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The Right to International Protection

The Impacts of the Global Refugee Compact and the Global Migration Compact on the Governance of International Protection:

Studies of Governance and Vulnerability in Practice



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1. An overview of the Research Work¹

Fieldwork was conducted in selected migration arrival ports in Greece, Italy, Spain, France, South Africa, and Canada to explore the role of the notion of vulnerability in the field level governance of international protection. Specifically, we explored how key actors and stakeholders in the selected field sites 1) **understood and applied notions of vulnerability**, and 2) **collaborated to address and reduce vulnerabilities**.

Despite its increasing presence within the policy discourse, the practical relevance of the idea of vulnerability for the development and implementation of global migration and refugee governance regimes remains unclear. Different understandings of vulnerability might have important implications for practices in field level governance, including classifying migrant bodies to respond to administrative categories.

Our research did not start from one particular definition of vulnerability but **sought to explore how vulnerability is understood and operationalized in field level governance**. How is vulnerability understood – by both migrants and migration governance actors - on the ground? Are there conflicting/converging understandings between different actors? Are there any adverse effects related to how vulnerability is operationalized in the different contexts? Particular attention was paid to how field level governance takes 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 field level is where global, regional, national and local actors and stakeholders interact in order to implement the international protection regime. A great variety of actors and stakeholders are as such engaged in the field level governance of migration and refugee protection, including notably government agencies, local authorities, civil society organizations, host community members, and migrants. Critically, our research provided opportunities to explore *de facto* governance responses and how they do or do not reflect formal governance processes - including national legislative frameworks and the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM).

¹ **Note on terminology:** In line with conventions in ethnographic analysis, the individual reports partly use different vocabularies, emerging from the context they work in and what terminologies the actors use. There are also important overlaps, as international and EU policy language tends to produce a standardised language of international protection that is reproduced by various actors. From an ethnographic point of view, it is problematic to adopt this standardised policy language uncritically, since it is largely an articulation of migration governance seen from a dominant point of view. This is nevertheless a language that is also used in much research literature. For the sake of readability and comparability, however, we cannot avoid to some extent reproducing this dominant language.

Field sites

The field sites are all migration entry points, but their location in relation to territorial borders and migration routes vary, as do the socio-political contexts and institutional frameworks for governing migration. Four field sites are located in Europe on the so-called Mediterranean migration route: Catania, Lesvos/Thessaloniki, Cádiz and Marseille. While Catania, Lesvos and Cádiz are places of disembarkation, transit and reception for migrants crossing the Mediterranean, Marseille, although a port city, primarily experiences secondary arrivals over land from Italy and Spain. Catania and Lesvos are included in the ‘hotspot’ program established by the EU in 2015, while Cádiz has opted out and Marseille remains outside. Between 2011 and 2019 the Catania region hosted the largest hotspot in Europe (the Mineo Centre), while the reputed Moria camp at Lesvos closed down after a fire in September 2020. A fifth field site, Musina, is one of the busiest Southern African migration corridor towns, near the Limpopo River border with Zimbabwe. Toronto, the sixth field site in which fieldwork was carried out, is Canada’s largest city, and the main destination city for the majority of asylum seekers and refugees in Canada.

Approach

In order to make the six field studies comparable, we used a uniform research design. In all field sites, researchers combined several qualitative methodologies associated with ethnographic fieldwork. This included participant observation and semi-structured interviews with actors involved in the governance of migration (e.g. actors at different government levels, international organizations, various civil society organizations (CSOs) and migrants). However, the Covid-19 pandemic created different possibilities and limitations for access and different methodological and ethical considerations in each of the six field sites. To adapt to the conditions, we redesigned the methodology to include online fieldwork, such as website and document analysis, and preliminary remote interviews during periods of lockdown.

1.1. Relevance of this research

Our research applied a bottom-up approach to exploring the application of the international protection regime by analysing practices and perspectives of key actors and stakeholders involved in field level governance of international protection. The aim was to assess how the Global Compacts on Safe, Orderly and Regular Migration (GMC) and Refugees (GRC), and their interaction with other jurisdictions such as the Common European Asylum System (CEAS) and other regional governance frameworks, impact the understanding and operationalisation of the concepts of vulnerability and special needs in the field level governance of international protection.

The field sites also provided an opportunity to explore the governance of international protection in contexts of so-called ‘mixed movement’, and in which humanitarian and securitization discourse, policies and practices closely co-exist. A key criticism of the Global Compacts is how the separation into two distinct Compacts assumes and reinforces a sharp categorical distinction between refugees and migrants, which does not adequately address the complex reasons why people move (McAdam and Wood, 2021). The Global Compacts are also criticised for simultaneously promoting a human rights and securitization agenda, that allow states to ‘cherry pick’ objectives in line with policy preferences (Vearey et al 2021). Critical

scholarship on migration governance, though, has used the concept of a ‘humanitarian border’ to draw attention to the ways in which humanitarianism and human rights discourses and practices are increasingly co-opted by approaches to national security (Pallister-Wilkins, 2017). The combination of support and surveillance in the reception of migrants and asylum seekers is thus not necessarily understood to be contradictory practices. The bottom-up perspective allowed us to explore how concerns with humanitarian assistance and security impact on collaboration between actors in specific contexts.

Collaboration

The governance of migration already involves complex interactions of state, private and civil society actors. In our research, we investigated how interactions between actors at various governance levels (supra-national, state, region, city) and with civil society organizations of different spatial reach (local, national, regional, global) were configured in specific contexts. We paid particular attention to interactions that can be identified as instantiations of collaboration, or as absence (or refusal) of collaboration. Rather than seeing the state as entirely separate from private and civil society actors, we were interested in tracing ‘state effects’ (Trouillot 2001) related to the management of migration, and how various actors participate in, reproduce or challenge such state effects.

Within the field of migration governance, collaboration most often takes place within asymmetric relations between asylum seekers and other migrants on one side, and CSO actors, and governance actors such as cities, regions and states, or between states that exist in an asymmetrical relationship to each other within current geopolitical configurations. By taking a bottom-up approach to the study of migration governance we were interested in the effects of these power differentials, as well as in how they were challenged from below. An interesting question was to what extent collaboration simply reproduced and extended state effects, or whether it carved out spaces for exploring divergent epistemologies and problem definitions (of ‘vulnerability’) in a way that served to problematize institutionalized inequalities between different governance actors.

Vulnerability

Vulnerability has acquired growing importance in current policy discourses on asylum and migration, but is a contested term. For example, the notion of vulnerability features prominently in the GMC. The notion of ‘vulnerability’ or ‘vulnerable persons’ is also used in legal instruments, including the CEAS directives. However, there is no exact definition contained in this regulatory framework, nor is there a consistent or exhaustive categorization of ‘vulnerable persons’ across EU directives (Hruschka and Leboeuf 2019). There are also important differences among domestic legal regimes regarding who constitutes vulnerable asylum seekers. As highlighted in an ECRE report (2017, p. 16), asylum seekers with mental disorders, for example, are recognised as vulnerable under Italian national law, but not under French and Spanish law. Greek national law recognize PTSD in survivors and relatives of victims of shipwreck.

In recent years, alternative terms to vulnerability have emerged in policy documents, including persons ‘in need of special procedure guarantees’ or ‘with special reception needs’. For example, in relation to the reform of CEAS directives in 2016, the European Commission

proposed to replace ‘vulnerability’ with ‘special reception needs’ (COM, 2016, 465 final of 13 July 2016). Also, the GRC has largely adopted a language of ‘special needs’, rather than vulnerability. While Hruschka and Leboeuf (2019, p.3) suggest that the use of ‘special needs’ represent a shift from a categorisation of refugees, migrants and asylum seekers (who is ‘vulnerable’?) to a procedural approach (how are vulnerabilities being addressed?), ECRE (2017, p. 15) sees the new terminology as superfluous as there do not seem to be any significant or systematic difference in the use of the concepts of vulnerability and special needs in and across CEAS directives.

2. Key findings

2.1. Conceptual contributions

Vulnerability: a globally mobile policy concept²

‘Vulnerability’ is increasingly propagated and contested within recent policy frameworks dealing with migration and international protection. In this Work Package we examined how vulnerability as a **mobile policy concept** became embedded in specific sites as it met institutions, policy frameworks, actors’ strategies and physical–infrastructural characteristics on the ground. Based on a comparative analysis of how vulnerability was understood and operationalized in and across the sites, we identified two dimensions that were crucial to shaping vulnerability as governance; the constitution of actor-assemblages identifying and attending to vulnerability in the context of (neo-)liberal marketization, and the ‘nativist’ rhetoric that currently circulates in migration policy and public debate.

Policies are not simply transferred, but rather translated or transformed in their journeys across space and time (see e.g., Peck and Theodore 2012). Our research shows how ‘vulnerability’ as a globally mobile policy concept morphs when it becomes embedded in specific sites as it encounters institutions, policy frameworks, actors’ strategies and physical–infrastructural characteristics in given sites. The orientations of actors in the actor-assemblages, can be studied in light of the conceptualization of political cleavages developed by Sicakkan (2022), Sicakkan and Atak (2021) and Usherwood (2021).

Despite the different translations of the policy notion of vulnerability identified across our sites, we also observed broad similarities in the ways in which vulnerability was deployed. Vulnerability primarily served to filter and narrow access to services on the ground. The existence of such broad similarities in the policies being adopted in various locales necessitates an analytical focus on the wider political-economy contexts that position particular assemblages within a power-laden policy landscape (Geddie 2015; Theodore and Peck 2012).

Collaboration: assembling a ‘migration industry’

Our research highlights how the general cleavages of political and social attitudes towards refugees identified by Sicakkan (2021) are configured in particular local contexts, the tensions they create in forms of collaboration on the ground, and other conflicts, contestations, and collaborations that may be of importance to the field level governance of international protection in particular local contexts.

² See Jacobsen, C. and Karlsen, M.A. (unpublished) A comparative study of vulnerability as a globally mobile policy concept

One important cross-cutting structural dimension is the tendency towards outsourcing of many of the functions of migration governance to non-state actors in western countries and to a juridification and contractualization of the role of CSOs (López-Sala and Godenau 2020). Such outsourcing happens in the broader context of what has been conceptualized as a ‘migration industry’ in which a wide assembly of actors’ existence depends on money paid either to facilitate or to constrain migration mobility – specialised transportation companies, visa facilitation agencies, labour recruiters, security contractors, human smugglers and NGOs (Sørensen and Gammeltoft-Hansen 2012). The migration industry is not only an important phenomenon in and of itself, it also fundamentally impacts the ground level governance of migration and international protection, and structures the opportunities for and functioning of collaboration on the ground. In the European cases, state and Eu funding are important. In South Africa, the role of external funding agencies is central in resourcing local responses. This includes the disbursement of funding to local implementing partners from international organisations such as the IOM and UNHCR. In most cases, this funding is, itself, from an external funding agency. A critique of this model is that funding can drive action whereby external agendas drive local action, with the result that context-specific needs may not be met despite funding being made available. State funding plays a minimal role in the South African context as local government departments retain mandates to provide services, within legal frameworks, to migrant groups within their jurisdiction. In Canada, collaborative approaches may involve the sharing of resources between governmental and non-governmental actors.

2.2. Empirical contributions

The impact of the Global Compacts

- Knowledge of, and engagement with, the Compacts among governance actors were very limited in all the field sites.
- So far, the compacts did not have significant implications for collaboration patterns and networks on the ground.
- They have not introduced new governance actors to the field or changed the implementation of international protection in de facto governance.
- Actors in most field sites mentioned their top-down character, and their legally non-binding character as reasons for why they were of limited relevance.
- The Compacts have not had much impact in the way actors work or on the conception of migrant vulnerability and special needs, and there was little expectation that much would change in practical terms.

Vulnerability

- In all country case studies, understandings of migrant vulnerability and specific needs are shaped through mechanisms such as funding opportunities, training, production and dissemination of knowledge, and civil society advocacy.
- In the EU countries, harmonisation through EU directives have influenced the introduction of and the way vulnerability is introduced into national legislation, that is by defining specific vulnerable categories (e.g., a pregnant woman, a minor, a victim of trafficking, etc.)

- The largely category-based approach to vulnerability introduced through EU directives, funding and training, was contested by actors on the ground that understood vulnerability as a broad and elastic term that could encompass a wider range of complex individual situations, including the situation faced by most people on the move.
- Actors on the ground also highlighted a broader range of factors that would be relevant for assessing vulnerability. These included migration-related factors such as lack of knowledge about language and legal procedures, and lack of social network and means of living in the place of arrival. Vulnerabilities produced and/or exacerbated by the country of arrival's institutional and legal context (e.g., inadequate reception system and asylum procedure) were also emphasised.
- The lack of legal status was widely recognized as a key source of vulnerability, but the cases varied significantly when it came to opportunities to regularize and initiatives taken to mitigate vulnerabilities related to legal status.
- The understanding of gendered vulnerability focuses mainly on women (in their reproductive capacities as child bearers and mothers, and as potential victims of gendered and sexual violence). Although the vulnerability of women and children was discursively foregrounded, it was still contested in terms of how it was operationalized.
- Tensions between a securitarian approach to migration, which tends to criminalize immigrants, and a humanitarian approach which is based on notions of suffering and innocence, are crucial to how vulnerability is understood and deployed across the country case studies, as are the socio-economic and material conditions of migration governance in the various countries.
- The notion of vulnerability increasingly implies selective rather than additional assistance due to a structural lack of resources. The operationalization of vulnerability indicates a shift in humanitarian concern from the vulnerability of all people on the move to the vulnerability of only some.
- The need to 'perform' vulnerability in a legible way due to difficulties of accessing provisions and services reserved for the vulnerable was problematized by actors on the ground.

Collaboration

- In all country case studies collaborations and partnerships between different kinds of actors (at multiple governance levels and different spatial scales) addressing vulnerability exist.
- Coordination between government actors and CSOs, and between different CSOs, is an important challenge in all field sites
- New forms of collaboration often appear as a response to perceived crises. Crisis-driven responses/acute phases often do not coalesce into longer-term initiatives/collaborations.
- (CSO) actors tend to emphasise the importance of good informal relations (between individuals more often than organisations) rather than formal structures of collaboration.
- In de facto governance, much interaction tagged as collaboration is characterized by marketization and contractualization between asymmetrically positioned actors (state, CSO and migrant).

- Marketization and contractualization influence CSO orientations and agendas (such as categories of migrants receiving attention and assistance), their internal structure (e.g., more professionalization and bureaucratization), and their readiness to oppose state policies.
- Overcrowding and malfunctioning in the state financed reception programs leads to local actors (including local authorities, CSOs, engaged citizens) being faced with asylum seekers and irregularised migrants' urgent social needs.
- The competition for scarce public resources can create obstacles to collaboration between CSOs.
- The 'uneasy alliance' of care and control in immigration policies creates tensions in the day-to-day collaboration between actors with different orientations and objectives.

The impact of the Covid-19 pandemic

- The pandemic is generally seen to have exacerbated vulnerabilities and accentuated the shortcomings of the asylum and the reception system to deal with these. However, in some cases the pandemic provided new opportunities to address vulnerabilities.
- The Covid-19 pandemic exacerbated a range of (particularly structural) vulnerabilities and created new ones.
- The pandemic had an impact on the ground level governance of international protection in all country case studies.
- The pandemic, and the way it was handled, had implications for collaboration patterns and networks on the ground in several field sites.
- In some cases, the pandemic provided opportunities for improved – or renewed – collaboration.
- In some cases such collaboration brought different 'migrant sectors' together (e.g. people working on access to housing and secure livelihoods, health workers, people working on documentation).

3. Conclusion

3.1. Contributions to the improvement of international refugee protection

Rethinking vulnerability as a frame for the governance of asylum and international protection regimes cannot take the form of trying to 'fix' the problem of by working towards a more precise definition or different concept. It seems to 'miss the point' by taking at face value that the best possible protection of the vulnerable is the goal of current so-called protection regimes. Although the language of vulnerability gestures to caring and sympathetic approaches to 'vulnerable' people on the move, the need for a 'vulnerability approach' within the current protection framework is tied to states denying or limiting migrants' access to legal and social protection in the first place.

3.2 Contributions to identifying ways of better aligning the Compacts / the current protection system with human rights and the right to international protection³.

‘Vulnerability’ is increasingly propagated, but also contested, within recent policy frameworks dealing with migration and international protection. The concept has the malleability to emphasise either individual, situational or the structural grounds for disadvantage. ‘Vulnerability’ has mainly taken root in policies in ways that downplay structural dimensions. Our research shows that civil society actors and migrants involved in field level governance have mobilized the notion of vulnerability to draw attention to how inadequacies in the reception system such as failure to provide legal assistance and basic needs as well as practices of border surveillance and return policies are exposing people to harm and making them more vulnerable.

Different conceptions of vulnerability are often used in implicit and arbitrary ways in policy documents, including the Global Compacts, and in field level governance. Legal scholars have therefore called for better and more concise legal definitions of vulnerability in migration and asylum governance. However, our research demonstrates that 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’ in policy documents do not necessarily solve dilemmas related to vulnerability governance on the ground. In fact, such attempts have rather contributed to fragmenting and narrowing the scope of the vulnerability label and who gets to be included.

In this WP, we argue that the problem of vulnerability as a policy concept is not necessarily inconsistent definitions, but the adaptability of the vulnerability concept to logics of neoliberal marketization and ‘nativist’ discourses that currently circulates in migration policy and public debate. We therefore suggest that attempts at creating more flexible reception systems that respond to migrants’ diverse needs and complex positionalities must first address how the need for a ‘vulnerability approach’ within the current protection framework is tied to states denying or limiting migrants and asylum seekers’ access to legal and social protection.

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³ See Jacobsen, C. & Karlson, M (unpublished) A comparative study of vulnerability as a globally mobile policy concept

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