing numbers of non-governmental (NGO) and inter-

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governmental organisations (IGOs) opening local offices; the International Organization for Migration (IOM) opened an office in 2007 and the United Nations High Commissioner for Refugees (UNHCR) established an office in 2008 (Elphick and Amit 2012). Since 2007, responses to understand and address the legal, humanitarian, social and medical needs of migrants in Musina have developed. These responses have evolved to include coordination and collaboration between governmental and non-governmental actors, including the development of bilateral responses between South Africa and Zimbabwe.

Our analysis is limited to the programming of two local NGOs: one providing migrants with legal assistance and the other with social assistance; both doing so in their capacity as UHNCR implementing partners, which has become more necessary as UNHCR has since closed its field office in December 2019. The central argument of this paper is that the interventions of these organisations reveal a well-mannered yet problematic humanitarian response that highlights the importance of making very clear the distinctions between those who require protection and those who do not, even in times wherein migrants have other protection needs that fall outside these boundaries or intersect with those of others. These boundaries, this paper argues, are retained in the stable definitions of migrant in/vulnerability that have now been strengthened and legitimised by the increased emphasis on the compacts as two separate frameworks: one, the GCM for managing migration and the other, the GCR, that determines a set of stable norms for international refugee protection. These mandates are also connected to other tidy, established identities of vulnerability that have to do with gender, health, legal standing, and persecution.

In the South African context, which is marked by conflicting and overlapping experiences for persons on the move, and mixed migration flows, this paper reveals that these ideas of vulnerability are unstable as a way of governing migration because they can also reproduce and intensify social divisions, amongst migrants as well as in the communities they live in. This paper demonstrates that this tension may lead to inconsistencies and unethical practices in international protection and migration governance for irregular migrants, as well as failures to respond to what the paper refers to as ‘the ‘social life’ of vulnerability’ we find to be a key characteristic of this border town. This is a concept we use to capture how responses to the disconnect between single points of rights violations, such as lack of documentation, can lead to conditions that permeate society to the extent that it puts migrants in a position of making decisions that can create more forms of vulnerability for themselves or others living in the same space, regardless of their nationality.<sup>2</sup>

In this context, one form of vulnerability is not removed from other, and more vulnerabilities emerge from the one form to the extent that suffering and living precariously in conditions of uncertainty appear to be a natural characteristic of border life. The social life of vulnerability is a concept that we suggest can expose the dangers of emphasising regular legal status in determining protection in contexts where the majority of those on the move cannot access documentation for different reasons. In these spaces, issues of migration have become so banal because of the kinship and conviviality that is disturbed by the border, crudely known as ‘the devil’s fence’ (*South Africa’s fence of death*, 2016), so much so that

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<sup>2</sup> We are indebted to a community activist in Musina who brought this understanding to our attention during fieldwork.

vulnerability takes a life of its own in the community because people are trying to exist in a way that challenges this historical anomaly. This banality is not too far from the ways in which this social life serves as a mobilising force for humanitarian activities because it keeps present the same representation of suffering that gave rise to the establishment of humanitarian government in the border in the very first place.

To develop the core argument, this paper begins by laying out its methodology, followed by an articulation of the ‘social life’ of vulnerability as a concept that captures the indeterminacy and intersections of different kinds of vulnerability. This section reveals how focusing on specific kinds of vulnerability assumes invulnerability on the part of ‘others’ who reside in the intermediate space of the migrant/refugee binary categorisation, in ways that can present further vulnerability to everyone else. This paper then locates this discussion in the GCM and GCR’s approach to the issue of the vulnerability and explores the limitations by using a case study of the programming of two local NGOs: one providing migrants with legal assistance and the other with social assistance; both doing so in their capacity as UHNCR implementing partners. This helps the paper to illustrate how this all plays out on the ground in South Africa. Final conclusions are then offered.

## **2. Methodology**

This article is based upon research we did as part of a project titled ‘PROTECT: The Right to International Protection. A Pendulum between Globalization and Nativization?’ Because of the Covid-19 pandemic, we begin our research by conducting remote fieldwork which took place virtually/telephonically in 2021 and consisted of an initial identification and mapping of relevant organizations based on website and document analysis, and preliminary interviews with key informants. Based on the initial mapping, we were able to identify two key actors for more in-depth study: one organization providing basic care services, and one focusing on legal assistance. We conducted remote interviews with organization representatives to gain insight into the role of these actors in identifying and assisting non-nationals who they considered to be vulnerable or have special needs. We were also interested in how they interact with other actors/ organizations regarding this group, and what understandings of vulnerability – including negotiations on this notion - characterizes the assistance provided, and collaborations with other actors. In 2022 when there were less restrictive Covid-19 regulations, we conducted in person fieldwork. This took the form of participant observation and interviews with 10 migrants, 5 serviced by the legal NGO and the other 5 by the social assistance NGO.

We complemented this process with consultative engagements. We convened online Expert Forums on the ongoing influence of the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM), as well as the current state of refugee protection governance in south(ern) Africa. This consultative process was also complemented by participation in a community workshop in Musina aimed at upskilling and training community members on statelessness. This article is also based upon desk-based review and discourse analysis of the GCR and GCM.

### **3. A case for using the social life of vulnerability as a concept to capture migrant experiences in South Africa**

We argue that the ‘social life’ of vulnerability as a concept captures the indeterminacy and intersections of different kinds of vulnerability and reveals how focusing on specific kinds of vulnerability assumes invulnerability on the part of ‘others’ who reside in the intermediate space of the migrant/refugee binary categorisation, in ways that can present further vulnerability to everyone else. For example, undocumented migrant women suffer uneven power relations in spousal relationships they develop with South African men because they have very little bargaining power. This puts them in a vulnerable position to abuse and separation that often leaves them behind with children who are undocumented. Forced to resign to staying in hazardous environments in the border informal settlements ultimately puts their children in a position where they cannot be admitted into schools or write exams for lack of requisite documents, often falling victim to teenage pregnancy or drug abuse that renders them a danger to the broader society. This theoretical exercise is meant to illustrate the limitations of dichotomous and linear portrayals and framings of vulnerability, as this paper argues is the case in the GCM and GCR, which is a key focus of this paper.

Some vulnerability literature suggests that rigid social hierarchies and fixed identities rooted in legal forms are the results of the frequently gendered vulnerable/invulnerable binary (Cole, 2016). There is, unsurprisingly, a dichotomy between ‘migrants’ and ‘refugees’ settled in public and policy discourse and international legal norms such as the GCM and GCR; not to mention a bifurcated perception of the experiences of men and women. This distinction is viable for targeted humanitarian interventions, although this does not mean that the work it does should be ignored. This status quo can sometimes mean that migrants who travel erratically and do not fit the strict criteria of the 1951 Refugee Convention or the rules governing labour migration have little legal rights (Pijnenburg and Rijken, 2021). The only remaining alternative for them is frequently irregular migration, as they do not fall into the category of officially recognised ‘deserving refugees’ or into the exclusive group of ‘desirable’ or ‘deserving’ migrants (those who serve an economic interest) (Pijnenburg and Rijken, 2021, p. 277).

Political camps in the migration world have thus clearly tried to target those identified as being susceptible by creating these two strict regimes. Responses to ‘displaced populations’ largely refer to a kind of vulnerability that denotes ‘a range of negative conditions, disabling qualities and diminished capacities ‘including underdevelopment, abject poverty, conspiracy, violation, injury, harm, weakness, susceptibility, fragility, deficiency, dependency and helplessness’ (Cole, 2016, p. 264). This framing is related to the portrayals of the refugee as a figure of ‘bare life’ in forced migration literature (Bauman, 1990, 2002, 2013). These ‘wasted lives’ give vulnerability its figure as ‘a shortcoming, an impending failure’ (Cole, 2016, p. 264). This means that while the condition of refugee vulnerability presents protections, it is also conceived ‘as a condition best avoided’, which also turns it into a problem or a ‘burden’ that must be minimised, such that the best way to contain its fecundity is ‘through various forms of securitization’ (Cole, 2016, p. 264) .

Working with Cole (2016), we clearly see the paradoxes of responding to refugee vulnerability because it can slip to a place of trying to protect the host community from succumbing to its own preconceived vulnerabilities. In this way, vulnerability takes on a life

of its own, to defend and award limited resources. In an attempt to protect themselves from impending vulnerabilities, host societies can create vulnerability for others by marking them (criminals, racial minorities for e.g.) as dangerous to it; an act Cole interprets as ‘biopolitical securitization’. This article shows that this is the political consequence that the framing of the well intentioned GCM has for groups outside the connoted norm of what it has defined as political ‘order’ in the international system.

This is evident, as we contend, in the migration governance regime of South Africa. It appears to rationalise policies that are difficult to navigate amidst a slow bureaucratic system that is not helped by strict visa regulations. Acting based on securitisation and national interest, these systems thrive on the presumptive basis that poor black, African migrants moving to South Africa are a threat; burdening the social protection system and social services reserved to address the concerns and interests of the black citizenry regarding poor service delivery. In a context where corruption runs amok, measures like GEAR (1998), Accelerated Shared Initiative Growth for South Africa (2006), the New Growth Path (2010), and, most recently, the Economic Redistribution and Recovery Plan (2019) have not reduced poverty and unemployment to the extent that they should have (Vanyoro and Musyoka, Unpublished). Immigration has featured prominently in the election manifestos of opposition parties like the Democratic Alliance (DA) and ActionSA. Guided by this rationality, the South African state has been aggressive in its response to protect its own interests by ensuring that visa application processes are inaccessible to the poor. Would-be migrants applying for long-term visas are thus required to show guarantees that they will be self-sufficient, be it in the form of medical aid, job offers or contracts, security deposits and proof of sufficient funds. These arrangements are inherently elitist hence exclusionary to poor migrants. In this gatekeeping process, these groups are marked by proxy as more likely to be economically vulnerable because of their class through a process of suspicion meant to uncover their hidden identities and agendas. The state’s securitised response then renders visas inaccessible to these migrants.

This reproduces a further position of vulnerability that emerges from being in the country but without legal status. The migrants move below the radar undetected and evading spot checks, arrest and deportation. In certain instances, this may entail hiding away from social protections or services meant to improve their immediate material circumstances that would not necessarily require documentation to access, often in fear of arrest, deportation or further victimisation. Victims and potential victims of xenophobic violence, may, for example, rely on social networks and local protections, or, if none exist in the nearby vicinity, ‘suffer’ in silence.

Atak et al. (2018) would argue that in this instance, we could say that migrants are being rendered vulnerable by state authorities. However, while useful, this understanding requires further engagement with the ways in which this vulnerability takes a life of its own by creating a condition of illegality that affects other strands of wellbeing such as livelihoods, to the extent that those that occupy liminal border spaces in poor, low income households (like the shacks in Campbell in Musina) live with it in their daily lives and distribute it in shared border spaces. In such spaces, residences already have short supply of electricity and running water due to the withdrawal of mining capital (Chiguvare, 2022). It is here that you will find

sewerage flowing in the midst of infants, who could be undocumented because they are born to undocumented mothers who struggle to register their births in South Africa as a result.

In this kind of context, the lines between vulnerability and precariousness may also become blurred. The term ‘precariousness’ in the literature is used to indicate that a large portion of the migrants’ ‘vulnerability’ is policy-driven, rather than related to their fundamental traits (Atak *et al.*, 2018, p. 4). It suggests that it is critical to distinguish between vulnerability and precariousness since doing so enables for discussion of precariousness’ manufactured nature and the state’s influence in it (Atak *et al.*, 2018, p. 4). This conception also emerges because some scholars stress vulnerability as ‘potentially’ or ‘constitutive’. According to Cole, however, there is a risk of blurring the (temporal) line between a general susceptibility to damage and the actual harm that particular people and groups are presently experiencing. We argue that there is also a point at which people’s present experiences of vulnerability become a fundamental trait that is most often characteristic of the liminality that comes with being put in a position to reside in limbo. It comes with it a certain way of life that relies on the vulnerability that the individual would like to be addressed. This scenario invokes the sheer spectrum of vulnerability, such that it cannot be captured by a single ideal position.

#### **4. The Global Compacts and their treatment of vulnerability**

How do the Global Compacts address the question of vulnerability? This question arises from a context where global civil society organisations (CSOs) involved in the policy process that gave rise to the compacts expressed optimism about their potential significance in national migration governance. With the Dhaka Global Forum on Migration and Development (GFMD) focused on making a case for a compact for migration, the one that followed it in Berlin (2017) was preoccupied with a focus on designing this social contract on ‘safe, orderly and regular migration’. The outcome was a comprehensive but non-binding global agreement on a shared pathway for the management of migration called the Global Compact for Safe, Orderly, and Regular Migration (GCM). After states sat side by side during the intergovernmental negotiations phase that led to the New York Declaration to negotiate and come to an agreement on specific wording on international migration, the GCM was ultimately endorsed by the United Nations (UN) General Assembly on December 19, 2018 (Schierup *et al.*, 2019). Also following the New York Declaration and two years of comprehensive consultations with Member States, international organisations, refugees, civil society, the private sector, and experts under the direction of United Nations High Commissioner for Refugees (UNHCR), the UN General Assembly also approved the Global Compact on Refugees (GCR) on December 17, 2018. The GCR recognises that without international cooperation, a durable solution to refugee crises cannot be accomplished, so it provides a framework for more equal and predictable responsibility-sharing (United Nations, 2018).

On both fronts, it still remains to be seen whether the compacts would be engaged on by local and national actors, particularly policy makers, with the seriousness the authors feel they deserve as expressed in the preparation of the GCM’s ultimate adoption in Marrakech when civil society was tasked with the role of taking the GCM to local and national level. This air of hope is countered by some concern about the fitness of these documents for local

contexts; that is, how compatible the compacts would be for different geographic and political spaces. While the emergence of GCR and GCM has brought to light the crucial role that global governance may play in national-level international protection and migration governance, respectively, it is this paper's argument that this has also strengthened and given legitimacy to the oppositions between 'migrant' and 'refugee' in the 'vulnerability chain'. This linear and dichotomous approach does not engage adequately the complex social life of vulnerability described above.

The GCM represents a 'remarkable advancement' in international collaboration since it is the first agreement encompassing a broad range of migration issues to be negotiated at the intergovernmental level on a global scale. The discussions that preceded these negotiations included several topic consultations and a stock-taking exercise. The GCM is clear from the outset about the fact that migrants and refugees are two different populations that are governed by two different legal systems. It clearly recognises that the unique international protection that is outlined in international refugee law is only available to refugees so it uses the term 'migrants'. The extent to which migrants and refugees are distinct groups governed by separate legal frameworks is, however, questionable as argued largely previously.

The GCR is a response to 'an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees' (United Nations, 2018, p. 1). With the help of other pertinent stakeholders and all United Nations Member States, it aims to provide a foundation for predictable and equitable burden and responsibility sharing. The very obvious connotation that is at the core of the GCR's guiding principle is the notion of 'burden sharing', which rightly captures the stated observation that without international cooperation, it will be impossible to adequately address refugee issues because granting asylum could cost some nations excessively (United Nations, 2018). The GCM also sets out, among others, 'shared responsibilities' and unity of purpose regarding migration, making it work for all.

However, it goes without saying that this terminology, particularly in GCR already implies that these host states and their economies are vulnerable to refugees, perhaps unintentionally. This runs the risk of ipso facto turning the refugees' vulnerability against them while at the same time trying to strengthen 'solidarity with refugees and affected host countries' (United Nations, 2018, p. 2). It is also more likely that this framing will influence how the local community view refugees, especially if they are not willing to extend the benevolent act of 'a generous approach to hosting refugees'.

The GCR 'is entirely non-political in nature, including in its implementation, and is in line with the purposes and principles of the Charter of the United Nations' (United Nations, 2018, p. 2). This political aloofness is also a questionable approach to a document that is trying to address issues related to vulnerabilities that are political in nature, particularly the precariousness that immigration policies pronounce. In the context of South Africa and Covid-19, state-wide lockdowns and the resulting loss of jobs and income, has seen the accountability of the state towards migrants and refugees become even more limited (Mukumbang, Ambe and Adebiyi, 2020). As a result, civil society has not seen much in the way of real benefits from the GCM or GCR filter down to the ground level, in terms of ensuring an inclusive response by the government to Covid-19. Instead, civil society has had to respond to the needs of persons of concern in the country, in many cases, replacing

functions of the state to support and protect persons in vulnerable situations. The concept of nation-building also emphasises the necessity for majority South Africans to agree on broad national goals, values, and recognise their common citizenship of the same country. Because the government is politically split, with representatives from various constituencies and ethnic groupings, its political will, already limited as is, is similarly fragmented (Luiz, 2002). This helps to explain why experts like Landau and Amit (2014) have found a gap between law and practise in domestic refugee law. The GCR seems to want to separate questions of vulnerability from politics yet, as Butler (2012) contends, in addressing vulnerability, we must presume that if the political infrastructure itself is destroyed, so too are the assemblies that rely on it. In short, this shows that politics is at the heart of any kind of discrimination.

The GCR also calls for dedicated efforts to address root causes. According to the GCR, climate change, environmental degradation, and natural disasters increasingly interact with the causes of refugee flows even though they are not causes in themselves. Initially and foremost, it is up to the nations where refugee flows first began to address the underlying causes. It also necessitates early measures to address their drivers and triggers, as well as increased coordination among political, humanitarian, development, and peace players, to prevent and resolve massive refugee situations, which are concerns of serious concern to the whole international community. This recognition of structural vulnerability is laudable. It is framed in the language of respecting peace, human right and resolving global conflict.

However, this does not seem to put in place measures to redress the historical imbalances that continue to structure human mobility, which overemphasises the situatedness of vulnerability over structural forces. For the GCM that is rooted in the 2030 Agenda for Sustainable Development, this is framed in the language of development. This is most succinct on GCM Objective 2 which aims to minimize the adverse drivers and structural factors that compel people to leave their country of origin. Here, GCM emphasises its commitment to fostering favourable political, economic, social, and environmental conditions for people to live peacefully, productively, and sustainably in their own countries and to realise their personal aspirations, while preventing desperation and deteriorating environments from compelling them to migrate illegally in search of a better life. The GCM proposes to tackle this by investing in sustainable development at local and national levels. None of these mechanisms are redeemable on the basis of historical injustices or reparations; a growing call in the decolonising migration literature.

Vulnerability in both compacts is also framed around specific groups. This the GCR argues requires resources and targeted needs that can address specifics needs. Persons with specific needs include: children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons. In the setting of massive refugee situations, the GCR specifically recognises that women and girls may encounter specific gender-related challenges that necessitate a change in approach ‘while also taking into account the particular needs and situation of men and boys’ (United Nations, 2018, pp. 28–29). GCM is also a gender-responsive framework that makes sure that the human rights of women, men, girls, and boys are protected throughout the migration process, that their unique needs are adequately recognised and met, and that they are given

the tools necessary to act as change agents. In all these instances, there is reticence regarding the distinctions between vulnerability and precariousness, which is problematic as it is important to be aware of instances in which responses to the victimisation of women and girls, often taken as inherent, can create conditions of precariousness for men. LGBTQI+ groups are also not considered.

Legal status is another important consideration in delivering protection. To provide basic support and protection, including for those with special needs, registration and identification of refugees are essential for the persons affected as well as for States to know who has arrived. For these reasons, the GCR highlights the importance of the UNHCR, working in conjunction with States and relevant stakeholders, to ‘contribute resources and expertise to strengthen national capacity for individual registration and documentation, including for women and girls, regardless of marital status, upon request’ (United Nations, 2018, p. 22). In a clinical way, the GCM complements this narrative by emphasising that ‘We must ensure that current and potential migrants are fully informed about their rights, obligations and options for safe, orderly and regular migration, and are aware of the risks of irregular migration.’ This can be discursively read as a warning of moving illegally if the wrath of the hosts pushes migrants back into dangerous situations. This becomes a way of excluding irregular migrants and legitimising violence against them such that it reveals how ‘concern to address one category through the GCM might even eclipse concern to protect another’ (Vries and Weatherhead, 2021, p. 300). This framework of safe, orderly and regular migration for the benefit of all is framed as benchmark for solidarity and ‘unity of purpose’ ‘in a spirit of win-win cooperation’. To realise this, Objective 4 aims to ensure that all migrants have proof of legal identity and adequate documentation and Objective 5 to enhance availability and flexibility of pathways for regular migration.

In sum, it is clear from the above that there are several blind spots in the compacts regarding vulnerability because it strengthens and gives legitimacy to the oppositions between ‘migrant’ and ‘refugee’ in the ‘vulnerability chain’, as well as other binaries of men/women, legal/illegal etc. This linear and dichotomous approach does not engage adequately the complex social life of vulnerability as seen in its separation of questions of vulnerability from politics, limited awareness of instances in which responses to the victimisation of women and girls, often taken as inherent, can create conditions of precariousness for men as well as intersections of different experiences in-between the migrant/refugee binary.

## **5. Understandings of vulnerability in field level governance**

So far this paper has highlighted conceptually the framework of vulnerability, the approach of the compacts regarding vulnerability and what ‘social life’ of vulnerability is. Now we turn to a case study to see how these ideas all play out in practice. To do this we look at the interaction between the types of vulnerability described in the global compacts on migration and refugees with the experiences of irregular migrants in South Africa; particularly through the way they are articulated in the programming of local NGOs providing legal and social assistance on behalf of the UHNCR in Musina.

The N1 that Bolt (2016, p. 1) describes as South Africa's 'great spinal cord' runs from Cape Town heading north towards Zimbabwe. Driving past Johannesburg, Pretoria and several kilometres covered by the green Highveld, into Polokwane, Louis Trichardt and the dry *mopaneveld* of the Limpopo valley leads to the small border town of Musina. Musina is the northernmost city in the Limpopo province of South Africa near the Limpopo River border with Zimbabwe. The town occupies the Vhembe district, which lies on the northern border of the Limpopo province, bordering Botswana, Zimbabwe and Mozambique. It is one of the district's four local municipalities (Massyn *et al.*, 2015). The Census of 2011 shows Musina's population at 68 359, which is a significant increase from a total of 39 310 in 2001 and 42 000 in 2009 (Popihwa, 2018).

Musina is one of the busiest Southern African migration corridor towns. It is ranked number 10 on the list of top 20 migration corridors involving African countries owing to Zimbabwe-South Africa migration flows (IOM, 2017). The town is located approximately 520 kilometers from Johannesburg which is a popular destination for internal and foreign migrants alike (Mahati, 2015). Musina thus serves a dual function. Many use it as a stop off point before proceeding to Johannesburg while others find employment on farms to make a living to take money back to relatives across the border (Leong, 2009). This profile is consistent with the historical standing of the town, which was a mining town that offered employment opportunities to Africans from neighboring countries. The town also served as a transit zone for labor migrants looking for lucrative employment on the Witwatersrand (Popihwa, 2018).

Particularly owing to acute income inequalities on the Zimbabwean side of the border and a protracted political and economic crisis there, Musina is a focus for would-be Zimbabwean migrants seeking to enter 'the land of greater opportunity' (Nugent, 2012). Similar to the 'so-called trampoline towns on the Mexico-US border,' the perception of 'a good life elsewhere' makes Musina a popular transit area (Nugent, 2012). Musina is one of the South African communities with a large migrant contingent and is a first stop for Zimbabweans who cross into South Africa (Chinyakata and Raselekoane, 2016).

### **5.1 Legal status: Vulnerable 'persons of concern'**

There are tensions relating to the ways in which different actors approach the field of refugee protection in Musina. 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 financial viable international organisations.

While the kind of vulnerability the UNHCR is responding to in its operations is associated with those seeking asylum as it pertains to those defined as fleeing persecution, it does not really reflect the needs of irregular migrants in Musina who tend to be largely undocumented and occupying a space where they do not fit the Refugee definition as set out in the 1951 Convention. The intersections of different kinds of vulnerability with human mobility make it difficult for a UNHCR social assistance implementing partner to respond to the needs of the community they serve, particularly given their broader mandate as a welfare NGO.

We chose a social assistance NGO 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, Cameroon, Burundi, Somalia and Ethiopia. It is responsible for assessing cases to categorise the vulnerability of individuals 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 responds to their plight, hence they remain hidden, unknown and suffering with no assistance.

This organisation had little say in how they spent the funding from UNHCR, even though they would question the actual differences between Congolese asylum seekers and Zimbabwean migrants. For example, while they had many irregular migrants 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. For example, Julie is a 49 year old woman from Cameroon who arrived in Musina in 2013. She was married in a Catholic union before separating because her husband became Muslim. This was 2 years into university, which meant that everything stopped, and she couldn’t proceed into 3<sup>rd</sup> year. She says she left because of the fighting in the family, ‘I was not having peace, every time fighting fighting. A relative said if you stay, we are going to lose you and your children. So, I just decided if I can make things straight here’ (Julie, Musina, 14 September 2022). Julie left immediately and travelled to South Africa using truck drivers who smuggled her in the country without passport. The asylum permit which she got on arrival; she was unable to renew due to Covid. ‘I applied 2-3 times they didn’t reply so I don’t know what to do. Even that document they gave me it’s not for me how can I say you apply for Cameroon, and they give you DRC?’ ‘With the help of this Social Assistance NGO I start samosa, but with the grace of God I leave samosa I cook from home and deliver Senegal, Nigeria. For the rent I struggle a lot, I became a beggar, but this Social Assistance NGO helped me. At the end of the month I paid my rent. It wasn’t easy. But now I have a restaurant’ (Julie, Musina, 14 September 2022).

The social workers observe that ‘people who face the most challenges are the migrant population, not asylum seekers’ as ‘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, Social Assistance NGO, 2 November 2021*). In such instances, the organisation would have to write motivation letters citing their reasons for defaulting assistance to UNHCR ‘non-persons of concern’ who are largely undocumented. This was only 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:

*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. [...] 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, Social Assistance NGO, 2 November 2021).*

These layers show how vulnerability operates in such a way that only 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; albeit none of this assistance can be guaranteed. It explains why a Zimbabwean woman at the women’s shelter relied on her own ‘piece jobs’ by waiting for cars that come to the Roman Catholic Shelter for Women looking for women to do laundry for 100 Rand (at least once a week) as well as the goodwill of church patrons to be able to afford her sick child’s routine operations in Pretoria. This was Sandy, a 39 year old woman from Mwenezi, and a married mother of 3 whose husband was in Zimbabwe. She studied up to Grade 7:

*I have a child with a problem with his bones. Whenever he falls he breaks a bone. So the leg he kept falling on would always break and the hospitals in Zimbabwe would always put a plaster on it but it never stopped bending. So I decided to come here and I was able to get a transfer to Pretoria to get him treated because his leg was bent because it the bone had healed in a crooked position (Sandy, Musina, 15 September 2022).*

Sandy had managed to get shelter at the Roman Catholic Shelter for Women. Despite the Social Assistance NGO’s acknowledgement that all people on the move are vulnerable and while the organisation had a large presence, it was inaccessible to the Zimbabwean migrants residing in the transit shelters as well as those in the Campbell shacks because they were largely undocumented. For example Sandy said, ‘I just travel through the border by asking the officials to let me in because I don’t have a passport and I just want to take my child to the hospital. They also can see the situation. I just have to show them his hospital card even when I’m coming with him for a review’ (Sandy, Musina, 15 September 2022).

Those in the Campbell shacks stayed under congested and unsanitary conditions, which created other vulnerabilities related to health as well as teenage pregnancy that tended to come to affect other community members by creating a situation where children were at greater risk of becoming stateless. This was linked to their lack of documentation. For example, Chiedza (40) came in 2004 from Marange with her grandfather who was able to take her because her parents had died and life had become difficult. She came through the border without a passport and just walked through, much like Sandy. She went to Venda and was working until she got married in Musina. With time, she brought Shamiso (20) who had grown up in Musina after arriving as a child. Shamiso had fallen pregnant as a teenager after dropping out of school because she did not have the required documentation to register for her Grade 12 exams. Reflecting on this unfortunate experience albeit appearing unperturbed, Chiedza said:

*Our children can go to school but under the understanding that their papers should be sorted. And it’s not all schools that allow this. There are only two schools that allow this. This also means they must walk far to school when there are schools nearby, for example*

*this one is 2km. They must walk to town. They don't have birth certificates because my child has baby clinic card from Zimbabwe. The problem which also happened to my daughter and sister's child is that they are forced to drop out because ultimately, they can't register for their Grade 12 exams. So, she couldn't write his final exams (Chiedza, Musina, 15 September 2022).*

Similar experiences threatened the lives of undocumented children who were born to South African fathers. The only time that legal status did not really matter was when the Social Assistance NGO would also provide psychosocial support or give families with bigger numbers of children preference. These families would also undergo best interest case assessments to determine if the family is at risk or the children are subjected to child labour or exploitation. The Zimbabwean families with undocumented children I spoke residing in Campbell also had larger families but expressed no knowledge of these services. The Congolese woman I spoke to residing in the women's shelter who was documented with 4 children and also with refugee status did not receive any direct support from the Social Assistance NGO. Shalimba was from Bukavu. She was married in Durban but was now divorced. She studied up to Grade 3. She arrived in South Africa in 2009 fleeing war and applied for asylum. However, having children gave her access to shelter where her children were fed twice a day and one of her children who was 4 years old attended the shelter preschool run by one of the nuns. 'Here I am helpless because of the kids but in Durban I was a car guard. If they give me money I can go to Durban' (Shalimba, Musina, 14 September 2022). She was waiting for a travel subsidy and the Social Assistance NGO were the likely people to help when they would come in to assess the shelter residents. It was a common thread as even Julie whose son was born prematurely and was now 9 facilitated that the Catholic church give her rice and cooking oil in times of need. 'But this is only because I have child. But if you don't have child you take care of yourself,' said Julie. Hence she identified having a child as 'a special need'.

Tendai was a 32-year-old Zimbabwean mother who came to South Africa in 2012 when she was not well. Her family, including her sister Chiedza, who she stayed with, carried her through the border to get treatment and she decided not to return. She did not have papers and had no recall how she even arrived because she was severely ill. She also said:

*There's a church that helps by taking care of children. They provide uniforms and some months they can help us with food. Because we won't even have a plan. I've never been in a shop to buy uniform, I don't even know how much it costs. They help us with some things. You can see our children also wearing uniform to school (Tendai, Musina, 15 September 2022).*

Legal status also played a key role in the work done at the legal assistance organization chosen for this study. At the time of the Zimbabwe crisis in 2008, the UNHCR gave the office a project on case management, general management and queue management. The 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 office's understanding of vulnerability is also centred on legal status. The office quickly picked up

that the main reason these migrants were vulnerable was that there was no reception office in Musina to process their asylum claims, which led them to take riskier routes. Their engagements with the Department of Home Affairs saw the opening of a refugee reception office in 2009.

Doubtless, legal status was an important focus in ensuring that people were documented so they could be protected from physical harm. However, it was also a gateway to exclusion of migrants from accessing services provided by UNHCR implementing partners like the social assistance organisation reserved for documented asylum seekers. However, the organisation could not have assisted the Zimbabwean families in Campbell. Memory, for example, is a 42 year old mother who came to South Africa in 2004 because jobs were hard to find in Zimbabwe. She was recruited at Gate 4 by a white farmer from Beitbridge. He got these workers permits to work on the farm which would be renewed every 6 months. Indeed, from 2005, farmers needed to apply for corporate permits, which allowed them to recruit a fixed number of foreign workers in line with immigration law (Rutherford, 2008). When the farmer's lease with government ran out Memory came to Musina. At this juncture she resorted to using the asylum system as a means of accessing documentation:

*Asylums we have used them after the permits ran out and we were running away from police. Then we went to apply for asylum got 6 months and renewed again. But by the time we went again we were arrested as they were saying you were already supposed to have gotten your passports. Then we were deported but now we returned through the holes in the razor wire fence. But after all that time we now had our little homes as you can see so now if I get returned to Zimbabwe where am I going, nowhere. But all my belongings if I get arrested I can take my little daughter here and take her home but there is no life here all my things are here. Which means I'd have to look for new family, my father is too old and cannot take care of me. I'd have to start from the ground up and you know that you need a house, blankets and all. So all our belongings are here, this is the place we call home, when we are here we are at home. So now we couldn't go back to apply for asylum it was counterproductive cause we just get arrested. So we saw it better to stay this way and if we see the police we just run off. When we come from fetching firewood and see a police van we have to act because we think of our children who won't have anywhere to go (Memory, Musina, 15 September 2022).*

The situation presented by Memory above raised all sorts of vulnerabilities that included reducing their lives to living off waste:

*Being undocumented means that we can't find jobs. Nowhere we go, because everywhere they ask passport ID, so its better to just go fetch firewood and find someone who can buy a bundle to get a bit of money. This is how we live. If there's too much pressure there we go to the dirt, the dumping site where we look for thing that people say have expired and we carry it and come eat it here with our children because we can tell that there is no other way (Memory, Musina, 15 September 2022).*

Recognising the ethical limitations of their interventions, the Social Assistance NGO responded by working on two other projects (UNICEF and Catholic Church) that allowed to address some needs specifically related to migrants, which was a key gap in the UNHCR project. One of the beneficiaries of the UNICEF project was Tendai who said ‘UNICEF has also provided assistance with food’ (Tendai, Musina, 15 September 2022).

## 5.2 Gender

Gender was also an important consideration on the social assistance organisation’s work although it was skewed towards the understanding that women are important. In fact, the NGO seems to acknowledge their vulnerability as greater than that of men, which is compounded by age and legal status. The social worker found that ‘women are more vulnerable’ because of the circumstances they find themselves in either as primary caregivers, or having other dependants. However, this notion of vulnerability is challenged by the narratives and experiences of two male asylum seekers, one from Burundi and the other from DRC, who are both clients of the Social Assistance NGO who also act as brokers for the organisation in their own communities. Raheem for example, is a 36 year old asylum seeker from Burundi married with 3 children and educated up to Grade 12. He came to South Africa in 2018 fleeing political persecution, narrowly escaping an assassination attempt as a member of an opposition political party who refused to join the main one. When asked whether he considered himself vulnerable he responded as follows:

*Myself I can say I am in need of organisations to come and help me why? I have people who are under my shoulders. Those people are under my shoulder who I’m keeping at my place where I’m staying at the salon . I’m having almost 5 people who are sleeping on the salon. So that bread that I get on the month end I share with them. I have a very big responsibility. These are people from other countries. As well I have some Zimbabwean ladies who they come to me they want bread. Because I grew up an orphan I was helped by people so also I have to help without he’s from where or where he’s coming from or which religion. SO I need organisations to come and assist me (Raheem, Musina, 14 September 2022).*

This was similar to a Congolese asylum seeker - who lived with his wife and son in Musina - Manqoqo’s understanding. Manqonqo had been waiting for his refugee status determination for 9 years, which he only received in November 2022. In this conversation before he received status, he said:

*According to my understanding, all of us we are vulnerable even though some of the people are trying to give some of the people, but all of us, since we don’t know anything and since you are in need of anything meaning you are vulnerable. The way that I’m trying to explain to you that in my asylum obviously I’m vulnerable because I don’t feel mentally, I don’t feel like I’m well. I have a problem. And this is what I can say this is a state of vulnerability to me. Maybe in another sector I can say I’m not vulnerable but that word is still coming to me (Manqonqo, Musina, 14 September 2022).*

The conception of vulnerability skewed towards the understanding that women are much more important is also challenged in the instance of working with LGBTQI people. When it comes to their assessments, the social assistance organisation also considers 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 he had, the social worker interviewed expressed the view that these groups often chose to remain invisible rather than seek protection on that basis. They would either change their claim at Home Affairs or remain in these communities without documentation oblivious to the fact that this is grounds to claim international protection.

This is consistent with a recent report (published in April 2021) on LGBTIQ+ asylum-seekers in South Africa (Mudarikwa *et al.*, 2021). 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 LGBTIQ+ refugees and asylum-seekers claims, many officials within DHA saw them as duplicitous claims and frequently denied them based on the assumption they were fabricated. 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 LGBTIQ+ claimants.

Members of our expert forum participants’ 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). This suggests that in South Africa, the refugee regime is not catering for the needs of LGBTIQ people hence they remain invisible and precarious especially because they are not labour migrants either. This bias feeds into a broader context of abuse for queer people. Altogether, the question of gender as a key aspect of vulnerability that has assumed a certain kind of interpretation thus means that the protection of LGBTIQ people and men is more precarious.

## **6. Perception of the Compacts**

In the famous words of the Common Space Grand Rapporteur Gibril Faal, the only problem the GFMD had to reconcile now was how it was ‘over-principled but underperforming’. The GCM needed to mark move towards implementation at a local level, but the perception of the compacts on the ground suggests that their impact is very limited. Migrant interviewees and attendees for our validation workshop confirmed our findings that knowledge about the Global Compacts at this level is very limited, if non-existent. This is related to the rather limited knowledge regarding laws in general. This shows the limited efficacy of these

documents for experiences on the ground, which we argue is particularly grounded in the disparity between a context marked by conflicting and overlapping experiences for persons on the move, and mixed migration flows and ideas of vulnerability that are unstable as a way of governing migration.

In our interview with the legal advocate from the legal assistance office, he made no reference to any of the compacts and even evaded the question, almost dismissively. These ‘beautiful 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. The GCM’s insistence on safe, orderly 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. This has in turn worsened the vulnerabilities of migrants by producing more undocumented migrants who are unable to access neither labour migration permits or refugee papers.

The UNHCR’s insistence on legal status has meant that their partner responsible for implementing social assistance programmes feel ‘defeated’ when it comes down to access to other services that require people to have documentation. In our webinar for the 2<sup>nd</sup> 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, a participant from the legal assistance partner of the UNHCR observed how many migrants do not use the official border crossing when coming into or leaving South Africa. Every day, the social assistance NGO has to write a letter to the hospital or to the clinics for at least 10 undocumented people, working together with Red Cross saying ‘Please allow this person to access healthcare, they are undocumented, these are their names, these are their issues’ (*Social Worker, Social Assistance NGO, 2 November 2021*). In spite of these limitations, the social assistance NGO has used the compacts in one project and in building an office manual.

The social worker from the social assistance NGO also stated that in as much as when it comes to vulnerability the GCM says that in every step of the migration journey information needs to be given, that does not happen. These things are difficult to implement because the protection space is shrinking due to a lack of funding, and ‘people are exhausted, or they are fatigued with these migration issues or issues of migrants because the dynamics change every day’ (*Social Worker, Social Assistance NGO, 2 November 2021*). 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. All five are true for South Africa. Due to backlogs, obtaining refugee status for those seeking asylum is today all but impossible. SCRA has very few members, yet 60% of them need to be present to make decisions, and it only sits for a week or two in each region. They are under resourced and under capacitated (Amit, 2012). The country has found it difficult to contain xenophobia as it has been marked, aggressive and longstanding (Cornelissen, 2009; Choane, Shulika and Mthombeni, 2011). COVID-19 has also increased levels of xenophobia in the country because of a deteriorating economy and attendant negative perceptions that place the blame on migrants.

In March 2021, UNHCR and DHA agreed to a new agreement called the Asylum Decisions Backlog Elimination Project based on South Africa's pledge to clear the asylum backlog by 2024. In order to end delays and the backlog in asylum decisions, it is intended to launch the project to redesign the refugee management system such that it becomes 'more robust' and 'safeguarded against abuse' (UNHCR, 2021). Indeed, the high rejection rate of refugee applications, aside from the lack of careful consideration, also points to the abuse of the asylum system. Similar to the majority of European nations, South Africa has few other legal entryways outside applying for asylum which grants people the freedom to work (Ruedin, 2019). With asylum seekers waiting up to ten years for determination of their refugee status, there is room for abuse where some labour migrants could use the asylum system as a 'back door' to be in the country. This suggests that the Department of Home Affairs needs to also facilitate access to work permits for labour migrants from the region as essentially the backlog of asylum will only grow and exacerbate the problem. Both UNHCR and DHA have made substantial financial commitments to the Asylum Decisions Backlog Elimination Project.

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 Musina. 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). Instead, they view them as reinforcements of prevailing migration norms. They appear to find more efficacy in working in collaboration, as they are aware they are dealing with a cross-cutting and intersectoral issue that has far reaching implications for the wider border context. Considering the challenges presented by the compacts as a kind of reinforcement of state dichotomies between migrants and refugees that has not been helpful for coordinating responses at the local level, it means that local innovation and collaboration that has been at the heart of addressing this incompatibility play an important role.

## **7. Conclusion: Towards a protection regime that engages 'social life of vulnerability'**

Vulnerability is the compact is presented as distinctive and hence capable of being addressed by separating the regimes of migration governance from refugee protection. However, this paper has shown that the two categories are not stable or separable in the Zimbabwe South Africa border characterised by mixed migration. In these contexts, the language of the

compacts seems more likely to reinforce and even worsen social hierarchies and the vulnerability of irregular migrants by simply legitimising state securitisation.

The compacts' unclear distinctions between vulnerability and precariousness also make for a concerning situation that allows vulnerability to be removed from the role of strict borders and hostile policies. Responsibility is shifting from the state and UN agencies to the individual as someone who should know better than jump the border, or they should be prepared for the violence that follows. This explains why the uptake of the compacts has been drip, and expedient at best for local NGOs who simply would like to secure funding in a difficult operating environment. Realising the limitations of the compacts and other dichotomous arrangements, these organisations venture into partnering with organisations with more elaborate mandates that can fill the void. Working in collaboration across the Limpopo also allows them to address the needs and vulnerabilities of everyone on the move. It is also an indictment on the limits of exceptionalising vulnerability as it creates programming that is narrowed to silos while inhibiting them from addressing the ways in which vulnerability takes a social life of its own.

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