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Between Protection and Harm

Negotiated Vulnerabilities in Asylum Laws and Bureaucracies

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Foreword: How to Make 'Vulnerability' a True Policy Priority

Some projects come at just the right time. The VULNER project, some of the main findings are discussed in this book, certainly qualifies. Not so much because it provides ready-made solutions to topical issues but rather because of the way in which the teams of researchers involved in the project and who authored this book deal with the issue they have been addressing.

The policy of the European Union (EU) on the cross-border mobility of people from outside the EU, i.e. third countries, has, for many years now, been a policy that oscillates between two basic agendas: on the one hand, a policy that seeks to attract a skilled workforce capable of maintaining the necessary level of competitiveness of the EU Member States in an increasingly globalised context. This is arguably a proactive policy, dictated primarily by economic needs. On the other hand, there is a humanitarian agenda that is closely linked to international law, and in particular to the growing number of multilateral conventions and agreements that require countries to show respect for the human rights of every person, regardless of ethnic or religious affiliation, nationality, gender, or other personal characteristics. Unlike the agenda dictated by economic necessity, which is forward-looking, i.e. oriented as far as possible towards the future, the humanitarian agenda is essentially reactive. The underlying logic of this second agenda is often, cynical as it may seem, first and foremost to protect the interests of the countries of destination. It does so by enabling them to avoid having to deal with an influx of large numbers of people in need of protection, who require intensive support, especially in the early years after arrival. In order to ensure that the needs of people in search of protection do not take precedence, their claims are approached with caution, subject to certain constraints and conditions which in turn risk causing humanitarian protection to lose its primary role.

The book goes to the heart of this paradox: under the guise of a protection criterion, i.e. primarily for persons who are weak and in need of special attention, the 'vulnerability' criterion is also to be seen as one of these precautions put in place to guard against the risk of excessive numbers of requests for humanitarian protection, with the consequence that the applicants would stay on the territory of the country of destination for a longer period, or even definitively. In principle, the concept of

vulnerability is designed to serve as a criterion to identify people who, because of their condition or situation, qualify for priority treatment; in practice, however, it excludes the many other persons who do not meet the conditions or fail to provide the necessary proof of their vulnerable condition and must therefore undergo a procedure that is often slower and clearly has lower chances of success.

The authors of this book have done some extremely revealing research, as they have brought back, from their fieldwork in various countries, unprecedented data that show the other, i.e. the practical side of the coin, so to speak. The empirical aspect of their work deserves to be highlighted here, as it will no doubt enrich academic discourse on the condition of people in need of protection. The data shows a wide range of potential consequences of the use of a concept initially intended to serve as a criterion for prioritisation, but which in the field often proves far from straightforward to implement. Where it is applied, it does not necessarily benefit those for whom it is designed.

In a discussion paper published in June 2023,[1] the authors presented the main policy-relevant findings that they had drawn from their work, distributed over ten ‘key messages’ that illustrate some of these consequences. In this volume, the authors return, directly or indirectly, to these key messages but in a more detailed form, which gives the reader a better understanding of the scale of the paradox mentioned above.

The crux of the problem probably lies in the fact that the terms ‘vulnerable’ and ‘vulnerability’ are necessarily contextual: what is the standard of measurement? Data collected in the field show among other things that what constitutes a situation of vulnerability in one context or according to one assessor is not necessarily seen in the same way in another context. Moreover, the moment of assessment can be decisive: a person who has not yet experienced him- or herself as particularly vulnerable may become so as the proceedings go on and the longer they last. More generally speaking, as with any argument that has the potential to strengthen one’s position, vulnerability tends to be used in an inflationary manner, which over time makes it lose its initial meaning; it benefits those who know how to use it. These are just a few examples of findings from the VULNER project, which are discussed in this book.

While the concept of 'vulnerability' may seem obvious at first glance when it comes to putting protection into practice, three years of intensive work under the aegis of the VULNER project have shown how much more complex the reality on the ground is.

For the concept of 'vulnerability' to serve as a sufficiently solid criterion for prioritisation, three conditions must be met: predictability, equal treatment, and consistency, three classic criteria for an approach that aims to be transparent and equitable. The book shows how difficult it is to meet and implement these requirements.

[1] K. Dearden & P. Weissenberger (eds.), “Better Policies and Laws to Address Migrants’ Vulnerabilities. 10 Key Messages from the VULNER Project”, Discussion Paper N° 18, June 2023 (Population and Policy, Population Europe, Berlin).

The results of the VULNER project that are discussed in this book, with the enormous advantage of being able, quite rightly, to claim to be based to a very large extent on first-hand observations *in situ* gleaned from a very wide variety of contexts, do not point a finger at anyone specifically, but make it absolutely clear that without a reasoning that is deeply rooted in the empirical reality of humanitarian migration, any concept—in this case that of vulnerability—runs the risk of not being able to achieve what it was designed to do, namely to genuinely protect the weakest.

The fact of the matter is that, in practice, the concept of vulnerability acts as a filter, one that is certainly in the interests of a large number of destination countries. One could not be more cynical.

One of the great merits of the book's authors, who worked together at a steady pace for three years, is that they succeeded in subjecting a central concept of European asylum and immigration policy to a 'reality check'. The result is certainly a highly disconcerting observation. At the same time, it is an invitation to proceed in the same way with other fundamental concepts/aspects/principles underlying migration policy in Europe, whether that of the European Union or of the individual Member States. Let us make no mistake: the conditions for survival in an ever-increasing number of countries around the world are such that it is perfectly understandable that people look for ways out for themselves and their families. In their place, everyone would do the same. A policy that is formulated in an exclusively reactive way does not provide the answer, or else it is overstretched, as the authors have demonstrated through their study of the practical application, in an everyday context, of the concept of vulnerability. In the coming years, throughout Europe and at EU level, the real challenge will be to review the coexistence of a policy dictated strictly by economic needs—not only of the countries of destination but also of the people's countries of origin—and a policy that considers humanitarian protection as a truly equal priority and that is meant to benefit those who are truly in need of protection.

At the closing conference of the VULNER project on 9 June 2023, James C. Hathaway suggested that anyone, especially those seeking humanitarian protection, should be treated as a priority. This should be feasible in the medium term, provided that the interests at stake are rebalanced, with priority being given to enabling the countries of origin to offer their local populations realistic prospects for a not-too-distant future.

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Part III Vulnerability and Asylum Processes in Europe and Canada

Chapter 1
Introduction. Between Protection and Harm. Negotiated Vulnerabilities in Asylum Laws and Bureaucracies

Luc Leboeuf, Cathrine Brun, and Sabrina Marchetti

This book started from a common observation: 'Vulnerability' is increasingly playing a role in institutional discourses and practices, when developing and implementing policies and measures towards migrants seeking protection (such as refugees and asylum seekers)—and this in a wide array of contexts, which range from organizing asylum processes in countries in the global north and evaluating asylum claims, to selecting refugees for resettlement, and to developing and implementing aid programmes for refugees in first countries of asylum that are also countries in

The authors would like to thank Delphine Nakache, Sylvie Sarolea, and Hilde Lidén, for their comments on an earlier version of this editorial. This book is among the main outputs of the research project "VULNER: Vulnerability under the Global Protection Regime", an international research initiative that was financed by the EU under the Horizon 2020 work programme and a matching funding from the Canadian Research Council (SSHRC). For three and a half years (beginning 2020—mid 2023), our project gathered research partners from Belgium, Canada, Germany, Italy, Lebanon, and Norway. Field researches were conducted in each of these countries, as well as in Uganda, in selected settlements for migrants in need of protection (such as reception centres for asylum seekers, shelters and community centres that provide assistance to asylum seekers and migrants without a legal status, refugee camps, and informal refugee settlements; we also met with self-settled refugees and asylum seekers, who often live in rented accommodations). More information about the project can be found at www.vulner.eu.

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the global south.[1] 'Vulnerability' can be a criterion that asylum seekers and refugees should meet in view of accessing certain advantages—such as resettlement, specific services in reception facilities and camps (specialised healthcare, housing, etc), or procedural accommodations as part of the asylum process (additional support and delays in preparing the asylum interview, interview by a specially trained public servant, etc) (UNHCR, 2011; Dir 2013/33/EU; Dir 2013/32/EU). 'Vulnerability' can also be an overall consideration, to be integrated in transversal ways while designing asylum and migration policies, as well as the norms and guidelines that accompany their operationalisation (UNGA Res 73/195, Objective 7; Council of Europe, 2021). Yet, while attention to the vulnerabilities of migrants seeking protection reflects humanitarian concerns, its concrete effects still need to be considered from a critical perspective. As it plays an increasingly key role in the legal and bureaucratic processes that seek to identify migrants eligible for protection (such as the refugee status) and/or protection services (such as access to housing, food, healthcare, etc), 'vulnerability' turns into a selection-tool with implied exclusionary effects that may also cause harms.

The authors of this book sought to investigate the various legal and bureaucratic constructions of migrants' vulnerability, and the extent to which they reflect migrants' experiences. We did so from a critical perspective, which sought to acknowledge the structural factors that contribute to create and/or exacerbate vulnerabilities among migrants, such as the broader constraints and obstacles to migrants' mobility that stem from the architecture of legal migration and mobility regimes, as well as global inequalities. We adopted an interdisciplinary approach, which included the doctrinal and socio-legal study of legal norms and implementing practices by institutional actors in view of revealing legal and bureaucratic understandings of migrants' vulnerability (1). We then conducted an empirical enquiry into migrants' experiences of their vulnerabilities—while adopting a grassroot and situated approach, which didn't depart from a preconceived definition of 'vulnerability', but which rather sought to understand how migrants live and experience their vulnerabilities in each context and situation (2). The country cases are located in the global north and in the global south, in view of gaining lessons from a longer standing tradition of mobilising 'vulnerability' as a conceptual tool to design and implement humanitarian aid programmes towards refugees in global south countries, such as in Lebanon and Uganda. We thereby sought to overcome the north-south divide in research, without neglecting the different legal, institutional, and geopolitical realities (3). While diverse, because they reflect each country's institutional, legal, and social specificities, the research results reveal the ambiguities behind the concept of 'vulnerability'. They invite researchers, practitioners, and

[1] Throughout this editorial, we refer to the divide between the global north and the global south to highlight existing global power divides. But we also refrain from capitalising these expressions so as to avoid essentialising the norh-south divide, in ways that would neglect major regional and country differences, and that would falsely present them as two monolithic blocs.

policymakers to tread with caution when mobilising 'vulnerability', which flexible understandings give rise to negotiations among the actors involved. The results of such negotiations vary depending on power positions (4).

1.1 An Interdisciplinary Outlook on Migrants' Vulnerabilities

Throughout our research, we provided an empirical study of the consequences of asylum and migrations laws for migrants' vulnerabilities—that is, how legal and bureaucratic norms and practices may foster, and sometimes even produce, vulnerabilities among migrants seeking protection. We also sought to document and analyse the various legal and bureaucratic norms and processes aimed at assessing and addressing migrants' vulnerabilities in each context, thereby including an internal perspective on the legal system. We further studied how migrants' 'vulnerability' is constructed and mobilised in the laws and implementing practices of street-level bureaucrats in each field: what are the legal instruments that require state actors to address migrants' vulnerabilities? Do they define the vulnerabilities that should be tackled and, if yes, how? Which processes do they establish in view of identifying and addressing migrants' vulnerabilities? How do state actors incorporate specific attention for migrants' vulnerabilities in their legal reasoning and practices, when implementing legal standards in individual cases?

Our project was thus divided into two main research phases: a first research phase consisted in a doctrinal and socio-legal enquiry into institutional approaches to migrants' vulnerabilities. It allowed us to establish cross-cutting typologies of institutional uses and understandings of migrants' vulnerabilities, depending on the legal uses of 'vulnerability', and to appraise their respective (dis)advantages. We showed how 'vulnerability' manifests itself through a focus on some 'specific/special' protection needs, which are often constructed by focussing on personal characteristics (such as gender, age, or health) and without considering how they intersect with other factors and circumstances, which are context specific, nor how they evolve over time. We also showed how 'vulnerability' serves as a loose notion, which guides legal reasoning in individual cases (when deciding on asylum applications or identifying aid beneficiaries, for example)—and how such loose understanding of 'vulnerability' risks reflecting decision-makers' affects and conceptions of fairness in ways that are disconnected from migrants' vulnerabilities, if it is not paired with adequate knowledge of migrants' life.

A second research phase sought to deepen empirical knowledge on migrants' experiences of their vulnerabilities. We mobilised 'vulnerability' as an analytical tool, to analyse and document migrants' experiences and social positions. We therefore based ourselves on conceptual understandings of human 'vulnerability', as they have been developed in the ethics of care (see, e.g., Fineman, 2008) and in an

abundant literature in the social sciences (see, e.g., Brown et al., 2017; Virokannas et al., 2018; Gilodi et al., 2022). This body of literature shows that, while vulnerabilities may have ontological components and relate to innate characteristics, they are always embodied in specific contexts, where they emerge as part of social interactions—which are themselves the result of broader structural factors that relate to the organisation of society and social inequalities. We thus opted for a situated approach to vulnerabilities, which we refined through the mobilisation of three concepts: agency, intersectionality, and temporality.

These conceptual frameworks were selected based on the intermediary findings of the first research phase. We sought to conduct the empirical research while also complementing legal and bureaucratic understandings of vulnerability, which we found to be often fixed at the time a decision is adopted, focussed on some personal characteristics (such as gender, age, and the health status), and based on stereotypes that convey victimhood and passivity.

'Temporality' allowed us analyse experiences of vulnerabilities from a dynamic perspective, which accounts for their evolving nature, including how they are shaped through the passage of time (for example, when asylum seekers are confronted to prolonged uncertainties, see: Brun, 2016; Griffiths, 2014; Jacobsen & Karlsen, 2021). 'Intersectionality' allowed us to understand how positions of vulnerabilities are socially embedded, and thus shaped by multiple personal, social, and structural factors, while remaining attentive to their gendered dimensions (Crenshaw, 1991). 'Agency' allowed us to lay the focus on migrants' relationships with laws and institutional practices—including how, despite the constraints they face, migrants mobilise state norms and practices in view of making their own independent life choices (Triandafyllidou, 2017; Carpentier et al., 2021). It allowed us to avoid essentializing migrants as passive victims, without however idealizing their resilience abilities nor obscuring the broader structural factors that contribute to generating experiences of vulnerabilities.

Through the combination of research methodologies from legal positivist, socio-legal, and socio-anthropological studies, we developed analyses that do not limit themselves to mobilising 'vulnerability' as a conceptual tool for radical criticism of asylum and migration laws and policies. Rather, we sought to refine our critical approach while considering and evaluating state practices that are aimed at reducing vulnerabilities among migrants—including by revealing how such practices may sometimes have adverse effects and cause harm. By duly considering the current uses and mobilisations of 'vulnerability' by institutional actors when operationalising legal and bureaucratic norms in individual cases, as well as their consequences for migrants' experiences, we developed a grounded thinking on the promises, challenges, and pitfalls, of mobilising 'vulnerability' as a conceptual tool for asylum and migration governance. We thereby showed how important it is for institutional actors to adopt a situated approach to the vulnerabilities of migrants seeking protection when operationalising the norms that are aimed at protecting them.

1.2 A Situated Approach to Vulnerabilities

When analysing migrants' experiences of their vulnerabilities in this book, we adopted an approached based, first of all, on what has been called a 'situational' view on vulnerability, namely an approach that emphasises how vulnerability is externally induced rather than inherent (Martin, 2023, 24): it is the context that makes certain individuals more susceptible to harm. Vulnerability of individuals and groups change, in forms and degrees, over time and the interpretation of 'situational vulnerability' may be different depending on people's location. As Martin phrases it, individuals who are "rendered vulnerable in certain situations or contexts become a vulnerable population that should be afforded special protection and additional attention" (Martin, 2023, 22). Also Rogers et al. (2012) stress that vulnerability can arise from personal, social, and environmental situations, including abuse and socio-political oppression. They come back to this definition in their well-known classifications including inherent, situational, and pathogenic vulnerability.

As an example of this type of vulnerability, we may consider the study by Few and Rosen (2005) on women enduring abusive intimate partner relationships. They argue vulnerability results from a culmination of risk factors overpowering protective factors, and they distinguish two subcategories of situational vulnerability: life-circumstance stress and life-stage stress. Women who are feeling weak and powerless for other external circumstances (troubles with family of origin, lack of job, etc.) might be more prone to accept abusive partners. Likewise, the same may happen to women in a life stage when they feel social pressure to be in a couple, have children, etc. In other words, "women [may] find themselves in certain contexts that increase the likelihood that they will stay in abusive relationships" (Few & Rosen, 2005, 268).

Policies and legislation are also to be looked at from such a vulnerability perspective. In some cases, one may find that policy and legal frameworks *increase* situational vulnerabilities., such as austerity or restrictive social policies being criticized for increasing vulnerability to poverty and other social risks of some populations in comparison to others. For instance, Koldo Casla (2021) applies the concept of situational vulnerability to the issue of social rights in the UK, underscoring the negative effects of tax and welfare cuts on social protection for some groups. This viewpoint echoes the UN Special Rapporteur's critique of the UK's 'punitive, mean-spirited' approach towards its vulnerable population (Statement by Philip Alston of 16 November 2018).

Similar discussions have been elaborated in the field of health studies and medical research, where 'vulnerable' patients are excluded from research protocols, with consequent dilemmas on what it means to protect them or cause them harm (Schrems, 2014). In fact, even organizations such as the Council for International Organizations of Medical Sciences (CIOMS) have declared that it is important to overcome the tendency to "label entire classes of individuals as vulnerable" (Council for International Organizations of Medical Sciences, 2016, 57). Coming to the rights of refugees and asylum seekers, some supranational and national legal

instruments have incorporated a situational approach to vulnerability, which state actors must follow when implementing them. This is the case with the *EU Directive 2011/36 on preventing and combating the trafficking in human beings*, which defines the 'position of vulnerability' in relation to trafficking taking into account the contextual factors rendering a person vulnerable to forms of abuse and exploitation and leaving them without any concrete and real alternative (Palumbo & Sciurba, 2018). Furthermore, attention to the situational dimension of vulnerability can be found in recent case law of the European Court of Human Rights (ECtHR), such as the landmark decision *Chowdury and Others v Greece* of 2017 concerning the case of undocumented migrant workers from Bangladesh who were exploited in the agricultural sector in Greece, and whose vulnerable position was evaluated by the European Court of Human Rights (ECtHR) by adopting a situational approach—as discussed in VULNER Research Report 1 from the Italian team (Marchetti & Palumbo, 2021, 17–18; App. 21,884/15 *Chowdury v. Greece* ECHR 30 March 2017). Such approach is also commonly used by the ECtHR, when assessing whether suffered ill-treatments reach the level of severity required to be qualified as inhumane and degrading, and thereby prohibited under art. 3 of the European Convention on Human Rights (ECHR) (see, e.g., App. 7334/13 *Mursic v. Croatia* ECHR GC 20 October 2016, at para. 97).

Unfortunately, some important instruments in migration policy still fail to adopt a situational approach to migrants' vulnerabilities. The EU New Pact on Migration and Asylum (COM, 2020, 609final) lays the emphasis on 'vulnerable groups', and it thereby seems to adopt a 'group-based approach' to identifying vulnerabilities—which also stems from the current EU Directives on asylum and the domestic legislations implementing them (Marchetti & Palumbo, 2021, 18). Such an approach based on making up 'lists of vulnerable groups' has been heavily criticized for homogenizing assumptions about social groups, not taking into consideration internal differences between subjects belonging to what can be from the outside seen as a salient social category. It may run the risk of stigmatization for members of these groups, whilst missing out on those who might need special protection, despite not falling in any of them.

This book will show that an essentialised conception of vulnerability—as something that inherently belongs to some categories of individuals or groups—has many failures. A very rigid view on a list of conditions associated with spotlight vulnerabilities is blind to the complexity of forms and dynamics of vulnerability, including to those that can be seen as 'new' or 'emerging' vulnerabilities, as they are described in this volume and the many national reports of the VULNER project. Accounting for the rights of refugees and asylum seekers also needs to be cast in the specific historical, political, and socio-economic context of the country of arrival, but also country of transit and origin of the migrant persons under consideration. The same person will not be subject to threat or stress factors in all countries, or even in different places of the same. All these contextual elements are of course particularly difficult for institutions to grasp. They may change quite rapidly, sometimes not yet officially acknowledged by the public and international audience, sometimes being open to different interpretations, etc. Yet we tried to argue that

adopting a "situational approach" is really the extra mile that needs to be done towards the full protection of these people's rights—and this, in each of the context we studied and analysed, be it to access protection services or get a protection status in the north, or again to access aid in the south.

Lastly, we view our research on this matter as an example of 'situated knowledge' (Haraway, 1990). In the second chapter of this book, we discuss the implications of considering research on refugees and asylum seekers as an example of situated knowledge. We question the 'positionality' of every single perspective involved into it, namely considering the differences between the views produced from the standpoint of migrants, of judges, legal experts, social workers, practitioners, and finally our own perspective as researchers on the ethical dilemmas for investigations in this field.

1.3 Researching Across the South-North Divide

This book aims to contribute to a very small body of work encompassing studies on refugees and protection seekers across the global south and north. The book is based on a multi-case study with countries representing different national refugee regimes in seven countries located in the global north (Belgium, Canada, Germany, Italy, and Norway) and in the global south (Lebanon and Uganda). While the global south countries are in the minority of the cases analysed in the book, we nevertheless argue that an essential contribution of this book is that it brings together case studies from different national and regional realities—yet still sharing the geopolitical reality of an international refugee- and migration regime.

The south-north divide may be understood as a constructed divide between the global south and north. By adopting the vocabulary of south-north, we risk to further cement that reality. However, the divide is present in scholarship and policies on forced migration and migration studies more generally. Some even go as far as to say that a divide is necessary because the different realities in north and south make theories from the global north inappropriate in the context of the global south (Nawyn, 2016). While we suggest that there is a need to distinguish between different levels of theory in this discussion, in this book, we do not support the view and proposition that the global south and north require different theories. The case studies in this book share a common methodological, conceptual, and theoretical basis. This helps us to capture and synthesise findings that may be helpful to shed light on longer standing tradition of mobilizing vulnerability to decide on how to allocate scarce resources as part of humanitarian aid programmes and differing asylum regimes, and to evaluate these norms and practices by confronting them to migrants' lived experiences of their vulnerabilities in each field.

Research on migration and refugees is often rather policy driven and selected themes, conceptualizations and methodologies reflect specific policy- and geopolitical interests (Bakewell, 2008; Black, 2001; Chimni, 1998; Stierl, 2020). This entanglement of research and policy interests has contributed to scholarship that replicates

the north-south divide. In many ways, Europe, North America, and Oceania are promoting policies on migration and refugees aimed at minimizing the movements towards their territories: keeping people close to their countries of origin. On the other hand, the major refugee-hosting countries in the global south, such as Uganda and Lebanon, show varying willingness of accommodating refugees on their territories as a temporary solution.

The chapters in this book demonstrate that countries in the global south and north share a history that can partly explain why these countries are differently situated in the geopolitical reality for individuals seeking protection. For example, Uganda and Lebanon are positioned in the regions of refugee-reproducing countries and their considerations include regional stability and relationships with neighbouring countries. Another critical divergence is the difference in numbers: Lebanon, for example, is the country in the world hosting the most refugees per capita (if you do not count the island-state of Aruba). Combined with a deep financial and political crisis, the context in which refugees are hosted in Lebanon impact on the vulnerability of the individual protection seekers. Following from these differences, the global north and south clearly represent different bureaucratic contexts where vulnerability assessments as part of humanitarian aid programmes dominate in Lebanon and Uganda, while vulnerability assessments as part of the asylum procedures are more dominant in the countries in Europe and North America.

Despite these differences, we maintain that the case studies in the book must be read and understood as part of the same geopolitical reality. We thus suggest that there is a need to see the case studies relationally across the south-north divide to understand better how the divide is maintained and reflected in policies and experiences of protection. This relationality could be understood both vertically and horizontally.

Vertically—between local and global actors and norms—the book and its case studies help to unpack the ways in which interactions between local, national, regional, and global frameworks shape how legal and bureaucratic frameworks operate and how the process of seeking protection is experienced and navigated. Hence the case studies are contextualized from their national reality but situated in international frameworks.

The case studies may also be read for their 'horizontal relationality'. Our understanding of 'horizontal relationality' is inspired by Cindy Katz' (2001) conceptualization of globalization as topography: We analyse at similar scales the experiences of similar categories of people and the meanings produced in similar documents and frameworks in different country-contexts. If we read the world as concentric circles on a map, one circle may represent protection seekers in different countries who are connected by their reality of seeking protection. Likewise, the judges, social workers, aid workers, and others we interviewed who are assisting protection seekers, describe similar experiences, struggles and perspectives. This situatedness, as we exposed in our previous section, across case-countries is then a clear justification for the study in multiple countries across countries in the global south and north.

We are interested in the specific ways in which the use of vulnerability operates in particular places and how those particular places are connected horizontally.

Relationality can be understood and read through the chapters as shared experiences and observations across the seven contexts. By approaching the cases through the lens of 'vulnerability' we asked the same questions across the seven country cases: How does the law assess, address, shape and produce the vulnerabilities of the protection seekers?

The discussion on vulnerability helped us to think across the divide. An important contribution of the book is thus to help to analyse the particularity of each country-situation but at the same time connecting realities across geographical distance and power divides. The chapters show that shared across all countries is the ambiguity inherent in the concept of vulnerability and how it is embedded in legal- and bureaucratic frameworks. A common understanding of vulnerability is that it is difficult to understand and pin down into a specific language and interpretation: It is about a language and concept that is always open for interpretation in legal reasoning and policy discussions. Also shared across the case studies is the experience of displacement and the production of vulnerability that takes place in the protection regime. Hence, the analysis shows that the cases we have studied are clearly intertwined, but they are also fragmented.

1.4 Negotiated 'Vulnerabilities'

This book is divided into three parts. A first one sets the scene, with two chapters seeking to unpack the conceptual and social dynamics surrounding the negotiated meanings of 'vulnerability'. A first chapter highlights the transformations of 'vulnerability' as it travels across the ethical, analytical, legal and bureaucratic conceptual frameworks—where it is used with different purposes, and where it receives different explicit and implied meanings. A second chapter underlines the need to consider each actor's positionality when identifying and analysing their understandings of migrants' vulnerabilities, and how this shapes their actions.

A second part addresses the uses and mobilisations of 'vulnerability' as part of refugee regimes in the southern countries under study. A first chapter focusses on Lebanon. It tracks down the meanings of vulnerability among institutions and legal and bureaucratic frameworks that protect, assist, and govern refugees in Lebanon. It also analyses the various ways in which Palestinian and Syrian refugees negotiate meanings of vulnerabilities in their encounters with those institutions and frameworks. A second chapter analyses the Ugandan refugee regime. It shows how, in the 'whole-of-society' and polycentric governance approach that characterises the country's refugee regime, 'vulnerability' has become a key concept to identify the mandates of each actor and coordinate their actions—while failing to address broader deficiencies, such as a lack of consistent and long-lasting solutions that would empower refugees to overcome their vulnerabilities. A third chapter zooms into resettlement processes, which benefit the most vulnerable refugees in the south, and who are offered protection in the north. Comparing resettlement practices and

policies from Canada and Norway, it discusses the competing political considerations and rationales behind the humanitarian focus on the most vulnerable.

A third part focuses on the northern countries under study. Chapters 2 and 3 consider the main components of refugee regimes, which contribute to generate experiences of vulnerabilities among asylum seekers. The first chapter builds on the Italian case study to demonstrate the impact of accommodation standards on the vulnerabilities lived by migrants. It thereby illustrates the capacity of asylum systems to tackle some vulnerabilities, whilst overlooking or even fostering others. The second chapter takes Belgium as a case-study to highlight how, combined with precarious legal statuses, long asylum processes contribute to feelings of disempowerment among asylum seekers, thereby exacerbating their vulnerabilities. Chapters 4, 5, and 6 discuss the consequences of increased attention to migrants' vulnerabilities as part of the asylum system. Chapter 4 analyses the administrative guidelines in Canada, which assist decision-makers to provide procedural accommodation(s) for vulnerable individuals who are going through Canada's inland refugee status determination process. It highlights the challenges that asylum seekers face in asserting or 'proving' vulnerability and thus eligibility for procedural accommodations. Another concern is the discretion exercised by decision-makers, both in terms of acknowledging vulnerability and in terms of determining what, if any, procedural accommodations are appropriate. Based on the German case-study, the fourth chapter shows how intricate institutional settings can foster inconsistent practices among the state actors, when numerous ones are involved at federal and state level without strong coordination mechanisms. Taking example from Norway, the fifth chapter questions the ambivalence of dedicated attention to asylum seekers' vulnerabilities, when it takes place against a background of increasingly restrictive asylum and migration policies.

The book thereby contributes to a grounded thinking on the consequences of increased reliance on 'vulnerability' when designing and implementing asylum and migration policies. It shows how 'vulnerability' receives different meanings and uses depending on the actors involved, leading to constant negotiations with indefinite consequences. It also reminds that, whereas 'vulnerability' may first appear as a concept with strong protective dimensions, its conceptual ambiguities and negotiated uses also contribute to perpetuate the deficiencies of the refugee regimes in which it becomes embedded.

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Part I
'Vulnerability' Between Legal and Empirical Conceptualisations

Chapter 2
The Travels and Transformations of 'Vulnerability': From an Ethical and Analytical Concept to a Legal and Bureaucratic Label

Luc Leboeuf

List of Abbreviations

EU	European Union
UN	United Nations
CJEU	Court of Justice of the European Union
ECtHR	European Court of Human Rights
URF	Union Resettlement Framework
EUAA	European Union Agency for Asylum
VEN	Vulnerability Expert Network
IPSN	Identification of Persons with Special Needs
EUTF	European Union Emergency Trust Fund for Africa
APD	Asylum Procedures Directive
RCD	Reception Conditions Directive
QD	Qualification Directive

2.1 Introduction

Polarisations within European policy debates are on the rise, and migration has become a particularly divisive topic. While studies have shown that anti-immigration feelings are not shared by a majority of voters across the EU, a consistent proportion of them now cast their votes depending on how political parties plan to address migration movements, mostly favouring those promising to tighten migration

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controls (Dennison & Geddes, 2019). But the volunteer grassroot movements and initiatives, which emerged during the 2015 'refugee crisis' to welcome asylum seekers and refugees, also showed support and further laid the ground for more radical contestations of state-driven logics of migration management (Holmes & Castaneda, 2016; Vandevoordt, 2019; Monforte & Mestri, 2022).

In such a context, policy communications that seek to generate consensus on the policy measures adopted in the field are increasingly mobilising 'vulnerability'[1] for its ability at generating wide support in public opinion: who would oppose the protection of 'vulnerable' persons and groups, such as children? This trend is particularly evident at the EU level, where 'vulnerability' has become an increasingly common talking point in EU policy communications on asylum and migration—for multiple reasons that may also have to do with the EU constitutional structure, which require it to obtain support among the member states so as to take action and, thus, to seek adhesion from numerous and diverse actors.

Yet, when envisaged in its implementing and operational dimensions, the trend of focussing on migrants' 'vulnerability' raises numerous practical questions: who are the 'vulnerable' migrants who should benefit from dedicated protection measures? How should their vulnerabilities be identified and addressed? Answers to these questions are key to determine whether the focus on 'vulnerable' migrants, asylum seekers, and refugees, is done while complementing and maintaining existing legal standards (for example, by fostering their implementation in ways that adequately consider migrants' lived experiences), or if they sustain an overall downplaying of existing legal protection standards to those who are identified as the most vulnerable.

Therefore, one should consider the specific functions and meanings that 'vulnerability' acquires when used as a tool for asylum governance in Europe. This chapter thus seeks to unpack 'vulnerability', by tracking down its conceptual transformations as it travels across ethical, heuristic, and legal and bureaucratic frameworks. It does so based on the analysis of the various functions and meanings that 'vulnerability' has acquired in the academic literature and in European Union (EU) asylum law—including EU Directives and Regulations on asylum, their interpretation by the Court of Justice of the European Union (the CJEU), and the case-law of the European Court of Human Rights (the ECtHR).[2]

The chapter thereby follows a theoretical approach that is akin to the one developed by Bal in her work on 'travelling concepts', in which she calls for greater

[1] When referred to as a concept, 'vulnerability' is used with quotation marks throughout this chapter.

[2] The ECtHR is not an EU institution. It is established as part of another international organisation, the Council of Europe, which objectives are to uphold human rights, the rule of law, and democracy on the European continent. The Council of Europe includes 46 member states, including all EU-member states, as well as non-EU member states (such as Turkey, the UK, and states that are located in the Balkans and in the Caucasus). Within the Council of Europe, the ECtHR is entrusted with the enforcement of the European Convention on Human Rights (ECHR). Its case-law plays a major role in setting EU human rights protection standards, which the EU Charter of Fundamental Rights equates to those established in the ECHR (Art. 52, 3, EU Charter of Fundamental Rights).

attention to how concepts undergo transformations when used in different conceptual frameworks (Bal, 2002, 2009). Bal developed her work on 'travelling concepts' when reflecting on the challenges of conducting interdisciplinary research. She reminds us of the importance of not focussing interdisciplinary discussions on research methods, but of also considering the variations in the implicit meanings that same or similar concepts may receive depending on each discipline. In this chapter, I extend Bal's theory to reach better understanding of how concepts (and knowledge) travels between scientific frameworks and decision-making frameworks.

Bal's theory of 'travelling concepts' takes as starting point that concepts are flexible, and that they receive different implied meanings depending on the conceptual framework within which they are used and mobilised. As concepts are never neutral, but they always impact the realities they seek to represent, attention to such implied meanings is key to understanding and appraising the likely consequences of their uses. This is especially true for those concepts, such as 'vulnerability', that are mobilised to guide and legitimate state actions, which can have major consequences on individuals' rights and positions within society.

A first section sets the scene. It looks at the concrete manifestations of dedicated attention to 'vulnerable' persons and groups in the legislative developments announced in the EU New Pact on Migration and Asylum (the EU New Pact), which lays out the policy and legislative agenda of the EU Commission for the years to come (European Commission, 2020b). A second section traces back the implied meanings that 'vulnerability' has received in academic studies. It does so based on an overview of the literature in the ethics of care, a school of thoughts that developed an ontological and embodied perspective on 'vulnerability' as part of a broader theory of justice, which advocates for attention and solicitude to the weakest members in society. A third section analyses how 'vulnerability' has come to acquire increased relevance within legal reasoning as part of EU asylum law, including ECtHR case-law. A last section reflects on the promises and challenges associated with the increased reliance to 'vulnerability' as part of EU asylum law and policy. It warns against the humanitarianism trap: an excessively moralised outlook on migration, which essentialises migrants seeking protection as passive victims, thereby neglecting policy choices and operational practices that would build on their agency and coping strategies, and ultimately failing to consider them as rights holders.

2.2 Migrants' 'Vulnerability' and Ongoing Legislative Trends in EU Asylum Law

The EU New Pact on Migration and asylum (the EU New Pact) states that 'the EU asylum and migration management system needs to provide for the special needs of vulnerable groups' (European Commission, 2020b).[3] Among the various legislative

[3] The EU New Pact also emphasises the importance of the 'vulnerability assessments' that are performed by the European Border and Coast Guard Agency (Frontex) (Reg., EU, 2019, 1896).

measures that are announced in the New Pact, two are particularly noteworthy for how they integrate dedicated attention to 'vulnerable' refugees and asylum seekers as part of their design. Both require EU member states to perform vulnerability assessments when operationalising them.

First, a Union Resettlement Framework (URF) is intended to provide a permanent and common EU framework to resettle vulnerable refugees to Europe (European Commission, 2016c). The URF objective is to incentivise EU member states to coordinate their action when getting involved in the resettlement programmes that are run by the UNHCR. While it doesn't impose resettlement quotas on the EU member states, the URF sets up a permanent institutional framework to establish annual resettlement plans for the EU as a whole. It also establishes a common operational procedure, as well as eligibility criteria, that will guide the implementation of the EU resettlement programmes in each of the EU member states involved (Ineli-Ciger, 2022). 'Vulnerability' is the main eligibility criteria, thereby reflecting the UNHCR approach when selecting the refugees who are eligible to resettlement (UNHCR, 2011). Discussions on the adoption of the URF remain ongoing.

Second, a border procedure is envisaged as a fast-track procedure to swiftly process asylum applications that were lodged at the EU external borders (European Commission, 2020a), in the objective of preventing further secondary movements of asylum seekers within European territory. The border procedure is envisaged in combination with the systematic screening of all migrants presenting themselves at the external border, which would include the identification of specific vulnerabilities (COM, 2020, 612). One of the objectives is to exempt asylum seekers from the accelerated procedure, when it would have the effect of depriving them from a fair and effective possibility to present their claim, considering the specific vulnerabilities they face (due to young age, trauma, etc) (European Commission, 2020a, art. 41, 4, 9, b). In such case, their claims will be examined following the regular procedure, which applies to asylum applications lodged within EU territory. The border procedure was adopted in May 2024 as part of the new EU Regulation establishing a common asylum procedure (Reg., EU, 2024/1348) and a new EU Regulation establishing a return border procedure (Reg., EU, 2024/1349), despite the major controversies on its concrete modalities. Plans to increase the recourse to detention pending a decision on the asylum application following the border procedure have led to vivid discussions (Mitsilegas, 2022). Given past experiences with the 'hotspots' camps on the Greek islands, such as Moria, one may rightly fear that large-scale detention centres will be built at the EU external borders, without guaranteeing asylum seekers with decent living conditions.

Moreover, the EU New Pact announces the establishment of the European Union Agency for Asylum (EUAA), which started its work on 19 January 2022 (Reg., EU, 2021/2303). The EUAA is entrusted with the development of operational tools,

The objective is to identify weaknesses in the migration management systems of EU member states, and which affect their ability to respond to migration movements at the EU external borders. This illustrates the concept's inherent ambiguities within the EU policy discourse.

including training, practical guidelines, fora for exchange of information and expertise, etc. The objective is to foster uniform practices among the EU member states administrations when they implement EU asylum law (Tsourdi, 2020).[4] In its work so far, the EUAA has dedicated particular attention to developing practical tools in view of streamlining vulnerability assessment practices across Europe—which civil society organisations have long pointed out for being implemented in unequal and inconsistent ways (ECRE, 2017).[5] These measures include the establishment of a specific expert network, the 'vulnerability expert network' (VEN), which is conceived as a forum gathering experts from member states administrations and international and civil society organisations for exchanging best practices and reflecting on common vulnerability assessment standards. They also include the establishment of practical guides and toolkits to be used by decision-makers within national asylum authorities, including the 'tool for identification of persons with special needs' (IPSN tool). The IPSN tool outlines the practical questions that public servants should systematically ask themselves and to asylum applicants in view of identifying those with special protection needs.[6]

Lastly, the EU New Pact calls for further developing the cooperation with third countries in view of managing migration movements to Europe. Such developments are difficult to identify and assess based on legal and documentary research exclusively, as they mainly rest on informal forms of cooperation (Cardwell & Dickson, 2023). One of the main patterns that seems to emerge is to complement reinforced cooperation in the field of return and readmission, with the further development of legal pathways—including resettlement for the most vulnerable refugees. This pattern is well-exemplified in some of the main agreements that were concluded outside the EU legal framework, such as the 2016 EU-Turkey statement, by which all asylum seekers who crossed the border between the Greek islands and Turkey will be immediately sent back to Turkey, whereas additional vulnerable refugees in Turkey will be resettled to the EU (European Council, 2016)[7]; or the 2020

[4] The EUAA replaced the European Asylum Support Office (EASO), whose missions were limited to strengthening and coordinating the cooperation among the member states' administrations (Reg., EU, 439/2010).

[5] This finding was also refined and confirmed by the reports that were produced on Belgium, Germany, Italy and Norway as part of the VULNER project (Sarolea et al., 2021; Kluth et al., 2021; Marchetti & Palumbo, 2021; Liden et al., 2021). Although not an EU Member State, Norway is an 'EU+' country, that is, a country which is member of the European Free Trade Area. It is bound by the Schengen *acquis*, including the Dublin Regulation, and it takes part in the EUAA work and activities based on a working arrangement with the EU (Reg., EU, 2021/2303, recital 65).

[6] The IPSN tool is openly accessible online, and it can be consulted here: https://ipsn.easo.europa.eu (last consulted on 5 July 2023).

[7] The General Court of the CJEU ruled that the EU-Turkey statement is not an act of EU law, which would bind the EU, and that it was concluded by the EU-member states in their own capacitiy and outside of the EU legal frameworks (Cases T-192/6 *N.F. v European Council* (2017) EU:T:2017:128; T-193/16 N.*G. v European Council* (2017) EU:T:2017:129; and T-257/16 *N.M. v European Council* (2017) EU:T:2017:130, with appeals declared inadmissible in the Cases C-208 to C-210/17 P *NF, NG and NM v European Council* (2018) ECLI:EU:2018:705).

UK-Rwanda asylum plan, which establishes a similar mechanism for all asylum seekers reaching the UK by boat (UK-Rwanda Memorandum of Understanding, 2022). Another pattern is to streamline aid development towards 'vulnerable' populations and groups who are more likely to migrate to the EU, as illustrated by the funding priorities established for the EU Trust Fund for Africa at the 2015 Valletta summit between the EU and African countries (Agreement establishing the EUTF, 2015). Both patterns can be found in the 2023 deal between the EU Tunisia, which enhances the cooperation with Tunisia in controlling migration movements, and which announces the setting-up of additional legal pathways as well as aid support towards promoting 'sustainable development in disadvantaged areas with high migratory potential by supporting the empowerment and employability of Tunisian people in vulnerable situations' (Memorandum of Understanding on a strategic and global partnership between the EU and Tunisia, 2023).

These developments show how deeply entangled 'vulnerability' has become with some of the main trends underpinning the development of EU asylum law and policy: the establishment of a common EU approach to 'legal pathways to protection',[8] the setting-up of accelerated procedures at the EU external borders, the pursuit of uniform asylum practices across the EU, and the development and deepening of cooperation with third countries. 'Vulnerability' has thus become an integral part of the conceptual toolbox for EU asylum governance, resulting into manifold vulnerability assessment processes, which are deployed in different legal instruments and contexts—including those fitting into EU policy endeavours of controlling migration upstream, before migrants reach EU territory, and of deepening the harmonisation of EU asylum law through the establishment of agencies, which are tasked with developing operational tools and forms of cooperation that aim at supporting the emergence of uniform practices when implementing EU asylum law in each EU member state.

But the trend of mobilising 'vulnerability' as a tool for asylum governance is not unique to the EU institutions. It also manifests itself in the work of other international organisations, albeit from a different perspective that is focussed on reviewing the conformity of asylum and migration policies with migrants' rights. The Council of Europe's Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (Council of Europe, 2021) calls for a transversal approach involving all institutional and civil society actors, to devise asylum and migration policies that are adapted to the specific needs of vulnerable migrants, asylum seekers, and refugees.[9] Similarly, international organisations, such as the IOM, have developed their own model to assess vulnerabilities in ways that seek to

[8] 'Legal pathways to protection' is used as an umbrella term in EU policy documents, to refer to any mechanism aimed at providing safe and legal access to European territory for migrants seeking asylum (Commission Recommendation, EU, 2020/1364). On the lack of clear and uniform vocabulary, and how this reveals the conflation between different and sometimes contradicting policy objectives, see Stoyanova, 2023.

[9] The Council of Europe is an international organisation that is distinct from the EU, and which objectives are to uphold human rights, democracy, and rule of law in Europe, as established in the

connect the analysis of individual situations with the broader social environment in which they arise (IOM, 2019).[10]

The United Nations (UN) Global Compact for Migration takes an even more ambitious approach. It requests states to 'review relevant policies and practices to ensure they do not create or unintentionally increase the vulnerabilities of migrants' (U.N.G.A. Res. 73/195, Objective 7; Atak et al., 2018). 'Vulnerability' then serves as a standard to evaluate asylum and migration policies while taking migrants' perspective, and the emphasis is laid on establishing transversal attention for migrants' vulnerabilities as a constitutive element of asylum and migration policies.

So far, however, uses of 'vulnerability' in policy communications in Europe have served to legitimise policy measures with diverging objectives and consequences. Some are oriented towards improving migrants' protection, such as the relocation of minor children from the Greek islands to other EU member states that was organised during the COVID-19 pandemic to prevent them from remaining stuck in camps, and that was justified on account of children's particularly vulnerable position (European Commission, 2020d). Other measures have the overall effect of reducing migrants' protection, as exemplified by the 2016 EU-Turkey statement, or the 2020 UK-Rwanda asylum plan (Memorandum of Understanding between the UK and Rwanda, 2022).

This explains why, during a focus-group discussion that was organised with key stakeholders at the EU level when designing the VULNER project,[11] civil society actors expressed their wariness towards the current policy emphasis on 'vulnerable' migrants, asylum seekers, and refugees. They fear that it will be used to justify and legitimise a downplaying of the existing protection standards to the most vulnerable among them, without real and dedicated attention to the vulnerabilities that all are facing (Hruschka & Leboeuf, 2019). There is a need of further evaluating these trends, which first calls for conceptual clarity—beyond the mere linguistic definition of 'vulnerability' as exposure to harm (Oxford English Dictionary, 2023).[12] Therefore, the next section focusses on how 'vulnerability' has been conceptualised in the academic literature and in vulnerability theories namely.

European Convention of Human Rights. The European Court of Human Rights is among the institutions that belong to the Council of Europe.

[10] The IOM model of the determinants of migrant vulnerability recommends combining the analysis of 1. individual factors with 2. household and family factors, 3. community factors, and 4. structural factors (IOM, 2019).

[11] The meeting was organized thanks to the support of 'Population Europe', a scientific network affiliated to the Max Planck Society and that gathers experts within academia and policy (www.population-europe.eu)

[12] The Oxford English Dictionary defines 'vulnerability' as 'the quality or state of being exposed to the possibility of being attacked or harmed, either physically or emotionally.'

2.3 The Ethics and Heuristics of Migrants' Vulnerability

'Vulnerability' is a key concept in the ethics of care, a philosophical school of thoughts that originated in the U.S. Ethics of care advocate attention and solicitude for others as the main ethical paradigm (Held, 2005; Tronto, 2009; Tong & Williams, 2018). From the perspective of these authors, a 'just' society is a society that cares for its weakest members, for example, through the adoption of adequate welfare provisions that guarantee universal access to healthcare, education, or housing.

The moral duty to care for others is itself grounded in an ontological understanding of 'vulnerability', which is viewed as inherent to the human condition (Mackenzie, 2013; Gilson, 2014; Browne et al., 2021). Human beings are vulnerable to varying extents depending on the circumstances, their personal characteristics (such as their age, gender, or health status), social position, resources, and past experiences. Moreover, vulnerabilities may take different forms and expressions depending on the social and interpersonal context in which they arise: an individual may be vulnerable in one situation, but they may enjoy a position of power in another. During their life course, all will experience a vulnerable position in which they depend on the care of others, for example, because of illness or old age.

Ethics of care thus call for identifying positions of vulnerabilities within society and guiding state action accordingly (Fineman, 2008). They developed a dedicated conceptual approach to vulnerability, which requires appropriate consideration of the social context and the power dynamics that underpin it. Without denying that some vulnerabilities may have natural and innate dimensions (for example, when they result from corporeal characteristics, such as disability), ethics of care lay the emphasis on how vulnerabilities are embodied in a given social context, and on how they emerge as part of social and intersubjective dynamics (Cortina & Conill, 2016; Boublil, 2018).

It is precisely such consideration for the broader social context that may help in reaching a better understanding of the specific vulnerabilities, which are inherent in the migrant condition—for being uprooted already places individuals in a vulnerable position as they integrate into a new social environment which requires them to adapt to new social and institutional norms, as well as to acquire the skills to navigate among them.

There is a burgeoning trend, in empirical and qualitative research on migration,[13] to mobilise 'vulnerability' as an analytical concept to document and study migrants' experiences in Europe and on the way to Europe (Blazek, 2014; Aysa-Lastra &

[13] The trend of mobilizing 'vulnerability' is not unique to empirical research on migration. It can also be found in development studies, where it is deeply connected with the long-standing tradition of using 'vulnerability' as a conceptual tool to identify aid beneficiaries, in view of empowering them to achieve self-reliance (U.N. Human Rights Council Res. 21/11, 2012; European Commission, 2016a). Similarly, risks and disasters studies, including those mapping the consequences of climate change, have commonly mobilized 'vulnerability' as their analytical framework. For example, the Intergovernmental Panel on Climate Change defines 'vulnerability' as: '[...] [t]he propensity or predisposition to be adversely affected […] [;] Vulnerability encompasses

Cachon, 2015; Ni Raghallaigh & Thornton, 2017; Kuschminder & Triandafyllidou, 2019; Adefehinti & Arts, 2018; Jacobs & Maryns, 2022). Attempts at refining the conceptualisation of 'vulnerability' from an empirical perspective have thus also been multiplying. While most authors don't establish a clear and straightforward connection between their analyses and vulnerability theories as developed in the ethics of care, positions of vulnerability are often emphasised as resulting from a combination of 1. innate characteristics, mainly with corporeal dimensions; 2. situated experiences, which relate to interpersonal relationships; and 3. structural factors and dynamics, which relate to the organisation of society (Brown et al., 2017; Virokannas et al., 2018; Gilodi et al., 2022).

There is also growing attention to the temporalities of vulnerabilities, including how they may also result from the passage of time, for example, when migrants are confronted to prolonged uncertainties that make it difficult for them to develop resilience and coping strategies (Jacobsen & Karlsen, 2021).

But mobilising 'vulnerability' as a heuristic device to document and analyse human experiences also comes with conceptual challenges. Analytical lenses are never neutral: they always have various explicit and implicit meanings, which ultimately shape the results of the analysis. Most of these implied meanings can be traced back to how 'vulnerability' is conceptualised in the ethics of care. In that literature, the focus is on individuals, whose freedom and liberty are the primary concern, and who should be empowered to become resilient and lead their own independent life. Gender and race are generally considered as a particularly important determinant of positions of vulnerabilities. Ethics of care are often labelled as 'feminist ethics', for they commonly seek to acknowledge, discuss, and reveal the gendered dimensions of inequality and experiences of vulnerabilities (Norlock, 2019).

Moreover, and perhaps most importantly, 'vulnerability' is a term that belongs to the vocabulary of affective communication (Chouliaraki, 2020). Whereas it has become common, in the literature, to lay the emphasis on the resilience of vulnerable individuals and on their abilities of developing their own coping strategies when put in a position to do so (see, e.g., Butler, 2016; Baumann & Moore, 2023), 'vulnerability' nonetheless conveys passivity and victimhood.

These implied meanings of 'vulnerability' nurture various risks of distorting realities, when 'vulnerability' is mobilised as an analytical tool to document migrants' experiences. Distortion risks include: overlooking the broader structural factors and circumstances that have the consequence of putting individuals in vulnerable positions (Cole, 2016; Davis & Aldieri, 2021); romanticising the coping strategies of vulnerable individuals, thereby ignoring that some vulnerabilities are so deeply entrenched that they can't be overcome even with adequate support, and that some form of care will always be needed; and developing an excessive focus on gender as a determinant of vulnerability, thereby obscuring other relevant factors

a variety of concepts and elements including sensitivity or susceptibility to harm and lack of capacity to cope and adapt.' (IPCC, 2015; Afifi & Jäger, 2010).

and circumstances which intersections contribute to generating positions of vulnerability (Sözer, 2019; Turner, 2019).

Besides these distortion risks, which result from the implied conceptual meanings of 'vulnerability', practical difficulties arise when 'vulnerability' evolves into a heuristic device that serves to document and analyse migrants' experiences. People rarely identify themselves as 'vulnerable'. When they do, it's often in a strategic way and with some distance, because they are aware that demonstrating their vulnerability is a prerequisite to gain access to certain rights and advantages (Freedman, 2018; Mitchell, 2020), or because it helps mobilising public opinion in favour of their cause (Chouliaraki, 2020). As a result, researchers who seek to document and analyse experiences of vulnerability need to make adequate translations between the life experiences of the research participants as told by them, and the vulnerable positions they face—as further discussed by Marchetti, Brun, Crine, Flamand, and Raimondo in the second chapter of this volume.

The risks associated with mobilising 'vulnerability' as an ethical and empirical concept aren't mentioned here to criticise ethics of care and vulnerability theories as such (they are being constantly refined through a rich scholarship in view of better reflecting human realities), nor to invalidate empirical studies that are mobilising 'vulnerability' as their main analytical framework. To the contrary, when duly acknowledged, the challenges mentioned above can be tackled in research through adequate methodological and conceptual tools.[14] But discussing them reveals the implied meanings of 'vulnerability', which are likely to resurface when 'vulnerability' travels explicitly or implicitly from the ethics and heuristic frameworks, where it often supports critical views and analyses of state action, to the legal and policy ones, where it becomes incorporated within state action.

2.4 The Vulnerability Label

When used in legislative instruments and mobilised as part of legal reasoning, the concept of 'vulnerability' acquires yet different functions. It doesn't serve to support and develop ethical arguments on what a 'just' society should be, nor to document and analyse human experiences. It rather becomes part of a practice-oriented reasoning, which allows state actors to identify rights beneficiaries. 'Vulnerability' thereby turns into one of the numerous labels, which European asylum bureaucracies mobilise explicitly and implicitly when assessing individual cases.

As a legal and bureaucratic label, 'vulnerability' has strong protective dimensions: It serves to tailor state action to the specific protection needs of those

[14] In the empirical enquiry conducted as part of the VULNER project, for example, 'vulnerability' was complemented with other theoretical frameworks, such as agency, to avoid essentializing migrants as passive actors; temporality, to account for how the passage of time can influence experiences of vulnerabilities; and intersectionality, to account for how experiences of vulnerability result from the situated intersection of complex individual and social factors and circumstances.

identified as 'vulnerable'. Yet, when laying out the criteria to be met and the processes to follow in view of accessing certain rights, benefits, and/or advantages, the law has exclusionary effects: exclusion is implied in legal protection, as criteria including some persons into protective mechanisms necessarily exclude others. This calls for additional scrutiny on the implied meanings of seemingly protective legal concepts, such as 'vulnerability'.

In view of tracking the implied meanings of the 'vulnerability' label, this section focuses on a legal analysis of how 'vulnerability' has come to permeate EU asylum law. Numerous doctrinal studies have shown that 'vulnerability' isn't a fully-fledged legal concept, with (relatively) clear legal content and consequences. There is no provision of international or EU law that requires states to address vulnerabilities as such. While the European Court of Human Rights (ECtHR) is increasingly mobilising 'vulnerability' as a key consideration when giving reasons for its rulings, it hasn't developed a systematic use of the concept, which would guide its interpretation of ECHR provisions across all cases, in a transversal and consistent way (Peroni & Timmer, 2013; Da Lomba, 2014; Baumgärtel, 2020; Ippolito, 2020; Heri, 2021; Moreno-Lax & Vavoula, 2024). 'Vulnerability' has nonetheless come to permeate EU asylum law in indirect ways.

First, EU legislative instruments require the EU member states to adopt dedicated measures in view of addressing the 'special needs' of asylum seekers in vulnerable positions, pending a decision on their asylum application (Sect. 2.4.1.). Second, each asylum applicant's specific 'vulnerability' is increasingly explicitly considered as a relevant consideration, when assessing all relevant facts and circumstances in view of evaluating the risk of persecution or ill-treatment in case of removal (Sect. 2.4.2). Each of these legal understandings and uses of 'vulnerability' has led to specific challenges, which are discussed below.

2.4.1 The 'Special Needs' of 'Vulnerable' Asylum Applicants Pending a Decision on Their Application

EU Directives on the asylum procedure (APD) (Dir. 2013/32/EU) and on the reception conditions (RCD) (Dir. 2013/33/EU) require EU member states to address the 'special needs' of 'vulnerable' asylum seekers. None of these Directives provide a definition of the 'vulnerable' asylum seeker. Rather, they emphasise some personal characteristics (such as being a minor, a pregnant woman, a victim of torture and violence, etc.) that may give rise to special protection needs, and which they list in an open-ended and non-exhaustive way.[15]

[15]The RCD, which has the most elaborate list of the personal characteristics to be considered, includes: 'minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious

The aim of the focus on the 'special needs' is to identify and remove obstacles in accessing dignified living standards, or in benefitting from a fair chance at submitting an asylum application. This is particularly apparent from art. 2(k) RCD, which defines 'applicants with special needs' as 'vulnerable persons' with a 'need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive'. From that perspective, 'vulnerabilities' are to be identified and addressed teleologically, through dedicated measures that enable vulnerable asylum seekers to fully enjoy their right to human dignity as guaranteed by the Reception Conditions Directive, and the fair and effective chance at presenting their application for asylum as guaranteed by the Asylum Procedures Directive.[16] The member states are responsible for identifying the most appropriate means of addressing the special needs, which may vary depending on each individual situation. But the Reception Conditions Directive and the Asylum Procedures Directive also contain some measures to be adopted, such as reserving asylum interviews of minor applicants to specially trained public servants (art. 25, 3, a, APD) or performing regular health checks on vulnerable applicants when they are detained (art. 11, 1, RCD).

The trend of focusing on the special needs is confirmed by current legislative plans as announced in the EU New Pact. The proposed recast of the Reception Conditions Directive (COM, 2016, 465fin), and the proposed recast of the Asylum Procedure Directives into a regulation, maintain the obligation to address special protection needs (COM, 2020, 611fin). The new border screening procedure is introduced as a tool to further strengthen the identification of special needs from the earliest procedural stages:

> The screening should also ensure that persons with special needs are identified at an early stage, so that any special reception and procedural needs are fully taken into account in the determination of and the pursuit of the applicable procedure (Recital 9, COM, 2020, 612fin).

The trend also appears in other EU documents, such as the EU Commission Operational guidelines on the temporary protection for people displaced by the war in Ukraine (C/2022/1806), which provide additional practical guidance to the EU member states on how to implement the temporary protection to those fleeing the Ukrainian conflict. These guidelines require the EU member states to give 'due consideration' to 'the particular needs of vulnerable persons and children, notably unaccompanied minors and orphans' (European Commission, 2022).

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forms of psychological, physical or sexual violence, such as victims of female genital mutilation' (Art. 21 Dir. 2013/33/EU).

[16] This kind of legal approach in identifying the beneficiaries of states' obligations is not unique to EU asylum law. It can also be found in other international legal instruments, such as the UN Convention on the Rights of Persons with Disabilities (CRPD), whose purpose is to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity' (Art. 1 CRPD; Motz, 2021).

The trend is not unique to the EU. At the UN level, the UN Global Compact on Refugees similarly calls on states to address the 'specific needs' of vulnerable refugees, paying particular attention to age, gender, and disabilities (Paras. 59–60). Non-EU member states, such as Norway, also include an obligation to address the 'extra needs' in their national legislation (Liden et al., 2021). In most recent developments, the focus on 'asylum seekers with special/specific needs' seems to gradually replace the one on 'vulnerabilities', when it comes to organising the asylum procedure and the reception conditions.[17] The proposal to recast the reception conditions directive into a regulation modifies the definition of asylum applicants with 'special needs' in such a way that it doesn't refer to 'vulnerable' asylum applicants anymore (Art. 2, 13, COM, 2016, 465fin). The stated objective is to move the focus from identifying vulnerable individuals, to identifying special needs, 'regardless of whether these persons are considered vulnerable' (COM, 2016, 465fin, at p. 12). This hints at a growing dissociation between the specific attention for 'vulnerabilities', which initially justified the obligation to address the 'special needs'; and the 'special needs', which should be addressed in and by themselves.

The focus on the special needs presents the advantage of translating the overall policy requirement of giving specific attention to 'vulnerabilities' into an operational concept, which can be implemented by state actors in (relatively) certain ways. It breaks vulnerability down to a workable notion that can be implemented through practical measures, which don't leave too much of a discretionary leeway to street-level bureaucrats. Yet, this doesn't go without risks, including developing a somewhat sanitised approach to 'vulnerability', which would focus on some personal characteristics while neglecting the broader social context in which they are lived, and which would limit the analysis to a given point in time.

This risk was confirmed by the researchers who conducted fieldwork as part of the VULNER project, within the EU+ countries (Belgium, Germany, Italy, and Norway). All found an emphasis, within the practices of the asylum authorities, on the needs resulting from personal characteristics that are easy to detect, such as disability, gender, or age—whereas positions of vulnerabilities that rest on the complex intersection of numerous factors and circumstances remain overlooked, and there is little attention for how they may evolve over time (Sarolea et al., 2021; Kluth et al., 2021; Marchetti & Palumbo, 2021; Liden et al., 2021). Field research conducted as part another EU Horizon 2020 project, PROTECT, in selected arrival ports in France, Italy, Spain, Greece, Canada and South Africa, reached similar conclusions (Jacobsen et al., 2022).

Besides the explicit legislative requirement to address the 'special needs', there is also an implicit and diffuse requirement to consider the vulnerable position in which asylum applicants would find themselves in the countries to which they will be expelled, when evaluating all the relevant facts and circumstance of each case. This requirement is further explored below.

[17] When it comes to legal pathways to protection, however, the focus remains on vulnerable individual. See the EU Recommendation on legal pathways to protection, which states that 'Member States are invited to increase the number of admissions to their territory of vulnerable people in need of international protection' (Recommendation, EU, 2020/1364, para. 11).

2.4.2 *'Vulnerability' and the Evaluation of the Risk of Ill-Treatments in the Country of Removal*

There is no requirement, in the 1951 Geneva Convention (the Refugee Convention) nor in the EU Qualification Directive (QD) (Dir. 2011/95/EU),[18] to be in a particularly vulnerable position to obtain international protection: the main legal criterion is to be facing a persecution risk in the sense of the Refugee Convention, or a risk of serious harm in the sense of art. 15 QD.[19] The Qualification Directive requires, however, to assess such risk based on individual facts and circumstances that support an asylum application, when evaluating risks of ill-treatments in the home country. It specifies that such evaluation should be done while considering the 'individual position and personal circumstances of the applicant, including factors such as background, gender and age' (art. 4 QD), thereby hinting at the need to also consider their specific vulnerabilities.

The Refugee Convention doesn't elaborate on how to assess the persecution risk. But the 2004 Michigan Guidelines, a doctrinal initiative by legal scholars aimed at clarifying the principles of interpretation and underlying requirements of the Refugee Convention, emphasise the 'general duty to give attention to an applicant's specific circumstances and personal vulnerabilities in the assessment of refugee status' (Michigan Guidelines on Well-Founded Fear, 2004). The assessment of vulnerabilities is thus implicit in the individualised evaluation of the persecution risk. Some of the public servants within asylum authorities and asylum judges, who were interviewed by VULNER researchers, have stated to be performing vulnerability assessments when evaluating each case's specific circumstances (El Daif et al., 2021; Kaga et al., 2021; Kluth et al., 2021; Liden et al., 2021; Marchetti & Palumbo, 2021; Nakueira, 2021; Sarolea et al., 2021).

There is some resonance to that approach in the ECtHR case-law on expulsion cases, where the Court has sometimes explicitly referred to the vulnerable position that applicants would face in the country to which they will be removed, when outlining the reasons why it concluded to a risk of ill-treatments.[20] The Court has

[18] The Qualification Directive sets out the criteria to be met in view of obtaining international protection in Europe, and the legal status of international protection beneficiaries. 'International protection' is a concept of EU asylum law, which encompasses both the refugee status (in line with the 1951 Geneva Convention) and the subsidiary protection status (which applies to those who don't qualify as refugees but are nonetheless fleeing ill-treatments that aren't motivated by one of the Convention persecution grounds, for example, because they result from a situation of indiscriminate violence; see art. 15 QD).

[19] For the sake of clarity, I refer to a 'persecution risk' in a way that also encompasses the risk of serious harms in the sense of art. 15 QD. The reason for that choice is to recognize the prevalence of the refugee status, which is established by international law, over the subsidiary protection status, which is established by EU law in view of complementing the refugee status.

[20] The focus in this chapter is on the cases where the ECtHR explicitly referred to an applicant's 'vulnerability' when it found a violation of article 3 ECHR, if the applicant were to be expelled. In other rulings, the ECtHR also made explicit reference to migrant applicants' vulnerability, for example, when evaluating whether their detention was in conformity with the Convention (see,

emphasised, for example, the specific vulnerability of some applicants resulting from their personal characteristics such as their age,[21] disability,[22] and state of health,[23] including their mental health condition.[24] In other rulings, the Court emphasised the risk of being submitted to ill-treatments resulting from the particularly vulnerable position of the applicants in the country to which they will be removed, for example, as internally displaced persons,[25] or members of a religious minority,[26] or of being a migrant in the country of removal.[27]

In these rulings, the explicit emphasis on 'vulnerability' mainly served to justify findings of a Convention violation.[28] Such emphasis is far from systematic. It's not uncommon for the Court to find a Convention violation based on the applicant's specific profile, without explicitly mentioning that they would end up in a particularly vulnerable position because of their personal characteristics and the overall social context in the country to which they will be expelled.[29] Similarly, the Court has often rejected applications, without contesting the applicant's particularly vulnerable position in the country to which they will be expelled.[30] Explicit references

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e.g., e.g., App. 13178/03 *Mubilanzila v. Belgium* ECHR 12 October 2006 and App. 8687/08 *Rahimi vs. Greece* ECHR 5 April 2011, concerning the detention of a minor child; App. 36,760/06 *Stanev vs. Bulgaria* ECHR GC 17 January 2012, concerning the detention of a mentally disabled individual).

[21] App. 29217/12 *Tarakhel v. Switzerland* ECHR GC 4 November 2014, which concerns minor children.

[22] App. 60367/10 S.*H.H. v. the UK* ECHR 29 January 2013.

[23] App. 41738/10 *Paposhvili v. Belgium* ECHR GC 13 December 2016.

[24] App. No. 57467/15 ECHR GC *Savran v. Denmark* 7 December 2021.

[25] App. 8319/07 and 11449/07 *Sufi and Elmi v. the U.K.* ECHR GC 28 June 2011; App. 886/11 *K.A.B. v. Sweden* ECHR 5 September 2013; both concerning Somalian nationals.

[26] App. 68335/10 *N.M.B. v. Sweden* ECHR 27 June 2013; App. 72413/10 *M.K.N. v. Sweden* ECHR 27 June 2013; App. 71680/10 *A.G.A.M. v. Sweden* ECHR 27 June 2013; App. 72686/10 *N.M.Y. and others v. Sweden* ECHR 27 June 2013; App. 68411/10 *N.A.N.S. v. Sweden* ECHR 27 June 2013; App. 43,611/11 *F.G. v. Sweden* ECHR 23 March 2016; all concerning Christians from Iraq.

[27] App. 27765/09 *Hirsi Jamaa v. Italy* ECHR GC 23 February 2012.

[28] With the ruling in *S.H.H. v. the UK* as a notable exception. In that case, the Court decided that the applicant didn't face an 'enhanced risk' of article 3 ECHR violations because of his disability, and which would be of such degree that there is a situation of 'indiscriminate violence' for disabled persons in Afghanistan. Such finding by the ECtHR would have implied that disabled persons wouldn't need to show additional personal elements and circumstances to establish that their removal to Afghanistan would violate article 3 ECHR. Standards for evaluating article 3 ECHR violations in case of situations of indiscriminate violence were established by the ECtHR in the *Sufi and Elmi* ruling (App. 8319/07 and 11,449/07 *Sufi and Elmi v. the UK* ECHR GC 28 June 2011).

[29] In *M.A. and others v. Lithuania* (App. 59,793/17 *M.A. and others v. Lithuania* ECHR 11 December 2018), for example, the Court concluded to a violation of the Convention if the applicants were to be expelled to Belarus, without laying specific emphasis on the vulnerability of the children concerned, which is well-recognised in its case-law (see, e.g., App. 13,178/03 *Mubilanzila v. Belgium* ECHR 12 October 2006; Ippolito, 2020, at p. 257).

[30] In *Nacic v. Sweden* (App. 16567/10 *Nacic v. Sweden* ECHR 15 May 2012), for example, the Court concluded that the removal of Roma applicants to Kosovo or Serbia wouldn't violate the Convention, without reversing its earlier case-law that recognises Roma people as a vulnerable

to the applicants' 'vulnerability' in the ECtHR's decision aren't necessarily meaningful, and the lack thereof either. Such references may also result from the applicants' argumentation, who may sometimes frame their legal arguments around their 'vulnerability', sometimes triggering the use of that concept by the ECtHR in its ruling. It is thus difficult, if not impossible, to distinguish decisions in which 'vulnerability' is used in a purely descriptive fashion when referring to the situation at hand, from those in which it played a meaningful role in shaping legal reasoning and the final decision on the case.

There is one exception, however, to the vague and often implicit use and mobilisation of 'vulnerability' by the ECtHR, as part of the individualised assessment of all relevant facts and circumstances. In cases concerning the implementation of the Dublin Regulation (Reg., EU, 604/2013), the ECtHR has given explicit legal meanings and consequences to the finding that asylum seekers find themselves in a particularly vulnerable position in host countries—thereby making an explicit legal use of the concept, which received an explicit legal consequence. The Dublin Regulation identifies the EU member state that is responsible to decide on an asylum application, based on a range of criteria that often lay such responsibility on the member state of first entry on EU territory. Its implementation often requires transferring asylum seekers back to the member state of first entry.

In its *M.S.S. v. Belgium and Greece* ruling, the ECtHR found that such transfer would violate the Convention, when the responsible member state cannot offer adequate reception conditions.[31] The case concerned an Afghan asylum seeker who, upon his transfer to Greece, was left homeless without any kind of assistance, nor concrete prospects of having his asylum application examined by the authorities. The ECtHR insisted that:

> […] [It] attaches considerable importance to the applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection (*M.S.S.*, at para. 251)

'Vulnerability' was thus used as an explicit criterion that justified expanding the protection of the ECHR, which generally does not protect against material deprivation in such a way that it requires states to set in place welfare policies.[32]

The question then arose whether the reception conditions in the responsible member state needs to be evaluated depending on the applicant's specific profile and vulnerabilities, beyond those resulting from the asylum seeker status. In its ruling in *Tarakhel v. Switzerland*, which concerned the transfer to Italy of a family of Afghan asylum seekers, the Court ruled that this was the case.[33] The CJEU followed suit. It

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group (App. 57325/00 *D.H. and Others v. The Czech Republic* ECHR GC 13 November 2007; App. 27238/95 *Chapman v. the UK* ECHR GC 18 January 2001).

[31] App. 30696/09 *M.S.S. v. Belgium and Greece* ECHR GC 21 January 2011.

[32] See also, following the same reasoning, App. 28820/13, 75547/13 and 13114/15 *N.H. and Others vs. France* ECHR 2 July 2020.

[33] App. 29217/12 *Tarakhel vs. Switzerland* ECHR GC 4 November 2014. As an 'EU+' country, Switzerland is bound by the Dublin Regulation.

adopted a similar reasoning in *C.K.*, where it conditioned Dublin transfers to adequate reception conditions in the responsible member state, which should be evaluated based on the analysis of the applicant's individual profile and vulnerabilities.[34] In *Jawo*, the CJEU outlined the same requirement when setting out the criteria to evaluate whether asylum applicants, who benefit from an international protection status in another member state, benefit from effective protection in that member state.[35]

As a consequence, EU member states courts and administrations are required to consider the specific vulnerabilities of each asylum seeker, when evaluating whether reception conditions in the responsible member state are in conformity with the ECHR—following an approach that is akin to the one followed in the ECHR case-law on the detention of asylum seekers and migrants, in which the Court evaluates and considers the applicants' specific vulnerabilities when evaluating whether their detention conditions respect the Convention.[36]

This line of cases demonstrates how specific attention to migrants' vulnerabilities, when interpreting and implementing legal standards in individual cases, can help in better tailoring legal reasoning depending on each migrant's individual position. From that perspective, 'vulnerability' can serve as a useful conceptual tool to guide legal reasoning, while evaluating all relevant facts and circumstances in each individual case. It could also direct the attention of decision-makers to 'migratory vulnerability' (Baumgärtel, 2020), which is inherent with the migrant condition and goes beyond specifc personal and individual characteristics such as gender or age. As demonstrated and detailed in other chapters of this collective volume, migrants seeking protection often find themselves in vulnerable positions because of their precarious legal status (or the lack thereof) and experiences resulting from the migration process. Being uprooted makes you vulnerable in distinct ways, and even more so when traumatic events were encountered before and/or during the flight (Brun & Maalouf, 2022; Carnassale & Marchetti, 2022; Liden et al., 2022; Nakache et al., 2022; Nakueira, 2022; Saroléa et al., 2022).

But there is a very thin line between on the one hand evaluating the relevant factual circumstances of a case, and on the other determining the scope and content of a fundamental right. This is well-illustrated in the ECtHR case-law on the detention conditions of asylum seekers in the transit centre of Rözske, in Hungary at the border with Serbia. In *Ilias and Ahmed*, the Court ruled that the applicants' detention conditions weren't contrary to the Convention, noting that there was no indication that the applicants were more vulnerable than 'any other adult asylum-seeker'.[37] In *R.R.*, it came to a different conclusion regarding a family with a pregnant woman and minor children, who were detained in the same centre, on account of their

[34] Case C-578/16 PPU *C.K., H.F., and A.S.*, 16 February 2017, EU:C:2017:127.

[35] Case C-146/17 *Jawo*, 19 March 2019, EU:C:2019:218.

[36] See, e.g., App. 36037/17 *R.R. and Others vs. Hungary* ECHR 2 March 2021; App. 36760/06 *Stanev vs. Bulgaria* ECHR GC 17 January 2012; App. 13178/03 *Mubilanzila v. Belgium* ECHR 12 October 2006.

[37] App. 47287/15 *Ilias and Ahmed v. Hungary* ECHR GC 21 November 2019 at para. 91.

specific vulnerabilities.[38] 'Vulnerability' has thus become a key criterion to evaluate whether the detention of asylum seekers in transit centres at EU borders respects the ECHR. This case-law reflects on the EU Commission proposal for a new asylum border procedure, which envisages a systematic vulnerability screening to exempt the asylum seekers who are identified as 'vulnerable' from detention in transit centres at the border as part of the accelerated asylum border procedure (COM, 2020, 611fin; COM, 2020, 612fin).

The ECtHR's approach is justified by its previous case-law on migrants' detention, which submits the deprivation of liberty of migrant children to additional guarantees.[39] Specific attention to the vulnerabilities faced by migrant children has led to additional obligations for states, which complement the ones that are recognised to every migrant and asylum seeker. Yet, the ruling in *Ilias and Ahmed* reminds that such reasoning can also be mirrored in cases concerning adults, who can't claim the same guarantees. If generalised, an approach that lays primary emphasis on 'vulnerabilities' would make legal reasoning evolve from identifying the scope and content of rights, to first identifying vulnerabilities in view of then determining the scope and content of the rights to be implemented—thereby limiting the personal scope of such rights to individuals who meet the requirements to be qualified as 'vulnerable', whereas such requirement isn't established in international refugee law and human rights law (Carlier, 2017).

This slippery slope is best considered when attention to vulnerabilities becomes extended and generalised at legislative and policy-making levels, for it shows and reminds of the risks of relying on humanitarian concepts when designing asylum and migration laws and policies.

2.5 The Humanitarianism Trap

Humanitarian discourses have proved to be particularly effective in generating broad consensus and support among public opinions for state measures and programmes aimed at offering protection to those in need. To achieve such objective, however, they call on popular emotions and feelings of moral deservingness. This goes with the essentialisation of beneficiaries of humanitarian interventions as innocent victims of unjust sufferings (Fassin, 2007; Ticktin, 2016). Yet, even assuming that human beings can ever be fully 'innocent', essentialising migrants who are seeking protection as passive victims estranges them from their experiences and lived realities. Far from being passive victims, migrants who reached European territory to seek protection managed to navigate and overcome numerous obstacles to their mobility. Most endured harsh journeys during which they had to overcome violence and exploitation, which have become increasingly common on the way to

[38] App. 36037/17 *R.R. and Others vs. Hungary* ECHR 2 March 2021.

[39] See, e.g., App. 41442/07 *Muskhadzhiyeva v. Belgium* ECHR 19 January 2010; App. 70586/11 *Mohamad v. Greece* ECHR 11 December 2014; App. 25794/13 and 28151/13 *Abdullahi Elmi and Aweys Abubakar v. Malta* ECHR 22 November 2016.

Europe (Lorenz & Etzold, 2022). They demonstrated agency, including ability at making strategic use of the resources at their disposal in view of overcoming obstacles to their mobility—despite the particularly disadvantaged positions they are in (Triandafyllidou, 2017; Carpentier et al., 2021).

Mobilising 'vulnerability' as a humanitarian concept thus risks trapping public debates in endless ones on deservingness, which oppose victimising stereotypes to abusing ones (Ticktin, 2016; Armbruster, 2018). Such debates, which are more emotional than facts-based, stand in the way of developing comprehensive responses to migration and refugee movements that adequately account for migrants' experiences. They make it difficult to discuss migrants' agency, whereas it should be considered if one is to develop migration laws and policies that foster coping strategies among migrants that have positive effects on society as a whole (as opposed to coping strategies that cause harms to others, such as human trafficking and other illicit activities). They also divert the attention away from the broader structural issues that affect EU policy responses, such as the lack of a holistic approach to human mobility—which remains viewed as an exceptional phenomenon that can and should be countered (in so far as compatible with international obligations of humanitarian nature), rather than as a permanent reality to be accompanied with proactive policies that build on migrants' aspirations to generate positive social and economic outcomes.

This raises the question whether there is any added value in mobilising 'vulnerability' to guide asylum and migration policies in Europe: should 'vulnerability' be avoided in legal and policy discourses, because of its implied meanings of victimhood and passivity? As argued above, and showed throughout other contributions to this volume, 'vulnerability' has strong potential for shedding light on migrants' experiences. It can serve as an analytical framework to draw attention to these experiences in legal and political reasoning at both operational and policymaking levels. Existing legal trends of emphasising attention to applicants' vulnerability as part of legal reasoning also offer the opportunity of improving the connection between asylum and migration laws, and migrants' lived realities—which is essential to the legitimacy of the legal system, that depends on its ability of adequately reflecting social realities.

For such potential to be realised, however, 'vulnerability' should be prevented from developing into yet another moralised outlook on migration and refugee movements, which ultimately creates a distinction between innocent victims who deserve protection and others. One way of limiting such a risk is to recognise the primacy of migrants' rights. If the more favourable treatment received by those who are labelled as 'vulnerable' doesn't question their rights, which are afforded to all irrespective of additional vulnerabilities, discussions on *who* deserves to be labelled as 'vulnerable' lose most of their relevance.

This does not render 'vulnerability' irrelevant. Anthropologies of bureaucracies have long demonstrated that decision-making processes at operational level are always marked by decision makers' affects, emotions, and own conceptions of fairness and deservingness (Jordan et al., 2010; Eule et al., 2019; Mascia, 2020; Andreetta et al., 2022; Andreetta & Nakueira, 2022). Such human factors are

inherent in any bureaucratic system, and they also contribute to humanising state responses in individual cases. Building attention to migrants' vulnerabilities would direct these practices, by avoiding too much a leeway between how migrants' experiences are understood by decision makers, and migrants' experiences. 'Vulnerability' has strong relevance and potential as a concept to guide bureaucratic action, for example, through the establishment of guidelines and training that reflect migrants' experiences and realities. In Europe, the EUAA can play a key role in that respect.

2.6 Conclusion. A Cautionary Tale

'Vulnerability' has become a particularly popular notion in scientific and policy discourses on asylum and migration, where it is used to support various and at time opposing claims and arguments. Its uses as a conceptual tool for developing and implementing asylum laws and policies lead to additional challenges, as 'vulnerability' then becomes part of the conceptual tools mobilised by decision-makers when identifying migrants who will benefit from some state form of protection—thereby becoming yet another focal point of broader contestations on current asylum and migration policies.

In view of clarifying the terms of the debate, and of identifying the likely consequences of mobilising 'vulnerability' as part of the conceptual toolbox for asylum and migration governance (including the unwanted side-effects), this chapter made an attempt at unpacking its various uses, meanings, and functions. It showed how 'vulnerability' transforms as it travels across the ethics, heuristic, and legal conceptual frameworks, where it respectively serves to (1) sustain ethical arguments as part of a specific theory of justice; (2) understand migrants' experiences; and (3) identify the treatment that migrants should receive from the state. The chapter also discussed how some implied meanings of 'vulnerability', such as victimhood, accompany the concept as it travels across these three conceptual frameworks—generating heightened challenges as, when used as a tool for asylum and migration governance, 'vulnerability' is bound to acquire implied exclusionary effects.

Addressing 'vulnerability' with particular attention to its varying functions depending on the conceptual framework within which it is used and mobilised, and how its implied meanings are also influenced by the ones it received in other conceptual frameworks, reveals the risks associated with using 'vulnerability' at the macro-level, as a tool for asylum and migration governance. Such risks include an excessive focus on compassion and deservingness, with the ultimate effect of reducing migrants' fundamental rights to peripheral and exceptional considerations, to be addressed through individualised measures by decision-makers at the operational level—thereby sometimes supporting the establishment of policy measures that have the overall effect of further exacerbating vulnerabilities.

Does it mean that 'vulnerability' should only serve as a conceptual tool for developing radical criticisms on asylum and migration policies? That would be neglecting decades of legal and bureaucratic evolutions in Europe, and the potentials of 'vulnerability' in supporting operational practices that effectively consider migrants' experiences—thereby bridging decision-making processes with empirical analyses and knowledge on migrants' vulnerabilities, including how such knowledge was developed as part of this volume.

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Chapter 3
Positionalities in Research and the Question of Migrants' Vulnerability

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List of Abbreviations

CFF	Cash for Food
COVID-19	CoronaVIrus Disease of 2019
FPRL	Female Palestinian Refugee residing in Lebanon
FPRS	Female Palestinian Refugee from Syria
FSR	Female Syria Refugee
GS	General Security
IRB	Institutional Review Board
LAF	Lebanese Army Forces
LCRP	Lebanon Crisis Response Plan
MCAP	Multipurpose Cash Assistance Programme
MoU	Memorandum of Understanding
MPRL	Male Palestinian Refugee residing in Lebanon
MPRS	Male Palestinian Refugee from Syria
MSR	Male Syrian Refugee
NGO	Non Governmental Organisation
PLO	Palestine Liberation Organisation
PRL	Palestinian Refugee residing in Lebanon

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PRS	Palestinian Refugee from Syria
RSD	Refugee Status Determination
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
VARON	Vulnerability Assessment of Refugees of Other Nationalities in Lebanon
VASyR	Vulnerability Assessment for Syrian Refugees in Lebanon
VULNER	Vulnerabilities Under the Global Protection Regime
WFP	World Food Programme

3.1 Introduction

Working together in different country teams on the project Vulnerability under the Global Protection Regime (VULNER), the question of 'positionality' kept coming back at several levels, in our methodological discussions, in the comparative analysis of results, in searching for common terminologies and definitions. It very soon became clear that the topic that had brought us together and on which our research project was entirely based—vulnerability—had a very volatile, ever changing meaning,[1] depending on who was using it, where and when. It was difficult for us to be certain about what we exactly meant with this word, how it applied to our research and to the reality of our national case studies. Even within the same context, definitions may have changed over the time due to changes in the legal-, policy- or common language used to talk about migration issues. Entering the fieldwork, the slippery character of the notion of vulnerability was reinforced by the fact that the different subjects with whom we discussed (lawyers, policy makers, researchers, social workers, asylum seekers and migrants in general) had different views and understandings about it.

In this chapter we aim to reflect on the importance of these conflicting views on vulnerability, taking it as an example of the ways in which the same categories that we use to talk about inequalities are differently shaped by the various contexts in which they are produced, shared and circulated (Anthias et al., 2012; Yuval-Davis, 2015). Based on the interviews collected by the VULNER research teams—seven teams working in seven different countries[2]—we discuss the tension between views on vulnerability held by migrants, legal experts and social workers. Such tension has been for us a very prolific source of inspiration, inviting us to take a self-reflexive

[1] Many other levels of complexity and tensions in meanings and definitions have arisen during this project. Simply speaking of 'asylum seekers' or 'protection seekers' had different meanings in the countries in which we conducted our research, due to different legal framework, use of language and terminologies.

[2] Belgium, Canada, Germany, Italy, Lebanon, Norway and Uganda.

stand on the way the use of academic working-definitions, such as vulnerability, can carry out sometimes unexpected consequences and therefore affect our understanding of reality.

In the following pages we are going to emphasise the interaction between our positionality (as researchers) and the positionality of the people we spoke with. This discussion is a way for us to reflect on the challenges of comparative and ethnographic methodologies through the lenses of feminist and other critical debates on knowledge production. We go back here to what Adrienne Rich (1985) first called the "politics of location" talking about the need that every person becomes aware, in the moment s/he writes or speaks, of the social, economic and political position from which s/he is doing so. For authors such as Sandra Harding (1986), the 'standpoint' of the subject will affect his/her understanding of reality, the ways s/he going to talk about it, the impact that this will have, etc. We also know that not all 'positions' have the same weight in the process of knowledge production: some of them will have more impact, visibility or legitimation than others. All knowledge is therefore 'situated' (Haraway, 1990). To understand the positionality of the different subjects participating in knowledge production, as it happens during a research project, is an important methodological consideration which calls into question issues of power, identity, emotions which affect ethnographic work, interview making, etc. (Nencel, 2005; Hoffmann, 2007; Ramazanoglu & Holland, 2002).

The VULNER project carried out research in seven countries and combined a legal and a socio-ethnographic analysis. As the aim of the project is to have a deeper understanding of the experiences of vulnerabilities of migrants applying for asylum in several countries, this twofold approach confronts the study of existing legal norms and practices that seek to assess and address vulnerabilities among asylum seeking protection, with migrants' own experiences.

From the legal perspective, the study consists in analysing the relevant domestic legislation, the case-law, policy documents, and administrative guidelines in light of the regional and international legal standards. The VULNER researchers documented the various administrative practices related to the identification of the vulnerability and its consideration throughout the asylum process. This allowed us to identify loopholes in the implementation of the vulnerability assessment.

From the ethnographic perspective, the research gave the opportunity to asylum seekers to share their experiences of the asylum process in their own words. It also included the insights of associations and lawyers specialised in the asylum and migration fields. Interviews were also conducted with the persons implementing the legal framework such as the judges, the protection officers (street-level bureaucrats) or other civil servants. This has shed greater light on how and to what extent the current asylum procedure can accommodate the experiences of vulnerability. Therefore, the interdisciplinary approach facilitates a thorough understanding of the concept of vulnerabilities with regard to the *role* of vulnerability in the legal framework, its *practices* by decision-makers and the *experiences* of protection seekers. These three grounds—legal framework, practices and experiences—are strictly interlinked and in constant interaction. Hence, their relations should be examined as a continuous flow given that the legal and policy framework influences the implementation practices and affects the protection seekers' experiences but, at the same

time, is also influenced by them. The desk legal research, combined with the two fieldwork projects (with decision-makers and protection seekers respectively), aims at gaining knowledge on the gaps between the legal framework and the realities experienced on the ground. The added value of this combined and complementary approach is to better grasp the reality of the asylum process and the vulnerability assessment in the different countries. The reality of the asylum process takes into account the position of the asylum seeker who is not always informed about the challenges and the pitfalls of the procedure, the agenda and the expectations in terms of collaborative efforts to prove the facts for instance or the reality of the street level bureaucrats, who apply the notion of vulnerability in the way they understand it legally and subjectively. It also considers the reality and the position of the social workers who try their best to accompany and inform the asylum seekers. It also allowed for more nuanced results, drawing on the experiences of those directly involved in the vulnerability identification policies and affected by its practices.

In addition to this combined approach, the research teams include members from different disciplines with different backgrounds, which also allows this dual approach (socio-legal) to be extended. Indeed, the notion of vulnerability—and the complex issues it covers—cannot be understood solely and exclusively through a legal approach. Other perspectives brought by sociologists, philosophers, anthropologists and political scientists have significantly enriched the research by ensuring a thorough understanding of vulnerability. They allow for a multifaceted and comprehensive approach of vulnerability and its implementation. It is therefore this double analysis (socio-legal) combined with multi-disciplinary teams that ensure a deeper understanding of the complex notion of vulnerability.

This chapter will reflect on the notion of vulnerability and on the different views on vulnerability depending on the positionality of each actor in this research, in four steps. In the first, we will address the different challenges related to the lack of definition of vulnerabilities, those faced in its daily implementation in practice, and how the legal framework itself is sometimes producing and shaping vulnerabilities. The categorical approach will be discussed by taking the perspective of the judges, legal experts and street-level bureaucrats who are taking decisions on the best way to navigate this complex realm, in contrast with migrants who do not have any stake at this level.

The second section takes us to the point of view of practitioners, lawyers and all people managing the way the asylum procedure is working ‘in practice’. Their standpoint sheds light on the quite ample space of maneuver, having the power to use different ‘labels’, implement different decisions and assessments. This section thus speaks again about the complex nexus between people’s positionality and their understanding of vulnerability.

The third section addresses migrants’ perspective on the asylum system, the reception and accommodation procedure, and their criticisms on the notion of vulnerability which is currently used by institutional actors mainly. Starting from their position as those who are indeed labelled as ‘vulnerable’ by this system, we find a series of denunciations based on their direct personal experiences with the other actors (judges, practitioners, bureaucrats, etc.) which confirm the importance of situating knowledge production in an embodied perspective.

Finally, in the last section, we are taking the researchers perspective, looking at the complex positionality of those who, as ourselves, are carrying out research in this delicate ethical field. Looking in particular at the relationship between researchers and research participants, and the dilemma that this relationship may pose. Here we are therefore discussing, from the researchers' point of view, what it means to resist the danger of reproducing standardised understandings of refugees as victims based on the particular conditions of self-representations.

3.2 Talking About Vulnerability 'Legally'. Lack of Definition and Categorical Approach of Vulnerability

This section will analyse how vulnerability is addressed in the law and how it positions the assessment of the asylum authorities. The need to talk about vulnerability legally is induced from the definition of vulnerability in the law. It is the referral material of the street level bureaucrats. They reflect from the law, which cites categories of vulnerable profiles. They have discretionary leeway in applying vulnerability to the asylum claims and in labelling. At the other hand, the asylum seekers have no control whatsoever on the way vulnerability will be interpreted in their case. There is a significant difference in the perspective and position of these actors. Those different realities need to be emphasized. We will reflect how despite the legal prescriptions in the law, a more holistic approach is needed in order to correspond to the reality lived by the asylum seekers but also by the associations accompanying them.

In recent years vulnerability has gained a legal momentum, being addressed at domestic and international level to identify certain individuals, or groups, experiencing a situation of fragility or precariousness and therefore presenting certain specific needs.[3] The same trend has also been noticed in the area of migration and asylum. Notwithstanding this increasing use of the concept of vulnerability, its definition is not homogeneous and the difficulty in delineating the contours of this concept is transversal across disciplines. In essence, the meaning of vulnerability is imprecise and contested and this concept is vague, complex and at times ambiguous (Peroni & Timmer, 2013, p. 1058).

Not all the legal systems that are part of the VULNER research project refer to it while dealing with migrants and asylum seekers. Moreover, even when the concept of vulnerability is used, there can be different approaches to it. Exemplary in this respect is the European context. The EU legislator repeatedly refers to vulnerable persons in the various instruments that constitute the Common European Asylum

[3] In the doctrine use of vulnerability in a positive sense.

System (CEAS). However, nor the Reception[4] or the Procedure Directive[5] give a clear and comprehensive definition of vulnerability. Instead, those directives establish some lists of "categories of persons" or "factors" that are relevant for vulnerability assessments. The Reception procedure provides for obligations to identify vulnerable persons in order to give adequate shelter to protection seekers, as well as to provide them with legal and social support during the reception and asylum process. This list has grown over time and is commonly considered non-exhaustive. Likewise, In the Procedure Directive, it is the notion of "applicant in need of special procedural guarantees" or "people with special needs" that is being put forward. If procedural needs are detected, "adequate support" will be provided to meet those needs.[6] The EU law considers that there is a "causal link" between vulnerability and special needs: if there are some special needs, the person will be considered vulnerable. If the pre-established categories can serve as a "warning bell" to detect vulnerabilities, the idea is rather to think *beyond* these ones, in terms of layers or degrees of vulnerability which can evolve in space and over time. However, vulnerability, by its very nature, cannot be identified and interpreted from a presence/absence perspective as to whether or not a person falls into a certain category, and this is especially true for asylum seekers.

A different approach than the categorical one has nevertheless been taken by the European Court of Human Rights. The Strasbourg judges, in the famous case of *M.S.S. v. Belgium and Greece*[7], recognised asylum seekers as vulnerable *per se*. More specifically, the ECtHR affirmed clearly that the applicant's vulnerability was "inherent in his situation as an asylum-seeker", the Court clarified that the vulnerability of the asylum seekers does not involve only the personal experience of the claimant, but that it could be considered a collective feature of asylum seekers: "Therefore, every asylum seeker could potentially be considered vulnerable, irrespective of his or her personal story or experience". The Court therefore already confirmed that vulnerability is closely linked to the context in which a person evolves.

Despite this approach of the Strasbourg Court, a categorical approach tends to be preferred when speaking of the vulnerable people in the context of migration and asylum. Indeed, when the issue of vulnerability is addressed, it is principally through the lens of a group of people sharing some common objectifiable characteristics.

In addition to its vague and sometimes unsuitable nature, the categorical approach implies a "labelling process" which raises further questions. First of all, it limits the scope of vulnerability by reducing it to some categories of persons whose needs are

[4] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), *OJ* L 180, 29.6.2013, p. 96–116, art.21.

[5] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* L 180, 29.6.2013, p. 60–95, art. 2 k).

[6] However, the Directive doesn't specify what adequate support entails.

[7] ECtHR, 21 November 2011, *MSS v. Belgium and Greece*.

identified and established *a priori*. Even if the list of categories is not exhaustive, the concept of vulnerability should be "broadened". Other factors such as socio-economic background and education (illiteracy) as well as other contextual factors linked to the migratory road should also be considered in the vulnerability assessment, as in the impact they may have on the probationary skills of individuals for instance. Secondly, with regard to vulnerabilities, especially in the context of migration and refugee protection, intersectionality seems to be the rule and not the exception. Every migrant and protection seeker is likely to be vulnerable to some extent due to the migration experience itself. Indeed, the vulnerabilities tend to overlap and intertwine. The notion of intersectionality is a useful lens in order to understand and assess vulnerability. Moreover, if one thinks in terms of category, a majority of asylum seekers may fall within more than one of those categories established by law. However, the law doesn't suggest this intersectional approach, that would allow a shift in the way the decision makers or the street-level bureaucrats are positioned and permit them to be closer to the reality lived by the asylum seekers and their needs. As a consequence, this type of reasoning (labelling) makes it hardly impossible to adequately assess their vulnerabilities and to address them accordingly.

As explained later in this chapter, there is a necessity to go beyond a bureaucratic and standardized approach of vulnerability, which limits the understanding of asylum seekers' vulnerabilities to a very "technical" aspect. Acknowledging the intersection of different experiences and difficulties and their continuum could give consistency to the identification of vulnerable groups, starting from their own experience and going beyond the somewhat narrow legal perspective.

It is also worth noting that the current identification process as it is conceived depends merely from the authorities' vision and representation of vulnerability. However, this process generates different reactions among the asylum seekers we met: some of them do not perceive themselves as vulnerable and are therefore not always aware of what is at stake in the notion and of the importance of identifying their particular needs. On the contrary, and in certain cases (such as resettlement programs in Uganda, for example), vulnerability takes on a strategic dimension of which the persons are aware, in that it allows them—via pre-established criteria—to have access (or not) to the resettlement program. As will be discussed, this results sometimes in a competition among people to be considered as the "most vulnerable" and thus eligible for resettlement, for example.

In conclusion, the legal perception of vulnerability assumes that vulnerability is a fixed status interpreted from the perspective of presence-absence. Yet, this approach is lacking consistency mostly because this notion is "disembodied" in the law in relation to the experiences of asylum seekers. On the other hand, the law and its categorical approach is the only formal referral to the notion of vulnerability for the street level bureaucrats and therefore, the position of the asylum instances is a labelling one, interpreted from their own sometimes subjective view. The asylum seeker is in a subordinate position, trying to respond to the expectations but having, also, as only referral, this legal notion of vulnerability. This categorical approach should be broadened, allowing to take into consideration the different vulnerabilising factors the asylum seekers actually encounter, starting from their own experience.

3.3 Speaking of Vulnerability *in Practice*: Vulnerability Through Decision Makers' Points of View and Modalities of Asylum Systems

Within EU member States, the law perceives vulnerability as categories of (pre-identified) individuals with special reception and procedural needs. The role of those responsible for identifying these vulnerabilities is therefore crucial, as they enjoy a significant margin of manoeuvre in the identification and assessment of these needs, and as this assessment is not without consequences and challenges. In states that have a body of law that legally includes vulnerability, as in those that do not, vulnerability, as the Norwegian VULNER report puts it, "is gaining traction in practices" (Lidén et al., 2022, p. 5). And positionality here plays again a key role to understand how different actors, positioned differently in the asylum system, deal with the notion of vulnerability. It is important to know that their positionality not only has an impact on their work, but also on the way they understand vulnerability, their interpretation, the way they use it in practice, but also their belief about how the notion should be used with regards to asylum seekers. The room for manoeuvre and eventually, the type of power this gives asylum bodies and officials, also influences the way in which asylum seekers are "labelled" as vulnerable (or not) during their process, sometimes in a very incomplete and unilateral way. What do the practices of agents in charge of giving substance to vulnerability suggest and mean, then? The following section is an attempt to answer this question.

Different practices can be identified in the asylum systems of the different EU states which participated in the study. This allows conclusions to be drawn about how vulnerability is understood by those who are supposed, by law, to assess it. More cross-cutting findings can also be made across EU borders and various trends can be mentioned in the different national (non-EU) systems under study. They gather around three common approaches. Firstly, a selective and pragmatic approach to vulnerabilities that is adopted by national decision-makers in charge of identifying vulnerabilities. Indeed, by taking as a starting point the "categories of vulnerable people" as defined by European law, they often establish selection criteria specific to their practice, which stems from the room for manoeuvre they have on the ground. In the VULNER report from Italy, for example, some interviewees distinguished vulnerabilities between "visible" and "objective" vulnerabilities and "less visible" or "subjective" ones, which are, according to them, usually less taken into consideration in asylum procedures (Marchetti & Palumbo, 2021). In Germany, the Federal Office for Migration and Refugees only recognizes certain types of vulnerabilities (such as those connected to gender-based violence, to age—for unaccompanied minors—or to victims of human trafficking). As stated in the German VULNER report, it does not use an "open-ended term" but has a "selective assessment" approach to recognize vulnerable people (Kluth et al., 2021, p. 22). In Belgium, while decision makers attempt to go beyond the categorical approach enshrined in law, their interpretation remains very practical and is often limited to identifying "very pragmatic" vulnerabilities that require immediate intervention

and planned responses. The following extract from a decision-maker in charge of examining the asylum application shows very well how vulnerabilities sometimes become "technicalities" of the procedure or parameters to be adjusted:

Someone in a wheelchair, or a woman who is pregnant, these are things that should be noted for the interview, so that they can be considered […] If someone is in a wheelchair, they should be given a room that is easy to access, and so on. (Saroléa et al., 2021, p. 127).

This very "pragmatic" aspect of dealing with vulnerabilities is also found in Italy where very specific arrangements are put in place to create "a setting that can potentially facilitate an applicant's expression" (Marchetti & Palumbo, 2021, p. 90). This is the case, for example, of the breaks that are systematically granted when the applicant unexpectedly declares to be a minor. In Germany, this can also be seen in the implementation of "need-based measures" which consist, for example, of adjusting accommodation modalities and conditions to pre-identified vulnerabilities of certain groups (e.g. women migrants) (Kluth et al., 2021, p. 28).

Secondly, a stereotypical sensitivity emerges from the assessments of the decision-makers in charge of evaluating vulnerabilities. In Italy, the vulnerabilities identified are indeed sources of stereotypes. As mentioned in the Italian VULNER report, women are very much associated with potential victims of human trafficking but other "atypical stories of migration" in which they do not self-identify as victims, are mostly overlooked (Carnassale & Marchetti, 2022, p. 87).

This echoes a point in the report from Belgium, regarding stereotypical representations of women asylum seekers: In some cases, an educated woman will tend to be recognised as "less vulnerable" because she does not fit the stereotype of what is expected of *a woman*, and especially of *a woman seeking asylum*. The Belgian report is very clear on that point when it states that, according to Belgian decision makers, "the typical profile of a vulnerable woman is one that is illiterate, poor and dependent on" (Saroléa et al., 2021, p. 49). In Germany, this stereotypical sensitivity towards women is also reflected in the scope for decision makers to include "more extensive care for expectant mothers and women who have recently given birth", for example (Kluth et al., 2021, p. 12).

At the same time, this sensitivity is also reflected in the failure to consider certain people as vulnerable, by applying some gender bias to certain groups. Isolated men are the first victims. The imaginary of the male condition represents the male asylum seeker as strong, and in any case, as someone falling outside the scope of the dominant representations of vulnerability. As a decision maker in charge of identifying vulnerabilities in the Belgian asylum system said in the VULNER report from Belgium that it is just "common practice" to consider an isolated woman more vulnerable than an isolated man (Saroléa et al., 2021, p. 93). In the same sense, Italy underlines the same gender bias in the fact that practices and guidelines surrounding trafficking in human beings fail to consider the fact that sexual exploitation may involve boys and young men (Carnassale & Marchetti, 2022, p. 96). These gender biases obviously go beyond the states subject to EU legislation, as the Norwegian report also points to a special focus on certain groups, notably "gender-related issues" and victims of human trafficking for the purpose of prostitution (which are traditionally considered as being a "female issue") (Lidén et al., 2021, p. 92).

The above two elements highlight the very subjective dimension of vulnerability that is reflected in the practices of decision makers. This subjective dimension is reinforced when the "emotions" of the decision makers also play a role in the interpretation of vulnerabilities. In Belgium, some asylum judges testified to this reality by indicating how their feelings (sometimes stereotypical) could influence their perception of vulnerability. In the Belgian VULNER Report, an asylum judge stated clearly that the "the person's posture during the hearing" (their feeling or way of behaving) can be decisive as it gives another indication of the state of vulnerability of the protection seeker (Saroléa et al., 2021, p. 204). The role of emotions is cross-cutting and is also found in a completely different context, in Uganda, where the report stresses "that emotions play a key role in aid workers practices and decisions in their assessments of vulnerable refugees" (Nakueira, 2021, p. 5), as civil servant practices were not only driven by guidelines, but also by emotions.

Finally, the practices of decision makers also show exclusive approaches to vulnerability. The "categories" of vulnerability say a lot about those who qualify as vulnerable, but also about those *who issued and created them*. They also reflect a particular sensitivity on the part of certain states to certain criteria which they have determined in advance to decide who is vulnerable and above all, who is *not*. Once again, this has a direct bearing on questions of positionality, and above all on the very unequal balance of power that emerges, not only in the assessment of asylum applications, but also in the recognition (or not) of the vulnerability of a human being *through* this application. This element is transversal to the approach to the vulnerabilities of decision-makers and appears in the examples of the various states that participated in the VULNER study. They demonstrate a form of vulnerability "competition" which tends to fit people into the categories to which they must conform. This is the case in the Italian context, for example, as stated in the Italian VULNER report:

In everyday practice of support or assessment, the question seems to be 'who is more vulnerable', and what category of vulnerability the person fits in. (Marchetti & Palumbo, 2021, p. 82).

In Belgium, the report further shows that this competition is mainly due to the classification of categories which says a lot about the (political) priorities of the State that actually designed them. As stated in the report from Belgium, vulnerability actually appears more as "category calibrated according to what the State can do […] than as a group [of people] that is identifiable by itself, whose needs are fixed and shared." (Saroléa et al., 2021, p. 258). In this perspective, a major problem is then raised by the Italian report regarding a more intersectional vision of the conditions that create vulnerability and the capacity of an asylum system to take them into account in its functioning. As the report mentions "the timeline of the subjectivation processes and alternative modes of self-identification may not fit with institutional measures and procedural times" (Marchetti & Palumbo, 2021, p. 91).

Interestingly, these problems of selective and oriented practices are also found in national systems where no clear obligation to identify vulnerabilities is directly formulated, for example, in Norway. While no concrete procedure for identifying especially vulnerable protection seekers currently exist in the Norwegian asylum system,

specific groups and persons are given special attention in practice, with reference to the state obligations derived from specific international conventions. According to the Norwegian VULNER report, this also creates a "hierarchy of vulnerabilities" that determines who is vulnerable and, more importantly, who is not (Lidén et al., 2021, p. 133).

While vulnerability is fully incorporated into the legal framework of some states and implies certain consequences for decision-makers, the various reports from the states participating in the study highlight that it is also a product of this legal framework and practices. In other words, this chapter shows that this framework also allows for the emergence of vulnerabilities, or situations in which migrants are exposed to risks they cannot tackle. The above paragraphs showed how the practices of the officials in charge of assessing vulnerabilities can carry with them certain challenges and that their positionality will impact their work, representations, acceptance and (dis)beliefs. But it should be also noted that, beyond procedural practices and unequally socially-positioned actors, other examples of these vulnerability lies in the spatio-temporal realities of the asylum system and, in particular, in places of waiting and passage (such as informal settings or reception centers in the EU). Those places contribute, on their own scale, to forms of increased vulnerability for people living there, with *similar challenges* for States that are yet very *different* (as in the States that participated in the VULNER project, some have a legally organized reception system and some do not). They then highlight another understanding of vulnerabilities that is not limited to categories of people or positionalities of asylum officials, but rather to *modalities* of asylum systems, which can maintain people in situations of vulnerability on two levels: on the one hand, because these places generate certain emotional impact, and in particular, sense of insecurity.

The German VULNER report highlights this issue, by mentioning that some Länder in Germany have enacted "measure to protect asylum seekers from violence in reception centres" (Kluth et al., 2021, p. 29). This problem of security in reception centres echoes the findings of the Belgian report, which highlights the fact that the primary need for security in reception centres is hardly met by their infrastructure (Saroléa et al., 2022, n°2, p. 49). This security aspect also has a particular gendered weight (the feeling of security is experienced differently in the space when one is a woman or a man seeking asylum). In Italy, the question of safety within the centre is also posed in terms of gender identity, and particularly sexual orientation. The question of "personal safety" is therefore at stake when asylum seekers report "the risk of homophobic incidents within reception contexts, among both the protection seekers and reception staff" (Carnassale & Marchetti, 2022, p. 46). In Lebanon, while some asylum seekers felt more comfortable staying with 'like-minded' people in the refugee camps, others preferred to settle elsewhere, "particularly due to dangerous infrastructure and crime" (Brun & Maalouf, 2022, p. 35).

On the other hand, vulnerabilities can also be generated because these places impose a form of "living apart" that prevents access to a range of resources, services opportunities outside the reception centre. The issue of access to service is very relevant in the Belgium and Italian context, where the location for the centre really

matters in terms of access to certain forms of assistance and opportunities (Carnassale & Marchetti, 2022, p. 55; Saroléa et al., 2021, p. 165). The forms of "segregation" that isolated centers imply is also found outside the geographic scope of the EU, in the Norwegian case, where asylum seekers experience distress due to limited social networking, access to information or to job market (Lidén et al., 2022, p. 66). In another context, the Uganda report mentions also that the system to monitor the refugee population in camps reduces refugees' mobility and prevents them "from seeking economic opportunities outside the settlement" (Nakueira, 2022, p. 5).

The preceding paragraphs show that vulnerability acquires particular dimensions (pragmatic, stereotypical, exclusive) which testify to the "selection" issues behind the practices of decision makers. Beyond that, the preceding sections remind us how vulnerabilities can be shaped through implemented practices and structures, or modalities of asylum systems. This allows us to conceive other approaches and other experiences of vulnerability which can be echoed in the following sections.

3.4 A Critique of the Use of Vulnerability from Migrants' Perspectives

As it was said in the beginning of this chapter, the VULNER project was purposely designed to highlight tensions between different definitions and understandings of vulnerability which are departing from the standpoints of lawyers, policy-makers, practitioners and finally migrants themselves. The assumption on the difference—when not the conflict—between these perspectives had also informed the structure of the empirical research, divided into a first phase addressing more the institutional and legal actors, and a second phase directed to migrants and grassroots actors. In this division, migrants' perspectives have been given great centrality, and therefore we made our best efforts to reach current or recent asylum seekers, despite all the obstacles that our research teams had to overcome in order to access a pretty difficult target such as migrants hosted in reception centers or refugee camps, traveling long distances to reach these remote places and overcoming the bureaucratic hassle to get permission to enter and talk with people—even the more difficult during Covid times. Yet, to get hold of migrants, to run our list of questions to them and collect their narratives has proved to be an enormously precious contribution to the outcome of our research. The expectation that their perspectives would have shaken the institutional view, and sometimes confirmed the critical voices inside of it, has been satisfied. We can say indeed, that having two different phases of research, and being able to collect the views on vulnerability of those who are indeed defined 'vulnerable' by the asylum system, has allowed us to close the circle, so to say.

In this section, we will focus therefore on how migrants' views are criticizing the most current use of the notion of vulnerability by the side of those institutions with whom they had direct contact, being these the Committee they met during the asylum interview, the management and other guests they met in the reception centers or, in a more abstract manner, the system of rules and legal requirements that they

had to learn and take into account during their experience as asylum seekers. On the basis of this direct personal experience, the migrant people we interviewed are proposing a series of critical perspectives which we are trying here to summarize, along three main lines.

At the first level, in migrants' views, we see a need to overcome a standardized, bureaucratic and categorical approach to vulnerability. This is something which has been said also by some critical judges and practitioners, and is important for us to see how migrants confirm this necessity to go beyond such a bureaucratic and standardized approach. Actually, they seem to favor what we can call a situational and intersectional approach to vulnerability, and in which vulnerability is seen as a continuum, as something which has degrees and not as something which you either have or you don't and it is determined by the context you are in, rather than by some intrinsic characteristics of you as a person (see Introduction to this volume).

From the stories that migrants told us, we also understand that the standardized use of vulnerability – as it is done in the EU, by national institutions and international institutions – fails in particular to understand some types of vulnerabilities. First, they often fail what we call 'invisible or hidden vulnerabilities': religion, sexual orientation, or other categories which are very specific to the context, therefore not typically taken in consideration. Along these lines, in the VULNER Report from Uganda we read:

> My field assistant and I met with a group of over 100 male refugees who had undergone sexual violence at the hands of male and female perpetrators in their home countries. (…) In their narratives, interlocutors emphasized their need of dedicated medical interventions. Some were left incapable of fulfilling their conjugal rights due to the psychological trauma. (…) Others confessed to not telling their spouses that they were victims of sexual violence, out of fear of losing their respect. Some mentioned that they were rejected by their family members and places of worship, who associate them to queer people because of their traditional belief that men cannot be raped. (…) All complained that aid agencies failed to respond to their needs that relate, for example, to the access of adequate healthcare and surgery to repair the consequences of SGBV (such as anal bleedings, erectile dysfunction, and so forth). They attributed the social stigma of being labelled as gay men by other refugees to the dominant belief that men could not be victims of sexual violence. (Nakueira, 2022, p. 22)

Another example of an 'invisible' vulnerability comes from the discussion in the Italian report about the ways these risks to be forgotten and do not find adequate solutions:

> Some situations of vulnerability are more visible and related to a very young or advanced age: a very serious health disability, illness, a pregnancy condition or the presence of newborns. These situations have provided for a series of channels aimed at dealing with these conditions. However, those situations that are less obvious or not visible at all (e.g. issues related to torture, sexual violence, trafficking, etc.) risk being directed to contexts where protection seekers will not necessarily find support. (Carnassale & Marchetti, 2022, p. 21)

In a similar vein, researchers from Lebanon explain how the setting is particularly affected by an 'emergent' vulnerability, which is specific of the particular history of Palestinians' presence in the country:

> For Palestinians residing in Lebanon, while most may have legal residency, they are still deprived of full membership in the place where they have lived for generations. The particular vulnerability that comes from being deprived of legal residency and its mental toll of not being represented is prominent among the research participants' reflections. (Brun & Maalouf, 2022, p. 23)

Only an experienced researcher or aid workers, with profound insider knowledge, would be able identify and eventually respond to these vulnerabilities which are strongly determined but the specific situation of each national setting, therefore often invisibilised by internationally standardized approaches.

In a very similar way, current assessment fails to understand what we have called 'context-dependent vulnerabilities'. These are vulnerabilities which are not intrinsic to the person, but which belong the kind of reality in which this person finds herself, since "Those who are vulnerable in one political, cultural and social context may not be so in another or may be vulnerable in different ways" (Lidén et al., 2022, p. 48). Let us think of all the people in trafficking, and exploitation, people who are involved for some reasons in criminal circles; people exposed to bribing; and people that are at risk of becoming illegal, like people with doubts about their ID in Norway, or people losing residence permits in Lebanon. In Norway's report we find this compelling example of the impact of the specific Norwegian legislation on the personal trajectory of a young boy:

> In the case of Hamid, when conducting the registration interview, the police (PU) doubted his age (15), expecting him to be 18+. So they sent him to a reception centre for adults. No longer seen as a minor, he underwent a lengthier application procedure. In the asylum interview 10 months later, the interviewer accepted may be a minor. He had an age assessment some months later, and when the result said he may be under 18, he was moved to a reception centre for unaccompanied minors. He turned 17 before receiving the decision on his application, which now accepted the age he first told the police. (Lidén et al., 2022, p. 28)

The Norwegian researchers conclude that the delayed timing of the asylum interview and age assessment negatively affected his case, hampering options for care and support.

In migrants' eyes standardized approaches also failed to understand what we have called 'relational vulnerabilities'. For example, in the Italian report we have the case of mothers who have sick children or children with disabilities, and this will be a vulnerability created by the condition of their child that somehow reflects or impacts on the mother. Other forms of hidden vulnerabilities can be subject which otherwise we consider as stronger than others but become more vulnerable in specific situations: as in the example people highly educated people in Uganda because they don't know strategies of everyday survival which are given for granted by aid agencies based on their stereotypical expectations on refugees' social background:

> Uganda is increasingly receiving 'elite' refugees (e.g. highly educated or formerly high-ranking political officials), who don't have the practical knowledge required to sustain themselves through the agricultural model envisioned by the UNHCR Self Reliance Strategy, and who are not accustomed to living in rural settings. (Nakueira, 2022, p. 10).

Likewise, the Belgian team makes the example of men which cannot cope with very masculinized expectations on asylum seekers:

> Isolated men are under pressure to succeed and cannot fail. (…) M. said in the same sense: "I had to leave first because I was the oldest male child in the family. And I'll fight [here, to get his papers] because I am the oldest. (Saroléa et al., 2022, p. 42)

The second level at which the current way in which we use vulnerabilities does not work concerns the procedures themselves, in migrants' views. The current procedures are seen by migrants as making them further vulnerable. The key moment is the one of the interviews. The interview is told by many as a shocking moment, as a moment which is more similar to a criminal interrogation than any other kind of meeting. They find themselves for the first time being suspected to be a potential liar. The Belgian team reports the following, as an example:

> The same man also claimed that during the interview, the CGRS protection officer had an "African" assistant whose role was to "read the look" and understand whether he was lying or not. He felt not respected and shared with us his frustration at not being believed, saying: "You haven't known 1/3 of my life and you say 'he's lying!' […] I don't even want to do it anymore since I'm in Europe. It stresses me out too much". (Saroléa et al., 2022, pp. 50–51)

Many of them recounted it as a very dehumanising moment, in which they felt a lack of empathy, which is a fundamental ingredient to vulnerability. Moral philosophers would say there is no vulnerability without empathy. The interview is told as a moment of intrusive questions, and way too personal questions. A moment in which they had the feeling that there was the right answer to give they were not able to give this right answer. This right answer was the only one which would have put them in the right box, the one able to show that they fit the right profile. Moreover, evaluating committees do not seem to avoid delving into deeply unpleasant episodes or cases of violence occurring during the journey and in transit countries, although these are formally not considered 'relevant' for the purposes of obtaining international protection. Another testimony of this, in a migrant's narrative, from the Italian Report:

> He felt uncomfortable facing the Territorial Commission and the translator, who had a deeply detached, hasty and disinterested attitude, while the latter praised the very professional attitude activated by both parties involved. Many protection seekers who participated through an interview have gone through particularly long or excessively fast procedures depending also on the period of arrival. (Carnassale & Marchetti, 2022, p. 33)

The Belgian team poignantly reports the opinion of migrants' lawyers, on this issue:

> Lawyers met during the fieldwork were also particularly critical of the way the interview was conducted and how the questions are posed, as if it were often a criminal interrogation, where the same questions are asked again and again if the expected answer is not received. (…) Lawyers have emphasized that the interviews are somewhat standardized, with a certain pattern, and in a certain sense "dehumanized". In fact, one lawyer highlighted how during some hearings the protection officer did not even look the person in the eye, but had his gaze fixed on the computer. (Saroléa et al., 2022, p. 51)

When migrants' say that the procedures do not work, this does not only mean the interview moment, but the reception system in general. Many complain about life in

the reception centers, about the isolation, and not being in touch with anyone. They say they miss having strong human relationships, they say they are not able to build meaningful relationships. Powerful examples of this are provided by the Belgian Report, as when quoting the following interview with asylum seeking women in a reception center:

> Aïsha is very clear in her words which underline the "superficiality" of the relationships that arise in the centre. She says that she doesn't trust anyone or talk to anyone here, except "for small jobs, and 'hello, how are you'?". The "hello, how are you?" (…) seemed mostly to be a meaningless "code", implemented in a mechanical way by residents who are used it ask it anyway. (…) Fatima also points out that making friends in the centre is "a bit of a problem" by saying "people talk". In the same vein, Life highlights the difficulty of staying in a mentally heavy environment where people are constantly talking about the issues that concern them, including their interviews and their beliefs about what is right to do (or not) about them. Life is clear when she says that she stopped talking to people at the centre to get away from those conversations about the procedure that were "too scary". (…) Jamila immediately points out the presence of several other families from Afghanistan in the centre. But she remains cautious: "We cannot trust anyone. They are family but maybe … I mean, here we cannot trust anybody so easily. I mean, I'm talking with them but … maybe they are not trustable". (Saroléa et al., 2022, pp. 58–59)

The sense of isolation is therefore profound among the asylum seekers encountered and, in their experience, reinforces vulnerability meant as the feeling of being helpless and disempowered in a hostile environment, in which they don't feel supported. This feeling increases in large centers with many guests. They recount fear, the feeling of a lack of safety, lack of privacy. These centres are places in which they are exposed to racism, to harassment, especially in the case of transgender and non-binary people. On this, the Italian Report tells the exemplary story of Osas:

> Osas, a genderqueer refugee living in Veneto who prefers to be called by his masculine name, recounted the vicissitudes experienced living with compatriots who are not always willing to acknowledge their elective gender identity. (…) He hoped the transfer would have resulted in a significant improvement of his living conditions, but he found himself being identified as a boy by his roommates, with whom he has conflicting relations, while as a girl by the staff of the centre in question. (Carnassale & Marchetti, 2022, p. 40)

Migrants repeatedly say they feel they cannot trust anybody. They cannot even trust people from other nationalities. They cannot trust especially the aid workers, the social workers working there, as in this example from Norway:

> We interviewed a 16-year-old Afghan boy who was granted a resident permit but with an ID limit. (…). He could not sleep at night, had several anxiety attacks and felt exhausted, all of which was caused by his worries about the future. The staff explained repeatedly that his resident permit was permanent; he only had to obtain a passport. (…) Still, he did not trust that he would not be deported. He did not trust the system and words of the staff. From his stay in reception centers, he learned about those deported after turning 18 and also those who had left the centers for France and Germany to avoid deportation. Their anxiety and all the deportations had evoked strong emotions in him over time, and he could not get rid of his doubts. (Lidén et al., 2022, p. 58)

In a similar vein, interviewees in Uganda complain that they don't have enough information on how the system works, and that they don't trust anyone who's in the position to give information, for example due to corruption of aid workers to be on

'the list'. This put us in a loop from which I think is very difficult to get out from and where corruption is perceived to be the norm:

> My field assistant, a refugee as well, explained that RWCs usually identify people who are able to pay them 'something' to be on the list of vulnerable people. (…) This confirms what one aid worker noted about this particular settlement: 'This is a business camp'. (Nakueira, 2022, p. 51)

Finally, the third level at which we would say vulnerability as it is used today is not working in their minds. The big problem for them is the arbitrary character, in their views, of final decisions. This is what migrants do not understand: the motivation, why this is happening to them. They don't understand the rationale of what is happening, they don't understand the logic of what is happening. They don't understand why some people are selected and some are not selected. What they do understand is that they are put into a competition, an unfair competition with other asylum seekers: lazy vs deserving, Afghan vs others, disabled and ill get priority, etc. All these kinds of conditions are putting them in a very harsh competition not only in order to get the refugees status, but already before to get the accommodation, to get into the reception system. A striking example comes from the Italian research team:

> Newly-arrived Afghan refugees – perhaps arriving between July and October 2021 after a traumatic, long journey that lasted for months – were denied entry into an extraordinary reception center because the beds were "reserved" for Afghans arriving by plane at that same time. (Carnassale & Marchetti, 2022, p. 47)

Migrants see that the rules are different for different people. Rules change from time to time, from country to country. This doesn't make any sense to them. They see EU rules as damaging for them, damaging their personal situation instead of helping them.

From Norway's report, the frustration after years of trial after trial, is very evident in the following quote with a migrant:

> What I really hope is that I get rid of the feeling of being empty. I've never known where to be in a month or year. (…) My whole life, I felt like I've been treated like a 'case'. I've lost my childhood, I've lost my sister, my mother, and myself. How can I get out of this in good shape? (Lidén et al., 2022, p. 55)

To conclude this section, the criticisms we find most significant, in this regard, are directed at the following: first, a standardized and bureaucratized conception of vulnerability, that is, seen as something that can be 'assigned' to certain people or groups rather than others/and others on the basis of a kind of 'check-list' of the essential characteristics of the condition of vulnerability. Second, the rigidity of the experiences and conditions that correspond to such vulnerability is criticized, since this rigidity can hide and render invisible all other forms of vulnerability that do not fit this model, particularly because they are 'new,' emerging, or very specific and minority. Equally problematic seems to be a view of vulnerability formulated in an abstract and universal way, whereas it needs to be cast in the specific historical, political, socio-economic context not only of the country of arrival and reception, but also of the country of origin and transit of the migrant persons under consideration. There is also criticism of a conception of vulnerability as something that

'belongs' to a person, that is part of his or her identity or intrinsic individual condition, while on the contrary it pertains to the conditions of the context, to the contingent personal situation, as well as to intimate and family relationships with other people, all of which can change more or less rapidly and unpredictably, toward improvement or deterioration that is. And finally, the use of vulnerability as a slogan is viewed with disapproval, as a catch-phrase for policies 'with a human face,' but behind which in fact intimidating practices, events related to competition, corruption, exploitation, and more generally a set of procedures and treatments that provoke fears and fears, with the outcome sometimes of worsening the conditions of those who would instead need support and care.

It is certainly difficult to walk the ridge that separates not only the point of view, but more generally the needs, interests, and objectives of those involved in migration policies and particularly asylum and international protection from different positionings. Nonetheless, I believe that these insights, offered from the perspective of migrant people, can be a useful reminder for those engaged in this field, in the face of the spread of operational and emergency logics, in the rare but valuable opportunities for critique and self-reflection.

3.5 Ethics and Vulnerabilities

So far in this Chapter we have addressed the concept of 'vulnerability' as it is reflected in legal frameworks, how it is used to label and decide who is deemed in need of protection and asylum, and how this labelling process is experienced by migrants themselves. We now turn to the ethical dilemmas we engaged with as researchers when researching vulnerabilities and defining research-subjects as vulnerable.

Asylum seekers and refugees are commonly defined as vulnerable populations in institutional ethics carried out by universities and research institutions. With more emphasis on research with vulnerable populations, there has also been increased reflexivity around the impacts of labelling research subjects as vulnerable. In the context of refugees, such labelling may even impact on their future status (Clark-Kazak, 2021). However, despite more emphasis on the dilemmas involved in conducting research with vulnerable populations, it has not resulted in straightforward practices in this field (Von Benzon & van Blerk, 2017). This is perhaps because there are no straightforward answers where one size fits all in research with forced migrants who represent a wide array of populations, contexts and situations. The multiple dilemmas that emerge from research with refugees and asylum seekers require constant scrutiny, reflection and compromises in order to stay ethically sound and to work against the notion that refugees must be defined as victims in order to be defined as morally deserving subjects of assistance and residency (Maillet et al., 2017; Ticktin, 2011). The differential positionalities that researchers and research participants bring into the research encounter is thus important for understanding how to tackle ethical dilemmas that may emerge.

In the VULNER project, we approached research ethics in two overlapping ways. One is the more standardised institutional system for ensuring research ethics. The other is considerations of a more relational ethical approach that takes into consideration the politics of location and positionalities in knowledge production and hence understands the more situated elements of research ethics.

Institutional research ethics are standards and principles that largely came from the medical sciences in the nineteenth century, such as Nuremberg principles after the second World War (Kassis et al., 2021). Later ethical reviews moved from disciplinary focus to a more generalised interdisciplinary approach. In research with refugees and migrants, the increased emphasis on research ethics over the past 10–20 years have resulted in a number of research articles and guiding principles related specifically to the lived reality of migrants and often helpful in discussing both institutional ethics and relational ethics. The International Association for the Study of Forced Migration (IASFM) and Christina Clark-Kazak (2017) have been in the forefront of this discussion. These discussions were also the basis on which the VULNER project developed our ethical guidelines (VULNER, n.d.).

VULNER's guidelines take generalised formal ethical standards as their starting point by focusing on informed consent, confidentiality, "do no harm" and data protection. There are standardised procedures on how to provide information and gain informed consent. There is also a reflection in the guidelines on the need to protect research participants during the data collection process and to make sure any sign of distress or threat to their wellbeing—including the recollection of past traumatic experiences—result in halting the interview. However, beyond halting the interview, there is little guidance on what to do if there is any risk to the well-being of the research participant, but to build trust and conduct the interview in safe settings. Finally, the VULNER guidelines also reflect on how to manage expectations and the respect and understanding of different cultural backgrounds and positionalities. Significantly, and to which we return below, our guidelines take for granted the notion of "vulnerability" and that we assume from the outset that the protection seekers we will conduct research with *are* vulnerable. At the same time, the professionals we interview "such as experts, practitioners and other relevant stakeholders but not migrants" are non-vulnerable research participants (VULNER, n.d., p. 1).

In addition to the VULNER and IASFM-guidelines, the project also used the European Commission's Guidance Note on Research on Refugees, Asylum Seekers & Migrants (European Commission, 2020) where particularly vulnerable groups are defined as participants in refugee camps (closed, waiting or detention camps) and unaccompanied minors. Again, the research encounter itself is not largely problematised. For each country case, we also conformed to national guidelines which differed in level of detail and procedure. In the case of Lebanon, we were not allowed to interview children, for example. In other national settings, access to some spaces were not authorised.

In the project, we used the different guidelines available to us actively as they were a genuine attempt to maintain the interests and safety of research participants and researchers. The principles in themselves may be interpreted as rather formulaic as they were covering many different cases and populations. Yet, all researchers

were dedicated to ensure that our research practices were ethically sound, that research participants' interests and experiences were at the centre of our research conduct. Hence, in our reporting we emphasised that we had ensured informed consent, anonymity, transparency, and that we followed do no harm principles. From the Norwegian team, which is representative for many of the reports:

> The informants gave their consent before and during the interviews. Each interview began by providing further information about the research and a reminder about the participant's freedom to refuse to answer any questions. To minimize any risk to protection seekers, their participation was treated anonymously, and all were assigned pseudonyms or alphanumeric codes. (Lidén et al., 2022, p. 20)

The ethical guidelines we shared in the project were a helpful basis for us, and defined the ground-rules for researching in an ethically sound manner. Nonetheless, the research encounters which revealed the differential positionalities of researchers and research participants entailed dynamics between the research participants and the researchers exposing dilemmas that were not covered by formal ethical guidelines. Hence, we observed that ethical reflections should also go beyond these formal guidelines and take place as an ongoing conversation.

One particular way that the project approached the ethical dilemmas in the project was through an ethics advisor, Professor Anthony Good. The ethics advisor enabled the possibility of facilitating discussions on ethical dilemmas that emerged during data collection particularly related to positionalities and relational dimensions of ethics. Moving from an approach of formalised ethics procedures, we thus reflect on the more relational approach to research ethics that were present in our research. A relational approach takes into consideration what arises in the research encounter, the power relations and multiple positionalities that are at play and the emotional side of interviewing. Reflections on relations in the encounter are helpful for understanding how we as researchers can approach difficult situations and for understanding better the knowledge that is produced. For example, in the Italian team they decided to work with both female and male researchers to be attentive to the gender dynamics that play out in the field:

> The involvement of both a male and a female researcher made it possible to reach out to protection seekers with different profiles, taking into account the gendered dynamics that pervade the relationships established in the field. This also made it possible to address particularly sensitive topics (e.g., gender-based violence, sexual exploitation (sic.), sexual orientation, etc.), toward which it may provoke a potential embarrassment or closure because of the interviewer's gender identity. (Carnassale & Marchetti, 2022, p. 18)

Relational ethical reflections came out most strongly in discussing positionalities and some of the challenges and limitations of the research process. In the case of Uganda, the issue of being an insider or outsider was important as the researcher became more familiar over time with the different groups of research participants. Also in Uganda, the discussion of power dynamics involved in the research encounter also came out strongly as it was believed that the researcher came from a research institution in Germany on an EU Project which created specific expectations.

The Belgian team addressed ethical dilemmas when discussing fieldwork related to suspicion and positionalities:

> (1) *Suspicion*: It was not uncommon for asylum seekers to be suspicious of the researchers, based on past experiences, particularly of the use they might make of interviewees' declarations. Some people we met refused to be interviewed or to talk at length about certain topics. (2) *Positionality problem*: Researchers are aware that they are in a very different and privileged position compared to the people seeking protection they are interviewing. This perception of the privileged position sometimes has led to asylum seekers requesting that we not meet in person (…), as well as expressing concerns we could not properly understand. We tried to be reflexive in that regard throughout the study in order to assure them that we exerted no influence on the asylum process as researchers. (Saroléa et al., 2022, p. 18).

In other contexts, concerns about avoiding data-mining and questions around how the research would benefit research participants were raised. In Lebanon, for example, the issue of research fatigue came up due to the many researchers Syrian refugees had met without benefitting from the research. However, the same research participants were grateful for the opportunity to tell their stories:

> Many refugees are used to being interviewed, and the team witnessed certain research fatigue among refugees, particularly Syrian refugees. However, most research participants warmly welcomed the interviewers (…) and even thanked the interviewers after the interviews for the ability to share their stories and situation, which made them feel relieved. Hence, the team felt it was necessary to be careful about the interview approach and ensure that interviewees understood what the research was about and that we were not representing an aid organisation to avoid raising expectations about assistance resulting from the interview (Brun & Maalouf, 2022, p. 18).

Maillet et al. (2017) suggest that we should not be paralysed in encountering challenges associated with conducting research with vulnerable people but rather engage in a continuous conversation on the consequences, challenges and ways forward for our research. At the centre of these reflections is the positionality of research subjects in the context of legal precarity, criminalisation and politicisation of forced migration and power asymmetries (Clark-Kazak, 2021). In most formalised ethical guidelines, refugees—without a settled status—are almost always considered vulnerable which can have profound consequences for their lives. However, by bringing in an approach to research ethics that centres the situated knowledge: the ambiguities of research subjects' understanding of vulnerability comes to the core.

In the Belgium-case, for example, the concept of vulnerability was not used in the interviews but was rather used as an analytical tool to shed light on the asylum seekers' experiences. In the Lebanon-case, we actively asked about what vulnerability may mean to the refugees interviewed. This was important for two reasons, first because vulnerability does not easily translate into English and second it is used in different ways for resettlement and by humanitarian actors, civil society and the state. Due to the financial crisis, we heard most of the time that everyone in Lebanon is vulnerable and learnt that in many ways the concept has lost its meaningfulness for people that agencies think of as vulnerable.

In Uganda, there was a tendency by refugees interviewed to use the formal vulnerability categories in describing their situation as these categories were often used to qualify for assistance or for resettlement.

What these examples show is that studying vulnerability is always dependent on the positionalities of the research subjects and researchers. Power relations played out in the research encounter may create specific expectations on part of the research participants and colour their responses in specific ways. If the situatedness of the knowledge produced is not taken into consideration, there is a danger of reproducing standardised understandings of refugees as victims based on the particular conditions of self-representations that our research situations pose.

From this follows the question of how we understand vulnerability and how the language of vulnerability is affecting the knowledge we produce. To what extent are we rendering people vulnerable by using the language of vulnerability? In our research we were occupied with understanding the ways in which the use of vulnerability categories are experienced. The research has enabled a more nuanced understanding of meanings of vulnerability and how vulnerability is produced in the asylum and humanitarian system, which again, can enable a deeper discussion of the ethical dimension of vulnerability in the academic field.

3.6 Conclusion

'Vulnerability' has become a prominent concept in domestic and international dealings with protection seekers/migrants and is used to identify who are in need of protection, who can stay and not. As we have shown in this chapter, the meaning of 'vulnerability' as a concept is contentious and ambiguous. We have addressed ways in which the concept is approached and experienced by policy- and law makers, legal practitioners, social workers, researchers (ourselves) and most importantly, the migrants/protection seekers themselves. We found that there were different views about the concept and that it was used differently in different contexts. Nevertheless, there were a general feeling of unease about using the concept: this unease was related to the ways that different legal frameworks we analysed did not provide a clear definition; the labelling processes of defining who is vulnerable was understood to reduce vulnerability to some few characteristics; and, the concept of vulnerability was understood to be "disembodied" in the law in relation to the asylum seeker/migrant as discussed above.

We pointed, in particular, to the role of different positionalities in understanding and defining vulnerability. For example, we showed the crucial role of those actors who are responsible for identifying who are vulnerable and how much space there is for interpretation in their assessments. We also considered the experience of the concept (and category) of vulnerability from the position of the migrant/asylum seekers themselves by pointing to the failures of applying vulnerability at three levels: the problems with the standardised and categorical approach; the procedures themselves tending to render migrants/asylum seekers more vulnerable; and the

arbitrary character of the decisions of who is labelled as vulnerable. We finally considered the position of the researchers and the ethics of knowledge production on vulnerability, particularly the need to expand from only considering formal ethical guidelines to understand the different relational dynamics in the research encounter between migrants and asylum seekers and researchers.

By addressing the concept of vulnerability interdisciplinary and from the politics of different locations, we have emphasised the need for a more situational and intersectional approach to vulnerability. In this approach, vulnerability may be seen as a continuum which may change over time and space rather than being a pre-defined category. The VULNER project has contributed in different ways to this situated and intersectional understanding: by considering different national contexts in the global south and north, but also by bringing together the legal frameworks, practice and experience.

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Part II
Vulnerability and Refugee Protection in First Countries of Asylum

Chapter 4
Negotiating Multiple Meanings of Vulnerabilities in Lebanon's Compounded Crises: Refugees' Encounters with Frameworks and Institutions

Cathrine Brun and Maria Maalouf

4.1 Introduction

Lebanon—a non-signatory to the 1951 Refugee Convention—hosts the most refugees in the world relative to its population: Perhaps 1.7 million refugees reside in a country whose total resident-population may be between six and seven million including refugees and migrants. While the refugees did not cause the compounded crises in the country (Brun et al., 2021), the additional population is understood to be a huge toll for a country in deep political and financial crisis and it affects refugees' experiences of vulnerability in multiple ways. Adding to the crisis is the lack of a legal refugee regime and an official homogeneous policy to govern refugees' presence and livelihoods: Lebanon's response to refugees can be described as an institutional void which is fragmented and consists of a myriad actors where each actor in the response process relies on its own mandate without centralised guidance. Refugees' experience of vulnerability is thus produced in the multiple encounters that takes place at the interface between refugees themselves, different social groups, policies and institutions—local, national and international. In this chapter, we discuss the meanings and experiences of vulnerability that prevail in these encounters.

Vulnerability is a rather ambiguous concept in Lebanon (El Daif et al., 2021). The concept is used in multiple ways and generally the experience of vulnerability has become the norm rather than the exception for its citizens, migrants, and the estimated 1.5 million Syrian refugees and 257,000 Palestinian refugees residing in the country (LCRP, 2022). In 2021, almost nine in ten displaced Syrian households

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were living in extreme poverty, with poverty levels also rising dramatically among Lebanese and Palestinian refugee populations (LCRP, 2022).

Based on interviews with Syrian and Palestinian refugees, lawyers and staff in governmental and non-governmental organisations (NGOs), the chapter introduces the bureaucratic and legal frameworks and the prominent institutions that refugees described they encounter during their "permanently temporary" journey in Lebanon. We attempt to develop insights into the particular interactions that Syrian and Palestinian refugees we interviewed had with different organisations and institutions. These types of encounters are helpful for understanding the relationship between policies and frameworks, implementation and outcomes and to analyse the agency and room for manoeuvre as well as the experience of vulnerability that refugees may have in those interface situations. To this end we are analysing vulnerability from two positions in this chapter. The first position is the meanings of vulnerability that we have identified in frameworks and among institutions concerned with protecting, assisting and governing refugees. The second position focuses on refugees' own experiences of vulnerability.

The institutional void mentioned above in Lebanon's refugee response takes place in the meeting point between different co-existing interests, responses and approaches (El Daif et al., 2021): On the one hand, there is a security response—an approach driven by the national government and that accounts for issues such as refugees' access to legal residency and legal documentation and their liberty of movement in Lebanon. On the other hand, there is the humanitarian response—an approach led by non-State actors but in close alignment with the Lebanese State's national and local social services institutions. The humanitarian response focuses more on survival and service provision—often targeting 'beneficiaries' based on vulnerability criteria that change over time and from one institution to another.

Considering securitisation and access to legal residency, there is currently no enforceable asylum legislation in Lebanon. Lebanon considers itself a transit country rather than a host country (El Daif et al., 2021).[1] Consequently, all displaced populations—despite their protracted residence in the country—officially reside in Lebanon temporarily. The lack of protective legislation for refugees exacerbates refugees' vulnerabilities in Lebanon. Following from the securitisation approach, the second approach that Lebanon has taken towards refugees—the humanitarian approach, takes place amidst heavy reliance on the international community and international funding. In what is often described as a 'no-policy approach' (Stel, 2021; Fakhoury, 2017) most of the services to refugees are offered through international organisations and where the specific legal and institutional measures towards refugees are limited and ad hoc. In this chapter we show that this scattered and fragmented approach implies that refugees negotiate encounters with a number of

[1] The chapter was written based on the Lebanon case study of the VULNER project. The contextual information relies heavily on the first report published by the Lebanon team under the VULNER projects titled *The Vulnerability of Refugees amid Lebanese Law and the Humanitarian Policies* (El Daif et al., 2021).

different formal and informal institutions to seek the protection and assistance they need.

Refugees manoeuvre their lives between these different governance and assistance approaches and in the remainder of this chapter, we aim to unpack how this manoeuvring takes place in the encounters with frameworks and institutions. We begin with a brief conceptual framing of our analysis and we describe the methodology applied for collecting and analysing the data. We then present the data and analyse the encounters that refugees described before we reflect on the vulnerabilities that are produced in the encounters. In conclusion, we reflect on how refugees mobilise constrained agency in the context of the profound sense of vulnerability that they experience.

4.2 Researching Encounters at the Interface: Framework and Methodology

In this section, we set out the framework we applied to analyse the meanings of vulnerability in the refugees' encounters with institutions and frameworks in place to govern refugees in Lebanon. We then describe the methodology for the study.

4.2.1 Understanding Vulnerability in the Encounters Between Refugees, Institutions and Frameworks

The research in Lebanon shows that vulnerability is understood and applied both as a premise and an outcome in refugees' encounters with the frameworks and institutions that govern and assist them. Vulnerability is a premise because those frameworks and institutions incorporate understandings of refugees as vulnerable. At the same time, vulnerability is an outcome, because refugees experience vulnerability in the encounters with those frameworks and institutions. Additionally, 'vulnerability' is a complicated concept in itself: While applied actively among international aid actors in Lebanon, it is not easily translated into Arabic, and as mentioned above, due to the deep crisis in the country, when discussing meanings of vulnerability, we find that most people are considered vulnerable in some ways. Hence vulnerability is challenging, all-encompassing and risk becoming a phrase that means everything and nothing at the same time. The two ways in which vulnerability is approached here suggest, first, that vulnerability is a label and category used by aid organisations and the state to allocate aid and decide on resettlement to a third country. And second, instead of a generalised category of vulnerability, refugees' experience of vulnerability may be termed 'epistemic vulnerability' which is vulnerabilities "that deepen inequality and inflict harm" (Cole, 2016, p. 266).

In a category-based understanding of vulnerability, the emphasis is on specific personal and group characteristics that are assumed to render someone vulnerable (see also Leboeuf, 2021). This use of vulnerability, while seen as a necessary tool to identify those who are most in need, may also contribute to stigmatise and regulate certain populations (Cole, 2016). In our study, when refugees themselves reflect on the meaning of vulnerability, however, they are not primarily interested in those categories, but the concept takes on a more dynamic, multidimensional, and contextual meaning that may broadly be described as "a susceptibility to harmful wrongs, exploitation, or threats to one's interest and autonomy" (Mackenzie, 2013, p. 6 in Gilson, 2016, p. 72). The latter meaning, which is closer to Cole's understanding of epistemic vulnerability, is more situational and can happen to anyone at a given point in time (Orru et al., 2021). We are interested in the interaction between these different meanings of vulnerability in the encounters between refugees, institutions and frameworks.

'Encounters' between migrants and the structures set to govern them have become a prominent research field (Ahmed, 2000; Häkli & Kallio, 2021; Ehrkamp, 2019; Kofoed & Simonsen, 2011) which have helped to emphasise the agency that migrants may pursue in those encounters. There is also a long research tradition in development studies, inspired by Norman Long's (1989) term "encounters at the interface" that seeks to understand intersections and linkages between different social systems, fields and levels where diverse normative values and social interests may be found. Inspired by these two fields of study, we understand encounters as encounters between individuals, institutions and frameworks representing different interests, backed by different resources and differentiated in terms of power (Long, 1989). The encounter can encapsulate both the individual experience and the institutional, legal and societal conditions in which an encounter takes place. The encounters thus signify the broader relationships of power and antagonism in which refugees in Lebanon are implicated (Ahmed, 2000). Encounters may be studied as an individual's or a group's meeting with the institutional, legal and societal conditions that concern them (Ahmed, 2000). From this follows that the encounters we study constitute both the domain of refugees' particular experience of face-to-face interactions with governance-, assistance- and protection-structures and the framing of that encounter by representing the broader relationships of power (Ahmed, 2000).

The doubleness of vulnerability—as a category and as an epistemic vulnerability—is expressed in those encounters between the refugees in Lebanon and institutions and framework established to assist, protect and govern refugees. We aim to analyse encounters as a productive way for understanding the relationship—and interfaces—between policy objectives, the means of implementation and the outcomes and the nature of the constrained agency that refugees may mobilise in those interface situations.

Scholars have criticised the vulnerability frameworks for either portraying refugees as passive victims or to give too much emphasis on the potential for individual self-reliance and resilience (Turner, 2021). Vulnerability cannot just be understood on one continuum from passive/vulnerable to active/resilient (Cole, 2016; Turner, 2021). Rather, we aim to understand the experience refugees have in the encounter

with the institutions and what potential they may have to manoeuvre restrictive—and hostile—frameworks and institutions in the context of the financial and political crisis in Lebanon. Moving away from the passive-active dichotomy, we attempt to nuance the discussion by recognising that there are limits to the potential for mobilising agency due to the multi-dimensional constraints that refugees must negotiate to get by.

4.2.2 Methodology[2]

Data were collected for this book chapter during two different time periods. The first period was from February to November 2020 and concentrated on a desk review and document analysis of Lebanon's legislation and regulations; administrative guidelines governing the response to foreigners and/or refugees; and, an analysis of the case laws that we were able to access.[3] We also conducted 42 semi-structured interviews with representatives from the security and humanitarian responses, state and non-state actors, including state agencies, judges, and lawyers, and representatives from institutions in the humanitarian response such as United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), United Nations Development Programme (UNDP) and other international and national NGOs. We also conducted interviews with lawyers and legal experts working on asylum matters.

In the second period of data collection from July 2021 to October 2021, we focused on understanding how the policies identified in the first stage are experienced and impact refugees residing in Lebanon. Accordingly, we conducted semi-structured qualitative interviews with 57 refugees—34 Syrian refugees, 14 Palestinian refugees from Syria, and nine Palestinian refugees from Lebanon, 33 women and 24 men—and seven international and national nongovernmental organisations. We interviewed refugees in three different areas of the country: A collective shelter in Al Koura in North Lebanon; Bar Elias Informal Settlement and Bar Elias town, both located in the Bekaa; Burj El Barajneh Camp, which is a Palestinian camp in Beirut and the camp's surrounding neighbourhoods in Beirut. Rather than seeking a representative sample and a comparative approach between different refugee groups, we were aiming for qualitative interviews focused on the contextualised experience of vulnerability that the research participants were experiencing.

[2] We would like to thank all the research participants who generously shared their insights and experiences with us during the research.

[3] When it comes to case laws, Lebanon lacks a centralised e-system to access these. This becomes more challenging for cases involving migrants since only major decisions are published on certain platforms and are mostly related to issues of private and administrative law. Hence, the main case laws that we were able to access were the ones delivered to us by judges whom we interviewed, or those published online by lawyers and organisations.

The study had IRB (ethics) approval from the Lebanese American University prior to initiating the research and interviews.[4] We also followed the VULNER common ethics strategy (VULNER, n.d.). We were dedicated to ensuring that all research participants received appropriate and sufficient information about the research to give their informed consent. We have ensured that all data remain confidential and cannot be traced back to the research participants. We have thus created pseudonyms for all research participants that are quoted and referred to in this report. With the quotes, we indicate whether the interviewee is a female or male refugee from Syria (FSR/MSR) or a female or Male Palestinian Refugee from Lebanon or Syria (FPRL/MPRL/FPRS/MPRS). While such labelling is never straightforward, we hope this clarifies some of the diversity of experiences the research participants shared with us. When quoting research participants from organisations, we use the reference number of the interview. All interviews we quote, were conducted between July and October 2021. Due to the need to anonymise, we have not referred to place of residence of the interviewees.

4.3 Encounters at the Interface Between Institutions, Frameworks and Refugees

In this section, we analyse the encounters at the interface between institutions, frameworks and the refugees. We start by explaining the bureaucratic and legal scene—representing the frameworks—that refugees encounter. We then explore the encounters refugees described with different institutions.

4.3.1 The Refugee Category: Encounters with the Bureaucratic and Legal Frameworks

Lebanon still lacks formal domestic refugee legislation and asylum cases are instead attended to through immigration laws. As mentioned above, the country is not a signatory country of the 1951 Refugee Convention and its 1967 protocol. The cornerstone legislation regulating migrants, including forced migrants, is the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon, containing six articles relating to asylum under Chap. 9 entitled "Political Asylum". Lebanon has not developed nor enforced these legal provisions and thus does not acknowledge the possibilities of seeking refuge in Lebanon. With the lack of both binding international regulations and domestic law on asylum to govern the lives of millions of refugees, Lebanon has subjected its response to the general provisions of other laws (El Daif et al., 2021).

[4] Research Approval Tracking Number LAU.STF.MS1.22/Apr/2020

The silence and considerable gaps in the refugee legislation have exploited the potential to enforce sporadic and ad-hoc policies and decisions toward its refugee population. The policies must be understood to derive from the country's history of hosting displaced populations—Palestinian refugees in particular—and the country's position in the region, specifically, relations with its neighbour Syria (Doraï & Clochard, 2006). Hence, fear of further militarisation of Palestinians and Syrian refugees, as well as fear of further permanence to their presence, colours the response to refugees in the country (Janmyr, 2018). The governance of Syrian refugees is then, in many ways, a direct outcome of the governance of Palestinian refugees in Lebanon, where legal, political, and institutional arrangements for Palestinians are kept short-term and under probation (Turner, 2015; Stel, 2021). The aim is to ensure that no arrangements can lead to any form of integration of Palestinian refugees in Lebanon.

Lebanon's approach allows for treating and categorising different refugee groups differently. The terms and labels are politically charged, and it is a common understanding by state actors that Palestinians are the only official refugees in the country, while the avoidance of the term of refugee for other groups of displaced populations, may be understood as an effort to evade legal responsibilities of individuals in these other groups (Janmyr, 2018). Accordingly, the concept 'refugee' is the least commonly used (El Daif et al., 2021, p. 15): "For instance, Syrian refugees are referred to as 'displaced,' Iraqi refugees as 'foreigners' or 'illegal residents.' While Palestinians in Lebanon are referred to as 'refugees' in the public discourse, conflicting opinions still exist, and it has been highlighted that Lebanon never referred in its legislation to Palestinians as refugees. Lebanon has only once defined an asylum-seeker, whereas the 2003 Memorandum of Understanding (MoU) signed between the General Security (GS) and UNHCR, it refers to them as 'those seeking asylum in a third country.'"

The UN characterises the flight of civilians from Syria as a refugee movement and considers that these Syrians are seeking international protection and are likely to meet the refugee definition (LCRP, 2022). The Lebanon Crisis Response Plan (LCRP, 2022)—a multi-stakeholder response plan co-led by the Government of Lebanon and the UN and contributed to by a wide range of entities, including local and international NGOs—uses the following terminologies to refer to persons who have fled from and cannot currently return to Syria:

1. "Persons displaced from Syria" (which can, depending on context, include Palestinian refugees from Syria as well as registered and unregistered Syrian nationals);
2. "Displaced Syrians" (referring to Syrian nationals, including those born in Lebanon to displaced Syrian parents);
3. "Persons registered as refugees by UNHCR";
4. "Palestine refugees from Lebanon" (referring to 180,000 PRL living in 12 camps and 156 gatherings);
5. "Palestinian refugees from Syria" (referring to 29,000 PRS across Lebanon).

In this chapter, in order to maintain consistency and recognise the displacement experience, we use the category 'refugee' to describe the populations we have interviewed. The production of vulnerabilities for refugees is closely associated with the difficulties of accessing a refugee status. For Palestinian refugees, they do not have Lebanese citizenship and are treated as foreigners, despite having stayed in the country since 1948. Most Palestinian refugees hold residency cards, others, who arrived after 1948, are considered illegal immigrants (De Bel-Air, 2012). Palestinians are officially excluded from Lebanon's politics, society and economy and hence from significant sections of the labour market. As for Syrian refugees, they are also treated as foreigners that need to go through the same process of obtaining residency as any foreigner in the country. Despite rounds of advocacy and attempts to enable a legal status for refugees, the costs involved in obtaining residency means that at the time of writing more than 80% of Syrian refugees above the age of 15 are without legal residency in the country (VASyR, 2019).

For all groups of refugees, as they are defined as foreigners, they need a permit to work. For Palestinians residing in Lebanon, this is granted through their residency. However, for Syrian refugees and Palestinian Refugees from Syria, work permit must be obtained through a costly work visa or a sponsor, which would often be the employer. Sponsorship is uncertain and often leads to exploitation due to the dependency on a third party. For all groups of non-citizens with residency and work permit, there are still only a restricted number of occupations they can access, for example, they cannot work as medical doctors, in law or in engineering.[5]

Some interviewees—Syrian refugees in particular—did not like to be named refugees due to the discrimination and negative discourse in Lebanon. Noor, a female refugee from Syria, for example, said that "I reject the idea of being a refugee…I don't like to see myself as a refugee in Lebanon, I like us to be siblings". However, research participants generally acknowledge that they share the experience of being a refugee. In more sociological terms, the refugee experience can be described with Said's (Said, 1988, p. 48) account of exile as 'dispossessions', 'impermanence', 'loss' and 'doubleness'. Most significantly, the encounters with the frameworks and understandings of displacement in Lebanon lead to specific feelings of vulnerability and a sense of alienation. The frameworks and definitions of refugees and associated concepts, produce specific situational vulnerabilities among refugees such as being felt as a threat to refugees' interests and autonomy as their access to livelihoods, owning property and becoming members of the host society are restricted.

[5] See UNRWA (2017) for more details on the 39 professions of prohibited access.

Palestinian Refugees in Lebanon (PRLs) are prevented from employment in 39 professions. Changes to the Lebanese Legal Framework in 2005 and 2010 have in principle improved PRL's right to access 75 professions and related social protection mechanisms, giving them partial access to the National Social Security Fund. However, they are required to obtain an annual work permit which is dependent on the willingness of the employer to request it from the Lebanese authorities and involves a lengthy administrative process. For more information, see UNRWA (2018).

The only existing detailed recognition and implementation of vulnerability in Lebanon derives from the vulnerability assessments of refugees by main UN agencies led by the UNHCR (VASyR, VARON), which does not define vulnerability, but introduces indicators such as shelter, water, sanitation, health and food consumption to measure socio-economic dimensions of vulnerability (El Daif et al., 2021). Most humanitarian actors are reluctant to engage with vulnerability from its legal and political dimensions, that is, with how experiences of vulnerabilities are being produced through the policies in place and the limited access refugees in Lebanon have to any kind of legal status. The humanitarian approach emphasises assistance with a short-term perspective that is mainly in place to keep people alive rather than addressing more structural and political constraints (Brun, 2016; Brun & Shuayb, 2020). Yet, on the other hand, the legal dimensions of vulnerability of displaced populations continue to play an important role and must be understood in a political and securitisation approach driven by the Lebanese state which focuses on monitoring refugees, restricting their residency and mobility and consequently placing refugees under risk of detention (Brun et al., 2021; El Daif et al., 2021). We now turn to explore how refugees we interviewed encountered the institutions that implement these different frameworks.

4.3.2 Encountering Institutions and the Different Responses to Refuge

The lack of a legal refugee regime and an official homogeneous policy to govern refugees' presence and livelihood in Lebanon has led to a fragmentation of the refugee response with myriad actors in this domain. Our research has mapped the prominent institutions refugees may encounter during their "temporary" journey in Lebanon and which are associated to differing degrees with the two main approaches to refugees—securitisation and humanitarian approach. In the following sections, we describe these institutions and explore the experience that refugees had in encountering them.

Encountering the Security Response to Refugees

Perceiving refugees' presence as a potential threat to security, infrastructure and the economy has materialised in a fragmented security response towards refugees. In the absence of a well-defined and comprehensive policy and national response, different state actors pursue their response based on its stated mandate and available security information without a centralised guiding framework (El Daif et al., 2021).

A main actor within the security response that many research participants mentioned is **The Directorate of the General Security (GS)** which manages and impacts the lives of foreigners, asylum-seekers and refugees in multiple ways. It

acts as the Lebanese Government implementing agency for its policies toward refugees and both Palestinian and Syrian refugees encounter them: For example, the GS monitors entry, stay, residence and departure, including deportations, of foreigners to Lebanon and delivers permanent and/or temporary residence permits; organise and deliver travel documents for the Palestinian refugees residing in Lebanon or coming from abroad; and also issues entry visas (General Security, 2023). While the GS was mentioned by both Syrian and Palestinian refugees regarding these tasks, relatively few research participants had had direct dealings with the GS but explained that they had good experience in the encounters with them.

As most Syrian refugees are without legal residency they have not had much dealings with the GS in recent years. In many ways, the state had deliberately contributed to preventing Syrian refugees from obtaining residency, hence contributing to profound experiences of vulnerabilities and limited possibilities for manoeuvring the governance structures. Syrian refugees' reflections about the GS were coloured by their limited contact. As Amani, a Female Refugee from Syria explained "*We only dealt with the GS when we renewed our residency. They treated us well, and we never had any issues with them*". Similarly, Palestinian refugees mainly visit the GS when they needed renewing their legal residency and passports. Most of the 22 Palestinian refugees interviewed stated that they had not experienced direct discrimination in the GS offices, but some interviewees felt discriminated against more generally and the experience of discrimination in itself led to feelings of uncertainty and vulnerability.

The reflections from research participants were deeply contradictory and some Palestinians and Syrians, as Adel a Male Palestinian refugee from Syria said:

> Of course, there is discrimination.

While Osman, a Syrian refugee from Syria stated:

> It is equal treatment like they would treat the Lebanese.

NGO staff and lawyers we interviewed highlighted the arbitrariness in granting residency permits, such as the GS confiscating IDs and passports, the lack of standard practices at the level of GS offices, the several quick changes of residency policies, and the chaos it leaves. The GS officers we interviewed on the other hand, insisted that the regional GS bureaus are not arbitrary in their decisions on granting residency permits but that applications submitted by "the displaced" are incomplete and that the GS:

> Does not compromise in case of errors or incomplete applications.

A legal practitioner interviewed emphasised that:

> (…) the GS is doing its best when considering that the legislator did not leave room for the GS to manage the refugee crisis (…) [trying] its best through circulars and decisions to manage the situation.

The contradictory messages from refugees of encountering security actors were also reflected in their descriptions of encountering the **Lebanese Army Forces (LAF).** LAF has a leading role in the State's security response towards refugees, and

interviews with lawyers and NGOs revealed arbitrary detention, torture of refugees, and raids on camps resulted in detaining refugees lacking legal residency, possibly due to expired permits (El Daif et al., 2021). One lawyer emphasised that the use of torture, illegal under Lebanon's international obligations and internal legislation, had arguably been covered and justified by the military court.[6] Agencies working with refugees in Lebanon emphasised the problem with forced housing evictions carried out by the Lebanese authorities increased particularly since 2015 (Amnesty International, 2015; Human Rights Watch, 2018). The increasing hostile environment culminated in May 2024 with the Lebanese authorities demolishing the al-Waha camp, which housed more than 1500 Syrian refugees (Amnesty International, 2023).

For the refugees we interviewed, the raids were always a concern, especially concerned were interviewees without residency residing in the tented settlements,[7] where residents had experienced multiple raids by the Army to check if papers were in order. In fact, the raids by the LAF tended to be more frequent in the first years after the Syrian refugees arrived in Lebanon. When we conducted the interviews in 2022 and after the spread of Covid-19, the raids have become less frequent. However, at the time of writing in April 2023, the raids have intensified amidst a wave of deportation and enhanced restrictions on Syrian refugees' presence in the country.

The interviewed Syrian refugees generally understood the main reason for the raids to be searching for weapons, and some interviewees welcomed this action and considered it a routine procedure from the LAF, which made them feel protected by the State. Also, some interviewees stated that they were treated fairly when detained by the LAF because of the lack of legal papers. They were asked to renew their papers, pay money, and were then released. However, other interviewees were less optimistic, felt vulnerable about such encounters, and presented more mixed attitudes towards the same institution.

Ambiguity was also present among Palestinian refugees when reflecting on their encounters with **The Security Committee and the Popular Committees in the Palestinian Camps**. Since 1969, the Lebanese State has had restricted authority in the Palestinian camps and a Security Committee composed of different political Palestinian factions is in charge of all internal security issues and is part of the everyday fabric of the camps.[8] T**he Committees**, which function like "states within the state" (Sogge, 2017, p. 282) straddle the securitisation response to refugees and

[6] The latter is an exceptional court in Lebanon and many activists were calling for its dismantling.

[7] Around 100,000 refugees live in tents in the approximately 200 Bar Elias informal camps. The majority are Syrian, but there are some Palestinian from Syria and Dom. The tents are not overcrowded but provide challenging living conditions in the cold winters and hot summers. The settlements are spread out on both sides along a road of 3 kilometres with the Bekaa Valley surrounding them.

[8] The unique autonomy of the Palestinian camps dates back to the Cairo Accords of 1969. In these agreements, the Lebanese state not only allowed the Palestine Liberation Organisation (PLO) to continue its resistance against Israel from Lebanese soil, but it was also given sole responsibility over the camp dwellers (Sogge, 2017: 282).

local (self) governance**.** The committees "are often referred to as municipality-like bodies in the sense that they oversee service provision and the related informal taxation, operate as a land registry, serve as intermediaries in judicial matters and social conflict, and have a related security committee that polices the settlements. (…) while the Popular Committees are officially civil bodies, they are heavily politicised and are perceived by Palestinians as [political] party structures rather than public, communal bodies" (Stel, 2021, p. 161).

Most of the research participants residing in Palestinian camps were aware of the committees, but as Amal, a Female Palestinian refugee from Lebanon stated *"(…) there's a committee but I don't know who its members are"*. The political affiliations in the camps and other power dynamics presented specific protection challenges and vulnerabilities where Palestinian refugees found themselves between the Lebanese State and Palestinian political factions. The interviewees did not talk much about these types of relationships, but Amira, a female Palestinian residing in Lebanon stated:

> You cannot know. You feel like all the shelter is filled with people in charge.

Others felt that their exclusions in society were represented through the camp and the fact that the police could not enter the camps.

Local Authorities Between Securitisation and Humanitarianism

Syrian refugees live dispersed across Lebanon, but with some particular concentrations in municipalities across the country (LCRP, 2023). Local institutions, especially municipalities, lead the crisis response for Syrian refugees[9] by handling the community livelihoods, service provision, and tension mitigation at the local level. However, with limited resources and support from central institutions, causing strain on services, hindering their ability to deliver basic services as mandated and creating local tensions (LCRP, 2015–2016). Consequently, different municipalities have approached the refugees residing within their administrative boundaries differently (El Daif et al., 2021). Some have continued the securitisation approach of other departments, as mentioned above, treating refugees as a threat in need of control through curfews where Syrians are not allowed to go out in the evenings (see also, VASyR, 2019). Refugees we interviewed did not have a unified response about their experience with municipalities, which explains the dissimilarity of the municipality's role and attitudes towards refugees from one area to another. Significantly, in many local areas, refugees stated that they call upon the municipality if there is a problem to be solved or they need assistance. Hence, the physical closeness to this authority was significant, as Khalil a male Syrian refugee residing in Bar Elias suggested:

[9] Palestinians in camps are not governed by local Lebanese authorities for the reasons explained above.

> (…) I only deal with the municipality because we see them in the area….it has the most authority here….Like when there was no bread the municipality was organising the lines at the bakeries, also at the gas station that municipality is present, wherever you go the municipality is organising, the army and the ISF come when they are called while the municipality is always present.

In addition to the local authorities, for the Syrian refugees in the Bekaa and the research participants we interviewed in the tented settlement in Bar Elias, the ***Shaweesh*** has come to play a crucial role. The Shaweesh has traditionally been a middleman managing foreign labour in Lebanon. However, the word took on a new meaning with the arrival of Syrian refugees (UNHCR, 2018): The Shaweesh, sometimes appointed by the refugees but more often by a landowner or the municipality, acts as a settlement supervisor and decision-maker and as a sort of camp-leader in the informal camps: he collects rent from refugees, sometimes receives a commission for the work that refugees may do on the landowner's land, has the authority to allow people to settle, and decides how to distribute aid that arrives in the settlement (Brun & Maalouf, 2022). To this end, the Shaweesh has become an informal local authority that acts as a middleman between the refugees and the land owner on whose land refugees are staying and also between refugees and other authorities and aid agencies.

The research participants described how the Shaweesh acts as a link between the refugees and the Lebanese authorities, international and national organisations and even tend to be obliged to inform the Syrian intelligence forces about what goes on in the settlement. Research participants thus described their relationship to the Shaweesh as complex. As a result, for some, the relationship with the Shaweesh triggered a sense of oppression and marginalisation, while for others, it provided a means of access to some restricted privileges. These differentiated feelings emerged when aid was seen not to be distributed fairly or when some—especially women—felt exploited as agricultural laborers. Yasmine, a Syrian refugee, described her feeling of vulnerability when she is forced to keep quiet when the shaweesh humiliates her, and she cannot react, even by calling UNHCR because they are not answering her.

Encountering the Humanitarian Approach: International Organisations and Civil Society: United Nations (UN) Agencies

As mentioned above, a security approach and a humanitarian approach co-exists in Lebanon and refugees negotiate these approaches in multiple ways. Regarding the actors that promote the humanitarian approach are international organisations and the national and international civil society.

The International UN organisations such as the **UNHCR** and **UNRWA**, play critical roles in both financial, legal and humanitarian spheres, for example, the UNHCR has a mandate of protection, searching for durable solutions, and assisting all nationalities other than Palestinian. Lebanon has long relied on UNHCR to

conduct registration,[10] documentation, and refugee status determination (RSD) to identify international protection needs and durable solutions (UNHCR, 2023). UNHCR's Multipurpose Cash Assistance Programme (MCAP) and the World Food Programme's Cash for Food (CFF) figured as the most prominent providers of cash assistance among the Syrian refugees we interviewed. UNHCR uses a category-based assessment model for refugees' vulnerability to decide on the most vulnerable population to target in their assistance and protection services and programs.

The research participants talked more about the inability to get in touch with UNHCR than the actual encounters with the organisations: they did not understand the criteria on which they could receive assistance for getting by or for assistance to resettlement. The immense struggles to communicate and get in touch with the organisation and feeling neglected meant that many no longer trusted the UNHCR. To this end, the research participants could not understand the vulnerability criteria the organisation used for assistance and resettlement. The encounters—or rather non-encounters—with the institution had the effect of amplifying the experience of vulnerabilities, Mona, a female Syrian refugee emphasised:

There are many people in the camp here who have been cut off from the cards. Some people don't have phones or chargers for their phones so they did not receive the [UN] texts; some get busy with work and life and miss the memo and that's why they get disqualified from receiving aid through that card. Even if these people call again, the UN are too busy to get back to them.

UNRWA is mandated to address the needs of Palestinian refugees in Lebanon (PRL) and from Syria (PRS) by providing a range of services, including healthcare, education, relief and social services, and emergency assistance, while also advocating for the rights and protection of Palestinian refugees in Lebanon (UNRWA, 2023). UNRWA recognises that certain groups, such as women, children, elderly persons, and persons with disabilities, may be particularly vulnerable to multiple forms of discrimination and exclusion, which can further exacerbate their vulnerability. UNRWA defines the vulnerability of Palestinian refugees as a multifaceted concept encompassing various factors and considers refugees vulnerable if they face risks related to their safety, livelihoods, health, or access to essential services such as education and shelter. In addition, UNRWA recognises that certain groups, such as women, children, elderly persons, and persons with disabilities, may be particularly vulnerable to multiple forms of discrimination and exclusion, which can further exacerbate their vulnerability. Our interview with UNRWA's staff

[10] UNHCR registered at first most Syrians through a prima facie registration process that included a short interview along with other formalities; then they were given access to the aid provided by the UNHCR according to their specific needs. Starting at the end of 2014, the registration of new refugees from Syria was halted. UNHCR considers most Syrians in Lebanon as refugees but has in practice come to differentiate between registered, unregistered and 'recorded' refugees, i.e. the latter consist of Syrian refugees who have approached UNHCR after the government's ban on new registrations. However, UNHCR is still registering refugees from other nationalities. For instance, 2359 non-Syrian refugees registered with UNHCR in Lebanon during 2018 (El Daif et al., 2021).

confirmed that a vulnerability approach that excludes individuals is an exceptional measure they would resort to when funding is short (El Daif et al., 2021).

UNRWA's assistance for Palestinian refugees from Syria and Lebanon is experienced as more important than the Lebanese State for most Palestinians. All Palestinian refugees from Lebanon that we interviewed and the majority, but not all, Palestinian Refugees from Syria were registered with the UNRWA. However, the lack of communication and access to UNRWA was a challenge shared by the Palestinian refugees with UNRWA, especially after the Covid-19 outbreak. The financial support offered by UNRWA fluctuated considerably among the Palestinian refugees we interviewed. The most common support was marginal medical assistance through UNRWA's hospitals and education through UNRWA schools. Other assistance varied within the group of PRS and PRL, such as monthly monetary help and house rent. However, due to the financial crisis, most research participants relying on this support were not satisfied and considered the assistance marginal: Generally, they did not understand why financial aid had decreased which had caused further socio-economic vulnerability on top of health problems and inadequate housing conditions. There was a huge sense of frustration with the limited support that UNRWA was able to provide and only Jamal (MPRS) mentioned UNRWA's lack of funding as a cause for the lack of aid and services. Additionally, many of the interviewees mentioned corruption and that personal connections [wasta] were needed when accessing UNRWA's assistance, according to Amira:

> (…) I told you if I have "Wasta" they [UNRWA] give me aid, but if I don't have, they don't give me.

As part of the humanitarian response, there has clearly been an NGOisation of the refugee response, indicating the need to fill the void of government response to refugees as well as a neoliberal mode of governance towards refugees and other marginalised groups. Refugees encounter **civil society organisations** in multiple ways. Some organisations work in their local areas and may be more easily approached. In other cases, refugees contact organisations through phone or email or travel to their offices to ask for assistance. Generally, access to assistance from civil society organisations—national and international—was irregular and varied according to the nationality of the refugee and the residential area. We noticed that Palestinian refugees from Lebanon had less access to assistance from civil society organisations than Syrian refugees, who felt they had limited access but reported more contact with civil society organisations, especially during Ramadan. Furthermore, during the COVID-19 pandemic, access to these organisations switched to remote through phone calls and emails, hindering the communication although some organisations made themselves more accessible through mobile units or community centres located where refugees live. Other organisations established a helpline for the refugees to call.

Most interviewees found it difficult to understand the eligibility and vulnerability criteria for assistance, which created a prominent disillusionment as many did not understand why they had not qualified for assistance or that their assistance had been cut. Many representatives from organisations who we interviewed exposed a

nuanced understanding of the meaning of vulnerability. However, these understandings were not always reflected in the implementation of assistance because funding for the organisation had come with specific strings attached preventing the organisations from adopting a more nuanced system for defining vulnerability and eligibility criteria. With much funding being short term and provided by different funders, the NGOs also had to change vulnerability criteria over time which contributed to the confusion among the refugees interviewed. Hence, refugees expressed frustration towards organisations dropping in with a needs assessment for never again to return or promising to help but never delivering. Marwan, a Male Syrian Refugee, is representative of many interviewees' experience:

> I tried with [an international NGO] because I'd heard that they offer accommodation aid. They promised they'd help, they said they'd send a team to my home, but they never did. This was a long time ago.

4.4 The Experience and Production of Vulnerability in the Institutional Encounters—A Discussion

> So that's my weak point now. No one is going to help me in this case, it's everyone for themselves (Yasmine, FSR).

Analysing the encounters between refugees and relevant frameworks and institutions enabled us to understand how refugees experience vulnerability as the feeling of being left alone, the lack of help and support and not having a state representing them. Amidst the chaotic response to refugees in the country, vulnerability is expressed as an existence in precarious conditions that are amplified due to refugee status and the compounded crises in Lebanon. To this end, the experience of vulnerability is ontologically different from the ways in which vulnerability is used and understood among institutions and in frameworks which focuses on defining categories of individuals and vulnerable groups in order to allocate assistance but more in tune with the aim of governing refugees as foreign subjects.

As we have shown above, there are significant similarities and differences in the experiences of encountering the migration governance systems among Palestinian refugees from Lebanon, Palestinian refugees from Syria and Syrian refugees. In attempting to synthesise the analysis conducted above, in this section we highlight some of the shared experiences, but also reflect on some of the differences that we have identified between and within the groups.

State institutions and local mechanisms for governing refugees are not among the actors that most refugees—regardless of legal status—would turn to for protection and support whether their rights are breached or they need any support. Most of the interviewed refugees, expressed an ambivalent relationship with relevant state and non-state institutions. The three groups shared experiences of the lack of accessibility to protection and assistance in their encounters with governance structures and described feelings of alienation, deprivation, and non-representation, leading to

marginalisation and increased vulnerability: The Lebanese state's ambition is not primarily the protection of the refugee but protection of the state itself. Thus, refugees clearly expressed that their understanding of 'protection' in Lebanon derived from the intersection of different constituting factors of vulnerability embedded in the displacement status, such as: "the feeling of safety"; "the belonging to their residential area", "the refugee status"; and, "securing fundamental rights, both socio-economic and legal rights".

The experience of vulnerability was highly contextualised and dependent on refugees' residential location. Some Syrian refugees, living in a municipality that had taken a positive approach towards refugees, explained that they did seek towards the local municipality as one of many actors they approached when they needed help. Syrian refugees who lived with a Shaweesh had very mixed feelings about this role and did not feel that the Shaweesh was a representative for them in any ways. Similarly for the Palestinian refugees, although they had representatives in the camps and a governance system, it was not these formal institutions or actors that they felt represented their interests. In this regard, neither the UNHCR nor the UNRWA were seen by most of the interviewees as institutions representing their interests to a large extent, although interviewees appreciated the assistance that they were receiving.

Crucially, in these encounters, the refugees mobilised agency to contact international institutions, civil society as well as local authorities to ask for assistance. Yet, they did not have any control over—and did not set the conditions for—the encounter. The encounters were entirely subject to the conditionalities by authorities or the organisation in question and represented the broader relationships of power and antagonism that refugees face. Interestingly, the access to institutions and the nature of the encounter did not follow a logical pattern where institutions at one scale, such as national or local level—or state versus non-state actors were experienced in the same way, but the experience of vulnerability in these encounters varied according to timing, specific localisation and personalities.

As showed here, a main difference between Syrian and most Palestinian refugees interviewed is their legal status in Lebanon. For many Syrian interviewees and Palestinian refugees from Syria, there was considerable fear attached to the lack of legal status. While some refugees did not see the need for a legal status, others felt this lack of legality had contributed to further deprivation of rights, increasing vulnerabilities, and a barrier to seek protection.

In the context of the country's deteriorating economic and security situation, the need for assistance and protection was widespread among the refugees. As a result, refugees we interviewed emphasised that they seek national and international organisations' support when they can. However, the difficulty in approaching and accessing these organisations is another symbol for the inequal power relations that contribute to deepen the experience of epistemic vulnerability.

Organisations we interviewed, explained that they had to adopt multiple exclusion strategies to keep people away due to limited capacity for meeting people's needs. In other words, many of the organisations interviewed were deliberately making themselves inaccessible. This inaccessibility contributes to refugees'

feeling of alienation and deprivation, adding to the strong sense of being left alone described above. Even those refugees who were receiving some support from civil society organisations described the support as irregular and with ambiguous and unclear selection criteria. Categories of vulnerable groups eligible for support differed from one organisation to another, making it extremely difficult to relate to vulnerability categories. Refugees we interviewed were confused about eligibility criteria and the way organisations operated was experienced as representing a deep sense of mistrust against refugees.

The overlapping dimensions of legal and institutional measures with different aims and understandings of vulnerability, contribute to produce individual vulnerabilities (Brun & Maalouf, 2022). Even those national and international civil society organisations that have an explicit aim of reducing refugees' vulnerabilities may contribute to epistemic vulnerability that deepens a sense of inequality and harm. The strategising that refugees have to turn to in the context of compounded crises may lead to a downward spiral of deprivation of resources and increased vulnerability. This is what international organisations tend to term 'negative coping strategies', defined by the UNHCR (UNHCR, 2021) as "begging, borrowing money, not sending their children to school, reducing health expenses or not paying rent". However, the concept of negative coping strategies is taken for granted and not questioned or nuanced as one interviewee from a national organisation stated:

> I've always been against this terminology of negative coping mechanisms, given the fact that in most if not all of the cases, the individuals have no other option…this is just the reality.

Hence, the notion of negative coping strategies tends to focus on the individual responsibility to cope rather than the context that produces the vulnerabilities and needs, such as the restricted legal status and the compounded crises leading to extreme poverty in Lebanon.

Rather than focusing on negative coping strategies, we suggest that the encounters analysed here represent the different layers and barriers that refugees have to manoeuvre to mobilise what can be described as "constrained agency". Refugees mobilise agency by applying at least two parallel strategies. One set of strategies is to continuously trying to access organisations and institutions that can assist, despite the unclear category-based criteria for who count as vulnerable and who would be eligible for assistance. The other set of strategies revolves around finding ways to bypass those organisations and institutions and using social and informal networks and resources (Brun & Maalouf, 2022).

For many of the interviewees in this study, belonging to a social group and network that helped each other was thus a most significant strategy in seeking protection. Social support from neighbours, such as connections and friendships, and hence the social capital, were significantly mentioned as essential in the refugees' day-to-day life for countering the vulnerabilities. These networks extended beyond the neighbourhood to family and friends elsewhere in Lebanon and transnationally. The complexity of the situation and the institutional voids means that the social

networks and social capital that people have built play a crucial role in gaining access and finding their way.

Over time, however, and amidst the deep financial crisis in Lebanon, the marginal position refugees occupy in Lebanon, resulted in depleting resources and energy. Sometimes, the situation is just too dire and the constraints too much to be able to identify a positive outcome as one of our interviewees from the civil society stated:

> For me there is no resilience of refugee because resilience should be a choice and they did not choose to move to Lebanon…I mean resilience, being the capacity to adapt, I think that we reach a point where people are not able anymore to come to adapt.

This experience is reflected among the refugees we interviewed too: the feeling of always being in crisis and with no future in Lebanon. This uncertainty exemplifies the epistemic vulnerability refugees in Lebanon experience, and as such we give the final word before we conclude to Aya, a Female Palestinian refugee from Lebanon:

> There's no future, we used to think about tomorrow, but now we don't, we live worrying about how we'll get through the day.

4.5 Conclusion

The Chapter has engaged with two different approaches to vulnerability. The first is the meanings of vulnerability found in frameworks and among institutions concerned with protecting, assisting and governing refugees. The second position focuses on refugees' own experiences of vulnerability. The Chapter showed how ambiguous the concept of vulnerability is. The way it is used in different—and often contrasting—ways by different institutions, can be interpreted in multiple ways in the multitude of frameworks available. Refugees do not have a unified experience and understanding of vulnerability in the encounter with those institutions and frameworks. In Lebanon, due to the institutional void created by the many different approaches to vulnerability, vulnerability becomes a concept that can be used according to the interests of the actors involved whether they are duty bearers or right holders.

We argued in the introduction that the types of encounters we have described and analysed here can contribute to a better understanding of relationships between policies and frameworks, implementation and outcomes. We have shown that the fragmented approach in Lebanon contributes to produce particular experiences of vulnerability. This experience of vulnerability is produced in encounters with the hostile state set to govern refugees through securitisation. However, vulnerability is also to a large extent a dominant feeling in encounters with international organisations and civil society that are there to assist and protect—often through a humanitarian approach. We suggest that there is a need for institutions to understand better the relationship between official notions of vulnerability and refugees' experiences of vulnerability.

In the current deep crisis in Lebanon, it is easy to end on a depressing note as most refugees we talked to found it difficult to see a future for them in the country that does not want them there and where they live in extreme poverty. However, what we have also shown in this chapter is the potential agency and room for manoeuvre that refugees mobilise in the encounter with those institutions. We suggest that a more nuanced understanding of vulnerability as a criteria for assistance and protection lies in a better understanding of the ways in which refugees constrained agency can be strengthened.

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Chapter 5
A Whole-of-Society Approach to Vulnerabilities: Contestations and Unintended Effects

Sophie Nakueira

5.1 Introduction

This chapter provides an empirical account of the central features of Uganda's humanitarian protection system and its impact on mitigating or exacerbating refugees' vulnerabilities. It focuses on the governance processes used to identify and provide aid and protection services to the most vulnerable populations in a global south context. One of the arguments advanced is that Uganda's whole-of-society structure falls short in several areas that are critical for an effective humanitarian response to refugees' vulnerabilities. I show how these limitations produce new risks or render refugees more vulnerable by focusing on the protection system's deficits and their consequences for refugee protection. In doing so, this chapter aims to make an empirical contribution to refugee and governance studies by mapping the actors involved in aid provision and through an examination of the effects resulting from how interventions and programs are implemented in the whole-of-society protection model.

Two overlapping points are pertinent here. First, the humanitarian regime, through its use of vulnerability categories and codes claims to have expertise in vulnerability (i.e., through classifying which individuals or groups of refugees and asylum seekers are vulnerable). Through its diverse humanitarian organization and aid programs, Uganda's protection system claims to have solutions to refugees' experiences of vulnerability. Second, humanitarian responses to refugees' vulnerabilities are governed through a polycentric approach (see precise definition below). Simply put, polycentric governance in a humanitarian context means that humanitarian protection is provided by various actors, including aid workers in various

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local and international organisations, state officials in various departments and refugees themselves.

This chapter argues that despite a well-designed architecture of humanitarian governance, various factors enhance refugees' experiences of vulnerability. It draws on empirical data conducted in Uganda in 2020 for the VULNER[1] project to show the factors that undermine the protection of those that Uganda's protection system classifies as 'most vulnerable', and the rest of the refugee population generally. Which category refugees are assigned is significant not just for accessing key humanitarian aid, but is also important for being prioritized for resettlement, in most cases. Paying attention to the mechanisms and processes through which humanitarian services and aid are delivered and *whom* they target, is key to understanding the 'making' and unmaking' (Anderson, 2020:55) of vulnerable populations.

In examining the architecture of humanitarian governance, this chapter will show how the control of refugees' movements through biometric verification, the duration of humanitarian programs and fluctuating bureaucratic definitions of vulnerability, play in complicating humanitarian protection. Below, I commence with a review of the scholarly debates in governance and refugee studies, followed by a discussion on the importance of the whole of society model (WOSA) for refugee protection in a resource-strapped country and provide an ethnographic analysis of the effects of WOSA on refugees' experiences of humanitarian programs and bureaucracies. I then conclude by summarizing the implications of this governance model for delivering a protection mandate based on classifications of vulnerability.

5.2 A Whole-of-Society Approach to Vulnerability

The Whole of society (WoS) approach has been empirically developed in different disciplines, ranging from criminology (Wood & Shearing, 2007) environment (Holley & Shearing, 2017), health (Ortenzi et al., 2022:1; Addy et al., 2014) to understand how complex problems plaguing these fields are governed. Much of this work draws from the pioneering study of polycentric systems done by Elinor Ostrom. There is a breadth of scholarly work on how different actors are working together across various domains to address complex problems in their respective fields. In the context of public health, Addy et al. posit that:

> adaptable and dynamic governance is needed to address the complexity and rapid change that characterizes interactions between diverse stakeholders, who sometimes have conflicting goals and priorities in the face of scarce economic resources, whether in industrialized or emerging economies (2014: 216).

In the field of international relations, Koinova et al. (2021) also draw on the concept of polycentricity to capture the 'practices', technologies, and goals of various actors

[1] VULNER was a project funded by the Horizon 2020 funding scheme led by Dr. Luc Leboeuf. For more info see https://www.vulner.eu

that shape interactions in humanitarian and migration contexts. 'Polycentricity' a term attributed to Michael Polanyi denotes 'decentralised decision-making' (Polanyi cited in Koinova et al., 2021: 4), Drawing on Polancyi, Koina et al., posit that 'polycentric' form of governance takes place when:

> "many centers" address a given policy concern. The diffuse decision points can be scattered across multiple scales (local, national, regional, and global) and various sectors (public, private, and hybrid). The participating organizations in a polycentric arrangement often have overlapping mandates, ambiguous hierarchies of authority, and no ultimate arbiter.

Polycentric governance is not tied to a specific scholary field (ibid). Recognizing the complexities in diverse governance domains, scholars and global governing bodies have called for the use of a whole-of-society (WoS) approach. In the context of global health, this call has been made by the World Health Organization (WHO) more recently in the context of dealing with the COVID 19 pandemic (Ortenzi et al., 2022). In the context of migration, scholars such as Domicelj and Gottardo advocate for the use of the WoS approach to achieve the objectives stated in the Global Compacts on Migration (GCM) and Global Compact on Refugees (GCR) (see Domicelj & Gottardo, 2019). Noting its importance for achieving the objectives of the Global Compacts, Domicelj and Gottardo state that '[T]he global community must now take incisive, coordinated action through a whole-of-society approach to push forward the effective implementation of the two Global Compacts' (ibid, 2019:79). For these scholars, such an approach would entail involving various stakeholders at multi-governance levels, in operational and policy domains. Domicelj and Gottardo recommend the inclusion of refugees, migrants, and host communities in a 'meaningful' way at national, regional and global levels (ibid) in a WoS approach. In advocating for the use of the WoS approach in distinct contexts such as health, migration, security or environmental governance, the underlying logic is the recognition that there is a need for 'bringing together different actors to address complex challenges and achieve interrelated goals' (Ortenzi et al., 2022: 2). Ortenzi et al. raise several questions that need further clarification from an empirical context. For instance, they posit that not much is known about what 'WoS approaches mean in theory and in practice'; how far it is understood by actors or how it is implemented. Most importantly not much is known about the factors that enable or hamper implementation. (ibid). These questions will be explored in the context of humanitarian governance of vulnerability in Uganda's first refugee settlement by unpacking how the WoS approach is used to address the vulnerabilities of refugees. From this perspective, this chapter aims to contribute to extant literature on polycentric governance and refugee studies by exploring these questions from a humanitarian governance lens.

While there is arguably a large body of scholarship on the WoS approach in the field of criminology in global South contexts, not much is known about the implementation of the WoS approach in a humanitarian context. Particularly, studies dedicated to investigating the nature of interactions between humanitarian actors in the provision of humanitarian aid and resulting effects of these interactions on refugee protection is lacking. This chapter draws on Ostrom's concept of polycentric

governance (Ostrom et al., 1961) as an analytical tool to understand the interactions between actors in Uganda's humanitarian system. Polycentric governance in the context of humanitarianism means that different actors from the grassroots, local, regional, and national levels are enrolled to respond to refugees' protection needs in emergency and protracted refugee situations with the aim of providing holistic services. The Global Compact on Refugees appeals to states to prioritise vulnerable groups in the assessment for protection services at various stages in the processes of asylum and admission processes. It also calls for a whole of society approach to refugee protection, thus acknowledging the plurality of actors and sectors that are crucial to addressing protection needs.

Thus, a whole -of-society model to humanitarian protection, is inherently polycentric because it encompasses numerous state actors and non-state actors that provide a wide range of services that are vital to the well-being of refugees. In Uganda, this includes humanitarian organisations, refugee-led organisations, and state agencies that provide legal aid, health education, livelihoods, physical protection, and so forth— meaning that protection is viewed broadly. Two overlapping questions arise: how do the different actors in the whole-of-society model exercise their mandates in the protection of vulnerable refugees? And what are refugees' experiences of this polycentric protection system? These questions are vital to understanding the effectiveness of WOSA in addressing refugees' vulnerabilities.

This chapter contributes to existing scholarship by showing how diverse local, international humanitarian organisations, and state agencies with inter-dependent or complimentary protection goals carry out their mandates within a WoS structure that aims to address the protection needs of the 'most vulnerable' refugees. Systems of governance where multiple actors exercise authority or control over a particular issue with interrelated or opposing goals are referred to 'polycentric' (Ostrom et al.) or plural forms of governance (for an overview see Berg & Shearing, 2021). Thus, polycentric governance refers to a 'a complex form of governance with multiple centers of decision making, each of which operates with some degree of autonomy' (Ostrom et al., 1961). Much of the empirical work on polycentric governance dates back to the 1960s when the concept was introduced by Ostrom (see Ostrom et al., 1961) and continues to date as scholars in different fields have continued to map plural systems of governance in diverse contexts such as safety and security, health, water management and other contexts of public goods. Despite being conducted in different domains, much of this research has found that the multiplicity of governance structures in such systems led to more effective public service provision' (Addy et al., 2014: 217). In the section below, I discuss how the WoS approach functions in practice in Uganda and the effects of the polycentric governance of vulnerabilities that underpins it.

5.2.1 *A Whole-of-Society-Approach to Refugee Protection in Uganda*

To understand the importance of a whole-of-society approach to addressing refugees' vulnerabilities, one has to be knowledgeable of the governance deficits in poorer countries and richer ones (Braithwaite, 2006). Uganda is a developing country which hosts the largest population of refugees in Africa as well as a large population of its own citizens who live in poverty. Thus, on its own, the state cannot deliver its refugee protection mandate despite having an obligation to do so under international law. Therefore, unlike refugee protection in developed countries where the state welfare systems are comparatively better resourced, Uganda's humanitarian setting relies heavily on the United Nations High Commissioner for Refugees (UNHCR)and the capacities of diverse actors such as civil society organisations, refugee leaders, and diverse international organisations to provide refugees with crucial humanitarian services.

5.3 Key Actors in the WoS Humanitarian Model

Uganda's humanitarian protection system is designed to assess and identify the most vulnerable refugees at various focal points. According to an interview with a UNHCR official, 'focal points' include humanitarian organisations and institutions such as schools, the police, prison, immigration and justice system where vulnerable refugees and asylum seekers can be identified and referred for protection to the respective agencies in charge of specialized protection services. In practice, this means these different aid agencies and instiutions are required to assess, identify, and act or referring refugees whose vulnerabilities match the universal vulnerability categories used by UNHCR (such as elderly persons, pregnant women, unaccompanied minors, persons with disabilities, and the like).

As such this polycentric governance model takes a broad approach to protection that targets the most vulnerable refugees. This means that if a refugee child misses school for an extended period of time, the school system is required to bring this to the attention of the organization in charge. If an asylum seeker is not registered, he or she is referred to the Office of the Prime Minister for registration or if a refugee needs legal aid, he or she can be referred to a legal aid agency within the humanitarian protection model. The aid services are designed to complement the activities or protection mandates of other humanitarian organisations. Moreover, the assessments and referral of vulnerable refugees can start at the top by UNHCR or OPM and can also commence at the grassroot level (e.g. within refugee communities) depending on who is doing the identification or assessment. At the community level for instance, refugee leaders and Refugee Welfare Councils are tasked with identifying the most vulnerable refugees in their respective communities and can refer vulnerable refugees to the aid organisations or state agencies that can best address their

needs. In such a context, vulnerability takes on diverse meanings as it is contigent on the refugees' protection needs. A refugee may be deemed vulnerable if he or she needs medical intervention, basic livelihood, is pregnant and requires antenatal supplies or can be a child in need of basic education. Thus, the actors within the polycentric governance structure are expected to deliver a holistic protection mandate by working together to deliver on a broad vision of protection goals through the execution of their respective protection mandates.

Some of the main actors in Uganda's protection model include UNHCR, Office of the Prime Minister (in charge of refugee registration), Alight, which is responsible for the physical protection of refugees, Medical Teams International which is in charge of health services, Tutapona (a mental health agency), Refugee Welfare Councils, War Child Canada (in charge of child education), and Windle International Uganda (who provide scholarships and specialized education of children with disabilities. Legal Aid International provides legal services and educates refugees and asylum seekers about their rights in Uganda to mitigate the potential of the violation of refugees' rights. Together these actors deliver crucial protection services to asylum seekers and refugees in Uganda and have programs that prioritise special groups/persons based on specific vulnerability criteria.

One humanitarian worker in charge of food distribution, stressed the importance of working with other humanitarian organisations in the protection of refugees. He explained that no single organization can do it alone — pointing to the enormity of the protection needs of refugees which requires the involvement of other actors to address refugees' diverse vulnerabilities. It is worth noting that in practice, humanitarian organisations provide aid and services to *only* those they refer to as their 'clients'. Therefore, along with the different services and aid provided by diverse humanitarian actors are differing definitions of vulnerability within the same system. Uganda's humanitarian system, then, operates by sorting refugees into various categories of vulnerabilities, thus rendering them governable by the humanitarian's own bureaucratic logic of suffering.

Each humanitarian organization has its own assessment criteria and system of addressing vulnerability with the overall objective of protecting the most of vulnerable refugees or clients. Indeed, showing how a particular organisation's activities complements those of other organisations is crucial to being accepted as a UNHCR operating or implementing partner. Operating partners carry out protection services with their own sources of funding while implementing partners are funded by UNHCR. Across the humanitarian system however, many of the humanitarian organisations work in silos when implementing their protection mandates (more on this below on 'fragmented approach'). However, I observed that while aid organisations worked in silos mostly, joint meetings on protection issues often involved the relevant actors and were always co-chaired by OPM and UNHCR. The lack of collaboration in the implementation of interventions adversely undermines refugee protection because of the overlapping nature of problems encountered by refugees. This often exacerbated existing problems suffered by refugees or created new ones.

5.4 Uganda's Humanitarian Context

According to UNHCR statistics, Uganda hosts more than 1.5 million internationally displaced populations mainly, from conflict-ridden countries such as DR Congo, Rwanda, Burundi, Eritrea, Ethiopia, and South Sudan among others. Refugees in Uganda have the same rights as citizens with the exception that refugees cannot own land. Refugee settlements in Uganda are at the 'margins of the state' (Das & Poole, 2004). They are often geographically located in remote areas in spaces where basic services such as water, electricity are scarce and infrastructures such as roads and hospitals are poorly resourced. Uganda ratified the Geneva Convention. Due to its open-door policy, the country regarded as model for refugee protection because if its 'progressive policies' (Bagenda et al., 2003). In spite of this, the rights of refugees are largely theoretical. The country has high levels of poverty, high unemployment rates and many refugees live in effective encampment despite Uganda's settlement-approach to protection. This has led to harsh criticism by scholars who have studied the conditions of humanitarian assistance in the country and analysed the violation of refugees' rights (see for instance Veradirame & Harrel-Bond, 2005). In practice, refugees' rights to employment, freedom of movement or health, for instance, are difficult to realise because of inadequate livelihood opportunities, lack of financial means to live outside refugee settlements and lack of adequate medical supplies for complex medical conditions. Whilst refugees are provided land by the government or local community (in the case of settlement in Northern Uganda) to build shelters, and for subsistence farming, the increasing number of refugees due to protracted displacements and recurring conflicts in the region, means that plot allocations are getting smaller in size and the land is often unproductive for farming or yields few crops. Often too, the ever-increasing population of refugees has meant that land conflicts arise with local communities. As explained by a high profile UNHCR official, owing to the protracted nature of conflicts in some countries, refugees find themselves encamped in refugee settlements for decades or generations. As such because of the dire conditions of permanent dependence on insufficient aid, refugees often seek for better prospects in terms of opportunities for resettlement to third countries in the west or try to get on vulnerability lists of diverse agencies to access aid programs that target the most vulnerable refugees. Those who feel dejected by the lack of prospects for a dignified life move to neighbouring countries or use clandestine routes to South Africa (or Europe). Many of the refugees I spoke to complained about feeling stuck in the settlement and shared their frustrations of engaging with different 'offces'. They decried the system that tossed them from one organization to another—suggesting a lack of understanding of the bureaucratic referral system embedded in the polycentric nature of humanitarian aid provision.

In an interview conducted in 2017 with a paralegal (a refugee himself, working in one of the aid organisations), he stated that the problem with the humanitarian organisations was that they did not understand refugees' actual problems. This was corroborated by my own observations of outreach programs that were introduced during the time of field work in 2020. One such example, was a program targeting

mentally ill children that was introduced during the COVID pandemic. The program was meant to pay for the assessment and treatment of these children so that they could gain an education but was not going to pay for their school fees. Many parents who were already experiencing the pangs of poverty that had only been worsened by the pandemic, questioned the logic of a program that did not understand that they could not afford school amenities for able-bodied children or were finding it difficult to afford living costs amid ration cuts to food aid and cash-for-food transfers. This suggests a lack of contextually relevant programs. In sum, both in interviews and observations during field work, it was evident that refugees' engagement with humanitarian bureaucracies was frustrating, aid workers selection of 'clients' was confusing, and engagement with resettlement process was unsettling for many. This was mainly because multiple humanitarian bureaucrats have differing definitions and interpretations of vulnerability depending on their respective protection mandates. To access humanitarian aid services, one must be categorized as 'vulnerable' according to aid organisations' own bureaucratic logic of vulnerability. In the humanitarian context, therefore, vulnerability means that experiences of violence or extreme suffering 'assume new currency' (Horton, 2020:11; Welfens, 2023) as they are proof of one's eligibility for humanitarian aid or resettlement. Humanitarian protection in Uganda is overseen by the state, under the auspices of the Office of the Prime Minister (OPM) which in reality is distrusted by refugees, and UNHCR—which is inaccessible to refugees without an appointment initiated by protection officers. The governance of vulnerability, as conducted by various state agencies and non-state organisations in Nakivale settlement invokes an image of 'structural violence' (Farmer, 2003) when viewed from the perspective of refugees. Thus, despite being one of the countries where vulnerability categories have been in use for long, the experiences of refugees and interviews with aid workers themselves suggests that most humanitarian organisations and state agencies only provide symbolic protection. This is because while seemingly addressing refugees' vulnerabilities, humanitarian interventions hardly improve refugees' conditions (more on this below) and consequently are largely distrusted by refugees.

5.5 Temporal Dimension of Protection Programs

Although UNHCR has historically used vulnerability categories in its humanitarian operations according to a high profile UNHCR officer, the decreasing donor funding over the years has rendered it imperative that humanitarian aid and services are reserved for the 'most vulnerable' refugees. Thus, refugees who have lived in protracted situations are often removed from vulnerability registers or receive significantly less food rations or limited cash-for-food. The reductions are based on the expectation that they have had enough time to become 'self-reliant'. Refugees in Uganda are provided with a small piece of land and are expected to grow their own food and become self-reliant within 6 months. The self-reliance strategy (SRS), which was initiated by UNHCR, and the government of Uganda, was meant to

reduce dependency on humanitarian aid and enable refugees to become self-sufficient through agriculture. Therefore, with the exception of those considered to be very vulnerable (e.g., elderly persons, pregnant women, or new arrivals) food rations or cash-for-food transfers are deliberately miniscule because they are meant to *supplement* refugees' own means of livelihood.

Additionally, the current humanitarian approach is based on 'short-term humanitarian assistance with a long-term development nexus' (informal conversation with UNHCR official, 2022). Thus, even those who are classified as vulnerable are not expected to live on humanitarian aid indefinitely. In fact, one key feature of humanitarian programs is their temporal aspect. Because humanitarian response is inherently designed to respond to emergencies, humanitarian programs or aid services given to those identified as vulnerable are often short-term. This is the case even for refugees in protracted situations such as Uganda's. However, short-term responses to refugees' intersecting vulnerabilities do not address the root causes of their problems. The overlapping nature of refugees' problems warrants a collaborative and timely approach to addressing them. However, in practice, as mentioned earlier, each humanitarian organization executes its protection role alone. Even when refugees are referred to other organizations to address their respective needs, the response times of some organisations is often slow. The slow responses and lack of coordination are due to the large population of 'vulnerable' refugees and severe resource limitations. This suggests that despite having a common protection goal, the lack of coordinated responses by humanitarian actors within the whole-of-society humanitarian model and severe resource limitations hampers the realization of protection. In interviews about operational challenges, one public servant complained about the slow response of another government agency. He stated that even when they alert them of vulnerable refugees (people with disabilities) at the reception center, the government agency is slow to respond citing lack of vehicles. Expressing his frustration, the public servant at the Reception Desk explained:

> You see they come here and sometimes they come here and you help them. You volunteer your little money. Sometimes people are stranded and they have no food! There was a woman with young children here and the children were crying. You call the agencies: They tell you, call this number. When you get this number, they tell you they don't have transport — 'that 'our vehicles are in the field'. In fact, one day, I was very, very annoyed. I used my 10,000 [shillings] in airtime. But the refugees they don't know this. They are deceived that that office has money. You see a disabled person stays here and they tell you 'let them come to our office.' You ask: 'how can they get to their office?' We give them 5,000 [shillings] for a boda boda – of your own money and you tell them [the disabled person] go to OPM and do not come back. We give them the money with instructions not to come back. You just want to get the burden off you. These people are stranded here for days sometimes with no food! (Nakueira fieldnotes, August 2020).

Another aid agency in charge of mental health stated that one of the challenges it faced in addressing mental health problems of asylum seekers is the duration it takes for them to get refugee status. The duration of 2 years (the average time that the government takes to grant refugee status) is very long which leaves many asylum seekers without crucial services. The same agency reported that funding cuts also meant that some much-needed mental health programs had to be suspended

indefinitely. What this means for the protection of vulnerable populations is that slow, siloed, short-term approaches to addressing their intersecting vulnerabilities result in a vicious cycle of vulnerabilisation which often worsens refugees' suffering.

Bridget Anderson posits that '[T]emporal uncertainty is deeply destabilizing and can mean people losing a recursive engagement with an imagined future' (2020: 62). In Uganda anxieties and frustrations of waiting were profoundly felt by refugees in the resettlement process. Many refugees I spoke to expressed their frustration or anxieties because many had been waiting for 5 years or longer to be resettled. Some who were not even in the process yet put their plans for starting families on hold. Refugees seeking resettlement to third countries in the West, and those whose resettlement cases are 'in process' (Ruzibiza & Berckmoes, 2016), expend a lot of time and effort to meet with protection officers in UNHCR and diverse humanitarian organizations to convince them to forward their cases for resettlement interviews (also see Thomson, 2018a, b). Physical interactions with humanitarian workers are important because refugees can then collect any form of paperwork that they provide them after any interaction. Collecting paperwork from particular humanitarian organisations and state agencies (such as the police, health clinic or legal aid agency) is not an easy task as it entails enduring long waiting times with only a slim chance of succeeding in getting resettled. As my assistant explained to me, chances of getting resettled were similar to 'a camel passing through a needles eye'. This biblical expression conjures up images of large populations of vulnerable refugees that are actively engaged in seeking solutions to their experiences of vulnerability whilst being contained by a bureaucratic system that is unable to alleviate them. The WOSA model then, is an integral tool through which refugees' subjectivities are disciplined as they engage with diverse bureaucracies in their quest for resettlement.

Viewed this way, it can be argued that Uganda's humanitarian system keeps refugees in what Brun describes as 'permanent temporariness' (Brun, 2016; Adrian Bailey et al., 2002 cited in Anderson, 2020:63). Refugees whose vulnerabilities qualify them for resettlement exist in this state for years with many of them putting their dreams on hold in hopes for a better life in a developed country. Because of the many intersecting vulnerabilities, a large population of refugees is in theory eligible for resettlement. However, because of the few resettlement slots, only a small fraction of them gets resettled. This puts competing humanitarian programs provided by other humanitarian organisations in jeopardy.

For instance, one humanitarian worker, a loan officer working with a financial institution explained to me that some refugees were reluctant to take up microfinance loans because they feared that having a debt would jeopardise their resettlement cases. At the time of the interview, the financial institution was a new actor in the protection system that had set up lending schemes to support refugees in financing small businesses. The loan officer also explained that some feared that if they set up businesses, this would make them ineligible for resettlement because they would no longer be viewed as vulnerable.

This shows how well intended policies undermine long term development projects and humanitarian programs that are meant to promote the resilience of refugees. Specifically, resettlement in the context of Uganda is arguably an unrealistic

durable solution because of the very few participating refugee countries and few people that benefit from it. Yet we see how the possibility or promise of being resettled discourages many refugees from integrating in the economy in situations where financial support to do so arise. Consequently, this undermines development goals as envisioned by the Comprehensive Refugee Response Framework (which aims to simultaneous address humanitarian and development gaps). More critically, refugees' refusal to partake in crucial programs enhances refugees' vulnerabilities because it gives them false hope of a better life in higher income countries, yet resettlement is not guaranteed to every eligible refugee.

In spite of these shortcoming in service provision (which aid workers themselves acknowledge), humanitarian workers routinely record statistics of beneficiaries of their programs and document them in reports (Nakueira, 2019). These reports attest to humanitarian organisations' successes and are submitted to donors when accounting or mobilizing for donor funds. The 'quantification' (Merry, 2016) of humanitarian services or programs implemented by the respective humanitarian organisations gives the illusion of successful aid programs based on the number of vulnerable beneficiaries of humanitarian aid. Quantification does not account for the quality of humanitarian responses, nor does it consider that refugees' vulnerabilities often, persist long after the timespan of aid programs. This highlights the mismatch between temporalities of humanitarian aid programs and refugees' vulnerabilities as 'bureaucratic time' (Anderson, 2020:56) of aid programs depends on donor funding.

Accordingly, although humanitarian interventions are intended to address protection needs of refugees who fall within specified vulnerability categories, their implementation in Uganda shows that a short-term approach to critical protection gaps results in harmful experiences in the long-term. Moreover, in the case of critical health and food related deficiencies, short-term assistance in protracted refugee contexts can lead to a vicious reproduction of malnutrition and associated effects for refugees who rely wholly on humanitarian assistance for survival. This is exemplified, for instance in cases where existing problems intersect in ways that produce new forms of suffering in the long term. One such case was of Mukadde, an elderly, single woman I encountered during field work in 2021.

Mukadde solely relied on minimal food rations for several years and later on cash-for-food assistance in the amount of 4 euros/month provided to refugees that were not categorized as vulnerable. At the time of our interview, she was very poorly. She explained that despite going to the aid office in charge to alert aid workers about the severe starvation she was facing several years before, she was not considered eligible at the time because she did not look malnourished, and thus no assistance was offered. This consequently led her health to detoriate to severe malnutrition and associated immune deficiencies. A doctor outside the refugee settlement we had visited, diagnosed her as having tuberculosis and suffering from severe malnutrition. Upon showing the doctor working in the settlement's health clinic the diagnosis and prescription, Mukadde was given a 6-month regimen to treat the tuberculosis. Following instructions from the previous doctor to 'continue nutritional support' the doctor at the health clinic also recommended that she be placed on a nutrition program designed for very vulnerable refugees (such as lactating

mothers, pregnant women, people with chronic diseases like HIV/AIDS and tuberculosis, among others). She was consequently placed on a 3-month nutrition program, despite having a chronic disease, requiring longer-term nutritional support: at the very least, support for the 6 months duration within which she would be on heavy medication.

The above example of Mukadde's experiences of vulnerability and aid interventions illustrate two things about Uganda's humanitarian protection system: First, that the system's focus on very vulnerable person's fails to address root causes of vulnerability in time, and thus does not prevent risks that make refugees vulnerable. Second, that the aid system takes a reactive approach to addressing vulnerabilities: Mukadde was only rendered eligible for nutritional support by a medical aid agency once she was acutely malnourished and very ill. Additionally, the short-term nature of the prescribed intervention, that is, the 3-month nutritional support, could potentially reproduce or lead to a vicious cycle of vulnerability, since it did not effectively cover Mukadde for the 6-month period for which she had to take medication that requires a balanced diet. This case reveals a design flaw inherent in Uganda's humanitarian system: it is designed to take a short- term, reactive approach to ongoing or complex problems. The paradox then, is that in order to address the needs of the most vulnerable refugees, the system inadvertently produces vulnerable bodies—effectively leading to a vicious cycle of the production and reproduction of vulnerable refugees.

5.6 Fragmented Approach to Governing Vulnerability

Despite the interdependent nature of humanitarian aid services, interventions in practice are very fragmented and siloed. The system was designed to identify vulnerable people like Mukadde in their communities and then refer them to the relevant humanitarian offices as per the objective of the whole-of-society approach to protection. Thus ideally, a community leader within Mukadde's constituency should have identified her as a very vulnerable elderly person and referred her to the aid organisations in charge of food distribution and health services. However, because community leaders are unpaid workers within the protection system, there is little incentive for many of them to diligently identify vulnerable refugees as this is a painstaking task that takes them away from actual search for livelihood options. The consequence is that refugees and aid workers both contend that the refugees who make it on the lists of vulnerable people at grassroot levels are not necessarily the most vulnerable. Rather, they are often a reflection of who has the capacity to pay community workers to be listed as vulnerable.

Moreover, even when she was recognized as vulnerable once at the healthcare centre and by the health service organisation that placed her on a short-term nutrition program, the root causes of her vulnerability were not addressed. The focus was on providing treatment and nutrition while on medication for tuberculosis, but she was not referred to the aid agency in charge of food distribution to address the acute

malnutrition. The health service provider simply reacted and addressed the protection issue before him as per his mandate, before continuing addressing the long queue of other vulnerable persons, mostly pregnant mothers that were waiting to be attended to.

A fragmented approach to protection hinders the smooth operation of the humanitarian system which was designed to enable various humanitarian actors to identify vulnerable refugees at various focal points within the system. Consequently, aid workers do not work together or coordinate their interventions when addressing the protection needs of vulnerable refugees. This fragmented approach to implementing interventions confirms an important factor that scholars have observed about polycentric governance systems in other contexts—that they can be ineffective and uncoordinated (Crawford, Lister, Blackburn, & Burnett, 2005; Fleming, 2006; Shearing, 1996 cited in Berg and Shearing, 2022: 158).

5.7 Geographic Dimension of Humanitarian Aid

Humanitarian aid is typically dispensed in refugee settlements which, in the case of Uganda are geographically located in remote parts of the country. Biometric verification systems ensure that individuals claiming cash-based transfer and non-food items are registered in the UNHCR database. The turn to 'digitization' of humanitarian goods (Sandvik, 2023) came about as a response to concerns about 'ghost refugees' and corruption in food sector in some countries**.** However, because the verification of refugees also functions as a roll-call mechanism, it brings with it new challenges. Refugees residing outside settlements have to periodically travel long distances to settlements to collect humanitarian aid, thus verifying their presence in the host country. For refugees earning small wages, this puts them in a precarious position as frequent travel disrupts employment opportunities. In a country where unemployment is at a high rate, this interferes with refugees' right to work and freedom of movement. Compounded with the fact that the amount of humanitarian aid is insufficient to cater for basic living costs (3 euros per month from World Food Program), this physically keeps refugees in remote settlements and dependent on insufficient humanitarian. This is because refugees who miss biometric verification more than 3 times are deregistered from UNHCR's database. Whilst this is done to keep accurate records of refugee numbers, refugees interpret it as a loss of their refugee status.

Thus, biometric verification while well-meaning, inadvertently results in the surveillance and control of refugees' mobility. The unintended effect is that the vulnerability of refugees with limited financial means to keep up with the frequent physical verification requirements is enhanced because they are discouraged from looking for employment in areas which have better employment opportunities but are far from refugee settlements. This illustrates the 'disciplinary power' (Foucault, cited in Horton, 2020) of humanitarian bureaucracy enacted through digital innovations and the unintended effects of policies (Shore & Wright, 2011).

5.8 Refugees' Experience of Polycentric Humanitarian Governance and Contestations

The focus on standardized vulnerability categories spurs contests amongst refugees whose experiences of vulnerability do not fit within the bureaucratic imaginations of suffering. Vulnerability categories are not used only in Uganda but are universally deployed in UNHCR's humanitarian operations globally. The exclusion of certain forms of suffering e.g., through a bureaucratic focus on 'the most vulnerable' according to *a priori* specified protection mandates of diverse humanitarian organisations undermines legitimacy of the protection system. This is because it caters to the protection needs of only a few groups of refugees.

Scholarship on security governance provision in contexts of 'weak state governance' contends that state or non-state institutions may be motivated by specific interests that may undermine the provision of public goods of the majority, leading to 'clientelism'. Berg and Shearing caution that [b]eing too client focused or favouring some clients over others negatively impacts on legitimacy' (2021:159). Yet the dominance of clientelism in humanitarian protection, the very situation which governance scholars consider to be a key challenge in the provision of public goods and should consequently be prevented from occurring, is exactly what Uganda's humanitarian system was designed to do. The humanitarian system was designed to address the needs of specific vulnerable groups (i.e., elderly, children, people with disabilities and so forth). In interviews and informal conversations with aid workers and my observations of humanitarian service provision, refugees were often referred to as 'clients'. Those who were not considered to be targeted clients were either referred to other humanitarian organisations or turned away if their problems did not fall within bureaucratic categories of vulnerability.

This has severely undermined the integrity (and consequently the legitimacy) of the humanitarian system because of its exclusionary effects. Many of the refugees I interviewed had lost faith in the system's ability to address their needs and were consequently vying for protection or settlement elsewhere through resettlement programs—arguing that the humanitarian system in Uganda had failed to resolve their problems. The issue of legitimacy is not unique to Uganda's humanitarian system. Rather, it is an ongoing problem that scholars of polycentric systems have pointed out in other contexts (Berg & Shearing, 2021: 158, Berg et al., 2014). Questions about the sources of legitimacy of non-state institutions in polycentric governance systems have dominated broad range of scholarship in contexts as diverse as 'non-state global networks, cyberspaces or in spaces of weak statehood' (Backer, 2011; Cole, 2011; Shackelford, 2013; Sovacool, 2011 cited in Berg and Shearing 2021, 158). Yet in Uganda, the contention is not about the source of humanitarian organisations' legitimacy but rather, how they lose their legitimacy when refugees perceive them as incapable of understanding and addressing lived vulnerabilities. This has led to an interesting phenomenon where a parallel system has sprung-up to fulfil the void created by the formal humanitarian architecture of protection. This is evidenced by the proliferation of refugee-led organisations and middlemen who

contest for service provision alongside actors within the formal architecture of humanitarian governance.

Refugees who are excluded by bureaucratic categories join refugee-led organisations that are organized around shared experiences and understandings of suffering (Nakueira, 2022) or seek out the services of middlemen to advocate for inclusion in resettlement programs (Nakueira, 2019). Contestations by other actors arise in contexts where 'sources of legitimacy maybe tenuous or questionable' (Thumala et al., 2011 cited in Berg and Shearing, 2021: 158) as is the case of the rise of middlemen and refugee-led organisations in humanitarian governance in Uganda's refugee settlements. In this context, it can be argued that the exclusion of other experiences sets the conditions for the rise of a parallel, informal, illicit, hybrid governance network that results from interactions between diverse actors (e.g., state, refugee leaders, refugee brokers, aid workers and refugees). Thus, blurring the distinctions between legal and illegal, formal, and informal processes and highlighting the contestations between refugees and the humanitarian governance system.

Here, contestations manifest in the ways in which refugees resist their exclusion by exercising agency in a context that seeks to marginalize their experiences while reifying dominant forms of vulnerability. My findings showed that in contesting their exclusion, refugees whose vulnerabilities were not recognized under the bureaucratic categories for resettlement, enlisted the services of brokers who claimed to have connections to protection officers. Additionally, some refugees paid refugee community leaders or policemen to provide letters and other documents that could support claims of vulnerability (Nakueira, 2019). The above findings support the argument that 'plurality in developing contexts may involve both legitimate and illegitimate, licit, and illicit nodes' (Berg & Shearing, 2021: 166). They also show how refugees themselves deploy resistance strategies that adapt and mobilise bureaucratic terminology of vulnerability for claims making.

Sarah Horton notes that unequal power relations between migrants and states are enabled by the 'opacity of the state and its inscrutability to those it governs…' (Horton, 2020:12). This was also observable in the case of refugees' relationships to humanitarian bureaucracies in Nakivale refugee settlements. For example, refugees found many organisations inaccessible and their definitions of vulnerability ambiguous or arbitrary. The opacity of selection processes for the limited humanitarian resources and resettlement programs led many refugees to complain about procedural injustices and perpetuated allegations of corruption (Nakueira, 2022). However, as also noted by Horton, in the case of migrants interfacing US immigration bureaucracies, refugees in Uganda 'do not submit passively' (Horton, 2020:12) to humanitarian bureaucracies. Refugees resist humanitarian bureaucracies' efforts to classify and sort them into or exclude them from standardized vulnerability categories.

Paradoxically, refugees resist bureaucratic categories whilst simultaneously mobilizing these categories—therein submitting to the very humanitarian 'logics' they contest. Unlike in migration contexts where undocumented migrants may avoid bureaucratic detection because legibility to state bureaucracies may lead to deportation (Horton, 2020) in humanitarian contexts, refugees actively seek to be

legible to humanitarian bureaucracies. This is because legibility in humanitarian bureaucracies confers symbolic protection to refugees either in the form of the promise of resettlement in future or access to basic aid and crucial services in the present.

Some refugees attempt to exert control over their lives by challenging their exclusion from humanitarian programs. They do so by confronting humanitarian bureaucrats with documentary evidence attesting to their eligibility for humanitarian aid or resettlement under bureaucratic vulnerability categories. In doing so, they seek to make their experiences of suffering legible to a system that invisibilises them. Refugees' efforts to 'assert active control over their fates' (Horton, 2022: 12) supports the argument that there is agency in vulnerability and that vulnerability and agency can 'co-exist' and are not binary conditions as have been portrayed (Coffey & Farrugia, 2014 cited in Celikakoksoy & Wadensjo, 2019) and that in situations of immobility people engage in 'active waiting' (Brun, 2016). Consequently, refugees whose vulnerabilities are excluded engage with middlemen to influence humanitarian workers with the aim of bypassing formal selection processes for accessing aid or resettlement. This, however, happens with limited success as informal processes are fraught with fraud and exploitation of refugees' ignorance of humanitarian bureaucratic processes. For instance, middlemen are refugees themselves, who having failed to get resettlement, claim to have powerful networks in various organisations that can influence the resettlement process if compensated well. Interviews with many refugees exposed that they viewed humanitarian workers as corrupt, and those particular programs were only available to those who could pay for them and thus in accessible to bona fide vulnerable refugees.

Additionally, since the protection system is designed in a way that each organization addresses a specific form of vulnerability (e.g., mental health, legal aid, education and so forth) refugees are often referred to humanitarian actors within the same organization or externally to other organisations with the particular mandate to address the vulnerabilities in question. Many refugees, however, interpret this as a denial of protection services or as being given the run-around. This is because of duplicity of some protection services or categories of targeted groups, and fluctuating vulnerability categories. For instance, organization A may cater to cases of sexual assault but only caters to a specific group of vulnerable clients—male survivors of sexual violence. Thus, a mother whose child who was defiled will be referred to another organization which is UNHCR's implementing partner for protection. This causes confusion and frustration amongst refugees who do not understand the rationale for the referral. This is because organization A received donor funding to *specifically* address the medical needs of male survivors of sexual violence. Moreover, the same organization may have received funding from another donor to cater to the needs of children with special needs (particularly mental health). This further complicates matters because the mother whose child was defiled also has mental health issues (and thus very vulnerable) but she approached the organization leading with the problem of sexual assault. Moreover, because the mother is seeking livelihood support (to ensure the child can keep up with her medication), she is referred to another agency because this is out of the protection scope of organization A.

This is exactly one of the cases I encountered when I was approached by a Burundian woman who claimed that she had not been helped by an organization in Nakivale settlement. In a follow-up interview, an aid worker with a legal aid agency acknowledged that he had indeed turned her away multiple times expressing his frustration that despite referring her to the right organization, the woman kept on coming back. This suggests that there is insufficient understanding of how the protection system functions and the scope within which humanitarian workers implement their roles. This perpetuates distrust of aid workers and enhances refugees' vulnerabilities as it undermines the humanitarian protection system's capacity to address refugees' needs. Moreover, constantly interfacing with humanitarian bureaucracies exposes refugees to a form of 'structural violence' (Farmer, 2003). This is because the long queues and repeated interactions with overworked and under-resourced humanitarian workers subjugates refugees to a form of suffering by other means.

5.9 Distrust Between Nodes Within the Polycentric Protection System

Governance scholars argue that trust amongst nodes is important for the proper functioning of polycentric governance systems (Berg & Shearing, 2021). This is also true for the effective cooperation of diverse humanitarian institutions in executing their interdependent protection mandates. My findings were that some humanitarian agencies do not trust each other, and neither is there trust between humanitarian actors and refugees (informal conversations with humanitarian workers and refugees, fieldwork 2017, 2019 and 2021). Sandvik argues that 'refugee narratives are often met with distrust' (Sandvik, 2021:1022). Accordingly, the lack of credibility of refugees' testimonies is increasingly being mitigated by a turn to 'digital devices as credible conveyers of information' (Sandvik, 2021:1022) there by 'positioning refugees as unworthy subjects' (Thomson, 2012: 193). Mutual distrust amongst nodes works in ways that undermines refugee protection as will be explained below. Describing documentary practices in the resettlement process in Nyarugusu refugee camp in Tanzania, Thompson posits that refugees rank at the bottom rung of the trust ladder in the humanitarian context (Thomson, 2012) which has led humanitarian workers to focus on evaluating the credibility of their narratives in resettlement processes (Sandvik, 2008). This was also true in the context of Uganda not only in the context of resettlement but also in refugees search for humanitarian assistance. Some aid representatives were convinced that refugees were not ultimately looking for solutions to their problems but rather referrals for resettlement. In conversations with aid workers or my observations of their interactions with refugees, there was apparent distrust of refugees' claims of vulnerability even when they presented documents attesting to their claims. Aid workers were skeptical of how these

documents were procured, demonstrating a lack of trust in the organisations that circulated them (Nakueira, 2019).

Thomson argues that refugees' 'willingness to lie, cheat, bribe and commit fraud is not an attempt to take advantage of generosity, but rather a symptom of the injustices of the system (Thomson, 2018a: 217)' or should be interpreted as migrants' attempt at 'looking for one's life' in a context of 'trapped mobility' (Bachelet, 2019:40). My findings support Thomson's argument especially when she adds that '[r]efugees would not have to fabricate stories of persecution if their own stories were deemed worthy of resettlement' (Thomson, 2018b). It is precisely because refugees' own lived experiences of vulnerability are not recognized that they resort to strategies such as these. Moreover, the fact that similar strategies are used in Tanzania, Uganda, and other contexts, is symptomatic of an inherent systemic flaw of the humanitarian system than of the morality of the actions used by refugees to contest vulnerability categories.

5.10 Conclusion

This chapter set out to provide an empirical analysis of how a WoS approach to vulnerability functions in Uganda's humanitarian context. In doing so it illustrated how polycentric [humanitarian] governance which underpins the protection system, addresses vulnerabilities from a multidimensional perspective that includes diverse state agencies and humanitarian organisations and refugee community leaders that provide humanitarian protection within this structure.

From a humanitarian governance standpoint, the chapter discussed the many advantages of using a whole-of-society approach, particularly the inclusion of diverse humanitarian actors and agencies in addressing protection gaps from various scales and domains. As posited by Ostrom et al., 'polycentric systems may be best placed to resolve complex governance challenges' (Ostrom et al., 1961, p. 838). As such, humanitarian contexts are spaces in which addressing complex protections gaps requires the mobilization of multiple humanitarian organisations and state agencies to address refugees needs.

I have shown how despite having an optimal humanitarian governance architecture and progressive refugee laws, challenges in addressing refugees' vulnerabilities prevail, and in some in instances, are even produced by the humanitarian system itself. There is an inherent systemic production of new harms or exacerbation of experiences of existing vulnerability because practioners do not work together in delivering interventions. This leads to a response failure to intersecting vulnerabilities for instance and a vicious cycle of vulnerabilisation that sustains experiences of suffering.

Moreover, implementation challenges in the system and resulting from failure to effectively address refugees' vulnerabilities highlights a critical issue: the impact of global actors (e.g., donors) and the ensuing effects arising from their influence on humanitarian programs in local contexts. The protection failures of the whole-of-society protection system instead expose **'**the expansion of regulatory modes of

governance to more and more spheres of life and political arenas' (Jordana & Levi-Faur, 2004).

The architecture of Uganda's humanitarian governance system renders visible the manner in which regulation through vulnerability categories is taking place in ways that has serious consequences for refugee protection and migration control (e.g., through resettlement decisions). Through its examination of the humanitarian governance structure, this chapter has shown how vulnerability categories work to restrict humanitarian assistance to a small population of people constructed as 'vulnerable' and the governance architecture that sustains the exclusion of large populations of refugees through logics of deservingness. In doing so, it exposes an interesting paradox: it shows how the human rights of a large refugee population are delimited by humanitarian actors—the very actors that are tasked with refugee protection.

As it stands, the WOS approach and its implementation sustains a differential humanitarian protection order between refugees classified into diverse categories of vulnerability and those whose lived experiences are excluded. In doing so the model maintains a humanitarian order that essentializes certain forms of suffering while minimizing experiences that fall outside bureaucratic categories. While well-intentioned, the effect is that it leads to discriminatory practices in the implementation of refugee laws and policies. In practice this translates to differential treatment of a large population of equally vulnerable refugees.

The arguments advanced in this chapter were not made against vulnerability categories per se, or the whole-of-society model particularly. Rather the chapter aimed to show the factors that hinder the effective protection of refugees in Uganda. It showed that despite this hybrid governance model whose broad objective is to efficiently deliver humanitarian aid to the most vulnerable refugees, protection goals are hindered by several crucial factors, without which, even this optimal governance structure cannot function. The chapter advanced the argument that a vulnerability logic to protection inherently rewards suffering and thus the model inadvertently produces vulnerable bodies in order to render them eligible for protection. Moreover, inflexible bureaucratic classifications and temporalities of suffering do not get to the root causes of refugees' contextual needs because the focus of humanitarian actors within the protection system is on addressing the needs of refugees who fall within neat bureaucratic categories. Empirically grounded examples illustrated various shortcomings in aid provision by diverse actors enrolled within this governance model. Thus, demonstrating how even with a governance model that is highly recommended as best suited for networking around capacity deficits (Wood & Shearing, 2007; Burris et al., 2005) in 'areas of 'limited statehood' (Börzel & Risse, 2010), resource limitations, siloed implementation and contradictory programs targeting a small fraction out of a large population of vulnerable refugees are among the key issues that hinder the effective delivery of refugee protection.

Notwithstanding the above, if the systemic, material, and operational challenges highlighted in the chapter are addressed, the Whole of Society approach remains the most realistic system for addressing intersecting vulnerabilities. This is because it provides an opportunity for humanitarian organisations to network around organizational deficits and to tackle vulnerabilities holistically.

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Chapter 6
Selecting Refugees for Resettlement to Norway and Canada: Vulnerability, Integration and Discretion

Erlend Paasche, Dagmar Soennecken, and Ritika Tanotra

List of Abbreviations

UNHCR	United Nations High Commissioner for Refugees
UN	United Nations
EU	European Union
VULNER	Vulnerability
NGO	Non-Governmental Organization
USD	United States Dollar
IRCC	Immigration, Refugees and Citizenship Canada
IRB	Immigration and Refugee Board
GAR	Government Assisted Refugees
AWR	Women At Risk
JAS	Joint Assistant Sponsorship
BVOR	Blended Visa Officer
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, +
ICORN	International Cities of Refuge Network
UK	United Kingdom
CAT	Convention against Torture
MoJ	Ministry of Justice
IMDi	Norwegian Directorate of Integration and Diversity
UDI	Norwegian Directorate of Immigration

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PMQ	Pre-mission Questionnaire
MoE	Ministry of Education
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
SAH	Sponsorship Agreement Holders
PM	Prime Minister
PMO	Prime Minister's Office
IRC	International Rescue Committee

6.1 Introduction

The elusive concept of vulnerability continues to stir debate in migration studies and beyond. Refugee resettlement–the selection and transfer of refugees and others in need of protection from one state to another that is willing to accept them permanently–is explicitly meant to offer a durable solution to the "most vulnerable". It is for those who cannot safely be repatriated to their country of origin or integrated into local communities, thereby ending their displacement.[1] The usage and operationalization of vulnerability in the resettlement context hence offers a particularly useful vantage point to examine how vulnerability is translated from legal-bureaucratic discourses into actual policy and practice. Examining the operationalization of vulnerability in refugee resettlements is particularly important given larger trends in national and international migration policy. One key trend is towards the securitization (Atak & Crepeau, 2013) and criminalization of migration, including that of vulnerable migrants (Atak & Simeon, 2018). Another overlapping trend concerns the global tendency to open borders to let profitable and 'desirable' migrants in, while increasingly shutting them to unprofitable and 'undesirable' migrants. As De Haas et al. (2018, p. 1) put it: "The essence of modern migration policies is […] not their growing restriction, but their focus on migrant selection."

While it is difficult to empirically document a trend towards selecting more "desirable" refugees for resettlement with more potential "profit" to the host country among resettlement (i.e., receiving) states (Brekke et al., 2021)—a process that is sometimes referred to as "cherry-picking"—it would be hard to argue that resettlement is immune to such broader trends. If some refugees were seen as having a better "integration potential" compared to others, it would translate into receiving

[1] According to UNHCR, all refugees waiting to be resettled are "vulnerable" because their displacement cannot end using one of the other durable solutions. Refugees categorized as "most vulnerable" are those who are further prioritized by UNHCR among this initial population. They are grouped into various categories as listed in the UNHCR resettlement handbook. The categories are not "natural" and have evolved over the years. As Sandvik notes, from 1988 on, the recrafting of these categories and priorities, in particular the explicit mention of survivors of torture and gender-based violence, benefitted the resettlement of Africans, who had previously been underrepresented (Sandvik, 2018, p. 64).

states giving those who already qualify as "vulnerable" but are also seen to have more "integration potential," greater access to resettlement. Researchers, the United Nations High Commissioner for Refugees (UNHCR), and government decision makers have defined such potential in myriad ways, for instance in terms of second language proficiency, educational achievements, productive age, health, networks, linkages to the resettlement state, and family size (Phillimore, 2021). However, such usage should be treated with caution analytically, as predictive statements about future outcomes in a different state based on certain individual or group-level attributes are not necessarily accurate, even on the aggregate, and can be based on stereotypes and prejudice. As noted by the UNHCR, there are also other risks to using integration potential as a selection criterion:

> UNHCR urges resettlement states not to use integration potential and other discriminatory selection criteria (e.g., family size, age, health status, ethnicity, and religion). Such discrimination undermines the protection and needs-based approach to resettlement, creating inequalities and protection gaps, and limits access to resettlement by some refugees most at risk (cited in Brekke et al., 2021, p. 38).

However, the fact that the UNHCR urges states not to use integration potential as a selection criterion does not mean that they necessarily comply with this in practice.

The importance of studying resettlement as actual practice compared to official rhetoric derives in part from the above. If resettlement is to maintain its legitimacy and justification as a humanitarian policy meant to permanently end the protracted displacement of a privileged few, in fact only one percent of refugees in the world, such "cherry picking" would be detrimental. It would reduce the incentive for states willing to resettle refugees even further, and worsen the situation in refugee camps and hosting regions (Pressé & Thomson, 2008). Cherry picking would also be poorly compatible with the idea of designing resettlement to maximize benefits to refugees other than those being resettled, the hosting state or other states, or the international protection regime in general, a process also referred to as the Strategic Use of Resettlement (Van Selm, 2013, p. 1). It is therefore important to not only uncover overt examples of cherry-picking but also to identify mechanisms through which integration potential shapes access to resettlement more subtly. While outright cherry-picking in its extreme version, say, resettling only highly skilled refugees, is rare, a modicum of socioeconomic considerations of someone's future integration outcomes in state selection practice is not. Most, if not all resettlement states balance integration potential against vulnerability in some way or another, though to varying degrees (Brekke et al., 2021). It follows that research also needs to shed light on existing legal-bureaucratic and political mechanisms that can safeguard and perhaps strengthen the humanitarian credentials of refugee resettlement.

There are compelling reasons, then, to examine some of the mechanisms through which the integration potential of refugees is weighted against their vulnerabilities in resettlement, and to sketch out some possible pathways, formal or informal, through which a commitment to accommodate, alleviate, and ultimately end refugees' vulnerabilities could be reaffirmed. Resettlement states will continue to make pragmatic calculations as to how many refugees they can resettle and how

"vulnerable" and resource-intensive these resettlements can be without exceeding local capacity—because it is at the local level that integration takes place (Phillimore, 2021). Such pragmatism is justifiable as it is critical for the program's long-term sustainability and should be discussed openly, rather than treated as taboo. However, scholars and advocates need to develop tools for when such considerations go too far, that is, when technocratic discussions about "integration potential" come to dominate considerations regarding alleviating vulnerabilities, and when selection practices come to undermine the stated humanitarian rationale of resettlement in a given state. While resettlement is a voluntary commitment and not legally binding, states that have signed the 1951 Geneva Convention have agreed to share the responsibility of providing protection and solutions for refugees who cannot return to their country of origin. The modest analytical ambition of this chapter is to discuss some of the complexities of operationalizing vulnerability and balancing it against the presumed integration potential in refugee resettlement.

Through a comparative discussion of refugee resettlement in Canada and Norway, we shed light on some mechanisms through which the humanitarian focus on prioritizing the most vulnerable comes under pressure from competing political considerations and rationales. Comparative analyses can produce broader insights than single case studies, ultimately helping to map out policies and practices that overlap across states, thus making policy options more visible and subject to analytical attention (Korntheuer et al., 2021). Nonetheless, very few studies exist that compare refugee resettlement policies and practices across resettlement states (though see, e.g., Phillimore, 2021), especially with regards to selection criteria (Brekke et al., 2021).

While Canada and Norway both have different migration histories, both have been among the countries that have received the most resettlement refugees relative to their population (Christophersen, 2022). Canada is a classic "settler" society with roughly 39 million inhabitants, and also a first country of asylum, but it is perhaps better known internationally for its humanitarian leadership, in particular for the creation of private (or "community") sponsorships. This innovation allowed Canada to resettle an unprecedented number of Indochinese refugees in the late 1970s (Casasola, 2016). This initiative elevated its status as a leader in the field and a model to emulate or at least be inspired by, for other states worldwide (Bond & Kwadrans, 2019). Since its inception in the 1970s, Canada has continued to resettle refugees utilizing a mixture of government- and community funding, making Canada the largest resettlement country on a per capita basis (Radford & Connor, 2019).[2]

Norway, unlike Canada, was a net emigration country until the 1960s, partly due to its relative geographic isolation at the Northern outskirts of Europe. Similar to Canada, humanitarianism is an important part of its international engagement and its image abroad. Resettlement fits well with this profile, and Norway has been

[2]The United States has historically been by far the leading destination for resettled refugees, although quotas and actual numbers dropped to a new, all-time low between 2018 and 2020. For an analysis, see Beers, 2020.

resettling refugees through the UN system since 1956. Norway is one of the major donors to the UN, the International Red Cross and Red Crescent Movement.[3] Being a small, oil-rich state with only 5.5 million inhabitants, Norway's stated interest in a rules-based international order explains its close collaboration with the UNHCR and other supranational entities, and its strategic push for multilateralism. Even if the size of Norway's annual quota has fluctuated around a modest 2–3000 resettlement slots since 2015, few other states resettle a higher number of refugees relative to its national population than Norway. Norway is an EU+ state and closely collaborates with the EU, especially on border-related practices and issues of migration policy.

How then, do Canada and Norway resettle? And to what extent do their practices illustrate some of the tensions between a humanitarian focus on prioritizing migrant vulnerabilities and other, more pragmatic considerations? We seek answers to these questions by drawing from a combination of qualitative interviews, documents analyzed as part of the VULNER project and another empirical study co-authored by one of the authors of this article (Brekke et al., 2021). The Brekke et al. (2021) study compared resettlement in seven countries with that in Norway and aside from expert interviews, relied on a survey and on participatory observation. The Norway portion is based on 65 interviews spanning five categories: civil servants and other experts, NGO representatives, UNHCR staff, and employees in three Norwegian municipalities. In addition, the data includes 7 interviews with resettled refugees. While this chapter addresses the same overall analytical theme as the Brekke et al. study, it expands on it with a more in-depth, updated, and empirically enriched comparative analysis, drawing on additional data gathered in the VULNER project. The Canadian VULNER team conducted 104 semi-structured interviews with 110 participants: 21 with 25 civil servants from the federal government (17 current employees from Immigration, Refugees and Citizenship Canada (IRCC); 6 current and 2 former employees from the Immigration and Refugee Board (IRB), 55 with 56 'on the ground' practitioners and 28 with 29 migrants (Nakache et al., 2022).

In the following, after a brief note on the concept of vulnerability, we discuss the evolution of pathways to resettlement in Canada, private and government-led. While state-led pathways have shifted towards giving a higher priority to vulnerability, the private pathway effectively leaves choosing vulnerable refugees up to the sponsors. Norway does not currently have private resettlement and complementary pathways. Secondly, we look at formal selection policies and criteria for resettlement in Norway and Canada and examine how 'integration potential' operates as a consideration in the process. While Norway has formally moved away from such considerations at the individual level government officials still need to make this shift in practice. And although Canada formally waives it under certain circumstances, it

[3] Norway also funds resettlement operations more broadly. In 2022, Canada gave USD 96 million in donations to the UNHCR, of which 10 percent were earmarked, which means that funds are tied to specific purposes. Norway gave more than USD 118 million, of which 86 percent was unearmarked, making it the UNHCR's second biggest donor per capita that year. For more data, see https://reporting.unhcr.org/dashboards/donor-profiles?donor=GNOR&year=2022

maintains the criterion in law but currently does not apply it in practice for most cases. A third section revisits the strategic use of resettlement in light of how "the most vulnerable" demographics have occasionally been selected. Norway and Canada alike have singled out some vulnerable migrants for resettlement for political or "tactical" purposes. Such tactical use of resettlement opens up questions of who is ultimately left behind or considered "too vulnerable" for resettlement. We briefly illustrate this by highlighting the vulnerability of single men, based on the Canadian data. Finally, in the conclusion, we summarize our findings and sketch out some dilemmas that researchers and practitioners face when the humanitarian imperative to prioritize the vulnerable may sit uneasily with the imperative of research ethics to do no harm.

6.2 Vulnerability in Resettlement: A Conceptual Discussion

Migration scholars interested in the legal-bureaucratic construction of vulnerability and the policy instruments associated with it have subjected the concept to extensive critique. Whether because of or despite the political ascendancy of the concept, it remains ambiguous and poorly defined, underlining the need for further discussion at the theoretical level (Atak et al., 2018; Pérez et al., 2016). As Hoffmaster put it, vulnerability can "impair living well and can destroy the good life" (2006, p. 42). For migrants, vulnerability typically manifests as risks of "violence, exploitation, abuse and/or violations of their rights" (International Organization for Migration 2017). Yet which characteristics or situations warrant what type of protection status in law, or what type of accommodations, and who or what is triggering the exposure to these risks, is far from clear.

On the one hand, vulnerability is typically understood as being caused by inherent, embodied characteristics at the individual level, such as someone's age or health (Gilodi et al., 2022). On the other hand, it can also be evoked by certain situational characteristics, which are often experienced by entire groups of people, such as their language or ethnic origin. In both cases, there is a need to deconstruct the source of vulnerability, socially and politically, to contextualize and denaturalize it, and to identify "power imbalances in society that encourage, create and sustain vulnerabilities over time and space" (Sabates-Wheeler & Waite, 2003). For instance, Schott (2013) locates the concept of vulnerability critically in what she refers to as "the resilience discourse." Drawing on neoliberal and Focauldian theory, she critiques the way vulnerable populations are rendered responsible for their vulnerability and designated as in need of assistance to overcome a lack of agency: "Vulnerability must be overcome in order to become a resilient subject" (Schott, 2013, p. 212). This casts vulnerability as a temporary phase that certain individuals and groups can pass through with requisite assistance, and also has a depoliticizing effect, obscuring structural causes of vulnerability for the benefit of palliative interventions. To English speakers, the common usage and intuitive understanding of the term

'vulnerability' may further create blind spots and stand in the way of deeper analysis, while in other languages the term is not as intuitive. For instance, Syrian refugees are one of the largest national populations of resettled refugees, yet interviews conducted with Syrian refugees in Jordan revealed that this concept was rarely employed, and even when attempts to translate it into Arabic by the UNHCR were made, it translated to "weak, miserable, or oppressed" (Turner, 2021, p. 15).

Vulnerability is also associated with deservingness. As noted by Watkins-Hayes and Kovalsky (2017), "the trope of deservingness [is] one of the most enduring narratives used by government officials, the media, and the larger public to classify poor people and to determine whether they are worthy of assistance" (p. 193). Debates surrounding the politics of deservingness involve the notion of 'communities of value' (Anderson, 2013), which as Smith & Waite (2019, p. 2296) explain, leads to excluded migrants being deemed as undeserving as they "lack value in some way." In other words, they do not fit the narrative of what vulnerability presents as.[4]

In the humanitarian context, vulnerability is often presented as something that is "readable and even "performed." Performing it is easier for those who follow the script and are conventionally seen as deserving, such as women, the elderly, and children (Smith & Waite, 2019). Both under- and overcommunicating vulnerability comes with risks, whether in being classified as not vulnerable enough, or in being labelled as fraudulent and undeserving.

Welfens (2023, p. 1106) critically discusses vulnerability more specifically with reference to resettlement and integration prospects:

> Integration, or assimilability, has two interrelated aspects to it: deservingness due to cultural 'fit' or cultural integration, and deservingness based on economic performance. The former deems particularly those migrants as worthy of membership – and in the context of resettlement, protection and territorial access – that demonstrate a (prospective) cultural fit with a state's community and values. The latter, economic performance, prioritizes those that live up to the ideals of today's neoliberal markets: self-sufficient, hard-working employees of the formal economy.

This distinction is useful, even if it blurs in practice. As we shall see, it is also traceable in our empirical material. Selection in resettlement policy is not only about official selection criteria but also about bureaucratic practice, ranging from program design to formal guidelines and implementation.

[4] For a more recent examination of the relationship between vulnerability and deservingness, Strasser (2022) highlights how in the process of resettlement, refugees must not only be 'vulnerable' but also 'compliant,' 'healthy' and 'harmless' (p. 263). This is because individuals should not try to cross borders "illegally" (p. 263) and must prove that they will not be threatening to society once in the receiving country.

6.3 Vulnerability vs. Integration Prospects: Program Level and Formal Guidelines

Canada used to be heavily criticized for prioritizing the ability to become "self-sufficient" over other humanitarian criteria in its resettlement decisions (e.g., Hyndman, 1999). Existing skills were also included in such considerations. Canada officially shifted away from a focus on self-sufficiency towards protection with the passing of the Immigration and Refugee Protection Act (IRPA) in 2001, in part due to successful lobbying from humanitarian organizations (Garnier, 2018, p. 124). While the integration requirement is still mentioned in the accompanying regulations to the IRPA today, visa officers can now disregard this criterion when evaluating certain" vulnerable" applicants or those in urgent need of protection (Anderson & Soennecken, 2022; UNHCR, 2018, p. 10). As one interviewee involved in policy advocacy and coordination put it:

> One of the things we have a problem with is that … successful integration, it oftentimes becomes [a] code word for economic integration. And not other areas of integration which might be a basis for success. For some people, physical security might be more important than economic integration. For some, integration is [about] family. Some settlement agencies would be like, "don't go out and work; you need to learn English." And by learning English […] you'll be able to find a better job than you would have been if you tried to find a job without being […] fully literate in English or French. […] There's obviously disadvantages because they weren't selected for it (Interview with Practitioner, 2021).

As the interviewee points out, successful integration was often equated with economic integration. This mistakenly assumed that 'successful' integration meant the same for all refugees: however, the reality is that for some, integration may mean moving to the receiving country, while for others it can be learning the language. Hence, when visa officers abroad are determining whether an individual is vulnerable and in need of resettlement to Canada, they are encouraged to disregard whether the applicant will be able to successfully integrate in Canada.

Prior to the 2001 change, Canada had already created a number of smaller programs within the government-assisted resettlement stream (GAR) explicitly aimed at overcoming the self-sufficiency obstacle. For example, the Women at Risk (AWR) program was created as a pilot in 1987 (Anderson & Soennecken, 2022) for women who were considered vulnerable and who met the legal definition of a refugee but who were frequently left behind because their resettlement needs and because future integration potential was assessed through a gendered lens (Madokoro, 2018). Also, the Joint Assistance Sponsorship (JAS) program, in which the government pays for 2 years of financial support (rather than one) and a select group of sponsors (so-called sponsorship agreement holders, SAHs) takes responsibility for ongoing resettlement assistance, was initially created in 1979 for special needs cases, including refugees with disabilities and high medical needs (McNally, 2023, p. 5). In 2013, the Blended Visa Officer Referred (BVOR) program was added to the mix after several related pilots, which has been especially popular in smaller and rural communities, chiefly Nova Scotia (McNally, 2020), and is aimed at urgent resettlement cases with a range of vulnerability markers, including LGBTQIA+ refugees.

Both programs combine government leadership and private sponsors but in the case of the BVOR program, both the refugee and the sponsor are selected by IRCC.

However, refugees who are privately sponsored are not assessed by Canadian visa officers for resettlement using the UNHCR's vulnerability categories. For these refugees, any vulnerability screening that is undertaken is effectively left to the sponsors, either before arrival in Canada (by consciously choosing to resettle someone with a certain vulnerability, e.g., Rainbow Railroad focuses on LGBTQIA+ refugees) or afterwards. For example, SAHs can apply for JAS if they find a refugee has much higher needs than anticipated after arrival in Canada (McNally, 2023, p. 10). But these cases are still exceptions. More generally, privately sponsored refugees, who often have family or community connections in Canada, fare better in many integration studies compared to government-assisted refugees—at least initially. Yet these assessments have been criticized because assessment criteria vary substantially and no consistent criteria for assessing programs offered by sponsors currently exist (e.g., Government of Canada, 2016; Hynie & Hyndman, 2016; Janzen et al., 2022). At a broader level, since government-sponsored resettlement spots have not kept pace with private ones, critics have noted that Canada may be moving towards privatizing refugee resettlement (Hyndman et al., 2016), a step which, critics contend, is at least in part driven by the higher costs of government-sponsored resettlements. The Canadian system, with its high degree of innovation, as seen by the wide range of both government- and private-led resettlement categories, illustrates how relatively more resourceful refugees can be favored indirectly, through programming, rather than directly through an explicit criterion.

Norway primarily operates a government-led resettlement program. There is an exception to this rule though, as a tiny fraction of refugees is resettled annually through two humanitarian organizations, PEN International and International Cities of Refuge Network (ICORN). In such cases, these organizations take on the role of the UNHCR in identifying refugees, many of whom are artists, journalists, and intellectuals, persecuted for using their freedom of speech. PEN and ICORN also offers some follow-up and networking after resettlement in Norway. Numbers are small, however, only a handful each year. Little is documented of their integration outcomes and there has been little talk of scaling up such programs. The UNHCR recently commissioned a feasibility study of community-based resettlement in Norway, in part inspired by "the Canadian model." Yet, unlike nearby states such as Sweden, Finland, Germany, the UK and Italy, Norway has no stated plans of emulating that model at the time of writing.[5]

Norway sets resettlement quotas annually, in consultation with relevant government ministries and community agencies. Although Norway prioritizes referrals from UNHCR to fill its quotas, it also accepts non-UNHCR referrals. All individuals must require international protection (i.e., must meet the Geneva Convention or CAT definition), although Norway is open to additional criteria in line with strategic

[5] A study was conducted by one of the authors, Erlend Paasche, and is expected to be published in 2024.

resettlement (UNHCR Handbook 2022 version, Norway, p. 4). More importantly for our purposes here, the most recent version of the Norwegian chapter of the UNHCR resettlement handbook states that "possibilities for integration in Norway will be considered on an aggregated level, including which skills refugees possess" (p. 4).

Until new guidelines came into effect in July 2020, there was a more explicit integration criterion, referring to past competences (education and vocational experience with relevance for the Norwegian labor market). In the 2020 Guidelines, these references were dropped, while another criterion related to integration (the potential for future integration) remained.

In previous guidelines from 2015, an explicit integration criterion at the individual level was also included, stating that those with relevant education and/or work experience for the Norwegian labor market should be given priority. However, resettled refugees living in Norway are rather young—on average almost half are 18 years or younger when they arrive in the country. Especially since 2012, the relative share of underage resettlement refugees has grown. From the period 2017–2019, their share has been almost 60 per cent (Utne & Strøm, 2020: 21). Partly because it was found to be hard to operationalize the criterion for underage children (RS G-04/2015), it was in practice also not applied to families with children. It was therefore only relevant to a very limited number of resettled refugees, as families with children have made up the bulk of the Norwegian quota in recent years.

The guidelines of 2020 do not have an explicit integration criterion to prioritize refugees "with relevant education and/or work experience" on the individual level. The prospect of integration, including formal and informal skills, should now be considered on the aggregate, in the process of composing the quota and sub-quotas, shifting the focus from individual qualifications (2015) to group prospects and skills (2020): "The different sub-quotas should in total result in a balanced composition of the refugee quota [and] refugees' potential for integration, including established competence" (MoJ, 2020:5).

In the 2020 guidelines, the Norwegian Directorate of Immigration (UDI) is further instructed on the group level to consult with the Norwegian Directorate of Integration and Diversity (IMDi) with regards to the prospects for [successful] settlement and integration in Norway and to include their input in the Pre-mission Questionnaire (PMQ) sent to the UNHCR. Importantly, on the individual level, the advice from IMDi about prospects for settlement and future integration should be a part of UDI's process of deciding on accepting or rejecting candidates for resettlement (MoJ, 2020:2).

The guidelines from 2015 and 2020 are specified in circulars that make for an interesting comparison. In some ways, IMDi may potentially have more influence than before. UDI previously suggested a quota after consulting with IMDi and others. Now, UDI and IMDi are asked to send separate suggestions to their respective ministries (MoJ and MoE) for consideration. UDI was previously instructed to elicit the advice from IMDi on specific refugees' prospects for successful integration in Norway. This advice is now meant to feed into the profile that is sent to the UNHCR in the Pre-Mission Questionnaire, as well as into UDI's case processing. IMDi's

role in assessing the resettlement capacity of municipalities and matters of integration is likewise made more explicit in 2020.

Our UDI interviewees understood the integration criteria as they were formulated in the 2015 guidelines, partly constituted by the already mentioned explicit criteria of education and work-experience, partly as a reference to the municipalities' capacity, which is more within IMDi's mandate. A key question here is whether municipalities have the capacity to offer the requisite services to the refugees, including interpreters, housing and other legal entitlements. The more "vulnerable" the refugee, the greater the challenge. The tension between "vulnerability" and "integration" in practice at the local level hence also plays into the selection process, albeit in a more indirect way in Norway compared to Canada. That a resettlement request can be rejected due to a combination of causes (such as poor prospects for future integration, unwanted attitudes and behaviors, and complex health issues), makes it possible to reject cases with reference to the "capacity of the municipalities'' rather than "integration prospects."

6.4 The Strategic and the Tactical Use of Resettlement: To Resettle or (Not) to Resettle Specific Religious Minorities

The "Strategic Use of Resettlement" is a concept coined by the UNHCR in 2003. It refers to:

> the planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting state, other states, or the international protection regime in general (cited in van Selm, 2013, p. 1).

Such an ambition adds a layer of complexity to the focus on vulnerability as a ground for resettlement, because stakeholders need to consider potential humanitarian multiplier effects at the meso- and macro-level rather than merely considering vulnerability at the group and individual level. Nevertheless, the notion that resettlement should be incorporated into UNHCR's broader protection strategies was explicitly introduced by a Canadian-led UNHCR Working Group on Resettlement (van Selm, 2013). In a 2016 intervention to the 67th Session of the UNHCR Executive Committee, the Government of Canada explicitly urged the agency "to promote the strategic use of resettlement in coordination with other humanitarian and development activities benefiting refugees."

Both Canada and Norway are committed to the Strategic Use of Resettlement, at least in the sense of its underlying logic. It is not enough to focus on the vulnerable who are resettled, in this view, one must also be mindful of how resettlement affects those who are not. For Norway, one key concern for the composition of resettlement quotas are: "the possibilities for a multi-country concerted efforts, including joint European interventions, to find solutions to prioritized refugee situations *and/or to*

achieve a strategic gain in the form of a solution or improved conditions for refugees who are not resettled."[6]

The Strategic Use of Resettlement is a controversial concept. Its proponents have struggled to translate it into practice (van Selm, 2013), yet the evidence of humanitarian multiplier effects is very limited (Betts, 2017)). However, our case studies of Canada and Norway illustrate how the principle underlying strategic use, that resettlement should have a humanitarian multiplier effect, can potentially serve as a useful reminder to policy-makers in designing the composition of the resettlement quotas. Does resettlement of specific demographics serve broader interests? Can it have unintended side effects and pose risks? Giving preferential access to resettlement to certain groups, for example some religious minorities but not others, illustrates such risks. Analytically, it can be understood as the *tactical* rather than strategic use of resettlement, serving domestic political interests rather than humanitarian ones.

In 2013, after the war in Syria had begun to escalate to a full-fledged civil war, Canada was being criticized by refugee advocates for not responding to "the most vulnerable refugees" (CCR backgrounder, Jan 2013a), and more generally, for being slow to fill its annual resettlement targets. Previously, the government had reduced the target range from 7500 to 8000 for 2012 (for government assisted refugees) to 6800 to 7100 for 2013. At the same time, the range for privately sponsored refugees had been slightly increased from 4000 to 6000 for 2012 to 4500 to 6500 for 2013, which meant that the government could still maintain that it was fulfilling its promise to expand resettlements by 20% each year (Citizenship and Immigration [CIC] backgrounder, March 18, 2011). However—as human rights advocates were quick to point out—due to major regulatory changes in 2012, unless they were resettled by a sponsor (a SAH), only refugees recognized by UNHCR or a state were now eligible for private sponsorship, which would exclude "some of the most vulnerable and marginalized refugees," since many would not be able to obtain the appropriate documentation. In addition to this obstacle, due to yet another change in 2011, sponsors could no longer apply to resettle someone who was still in their country of origin, as had previously been an option.

All of these changes narrowed resettlement channels. They lead Canadian human rights advocates to point out that actual resettlements for 2012 were "the second lowest in over 30 years," and that the government was not keeping its promise to resettle more refugees (CCR, March 2013b). While the closure of the Canadian embassy in Damascus on Jan 31, 2012 due to security concerns, and with it, the subsequent relocation of Canada's "largest overseas refugee program and the regional headquarters for immigration services" to Ankara, Turkey (CIC, 2013:

[6] Norwegian Ministry of Justice and Public Security, Rundskriv G-15/2020: Retningslinjer for arbeidet med overføringsflyktninger jf. Utlendingsloven § 35 [Circular G-15/2020: Guidelines for the work with resettlement refugees as per the Aliens Act § 35]. July 1 2020, 4, 2016, https://www.regjeringen.no/contentassets/47fe09b332c54f95aad990583df64da6/rundskriv-g-15-2020%2D%2D-retningslinjer-for-arbeidet-med-overforingsflyktninger.pdf [our translation and Italics].

p. 18) in part explained the lower numbers, advocates were quick to point out that Canada should be taking a more global approach to resettlement instead of relying mainly on one specific region (CCR, March 2013b). These critiques followed on the heels of Canada announcing that it would resettle an additional 1300 Syrians in July 2013, although it had initially not made a clear commitment regarding taking in even more refugees from the region at a special conference convened by UNHCR (Lynch, 2014).

In the lead up to the Oct 19, 2015 federal election, (then) Conservative PM Harper stated—in response to questions seeking clarification on Canada's commitment to taking in refugees from the Syrian civil war—that he wanted to "make sure that we are selecting the *most vulnerable* bona fide refugees… with a focus on the religious and ethnic minorities that are *the most vulnerable*" (PressProgress, 2015, cited in Hurd, 2017, 99, our emphasis). The 2015 remarks by the PM followed the Canadian government's move to temporarily halt resettlements from the region because of security concerns. Simultaneously, news broke that sources within the Immigration Ministry had told a prominent journalist that staffers from the Prime Minister's Office (PMO) had reviewed resettlement files to ensure that only those minorities with established community ties in Canada were selected so that the PM could "court for votes," while actively discouraging accepting applications from Shia and Sunni Muslims (CTV News, 2015), which was promptly denounced as an unprecedented and unacceptable step by critics from Canada's other political parties and human rights groups. In other words, the PMO had:

> directed Canadian immigration officials to stop processing one of the most vulnerable classes of Syrian refugees […] and declared that all UN-referred refugees would require approval from the Prime Minister, a decision that halted a critical aspect of Canada's response to a global crisis (Friesen 2015, cited in Kellogg 2018, p. 602).

Harper denied the allegations but confirmed that they had halted the processing of refugee files prepared by the UN for security reasons and to ensure "the selection of *the most vulnerable* people (while) keeping our country safe and secure" (Gerami, 2015, our emphasis). Reference to Christians and other religious minorities as "the most vulnerable" were made by the Conservative Party, but challenged by the UNHCR, civil society, and others, with some seeing it as a clear expression of Islamophobia (Berthiaume, 2015). As Canadian Council for Refugees (CCR) executive director Janet Dench commented at the time: 'The concern is more about [officials in the PM's office] looking in and saying: 'There's too many Muslims here' (…) the role of the PMO is just not clear" (Berthiaume, 2015).

Upon taking office in 2015, newly elected PM Trudeau critiqued the former government for meddling in refugee selections (Berthiaume, 2015) and announced that they would move swiftly to make good on the Liberal #WelcomeRefugees campaign promise of resettling 25,000 Syrians, an initiative that would mobilize not only the government but the entire country and would come to define the Trudeau government's early period in office. As a result of this nation-wide mobilization, Canada resettled over 73,000 Syrians by 2021.

A related political dynamic unfolded in Norway 5 years later. In December 2020, as part of a political compromise, the Norwegian government decided that priority

should be given to resettling three specific religious minorities, namely persecuted Christians, Ahmadiyya Muslims, and Yazidis (Brekke et al., 2021, p. 14). These priorities were supposed to be applied to the 3000 resettlement spots, which already prioritized families with children, both at the individual and group levels. Two prominent scholars of the region, Reinoud Leenders and Filippo Dionigi, argued at the time that the use of such criteria could have strategically *detrimental* effects in the Middle East region, especially in Lebanon and Jordan. These were two of the most overwhelmed host states in the world following the Syrian influx, and both states from where Norway had a long tradition of resettling from. Thus, it is where the proposed policy would most likely have been implemented at the time.

Leenders and Dionigi commented on this new policy prior to its implementation, at a time when it was too early to examine its effects empirically.[7] According to Leenders, such a policy could possibly aggravate sectarian tensions. In Lebanon, the Christian exodus dates back to the end of the Civil War in 1989. Among non-resettled refugees, the preferential treatment of Christians would "likely embolden sectarian identities, and through them, anti-Western attitudes towards refugees." For the Lebanese state.

Such a policy will surely be viewed as contradicting official European and UNHCR policy on resettlement for the most needy and persecuted refugees as, arguably, the Christian refugees already enjoy a relatively better position thanks to local Christian attitudes toward them and a comparably brighter prospect for return to Syria.

Another scholar of the region, Filippo Dionigi, warned of a similarly undesirable strategic fallout in Jordan. Stressing that the monarchy of Jordan sees itself as a champion of the Muslim world community and a protector of its "Muslim brethren," Dionigi warned that a preferential treatment of Christian, Yazidi and Ahmadiyya may be interpreted as arbitrary, and responding to Western perceptions of Islam rather than responding to the actual nature of the phenomenon of Syrian displacement, that, in fact, affects a population in which the greatest majority is indeed Muslim.

In Iraq, from where Yazidi refugees would presumably be resettled, Dionigi warned that the Iraqi government may look favorably on the policy "that will have the effect, in the longer term, of rendering more uniformly Muslim the Iraqi population." While this could be said to benefit the host state, rather than the refugee being resettled, it would hardly be in line with the UNHCR's mandate or the intentions behind strategic use. It appears driven by electoral politics rather than humanitarian ones, translating into the tactical use of resettlement rather than strategic use as defined by the UNHCR.

However, shortly after the policy was agreed upon in the Norwegian parliament, which was extensively covered in the media, there was a change of government in Norway and the policy was reversed. At a parliamentary hearing, the Minister of Justice, Emilie Mehl, explained why. While not explicitly referring to strategic use,

[7] Personal correspondence, October 2021.

she did couch the policy reversal in a similar logic, stressing the need for localized knowledge and the role of UNHCR:

In many host states, the religious affiliation of large refugee populations is a highly sensitive issue. If it would be known that the UNHCR should prioritize specific religious groups, it could cause significant challenges to the capability of the UNHCR to work in such states. […] It is UNHCR which has the best knowledge about global refugee populations. Given the global needs, the quota is very small. UNHCR must therefore make the difficult decision to prioritize certain groups and countries, and resettlement states need to relate to this.[8]

If one accepts the premise that the UNHCR is best suited to pursue strategic use through coordination and the fulfillment of its mandate, the statement can be read as a reaffirmation of that principle in the Norwegian context. What this illustrates then, is how Strategic Use, while fuzzy, somewhat unfashionable, and underspecified, may still offer a useful quality check for resettlement practices. If the tactical use of resettlement for politicized and electoral purposes runs counter to the humanitarian objectives that refugee resettlement is meant to achieve, potentially undermines the legitimacy of the program in resettlement states, and thus has serious detrimental, if unintended, side effects, it may not be a worthwhile undertaking.

Summing up, the preferential treatment of certain religious minorities brings to the fore the securitization of (fundamental) Islam as a religion and culture since 9/11 (Dauvergne, 2016), and the designation of vulnerability as a vehicle of Othering. This, in turn, illustrates why the UNHCR "urges resettlement states not to use integration potential and other discriminatory selection criteria (e.g., family size, age, health status, ethnicity, and religion), and some of the risks posed by operationalizing such criteria in a tactical manner.

In predominantly Christian countries such as Canada and Norway the more or less openly stated premise at the policy level was that specific religious groups would integrate better than others, bringing to the fore fears of (fundamental) Islam as both a religion and culture that have been ever present since 9/11 (Dauvergne, 2016). The Canadian case additionally illustrates how politicians sought to secure "ethnic" votes by appealing to older immigrant communities (Carlaw, 2015).

Such tactical use of resettlement opens up questions of who is ultimately left behind or "too vulnerable" for resettlement. We illustrate this by highlighting the vulnerability of single men, illustrating the gendered nature of humanitarian protection and its reinforcement of the ideal (female and/or underage) victim (Ticktin, 2011).

[8] Parliamentary hearing, dokument 15:21 (2021–2022) Spørsmål til skriftlig besvarelse med svar. Spørsmål nr. 2957–3062 20.08.–30.09.2022. https://www.stortinget.no/globalassets/pdf/dokumentserien/2021-2022/dok15-21-2021-2022.pdf p. 98. Our translation.

6.5 Too Vulnerable to Resettle?

When the mass resettlement program of Syrian refugees was introduced late 2015, the Canadian government announced that single, unaccompanied men, considered as a security risk, would not be included, while families, women, and children would be prioritized (The Guardian (Online Edition), 2015). Quebec's (then) Premier Philippe Couillard echoed that the prioritization of particular groups was necessary: "All these refugees are vulnerable, but some are more vulnerable than others—for example, women, families and also members of religious minorities who are oppressed."

In the context of Syrian refugees in Turkey, Sözer (2021) argues that the concept of vulnerability that is employed by local humanitarian actors often focusing on women and children as being "primarily vulnerable groups" has led to the introduction of a "hierarchical system of differentially vulnerable" (p. 2778; see Hyndman & Giles, 2011). In some instances, the vulnerabilities of some refugees are seen as "properly vulnerable," others as not vulnerable, or vulnerabilities that are not considered. This leads to selective, rather than additional assistance in the humanitarian context. Women and children are used to distinguish between "real" and "unreal" vulnerabilities, between innocence and deservingness. Using Connell's (1995) concept of hegemonic masculinity, Sözer (2021) explains how vulnerability for local actors involves a juxtaposition of paternalism and patriarchal ideologies, where men are seen as fighters in Syria and as less vulnerable in Turkey, whereas women and children in Syria and Turkey are seen as vulnerable victims. Syrian refugee men are therefore criticized for not staying back to fight for their country, their vulnerabilities rendered as not "proper" (p. 2790), and therefore ignored. This is reiterated by Janmyr & Mourad (2018), who explain that gendered assumptions highlight what vulnerability looks like in both the resettlement and humanitarian assistance context. Citing an assessment by the International Rescue Committee (IRC), they found that "particular dimensions of vulnerability" that single and employed men experience are not often considered, therefore affecting access to resources, recognition, and protection (p. 551):

> not prioritized by the humanitarian system for support, [they] are often not able to access support that they need and, even more often, feel themselves to be excluded from it. In addition, refugee men's engagement in informal work create specific vulnerabilities to abuse and exploitation for which effective and consistent responses have not been formulated" (IRC, 2016, p. 3 as cited in Janmyr & Mourad, 2018, p. 551).

Turner's (2021) work raises similar concerns regarding vulnerability in the context of refugee men and argues that to "add 'vulnerable' men and stir" (p. 12) fails to acknowledge the underlying power structures that are involved in humanitarianism and the way in which it is exercised in practice, as vulnerability in that context is about allocation of resources according to a criteria.

Furthermore, whether someone is rendered vulnerable and ends up experiencing harm or is only potentially at risk (for instance, of being trafficked), can lead to very different (and at times contradictory) policy responses. At the same time, the

concept of vulnerability is also employed normatively (Brown et al., 2017, p. 498), identifying only certain people worthy of protection, often those who do not (or cannot) exercise any agency (Ataç et al., 2016). This can lead to a vulnerability 'contest,' as some vulnerabilities become normalized or valued more over others (Howden & Kodalak, 2018). One Canadian government interviewee elaborated on this:

> I do think that sometimes we don't always get vulnerability totally right, because obviously we have a huge population that we're dealing with, and of course you have to put people into categories because otherwise how do you manage? You know, when you have a resettlement target of, I think this year it's 3,000 or some people, you have to categorize. But that said, you know, […] men in Syria, if they've been detained, they've almost certainly experienced sexual violence. And we've seen through some of our special programs recently that there are definitely men who need significant additional support and who are very vulnerable and very at risk of or have significant mental health concerns, at risk of self-harm. They definitely need additional supports. And just because of the kind of gendered way in which we see the world, especially here, those people aren't always identified as actually being "vulnerable." (Interview with Civil Servant, 2021).

While this section illustrates the gendered hierarchy of socially constructed vulnerabilities, it also shows, more broadly, the operational challenges of making state-centric Northern policies attuned to local realities and needs in the South. This segues into some concluding reflections.

6.6 Conclusion

Refugee resettlement can and should be subjected to critique. The act of resettlement removes UNHCR-registered refugee bodies from situational vulnerability in refugee-producing regions, mostly in the global South, and relocates them to resettlement states in the global North. Rather than politically engineering structural solutions to protracted displacement and its humanitarian implications in such regions, critics point out, resettlement shifts the onus to the seemingly benign interventions that benefit only a miniscule proportion of the refugee population. While resettlement is where vulnerability is meant to shine, it is also a policy and program under pressure in a world where resettlement states may be tempted to seek desirable migrants based on their presumed ability to integrate, in line with global trends towards increasingly socioeconomically selective migration policies (De Haas et al., 2018).

Comparing the case of Canada and Norway has aided our analysis and understanding of each by juxta positioning them against the other. The fact that Canada has multiple programs, associated with differentiated integration outcomes and volumes of resettlement refugees, illustrates how the balancing of vulnerability and integration potential is not simply expressed through a formal policy, but in practice, an observation transferrable to other fields. If one pathway produces a refugee population with a better presumed cultural and/or economic fit, to use the terminology

introduced by Welfens (2023), then vulnerability is under pressure as an eligibility criterion and those pathways are less likely to grow numerically. That the pathway itself and its associated selectivity can impact integration outcomes is an important observation, yet one that is often neglected when academics and practitioners talk of "cherry-picking" in refugee resettlement, at least outside of Canada.

It can be hard to pinpoint the exact line between "cherry-picking" and the degree of pragmatism required for resettlement to operate well at the local level and in the long term. There is no data to suggest that outright cherry-picking is observable as an institutional practice by street-level bureaucrats in either Canada or Norway, but, as we have demonstrated, there is plenty of evidence to substantiate that both Canada and Norway still aim, in different ways, to balance perceived vulnerability against presumed integration prospects. The Norwegian case illustrates that the consideration of integration potential can occur at multiple levels (individual vs. aggregate) and through various causal pathways (stated policy in a circular vs. ad hoc preference for specific religious minorities).

A measure of pragmatism in resettlement states is not necessarily a bad thing if one cares for the long-term sustainability of the program, but it is something that needs to be kept in check and that calls for transparency. The Canadian focus on security is a case in point. Here the growth of private sponsorships and the balancing act undertaken with respect to vulnerabilities will require further study.

Dilemmas that come with resettling the most vulnerable 1% are practically and ethically difficult to study and research. Yet a frank and open discussion of the challenges, bureaucratic and political, formal and informal, of operationalizing vulnerability and regulating it to something manageable within local budgets and capacity frameworks, however they may be defined, is imperative. It is through such outside scrutiny and interrogation, including from us as academics, that resettlement policies and programs achieve resilience and robustness.

This chapter has been a modest contribution to putting such dilemmas on the research agenda. It has highlighted some commonalities and differences of two of the world's major resettlement states and demonstrated that they both seek to strike the right balance between a humanitarian focus on vulnerability and a pragmatic understanding of its practical implications, with the occasional faux-pas included. Outside scrutiny should help to clarify the appropriate threshold levels for pragmatism, such as when resettlement becomes *tactical* rather than *strategic*. While beyond the scope of this chapter, refugees themselves, too, should be given careful attention post-resettlement, if we want to see how vulnerability is administratively produced by resettlement states, and not merely alleviated by them. As with any humanitarian program, the precise meaning of vulnerability is far from given, and vulnerability from above, at the level of policy design and implementation, differs from that as experienced and lived from below, at the individual level.

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Part III
Vulnerability and Asylum Processes in Europe and Canada

Chapter 7
A Place to Live: Views from Protection Seekers and Social Workers on Accommodation Issues in the Italian System

Dany Carnassale and Sabrina Marchetti

7.1 Introduction

In this chapter we explore the results of the VULNER project by focusing on the issue of accommodation provided to protection seekers in the Italian reception system. We argue that this issue reveals the main tensions and contradictions characterising the experience of vulnerable migrants seeking protection in Italy. As we will see, both migrants' access to accommodation centres[1] and the duration of their stays are a matter of contention. Everyday life in these centres is filled with contradictory feelings of dependency, anxiety, fear, worry, hope, solidarity, and support. Despite the various problems of accommodation centres, migrants seeking protection often consider them as a solution to their accommodation needs, due to the scarcity of cheap and safe alternatives. As a result, the question of living (or not) in an accommodation centre is paradigmatic of the ambiguities in the Italian reception system, in which the line between protection and harm is very thin.

After the so-called "refugee crisis" in 2015 (Campesi, 2018), issues related to protection seekers, especially those crossing the Mediterranean Sea, have gained increasing attention in the media, academia and policy-making, whilst other

[1] In this chapter, we use the expression "accommodation centre" as an umbrella term, although such centres are also described in the literature as "reception centres". Our analyses are focused on the issue of living conditions in accommodation centres more than on other aspects related to the reception system. There are various types of centres, with divergences in the ways in which they conceive, organise, and manage the reception system for protection seekers at the national and local level. Further information is provided in the third paragraph.

Marchetti is the author of the introduction and conclusion, Carnassale of all other parts.

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migratory experiences and trajectories have gradually faded from the policy debate. The question of the vulnerabilisation of migrants has become central given their increasing criminalisation and the implementation of restrictive policies at the European and national levels (Marchetti & Pinelli, 2017). Both factors have made migrants' journeys more dangerous and worsened the conditions of those who do manage to arrive (Pinelli, 2017). New legal and policy changes continue to restrict the ways in which migration authorities can identify, address, and support the requests coming from migrants considered eligible for international protection (Pinelli, 2018). As we will discuss below, the legal and policy changes introduced in Italy between 2018 and 2020 had a very dramatic impact on both procedures and reception capabilities, further aggravating the structural shortcomings of the approach deployed by the Italian government in dealing with migrants who are not given a visa (for work, study, family reunification, etc), and thus arrive through other channels (Campomori & Ambrosini, 2020). These changes have had a negative impact on the everyday lives of protection seekers and on the ability of decision makers, NGOs, practitioners, and other relevant social actors to properly identify the situations of vulnerability experienced by migrants seeking protection, and to provide them with support. In this difficult context, seeking asylum and international protection has become central both to migrants' experiences in Italy and to Italian policy-making and social service provision. Protection seekers' experience of arrival, settlement and first inclusion in the country are deeply affected by the functioning of the reception system and the accommodation provided within it.

This chapter addresses this issue by looking at tensions around protection seekers' accommodation based on the ethnography carried out in the Italian regions of Veneto and Lazio in the framework of the second phase of the VULNER project (2021). We will then describe the functioning of the Italian reception system and the regulation of the accommodation provided by it. This will be followed by further methodological insights. We will discuss the data collected during the fieldwork with social workers employed in the reception system and with protection seekers, both those currently or formerly hosted in accommodation centres and those who have been unable to access to such centres. In conclusion, we summarise the main shortcomings in the management of this accommodation system from the perspectives of our research participants.

7.2 The Importance of "A Place to Live": Current Debates

Various studies have shown how home-making experiences and housing conditions have a fundamental role in delineating migrants' subjectivity, agency, and trajectories. As stated by Bonfanti et al. (2022), it is important to look at the everyday meanings that people give to having accommodation, considering the uncertainty that characterises both mobility plans and future personal and work trajectories.

Most of the debate on state-provided accommodation for protection seekers has focused on the process through which the eligibility of some migrants is defined at the expense of others (Degli Uberti, 2019), and on the contradictions in those processes (Pasian et al., 2020). This is particularly important in the context of Italy, where living conditions in accommodation centres should be contextualised within broader structural phenomena, such as the lack of national or local policies for the provision of affordable housing. For instance, Fravega (2022) argues that we must urgently focus on the long-term discriminatory effect of this political void on migrants' chances of renting or buying a place to live. In this light, attention has been paid to the presence of migrants—and in particular protection seekers—in Italian urban space, where they are often homeless or live in very precarious situations (Sanò et al., 2021; Fravega, 2022), and are therefore subject to various constraints on their social rights (Gargiulo, 2022; Declich & Pitzalis, 2021). As the literature clearly demonstrates (Marchetti & Pinelli, 2017; Della Puppa & Sanò, 2021a, b; Declich & Pitzalis, 2021), the existence of informal slum-like settlements or squatted buildings in big cities is both the reason for and the result of current housing policies (Pozzi et al., 2019). In fact, although there is no obligation for protection seekers to live in a state-run accommodation centre, many of them cannot afford a place of their own. For this reason, many consider living in these centres as the only available option.

The experience of protection seekers hosted in accommodation centres has been discussed elsewhere as an experience of forced immobility—in both social and spatial terms—and of frustration, passivity, and even trauma and exploitation (Sanò et al., 2021; Cingolani et al., 2022). Many protection seekers hosted in these centres experience what has been defined as "protracted immobility" (Cingolani et al., 2022) due to lengthy procedures (international protection, family reunification, and relocation programmes) or to the impossibility of moving to better accommodation (Pasian et al., 2020; Sanò et al., 2021). Some NGO reports (Naga, 2021; Centri d'Italia, 2023) have also demonstrated the shortcomings of the reception system and asylum procedures.

Many protection seekers frequently experience frustration during their stay in accommodation centres. This is often the source of an existential state of precariousness that does not allow them to properly recover from the previous traumas in their journeys and past experiences. It also limits the possibility of acting and moving, and of freely planning their lives (Bonfanti et al., 2022). These tensions also affect the Italian staff who work in the accommodation centres, challenging their capacity to establish personal relationships with protection seekers (Mugnaini, 2017; Giudici, 2021). Consequently, in accommodation centres there can be a strange mix of compassionate support and restrictive regulations (Fassin, 2005; Biffi, 2018).

7.3 Contexts That Matter: Accommodation for Protections Seekers in Italy

Migrants seeking protection, who arrive in different periods and through different migratory trajectories, often experience different standards and living conditions in accommodation centres, as discussed in the second VULNER report published by the Italian team (Carnassale & Marchetti, 2022). This is related to the many changes in Italian refugee policies in recent years, and their corresponding impact on the functioning of accommodation centres (Fabini et al., 2019).

At the time this research was carried out (April 2020–February 2022), there were four main types[2] of centres hosting applicants for international protection in Italy. Where a particular applicant was hosted depended on their migratory trajectories, personal characteristics, and legal status.[3] While the first two types (hotspots and CPA[4] centres) were meant only as temporary structures for the identification, screening, and relocation of protection seekers to other places in the national territory, the other two types (CAS and SAI centres) were long-term accommodation centres in which migrants would pass most of their time.[5] Officially, while the first two types represent a first level of reception, the second two types are conceived as a second level of reception.[6] In this chapter, we focus on the second level, using the generic label "accommodation centres", although in Italy CAS are known as "extraordinary accommodation centres" and SAI as "ordinary accommodation centres". These centres are usually managed by NGOs or by the not-for-profit private sector financed by funding from the Ministry of the Interior via the local prefectures.

[2] For reasons of brevity, we will not discuss alternative accommodation centres in detail, such as those related to humanitarian pathways (jointly managed by the Catholic and Protestant churches), or domestic reception, such as "Refugees Welcome" projects, despite the fact that a few of our participants passed through these channels. We will also not discuss CPRs (permanent centre for the repatriation of undocumented migrants), that have characteristics similar to detention centres.

[3] For instance, there are specific shelters for unaccompanied minors, victims of trafficking and gender-based violence. However, as happens in other accommodation centres, migrants are not allowed to express a preference for being in a town/village in one or another region, contributing to the phenomenon of so-called "internal movements" (Sanò, 2019) or "secondary movements" abroad (Zimmermann, 2009; Belloni, 2016).

[4] Literal translation of Centres for Primary Accommodation.

[5] In specific circumstances, sometimes without their agreement, some protection seekers are transferred from one centre to another of the same type, especially when a cooperative managing various accommodation centres has to redistribute protection seekers hosted in their structures.

[6] Officially, only hotspots and CPA are considered by the government to be "first-level centres", while CAS and SAI represent the "second-level". However, due to the legal changes which redesigned the reception system in Italy between 2018 and 2020, and the most recent developments (the so-called "Cutro Decree", that became law in May 2023), CAS and SAI centres are no longer conceived as equivalent accommodation centres providing the same services and support services to protection seekers. The concrete implications of these governmental changes imply that there is a new long-term vision for the asylum protection regime as a two-step reception system: one for protection seekers (CAS) and the other for migrants granted international protection or complementary types of protection (SAI).

While CAS centres can vary in size (from a few beds in small buildings—such as houses or flats—to hundreds of beds in large collective camps), the SAI centres are mostly organized into flats or houses, and are for migrants who already have international protection (or complementary types of humanitarian protection). In SAI accommodation centres, additional services (Italian courses, psychological support, a legal help desk, and support finding unemployment or housing) are often provided by a more professional staff than that found in CAS centres. In fact, CAS were introduced after the 2015 "refugee crisis" as an urgent measure to make up for the lack of beds available in the "official" system of protection (established in 2002). However, initially there was not such diversification between the two types of accommodation centres, with CAS also offering the same services until 2018.

At the time of our research, asylum seekers were usually sent to CAS centres and were transferred to SAI centres only after been granted international protection. The waiting list for SAI accommodation is very long and there are far fewer beds available than applicants or than those considered eligible for them. Often those who receive a positive response to their asylum application are given access to SAI centres,[7] while those who get a negative response remain in CAS centres throughout the appeal and till the end of the procedure. The different sizes and locations of the various accommodation centres affects the possibilities that migrants have for social inclusion (Della Puppa & Sanò, 2021a, b), both during and after the time in which they are seeking protection (Degli Uberti, 2019).

The period between 2018 and 2020, just prior to the beginning of this research project, saw a cut in government funding as a result of a spending review related to the accommodation of protection seekers.[8] The outcome of this political decision was a reduction in essential services for protection seekers provided by CAS centres (such as Italian courses and psychological and legal assistance). In contrast, the support provided by SAI centres (hosting mainly migrants who have international protection) remained almost the same. The policy changes had a strong impact on the lives of those hosted in CAS centres (Carnassale & Marchetti, 2022). For protection seekers who had arrived before the introduction of these changes, it meant a reduction in the services that they had previously been provided with. For the newly arrived, it created a sense of frustration due to difficulties in dealing with everyday problems or understanding the asylum system, including having access to basic information about their rights. The cohabitation of newly arrived protection seekers and long-term residents awaiting their appeal sometimes created conflicts with the staff around what were perceived to be different standards (Biffi, 2018). Indeed,

[7] Unfortunately, there is no guaranteed access to second-level accommodation centres. On the contrary, there is a long waiting list and refugees can be told they are not eligible for them due to the scarcity of beds available. Consequently, they are generally invited to CAS accommodation centres a few weeks after they are granted international protection.

[8] Further information concerning the novelties of the so-called "Security Decree Law 1" and "Security Decree Law 2" can be found in detail in the first VULNER report (Marchetti & Palumbo, 2021).

another consequence of this defunding has been the high turnover rate of staff working in CAS centres.

At the same time, potential conditions of vulnerability were frequently ignored, overlooked and even dismissed in CAS centres (Sacchi & Sorgoni, 2020). In fact, both CAS and SAI accommodation centres have to deal with migrants facing multiple situations of vulnerability. As we will see in the following paragraphs, these challenges ranged from personal circumstances related to their age, gender and health conditions to other factors related to the new context (e.g. problems in finding employment, accommodation, a residence permit or structural phenomena like institutional racism). While some migrants spend a relatively short time in these centres, the majority usually stay at least 2–3 years. In some cases, people who have received multiple rejections of their asylum requests and are in the process of appealing to the Supreme Court of Cassation (the highest court of appeal in Italy) remain stuck in CAS accommodation centres for 5 or 6 years, aggravating or prolonging their discomfort, as well as increasing their dependence and reducing their agency.

However, those facing long-term immobility at least improve their knowledge of the territory and establish significant connections with the local community (Della Puppa & Sanò, 2021a, b; Sanò & Della Puppa, 2021; Sanò et al., 2021). For this reason, even when they are finally granted asylum and become eligible for SAI accommodation centres, they are not always willing to move elsewhere. This happens not only for reasons of convenience, but also because of their lack of social bonds in the regions in which they are invited to resettle. Over time, protection seekers express their agency in various ways, most of which are learnt through their contacts in accommodation centres or in the local community. Others decide not to remain in government-run accommodation centres because they are subject to far more restrictions than they would be living in private homes with friends. There is also a correspondence between the size of accommodation centres and the possibility that vulnerabilities will be overlooked. Living in large CAS centre means that protection and assistance needs are frequently unanswered or exacerbated. In brief, long periods in hyper-crowded, hyper-regulated and hyper-isolated contexts results in the exacerbation, or creation, of situations of vulnerability.

The situation of migrants becomes even more critical after a series of denials to their asylum applications, their sudden exit from the formal reception circuit, or their relocation elsewhere (in Italy or abroad) (Fontanari, 2018). In many cases, protection seekers decide to settle abroad in the hope of having better luck at the level of their regularisation, and of finding a social network to support them in their daily challenges and work and care needs. These transitions often result in even greater vulnerability, as they become dependent on other individuals to mediate bureaucratic and basic issues for them, concerning for example reception, accommodation, and access to basic local services (Della Puppa & Sanò, 2021a, b). At this point their requests for support are often very difficult to resolve, as policies regulating access to accommodation measures exclude those who have an irreversibly "concluded procedure" or who had already benefited from the accommodation system in the past, preventing them from having renewed access to accommodation

centres.[9] In these cases, only the joint action of social services and local NGOs can claim exceptional measures. In many cases, these actors provide a temporary buffer in particularly extreme situations that risk leaving either documented or undocumented migrants in a situation of homelessness and vulnerability (Carnassale & Marchetti, 2022).

7.4 Research Methodology

This chapter is based on the data collected during ethnographic fieldwork carried out from June 2021 to February 2022, which was published in the second VULNER report.[10] Our research locations were mainly accommodation centres and support services dealing with protection seekers in various or multiple situations of vulnerability. To better grasp the concrete challenges experienced by migrants both from their perspective and from that of the social workers interacting with them, we considered the role of space and living conditions in facilitating or complicating the formulation of their needs and the possibility of them receiving assistance. As part of our research, we compared the discourses and practices of decision makers and legal actors (interviewed in 2020) with the opinions and experiences of migrants and social workers either directly or indirectly involved in the field of reception (interviewed in 2021). Comparing these varied standpoints gave us a better understanding of the concrete consequences of the legal changes introduced in the years leading up to the research project.

The fieldwork in reception centres was carried out by two researchers (Dany Carnassale and Martina Millefiorini) in Veneto and Lazio respectively.[11] Another researcher (Letizia Palumbo) carried out a number of interviews[12] at the national level specifically on the topic of trafficking, as the leader of the Vulner work

[9] Officially, anyone intentionally leaving a CAS centre is prevented from accessing similar centres in the future. Similarly, those who have already lived in an SAI centre—but have exhausted the maximum time they can stay there—are not eligible to return to a centre of that type, even if there is a sudden deterioration in their socio-legal status or health conditions. As a result, and as a form of political and social response to these needs, some centres and shelters framed as a "third level of reception" have opened in recent years for migrants still needing hospitality.

[10] Data collected in the first phase of the project (from April 2020 to October 2020)—and mainly concerning the legal and policy implementations of tools used by NGOs, decision makers, and legal actors—were documented in the first VULNER report (Marchetti & Palumbo, 2021).

[11] Dany Carnassale also carried out all of the fieldwork in Veneto and some of the fieldwork in Lazio, conducting observations and interviews with social workers involved in the reception or support of migrants living in Rome. Martina Millefiorini did the rest of the fieldwork and all the remaining interviews in Lazio, focusing in particular on migrants and NGOs dealing with the issue of gender-based violence and human trafficking.

[12] Interviews concerning the topic of trafficking were carried out in this way: Dany Carnassale did all the interviews with anti-trafficking actors based in Veneto, Martina Millefiorini and Letizia Palumbo did all the interviews with anti-trafficking NGOs based in Lazio or in other contexts.

package on this issue. In the selection of research contexts, we decided to include a variety of accommodation centres, ensuring a range in terms of size (small, medium or large) and location (urban, suburban or rural area). Efforts were made to include a plurality of perspectives and experiences to capture the various facets of the complex issue of living conditions in accommodation centres. This meant including protection seekers who had arrived in Italy at different times, but also from different countries of origin and via different migratory trajectories. We also attempted to provide a balance in terms of gender, age and other personal circumstances when recruiting participants.

The interviews discussed in this article relate to the second phase of the research project, for which the team carried out 64 interviews with various participants with a range of roles and perspectives (37 protection seekers, both with and without a legal status after their asylum application, and 27 social workers involved in accommodation centres or support services). However, during the fieldwork carried out in 2021 for the second VULNER report, we had informal conversations with at least 200 people (including both migrants and people working in the field of migration),[13] which increased our knowledge of specific phenomena and facilitated our understanding of the issues mentioned during the interviews.

The combination of different sources and perspectives provided useful insights for both understanding structural factors, and contextual and situational factors that influence the experience of living in such places. At the methodological level, we were particularly interested in the processes of vulnerabilisation that the reception system sometimes fosters, but also the capacity of various social actors (migrants, and social workers) to cope with them both through strategies of resilience and attempts to take advantage of loopholes in the system. Our research also paid specific attention to the VULNER Common Ethics Strategy concerning engagement with vulnerable migrants in fragile and disadvantaged situations.[14] After selecting the accommodation centres and support services, we negotiated access to the research fields with the staff and migrants living or passing through these contexts. While some migrants and social workers were sympathetic with the broader focus of the research project, others rejected our invitation to participate.[15]

[13] Further details on the numbers of protection seekers, refugees, undocumented people, social workers and other experts who have been interviewed for this research can be found in the second VULNER report (Carnassale & Marchetti, 2022).

[14] Further information on the VULNER Common Ethics Strategy can be found on the Vulner website: www.vulner.eu

[15] This was the case in large accommodation centres, as well as in a few small centres. Similarly, some migrants decided not to participate in the research.

7.5 "A Place to Live": Migrants' Perspectives

The problems of living conditions in accommodation centres were the most common issue mentioned in the interviews. During the fieldwork, we looked at how unsuitable accommodation makes it harder for protection seekers to find long-term inclusion in Italy and puts their "protection" at risk. However, as we will see below, migrants did not all have the same experiences or opinions of living conditions in the same accommodation centres.

Migrants reported problems in living in large CAS centres, which are sometimes overcrowded, linking this with a feeling of losing their personal agency, as well as their privacy and sense of security. For instance, Araphan, a 23-year-old man who arrived from Ivory Coast as an unaccompanied minor, stressed the challenge of living in a relatively big CAS centre with insufficient support from social workers:

> It was like a jail, but a jail in which you don't see the bars in front of you. You have a transparent barrier that you don't see. So, you are there, ghettoized by everyone, and you need to arrange everything with your skills and the little you have […]. Inside the camp, we were divided into various categories, even communication was very difficult with the social workers. They only related to us when they needed you […]. We were placed like animals in a herd, abandoned like this. […] Many have been sent away because they were there for a long time and they received various rejections (to their appeals, ed. note). So they went out without a permit of stay and without speaking Italian […] and I wonder: what happened to them? Where did they go? What life are they living? (Araphan, September 2021)

This feeling of being abandoned in an insecure place resonates with the comments of many other protection seekers we met during our research. Araphan explicitly mentions the lack of communication between migrants and the staff working in the centre, but also implicitly refers to the reduced opportunities offered to migrants in recent years (the lack of additional services provided by social workers inside and outside these places).

In a similar vein, Serge (a man in his thirties from the Democratic Republic of Congo) reports his experience of living in a large CAS centre hosting more than 1000 asylum seekers who are hosted in a number of big tents:

> That camp was shitty! A real disaster, there are no rights there, at 100%. I was in a tent with more than 200 people. During the first period, I had problems for sleeping. Sometimes I woke up in the night thinking "Oh my God, where am I? Still in Libya?". Luckily, I remained there only 6 months, then I've been transferred. […] Other people remained blocked there for many years. There were no rights, we were blocked, no job, no chance of learning the language. In other cities, you can go out and meet Italian friends and you can at least understand something, but out of that camp (in the middle of nowhere, ed. note) you speak with who? […] There are people who arrived in Italy being mentally ok, but now their minds don't work anymore. (Serge, October 2021)

Serge here mentions something that was repeated in many of the stories we heard: the link between living in an overcrowded accommodation centre and the feeling of being abandoned in a remote place. Many of the protection seekers we met during the fieldwork complained about the lack of support from the staff managing CAS centres and the absence of activities provided for those hosted there. The large camp

that Serge describes was situated in a tiny village, whose population was only twice that of the accommodation centre. He also describes the psychological problems affecting some migrants due to the ways in which these large centres are managed, which are not necessarily related to pre-existing conditions as a result of their traumatic journeys or problems experienced in their countries of origin.

As a consequence of naïve policies, accommodation centres are not always places of "protection", but also spaces in which people can experience insecurity. This happens not only in large overcrowded centres, but also in relatively small flats, even when they are situated in big cities. This problem of insecurity was reported by Muraad, a man of approximately 35 years old from Syria, who escaped from his country of origin not only because of the war, but also because of his sexual orientation:

> (During the interview for resettlement program) I was promised to be in a safe house, without so many co-nationals. But when I arrived, I was in a Syrian house with strange people, which is not the same as they (social workers and humanitarian agents) promised. So I waited for the new social worker to arrive and I told "you promised me that I would be in a safe place, and I am not". It's not that I'm not, but I didn't feel that I was in a safe place. She said: "we have to work" and they didn't do anything. (Muraad, August 2021)

This example underlines how some migrants can experience discrimination and retraumatization in places in which they are supposed to be "safer" than in their country of origin and in transit countries. During the interview, Muraad said that the homophobic attitudes of his flatmates did not result in any sanction or protective action, and even led to his hospitalization after an assault. His experience reminds us that sometimes migrants seeking protection can experience harm living under the same roof as their co-nationals. While for many being in touch with others from their country of origin is an additional resource for coping with the harsh living conditions found in the new context, this is not the case for everyone.

The fieldwork clearly revealed that the everyday challenges experienced by migrants have a gendered dimension. Muraad's experience exposes a form of gendered insecurity that tends to remain overlooked, especially considering that he is male. More commonly, a gender sensitive approach is applied in the case of women, even though it does not always recognize the complexities of other intersecting factors (Szczepanikova, 2005; Pasian & Toffanin, 2018). For instance, the experience of women who very often travel with children (and who are also divided by whether or not they have a legal status, accommodation, and a regular job) is certainly different from that of the many men who migrate alone. For mothers with children, their lack of a legal status, job or accommodation frequently contributes to the development of new vulnerabilities. For instance Hania, a 36 year-old woman from Pakistan, mother of a 9-year old child who remained in Pakistan, reports in these terms on her current experience of living in a CAS centre situated in a rural area:

> This is the first time that I live with people of other nationalities. It's very difficult, especially the first month. Because everything was new: new place, new people. Every time I asked what I have to do if I leave this camp. At my first time, all the time I cried, never slept and talked with any person. […] They bring me to a psychologist; they gave me medicines for reducing the stress. […] But medicines don't work, because problems are not finished

> until now. I'm in struggle, I'm alone and nobody is helping in my back and front. I'm alone, day and night. Ok? […] But after getting the good result (international protection, ed. note), I was feeling fresh. Some nights are very good. When I knew that very soon I will leave this camp, I became again… because now, after a lot of struggles, I became able to go outside, to talk with other persons, to go to the supermarket. Do you know that for 6 months I didn't know that there was a supermarket? (smiling) (Hania, December 2021)

Both Muraad and Hania prefer to keep away from their co-nationals who live with them, because they perceive them as harmful or at least judgemental. At the same time, Hania struggled with the fear of being resettled in another centre where she did not know what to expect. For instance, after the interview she mentioned the importance of space to give her freedom to pray, as she is a practicing Muslim. Finally, she was concerned about her health, which was significantly impacted by her stay in the accommodation centre, especially considering that the staff were not able to find her psychological support. The various challenges and threatened situations found in stories like Hania's and Muraad's highlight the perceived insecurity of accommodation centres and the gendered dimension of reception (Pasian & Toffanin, 2018).

Another recurring theme is what happens *after* living in an accommodation centre. Protection seekers, whether documented or not, experience many challenges once they are required to leave CAS or SAI centres. This was the case for Omar, a 27-year-old man from Senegal, who lived for 5 years in a CAS centre. Toward the end of his experience in that centre, Omar managed to find a regular job with a relatively good salary. Unfortunately, due to a particularly difficult bureaucratic process, he suddenly found himself at risk of losing everything. This was due to the fear of a negative response to his asylum application by the Supreme Court of Cassation (originally expected in the winter of 2021), which he worried would lead the coordinator of the CAS centre to request him to leave the accommodation he was in as soon as possible.

> The cooperative [managing the first-level Reception Centre] wanted to put me out because now I have a job. They asked for my contract and I showed it. The problem is that if I have a rejection (for the asylum pending application, ed. note), they will push me out. (Omar, December 2021)

Exiting the protection system and the resulting irregularity of his documents would also mean Omar could lose his job. In the month following the interview, Omar recounted the major difficulties he faced, as he not only had to find another room, which is in itself difficult as a young black male migrant due to the prejudice and racism of many landlords, but also had to acquire an official rental contract on which to eventually base his application for the renewal of his residence permit, switching to another type of residence permit (e.g. a "special protection" permit).[16]

[16]The "special protection" permit provided in Italy can be considered to be a sort of "humanitarian protection" which is given to migrants not considered eligible for international protection. At the time of writing, this type of protection has been considerably dismantled by the current government through the so-called "Cutro Decree" (2023).

Being outside the reception system or spending part of the asylum procedure in large camps usually has a deep impact on migrants' life trajectories and subjectivities, as well as on their narratives and agency. Protection seekers who are unable to find places in accommodation centres for asylum applicants are prevented from accessing more reliable information, usually live in insecure places and are more exposed to labour exploitation. Particularly significant is the testimony of Hamed, a 35-year-old man from Iran who lives in a SAI centre. In the past, he lived in other forms of accommodation in Italy, as well as in other types of accommodation in other European countries. Then, the possibility of being hosted in a SAI centre became a good option for him, as we will explain later. However, a stay in an SAI accommodation centre is limited to approximately 1 or 2 years and people worry what will happen to them when they have left, as Hamed clearly expressed:

> ok, for 1 year I have a place, after that even if I have a job contract, and I find a place for rent, if I lose my job, what's going on?. This is the issue, otherwise Italy is much more welcoming than other countries for asylum seekers […]. That's the issue, it's that you don't feel safe for the future. (Hamed, October 2021)

It is interesting to note that Hamed entered the SAI centre after 5 years spent in other European countries (including Norway, France, and Germany), even navigating the system and applying for asylum abroad, in so doing demonstrating how protection seekers frequently have a high level of agency despite facing various situations of vulnerability. However, he was finally obliged to ask for access to a government-run centre in Italy due to serious depression that vulnerabilized him during a period spent in Germany, where he became homeless. It was only through the support of an NGO and the local social services that he was put in a SAI centre in order to recover. Hamed's worries about his future after living in accommodation in which he was given the chance to start to rethink his migratory plan is very common among migrants hosted in government-run accommodation centres. This is also reflected in Araphan's words:

> The problem is what happens after, when you leave the Reception Centre, when you are independent. It's in that moment that you see all the bureaucratic problems that exist in the local police headquarters (the place in which documents are regularly renewed, ed. note). In the Reception Centre, the staff does not talk about this. […] (The way in which) reception is organized in Italy creates – not "can create" – this system of vulnerability; damages of 2015 (reference to "refugee crisis", ed. note) can be noticed now […]. Many people base their views on reception, they do not think after the reception. The worst part is after the reception, because even if I get out with a regular permit of stay, the problem is how to maintain it. (Araphan, September 2021)

During the fieldwork, we also noticed the creative ways through which participants express their resilience or skills to cope with adverse events, reminding us that migrants are not just the victims of an unfair system reproducing power dynamics, discriminatory practices, and structural violence and racism. The research participants also shared the subtle and unexpected ways they overcome problems related to their everyday lives in accommodation centres. For example, Serge reported he did not feel the need to get psychological help, as he processed his problems by writing a diary:

> When I have problems, I take a pen and a paper, and I write in French. After that I sleep and I read again, that's how my head works… yes, (it helps me to decrease) the stress. (Serge, September 2021)

Another good example was shared by Hania, who used an artistic activity (painting) to alleviate the distress that she experienced after hearing about the worsening conditions of her son in Pakistan (who was a victim of domestic violence). Reacting to these events and trying to alleviate the depression she was experiencing, Hania asked the manager of the CAS centre to let her garden in order to feel more active and cope with the problems related to the feeling of being stuck in limbo in a very rural area in Italy.

7.6 "A Place to Live": The Perspectives of Social Workers

Social workers involved in the support of protection seekers reported various challenges concerning both their jobs and the accommodation system in general (Mugnaini, 2017; Fabini et al., 2019). They know that most protection seekers rely on their support, via local NGOs, for a number of reasons: some have been expelled by accommodation centres and need support to access healthcare; others are homeless and need alternative ways of accessing accommodation centres; and others are undocumented migrants subject to the Dublin procedure or applicants of subsequent asylum requests who require legal support that they cannot afford. Identifying the combination of these various aspects has been particularly insightful for understanding the situation our research encountered in accommodation centres and support services. This broader view allowed us to see how they had been organised in recent years and to better understand the current problems which these social workers saw as affecting migrants seeking protection in the local territory.

One of the main concerns raised by social workers was the dual reception system, with its different standards and services. The cut in additional services (such as Italian courses, legal assistance, and psychological support) in CAS centres exacerbates the problems that protection seekers experience and creates further challenges when these migrants are suddenly forced to leave the centre. According to one social worker who facilitated our fieldwork, you could say that:

> the very way in which the reception of migrants is organised is responsible for their vulnerability. Some people were not vulnerable at the beginning, but after many years spent in first-level Accommodation Centres without any incentives, they became vulnerable and dependent of this system in the long-term. (Luca, July 2021).

The perspective of this social worker—who has long experience working in accommodation centres—is certainly not an isolated case. In another interview, another social worker, Fabio, explained how the blind spots of the reception system were both directly and indirectly responsible for the challenges and dramatic situations experienced by protection seekers. He argued that these contradictions urgently needed to be called out:

> please, report clearly the reality of facts as they are: these people are not vulnerable, but vulnerabilized. These migrants have scars that remain also in the future. When you spent years being homeless, when you have been subjected to a compulsory mental treatment, or when you worked in the harvest season 12 hours per day with a very cold temperature outside, all of these scars remain. As the priest don Tonino Bello used to say: "it would be nice if one day all these scars ("*ferite*" in Italian, ed. note) would become openings ("*feritorie*" in Italian, ed. note), so that through them we can acquire new perspectives". (Fabio, February 2022)

This narrative again draws our attention to how accommodation centres and support services can be places where migrants can experience a sense of abandonment and subordination. However, our fieldwork showed that it was more possible to have personal and caring relationships in SAI centres than in CAS centres.

During our research, we encountered increasing numbers of junior professionals still in training who had replaced more senior workers due to a high staff turnover rate. This phenomenon is both directly and indirectly related to the defunding of CAS centres and the lack of professional recognition of people working in these kinds of centres. If we look at the broader context, we can see that the defunding of essential services for protection seekers reflects political choices and wider structural conditions. These legal and political actions and structures demonstrate specific narrow-minded views on the reception of migrants seeking protection. In other words, they are part of a framework in which welfare and protection for migrants are considered costs that should be reduced. In this context, it is not uncommon—both among experienced and new social workers—to hear stereotypical and derogatory views of migrants' narratives and behaviour in relation to the subject of accommodation. For instance, one interviewee reflects on the consequences of these changes:

> first-level accommodation centres are producing problematic people, but we already noticed this before 2017. People coming from these Centres had the habit of not doing anything the whole day, remaining on their beds, and having everything, taking it for granted. So, it is a vulnerability which is caused by the system […]. Nowadays the refugee-type is someone who pretends and does not have a lot of will. We are witnessing the long-term effect of that way of offering reception to migrants only for 20 euros per day and keeping people stuck […] in reception centres for 6 years. How do you keep out those people from dependence on welfare? A vulnerable person living in a first-level Reception Centre becomes even more vulnerable, because (his/her/their) special needs are not taken into consideration in the right way. […] If these are not people with initiative, these Centres are becoming receptacles of people spending their time on the bed or women popping out children. (Alessandra, September 2021)

This narrative insists that the quality of the services provided in accommodation centres have consequences on people's agency. Migrants' attitudes and behaviours are frequently understood by social workers both in relation to specific "personal characteristics" and "moods", but also in relation to the management of the reception system. What often remains overlooked is people's agency, their actions or resistance, and their most intimate needs and desires. The emergence of vulnerabilities is somewhat better addressed in SAI centres and complementary shelters for victims of human trafficking, where social workers have the chance to better

recognise and deal with migrants' needs. These typologies of accommodation centres are effectively conceived as places in which vulnerabilities can potentially be addressed, but they represent a last-ditch effort in the attempt to reduce intersecting vulnerabilities related to a harmful and inadequate reception system. As one interviewee stated when discussing SAI centres in relation to shelters for victims of trafficking and sexual and gender-based violence:

> I don't see a contradiction in the fact that in these places (second-level Reception Centres) fragilities emerge more frequently […]. On the contrary, it is while they are in reception that there is a "way" and "space" for dealing with those fragilities, inviting them to see their personal resources with the purpose of a social and labour "autonomy". […] Sometimes it is challenging to cooperate (between institutions, ed note.) for a case. Because sometimes everyone would like to do everything […], but I continue to believe in the challenges of working in close collaboration with second-level Reception Centres (Francesca, September 2021)

In juxtaposing the narratives of NGOs active in these centres and those of the migrants they host, we can see that these smaller centres respond more effectively to the protection needs of the migrants and the goal of their social inclusion. However, this goal is also a challenge for those who have not spent much time waiting the outcome of their procedure, but instead only lived in a SAI centre for a relatively short period of time. The main problem in these cases is not their legal status (which is not an issue for those granted international protection), but how to find accommodation and employment. One of the first accommodation centres that gave us permission to conduct our ethnography there was a small SAI centre based in a rural area. It was composed of three flats hosting approximately five refugees each. These refugees usually travelled by bus or bicycle, but the closest cities were quite far away. During one of our first meetings with a social worker in that centre, he said:

> nowadays it is more difficult finding a house or a room than a job. Even though a couple of local companies tried to mediate the housing search for some of the refugees that are hosted by us and that now are working for them. (Stefano, July 2021)

As an example of this, he reported the case of one refugee from Syria who had a regular long-term contract with a local company. He said that this man remained stuck in the local SAI centre because he was having problems finding a room to rent close enough to his workplace. This was one of the most recurrent issues both in informal conversations and interviews we had, both with protection seekers (regardless of their legal status) and with professionals working in accommodation centres or in local support services.

From the perspective of social workers, while "third-level" accommodation centres (such as dormitories or shelters for both undocumented migrants and refugees) can be particularly complex due to intersecting factors, they can sometimes allow people to establish new kinds of sociality and mutual support. This was witnessed by one social worker supporting undocumented people and other vulnerable subjects who had already lived in accommodation centres:

> Some people arriving at our dormitory already know each other outside. Because maybe they attend the same mosque and they inform other people about the existence of this place.

> […] Sometimes, there are people who are unemployed for many months, but they don't ask for help and you wonder how they are able to cope with this situation. Then, you discover that within the flat, the guests organised a form of economic mutual support to cover these accidents. (Marta, December 2021)

This example highlights the importance of looking at the role of social interactions between protection seekers and local services, but also the invisible and indirect forms of mutual support that these people are able to create among themselves. Although sharing a difficult situation, newcomers and long-term migrants express a form of solidarity that recognises the central role played by housing in crafting their own life trajectory.

7.7 Conclusion

We have seen that many protection seekers have complained about the standards offered in accommodation centres and support services, but also additional problems which seem not to be taken seriously enough (such as lack of legal status and/or social inclusion within the local society, etc.). Their feelings of insecurity with respect to their lives in accommodation centres, and their fear of what could happen during and after staying in them was a running theme in almost every encounter we had during the fieldwork. A sense of profound precariousness united people who had arrived in Italy seeking protection for a huge range of reasons: single migrants with or without children, unaccompanied minors, families, and people forced to live with chronic illnesses or disabilities. Speaking about their future, the prospect of leaving a centre "without a parachute" and finding themselves exposed to exploitation or homelessness was always very present. Even though the goal of the reception system should be to guide protection seekers towards "autonomy", we could question what this actually means from the migrants' perspective. Often the bureaucratic organization of accommodation centres does not suit the needs of migrants seeking protection, because the standardization of these centres contradicts the variety of migrants' personal trajectories. Sometimes, the "most vulnerable" (or those with intersecting or multiple vulnerabilities) are not properly supported due to bureaucratic and legal blind spots. This is particularly evident in the case of undocumented, homeless, newly arrived, and the so called "Dublinated"[17] migrants. A similar sense of insecurity can be found among those who are considered to have had a "successful" experience in an accommodation centre and who are asked to leave not knowing if they will find be able to find alternative accommodation soon.

In conclusion, we looked at how different standards in terms of accommodation can concretely affect the everyday lives of migrants. From this discussion, it is clear that it is urgent and necessary to question the ways in which institutional and social

[17] This is the expression commonly used in the legal jargon in Italy to refer to migrants who have been sent back to the first country of arrival—where their asylum application was pending—from other EU countries on the basis of the Dublin III Regulation of 2013.

actors implement support practices for disadvantaged migrants seeking protection. An important goal would be to create a reception system that better takes into account the former experiences of migrants, their desires and needs, as well as their ability to imagine their futures.

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Chapter 8
Time(S), Space(S) and Shapes of Vulnerabilities in the Belgian Asylum System

Zoé Crine, Christine Flamand, and Francesca Raimondo

8.1 Introduction

Time is always implied in asylum. It can be perceived as a series of linear events (departure, migratory journey, arrival in the country of asylum) which transcend the asylum seekers' journey until they obtain a residence permit, continue their road, or return to their country or origin. In this example, as in many others, time "organizes the inevitable arrival of the future into a sequence" (Moran, 2015:284). Time can also be perceived as "cyclical", which includes "institutionalized schedules" or "serialized time-spaces" (Griffith et al., 2013) in the very functioning of the asylum process. However, time is never detached from the social practices embedded in the environment in which it flies. As Moran puts it, time is in fact made of all "complicated, varied and interrelated social practices" (Moran, 2015:285) that we maintain, recognize and organize as such. This Chapter argues that those practices, in the way they are being implemented, have a vulnerabilizing effect that contributes to a peculiar experience for asylum seekers whose asylum status has not been determined, creating a "chrono-politics" (Jacobsen & Karlsen, 2020:3) or *politics of time* in the asylum process in Belgium, the consequences of which should be evaluated. Those consequences hinge on different temporalities—mostly connected to insecurities produced *by and in* time—to which asylum seekers are exposed.

In the Belgian asylum system, these politics of time take on a particular dimension because they always seem to escape the control of the asylum seekers: they seem not entitled to control either the duration or the temporal sequences of a procedure of which they are nevertheless the *main* subject. In that perspective, asylum seekers are very much exposed to "heteronomous time", as developed by Cwerner.

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This concept, in migration and time studies, highlights the limited grasp that migrants have over time, by recalling that "to a certain degree, control over time lies beyond the migrant's reach" (Baas & Yeoh, 2019:164). It is also transversal to the asylum seekers' experience of time in our analysis.

In this Chapter, the subjective experiences of time in asylum are articulated around different types of temporalities which follow the asylum seekers' journey along the way, and sometimes interact. *Temporalities "of the road*", connected to the departure and migratory journey, as well as *administratively produced temporalities* connected to the demands of the asylum procedure (among which waiting is a fundamental aspect), are the two main types of temporalities discussed in this Chapter. In a transversal way to all the others are those temporalities that could be defined "*imposed",* since they are set up by the structures and systems in which the asylum seekers evolve. These *imposed temporalities* also affect the practices of social workers, creating ethical dilemmas linked to emergency timeframes and *temporalities of "urgency*" in dealing with asylum seekers. Those in turn, come into conflict with the need to create *temporalities of "reappropriation*" through tools that create "temporal control" over the path of the process *for and by* asylum seekers. This reappropriation is all the more necessary as it can give content to a "temporal order" that is often perceived as pointless for asylum seekers, "empty", but at the same time, filled with uncertainty.

In this Chapter, time is not regarded as a mere "parameter" or descriptor of the asylum system, but as a factor that establishes a temporal order that is created and maintained by certain practices, through certain spaces, leading to expose asylum seekers to certain risks. In that perspective, time is a matter of social (and inherently political) practices and this Chapter aims to demonstrate the multi-layer relationship between *vulnerability and time,* as well as *time as a vector of vulnerability,* which must be analyzed in a particular context, marked by the subjective experiences of asylum seekers and temporalities that characterize the Belgian asylum process.

This contribution is therefore also an attempt to incorporate the issue of vulnerability into existing work on time and migration. This implies clarifying how the notion is understood in this Chapter. Based on the work of other authors, we perceive vulnerability as always dependent on context, particularly in terms of exposure to *risks* that are generated for asylum seekers. In short, vulnerability is connected to the individual (Peroni & Timmer, 2013:160) but inherently relational (Fineman, 2008) and must be understood here as an analytical tool to evaluate exposure to certain risks, that time and "politics of time" may generate in their implementation in the Belgian asylum system.

In the following sections, the perspectives of asylum seekers are mobilized from interviews with 39 asylum seekers staying in reception centers in Belgium (Flanders, Wallonia and the Brussels-Capital Region).[1] These perspectives are complemented by interviews of social workers, lawyers and, more generally, decision makers for

[1] In referring to the asylum seekers interviewed in this article, fictitious names will be used, which were chosen by them in the course of our interviews.

which the time factor also has a particular influence on their practices. All in all, this contribution therefore includes a more subjective dimension of time, which goes beyond the objective course of a usual asylum procedure but shows how the passing of time is not neutral. Indeed, it demonstrates how certain practices around time characterize the experiences of asylum seekers by shaping their vulnerabilities in their daily interactions with the asylum bodies.

8.2 *Temporalities of the Road:* Time and Vulnerabilities Along the Migration Pathway and Upon Arrival in Belgium

Time is a real *protagonist* in the experience of migration and, in particular, in the asylum procedure, as will be developed later in this Chapter. However, the relevance of time, as mentioned by asylum seekers in their interview, begins well before the application for asylum is lodged. Indeed, time matters a great deal also with regard to the migratory road that each asylum seeker undertook to reach Europe. In the vast majority of cases the migratory road is long, tortuous, fraught with dangers, characterized by abuse, violence—physical, sexual and psychological—forced labor and enslavement. Farid Khali, the then-Director of the Red Cross reception center of Uccle, is very clear on this point:

> The path of migration – we don't talk about it perhaps – but between the departure of the young people and their arrival at my reception center, it is unimaginable what can happen. The destruction, and I'll say the "mental massacre", that's where it happens. […] That lapse of time is terrible, one can only imagine the atrocities through which these young people [went]. […] During that period of time, they are people who have almost no weapons to protect themselves. Against the smugglers, against the cold, against injustice, they are like a prey for all actions…all actions. And that, for me, is a vulnerability (Saroléa et al., 2022:103).

When one thinks of time and the migratory road, the first thing that comes to mind is the time needed to make the entire journey and arrive in Europe. During the interviews, asylum seekers cited an impressive list of countries they have been through, having undergone a migratory journey that in the majority of cases took several years. Of course, the time needed to reach Europe tends to be long and completely unpredictable because there are many factors that can make the journey harsher and more complicated. Some of the people interviewed during the fieldwork had been taken captive, such as a young boy from South Sudan who had spent 7 months in a "slave" prison in Libya and was subjected to forced labor. Moreover, it is not an easy task to cross all borders and it often takes much longer than the asylum seekers had planned. The story of Mustafa Sherzad, a young man interviewed in a Flemish reception center, is significant in this regard. He left Afghanistan at the age of 15 when he was still a minor, and reached Belgium only 3 years later. He had lived 2 years in Bosnia on the border with Croatia, which he had tried to cross unsuccessfully 21 times, before being able to get in (Saroléa et al., 2022:29).

The time of the migratory journey leaves an indelible mark on asylum seekers. It became clear during the course of the research that the migratory road constitutes one of the greatest sources of vulnerability for asylum seekers, especially if they have to pass through certain countries or regions such as Libya or the Balkans. Ibrahim, a boy from Niger, clearly expressed the impact that migratory road had on him:

> If someone had told me that in Libya they were going to point a gun at me, I wouldn't have believed it […]. Over there, guns are like pens, they are full of them, everywhere […] and if you are a foreigner, they don't consider you, you can die so easily…From then on, I've started to regret (Saroléa et al., 2022:27).

During the fieldwork, some asylum seekers shared stories and impressions related to the journey. However, not all of them were ready or eager to recall the moments they had experienced on their journey and the difficulties they had encountered. It takes a long time to process and deal with the migratory road. Indeed, the stress and consequences of the journey have a "slow release" effect once individuals arrive in the country of destination and settle down in the reception center, resulting in outbursts of anger, disturbed sleep and generalized anxiety. Reception center staff and nurses know that it takes time for asylum seekers to trust and to be able to open up to them and recount what they have experienced along the way. This confirms that in order to identify and understand certain types of vulnerabilities, especially those caused by the journey, a considerable amount of time is needed. Elisabeth Lejosne, a nurse working in a Red Cross reception center, mentioned how it took time and multiple conversations with women who had passed through Libya before they opened up and told her what they had experienced. In her words:

If a girl went through Libya, I'm not going to ask her right away if she was raped. You really have to go step by step, to find out when she left her country, generally I ask instead the age, the year, which country she passed through at that time. From that I can guess what might have happened. We'll stay a little while, we'll ask the question differently (Saroléa et al., 2021:149).

This allows us to say the migratory journey carries with its particular temporalities which have vulnerabilizing effects along two profiles. First of all, at the level of the temporalities "on the move". Indeed, the length and the conditions of the journey have a significant impact on the asylum seekers since they are very vulnerable to harm, being exposed to all mental and physical forms of abuse during their journey. Secondly, at the level of the temporality of the "disclosure" of these moments. Recalling the journey to Europe, recounting their stories exposes asylum seekers to "harm" in the form of intense stress. The latter may also have consequences on asylum seekers' ability to bring evidence in the asylum procedure, which requires them to remember details accurately, within a limited timeframe. This therefore also highlights how vulnerabilities must be perceived as a *continuum*, impacting the asylum seeker at different moments and through different forms, composing "layers" rather than labels (Luna, 2018) whose consequences are noticeable in the different sequences of the asylum seekers' journey.

8.3 Administratively Produced Temporality: Time and the Asylum Procedure

If specific temporalities result from the migratory route and path, resulting from a particular exposure to risks and situations of vulnerabilities, these specific temporalities soon encounter the demands of the asylum procedure when asylum seekers reach the country of arrival. They are then exposed to the temporalities of the procedure, namely a new sequence and new subjective experiences of time, which are administratively produced, and dependent on the asylum application route in Belgium. Temporalities of the procedure shape and order the asylum seeker's time and, by the same token, condition their experiences of time during the asylum procedure.

Before going any further, it should be noted that vulnerability is not only an experience *of and in* asylum, it is also employed in the legal context. Before considering the temporalities to which asylum seekers are subjected and the situations of vulnerability those may generate, the following paragraphs recall the legal basis with reference to vulnerability as well as its legal implications at different stages of the asylum procedure in Belgium.

8.3.1 Vulnerability as a Legal Concept in Belgian Law

In the Common European Asylum System (hereinafter, the CEAS), and more specifically through the Reception (2013/33 reception directive, recast)[2] and Procedure Directives (2013/32 procedures directive, recast),[3] the need to take into account the special needs of some groups deemed vulnerable is stressed.[4] These obligations are transposed in Belgian national law in the Reception Law[5] and in the Aliens Law.[6]

[2] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), *OJ* L 180, 29.6.2013, pp. 96–116.

[3] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* L 180, 29.6.2013, pp. 60–95.

[4] For example, art. 21 of the Reception Directive states: "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, […]." In the Procedure Directive, the wording is a bit different: vulnerable people are referred to as "applicants in need of special procedural guarantees" (art. 24) or having "special needs" (art. 25). On the subject, see further L. De Bauche, *Vulnerability in European Law on Asylum: A Conceptualization under Construction. Study on Reception Conditions for Asylum Seekers*, Brussels, Bruylant, 2012.

[5] Law of 12 January 2007, *M.B.*, 7 May 2007 (Reception Law).

[6] Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals, *M.B.*, 30 December 1980 (Aliens Law).

At the CEAS level, Belgian law does not provide for a clear definition of vulnerability. The Reception Law states the obligations to identify vulnerable asylum seekers in order to refer them to adequate shelter and to provide them with legal and social support during the reception and asylum procedure. It enumerates some categories of vulnerable persons as a way to define vulnerability.[7] The Aliens Law proceeds in the same way.[8] Again, this illustrates a *categorical approach* to vulnerability namely referring to certain groups that are deemed to be vulnerable (Jakulevičienė, 2022).

Further, the Aliens Law deals with the identification of vulnerability when applying for asylum, through a questionnaire, which aims to determine if the asylum seeker is entitled to special procedural guarantees.[9] Here, the vulnerability is associated with special procedural needs. Those could be evoked by the asylum seeker when introducing the asylum request or in a later stage of the asylum process.[10] The authorities expect the asylum seekers to put those needs *forward*, as a means of collaboration in the asylum process. If they are not clearly established and demonstrated, the applicant will not benefit from any special procedural measure (Saroléa et al., 2021:25). These special needs can also be identified by means of a medical examination initiated by the asylum authorities.[11] Apart from these specific rules, no other reference is made to special needs or vulnerability in the Aliens Law.

The legal categorical approach lacks consistency as it does not take full account of the personal experiences of the asylum seekers but rather limits them to predefined categories, which sometimes limits the understanding of asylum seekers' vulnerabilities to a very "technical" aspect. Besides, the current identification process, as it is conceived, depends merely on the way authorities perceive it and choose to "frame" vulnerabilities in asylum. Yet, vulnerability is a multifaceted concept susceptible to change and develop over time and space, as it is examined throughout this Chapter. Recognizing the intersection of different experiences and difficulties and their *continuum* could give consistency to the identification of vulnerable groups, starting from their own experience.

Interestingly, the relationship between *time and vulnerability* can also be articulated legally, by reference to the principle of "predictability" and "reasonable delay" in decision-making, which will be examined in the next section.

[7] Belgian Reception Law, art. 36.

[8] Aliens Law, art. 1(12).

[9] *Ibid.*, art. 48/9.

[10] However, this questionnaire is given right at the start of the procedure when asylum seekers often do not know what is going on or for instance, they are old or illiterate and are unable to understand and fill a questionnaire.

[11] In practice however, this mechanism has never been activated as no medical expert has been hired since the implementation of art. 48/9 of the Aliens Law. In practice, it is the asylum seeker who will take the initiative of submitting a medical certificate, in order to provide additional information related to his or her profile or to corroborate past persecution, see the Vulner Report 1, p. 250 and Vulner Report 2, 2022, p. 40.

8.3.2 *Decision-Making in the Belgian Asylum System: The Principle of Predictability and Reasonable Delay in Decision-Making*

Time is particularly relevant in the asylum procedure, both with reference to the time *of* the procedure, namely the steps needed before receiving a response from the asylum authorities and, in particular, its (long) duration, but also with reference to the time *in* the procedure, *i.e.* the period asylum seekers spent in the country waiting for the procedure to end.

The principle of predictability and reasonable delay requires that decisions should be taken in a reasonable period of time. This is also important for applicants seeking international protection to know what their future holds in a swift manner. This principle of a reasonable delay is a general principle of administrative law. However, in the context of asylum, the deadlines throughout the procedure are not binding and the examination of these applications can take several months, even years. If the legal deadline is exceeded by the asylum authorities, there are no consequences for those asylum bodies. Yet for asylum seekers, this wait prolongs the uncertainty of a procedure in which the applicants are not the real "actors". It is clear that the absence of deadlines increases their insecurity, as they lack control over the course of this procedure.

Time can sometimes be taken very seriously and imply legal consequences in Belgium, however. In the case of a young asylum seeker, where the Belgian asylum authorities issued a decision refusing recognition *6 years* after the application was submitted, the Belgian State was condemned by the Court of Appeal of Brussels following a violation of the general principle of reasonable time, requiring the authorities not to hold their decisions in abeyance indefinitely when they are required to rule (Gourdin & Kaiser, 2017). The Court condemned the Belgian State to pay the sum of €6500 to the young asylum seeker because of the stress inflicted on him who had unjustly remained uncertain about his fate.[12] In some ways, law could "mitigate" the vulnerability that can result from proceedings that drag on beyond all reasons.

Yet the reality for figures in the processing of asylum applications remains a cause for concern. In its 2019 "asylum statistics" report, the Office of the General Commissioner for Refugees and Stateless persons (hereinafter, the CGRS) already highlighted an ever-increasing backlog with a total of more than 10,000 unprocessed files. In order to reduce this backlog, in 2019 the Council of Ministers twice

[12] Brussels, 14 December 2008, no. justel F-20081214-1.The Court recalls that "in the absence of a regulatory time limit prescribed for the administrative authority to take a decision, the obligation to act as a normally competent and diligent administrative authority that respects, in particular, the general principle of good administration, implies dealing requests from citizens within a reasonable time. To this end, it is incumbent on the legislative and executive, federal, community and regional powers "to provide their respective administrations with the means of action necessary for the proper accomplishment of their missions."

approved the reinforcement of the staff, namely by appointing protection officers. In 2022, the CGRS stated in its annual report that they put more (financial) resources into reaching a greater number of decisions, through "special action",[13] which resulted in an increase of 25 percent in the number of decisions for the September–December 2022 period compared to the number of decisions for the same period in 2021. In this "race" to produce more decisions in less time, some of the interviewed protection officers show some reluctance to make decisions that are too premature. The CGRS also continued to invest in the recruitment of new staff, following an additional budget granted. According to the report, these various measures should lead to a significant increase in the decisions made.

8.3.3 Time, Temporalities and Vulnerability in the Asylum Application Process

Time is central in the asylum procedure since the inception when people submit their application, the first step that officially starts the procedure. The foreigners seeking refugee status or subsidiary protection must apply upon entry into the country or at least within eight working days of entering Belgium.[14] This application for international protection used to be submitted at the *Petit-Château* before August 2022. Although the application must currently be submitted at the Immigration Office, *Petit-Château* remains the arrival centre where asylum seekers stay the time needed before they are transferred to a reception centre for the duration of the asylum procedure. However, places are limited so new people can only be received if as many people leave to be transferred to their final centre. Isabelle Plumat, Director of the *Petit-Château* is very clear on this point:

We regulate the stay here according to the number of people waiting at the door…so if we have 200 people at the door, and if 150 of them need to be received, that means we have to take 150 out as well, because otherwise the centre is overcrowded and so there is a congestion at the arrival centre.[15]

Asylum seekers interviewed during the fieldwork were well aware that it was crucial to arrive early at the *Petit-Château* in order to be sure to get inside, submit the application and receive an accommodation. If they were not aware of it, thanks to the information that they had gathered or received from other asylum seekers or compatriots, they immediately realized it at their own expense. Therefore, the requirements of the procedure (which imposes a particular "tempo") are combined with the importance of access to information and awareness about the precise timeframe and specific places. Time and knowledge here drive the action of asylum

[13] CGRS, asylum statistics 2022 (survey), www.cgrs.be/en/news/asylum-statistics-2022-survey

[14] Aliens Law, art. 50(1).

[15] Interview with Isabelle Plumat, Director of the *Petit-Château* Fedasil reception center, Microsoft Teams Platform, 7.10.2020.

seekers who must act by mobilizing both these resources, so that this sequence of time does not adversely affect them. Thomas Willekens from *Vluchtelingenwerk Vlaanderen*, a Belgian NGO working in the field of asylum, stresses:

> Sometimes it happens that if a family comes from a certain part of Belgium has to travel multiple hours to get to Brussels, they don't arrive in time at the arrival centre. It can happen that they are greeted by a closed door of the arrival centre and then if we [Vluchtelingenwerk Vlaanderen] aren't there, this family has no idea what's going on, they will be staying one night extra without shelter[16] .

Indeed, the situation has considerably worsened with the multiple reception crises that Belgium has been facing in the last years. Indeed, the Vulner research has been carried out in a particular context, i.e. the reception crisis, that has been ongoing for several years in Belgium. This crisis has been marked by very particular sequences of time, which consists of reducing the number of reception places—or even closing centers—and reopening later, as a matter of urgency. This reception crisis has become systemic and is now an established fact in the Belgian asylum system. In 2023, many people are still deprived of their access to material support (mainly, a reception centre or accommodation to stay in during the process) and are forced to live in substandard conditions. In these situations, questions can be raised about the State's compliance with its positive obligations towards asylum seekers.[17] Vulnerabilities are obviously exacerbated in this context, as decent reception conditions are the absolute prerequisite to a consistent and coherent system of identification of vulnerabilities. This ongoing situation is important to mention, as it highlights a particular approach to vulnerabilities in time, developed in this Chapter. It is also an example, among others, of how a system in its (dis)functioning can shape or produce vulnerabilities of protection seekers.[18]

Due to the harsh situation in front of the *Petit-Château*, since fall 2022, the registration of international protection applications has been temporarily moved to the buildings of the Belgian Immigration Office, which then will redirect only those who are eligible for reception to the *Petit-Château*. Therefore, it becomes even more essential for asylum seekers to arrive *in time* to file their application as, in practical terms, this is necessary not only to ensure that the asylum procedure begins, but also to enter the reception system and have accommodation in the country. It also shows in an interesting way how the timeframes of a particular social system (the asylum system, for instance) can evolve under the weight of political dynamics, and in

[16] Interview with Thomas Willekens, *Vluchtelingenwerk Vlaanderen*, Brussels, 19.10.2021.

[17] Belgium has been condemned more than 8000 times since 2021 by the national Labor jurisdictions, and ordered to apply the Reception Law as well as to provide shelter. The European Court of Human rights also ordered Belgium to give shelter to more than 150 people who could not find any place in the reception network, see ECtHR, 31 October 2022, *Camara v. Belgium* (appl. no. 49255/22); ECtHR, 15 November 2022, *Msallem and 147 others v. Belgium*, (appl. no. 48987/22 and 147 others). In a recent case, the European Court decided that Belgium violated art. 6(1) by systematically refusing to execute the decisions of the national jurisdictions: ECtHR, 18 July 2023, *Camara c. Belgium*.

[18] Latest statistics in May 2023 show a backlog of 16,806 cases in April 2023.

particular, acquire a different tempo when these are guided by *politically produced* temporalities of "urgency".

Even the length of stay at the *Petit-Château* can be variable as it depends on many factors, including the availability of places in the reception centers, but also the presence of suitable places for people with special reception needs. However, in many cases, due to the shortcomings of the Belgian reception system, it is not possible to cope with all the reception needs, but only with those that the system *can handle.* On this point, Cristina Valenti, former employee of the Fedasil dispatching unit at the *Petit-Château*, affirms:

> We just say [to the people in the center] "You are staying here, we don't know for how long", and "You'll be transferred, but we don't know when". And at the beginning it was very difficult to pass the message to the people. They really thought that they were staying for a few days, and then moved… Now they are a bit more aware of how the system works and they learn to be a bit more patient.[19]

Asylum seekers, therefore, immediately experience the contradictions and the disparities in the *pace* of the asylum procedure and reception system that shape their perception and experience of the time in the country. Since they need to arrive very early at the Immigration Office to register their request to benefit from a place at the *Petit-Château*, they immediately get used to constrained waiting. From the very start, they navigate between different timeframes that they learn to accommodate, the resilience to the asylum and reception systems being the only available solution.

8.3.4 "Labelling" Vulnerability on Time: Challenges of Time in Detecting Vulnerability to Give Adapted Reception Facility

Time also plays a fundamental role after the asylum seekers have lodged their application for international protection, while waiting for the designation of a reception centre. In the Belgian asylum system, .there is a general principle stating that special needs and vulnerabilities are considered in finding a place for asylum seekers to stay during their process.[20] It is the *Dispatching Unit* that is responsible for designating a reception centre adapted to the special needs of the asylum seeker, based on an initial identification of vulnerabilities carried out by the Immigration Office.

Time is a real challenge for the Dispatching Unit when it comes to finding a suitable place. In fact, the practices of this service oscillate between the need to find a centre *quickly* (to allow the asylum seeker to settle down) and the demand to *take the time necessary* to identify in advance the particular needs of the asylum seeker.

Means have been put in place to reduce the time that may elapse in the designation of a place, or rather to "optimize" the way in which this time is used to find a

[19] Interview with C. Valenti, Fedasil Dispatching unit former employee, Brussels, 23.09.2020.

[20] Belgian Reception Law, art. 36.

suitable place. Fedasil has put in place the "*Match-It*" *programme*, a database of the reception network which enables the management of the reception spots available according to the specific needs of the protection seekers. This program aims to create a better harmonization between individual needs and adapted reception facilities.

These approaches to "management" (of time and space) are quite bureaucratic and standardized, and are sometimes coupled with a simplification of the vulnerabilities detected. In a study carried out by Fedasil itself in 2018, it was underlined the "too vague" character of the "label" system set up to detect the vulnerabilities of people waiting for a place in a reception centre.[21] This system therefore raises the question of the possibility of *objectifying certain forms of vulnerability through a label* which can be seen as a "simplistic answer to a complicated problem" (Luna, 2018:124), ignoring the singular realities of the individuals who compose the group.

These labels, moreover, are also affected by very "stereotyped" representations of vulnerabilities and by a *selective sensitivity* to certain vulnerabilities rather than others. As mentioned earlier in this book, men are the primary victims of gender bias which systematically exclude them from vulnerability, as men are seen in the collective imagination as naturally strong and courageous. Isabelle Plumat, Director of the *Petit-Château*, points out that this prejudice of the "non-vulnerability" of single men is used as a recurrent "analysis grid" in reception policies:

> I think, in reception policies and procedures, we quickly say to ourselves, "OK, an isolated man, a young man between 20 and 40 years old, he's someone without any particular problem, so he'll be fine …" (Saroléa et al., 2021:93).

A social worker also underlined this reality of a hierarchy of vulnerabilities indexed on a gendered reading in reception centres:

> In fact, there is a slight hierarchy of vulnerabilities. And I think that, yes, in terms of hierarchy, single men will stand at the bottom of the list. They are still vulnerable people, but it's true that when we talk about asylum seekers and we talk about single men in terms of vulnerability, we say to ourselves: "It's fine!" (Saroléa et al., 2021:94).

Time is therefore a variable to be considered in the admission to a reception centre: if it drags on, it affects the situation of the asylum seeker who remains uncertain about having a specific centre to settle in. If it is done too quickly, some vulnerabilities of the asylum seeker may remain undetected—such as those connected to mental health issues or trauma caused by violence on the migratory road or due to human trafficking which need time to be disclosed—and, as a result, may no longer be a determining factor in assigning them to a reception centre, which therefore generates an additional level of vulnerability that can be triggered in inadequate centers. This specific step of identification of vulnerabilities is not immune to particular sensitivities that tend to stigmatize certain categories of population that will in time always (or rather never) be considered as vulnerable *a priori*. As mentioned earlier in this Chapter, however, in a crisis situation such as the one Belgium is currently experiencing, the problem lies elsewhere: apart from the time needed to correctly

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

detect and identify vulnerabilities, it is above all the question of *places and spaces* (available and really adapted to the needs of the people), or to put it differently, the political will to allocate resources in a coherent way that is a real challenge.

8.3.5 Long Wait in a Narrow Space: Experiences of Time in the Reception Centres

The waiting time and different rhythms to which the asylum seeker is subject have a particular dimension because it takes place in a particular space: the reception centre. In this *open but constrained* space, the fieldwork conducted in the Vulner study shows that time takes on a particular mental and emotional charge. Time and the way it is experienced in the reception centres becomes a source of vulnerability itself, in the narratives of the asylum seekers encountered in Belgium. The "vulnerable" effects of time experienced by the asylum seeker revolve around two particular aspects. On the one hand, because it implies a feeling of lack of control over the path of the procedure, which is exacerbated in a constrained space. On the other hand, because this space, over time, does not allow certain basic needs to be met—in particular, the need for privacy and security—which undermines the daily life of asylum seekers. In the end, this indefinite time puts asylum seekers in a feeling of disempowerment from which they can hardly protect themselves.

Losing Control—Boredom, Routines and Absence of Perspectives

The feeling of lack of control over time is a fundamental issue in the narrative of the people met during the study. Rather than being a simple "parameter" of the asylum procedure, time sometimes acts as a *vector* of vulnerability, precisely when it is added to situations of vulnerability already experienced in the country of origin and during the migratory journey. The centre then appears to be a real "catalyst" for vulnerabilities, a place where vulnerabilities combine and sometimes accumulate (Saroléa et al., 2021:194).

In the words of the people concerned, the time spent in the centre takes the form of a particular weariness that goes with the life of the residents and which gradually limits their will and desire to move and act. Paradoxically, if asylum seekers have a lot of time (mainly waiting), it is accompanied by an immediate feeling of limitation, in the confined space of the centre. Speaking of migrants in "transit" Bredeloup stresses that for those "immobile individuals", the act of waiting expands time, but compresses space (Bredeloup, 2012:465). The same conclusion could be applied to asylum seekers waiting in reception centers. These forms of limitation result in very monotonous days that look similar and a deep boredom, which progressively reduces the "ambitions" of asylum seekers living there, who end up having no objective other than *waiting*. Indeed, they become subject to a new form of temporal

order (mainly consisting of long waiting periods) from which they cannot escape. In this perspective, waiting is only perceived as "passive activity producing powerlessness, helplessness and vulnerability" (Bendixsen & Eriksen, 2018:93). In the same way, it reduces waiting to something inherently non-productive, thereby erasing the valuable or creative dynamics of waiting, which are sometimes necessary to produce "specific forms of sociality" for asylum seekers (Bendixsen & Eriksen, 2018:93).

The people met in the reception centres describe their day in a very monotonous, routine way, with a form of disengagement in the repeated actions they perform without much conviction on a daily basis.

> Life, a Somali girl, is clear in her words when she describes her daily routine: "*You wake up, you eat, you sleep…something like that*" (Saroléa et al., 2022:42). For those who spend most of their day in a reception centre, the days are punctuated by mealtimes, which appear to be the only activity that gives a certain "rhythm" to the day.

These monotonous lives go with a specific form of waiting, experienced as "stuckness"[22] that is particularly pronounced for asylum seekers who have no work or training opportunities. As mentioned before, those waiting temporalities place the asylum seekers in a temporal regime that seems meaningless from a societal and individual point of view, and that prevents any future-oriented action and planning.

Waiting is therefore a specific temporality in the Belgian asylum system. On this subject, the Vulner report stresses that although this feeling is shared by all asylum seekers, it is more visible among female asylum seekers who seem "less busy" than men, or in any case, much less busy with activities *outside* the centre. This also gives another dimension on the time for the asylum seeker: how time is spent in the centre is highly gendered. As Straughan et al. argue, the experience of stuckness has a clearly gendered dimension as well (Straughan et al., 2020:637). While men often work outside of the reception centre, women generally spend their time inside and the report shows that they are more often in charge of traditional domestic tasks (cooking, cleaning, childcare) which limit their interaction with the outside world. In this sense, these places reflect the traditional public/private dichotomy, in a gendered sense, often also understood as masculine/feminine divide (Thornton, 1991).[23] These monotonous lives and routines imposed in the centre create a form of discouragement but also a profound transformation in the mental health of the applicants.

[22] We understand stuckness as Hage defined it, as a form of immobility that prevents any future-oriented actions. On this concept, see: G. Hage, "Waiting out the Crisis: on Stuckedness and Governmentality", in G. Hage (ed.), *Waiting*, Melbourne University Publishing, 2009, pp. 97–106, but also E. Straughan, D. Bissell, A. Gorman-Murray, "The politics of stuckness: Waiting lives in mobile worlds", *Environment and Planning C: Politics and Space*, 38(4), 2020, pp. 636–655, and A. Jefferson, S. Turner, S. Jensen, "Introduction: On Stuckness and Sites of Confinement", *Ethnos*, 84(1), 2019, pp. 1–13.

[23] On this topic, see M. Thornton, "The public/private dichotomy: gendered and discriminatory", *Journal of Law and Society*, 18(4), 1991, pp. 448–463; but also, in the field of migration, C. Moore, "Women and domestic violence: the public/private dichotomy in international law", *The International Journal of Human Rights*, 7, 2003, pp. 93–128.

In short, it shows that the perspective of "having a future" directly affects the way they experience the present and the actions put in place—or not—to cope with it. This is reflected in more violent (or "less restrained") behaviours that transform the interactions between asylum seekers in the centre. Eduardo, an asylum seeker from El Salvador, is clear when he talks about how this space and stress has generated this "deteriorated" behaviour:

> I don't have a word to express it. Because it's very hard to explain it. I know it has affected me because sometimes I scream, I scream a lot. And I wasn't like that before. I get angry very easily, I get frustrated (Saroléa et al., 2022:46).

This goes with this feeling of *dispossession of time* that generates situations of frustration in the asylum seekers we met. This feeling was echoed by Moussa, a Palestinian man, who affirmed:

> You don't know where you are going. This was difficult with the procedure. You do not have a normal life, I feel I deserve it […] I felt nervous for "just a stamp" (Saroléa et al., 2022:80).

The fact that Moussa has the feeling he is not *going* anywhere expresses this feeling of immobility and stuckness. Interestingly, it also shows that those feelings take the form of a commitment, in short, that someone has "to wait for everything to come from others" This relationship that induces dependency also immediately implies, because you accept waiting, "[…] that you have accepted the loss of your control over your own time" (Bendixsen & Eriksen, 2018:42). This echoes the idea of "heteronomous time" mentioned in this Chapter, and ultimately of imposed temporalities whose sequences seem to correspond to a rhythm institutionally determined, in a durational time imposed to asylum seekers. This also creates unbalanced interactions and relationships with the asylum authorities which reinforce the asylum seekers' sense of disempowerment. If they feel lost and disempowered, they also therefore feel very vulnerable in the procedure and precisely, *the time that this procedure requires them to spend in the centre,* without any control or influence over the timeline.

In addition to this immobility in waiting, certain primary needs that are hardly met by the reception centre reinforce this impression of a lack of control. Indeed, because asylum seekers do not control a whole series of elements of the environment in which they live (they do not choose the centre they are given, they do not choose their room or the people they live with, they are subject to the centre's rules which they can hardly negotiate), tensions crystallize around the need for privacy and the need for security, which affect asylum seekers over time.

Several asylum seekers reported the difficult experience of living in a community, in small spaces for an indefinite period of time, which undermines their need for privacy. Francesco affirmed his desire to simply "shut the door". He described how residents and staff at the centre would enter rooms on a regular basis, as a very intrusive practice:

> They come in without knocking in the room. They come in like that, it's like "the criminal police" … but sometimes I just want to undress, to change my clothes…(Saroléa et al., 2022:48).

Jaama, an Albanian woman, shares her very personal experience about the room she shares with six people:

> Six in a room, I didn't expect that! I didn't expect to have any privacy. And it's not like you're with your family! With six people, you can stay if you are in a family, but we are not a family, here! I was disappointed […] (Saroléa et al., 2022:48).

The lack of privacy is also felt in having to live for long periods in spaces where everything is sometimes reduced to "a room". Space and time again combine to create a peculiar feeling of confinement. Eduardo is clear on this point:

> I mean, we used to have a big house. So, it's like, I used to have space, I used to have my room, my son used to have his own place, with his toys, my wife used to have her own place […]. I mean, everything was organized. But here, your room is your wardrobes, your room is your kitchen, your room is your dinner table… and you eat on your bed. So, I think now that being together in this small place, it's very hard. Because even though you try to go outside… It's like you don't have enough space. I don't know…(Saroléa, S., Raimondo, F., Crine, Z., 2022:48).

This lack of privacy is often coupled with a feeling of insecurity in the words of the people affected, due to the fact that they have no control over the environment in which they are forced to live. This sometimes leads to a demand for more "control" in this space by some asylum seekers. Money Transfer, a man from Togo, clearly would like the centre to be equipped with cameras "because there is no surveillance, no security if you are raped in the corridor" (Saroléa et al., 2022:49). The feeling of insecurity is also, in some aspects, gendered. The men we met often told us of their fear of fights, of very "explosive" violence within the centre. Ibragim, a Russian man living alone, is clear in explaining that there is not much security within the centre to counter violence between residents: "They [the staff] will arrive once the fight is done…but it's too late, when they [residents in the centre] are ten against one…"(Saroléa et al., 2022:49). Bob, a Palestinian man, spoke half-heartedly about the forms of violence present in the centre, which he had to face: "I have seen lots of things happening in this camp, fights…I cannot talk about these things, but strange things happen here"(Saroléa et al., 2022:49).The women we met often place their sense of security in the presence of the male population in the centers. Some of them adopt strategies of control (by avoiding certain spaces, or by adopting certain behaviours in those spaces). Ainura, separated from her husband because of domestic violence, explains that she has been regularly harassed in the centre, facing problems that were not present when her husband was with her. Solange described how the different spaces in the centre are divided between "men's spaces" and "women's spaces" so that women do not "go down to the restaurant to eat" for instance (Saroléa et al., 2022:37). Solange also adopts forms of "clothing strategies" when she walks through certain areas of the centre, to maintain a form of control:

> You have to cover up, you're not going to go with your "loincloth" into the men's corridor, no! That's life in the center (Saroléa et al., 2022:37).

All in all, it is a need for individualization of the reception structure in the centre that is not fulfilled and which reinforces the impression of "losing control" and stuckness over time. In a sense, this lack of individualization also creates a type of

"institutionalized identities" which over time, create a "progressive depersonalization and objectification of an individual's own identity" evolving in the limited time-space of the reception center (Acocella & Turchi, 2020:74).

8.3.6 Temporalities of the Asylum Interview and Vulnerabilizing Effects

Another example of the temporalities produced by the asylum procedure is the perception and the consequences of time with regard to the interview by the asylum authorities concerning the asylum application. Indeed, time plays an important role both with reference to the time *before* the interview but also with regard to the time *when* the interview is scheduled.

Asylum seekers used to refer to "small interviews" and "big interviews" to distinguish between the first meeting at the Immigration Office and the interview at the CGRS, the authority in charge of assessing at the asylum application at first instance. Asylum seekers attach great importance to the "big interview" because they know that on it depends the possibility of legally staying in the country and plan their future there. Therefore, many interviewed asylum seekers highlighted how they tried to prepare themselves as best they could and shared their coping strategies to this end. One difficult aspect to manage is that the time waiting and preparing for the interview is spent in the reception centre which, as already discussed, is a vulnerabilizing environment for asylum applicants. An Afghan woman, who arrived in Belgium with her young son and was expecting a daughter, explained how in the moments when she did not have to take care of her son, she transcribed the most important details of her story in order not to forget them. One young Cameroonian boy had temporarily stopped his training as a nurse and related internship activities outside the reception centre in order to limit sources of stress as much as possible and to better prepare for the interview. However, the living conditions inside the reception centre do not always allow for the necessary calm to prepare and "be prepared" for the interview. The young Cameroonian boy mentioned how it would have been challenging for him to handle the stress of the interview just after his arrival when he was under pressure and living in a stressful environment (a CAMPO centre[24]).

Furthermore, time *of* the interview during the asylum procedure is crucial, and it is important to find the right balance between the different issues at stake. While it is necessary to have a procedure that is as fast and efficient as possible, those who arrive in a new country in order to apply for asylum, after a very often long and dangerous migration route, need time to stop, to "catch their breath" to regain the necessary strength to deal with the asylum procedure, which is itself a source of

[24] The CAMPO centers are set up to offer temporary supplementary reception places. They are not supposed to last in time, but only for a period of "crisis".

stress, anxiety and to a certain extent, vulnerability. In this regard, one of the lawyers interviewed during the fieldwork, talking about the very fast procedures being implemented in the Moria camp in Lesbos, said that these types of procedures were not effective because people were still in shock by the perilous journey—as she said, "They don't have time to dry off from the Mediterranean crossing" (Saroléa et al., 2022:47)—and were not able to adequately answer the questions they were asked.

Precisely with regard to the vulnerabilities and special needs that asylum seekers may have and their identification, time becomes a factor that carries fundamental stakes and challenges. One of the interviewees specified that it is always better to have fast procedures, but that rapidity can raise questions precisely with regard to taking the time to assess the individual profile and identify any potential vulnerability. In her words:

> […] and it's true that the accelerated procedure could be problematic because it's systematic and it does not take into account the "vulnerability" argument. I think that a procedure can only go fast if the case at stake is clear. And when you have someone who is vulnerable, it's not clear, so it shouldn't go fast (Saroléa et al., 2022:192).

Conversely, a particularly lengthy procedure is counterproductive, not only because people may forget details with regard to their story, especially in the light of how unpredictable the workings of human memory are under great stress, but also because it can itself become a source of stress and anxiety. This dilemma with regard to the rapidity of the asylum procedure and the *right time* for the interview was well explained by one of the interviewed lawyers:

> Politicians demand very short procedures, which I think in itself is problematic, because it doesn't give you time, it doesn't give people time to breathe, to get proper treatment to identify vulnerabilities. So I think vulnerable people will be damaged by extremely fast procedures. But on the other hand, the extremely long procedures that we see sometimes, they can really damage people, we can see clients over the years go more and more down and start suffering more and more (Saroléa et al., 2022:47).

In light of the fact that the interview is the core of the asylum procedure because the decision on the application highly depends on it, time *before* and *of* the interview takes on an even greater relevance because it can play a significant role on the recognition of the status of the asylum seeker.

Time of the Interview: Dispossession, Appropriation, Backlog and Tensions in Time

The time of the asylum procedure is also a specific recurring factor in the asylum seekers' views, especially at the crucial moment of the interview when the applicant is asked to talk about their story in detail before the authorities in charge of granting or refusing international protection. The moment of the interview often takes place more or less unexpectedly, as a break or "temporal rupture", understood as "a radical interruption of previous modes of existence in favor of new ones" (Farnetti, 2019:116)

or simply "experiences of clashing times" (Fengyu, 2019:12), resulting here in tensions between long, rather monotonous waiting periods and speedy procedures, with very "fast-paced" requirements. Indeed, asylum seekers do not know in advance precisely when their interview will take place. Once they are informed that their interview will be held, they become subject to another temporality, that of the interview and its requirements.

The lack of predictability of the moment of the interview is a central element in the asylum seekers' words. They simply cannot "plan the agenda" and gradually delegate, by necessity, the follow-up of their interview schedule to external actors and course of actions over which they have no influence. They very often look to their social worker to inform them that an appointment has been made, or that a letter has been received, and consult their social worker regularly to stay informed on the progress of their case. This "delegation" of the process to external actors implies a sometimes very fragmented knowledge of the asylum process with difficulties for the applicants to estimate "*what will follow*" (when the interview will actually take place, what exactly will be asked of them, when to start preparing). In the end, there is a general lack of information and resources to understand the procedure in an integrated way.

In an attempt to grab some of the time that is slipping away, asylum seekers do not remain passive. In the light of the interview, they put in place certain elements of "reappropriation" of time and information, understood here as coping strategies to remain aware of what is a stake. Although they are guaranteed legal and social support according to the Belgian Reception Law, many asylum seekers testify to the need to prepare themselves on their own for the procedure. Some asylum seekers explain they take various steps away from the official framework (for example, by not turning to social workers) in order to find information in other ways and elsewhere, when the systems set up in the centre do not meet their need for clarity or understanding. Étoile reiterates this in his comments when he emphasizes the vigilance he must show at all times in order to remain informed about the course of his case in a way that suits him: "With the assistants, you always have to 'fight', be attentive, ask friends in the center to check if you have received mail…" (Saroléa et al., 2022:53). Mamy is also clear on this point when he explains that he draws on the "ground" experience of other asylum seekers to understand the issues at stake in the process (Saroléa et al., 2022:53). This is also the case of Badrya, who in 2021, had already done six interviews between the Immigration Office, the CGRS, and the CALL. Meandering along the trails within the asylum procedure, she explained that she must rely on herself to do her own "follow-up" and keep track of its process (Saroléa et al., 2022:31).

Although the interview appears to be a moment of reappropriation of the procedure (in the sense that it becomes more "tangible" through a concrete moment: the interview, precisely), it also appears very quickly as a moment of delegitimization of the asylum seeker's words. This againgenerates this impression of exclusion, of being deprived of a procedure that primarily involves them and still here, some form of exposure to "heteronomous time". Many asylum seekers felt this way during the crucial moment of their interview.

Eduardo also highlights the hostility he encountered during his interview at the CGRS. He explains how a number of factors at the time of the interview (the discussion with the protection officer, the lack of time to explain the reasons for his request, the suspicion of "abuse", the absence of his lawyer) contributed to dispossessing him from this moment, which was nevertheless crucial for his protection needs to be established:

> The lawyer […] said go and ask for a process for him, only [for his son]. But we already received a negative decision for him. And at the interview, the person who conducted the interview says, "Why are you opening a new request for him?" and I said, "Because we have problems, because we cannot go back to our country." And […] the lady [the protection officer] said, "No, you'll get a negative anyway" and indeed, after the interview we received a negative decision. So, we feel like…during the interview she decided to give us a negative answer just because…we were there asking for a new process. It feels that way. Because I wasn't even allowed to finish my story and she said, "No, you'll get a negative answer from this." And my lawyer was not there…" (Saroléa et al., 2022:56).

The moment of the interview is therefore experienced through different temporalities of inclusion and exclusion that oscillate between two polar points: they swing between brief moments of appropriation (and strategies of *re*appropriation) of the procedure and long moments of dispossession.

If the time of the procedure carries with it a very strong emotional charge on the side of the asylum seekers, how do the decision makers who seem to "rule" this time (those in charge of examining the file and conducting the interview) perceive it?

Their experiences help to provide some answers to the question above. Their practices are marked by forms of moral and ethical dilemmas while waiting for a case to be analyzed. One protection officer is very clear on this point:

> I think we really need to find a way to process the files, in any case much more quickly than we do, without doing it in 15 days […], but at the moment, between the time [Asylum seekers] submit their application to the Immigration Office and the decision, two years have often passed, and that's too long. That's way too long. And I'm also responsible, right, I know that there are files that I keep for 3 months, 4 months, 6 months, because there's a kind of unconscious deadlock sometimes. Because the decision is not obvious and we have to think about it…And at the same time we are not given time to think about it […]. If we're forced to do a job we're not ready for, that's not right, but at the same time it's not right for a case to drag on so long […].[25]

Other protection officers also testify to the need to understand, in a limited time, a set of elements that are difficult to express in the context of a very formalized interview. The protection officer is responsible for getting the applicant to talk and to understand their protection needs within a very tightly defined bureaucratic time frame. A tension between the time *given* to the examination of the application and the time *needed* for the asylum seekers to be able to fully develop their story in an optimal way crystallizes at the time of the interview. In fact, these appear almost as two different temporal rhythms, that can hardly operate in harmony. The time of the interview takes on a particular dimension when it is coupled with sensitive issues

[25] Interview n° 7, CGRS protection officer, Microsoft Teams Platform, 27.07.2020.

(gender-based violence or sexual identity, for example) that are more difficult to express in the open and subject to constructed forms of taboo that are highly embedded in female (and male) asylum seekers.[26]

8.3.7 *Social, Legal, Voluntary Support of the Vulnerable over Time: Role and Limits of Social Workers, Lawyers and the Non-profit Sector in Temporalities of Emergency*

The Vulner Project gave a voice to asylum seekers in trying to understand their experiences, but it also wanted to question other "asylum professionals" who gravitate around them. Indeed, the project researchers met several "key" people supporting asylum seekers during their procedure: firstly, social workers, or the "reference point" for asylum seekers during their stay in the centre; secondly, lawyers, or the asylum seekers' legal representative throughout the procedure; and thirdly, the voluntary sector, through which certain associations have specialized in dealing with specific vulnerabilities (gender-related, for example) or are committed to providing psychological support to people seeking protection.

Although these individuals carry out different functions at various moments in the procedure, the "time" issues that cross them overlap. Indeed, trends can be seen in the difficulties they experience on a daily basis, which are mainly related to the *lack of time* (and means), which have deleterious effects on their respective work, that develops in a timeframe of emergency. In the end, it is a system that is weakened and *vulnerable* in its very functioning. Two main challenges can be drawn from the testimonies of social workers, lawyers and the voluntary sector.

The first challenge concerns the aspects of the workload and the climate of urgency in which their work is carried out. For the voluntary sector, the budget issue comes into play. The interviews conducted with the centre workers revealed a number of constants relating to the feeling of vulnerability specific to their work, which revolves around the lack of time to guarantee serious follow-up of the people in their care. In terms of the "climate of urgency" in which workers have to operate, some of them point to the increasing demand of reception centers to multiply the tasks and functions of social workers within ever shorter timeframes, who can no longer properly follow up or guarantee quality work. In general, the lack of time available to workers puts them in a "race against the clock", imposed by the urgency of the situation, which justifies going faster and faster. Daniel Legrève, a social worker at the Red Cross emergency shelter in Ans is very clear on this point:

[26] On this, see among others: J. Freedman, "Women Seeking Asylum", *International Feminist Journal of Politics,* 10(2), 2008, pp. 154–172, but also the particular recommendation of the United Nations High Commissioner For Refugees for conducting interviews with women victims of gender-related violence: UNHCR, *Guidelines on International Protection: Gender-related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01 (2002).

> There is "theory" and there is the field. And sometimes those who do the theory are not always very aware of the reality on the ground. And sometimes, we don't have enough tools or human resources to be able to offer a "good reception system", and that's the problem, sometimes we have to make choices because we have no choice! We are overloaded. […] And we can't do a proper job when you put on two, three hats! We can't do that […] so like everyone else, we skip things we don't see, because we're too overloaded […]. And at some point, not only is it dangerous for the resident, but it's dangerous for us too, because vulnerability, I think, goes both ways […].[27]

This climate of urgency is also widely recognized and experienced by the voluntary sector in its daily practices. Time here plays a role on two levels: first, on the one hand, because the support programs that these associations put in place are often very limited in time. This short timeframe prevents a sustainable approach to vulnerabilities by reducing it to a project-based approach. On top of that, the lack of staff in these associations lengthens the time it takes to care for people, since the associations can no longer follow-up within a given timeframe. The individualized support that can be provided therefore depends on the duration of these programs, but also on the capacity to resort to competent staff over time to allow consistent follow-up of vulnerable people. The associations we met are clear about the difficulties they encounter in this respect. The Rainbow House, for instance, says on this subject:

We don't say "no" to people, but it's true that it takes time to get an appointment. And the delay is not the same for a person who experiences their request as an emergency—and that is normal—and we tell them, "There are many requests, so you can wait 2 weeks and I will give you an appointment." For us, 2 weeks is nothing, but for them it is a lot (Saroléa et al., 2022:65).

Casa Legal, an association of lawyers and social workers, stresses more broadly this observation can be made for the entire voluntary sector, when they have had to refuse some cases for "lack of time", stressing that the situation is known "because it is the same everywhere: there are too many requests and not enough possibilities" (Saroléa et al., 2022:65).

On the other hand, this lack of time and lack of staff in time implies particular practices that can sometimes be very selective where vulnerability becomes a real "selection criterion". The association Brussels Refugees argues in that sense:

> What came out of the discussions with the other partners is that, in the end, we are faced with people who are all in a precarious situation and vulnerable and that, on the ground, at some point, we had to categorize these vulnerabilities and make choices between which vulnerability is more urgent than the other […]. Faced with two people with vulnerabilities, we have to choose which one we will prioritise (Saroléa et al., 2022:66).

This climate of urgency is also shared by lawyers. Some of them revealed that their workload, the complexity of the asylum procedure and the large number of clients that each lawyer assists have the inevitable consequence that lawyers do not have

[27] Interview with D. Legreve, multipurpose employee, Ans Red Cross reception centre, Ans, Belgium, 14.09.20.

enough time to closely follow all asylum seekers, sometimes providing deeper legal assistance to the most "sensitive cases".

The second challenge follows from the first. This climate of urgency, because it develops in emotionally charged situations (in reception centers, and more generally throughout the asylum process) generates particular feelings produced by the very conditions of those situations and environments. Reception centers, for example, are also often a place where a lot of suffering is expressed by asylum seekers, notably through crises of decompensation, which creates forms of vicarious stress to which social workers are very exposed, generated by stories that happen to others. Here, it is no longer the absence of time, but the *prolonged exposure time*, the *over-exposure to suffering* which generates forms of stress in social workers that make them vulnerable. The presence of these forms of stress can be seen in the discourse of the people concerned:

In the evening when you come home it's tiring, it's more than a job in fact! it's perhaps a comfort zone to stay in good mental health, not getting too involved. I mean, the burnout and absenteeism rate in our country is huge! I mean,there's turnover, people leave, there's no one left!.[28]

Another social worker testified in the same vein:

> Because I work here, I really feel that. We feel that it's not good for our health, as workers, to be here, in the long term, I mean, you don't have to have big dreams here… You must have small professional goals here… Otherwise, with all that happens here, you don't sleep well.[29]

This high turnover is also explained by a precariousness in the employment contract and recognized as structural to the reception sector in the latest report of the Belgian Court of Audit, dated October 2022, which formulates a series of recommendations to improve personnel management within Fedasil, which is plagued by recurrent recruitment problems that considerably hinder the reception of asylum seekers in Belgium.[30] In these recommendations, the Court underlines the high turnover and the workload faced by Fedasil workers and recommends "to offer staff members permanent contracts as a matter of principle"[31] to increase the attractiveness of these positions and avoid this turnover phenomenon.

This feeling of turnover and lack of resources is also present in the voluntary sector, and creates a temporality of urgency, which on several occasions testifies to the need to resort to "volunteering" to fill vacant positions, forcing them to rely ever more on volunteers, which raises some questions regarding commitment. As the Rainbow House points out:

> What is the future of the voluntary sector, which has to rely more and more on "motivation", the commitment of people who are not paid for it? (Saroléa et al., 2022:65).

[28] Interview n° 52, social worker, Rixensart Fédasil reception centre, Rixensart, 28.09.2020.

[29] Interview n° 32, social worker, Jette, 09.09.2020.

[30] Court of Audit, report sent to the House of Representatives Brussels, October 2022.

[31] *Ibid*., p. 20.

This last excerpt also testifies to the financial challenges facing the voluntary sector in ensuring that the services it intends to offer remain consistent over time and continue to meet a demand.

The same situations are found in the comments of the lawyers interviewed for the Vulner project. There is also a significant turnover of lawyers due to a wide array of reasons which create "temporal ruptures" that impact the follow-up of asylum seekers, but more generally, the temporal expectations connected to them. In the face of deeply articulated work and an often very demanding asylum procedure, the result is not feeling sufficiently heard by the asylum authorities and, more generally, a lack of a sense of justice. As stressed by Pierre Robert:

Not many lawyers practice refugee law over a long period of time. There's, unfortunately, an absolutely gigantic turnover… that would be worth a study in itself. I think it comes from discouragement in the face of the injustice of the procedures and the impression of not being listened to, the fact that you can sometimes do a great job, in the end, it will lead to the same result as if you had done the bare minimum, because anyway, well that's it, it will be… it will be rejected (Saroléa et al., 2022:68).

Finally, this time that oscillates between "*too little*" (time to do one's job properly) and "*too much*" (exposure to the suffering of others and stress, for example) places the "asylum workers" in a situation of structural vulnerability that is produced and maintained by the functioning of certain structures and dynamics at play that undermine a given social system from the inside. That raises the question of the sustainability of a system as a whole. It also shows that different individuals positioned differently in the asylum system may be subject to timeframes that create "temporal disruptions"(Griffith et al., 2013) that also generate zones of uncertainty, therefore exposing them to risk of discouragement and burnout. This uncertainty flows from the systematic temporariness ("nothing lasts") with which asylum seekers are confronted in their journey. Nothing, apart from *waiting for a residence permit*, seems to remain permanent.

8.4 Conclusion

This Chapter demonstrates how time, through the implementation of the asylum process by the asylum bodies, contributes to a peculiar experience of asylum seekers awaiting protection. It illustrates how time becomes a fundamental and consistent issue as it positions asylum seekers in a temporal duration which is not neutral, but which carries with it "*vulnerabilizing effects*" as a result of the space-time in which asylum seekers are constrained to move. This Chapter also highlights how administratively produced temporalities must be taken seriously in the production of certain risks and, by extension, situations of vulnerability to which asylum seekers are unnecessarily exposed.

In summary, three dimensions of time can be drawn from the discussion in this Chapter.

Firstly, a very linear (almost theoretical) dimension, focusing on the *time and stages* of the procedure, which has structured the Chapter. This dimension is modelled on the different phases of the asylum procedure and the various steps when vulnerability must be legally identified and assessed in Belgium.

Secondly, a more dynamic dimension, focusing on the *temporalities* of the procedure, which aims to understand the interactions of time with the asylum seeker's experience of asylum—that alternates between long periods of waiting and sudden breaks—in terms of exposure to risks and situations of vulnerability. It also aims to understand how the temporal order that is established by the pace of this procedure also exposes the staff in charge of caring for or legally representing asylum seekers (social workers, lawyers) to certain situations of vulnerability.

In view of the above two dimensions, *time matters* in the Belgian asylum system, but *whose* time?

A third political and social dimension, focusing on the *"politics of time"* in asylum, can be drawn from this Chapter. It shows how different temporal orders are being organized in a given (asylum) system and how certain practices (and failures) of the system generate temporalities of waiting, in which the asylum seeker is exposed to time without ever being in a position to control it. In other words, as Hage says, "There is a politics about what waiting entails" (Hage, 2009:2). For issues as important as those that can generate asylum applications, there is a political aspect to recognizing—or not—through certain practices, the urgency of time passing and the need to be allowed to have a grip on it.

These different dimensions obviously interact and form a complex and singular temporal order which, according to our analysis, exposes the asylum seeker to certain vulnerabilities against which the current asylum system does not provide any tools to cope. In this sense, and this is the point of our Chapter, *time is to be taken seriously*, in every sense of the term, in the Belgian asylum system.

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Chapter 9
Accommodating Vulnerable Claimants in the Refugee Hearing: The Canadian Example

Anna Purkey, Delphine Nakache, Biftu Yousuf, and Christiana Sagay

List of Abbreviations

BOC	Basis of Claim Form
CBSA	Canada Border Services Agency
IFHP	Interim Federal Health Program
IRPA	Immigration and Refugee Protection Act
IRCC	Immigration, Refugees and Citizenship Canada
IRB	Immigration and Refugee Board
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
SOGIE	Sexual Orientation and Gender Identity and Expression

9.1 Introduction

In recent years, states have been increasingly committed to protecting "vulnerable" migrants and refugees, both at the domestic and regional/international levels (Nakache & Sagay, 2024; Atak et al., 2018). Canada is no exception here. In fact, the Canadian protection regime has made many positive and unique steps towards

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the increasing recognition of migrant vulnerability. For example, four Immigration and Refugee Board (IRB) Chairperson's Guidelines were developed (and subsequently revised) over the years to assist Canadian decision-makers to better address and respond to the needs of vulnerable migrants in their decision-making. In its earliest effort, the IRB created the 'child refugee claimants' Guideline (Guideline 3) (IRB, 1996) and the 'gender' Guideline (Guideline 4) in 1996 to provide board members with guidance when hearing cases involving children or issues of gender-based violence, gender inequality, and discrimination. In 2006, the IRB created a 'vulnerability' Guideline (Guideline 8) to assist board members in "providing procedural accommodation(s) for individuals who are identified as vulnerable persons" as they go through Canada's inland refugee determination process. Finally, in 2017, the IRB also developed a 'SOGIE' Guideline (Guideline 9) aimed at "promoting greater understanding of cases involving sexual orientation and gender identity and expression (SOGIE) and the harm individuals may face due to their non-conformity with socially accepted SOGIE norms." These Guidelines reflect important developments aimed at addressing the increased vulnerability of migrants.

No one would disagree in principle with the fact that recognizing the individual vulnerabilities of each applicant is a critical step in ensuring the integrity of the asylum system: refugee status is, above all, an individual status, and the ability of each individual to orally present their case in a neutral (i.e., non-adversarial) forum that strives to meet the highest standard of procedural fairness is what the Canadian system has been known for (House of Commons, 2018). However, vulnerability in Canadian legal and policy documents is rarely defined and lacks conceptual clarity. Moreover, for asylum seekers claiming protection, being identified as "vulnerable" on its own does not typically lead to the granting of refugee status. This recognition *may* open the door for board members to provide procedural accommodations (e.g., priority processing of application, allowing a support person, or varying the order of questioning) to mitigate the difficulties that 'vulnerable' claimants may face in adequately presenting their claims as a result of disabilities, trauma or other factors, but it does not substantively impact the outcome of the decision. As the study on which this chapter is based reveals, the "may" is important here because the circumstances or characteristics that are seen as rendering one asylum seeker more vulnerable than the average, and thus entitled to accommodations, differ according to the capacity of the claimant to present his/her case and the discretion of the board member. Factors such as the ability of the claimant to access a psychological report to support a claim of vulnerability and the discretion exercised by the decision maker in evaluating those claims of vulnerability and assessing what accommodations may be required, have a critical impact on the fairness, and potentially the outcome, of the proceedings and are thus deserving of further investigation.

In Canada, there is substantial literature on refugee determination proceedings and the legal, political, cultural, and psychological factors which can influence the outcome of refugee claims (Cleveland, 2008; Rehaag, 2008; Showler, 2007). While most research recognizes that determining refugee status is an extremely complex

decision-making process, "possibly the most complex one in any given society" (Crépeau & Nakache, 2008, 57), many works have also documented in a detailed manner the specific challenges that asylum seekers face in refugee hearings and the reasons why some claimants may be at increased risk of receiving a negative refugee decision compared to others. It has been shown, for example, that the difficulty involved in obtaining 'hard' evidence, trauma-related mental health sequelae, and cultural and communication barriers may have serious consequences in the process of ascertaining claimant credibility in asylum cases (Gojer & Ellis, 2014; Jones & Houle, 2008; Rousseau et al., 2002; Showler, 2007). However, specific literature on the Chairpersons' Guidelines is much more limited. More particularly, there are a few critical analyses of the SOGIE (Lee et al., 2021; Marshall, 2021; Mule, 2020; Rinaldi & Fernando, 2019) or gender Guidelines (Bernier, 1997; Foster, 1999; Sadoway, 2008) but—with the notable exception of Cleveland (2008)—no publication deals specifically with the 'vulnerability' Guideline (Guideline 8). Cleveland's (2008) critical overview of Guideline 8 was released shortly after it was implemented. This publication is important and valuable insofar as it identifies Guideline 8 as a step in the right direction and analyses some of its serious shortcomings: its purely procedural scope, the fact that it only applies to persons whose ability to present their case is severely impaired, and the fact that it does not give sufficient weight to expert opinions by mental health professionals (Cleveland, 2008). Yet there is in Cleveland's work no specific analysis on how the vulnerability of the asylum seeker is understood and assessed in the refugee hearing. Before the start of the VULNER project in Canada, there was only one published work dealing with vulnerability in the context of the Canadian refugee hearing (Huminuik, 2017). This piece seeks to understand how the concept of vulnerability is understood and intervened upon, and contains very relevant information regarding Guideline 8. However, as a PhD thesis in psychology, its scope is very different from that of this chapter. Indeed, its key objective is to ensure that mental health professionals who engage with the concept of vulnerability can better support vulnerable claimants, notably by determining which accommodations are like to be most effective.

In this chapter, we seek to add to the very limited body of literature on vulnerability and Guideline 8. We examine what types of procedural accommodations are provided in refugee status determination hearings before the Immigration and Refugee Board of Canada, and under what circumstances. Following an overview of the legislative and policy framework, including a discussion of how 'vulnerability' is understood in accommodation cases, we discuss the challenges that refugee claimants face in asserting or 'proving' vulnerability and thus eligibility for procedural accommodations. In particular, we highlight several issues of concern. The first challenge concerns the difficulty posed by the need to access psychological assessments in cases dealing with psychologically vulnerable asylum seekers and the inconsistent consideration of these assessments by board members. The second challenge examined in this analysis pertains to the broad discretion exercised by decision-makers, both in terms of acknowledging vulnerability and in terms of determining what, if any, procedural accommodations are appropriate. As outlined

below, while discretion allows an individualized approach, it also creates uncertainty and can result in unpredictable outcomes thereby exacerbating existing vulnerability.

This chapter is built upon findings from the Canadian team of the VULNER project, a study conducted in the context of an international project that sought to investigate how the "vulnerabilities" of migrants are defined in government documents, how they are assessed by decision-makers, and how the legal frameworks and the implementation practices concretely affect vulnerabilities as experienced by the migrants themselves (Kaga et al., 2021; Nakache et al., 2022). In the first phase of the research (April–December 2020), we examined how the 'vulnerabilities' of migrants are presented/defined in the relevant Canadian documents. During this phase, which solely relied on desk research data, we examined over 377 legal and policy documents, including legislation and regulations, guidelines, manuals, and ministerial instructions produced by government departments. Our study was complemented by an analysis of over 884 court cases and over 100 secondary sources from academic and grey literature. In the second research phase (January 2021–July 2022), we analyzed how migrants' vulnerabilities are understood and assessed in practice, and how migrants' vulnerabilities are created or exacerbated. During this phase, we conducted 104 interviews, including 21 interviews with 25 civil servants from the federal government based in the National Capital Region and in regional offices, including overseas (17 current employees from Immigration, Refugees and Citizenship Canada; and 6 current and 2 former employees from the Immigration and Refugee Board), 55 interviews with 56 on-the-ground practitioners (i.e., mainly lawyers and NGO representatives), and 28 interviews with 29 migrants. Given that many key services in Canada are provincial (such as health care and legal aid) it was important to compare the dynamics across different provinces. Thus, interviews with practitioners and migrants were conducted across several Canadian provinces: Ontario, Quebec, and the Prairies (Alberta, Manitoba, Saskatchewan). Together, these provinces are home to almost 80% of all permanent residents in Canada in 2020 (IRCC, 2021, p.38). All interviews were audio-recorded, transcribed and coded (using NVivo, a qualitative data analysis program). Our codebook was developed following mixed methods of deductive and inductive reasoning: a few coding categories were pre-determined according to our research objectives, but we also adopted an inductive approach to code other themes that emerged from our discussions with interviewees and as part of the coding process.

The analysis reproduced below draws on data collected during the two phases of the project, but it only uses data from interviews conducted with civil servants (most particularly board members from the Immigration and Refugee Board) and on-the-ground practitioners. Although essential to fully understanding the strengths and weaknesses of the Canadian refugee determination process, the experiences and views of migrants and practitioners are covered in other publications (Nakache et al., 2022; Nakache & Purkey, 2023). Practitioners are divided in our publications into two broad categories: the legal professionals (referred to as "lawyers") which includes both lawyers (30) and immigration consultants (1), and the non-legal

professionals (referred to as "practitioners"). This group consists of community workers (22), UN employees (1), and migrant network representatives (2). They are identified by participant number, province of interview, and date of interview. For example: "Lawyer 24, Ontario, 2020/11/12" or "Practitioner 5, Alberta, 2021/08/24". For civil servants, since the contacts of interviewees were provided by the government, we took additional steps so that the information provided cannot be directly attributed to any specific individual. For example, we assigned pseudonyms to all civil servant participants, and we removed locations of their workplaces. We also do not specify the exact date when the interview took place, and we use a numbering system that does not correspond to the order civil servants were interviewed. As an example, civil servants are identified as follows: "Civil Servant 14, 2021". Our conclusive findings stem from the insights obtained through these interviews.

In a somewhat complicating development, between the time that the research on which this chapter is based was conducted and this writing, the Immigration and Refugee Board of Canada released an updated version of Guideline 8: Accessibility to IRB Proceedings—Procedural Accommodations and Substantive Considerations (IRB, 2023c), and Guideline 3: Proceedings Involving Minors at the Immigration and Refugee Board (IRB, 2023a), and adapted Guideline 4 (IRB, 2023b) to reflect the language in the new Guideline 8 (IRB, 2023c). The revised Guideline 8 includes some important developments and directly addresses some of the concerns that are outlined below. Indeed, the revised Guideline 8 (IRB, 2023c) specifically refers to the findings of this research. While the analysis presented here is based on the experiences of decision-makers and advocates who were functioning under or subject to the former Guidelines (pre-2023), where possible, we have integrated commentary on the new Guidelines. Any conclusions as to the potential impact of the new Guideline 8 remain mere speculation at this stage.

9.2 How Vulnerability/Accommodation Is Viewed/Presented in Canadian Policy Documents

Before exploring the potential accommodations that individuals appearing before the Immigration and Refugee Board of Canada might require in order to ensure that they are able to present their case effectively despite any disability, trauma, or other vulnerability, it is critical to understand the legislative and policy framework within which this analysis is occurring. As noted in the previous section, the IRB has recently released revised versions of several of the Chairperson's Guidelines which specifically address some of the shortcomings that our research (and that of others as well) has identified. It is to be hoped that these revisions will promote a more nuanced and comprehensive understanding of the concept of vulnerability and a more considered and consistent approach to claimants experiencing vulnerability. Nevertheless, the fundamentals of the Canadian refugee protection system remain unchanged.

9.2.1 Legislative and Policy Framework

In Canada, there are three major immigration actors: the Canada Border Services Agency (CBSA), which is responsible for managing Canada's border, including determining an individual's initial admissibility at ports of entry and carrying out enforcement duties (detention, removal, etc.); Immigration, Refugees and Citizenship Canada (IRCC), which is responsible for developing and administering all of Canada's immigration programs, including but not limited to Canada's overseas refugee resettlement programs, humanitarian admission, and applications to remain in Canada on humanitarian and compassionate grounds; and the Immigration and Refugee Board (IRB), an independent tribunal responsible among other things for adjudicating eligible inland claims for refugee protection. While there are a variety of different avenues through which vulnerable migrants are able to gain legal status and protection in Canada, the focus of our discussion is on individuals who are seeking refugee protection through the inland claims process (as opposed to the overseas refugee resettlement process).

Individuals may make a claim for refugee protection at a Port of Entry when they arrive in Canada, or at an inland office. Immigration officers will first decide whether the claim is eligible to be referred to the Immigration and Refugee Board of Canada and, if so, the claim will be sent to the Refugee Protection Division (RPD) of the IRB. Claimants seeking recognition of refugee status must submit a Basis of Claim Form (BOC Form) in which they are asked to provide details about themselves (their identity, family, documents, and travel history) and about their reasons for claiming refugee protection in Canada. The BOC is critical to the application process as it is the primary document on which the claim, and ultimate hearing, is based. Claimants will subsequently receive a Notice to Appear for a Hearing document from the RPD with a date for their hearing. While awaiting their refugee hearing, claimants can apply for an open work permit and are provided with health care through the Interim Federal Health Program (IFHP) for refugees (for more on this topic, see Kaga et al., 2021).

At the IRB hearing, an RPD decision-maker (called a 'board member') decides whether the applicant's claim should be granted or not. To do so, the Board uses the information in the BOC form, together with the applicant's testimony, and other evidence. Under the *Immigration and Refugee Protection Act* (IRPA, 2001), refugee protection is given to claimants who are found to be either a 'Convention Refugee' or a 'Person in need of Protection'. These terms are defined under Sections 96 and 97 of IRPA and are known as the 'consolidated grounds'. At the hearing, the RPD has the authority to decide whether a person is found to meet either definition. If the claim is accepted (i.e., the decision is positive), claimants are given protected person status and can immediately apply for permanent residency. If the refugee claim is rejected (i.e., the decision is negative), in most circumstances, claimants will have

the right of appeal to the Refugee Appeal Division (RAD).[1] The appeal process is generally a paper process and is restrictive in terms of the evidence that may be considered. Those who do not have a right of appeal to the RAD may have the option to seek leave to judicially review the RPD decision at the Federal Court.

In 1996, Canada was the first country in the world to issue Guidelines to assist decision-makers in assessing claims for refugee protection (i.e., the two Guidelines on child refugee claimants and on women refugee claimants fearing gender-related persecution). Since then, six additional Guidelines[2] have been implemented and Canada has remained a leader in the field. Such Guidelines are aimed at ensuring that decision-makers understand the unique challenges that claimants face and that they avoid any stereotypes or inappropriate assumptions in their decisions. Four Guidelines (discussed in further detail below) are of direct relevance for this chapter since they deal with claims from "vulnerable" claimants: the Guideline 3 about children (1996, revised in 2023), Guideline 4 about gender (1996, revised in 2022 and again in 2023), Guideline 8 about vulnerable persons (2006, revised in 2012 and again in 2023), and Guideline 9 on sexual orientation and gender identity and expression (SOGIE) (2017, revised in 2021).

9.2.2 Understanding of Vulnerability with Respect to Asylum Seekers

Despite the growing recognition in the Chairperson's Guidelines of the need to accommodate vulnerable claimants, a coherent understanding of 'vulnerability' is still lacking in Canadian law and policy. To start with, the notion of 'vulnerability' is rarely defined in Canadian legal and policy documents pertaining to in-Canada asylum claims and very few of these documents, whether produced by the IRB, IRCC or CBSA, engage substantively with the concept. Indeed, the IRB's new Guideline 8 notes explicitly that "the term *vulnerability* should be interpreted broadly, as the concept of vulnerability remains difficult to define" (IRB, 2023c, ft. 1). This ambiguity is also reflected in the caselaw at the IRB where there is no meaningful engagement with the concept of 'vulnerability' or what it means to decision-makers. In the few cases where a definition of 'vulnerability' is provided, it is limited to a specific context and thus cannot be generalized to a broader range of situations. In other policy and legal documents, the concept is either absent or is used as a vague qualifier attached to a broad group (e.g., the government's "priority

[1] For more information on this topic, including which groups of refugee claimants are barred from accessing the Refugee Appeal Division, see our first VULNER report (Kaga et al., 2021), Sect. 6.3 (page 53).

[2] For more details on those guidelines, see the Immigration and Refugee Board's website: https://irb.gc.ca/en/legal-policy/policies/Pages/chairperson-guideline.aspx

to address the vulnerability of women in the immigration context" (Huminuik, 2017; IRCC, 2015; Kaga et al., 2021)). In the context of inland processes to determine refugee eligibility completed by either IRCC or CBSA, a vulnerable person is defined in processing manuals as an individual "who has significant difficulties coping with the refugee eligibility examination, due to a specific condition or circumstance" (IRCC, 2019; see also Kaga et al., 2021). Vulnerable persons are then divided into two subcategories: (1) individuals "who may be identified as vulnerable" (e.g., elderly); and (2) individuals "who may display less obvious symptoms of a vulnerability" (e.g., victims of trauma). The purpose of this categorization is to remind officers that some vulnerabilities are less obvious than others. For the CBSA, vulnerability is linked primarily to the agency's responsibility around detention and removals and its treatment of children, victims of human trafficking and persons with mental illness in these situations.

In the context of the refugee determination hearings, all divisions of the IRB receive guidance from the Chairperson's Guidelines (159(1)(h) *IRPA*). Chairperson's Guideline 8 (2012 revisions) was of particular relevance here as it provided a definition of vulnerable persons as "individuals whose ability to present their cases before the IRB is *severely impaired*"[3] (emphasis added, IRB, 2012, para 2.1), and it included procedural accommodations that could be offered to claimants who had been identified as being vulnerable. Importantly, Chairperson's Guideline 8 was not intended to apply to every person who might be vulnerable, rather it applied "to the more severe cases of vulnerability" (IRB, 2012, para 2.3). This resulted in a situation whereby the IRB appeared to accept that all refugee claimants are inherently vulnerable but recognized that only the 'most vulnerable' warranted special attention/procedural accommodations and left broad discretion to its members to decide which refugee claimants were sufficiently vulnerable to warrant these additional protections. This distinction between vulnerability that is common to all refugee claimants and that which is so heightened that it impedes the ability of individuals to present their claims, was further recognized by the Federal Court. For example, the Federal Court in *Orozco*, noted that the Guidelines distinguish between "ordinarily vulnerable refugee claimants and those who are severely vulnerable and therefore in need of particular accommodations." (*Orozco* 2008, para. 30). The Court then went on to cite the United Nations High Commissioner for Refugees Handbook and affirmed that "a duty to accommodate above and beyond those [accommodations] already built into IRB processes is triggered only in cases of severe vulnerability where an applicant's ability to present their cases is significantly and considerably impaired" (*ibid).*

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

The problematic nature of these requirements appears to have been recognized by the IRB itself as the 2023 revisions to Guideline 8 include two key changes. Specifically, in Sect. 1.2, the revised Guideline:

- Removes the need to designate and consequently label an individual as a "vulnerable person";
- Removes the requirement for an individual to establish that their ability to present their case before the IRB is "severely impaired".

Thus, under the new Guidelines, any person "participating in a proceeding at the IRB can make a request for accommodation" (Guideline 8, s. 9.1) and reasonable accommodations must be provided "to individuals requiring such accommodation taking into account any disability, vulnerability, or personal characteristics […] where necessary to ensure the fairness of the proceedings" (IRB, 2023c, s. 9.3). As the IRB explains, these changes reflect the existing state of practice where IRB decision-makers were frequently granting accommodations without a "vulnerable" designation as many refugee claimants could not meet the "severely impaired" threshold and yet the interests of procedural fairness still required that they be accommodated. (IRB, 2023c, ft. 4; Cameron, 2018, 100).

Unlike in the context of resettlement where recognition that a claimant falls into a particular 'vulnerable' category might increase the likelihood of resettlement,[4] in the context of inland claims for asylum, "vulnerability" as set out in such policies and legislation as exist, is *not* a basis for a grant of protection. Refugee protection is only granted to those individuals who meet the definition of Convention Refugee or Person in Need of protection set out in ss. 96 and 97 of IRPA. Factors that render an individual vulnerable (e.g.: trauma, disability, social construction of gender, or age) may contribute to the harm or persecution that they have experienced or increase their risk of persecution, but on its own vulnerability does not entitle a claimant to protection.[5] Thus "vulnerability" is primarily relevant insofar as it has an impact on a claimant's ability to present their claim and the fairness of the proceedings. The question to be asked then is whether the vulnerability of a particular claimant is such that it entitles them to *procedural* accommodations. As an example, the IRB Chairperson's Guideline 8 (2012) noted that its objective was to "promote consistency, coherence and fairness" by providing that people who would otherwise have difficulty testifying be given appropriate accommodations (IRB, 2012, Sect. 1.1; Kaga et al., 2021). Thus, any potential accommodations are viewed as being a necessary part of ensuring procedural justice and protecting the integrity of the process. However, the 2012 Guideline 8 is clear that an identification of vulnerability "is made for the purpose of procedural accommodation only" and "does not predispose a member to make a particular determination of the case on its merits" (IRB, 2012, Sect. 5.2).

[4] For more on this topic, see Nakache et al., 2022, 41–45.

[5] Note that the explicit recognition of vulnerability factors as potentially contributing to an individual's claim for protection was included the revised Guideline 8 (s. 16.2), in contrast with the 2012 Guideline 8 where vulnerability was only considered in a procedural context.

If, under the former (2012) Guideline 8, a claimant was found to meet the heightened standard of vulnerability, if the recognized vulnerability was *above and beyond the norm*, they might then be entitled to procedural accommodations. While both Guideline 8 and the case law asserted that vulnerability could be assessed at any time, the caselaw suggested (and the revised Guideline 8 specifically states in s. 12.3) that early identification is preferable, and that concerns surrounding vulnerability should ideally be raised by the claimant or their counsel at, or prior to, the hearing whenever possible. Nonetheless, accommodations may be requested at any point throughout the process as it becomes evident that they are needed. Decision-makers may themselves raise concerns about vulnerability (Purkey, 2022),[6] but the assumption is that the claimant and his/her counsel bear the greater burden as they are considered to be best placed to bring these concerns to the attention of the IRB.[7] When raising this issue, counsel or the claimant may propose certain specific accommodations. The range of possible accommodations is broad and includes such things as allowing the presence of a support person, assigning a designated representative, assigning a female decision-maker, rescheduling the hearing, allowing additional breaks, reversing the order of questioning, etc. The decision as to whether accommodations are necessary—and what those accommodations might be—ultimately resides with the IRB member who is "expected to follow the Guidelines unless there are compelling or exceptional reasons for adopting a different analysis" (*Higbogun* 2010, par. 60) but who, even under those Guidelines, has broad discretion as to what accommodations, if any, are granted.[8]

In comparison, the SOGIE Guideline 9 adopts a much more comprehensive understanding of the vulnerability experienced by LGBTQ claimants, focusing not on any innate quality, but on the society and environment in which individuals are situated and the impact of cumulative discrimination, limited access to resources due to their LGBTQ identity, and the intersectionality of their various identities (IRB, 2017; Kaga et al., 2021).[9] Likewise, Chairperson's Guideline 4 provides IRB members with guidance in considering evidentiary problems which women refugee claimants may experience in demonstrating their claims. However, unlike Guideline 8, neither of these Guidelines lead directly to a grant of procedural

[6] See e.g. Gilles v Canada (Minister of Citizenship and Immigration), [2011] FCJ No 6; RAD File No MB5-02903, [2016] RADD No 74; RAD File No TB4-04948, [2014] RADD No 586.

[7] Under the former Guideline 8 (2012), any assertion of vulnerability had to be supported by evidence if possible; this included psychiatric or medical assessments as outlined in Sect. 8 of Guideline 8. The revised Guideline 8 loosens these requirements and suggests that board members should determine whether any supporting documentation is needed on a case basis, proportionate to the accommodation being requested (for more on this topic, see Sect. 9.3.1 below).

[8] Note that while there is an expectation that decision makers will apply the Chairperson's Guidelines, the guidelines themselves are not legally binding and thus a departure from the guidelines that does not result in a breach of natural justice or of fairness will not necessarily give rise to independent grounds for judicial review or appeal (Purkey, 2022).

[9] See the discussion of situational vulnerability in the introduction to this volume.

accommodations,[10] instead they exist to assist decision-makers in understanding the particular challenges these claimants face and to ensure that they avoid stereotypes or inappropriate assumptions in their decision-making (IRB, 2018, para 1.4).

In sum, to its credit, the IRB has taken substantial steps to provide decision makers with guidance as to how they should understand and address vulnerability in the context of refugee hearings, primarily through the discretionary grant of procedural accommodations aimed at mitigating any challenges that these claimants might have in presenting their cases. These accommodations are viewed as a critical component of ensuring a high standard of procedural fairness. Nevertheless, particularly prior to the 2023 revisions, the Guidelines also created a tacit hierarchy of vulnerability—a "severely vulnerable" standard that could act as a barrier to entry with respect to accommodations. This barrier was one of several highlighted by participants in our research; two others, discussed in detail below, consist of the inconsistent use and consideration of psychological reports as 'proof' of vulnerability and the uncertainty created by the broad discretionary powers of IRB decision makers.

9.3 Key Challenges on the Ground

Despite the IRB's recognition of a need to accommodate different types and sources of vulnerability in refugee status determination hearings, our research found that practitioners, and even civil servants, have mixed perspectives on the success of translating this awareness into effective action. Some of the concerns raised in our interviews are addressed in the 2023 revisions to Guideline 8, but the effectiveness of these changes remains to be seen given the non-binding nature of the Guidelines and the difficulty involved in changing institutional culture and practices. As discussed in detail below, the revised Guideline directly addresses the issue of accessing and evaluating psychological reports in IRB proceedings, a requirement which has been identified as problematic in our research. The changes, however, may result in greater confusion rather than more certainty. Concerns regarding certainty, or more accurately uncertainty, also arose with respect to the broad scope of discretion granted to IRB decision makers both with respect to their evaluation of

[10] The original, 1996 Guideline 4 provided decision-makers with guidance on how to consider gender-based claims but, in terms of procedural accommodations, referred only to the idea that in some cases of sexual violence "it will be appropriate to consider whether claimants should be allowed to have the option of providing their testimony outside the hearing room by affidavit or by videotape...". The 2022 revisions of Guideline 4, included a more general reference to the potential need for procedural accommodations (s. 5.3), particularly as "[s]ome individuals who have experienced gender-based violence may not meet the threshold set out in the Chairperson's Guideline 8 on Vulnerable Persons but would nonetheless benefit from certain procedural accommodations" and provides a short list of potential accommodations. The 2023 revised Guideline 4 states simply that "[s]ome individuals who have experienced gender-based violence may require procedural accommodations under *Chairperson's Guideline 8.*"

psychological reports, and of vulnerability and the need for accommodations more generally. As discussed below, the discretion afforded IRB members is necessary, is not impacted by the 2023 Guideline revisions, and remains somewhat problematic.

9.3.1 The Inconsistent Use and Consideration of Psychological Reports in IRB Proceedings

As noted earlier, Guideline 8 provides procedural accommodation to refugee claimants with issues which may impede their ability to present their cases and thus impact the tribunal proceedings. In this section, we focus on psychologically vulnerable refugee claimants. As we show, although the IRB has taken steps—through its Guideline 8—to identify and accommodate such individuals in refugee proceedings, only a small portion of these asylum seekers are able to access meaningful psychological support. Moreover, there is a high degree of variability among board members in the interpretation and use of expert reports.

A psychological or psychiatric report is an important tool to guide the refugee determination process: it allows psychologically vulnerable asylum seekers who disclose pre-migratory traumatic events and trauma-related mental health issues to translate their trauma stories into a medico-legal language that is viewed by board members as authentic and credible. This is essential in a context where mental health can seriously impact the testimony of asylum seekers and thus have a direct impact on the outcome of the case since it is the credibility of the claimant that is at stake (Cleveland, 2008; Gojer & Ellis, 2014, 4; Houle, 2008). However, as Huminuik notes (2017, 181), "psychological evidence is not being utilized to its fullest potential at the IRB".

First, only a small portion of psychologically vulnerable asylum seekers are able to secure a psychological or psychiatric report. Given the complexities of the refugee determination system in Canada, unrepresented claimants will usually not seek to secure such reports, nor will they require accommodation in a refugee hearing. This brings us to the issue of legal representation: as our board member interviewees noted, legal representation does not eliminate the vulnerabilities at play during the process, but it can help to mitigate them (Cameron, 2018; Gojer & Ellis, 2014; Nakache et al., 2022, 43). Even for claimants who are represented by a lawyer, securing expert reports is very difficult. As one lawyer explained:

> …Legal Aid Ontario will pay a specialist 300 dollars plus tax to do an assessment and write a report (…) I've had doctors be like, "I treat it as pro bono, because, like, my hourly rate and the amount of time I spend," so interviewing the client, often with an interpreter, which of course makes things take twice as long, and then writing (…) a useful report and then sending it to counsel… so it's like 10 hours of work, and they've been paid for one hour…so finding people who are willing to do this is really tough. I can think of less than 10 psychiatrists and psychologists in the GTA who will do them, and so they are often like you're trying to book weeks and weeks and months in advance… (Lawyer 8, Ontario, 2021/07/09).

In addition to the onerous costs involved, such reports are also difficult to obtain because they are very labour intensive. For example, several reports are usually required: one report that must address how trauma symptoms lend credibility to the claim, and another (separate) report that must explain how these symptoms are anticipated to impact a claimant's ability to testify and risk for re-traumatization (Huminuik, 2017, 183). Research has shown that individuals who are unable to access lawyers and/or expert witnesses are at an increased risk of negative decisions, deportation and continued mental health deterioration in their country of origin (Gojer & Ellis, 2014, 2).

Second, there is a great deal of inconsistency among board members in their consideration of expert reports. More particularly, board members are hesitant, at times, to accept expert witness testimony: either they are skeptical regarding the objectivity of psychiatric/psychological reports, or they tend to make medical assessments that are completely beyond their legal expertise (Gojer & Ellis, 2014, 8–9; Nakache et al., 2022, 44–45). Canadian courts have stated on many occasions that "while members of the Refugee Protection Division have expertise in the adjudication of refugee claims, they are not qualified psychiatrists, and bring no specialized expertise to the question of the mental condition of refugee claimants" (*Ors* 2014, para 22 (in obiter); *Pulido* 2007, para 28). According to the court, therefore, board members do not have the power to substitute their own judgement about the claimant's mental health for that of qualified psychiatrists and psychologists, who are professionals using their expertise in reaching their diagnoses and conclusions (Cameron, 2018, 45). Yet, as is highlighted in the IRB's *Training Manual on Victims of Torture*, even though board members are expected to take into consideration all evidence including expert reports, they are not "bound to accept and give full weight to an expert report or testimony" (IRB, 2004, 42). Board members are not experienced with or trained to analyze and understand the mental health challenges of asylum seekers. In 2010, the Schizophrenia Society of Ontario highlighted that IRB board members "cannot be expected to be able to ascertain the extent of a mentally ill individual's ability and/or vulnerability, and subsequently the special accommodations they require, unless they receive proper training to do so" (Schizophrenia Society of Ontario, 2010, 25; cited in Gojer & Ellis, 2014, 9). Interestingly, some of our board member interviewees also expressed substantial discomfort in processing claims from refugee claimants with mental health issues. As one member noted: "…it's really hard to invest in a person who has no psychological training and the ability to assess whether somebody needs help" (Civil Servant 2, 2021). There should be more credit and consideration given to expert reports by board members. In fact, as one lawyer noted: "we have to really get out of the idea that the board can (…) even make this [mental health] determination. We have to get out of this guideline principle and say, 'No. This has to go to a medical professional. A medical professional will make the determination as to whether they can appreciate the nature of the proceedings (…) Board members should [not]even be allowed to touch that decision" (Lawyer 7, Ontario, 2021/06/23).

The 2023 revisions to Guideline 8 stipulate (para. 13.2) that board members "should consider the barriers individuals may face in obtaining expert evidence". Given the disproportionate number of psychologically vulnerable refugee claimants who are unable to access expert witnesses/lawyers, as discussed above, this is a positive change. However, the 2023 revisions to Guideline 8 are more problematic regarding psychological reports. The revised Guideline recognizes that "expert evidence can be of assistance to the IRB in applying this guideline", but it also notes that "[e]xpert evidence is generally not required to support a request for procedural accommodation" (IRB, 2023c). By downplaying the role of expert reports, this later formulation provides decision-makers with even more flexibility than before to offer (or not) procedural accommodation to psychologically vulnerable asylum seekers and hence, is creating a more uncertain environment for claimants and their legal representatives regarding the weight to be given to psychological/psychiatric reports in claims for special procedural accommodation. This, in turn, can have a negative impact on the refugee evaluative process, as the two are closely intertwined. On a positive note, the revised Guideline 8 contains a heightened awareness of the impact that trauma may have on refugee claimants which was also expressed by our board member interviewees (even if board members are unsure how to cope with that impact). The trauma-informed approach to decision-making reflected in the revised Guideline 8 (in part 5), which was also already reflected in the revised Guideline 4, is thus a most welcome addition, although it is still difficult to anticipate what impact this recognition will have in practice. As with many elements of the administrative system, much will depend upon the knowledge and expertise of individual IRB Members. This leads us neatly into a discussion of the discretion exercised by decision-makers.

9.3.2 Discretion

It is trite to say that discretion is a double-edged sword and yet it is also fundamentally true. As alluded to in the discussion above, IRB decision-makers retain broad discretion in recognizing and evaluating the vulnerability of claimants, in determining when procedural accommodations might be necessary, and in deciding what procedural accommodations are appropriate in a given case. This discretion is an essential component of an individualized decision-making process, but it may also result in inconsistency and unpredictability in decision-making. In comparison with IRCC or the CBSA, the IRB provides its decision-makers with far more guidance when addressing "vulnerabilities" but also with wide discretionary powers. As noted in the Regulatory Impact Analysis Statement regarding the RPD and RAD Rules: "Because considerations of natural justice and fairness are always paramount, the IRB member is always able to exempt a party, when appropriate, from the specific requirement of any rule, with proper notice to parties. Members will remain alert to the specific challenges faced by these persons and will use their discretion to ensure that all those who appear before the IRB are provided with a fair

and just resolution of their case" (IRB, 2018). Thus, while the Rules of the various IRB divisions are binding and decision-makers must follow them, it is acknowledged that "certain rules expressly grant discretion" (IRB, 2020). In contrast, the Chairperson's Guidelines are not mandatory but, as previously noted, decision-makers are expected to apply them or to provide a justification for not doing so (IRB, 2003; IRB, 2019). While the revised Guideline 8 has attenuated some of the requirements for requesting procedural accommodations (removing the 'severely impaired' standard and reducing the need for supporting documentation), it has not changed the balance of power between the claimant and the decision-maker, nor reduced the discretion that board members exercise. This discretion has been endorsed by the Canadian courts which have recognized that a failure to apply the IRB Guidelines will not necessarily constitute grounds for judicial review,[11] but similarly, that a person does not need to be designated as 'vulnerable' to be accommodated. In practice, IRB members often provide procedural accommodations whether or not they formally recognize the claimant as 'vulnerable'.[12] The result is a system where board members are provided with many guiding principles, but also a substantial amount of discretion and flexibility to address the specific facts and circumstances of each case as noted in the second VULNER research report (Nakache et al., 2022).

The discretion afforded to IRB decision-makers when it comes to accommodating vulnerable claimants is one of the strengths of the system. It allows the refugee determination system to be responsive to the individual needs of each claimant, needs which are the consequence of the individual's identity and characteristics, their personal experiences in the country of origin, and even their experiences in Canada. A trauma-informed approach must necessarily recognize that each individual responds to trauma in a different way and must accommodate this variation. We see evidence of a growing understanding of this variability in the Chairperson's Guideline 9, in the explicit references to trauma-informed adjudication in the 2022 Chairperson's Guideline 4 (e.g.,: s. 5.2.1 "The IRB recognizes the importance of taking a trauma-informed approach to the adjudication of proceedings involving gender considerations"), and in the recent (2023) revisions of Guideline 8 (e.g.,: 5.2.2 "Members and adjudicative staff should apply trauma informed adjudication principles to cases where trauma impacts a person's ability to fully participate in the proceedings"). This individualization allows counsel to request specific accommodations, as noted in our interviews with practitioners: "As a lawyer I can make special accommodation request, they're not always granted, but I can do it. So, I think we have a lot of ways that we do already support these vulnerabilities" (Lawyer 2, Ontario, 2021/05/14).

[11] *Hernandez v Canada (Minister of Citizenship and Immigration)*, [2009] FCJ No 109; Higbogun v Canada (Minister of Citizenship and Immigration) [2010] FCJ No 516; *Bolombu Ndomba v Canada (Minister of Citizenship and Immigration),* [2014] FCJ No 188.

[12] Purkey, 2020; also, Cleveland, 2008, p.122–123. This reality is now reflected in the 2023 revisions of Guideline 8.

The existence of this broad grant of discretion presumes that board members are able to exercise their authority in a fair and reasonable manner. Thus, the integrity of the system depends in large measure on the quality of decision-makers and on the training that they receive. In the 2012 version of Guideline 8, specific attention was drawn to the fact that "the very nature of the IRB's mandate […] involves persons who may have some vulnerabilities" (para 2.3) but that this had been accommodated for in the design of the IRB proceedings and in the training of board members. Indeed, IRB interviewees in the VULNER project highlighted the substantial efforts devoted to ongoing training and professional development of decision-makers. This expertise has also been confirmed by both the RPD and the Federal Court where the decisions explicitly refer to the competence of the IRB decision-makers with regard to vulnerable claimants, their experience in dealing with 'vulnerable' claimants and the "extensive training on how to elicit evidence and conduct themselves in such circumstances" that board members have received.[13] The IRB seeks to strike a fine balance: board members must be provided with specialized ongoing training and tools such as the Chairperson's Guidelines in order to foster some degree of consistency and fairness in decision-making and yet none of these measures can be permitted to fetter the independence of the decision-makers. Consequently, the ultimate preservation of the system's integrity rests in large measure upon the confidence that society has in the discernment and discretion exercised by the decision makers.

The broad discretion which board members exercise in assessing and accommodating vulnerability allows for flexibility and individualization but it also results in inconsistency and a lack of predictability in the interpretation of refugees' claims. Our research found that when applied strictly, the narrow understanding of vulnerability adopted by the 2012 Chairperson's Guidelines, that is the need to establish that the claimant requesting accommodations is "severely" impaired, could result in perverse consequences. For example (albeit not in an asylum hearing), Purkey notes that "in an application [at the Federal Court] for a stay of removal on Humanitarian and Compassionate grounds, a refugee claimant who was a diagnosed schizophrenic was found not to be a vulnerable person for the purposes of the Chairperson's Guidelines" (2022, 7).[14] While eliminating the "severely impaired" requirement is certainly progress, it remains to be seen what impact this will have in practice.

Even without that standard, the availability of accommodations will still depend upon the discretion of board members. Practitioners interviewed for this research highlighted the challenges of relying on members to assess the vulnerability of claimants, often with no mention of the "severely impaired" standard thus raising questions as to whether its elimination will have substantial impact on the ground. As one lawyer explained:

[13] *RKN (Re), [2004] RPDD No 14.* See also e.g. *LA v Canada (Minister of Citizenship and Immigration),* [2016] FCJ No 1378.

[14] Referring to *Gardner v Canada (Minister of Citizenship and Immigration)*, [2008] IADD No 767.

> Someone could have dementia and still understand the nature of a proceeding… The bar is "Do you understand what this refugee claim is about?" And it's like someone is "Yeah. It's to let me stay in Canada, where I can be safe." It's like, "That's appreciating the nature of the proceeding." My four-year-old can tell you that, right? That doesn't tell you anything about (…) that person's ability to give testimony and provide evidence, or to meaningfully participate… (Lawyer 9, Ontario, 2021/07/13).

Another lawyer recounted a similar experience when seeking a designated representative (an accommodation) for an elderly claimant:

> …In this particular case, it was just age, you know, really advanced age. Obviously, people's minds at that age are not as sharp as they were, and so on. And the Board Member asked her a question: "Madam, do you know why we're here today?" And she answered to her interpreter, "Oh, you are going to grant our claim to stay in Canada," something like that, "and thank you very much." And he's like, "Well, counsel, I don't see a problem here," I just remember, like, that's not enough to, you know, determine that she's not a vulnerable person (Lawyer 8, Ontario, 2021/07/09).

Practitioners were not the only interviewees who expressed their concern about the exercise of discretion. In one interview, an IRB member noted that the process for accommodations could be very fluid and admitted that it could be concerning because while board members receive training to sensitize them to the potential vulnerability of claimants and generally respond to what is happening in the hearing room, ultimately it depends on the individual decision-maker.

> […] Ça pourrait être inquiétant, parce que c'est d'un commissaire à l'autre ce n'est pas nécessairement le même degré de sensibilité. […] On va accommoder la personne qui ne se sent pas bien, qui… tu sais. Il y a toujours… donc, c'est intrinsèque au processus, mais évidemment ça dépend de chaque commissaire dans sa réaction face à ce qui se passe en salle (Civil Servant 18, 2021/08/25).

The existence of this broad discretion highlights the great importance of ongoing training and quality management at the IRB but also the need for ongoing monitoring of the consistency of IRB decisions.

9.4 Conclusion

Canada has made significant strides in the protection of vulnerable migrants and refugees. The establishment of the Immigration and Refugee Board (IRB) Chairperson's Guidelines is one such indication of Canada's determination to grasp and address the myriad of challenges faced by vulnerable refugee claimants throughout the asylum process. Over the last three decades, we have seen the Guidelines evolve to respond to changes in societal standards and to address the complex and multifaceted challenges faced by claimants seeking protection in Canada. One such evolutionary undertaking is the move away from a discourse that labels individuals as 'vulnerable' to a focus on proactively catering to the needs of all claimants

necessitating support. This shift recognizes the paramount significance of procedural equity for every participant, irrespective of their vulnerability status, and reinforces the overarching goal of elevating and maintaining the integrity of the asylum process.

While remarkable steps have been taken, the asylum process remains challenging for many refugee claimants seeking protection in Canada. For one, a unified, all-encompassing understanding of 'vulnerability' within Canadian law and policy remains elusive. The vagueness of this concept still casts a shadow of ambiguity in legal and policy documents, and creates uncertainty in refugee determinations before the IRB, as a finding of vulnerability does not infer or necessitate a substantive outcome and leaves the claimant still subject to the IRB's discretion in making a determination on what sort of procedural accommodation would be granted to suit the justice of the case. Another challenge is regarding psychological vulnerabilities. Though the Guidelines lay down a blueprint for accommodating psychological vulnerabilities, the absence of comprehensive psychological support undermines the trauma-informed approach needed by vulnerable asylum seekers. Furthermore, the divergence in how expert reports are interpreted and employed among board members heightens the need for additional coherence and clarity within the system.

While limited, Canada's commitment to protecting asylum seekers throughout the process is evident in its progressive approach to understanding and addressing the vulnerabilities of claimants and emphasizing the need to grant accommodation for vulnerable claimants before the IRB. The recent changes to Guideline 8 suggest a desire to address some of the challenges presented here. Whether this effort has been successful remains to be seen.

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Chapter 10
Interdependencies of Vulnerability and Asylum Law Within the German Federal System

Jakob Junghans and Winfried Kluth

List of Abbreviations

APD	Asylum Procedure Directive 2013/32/EU
AnkER-centres	German Reception Centres for Arrival, Decision-making and Return (Zentren für Ankunft, Entscheidung und Rückführung)
BAMF	Federal Office for Migration and Refugees
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
ECHR	European Court of Human Rights
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	EU member states and four non-EU member states, which are associated to the Schengen area (Iceland, Liechtenstein, Norway, and Switzerland)
EUAA	European Union Agency for Asylum
EURODAC	European Asylum Dactyloscopy Database
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex +
NGO	Non-Governmental Organization
PICUM	Platform for International Cooperation on Undocumented Migrants
RCD	Reception Conditions Directive 2013/33/EU
UMA	Unaccompanied minor asylum seekers

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10.1 Introduction

The concept of vulnerability is complex and has different meanings and interpretations across different disciplines. While vulnerability can be seen as an inherent characteristic of human existence, there is at the same time the risk of attributing a certain vulnerability to individuals without acknowledging that specific characteristics do not lead to vulnerability *per se*, but through a certain reception and construction in society. This understanding of vulnerability as an individual issue facilitates victimisation and obscures factors that lead to vulnerable situations. In particular, vulnerability can be shaped by external factors such as situational (e.g., during one's exodus) and administrative conditions (limited access to the health system, mandatory housing in reception centres). For us, vulnerability should be understood beyond the ontological sphere (Boublil, 2018), which refers to an individual's intrinsic characteristics, and instead we must recognize that vulnerability is often imposed upon individuals by societal perceptions based on personal characteristics. For example, groups identified as vulnerable by international and European protection tools are categorized as such due to societal perceptions rather than their inherent vulnerability.

It is important not to essentialise vulnerability by reducing individuals to one dimension or establishing hierarchies between different categories based on personal characteristics. Vulnerability is a complex and context-dependent phenomenon shaped by the interaction of multiple factors, including individual attributes, institutional, political, economic and social factors. Therefore, vulnerability is mostly situational and shaped by various forms of interactions, such as social and economic factors, interpersonal relationships, or life events (Boublil, 2018). Many could be the factors that are able to exacerbate a situation of vulnerability: the fact of being dependent on the authorities, limited access to medical and care assistance, or limited contacts with family and mediators. To emphasise these structural factors of vulnerability we speak about administrative vulnerability as a form of situational vulnerability when examining the relationship between experiences of vulnerabilities and the legal and bureaucratic framework. As will be shown, the different personal and social factors and circumstances generating vulnerabilities cannot be strictly separated from each other, but can also be interrelated. This chapter complies with the overall research design and therefore pays special attention to the analytical concepts of intersectionality,[1] temporality,[2] and agency.[3]

[1] In this context, intersectionality recognizes vulnerable positions of asylum seekers as the outcome of a combination of interconnected and diverse, social and personal circumstances making it insufficient to only rely on specific categories or to focus only on abstractly defined personal characteristics; see further (Crenshaw, 1991).

[2] The concept of temporality emphasizes the temporal aspect of vulnerabilities' constant evolution, including how they are shaped through the passage of time, for example, due to prolonged asylum procedures; see further (Brun, 2015; Griffiths, 2014).

[3] Agency means the migrants' ability to make their own independent and free choices, and to utilise existing rules and structures to achieve their own personal objectives; see further

In particular, German asylum law is a good field of enquiry to analyse the interdependencies of vulnerability and the legal and bureaucratic framework. German asylum law was established to grant protection (Art. 16a German Constitution), while it subsequently evolved to limit the rights of those seeking refuge. As the law limited the rights for irregular migrants, such as people illegally residing in Germany, and also for people who were granted protection (cf. Sect. 10.3.3). This demonstrates that this contradiction is inherently connected to German asylum law. Additionally, the federal system in Germany led to the respective asylum procedures differing in each German state. Some legal procedures are regulated at the federal level, while other procedures remain at the state's responsibility. Regarding migration law the asylum procedure and the asylum benefits are regulated uniformly throughout Germany, whereas the accommodation and integration of asylum seekers[4] is at the discretion of each German state. The competences on assessing and addressing vulnerabilities of asylum seekers are shared between the federal state, the German states, and the municipalities.

The term vulnerability is almost non-existent in German asylum legislation. In federal law, only the § 44 (2a) Asylum Act refers to the general obligation of each German state to consider asylum seekers' vulnerability when accommodating them. And the § 12a Asylum Act mentions the obligation to identify special procedural and reception needs in the context of the asylum-procedure counselling (*Asylverfahrensberatung*). However, the term vulnerability is not used here either; instead, the Asylum Act refers to "persons in need of protection" or "foreigners with special procedural guarantees" or "foreigners with special reception needs". Thus, vulnerability is not a legal term in German asylum legislation, but a concept that is described and directly related to the relevant procedures (asylum and reception procedure). Besides these general obligations, there are no concrete legal provisions for vulnerable asylum seekers, thus no binding regulations from the federal state. Therefore, the concept of vulnerability is largely referred to informally in administrative regulations regarding certain groups, for instance those in receptions centres. Thus, there are no unified practices, which consequently produces inequal treatment of individuals depending on the localities they are assigned to or they arrived at.

In view of this volumes' overall objective, this chapter will first summarize the most important provisions towards vulnerable asylum seekers in the Common European Asylum System (CEAS) and then illustrate how vulnerabilities of asylum seekers are addressed within the uniform asylum law. The chapter will then explore the fragmented regulations from different German states. Comparing the various state practices and highlighting the experiences of asylum seekers, the chapter will question which approach is best suited to reduce the vulnerability of asylum seekers in Germany. It will utilize data collected through interviews with asylum seekers, public servants, social workers, and other relevant experts.

(Triandafyllidou, 2017).

[4]We refer to "asylum seekers" in a generic sense, without distinguishing whether the person has applied for asylum, is still in the procedure, has received a negative decision, or a suspension measure.

As will be shown, the legal ambiguities—both at the federal and municipal level—have led to increasing differences in the municipalities and German states, which was also reflected in our interviewees' experiences. These differences and the attempts of federal and state authorities to collaborate in matters of accommodation and return procedures will be discussed throughout this chapter, and what this all means for the vulnerability of asylum seekers.

10.2 European Provisions for Vulnerable Asylum Seekers and Their Implementation Into German Legal Framework

The concerns of vulnerable persons are addressed in several contexts by the CEAS, which make them the subject of obligations for Member States. While there exist provisions in many Directives, we will focus on the Asylum Procedure Directive 2013/32/EU (APD) and the Reception Conditions Directive 2013/33/EU (RCD).[5] In this context, a distinction must be made between basic principles which must be respected with respect to all asylum seekers, and concrete requirements for specific groups like unaccompanied minors.

10.2.1 European Regulations

Article 21 RCD provides a *general principle of assistance* to vulnerable asylum seekers and contains a more detailed, but not exhaustive, definition of the groups of persons covered. Consequently, Article 22 RCD constitutes the *general obligation to identify and assess asylum seekers' special needs.* The Directive further contains subsequent *provisions on specific groups of persons* (minors in general, unaccompanied minors, and victims of torture and violence). The clarifying reference in Article 22 (2) RCD states that the assessment of special needs does not have to (but can) be carried out in a separate administrative procedure. This assessment can be made in connection with the registration procedure and medical examinations that are provided for all asylum seekers.

The APD takes into account special needs of vulnerable persons, inter alia, in the application process (Art. 7 regarding minors), in the conduct of the interview (Art. 14 para. 2), in the medical examination, (Art. 18) as well as in procedural guarantees (Art. 24 f.). In contrast to the RCD, the APD has lower requirements regarding

[5] The Qualification Directive 2011/95/EU takes vulnerable persons into account in connection with the requirements for medical care (Art. 30 para. 2) and for dealing with unaccompanied minors (Art. 31). Cf. also Art. 6, 8, 16 Dublin III Regulation 604/2013/EU and Art. 3 No. 9, 10, 17 of the EU Return Directive 2008/115/EC.

the identification of vulnerabilities. This is seen in the fact that according to Article 24 (2) the assessment of whether special procedural guarantees are needed can be integrated into the existing identification procedure referred to Article 22 RCD. However, the reference to *existing* procedures clarifies that in case no formalised identification procedure is in place when determining the reception conditions, the competent asylum authority has to comply to its obligation of assessing special procedural guarantees as part of the asylum procedure.

10.2.2 Implementation Into German Legal Framework

Regarding implementation, each member state is free to decide how it administrates the regulations that relate to vulnerability. This applies to the context of the specific legislation (regulation in immigration laws or in specific laws to which there is a reference), but also to the regulation at the federal level, the level of the German states (*Länder*), or at the municipal level.

In the main legal instruments of German migration law (the federal Asylum Act and Residence Act) there are only a few regulations regarding vulnerable persons: as already mentioned, the § 12a (2) Asylum Act transfers the responsibility to identify special procedural and reception needs to the asylum procedure counselling, which is provided by welfare organisations. The § 12a (3) Asylum Act states the asylum-procedure counselling provider's obligation to inform the Federal Office for Migration and Refugees (BAMF), and the competent supreme state authority of the *Länder* about certain vulnerabilities of asylum applicants. These provisions were implemented in January 2023 when the responsibility of counselling was transferred from the BAMF to non-state actors, which was also one of our policy recommendations. The § 14 (2) No. 3 Asylum Act provides special responsibilities regarding the asylum application for minors.

Overall, however, the topic of vulnerability plays a minor role in asylum law. The federal Asylum Seekers Benefits Act, which applies during the asylum procedure, and in the case of illegal residence status, refers only generally to "special needs" with regard to subsistence and medical benefits. But it has discretionary clauses which transfer the possibility of meeting special needs to street-level bureaucrats[6] instead of regulating special benefits in a transparent and binding way. Although benefits are regulated uniformly throughout Germany, the application of this legal instrument thus differs.

The Residence Act addresses asylum seekers and thus also vulnerable persons among them in two different situations. The first concerns situations of issuing a residence permit to grant protection. These are the cases of §§ 22 to 25 Residence Act. Under this act the persons concerned are integrated into the regular social

[6] Street-level bureaucrats (e.g. police officers, asylum decision-makers, social workers) carry out and/or enforce actions required by legal regulations and public policies. By exercising wide discretion, they also make policy (Lipsky, 2010).

welfare system and thus, with few exceptions, are placed on an equal footing with nationals. As a result, this act also includes an appropriate response to their special needs. No more is expected under international and European Union law.

The second reference in the Residence Act concerns cases in which no protection under the Qualification Directive or on humanitarian grounds has been granted, and there is an enforceable obligation to leave the country, but the concerned person faces obstacles to deportation that are an expression of a special need, particularly a need for medical care. § 60 of the Residence Act addresses this by recognising an obstacle to deportation under certain conditions and thus creating the basis for a temporary leave to remain (*Duldung*).[7] Paradoxically, bans on deportation are a legal instrument that recognises the vulnerability of asylum seekers. In contrast, *Duldung* as a legal instrument of residence law increases the vulnerability of asylum seekers due to the associated restrictions in the areas of social benefits, residence status, employment, social integration and accommodation.

Regarding housing, no federal law provides any provision for vulnerable asylum seekers. This is due to the fact that the central link for the implementation of Art. 22 RCD is the reception procedure, which is regulated by the *Länder*. Two levels have to be distinguished here due to the German federal system. For asylum seekers there is a first accommodation in large-scale state reception centres (*Aufnahmeeinrichtung*) that are in each German state, followed by a distribution to the municipalities. In the municipalities, the accommodation can be in collective shelters (*Gemeinschaftsunterkünften*) or in private flats. Vulnerable asylum seekers can benefit from specialised collective accommodations, before and after their distribution to the municipalities. With regard to the assessment of vulnerabilities, the § 44 (2a) Asylum Act refers to the obligation of the *Länder* to identify vulnerable persons, but there is no German state that has both a mandatory and a comprehensive approach (Kluth et al., 2021, p. 30). As part of the registration process for state-run reception centres, asylum seekers go through a medical check-up that screens them for diseases, but this is not a holistic screening for vulnerability. There are some pilot projects testing standardised screening in state-run reception centres, e.g., for trafficking victims |(Heuser et al., 2021, p. 32)|. Otherwise, vulnerability is only addressed in non-binding policy documents, administrative regulations, or protection plans against violence (*Gewaltschutzkonzept*). These basic regulations often concern room occupancy in accommodation centres and minimum standards, such as gender-separated toilets.[8] Whether and to what extent the special needs of asylum seekers are properly considered thus depends primarily on the commitment of individual persons in the administration, social services, and counselling centres.

Thus, provisions of needs-based assistance to vulnerable people varies greatly between the *Länder*. This is also dictated by different approaches of (informal) cooperation in the context of the reception procedure: In order to support vulnerable

[7] In addition, the regulations on detention pending deportation contain special provisions for minors with regard to the ordinance, § 62 (1), and the execution, § 62a (3).

[8] Cf., for example, in Bremen (Bremische Zentralstelle für die Verwirklichung der Gleichberechtigung der Frau & Freie Hansestadt Bremen, 2016).

asylum seekers, some *Länder* refer to their internal counselling in large-scale accommodation centres, others refer to external counselling centres for adequate assistance. Three *Länder* (Lower-Saxony, Berlin, Brandenburg) have a comprehensive identification procedure involving all relevant authorities and counselling centres, while one third of all *Länder* do not have any method at all (Heuser et al., 2021, p. 84). The latter concerns Bavaria, Thuringia, Saxony, Mecklenburg-Western Pomerania and Schleswig-Holstein. Thus, the situation for vulnerable asylum seekers in Germany differs: whether they have access to adequate housing, counselling services or medical care often depends on which German state or municipality they were distributed to.

10.2.3 The Separate Track for Unaccompanied Minors

Unaccompanied minor asylum seekers (UMA) are excluded from this reception procedure. Unlike other vulnerable groups, they are excluded from the migration ratio and placed on equal footing with domestic unaccompanied minors. This also changes the responsibility of authorities. When an UMA is identified by German authorities, the local Youth Welfare Office is responsible for taking them into preliminary custody (§ 42a Social Benefit Code VIII). The first and foremost aim is to find relatives of or legal representation for the minor, and assess whether the distribution of the UMA to another German state might be contrary to the best interest of the child. Due to the different procedure, UMAs do not fall under the scope of the Asylum Seekers' Benefits Act, and they are not accommodated in reception centres. There is the possibility of living in shelters for unaccompanied minors, in private flats with special assistance, or with a foster family.

The primacy of youth welfare includes the responsibility for identification, initial care and accommodation. Therefore, the age is estimated by the Youth Welfare Office and must be estimated according to a mandatory order (§ 42 f. Social Benefit Code VIII). First of all, identity papers must be examined. However, the "primacy of self-disclosure" also applies, according to which the person's statement of age has to be accepted generally. If these steps do not lead to an unambiguous result, the Youth Welfare Office carries out a qualified inspection (*qualifizierte Inaugenscheinnahme*), in which the state of development and physical appearance is assessed in a conversation. In this step of the procedure, social workers have a great leeway. If there is still any doubt, a medical examination is carried out.

The identification procedure regarding UMAs (age assessment) is thus more formalized compared to other vulnerabilities. However, the qualified inspection legally requires a well-founded and individual justification and may therefore not be based solely on questionnaires or generalised adoption of information from other authorities (e.g., EURODAC searches). This leaves a great leeway to the staff of the Youth Welfare Offices. During the intake into custody, the Youth Welfare Office then draws up an individual support plan with the UMA, which corresponds to a vulnerability assessment. Because the identification and support of UMAs is

fundamentally different from vulnerable persons within the regular asylum and reception procedure, we will leave this perspective out of consideration in the following (See further Junghans & Lidén, 2024).

10.3 Uniform Asylum Procedure at the Federal Level

Having given an overview of the legal framework, we will now examine how this framework is applied in practice with regard to the asylum procedure. We will first take a look at the authorities' practice and then confront this with the lived experience of asylum seekers. Thirdly, we will separately address the issue of restrictions on freedom of movement for asylum seekers, which have become more prominent in Germany in recent years for the purpose of a controlled distribution of asylum seekers to the various federal states beyond the initial distribution.

10.3.1 Administrative Measures Aimed at Addressing Vulnerabilities Among Asylum Applicants

With regard to the asylum procedure, two approaches should be mentioned that address the vulnerability of asylum seekers within the responsibility of the BAMF. Introduced as a pilot project in 2018, an asylum procedure counselling was set up according to § 12a Asylum Act. This counselling gives asylum seekers the opportunity to point out their own vulnerabilities in the form of a first group discussion and a second individual counselling, which take place in reception centres. In our first research report, we concluded that this counselling does not meet the requirements of a comprehensive vulnerability assessment (Heuser et al., 2021, p. 125). For example, it is carried out by case workers who work as decision-makers at the BAMF, and the group discussions do not allow for proactive identification. Since our first report, the law has been amended, so that counselling is no longer provided by the BAMF but by independent welfare organisations that have been given the mandate to identify the need of special procedural guarantees or safeguards in accommodation. Although the obligation of independent welfare organisations to address the special reception and procedural needs of vulnerable persons are explicitly mentioned now, it remains doubtful whether the new asylum procedure counselling can really serve as a basis to identify vulnerabilities. Welfare organisations and refugee councils have already noted the insufficient funding and the need for separate funding for counselling of vulnerable persons, which cannot be adequately addressed in general counselling (AWO, 2022; FR LSA, 2022).

The BAMF also trains special representatives (*Sonderberichterstatter*), who can be involved in the asylum procedure if a person is identified as having special needs. These special representatives can either be consulted to provide advice on the asylum decision or take over the asylum hearing themselves, as they are better trained, for example, in conducting interviews with traumatised persons. There are representatives who have training on gender-specific persecution, unaccompanied minors, victims of torture and traumatised persons, as well as victims of human trafficking. These representatives get special training and do networking with other state and non-state actors relevant in this field. According to internal administrative regulations, the regular asylum staff has to consult a special representative as soon as they recognize a potential case of human trafficking. But even then, the special representative is not obliged to take over the case by carrying out the hearing, taking further measures, or deciding on the asylum grounds and the Dublin-procedure. As special representatives only get involved after the recognition of a potential victim by the regular staff, for example by the interviewers in the asylum hearing, or by external individuals, their impact on the proactive identification of vulnerabilities and subsequent assistance remains low. They rather serve to meet the procedural guarantee of adequate support in order to enable applicants to participate adequately in the hearing (cf. Article 24 (3) APD). As no formalized identification procedure exist, it is essential that the regular asylum service staff, especially the interviewers who conduct the hearings, get sufficient instruction on the specific circumstances and consequences of specific vulnerabilities, corresponding to Article 4 (3) APD. Therefore, a list of indicators for trafficking was introduced to oblige the regular staff to take further steps, when recognizing a potential case, i.e., informing the concerned person about special counselling centres nearby and contacting other relevant authorities such as the BAMF Dublin-unit (Heuser et al., 2021, p. 130; Jack & Junghans, 2021, p. 20). But a provision about the information in the reception centres is missing herein, as well as the access to legal counselling. This referral mechanism is an asset, but can only become effectively operative if more staff is trained to use it.

In summary, the special representatives at federal level indeed offer suitable measures to sensitively address the vulnerability of asylum seekers during the hearing with specially qualified personnel. However, the fact that insufficient measures are in place to ensure that vulnerable persons are identified limits the effectiveness of adequately considering vulnerabilities in the asylum procedure. At least, even if there is no legal obligation to assign the file of an asylum seeker with special needs to a special representative, judges are more likely to conclude to a procedural error when this was not the case. The decision is then usually annulled (cf. VG Berlin [31 K 324/20 A] Judgement of 30 March 2021 § 22).

10.3.2 Protracted Procedures and Other Administrative Factors of Vulnerability

The German team interviewed 28 asylum seekers in various German states using semi-structured non-representative interviews. Most of the interviews took place through personal contacts of the researchers with the interviewees and through social workers. When focusing on experiences of vulnerabilities among asylum seekers, the analytical focus will be, accordingly to the overall research design, on how they result from intersecting factors (intersectionality), how they evolve over time (temporality) and thirdly on how asylum seekers exercise their agency in view of overcoming their vulnerabilities.

Almost all of our interviewees mentioned the length of the asylum procedure which can range between months and years, as a major source of stress and uncertainty. The unpredictability of the outcome, the dependence on authorities, and the obligation to live in reception centres or collective shelters all contribute to the general burden the procedure entails.

However, the lengths of the procedure and the circumstances that applicants faced while waiting for a result, differed and were also influenced by the time of their arrival. For example, applicants who arrived in 2015–2016 were confronted with overwhelmed authorities. One of our interviewees arrived as an unaccompanied minor. In the asylum hearing with the BAMF, he noted that he was a minor, but instead of being referred to the Youth Welfare Office and receiving special support, he was left in the refugee camp without special care for minors and had to wait a year for his procedure to be continued (Sami, Bavaria November 2022).

Some processes even became protracted when authorities lost our interviewee's documents or postponed the asylum hearing due to the applicant's status as a minor. This reveals the temporality of our interviewees' vulnerabilities, which may increase when procedures become protracted. Thus, swift asylum processes decrease the uncertainty with which asylum seekers are confronted. On the other hand, when asylum procedures are too swift, they don't provide enough space to generate a sufficient sphere of trust, which allows the asylum seekers to reveal their specific stories and vulnerabilities (Heuser et al., 2021, p. 130; Jack & Junghans, 2021, p. 65; Junghans & Kluth, 2023, pp. 56, 72, 78). Over-hasty procedures also stand in the way of a comprehensive assessment of the most complex forms of vulnerabilities, which are the least easy to detect. This can be observed in the accelerated procedures for asylum seekers from so-called safe countries of origin or in the need of a recovery and reflection period for victims of human trafficking (cf. Asylum Information Database, 2017, p. 14; Flüchtlingsrat Mecklenburg-Vorpommern e.V., 2016). Therefore, it is important to design protection procedures in a way that allows newly arrived asylum seekers to recover from fleeing, and that allows them to establish a sphere of trust. This is essential for both detecting certain vulnerabilities and adequately navigating the asylum procedure.

Another frequent issue, which has the effect of prolonging the asylum procedure and the associated uncertainties, is the loss of documents by the authorities. The

BAMF is responsible for keeping passports during the asylum procedure, but other authorities need them as well. Even though the BAMF admits that "delays may occur" (Taßler et al., 2016), there are no figures on the loss of documents. The political magazine *Monitor* has launched a survey among municipalities, according to which 74% of them are confronted with the problem of losing documents, many of them reporting "regular or frequent difficulties"(Taßler et al., 2016). In the case of one of our interlocutors, the authorities lost his documents including a military letter, his identity card, and school certificates (Adil, Thuringia October 2022). During his asylum interview with the BAMF, he was told that "there were no papers". As a result, his asylum procedure was protracted. In view of the many problems undocumented asylum seekers have with the Immigration Office (Junghans & Kluth, 2023, p. 41), there is also a risk of being held responsible for the failure of the authorities, unless there is proof that one has already handed in the documents.

In the experience of our interlocutors, it is especially the interactions with authorities which reflect the general strain of the asylum procedure, as there is a lack of sufficient information from both the BAMF and the Immigration Office, and decisions are sometimes not translated or explained. This makes it indispensable for asylum seekers to be in contact with informed supporters in order to understand the content of decision sand to be aware of deadlines for appeals.

The most important interaction for asylum seekers with the BAMF is the asylum hearing. In order to comply with provisions of the APD on vulnerable persons, the hearing and decision can be conducted by the above-mentioned special representatives. These special representatives are only consulted if the person belongs to a certain group indicated as having special procedural needs, they do not contribute in identifying such needs. Therefore, the risk remains, that vulnerabilities are not being detected by case workers, especially concerning hidden vulnerabilities (Junghans, 2022).

But sometimes, vulnerability is simply ignored: *Aleeke* lived homeless in France for 3 years before coming to Germany. She has experienced a lot of violence and had to leave two daughters behind in Cameroon, who are being kept from her by her family. While talking about her experience of not being believed by the authorities, she showed us her scars to prove her suffered torments. In 2017 she was interviewed at the BAMF, but out of shame, she did not reveal all her experiences, which she described as particularly bad:

> When people tell you that you would lie, it causes even worse pain than to speak about it. (Aleeke, Baden-Wuerrtemberg October 2022)

Evasive answers and hinting at traumatic experiences (as also occurred in the VULNER interview) should have prompted the caseworker to involve a special representative for trauma or for human trafficking. After a few months, *Aleeke* received a negative decision. Although she was granted a residence permit for other reasons, it cannot be ruled out that the appointment of a special representative would have had the consequence of *Aleeke* obtaining international protection and, thus, a residence status that is less precarious than the one she received. This demonstrates that,

although there exist special representatives, other decision-makers have to be trained as well to effectively consider all relevant circumstances of vulnerable people within their asylum process.

10.3.3 Federal Restrictions on Freedom of Movement

Due to the domestic distribution procedure (*Verteilungsverfahren*) called *Königsteiner Schlüssel*, applicants who register in a certain place are mostly distributed to another German state. The place where one stays during the asylum procedure is especially important for those who are in need of special support. For example, our interviewees who applied for asylum in Berlin belong to sexual and gender minorities. Their community and LGBTQI+ focused organisations are more developed there, since bigger cities often provide better community networks than peripheral localities. We elaborated already on the issue of peripheral and urban localities in our first research report (Kluth et al., 2021, p. 40). The fear of being relocated and the bureaucratic struggle to be able to stay in Berlin had an important impact on the psychological state of our interviewees. One of them refused the relocation imposed by the authorities and therefore didn't receive any state support for 2 years (e.g., financial and health insurance). Thus, they felt compelled to provide for themselves through sex-work, and were forced to rely on community organising to find alternative accommodation arrangements that better suited their needs. However, such arrangements can be financially unstable, leaving them in insecure living conditions and aggravating their psychological distress. This demonstrates the intersection of situational vulnerability factors related to personal circumstances such as gender identity and community support on the one hand, and on the other hand structural factors like administrative restrictions to the freedom of movement or work conditions.

Furthermore, the restriction to freedom of movement by the German system does not end once protection is granted, as demonstrated by the joint cases of *Alo and Osso* before the CJEU (C-443/14 and C-444/14 *Kreis Warendorf v Ibrahim Alo and Amira Osso v and Region Hannover* CJUE GC 1 March 2016). The two applicants were issued residence permits accompanied by an obligation to reside in a particular part of Germany. They both challenged this obligation. According to Article 33 of the Qualification Directive 2011/95/EU, Member States must allow freedom of movement within their territory to recognised refugees and persons who have been granted subsidiary protection under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories. Restrictions on this freedom of movement is only permissible in specific situations in which serious considerations of immigration and integration policy apply. Germany justified the residential restrictions by saying it wanted to avoid disproportionate budgetary burden for certain German states and municipalities as well as preventing social segregation and negative consequences for integration. The CJEU rejected the first justification as it is contrary to the requirements of the principle of

proportionality for refugees and beneficiaries of subsidiary protection to be treated equally. Additionally, the Court found the second justification regarding immigration or integration policy considerations as abstract grounds and thus not sufficient. The obligation to live at a certain place in Germany for those who benefit from international protection (according to § 12a Residence Act), thus can only be justified if it facilitates the integration of the persons concerned. This has to be assessed individually for each case, but cannot be assumed automatically. On the contrary, a recent study testifies that this residential restriction does a disservice to the integration of asylum seekers (Brücker et al., 2020). Thus, this German restriction to the freedom of movement infringes Article 33 of the Qualification Directive. Besides the legal appraisal, restricting residential mobility contribute to administrative vulnerability since it negatively affects asylum seekers' social engagement and feelings of belonging (Hilbig & Riaz, 2022). Accordingly, their integration into society is impeded, and this, in turn, can have an impact on their situational vulnerability as well. For example, *Genet* experienced difficulties in the context of adequate medical treatment and her son's schooling due to residential restrictions, which caused her additional stress on top of her already difficult health situation (Genet, Saxony-Anhalt November 2022).

In a broader sense, the application of the Dublin procedure has to be understood as federal restrictions to the freedom of movement, as the BAMF may refer to the responsibility of another EU member state instead of processing the asylum application on its own. The Dublin III Regulation aims to determine which Member State is responsible to examine an asylum application.[9] On the other hand, the BAMF may also decide not to hold another member state responsible. In this regard, case-law at national and European level consider that an asylum applicant may face "*a whole range of insecurities and risks, triggering their movement to another EU+ country to legitimately seek an adequate standard of life under the umbrella of international protection"* (EUAA, 2022, p. 12), even though they already benefit from asylum in another EU+ country.[10] This breach on the restriction of movement prohibiting a subsequent asylum application in another member state was laid down by the CJEU judgment in the *Ibrahim case (*C-297/17, C-318/17, C-319/17 and C-438/17 *Ibrahim* et al. *v Bundesrepublik Deutschland and Bundesrepublik Deutschland v Magamadov* CJEU GC 19 March 2019*).* The Court ruled on a rejection by the authorities of a Member State of an application for asylum as being inadmissible because of the prior granting of asylum in another Member State, and clarified the standard of proof and the threshold of severity for inhuman or degrading treatment that would lead to the annulment or prohibition of a transfer back to

[9] The regulation was established to guarantee the responsibility of a single Member State for an asylum application in the EU. Therefore, it creates restrictions on the freedom of movement for asylum seekers within the EU borders in order to guarantee the responsibility of a single Member State and to avoid multiple applications in different states.

[10] The Dublin III Regulation applies among the EU+ countries, that is the EU member states and four non-EU member states, which are associated to the Schengen area (Iceland, Liechtenstein, Norway, and Switzerland).

the first country that granted asylum. Since then, national courts have overturned transfers of asylum beneficiaries to countries such as Greece or Hungary due to a serious risk of treatment contrary to Art. 3 of the European Convention on Human Rights (ECHR). Therefore, a second asylum application may be examined by another EU+ country, if the treatment of a beneficiary of asylum in the protective Member State doesn't comply with the requirements of the EU Charter, the Geneva Convention, and the ECHR. However, the BAMF often rejected applications as inadmissible (§ 29 I No. 2 Asylum Act) and only changed this practice in April 2022 (BAMF, 2022b). Furthermore, the BAMF decided in 2019 not to process asylum applications from asylum seekers who have already been granted refugee status or subsidiary protection in Greece. In the same turn, it ordered that court rulings obliging the BAMF to make a decision should not be complied with until the BAMF is threatened with a penalty payment (Bundesamt für Migration und Flüchtlinge, 2021b). The BAMF only reversed its decision in April 2022 (Bundesamt für Migration und Flüchtlinge, 2022b). But even if the BAMF examines the asylum application, it does not base its decision on the Greek decision. The different interpretation of the same case can therefore lead to a person being granted refugee status in Greece but only subsidiary protection in Germany. This impacts for example one's opportunity to apply for family reunification (Junghans & Kluth, 2023, p. 41).

The phenomenon of secondary movement illustrates the importance of freedom of movement for asylum seekers on their ability to make their own choices by choosing the most suitable place of residence depending on their individual needs. Asylum seekers flee their country of origin in search of a safe place. Due to the restrictions on freedom of movement imposed by the Dublin III Regulation, they then have to stay for example in Greece. If they finally decide to move on to Germany,[11] they are also confronted with restrictions in their search for a safe place due to the distribution procedure. And even after they are granted refugee status a second time in Germany, restrictions are sometimes imposed, even though they have the right to freedom of movement. The several decisions of the BAMF not to process asylum applications from already recognised refugees or not to comply with judgments forcing the BAMF to decide, illustrate how the issue of freedom of movement is contested and politically managed beyond the law. The phenomenon of secondary movement thus illustrates both how states try to limit asylum seekers' agency and simultaneously proves how asylum seeker exercise their agency despite the challenges they face.

Ongoing restrictions on this freedom of movement reveal also the temporal aspect of this endless journey to seek protection and a safe place and demonstrate the trajectories of our interlocutors' experiences of vulnerability. The national restrictions show how experiences of vulnerability persists for years and can be exacerbated even when asylum already has been granted, especially if these restrictions are combined with economic precarity due to restrictions on social benefits.

[11] Regarding locational choices from the perspective of asylum seekers see further (Glorius & Nienaber, 2022) .

This persistent situation contributes to our interlocutors' overall mental health and well-being and thus impacts the capacity to exercise their agency. Also, it indicates how crucial the restrictions are for grasping the situational vulnerability of asylum seekers. This finding on administrative factors of vulnerability is echoed in several studies demonstrating the negative impacts of such restrictions on integration (Brücker et al., 2020; Hilbig & Riaz, 2022).

10.4 Accommodation and Integration Throughout the German States

As already mentioned, the reception system in Germany is divided into two parts: state and municipal accommodations (see further Junghans, 2022). Most of the people we interviewed arrived at a time when accommodation in state-run reception centres at the level of the *Länder* was limited to a few weeks. They were mostly accommodated in temporary emergency camps and distributed to the municipalities. The focus of the following chapter will be therefore on municipal collective shelters. The living conditions among the German states and municipalities differ widely, but structurally the same issues arise, as collective shelters are also a form of large-scale accommodation, unless they provide separate flats.[12] Our findings from the first research report found that none of the German states had adequate protection plans against violence (*Gewaltschutzkonzept*). This was also confirmed by the fact that none of our interviewees could report on adequate mechanisms in their shelters. On the contrary, the violence and insecurity was a constitutive part of the experience in collective shelters. Living in such facilities leads to (mental) health issues, addictions and violence (Junghans & Kluth, 2023; Lewek & Naber, 2017; Schönfeld et al., 2022). According to one interviewee, it just feels like being in a prison (Konfé, Saxony-Anhalt August 2021). The experiences of our interviewees are almost identical here. So, spending the first period of time after arrival in large-scale accommodation centres had a high impact on the vulnerability of our interviewees. This demonstrate how existing vulnerabilities caused by personal circumstances and the situation in the country of origin or during flight cannot be adequately addressed due to the reception system. In addition, new dependencies and vulnerabilities are produced and existing ones exacerbated (Bjarta et al., 2018; Dumke et al., 2024; Johansson, 2016; Junghans & Kluth, 2023; Lewek & Naber, 2017; cf. McLoughlin & Warin, 2008; Priebe et al., 2016; Roussou & Carthaigh, 2020; Van de Wiel et al., 2021).

Both the German states and the municipalities have leeway in implementing federal law. This concerns the issue of accommodation as well as the issue of integration. No municipality is legally obliged to run a collective shelter at all.

[12] In our first research report we gave an overview of different state approaches (Kluth et al., 2021, p. 25).

Accommodation in municipal collective shelters is only intended by law, but not mandatory (§ 53 I Asylum Act). It is therefore at the municipalities' discretion to shape the housing situation, which is closely related to the municipalities' approaches to integration. Thus, the operation of such facilities is significantly related to the migration ratio of limiting the rights of asylum seekers. The isolation effect associated with living in collective shelters thus impedes integration in all spheres of life (Junghans & Kluth, 2023; Seethaler-Wari & Yanasmayan, 2023). In contrast, there are also municipalities that want to attract refugees with precarious residence status as workers for local companies and have decided accordingly to abolish collective shelters (Public servant, Saxony-Anhalt December 2022). Both issues are strongly interrelated, as peripheral and isolated accommodation has an impact on how a person can participate in society. In our first research report, we also explained how different, for example, the support structure is in the federal states, how accessible counselling centres are, and how well accommodation centres are connected to public transport (Kluth et al., 2021, p. 40). There is also no uniform understanding of the concept of integration, so that the view of which approach and which tasks are associated with the integration mandate varies in the different German States.

10.4.1 Large-Scale Accommodation Centres Undermine Safe Accommodation

In addition to the constant feeling of insecurity, living in large-scale accommodation centres with many people suffering from multiple traumas and having different lived experiences can provoke tensions and conflicts. For example, one of our interlocutors witnessed a suicide attempt by his roommate who feared the arrival of authorities to deport her (Ahmed, Berlin January 2023). This incident had a significant impact on our interviewee's already fragile mental health and increased his fear of being deported. And *Sami* who came to Germany as an UMA was forced to fight for a room when arriving in a reception centre (Sami, November 2022). A recent study demonstrates how reception centres systematically oppose or violate the needs and rights of children (Méndez de Vigo et al., 2020). Nevertheless, large-scale accommodation centres have been greatly expanded since 2015. Thereby, vulnerabilities are produced, such as violence amongst asylum seekers and against them, which the state is responsible for preventing (Art. 18 (4) RCD). *Adil,* one of our interlocutors, was accommodated in Thuringia, Eastern Germany. He described how he felt like a criminal due to the many controls, the presence of security, and the fenced-in area. There were many violent conflicts with the security and the residents. There was no privacy, both in the room, where he had to live with eight people in sixteen square metres, and in the common rooms. He found it particularly stressful that there were only open showers where he had to show himself naked in front of many people. Additionally, he observed that the situation for physically disabled persons is even more miserable, as they often stay in large-scale

accommodation centres longer than they actually have to, because the municipality cannot arrange accessible housing. In this sense, he concluded:

> It is not possible to put people in one place en masse and seal them off with security and police, thus contributing to alienation and exclusion. It has to be humane. The impression of fear must not be created from the beginning. We all know that there is a housing problem, but in the end, people are relocated anyway. (Adil, October 2022)

Often, municipal accommodation is characterised by its peripheral location, which is why the residents are poorly connected to public transport and urban facilities. Even appointments with immigration authorities become an odyssey. In *Adil's* case, the BAMF, was 2–3 h away by bus. It was badly signposted in the middle of the forest, so it was hard to find. *Adil* himself was relocated three times before he was allowed to move in a private flat. Until now he supports recently arrived asylum seekers living in collective shelters. But sometimes he meets there also people with whom he was accommodated back in 2015 and who have had to live there since then. Large-scale-accommodation thus contributes to intersecting forms of socio-spatial exclusion (Seethaler-Wari & Yanasmayan, 2023).

Sometimes, also essential services such as Wi-Fi are denied and the inhabitants are at the facility manager's mercy, as one of our interlocutors described:

> If you have a problem with the warden, he just says he won't sell you Wi-Fi. And to be in an asylum accommodation without WLAN is very, very difficult. (Konfé, Saxony-Anhalt August 2021)

Based on the experiences shared with us in the interviews, it appears that the people who were in close contact with social workers, who were able to make friends, or were involved in interpreting or other services, were actually in a much better position as a result. Also, they had better access to relevant information. The individual's level of education and access to local integration and language courses had a great influence on whether our interviewees were able to shape their situation to their advantage. Since relations between state agents and asylum seekers in accommodation centres oscillate between assistance and control (Seethaler-Wari & Yanasmayan, 2023, p. 2), the ability to navigate these complex social relations depends also to one's education. This finding points out the intersectional dimension of vulnerability when being obliged to live in accommodation centres.

Despite the general troubles related to large-scale accommodation centres, protective shelters remain crucial for certain groups of individuals. The concept of specialised protective shelters is already recognised, as there exist shelters for unaccompanied minors (without regard to whether they are migrants or not) or women, who experienced domestic violence. The facilities thus serve as a safe space to escape violent situations, offer support, and provide a safe place to stay. Also, LGBTQI+ asylum seekers are often in need of such places as they experience various forms of discrimination, exclusion, sexual violence, and other forms of violence. As a result, they have specific needs in terms of reception conditions to ensure their safety and prevent such risks. However, safe accommodation is no integral part of the reception procedure in Germany since it promotes large-scale accommodation centres and thus increases the inhabitant's vulnerability instead of preventing it.

Large-scale accommodation *per se* lead to vulnerability (Junghans, 2021, 2022; cf. Seethaler-Wari & Yanasmayan, 2023). While focusing on such housing since 2015, Germany undermined safe accommodation consequently. Although the needs of vulnerable asylum seekers are recognised in various policy concepts and administrative regulations, they remain unimplemented in practice. Only a few accommodation facilities for LGBTQI+ people or other vulnerable groups exist in Germany, mostly informal. In general, they are operated by non-state actors like welfare organisations, churches, or NGOs. For instance, the shelter for LGBTQI+ asylum seekers in Berlin was founded in 2016 and is run by an NGO called Schwulenberatung. Providing such adequate shelter for vulnerable individuals must be a main component of reception procedures. However, even our interview partners who were accommodated in shelters dedicated to vulnerable people instead of large-scale accommodation centres, experienced situations of insecurity, transphobic assaults, and traumatising events such as suicides (Junghans & Kluth, 2023, p. 66).

This suggests that the way safe accommodation is embedded in the regular reception procedure cannot serve its purpose due to the focus on large-scale accommodation centres. Such accommodation may be necessary when large numbers of asylum seekers arrive to enable registration and to prevent homelessness. On the contrary, the focus on large-scale accommodation centres in Germany since 2015 aims to use centralised mass housing as a control tool to prevent integration. This approach is only able to address vulnerability within these huge facilities. Thus, it prevents a way that enables decentralised housing and only provides collective shelters if this is required for the people's protection or to enable an effective asylum procedure.

10.4.2 The Impact of the Municipalities' Approaches Towards Integration on Vulnerability

As stated above, the municipalities' approach of housing is strongly interrelated with its concept of integration. Some municipalities' approach to permanently accommodate people in collective shelters thus pursues the goal of permanently hindering people from integrating in order to maintain the ability to deport them at any time, while failing to recognise that many people nevertheless remain in Germany.[13] The socio-spatial exclusion associated with large-scale accommodation centres thus can cause longer-term consequences and facilitates also legal exclusion (Seethaler-Wari & Yanasmayan, 2023, p. 2).

Our research found that the isolation and insecurity that comes with living in large-scale accommodation centres has negative impacts on all aspects of the lives of asylum seekers. For example, inflexible rules for residents are a grave hindrance

[13] For reasons why asylum seekers remain in Germany, although they received a negative asylum decision, see (Junghans & Kluth, 2023, p. 73) 73).

to integration into the labour market: if the kitchen closes before a person returns from their work day, this means that they have no means to prepare themselves an evening meal.

The local authorities and respective case officers exercise independent discretion on asylum-seekers' lives. In our interviews, this mainly concerned the processes of giving access in specific reception conditions or imposing sanctions like work bans or food vouchers.[14] In our research we identified this authority's margin of discretion as a source of administrative vulnerability. These discretions are built into the legal framework as a policy choice. Often justified as allowing the system to apply legal regulations more adequately to individual circumstances, these discretions can however also lead to extraneous considerations being taken into account in decisions. In fact, street-level case officers thus also function as policy decision makers, as they wield their considerable discretion in the day-to-day implementation of public programs (Lipsky, 2010, p. 13). In his study, *Lipsky* examines how decisions translate into ad-hoc policy adaptations that impact peoples' lives and life opportunities. He also points out the dilemma that case officers are supposed to make decisions on the basis of individual cases, yet the structure of their jobs makes this impossible. Structurally, discretion clauses are a risk factor for extraneous considerations and thus also for racist, transphobic and other discriminatory practices. In this regard, our interviewees testified to misgendering, dismissive behaviour, and racism. Furthermore, the uncertainty which results from the lack of transparent and strict regulations burdened our interviewees. Although, they may be informed about their rights, they sometimes had to refrain from insisting on them being observed. Instead, they had to behave strategically to not upset the respective case officer. *Naaber* told us:

> I had an appointment to get my bachelor's degree verified. I showed [the certificate] to the staff member but it didn't work. I knew I was right. But instead of insisting, I made an appointment with another staff member. It worked straight away without a problem. It's often like that. I always make two appointments now. Always! Because I know that one staff member decides differently than another. (Naaber, Saxony-Anhalt November 2022)

The way local authorities and case officers exert their margin of discretion thus leads to significant differences of administrative practises among the German states and municipalities.

Also, the length of administrative procedures is influenced by regional differences, e.g., the staffing of authorities, the allocation of appointments, or the availability of digital services. These circumstances have an impact on the way asylum seekers perceive their contact with the authorities and whether their issues are adequately processed. In particular, the fact that appointments could not be made for long periods of time and that emails or phone calls were not answered had a considerable negative impact. Open consultation hours led to a queue forming in front of the authorities as early as four o'clock in the morning, but many people have to

[14] Besides, it concerned the process of granting residence permits and Duldungen, as well as carrying out deportations.

leave without a meeting after the authorities closed. In some cases, people took leave from work and travelled long distances for this purpose.

Another administrative factor which increases one's vulnerability was the granting of certification of fiction (*Fiktionsbescheinigung*). If the Immigration Office does not renew residence permits in time, it issues these certificates. Although this prevents asylum seekers from being completely without a legal residence status, our interlocutors described the negative impact this certificate has in various spheres of life. When searching for a flat or studying, landlords and universities might not accept it, as well as employers if a person applies for a job (Junghans & Kluth, 2023, p. 52).

All these regional differences caused by federalism and legal techniques were highlighted several times by our interviewees. Insofar as they already achieved a right of residence and they were free to move, this was reflected in the fact that they moved to other federal states or municipalities. In fact, in the cases we documented, these moves were less frequently made due to family ties than to federal differences. In addition, for some interviewees, the negatively-perceived attitude of the local population also played a role in the decision to move to another municipality.[15]

Considering that the decisions of the Immigration Office have an impact on many other areas of the lives of asylum seekers, there is often a lack of an agency that can advise people. The desire for such a contact and counselling centre was mentioned several times in our interviews. So, the need was expressed not only to have a support network which establishes a sphere of trust in contrast to the sphere of mistrust experienced in interactions with authorities, but also to have a state-run agency, which informs asylum seekers and processes their files adequately, refers to responsible other services and state actors, and helps with filling forms etc. This addresses a holistic approach to municipal migration management, which may be seen in the concept of "case management" advocated by some NGOs such as PICUM (IDC et al., 2020).

In the municipality *Burgenlandkreis* where we conducted interviews, such a migration agency was established a couple of years prior. This agency enables better coordination between the authorities. In this sense, the agency is a cross-sectional authority (*Querschnittsbehörde*) with the aim of reducing external interfaces between different authorities, avoiding any unnecessary duplication of effort, making administrative procedures more efficient, improving the exchange of data and strengthening the cooperation between different authorities (Michalak & Hemmer, 2023, p. 272). Thereby, it is also characterised by the fact that various relevant authorities are represented in one place in order to enable short travel distances for asylum seekers. Additionally, the internal administrative procedures are restructured in a way that focuses more on thematic issues, rather than official responsibilities or legal systematics (Michalak & Hemmer, 2023, p. 274). This is to prevent unnecessary routes and continuous referrals to other authorities for asylum seekers.

[15] Regarding different social perceptions of foreigners and the process of othering in German rural areas, see further (Glorius, 2022; see also Schammann et al., 2023).

Also, an integration officer is responsible to accompany the different processes within the authority and may intervene at various stages. Finally, the administrative restructuring also provides for a better involvement of voluntary and non-governmental actors in the processes.

Besides, in this municipality large-scale accommodations centres were abolished and sanctioning measures reduced in order to facilitate the integration of asylum seekers into the labour market (Junghans & Kluth, 2023, p. 72). This example shows how a respectful approach towards integration can adequately address many of the issues our interview partners mentioned. This is not achieved by changing the law, but by changing the organisation of administrative processes within the municipalities' leeway.

The above-mentioned example shows the two sides of discretionary and municipal leeway. On the one hand, this leeway creates a fragmented landscape of different approaches and standards, which makes it crucial for asylum seekers as to where they are distributed. On the other hand, the regulations also provide leeway to counteract increasingly restrictive federal legislation and to push for local approaches to effective migration management in the municipalities. However, in areas that are crucial for asylum seekers, in particular the needs-based support for vulnerable persons, there should be transparent and binding regulations so that this support is not left to chance or the special commitment of individual case officers whether vulnerable persons receive the support to which they are entitled.

10.5 Collaboration of State and Federal Authorities in Matters of Reception, Asylum, and Return Procedures

Since 2015, the federal asylum procedure and the reception procedures of the German states have been increasingly interlinked through various amendments to the law and informal administrative cooperation. Central to this interconnection is the establishment of large-scale reception centres for several thousand residents, in which the BAMF and the competent state authorities cooperate more closely with each other. For this purpose, so-called AnkER-centres (centres for arrival, decision-making, and return) have been set up in several German states, which serve as large-scale accommodation centres at the level of the *Länder*. The legal basis for such centres are administrative agreements between the BAMF and the respective German states, in which financial arrangements are made, responsibilities for counselling services are clarified, and measures for more efficient administrative procedures are provided (such as branch offices of authorities in the facilities themselves, cooperation in case processing, and obligations to deport persons on consistent considerations). The above-mentioned asylum-procedure counselling was introduced as part of this process under the BAMF's responsibility. In these reception centres for several thousand inhabitants, asylum seekers are supposed to be accommodated

until the asylum decision and, in case of a negative result, until they leave the country.

In parallel, informal policy instruments were introduced to select asylum seekers: if there is a "good prospect to remain in Germany" (*Bleibeperspektive)* a distribution to the municipalities should be possible earlier. This is not a legal category, as it does not appear in any binding regulations. However, it is used by the authorities within their leeway to select asylum seekers, who applied for asylum, and are still in the determination process (GGUA, 2016). The authority's decision on asylum seekers' good or bad prospects to remain is also decisive for whether they will be given access to integration courses or receiving an employment permit.[16] But the category is based on a misconception, as a good or bad perspective is determined only on the basis of the recognition rate for international protection. People who come from countries of origin with a recognition rate of over 50% have "good prospects to remain".[17] From this, however, no statement can be made as to how good the prospect to remain is for each individual. For example, if a ban on deportation applies, the prospect to remain is actually very high, even if no refugee status has been granted (Méndez de Vigo et al., 2020, p. 22). This selection thus serves to decide which applicants should be given the opportunity to integrate and which should be actively prevented from integrating through isolation in reception centres and exclusion from integrative measures and community services. Deportation bans are issued in particular on the basis of a person's vulnerability (state of health, pregnancy, minority). The fact that such circumstances are not taken into account when examining the prospect to remain indicates that this policy instrument particularly affects people who are already vulnerable and thus exacerbates their situational vulnerability.

It is also important to note that the category of "prospect to remain" is referring to the *unadjusted* recognition rate. The adjusted quote considers also formal settlements of the asylum procedure as well as Dublin transfers. Therefore, even if the unadjusted recognition rate is below 50%, the adjusted rate may be above 50%. In addition, in more than one third of all court proceedings, the BAMF's negative decision was repealed (Deutscher Bundestag, 2022, 1). Considering all these facts, the distinction between "good and bad prospects to remain" seems arbitrary and shows how certain groups of people are treated unequally. This is done without transparent legal regulation and before a decision is even made on the individual asylum application. Finally, the importance of counselling centres and a supportive network has to be taken into account, on how well one is prepared for the asylum hearing to also talk about traumatic experiences and on consulting specialised counselling service or special representatives at the BAMF. Thus, the isolative impact of this differentiation may also influence the outcome of the asylum proceeding. This shows how through such informal categories the asylum and reception system are

[16] Access to integration courses is limited to people, who are *expected* to reside legally and permanently, § 44 IV Residence Act.

[17] This applies to Eritrea, Syria, Somalia and Afghanistan (as of 17.01.2022): (Bundesamt für Migration und Flüchtlinge, 2022a).

systematically changed and thereby influenced more than before not by legal standards, but by other factors such as the country of origin. Through this shift, the intersectional dimension of migration management in Germany becomes clear. This increasing selection of asylum seekers also promotes an arbitrary practice that, for example, structurally incentivises the BAMF to make decisions that are as restrictive as possible, as this defer the distribution of asylum seekers to the municipal, regardless of whether protection is ultimately granted in court proceedings.

The housing situation, availability of support and integration (under the responsibility of the German states), and the federal asylum procedure are thus increasingly interlinked on an informal basis. In doing so, the competent authorities ignore the legal and factual situation of asylum seekers, as a negative asylum decision cannot be used to make a direct statement about the prospects of remaining in Germany. The BAMF's evaluation report on AnkER-centres also states that the objective to deport asylum seekers before distributing them to the municipalities cannot be achieved. In fact, 42% of all persons who received a negative decision in the evaluation period were distributed to the municipalities (Bundesamt für Migration und Flüchtlinge, 2021a, p. 52). The intended prevention of a distribution to the municipalities can therefore often not be achieved, but integration and arrival is permanently disrupted by people being isolated from society for years in large-scale accommodation centres. In the same way, this applies to accommodation in municipal collective shelters. This state, which lasts for years and in which there is no way back to the country of origin and no way to a better future in the host country, is paradigmatic for the health complaints, depression, and uncertainties for the future that some of our interviewees described. The above-mentioned approach of the *Burgenlandkreis* recognises this circumstance in facilitating an approach towards a coherent case-management of asylum seekers. However, many municipalities fail to find an adequate response and thus are contributing to the socio-spatial exclusion of asylum seekers.

A similar development can also observed with regard to the asylum procedure on the basis of the selection of countries of origin with "low protection quotas", which was intended for so-called safe countries of origin (protection rate < 3%). Following a decline in the number of applications from these countries, however, this legal category was generally extended to countries of origin with a protection quota of up to 20%. On the contrary to the concept of "prospect to remain", this development was implemented in law (Art. 16a of the German constitution). The determination of safe countries of origin is thus under the purview of the parliament. But while the consequences of this selection were initially limited to the asylum procedure, it now has a significant impact on the reception system, as it is decisive whether one is obliged to stay in large-scale reception centres. Furthermore, the obligation to live in reception facilities triggers further restrictions like a ban on work/apprenticeship (§ 61 Asylum Act), a residential obligation (§ 56 Asylum Act), or granting of benefits only in kind (§ 3 Asylum Benefits Act). Considering that the consequences for people with a poor prospect to remain are the same within the scope of the reception procedure, one can speak of an informal expansion of the concept of "safe countries of origin" and its transition into the reception procedure. As this process is linked to

a shift in responsibility from the parliament to the executive, which selects asylum seekers on the basis of their "prospects to remain", it implies also a circumvention of legally fixed regulations.

Overall, the asylum and reception procedure are thus conceived more strongly on the basis of non-legal selection criteria, which expose certain asylum seekers to considerable restrictions and have an increasingly limiting effect on their living situation. The problems are perpetuated for years and decades when, subsequent to the asylum procedure, people have to live in municipal large-scale accommodation centres, receive a *Duldung*, or do not get a work permit etc. People are increasingly excluded, both legally and geographically, from opportunities for participation, fair asylum procedures, and essential fundamental rights such as access to education (Lewek & Naber, 2017, p. 17). This exclusion is carried out by combining *de jure* discretion and *de facto* differentiation by authorities (Junghans & Kluth, 2023, p. 41). By implementing this interplay of legal and policy categories into migration management, the asylum and reception procedure are restructured to be more and more opaque.

10.6 Concluding Reflections on How to Design a Decent Asylum and Reception Procedure Within German Federalism

After having given an overview of the approaches and (administrative) hurdles to assess and address the needs of vulnerable asylum seekers within German federalism we want to make some concluding remarks which reflect both the legal framework and the lived experiences of those seeking protection.

Firstly, this concerns the way an identification procedure could be implemented. Due to the fact that the responsibility for accommodation and vulnerability assessment according to the RCD concerns the *Länder*, it makes sense to establish such an assessment in the initial reception centres of the German states. Since the medical check-up during registration is not sufficient and a sphere of trust is essential, especially for hidden vulnerabilities, this would have to be carried out by independent counselling centres or welfare organisations. The recast of the **asylum procedure counselling** could be suitable. However, it must be ensured that enough attention is paid to the assessment of vulnerabilities here, which is doubtful in the current system. Furthermore, it is important that the counsellors are sufficiently qualified and that a referral to specialised counselling centres succeeds, if this is necessary. In order to ensure that special procedural guarantees or reception needs are also met in other contexts, it is necessary to communicate effectively with the BAMF, the competent authorities for reception of the German states, the accommodation operators, and local municipal authorities, while respecting the personal rights of the persons concerned.

Taking into account the fact that fleeing one's home entails considerable stress, we recommend a **recovery period at the beginning of the asylum procedure**, which is already provided for in European and international law for victims of human trafficking. Overall, the initial phase of the asylum and reception procedure should therefore be designed in a uniform and comprehensive manner with the procedural steps of registration, a recovery period, application, counselling, and then the asylum hearing. During this first phase, which takes several weeks (but also shouldn't last longer), it is appropriate to accommodate asylum seekers in state-run reception centres where all relevant authorities are represented and where the asylum seekers' matters can be dealt with effectively. This conclusion also reflects the findings of the BAMF's evaluation report on AnkER centres. Beyond these procedural steps, however, there should no longer be an obligation to live in reception centres. Rather, there should be a focus on small municipal shelters for certain vulnerable asylum seekers and to avoid homelessness. Both the state reception centres and municipal shelters need a monitoring and complaints mechanism in order to actually implement decent reception conditions.

The municipal reception and integration of asylum seekers needs a paradigm shift. Since the obligation to live in reception centres should end after the asylum hearing, centralised accommodation should also be provided here only if this meets the needs of asylum seekers. In addition, the various administrative processes have so far been insufficiently coordinated with each other, thus we see there is a need for increased communication and cooperation between all relevant authorities. This mainly concerns the areas of accommodation, integration, work, social benefits and the Immigration Office. In addition, asylum seekers must be sufficiently informed in all areas so that appropriate and effective case management is guaranteed. All these restructuring efforts do not require any legal changes; in fact, they can be achieved by realigning administrative processes within the municipal leeway. The migration agency of the *Burgenlandkreis* can serve as a best-practice example.

At the federal level, the restrictions on freedom of movement are particularly critical. Once a residence permit has been granted, there should be no obligation to live in a certain place. The concern that certain municipalities are more attractive must not be met with restriction. Rather, the focus should be on the rethinking now described regarding the municipal integration of asylum seekers in order to create positive incentives to settle in the municipality after the asylum procedure. Especially since certain (vulnerable) persons are more dependent than others on support from peers and communities because they are exposed to a higher security risk in an isolated environment, asylum seekers should be enabled to choose their place of residence according to such criteria. Similarly, more attention needs to be paid to such social factors in the initial distribution procedure.

Finally, it remains to be mentioned that the observed trend to rely less on legal procedural guarantees and more on discretionary powers is not without concerns. Even though discretion may indeed mean individual advantages and a better application of legal regulations to the individual case, this goes hand in hand with increased uncertainty and a lack of transparency. Our research findings show how asylum seekers feel compelled to behave strategically and refrain from asserting

their rights. The increasing use of informal policy categories also leads to a disproportionate socio-spatial and legal exclusion of a high number of asylum seekers. Together with restrictions on integration and counselling services, this has long-term negative effects on their integration following the asylum procedure. Especially, there is a need for transparent regulations regarding relocation to other municipalities, monitoring and complaint mechanisms in reception conditions, on how living space is allocated and room occupancy decided, as well as on how to deal with or prevent violence in accommodation centres. These are the pillars for a decent reception of asylum seekers and the basis for adequately addressing and preventing vulnerabilities in the asylum process.

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Chapter 11
Reinforcing or Obscuring Refugee Rights? The Roles of Vulnerability in Norwegian Asylum Practices

Jessica Schultz and Hilde Lidén

Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979)
CERD	Convention on the Elimination of All Forms of Racial Discrimination (1965)
CRC	Convention on the Rights of the Child (1989)
CRPD	Convention on the Rights of Persons with Disabilities (2006)
CSR	Convention relating to the Status of Refugees (1951) and its 1967 Protocol
ECHR	European Convention on Human Rights (1950)
ECtHR	European Court of Human Rights.
FGM	Female genital mutilation
FO	Norwegian Union for Social Workers
IA	Immigration Act
ICCPR	International Covenant on Civil and Political Rights (1967)
IPA	Internal protection alternative
IR	Immigration Regulations
PU	The immigration police
UAM	Unaccompanied minors

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UDHR	Universal Declaration of Human Rights (1948)
UDI	The Immigration Directorate
UNDRIP	United National Declaration on the Rights of Indigenous Peoples (2007)
UNE	Immigration Appeals Board
UNHCR	United Nations High Commissioner for Refugees

11.1 Introduction

The concept of vulnerability is widely mobilized in migration governance; applied flexibly and inclusively it is arguably "one of the central tools on which the very effectiveness of the international protection system hinges" (Krivenko, 2022: 193). In legal instruments and bureaucratic processes affecting refugees, 'vulnerability' is primarily mobilized in two ways (Leboeuf, 2022). First, a protection seeker's 'special needs' may trigger legal obligations to adapt procedures and reception conditions, or even provide the basis for accessing a procedure at all in the context of EU externalization policies such as 'hotspot' and safe third country arrangements. Second, migrant vulnerabilities are taken into account in the legal reasoning underpinning protection decisions. While the procedural uses of 'vulnerability' have received significant scholarly attention (e.g. Costello & Hancox, 2016; Jakuleviciene, 2016; Åberg, 2022), as has the vulnerability jurisprudence of human rights bodies (e.g. Ippolito, 2020; Heri, 2021), there is less research on how the concept of vulnerability is operationalized in the substantive assessments of asylum claims at the national level.[1] Through an analysis of Norwegian law and state practices,[2] and the lived experience of protection seekers in Norway, we aim to contribute by exploring how 'vulnerability' shapes refugee status and protection on humanitarian grounds.[3] How is attention to vulnerability reflected in asylum legislation and guidelines that direct administrative practice? Does it expand the possibility that protection needs are recognized by drawing attention to contextual risks, including compound and intersecting ones? Or is it leveraged in an exclusionary way, for example to justify differential treatment of certain groups and individuals, or as an additional

[1] How vulnerability concerns shape substantive outcomes of asylum decisions at the state level seems to be a relatively underexplored dimension of migration research. For an example from the Canadian context, see Purkey (2022).

[2] Our focus was on the operationalization of legal standards in specific cases (see for example Andreetta, 2022 discussing the civil servants' emotional engagement, discourses, their relationship to 'the state', and the way they decide on specific cases based on administrative guidelines and instructions from above). In our study, we included interviews with and decisions by case workers in the Directorate of immigration (UDI) and the Board of Immigration Appeals (UNE), and judgments from higher level courts.

[3] As discussed below, the two main avenues to protection for refugee claimants in Norway are through a grant of refugee status (§28 of the Immigration Act) or the provision of a residence permit on humanitarian grounds (§38 of the Immigration Act).

requirement for accessing status? How are recognized vulnerabilities addressed by, and even produced through, the quality of protection provided?

We start with a review of the trend towards juridification of vulnerability in European and international human rights law. In addition to its long-standing application as a criterion for the prioritization of humanitarian aid, vulnerability also plays an increasingly prominent role in the interpretation of a state's legal obligations, including those related to migrant protection (Leboeuf, 2022). Part I opens with a discussion of how vulnerability has been applied to calibrate principles of non-discrimination and equality, and by extension the norm of *non-refoulement* (the duty to refrain from removing someone to a situation of persecution or similarly serious harms). Part II moves from the international and regional stage to Norway, to show how protection seekers' vulnerabilities are understood and weighed in decisions to grant refugee status or the residual (non-asylum) category of residence on humanitarian grounds: which vulnerabilities are recognized, which aren't, and why. We find that references to vulnerability refine and complement the rights-centered approach to refugee status that prevails in Norwegian law and practice. However, its protective potential is limited by the legal weight granted to competing migration control interests as well as the state's restrictive interpretations of refugee law. In addition, the focus on consistency and efficiency in administrative practice produces decisions that undervalue or overlook certain vulnerabilities. Turning to the role of a responsive state as developed in vulnerability theories—one which provides residents with support to enhance their resilience (e.g. Fineman, 2010)—we conclude in Part III by exploring how temporal governance strategies limit the agency of refugees to plan for their future and build a life in Norway.

11.2 Vulnerability as an Analytic Tool in Human Rights Law

The turn towards vulnerability reasoning in human rights law, including refugee law, derives from the confluence of (at least) two developments: the first is the increased particularization of human rights norms to secure equality of protection, which involves filling gaps in general instruments and concretizing state obligations to groups and individuals deemed vulnerable in particular ways. The second development is the influence of vulnerability theories (e.g. Goodin, 1985; Fineman, 2008; Barbou des Places, 2010; Fineman, 2010; Grear, 2013).[4] Vulnerability theories challenge the assumption of an autonomous and independent legal subject, pointing out that all human beings are embedded in their social environments and are

[4] Leboeuf (2021) describes how vulnerability as a 'travelling concept' has moved from the humanitarian aid context to migration and asylum policies to legislation at the EU level. It is likely that the concept's uptake in legal reasoning, particularly in asylum and deportation cases within Europe, can be tied not only to legal developments in human rights law including the influence of vulnerability theories but also to the increased visibility of 'vulnerability' as a justification for humanitarian action.

vulnerable to different degrees. As a 'heuristic device', the notion of vulnerability draws attention to how a person's needs, context and capacities affect their enjoyment of rights, and concretizes the state's obligations in turn (Fineman, 2008: 9). This approach we also find in the reasoning of human rights courts, including in judgments that predate the advent of vulnerability theories. While a comparison of the application of vulnerability reasoning by regional and international courts is beyond the scope of this chapter, we present a brief overview of the 'vulnerabilisation' of human rights law (Engström et al., 2022) before narrowing in on the role of vulnerability in protection assessments under the two main legal sources of protection in Norway: the European Convention on Human Rights (ECHR) and the 1951 Convention on the Status of Refugees and its 1967 Protocol (CSR).

Since the Universal Declaration of Human Rights (UDHR) was adopted in the aftermath of World War II, human rights norms have been increasingly particularized. The broad claim in the UDHR that all human beings are born free and equal in dignity and rights is supplemented by a provision on non-discrimination, reflecting the knowledge that certain groups and individuals—including on the basis of their 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (UDHR Art. 2)—face additional challenges in realizing their rights.[5] The specialized human rights regimes that emerged in the following decades, focused *inter alia* on children (CRC),[6] women (CEDAW),[7] refugees (CSR),[8] racial minorities (CERD),[9] indigenous people (UNDRIP),[10] people

[5] For example, the Committee on Economic and Social Rights, in its General Comment no. 19 on the Right to Social Security (2007) notes that "States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers, minority groups, refugees, asylum-seekers, internally displaced persons, returnees, non-nationals, prisoners and detainees" (para. 31). Available at: https://www.ohchr.org/en/resources/educators/human-rights-education-training/g-general-comment-no-19-right-social-security-article-19-2007

[6] Convention on the Rights of the Child (1989), available at https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[7] Convention on the Elimination of All Forms of Discrimination against Women (1979), available at https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

[8] Convention relating to the Status of Refugees (1951) and its 1967 Protocol. Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees and https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280048bb8

[9] Convention on the Elimination of All Forms of Racial Discrimination (1965). Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

[10] UN Declaration on the Rights of Indigenous Peoples (2007). Available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

with disabilities (CRPD),[11] and migrant workers,[12] calibrate general human rights obligations and introduce new ones, so that groups and individuals who are marginalized in society or dependent on others can access rights on an equal basis. Many specialized treaties also elaborate factors that enhance vulnerability including poverty, inequality, and gender.[13]

Besides specialized treaties, which implicitly recognize the vulnerability of certain groups, the concept of 'vulnerability' itself has increasingly permeated the reasoning of human rights courts and UN treaty monitoring bodies (Nifosi-Sutton, 2019; Ippolito, 2020). Among these, the European Court of Human Rights (ECtHR) stands out in terms of its extensive engagement with the concept (Peroni & Timmer, 2013; Ippolito & Sánchez, 2015; Al Tamimi, 2016; Baumgärtel, 2020; Heri, 2021; Leboeuf, 2022). The Court has identified vulnerable groups based on various determinants (i.e. situations of dependency or historic discrimination) and include both 'intrinsic' and 'extrinsic' factors (i.e. children as intrinsically vulnerable versus the situation of being in police custody, Baumgärtel, 2020: 16). The legal effects of recognizing vulnerability include, among others, a particularizing of rights and the corresponding duties of states; a shift in the burden of proof, and a narrowed margin of appreciation for states to limit individual rights (Al Tamimi, 2016; Ippolito, 2020; Heri, 2021).[14] As with the development of specialized treaties, vulnerability reasoning in the interpretation of general human rights norms aims to address the "constructed disadvantage of certain groups" (Peroni & Timmer, 2013: 1062) to achieve substantive equality of rights. Vulnerability serves as an underlying value within the treaty regime, shaping the search for consensus in an evolving interpretive context (Carlier, 2017). However, it is less clear that reference to an applicant's vulnerability always serves the protective purpose it is meant to achieve. This is particularly evident in the Court's migration case law, as shown below, where the vulnerability of asylum and refugees is acknowledged in theory but not always appreciated in practice.

[11] Convention on the Rights of Persons with Disabilities (2006). Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

[12] Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers

[13] See for example CRPD Art. 6, Art. 16, Art. 28.

[14] For example, in the 2001 judgment *Chapman v. UK* the ECtHR relied on the rights to family life and privacy' to 'facilitate the Gypsy way of life' *Chapman v. UK* App no 27238/95, para. 96. Under Article 14 on non-discrimination, the effect of finding that an applicant belongs to a group that has historically suffered 'prejudice with lasting consequences' that led to its 'social exclusion' is to limit the state's margin of appreciation to treat the group differently. See *Alajos Kiss v. Hungary* App no 38832/06 and the discussion by Peroni and Timmer (2013: 1080–1082). In terms of equality, then, the recognition of vulnerable groups creates new suspect criteria of discrimination which, initially, were not explicitly mentioned (like sexual orientation).

11.2.1 Asylum Seekers as a Vulnerable Group Under the ECHR: M.S.S. *and Its Aftermath*

The vulnerability of asylum seekers and refugees has been acknowledged in the ECtHR non-refoulement jurisprudence under Article 3 ECHR, which prohibits the removal of foreigners who would face a 'real risk' of torture, inhuman or degrading treatment or punishment upon their removal to a third state. In cases raising issues of potential refoulement, the Court has recognized that vulnerabilities may either create a greater risk of ill-treatment or shift the threshold of ill-treatment that must be met to establish a breach. In the *M.S.S. v. Belgium and Greece* judgment of 2011, the ECtHR formally recognized that asylum seekers and refugees constitute "a particularly underprivileged and vulnerable population group in need of special protection" (para. 251).[15] In that case, the applicant was an Afghan asylum seeker transferred to Greece by Belgium in application of Dublin Regulation, where he lived in extreme poverty while waiting for his claim to be determined. In support of its finding that the unhygienic and inadequate reception conditions, the long case-processing times, and the Greek state's failure to address these deficiencies amounted to a breach of Article 3 ECHR, the Court noted that the applicant "being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously" (para. 232). At the time of its publication, this judgment was widely lauded by scholars of refugee and human rights law, who praised the court's recognition of vulnerabilities stemming from the migration experience itself. As Krivenko points out, this case has fueled the claim that reliance on the concept of vulnerability for refugees and protection seekers produces more protective outcomes (2022: 194).

However, *M.S.S.* also exposes the weakness of group-based vulnerability assessments. While Judge Sajó, in his separate opinion criticized the Court's approach as over-generalizing, especially considering the heterogenous experiences of people seeking asylum, a more pronounced problem is the Court's own inconsistency in applying the vulnerability concept (Al Tamimi, 2016: 568). Recent judgments reveal a search for the *exceptional* refugee with extraordinary vulnerability—often based on factors like health, gender and age (Carlier, 2017; Ogg, 2022; Krivenko, 2022; Hudson, 2024). Yahyaoui Krivenko's research shows that during the decade following the *M.S.S.* judgment, the concept of vulnerability was only used to the benefit of refugees' and asylum seekers' claims if additional vulnerability factors were presented. For example, in *Tarakhel v. Swizerland*, the ECtHR was asked to assess conditions facing an asylum-seeking family challenging return to Italy under the Dublin Regulation. In this case, the vulnerability of being an asylum seeker totally dependent on state support, combined with the poor reception conditions, was exacerbated by factors related to the number of children, their age and health.[16]

[15] *M.S.S. v. Greece and Belgium*, App. No. 30696/09 (2011).

[16] *Tarakhel v. Switzerland*, App. no. 29217/12 (2014).

The Court determined that Swiss authorities must secure specific guarantees from Italy that the applicants would receive adequate accommodation and access to protection before removal could take place.

The reliance on sources of vulnerability above and beyond the fact of being an asylum seeker in *Tarakhel* shifts focus from the complicity of the state in producing migrant vulnerability, which *M.S.S.* had illuminated. It also encourages comparison among individuals in similar situations, leading to the same vulnerability contests present in other aspects of migration law and policy (see Chap. 1, this volume). Carlier points out that too much reliance on vulnerability leads not only to competition but also to indifference, as the multiplication of vulnerabilities reduces the visibility of each one (Carlier, 2017). Indeed, in some post-*Tarakhel* cases involving refugee and asylum-seeking applicants with similar additional vulnerabilities (i.e. related to age, gender, health), the ECtHR has held that Article 3 ECHR would not be engaged upon their removal to a third state. The circumstantial application of the concept leads Krivenko to conclude that vulnerability reasoning "produces a high degree of arbitrariness and uncertainty incompatible with the principle of equality, since reasonable and objective justification for differential treatment remains either absent or unclear" (2022: 18).

In addition to the subjective and inconsistent assessment of vulnerability criteria in individual cases, another issue is the ambiguous recognition of migration experience as both a source of vulnerability *and* as evidence of resilience. When assessing potential violations of Article 3 ECHR, the ECtHR seems to assume that the agency demonstrated through the act of migration will facilitate a person's relocation within the country of origin upon their return. For example, in the admissibility decision *Collins and Akaziebie v. Sweden*, the Court reasoned that a young Nigerian women could protect her daughter from female genital mutilation (FGM) if she were removed to a large city, like Lagos.[17] There was no assessment of whether, given that internal migrants usually settle among their ethnic kin, the risk of FGM might in fact be higher since harmful traditional practices sometimes occur with greater frequency in displaced populations (Brems, 2010). Meanwhile, in *S.H.H. v. United Kingdom*, the ECtHR assumed that a disabled man could return to Afghanistan and avoid risk with the help of his sisters, with no evidence of their ability or willingness to provide this protection.[18]

In theory, then, the concept of 'vulnerability' points to sources of disadvantages that expose people to serious harm and persecution; including those sources produced by the state (as in *M.S.S.).* However, in the Strasbourg court's migration case-law we see that the application of the vulnerability concept is done on a partial,

[17] *Collins and Akaziebie v. Sweden*, App no 23944/05 (ECtHR admissibility decision, 2007)

[18] *S.H.H. v. the United Kingdom*, App no. 60367/10 (2013). In their joint dissenting opinion, Judges Ziemele, Björgvinsson and De Gaetano note that the Court's reliance on the applicant's married sisters to ensure his protection "is highly speculative as there is nothing in the case file indicating that they would be able or willing to provide him with any relevant help and support that might alleviate in a meaningful way the obvious severe hardship the applicant, as a very seriously disabled person, would face upon return to Afghanistan" para. 2.

selective and even competitive basis. Because the criteria are obscure and not implemented consistently, enjoyment of rights becomes a subjective matter of highly uncertain charity (Carlier, 2017; Krivenko, 2022). The gap between potential and practice points to the need for more empirical knowledge, particularly at the national level, about how understandings of vulnerability shape who receives protection, and under what terms.

11.2.2 Vulnerability as Rationale and Interpretive Aid in Refugee Law

Sometimes referred to as the first human rights treaty[19] the Convention on the Status of Refugees of 1951 (CSR) was drafted in response to the atrocities of World War II including the persecution of groups and individuals based on ethnic, social, and physical classifications. Like subsequent human rights treaties, this specialized instrument was designed to ensure protection of a marginalized group within the jurisdiction of residence. As Cantor explains, the standards of treatment accorded to refugees in Articles 3 to 34 of the Convention "reflect a special 'human rights' concern on the part of drafters with ensuring that refugees are not unduly discriminated against in access to services and similar nationality-derived benefits in the host country" (Cantor, 2016: 394). Special protections calibrated to the specific needs of refugees—and not covered in subsequent human rights treaties—include the recognition of personal status, the provision of identity and travel documents, and immunity from penalization for irregular entry.

But if the CSR itself can be seen as a particularized instrument of human rights law aimed at a vulnerable group, it is also the case that vulnerability reasoning informs the selection criteria for group membership. Article 1A(2) of the Convention defines a 'refugee' as someone "who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion." Similar to the way vulnerability reasoning in human rights law identifies categories that are not explicitly listed as suspect bases for differential treatment, the concept of 'vulnerability' comes up in UNHCR guidance and state practice to calibrate the Convention grounds for persecution, particularly within the undefined 'social group' category. Women without a male network, girls subject to FGM, sexual minorities, victims of trafficking and unaccompanied minors have all been identified in UNHCR's guidance as groups that may qualify as refugees including (but not only) as members of a 'social group'. As is the case with human rights more broadly,

[19] See, for example, Foster (2007), Hathaway & Foster (2014) and Einarsen (2011). But see Chetail (2014: 44), who describes the Convention as a 'hybrid legal creation: it is grounded in the very notion of minimum standards inherited from the traditional international law of aliens, while its ultimate objective is to secure the exercise of fundamental rights in line with the new branch of human rights law".

then, the concept of vulnerability serves as a heuristic device within refugee law to make legible exposed groups,[20] and the types of persecution they face (i.e. FGM, forced marriage or child labor) including cumulative discrimination often based on one or more vulnerabilities of the person concerned. The concept of vulnerability may also calibrate the threshold of risk, the burden of proof and the credibility assessment. For example, the Guidelines concerning Child Asylum Claims state that "alongside age, factors such as rights specific to children, a child's stage of development, knowledge and/or memory of conditions in the country of origin, and vulnerability, also need to be considered to ensure an appropriate application of the eligibility criteria for refugee status" (UNHCR, 2009: para. 4). These Guidelines further emphasize that children may be subject to specific forms of persecution influenced by age, level of maturity and vulnerabilities.[21] Furthermore, even if the child faces the same risk as adults, he or she may experience these risks differently, depending on various factors:

> Particularly in claims where the harm suffered or feared is more severe than mere harassment but less severe than a threat to life or freedom, the individual circumstances of the child, including his/her age, may be important factors in deciding whether the harm amounts to persecution (UNHCR, 2009: para. 15).

When considering the possibility of an 'internal protection alternative' (IPA), furthermore, UNHCR guidance states that age, sex, disability, family situation and relationships, "social and other vulnerabilities," language abilities, education, skills and work experience and so on are factors to be considered when assessing whether an IPA is a reasonable alternative to asylum abroad (UNHCR, 2003: para. 25).

Against this backdrop explaining how vulnerability reasoning has been adapted by the ECtHR and the UNHCR to calibrate the rights to non-refoulement and status as a refugee, we turn to Norwegian law and practice. In this analysis, we find that vulnerability reasoning is similarly applied in both an inclusive manner (to identify exposed groups) and an exclusionary one (to reinforce hierarchies of vulnerable migrants). In addition, certain vulnerabilities are routinely overlooked, either by law or in practice. On a policy level, vulnerability discourse contributes to displacing migrant rights into the realm of state discretion.

[20] For example, in UNHCR's International Protection Considerations for People Fleeing Somalia published in 2022, female headed households are identified as among the 'most vulnerable groups' in Somalia, as are children and internally displaced persons with disabilities, and children from minority clans. Available at https://www.refworld.org/docid/6308b1844.html.

[21] Child-specific forms of persecution include, but are not limited to, under-age recruitment, child trafficking and female genital mutilation (FGM), family and domestic violence, forced or underage marriage, bonded or hazardous child labour, forced labour, forced prostitution (UNHCR, 2009: para. 18).

11.3 Vulnerability and the Assessment of Protection Needs in Norway

Norwegian laws and state practices provide a unique entry point for exploring how human vulnerabilities are appreciated in the assessment of refugee status in Europe. One reason is because of the relatively recent juridification of refugee law in Norway, meaning that residence on protection grounds has been historically perceived to be mainly a matter of humanitarian compassion rather than legal obligation (Schultz, 2022: 16). We see the residual effects of this in the (1) narrow interpretation of obligations under the Refugee Convention (Sect. 11.3.2) and the (2) continued reliance on the immigration category of 'humanitarian residence' as a safety net for people who arguably have a right to non-refoulement under human rights law (Sect. 11.3.3). Also, while vulnerability is not a legal concept in Norway (unlike in many EU states), it nonetheless permeates the guidance that shapes administrative practices and resulting decisions. Our informants in the asylum administration also told us that the idea of vulnerability is useful in identifying cases where return would be strongly inadvisable even if it would be legally justified (Lidén et al., 2021: 85).

The analysis of legal reasoning in Norwegian practice is based on three data sets. Firstly, we reviewed the relevant provisions of the Immigration Act (IA), the Immigration Regulations (IR), preparatory works, circulars from the Ministry of Justice and Security, as well as administrative guidance by the Immigration Directorate (UDI) and the Immigration Appeals Board (UNE), which is the appellate body for immigration and citizen cases in Norway. The research includes Supreme Court judgments interpreting aspects of refugee law in Norway, judgments from the Borgarting Appeals Court, asylum decisions from the UDI as well as the UNE. From the UNE practice database, which consists of abstracts of summaries of decisions produced by the UNE, we identified 50 cases using the search words 'vulnerability' and 'vulnerable' (sårbarhet/sårbar). While these are by no means representative, they illustrate some of the ways in which vulnerability is understood and operationalized in UNE's practice.

Secondly, we analyzed a small number of administrative decisions from both UDI (12 cases) and UNE (9 cases), which were selected by UDI and UNE based on our request to identify 'typical' cases on topics related to unaccompanied minors, health issues, human trafficking, transfers to third countries in application of the Dublin Regulation as well as the cessation of refugee status for members of a 'social group'. These case files included the asylum interviews, decisions, and internal comments on the case by the involved caseworkers.

And finally, we conducted 34 interviews with 35 protection seekers and 23 interviews with 31 people working in the institutional context of the everyday lives of protection seekers. The fieldwork largely took place in three arenas: reception centres, centres for UAMs and refugees resettled through UNHCR, and facilitators for survivors of human trafficking.

11.3.1 Vulnerability and the Right to Refugee Status in Norway

Section 28 IA provides a right to refugee status for persons who meet the refugee definition established in the Refugee Convention (§28a). This right also extends to persons protected from return under human rights law (e.g. Article 3 ECHR) (§28b). In this way, Norwegian asylum legislation departs from that of other countries, which often provide a distinct (and subsidiary) status in such cases.[22]

The concept of vulnerability is implicitly integrated into the criteria for refugee status, particularly when assessing a person's exposure to harm, as well as their coping capacities. Like the EU Qualification Directive, the IA provides that in the protection assessment, "consideration must be given to whether the applicant is a child" (§28 para. 3), and persecution includes sexual violence and "acts of a gender-specific or child-specific nature" (§29). Meanwhile, the topic and country guidance relied on by immigration authorities provide greater details about types of persecution that might be relevant. For example, the Gender Guidelines produced by the Ministry of Justice (2012) mention rape, forced sterilization or abortion, FGM, bride burning and honor killing, mistreatment inside and outside the home, forced marriage, forced prostitution, and human trafficking. They also observe that factors related to a person's gender, gender identity, gender expression, and sexual orientation can impact their ability to receive protection. When it comes to security issues, guidance documents recognize that some people—for example families with children and unaccompanied minors (UAMs) might be at greater risk than the population at large.[23] In addition to objective risk, they note that "extra vulnerable" people may have a lower threshold for experiencing a reaction that can be considered persecution or serious harm; in this regard, gender may shape a person's response to threats in combination with, for example, age, health condition and/or social network (Ministry of Justice, 2012: 3.2).

The concept of vulnerability, as it does in the UNHCR guidance mentioned above (Sect. 11.2.2) aids in making legible groups at risk in particular contexts. Stateless Palestinians have been described as a vulnerable group, "disproportionately exposed to controls, kidnapping and imprisonment, with no clan network or other support structure" (Lidén et al., 2021: 89). Somalians returning after long periods outside the country are 'vulnerable' to harm because they no longer recognize cultural codes. In other types of cases, a more individualized approach applies. In claims by victims of trafficking, compound vulnerabilities (lack of resources,

[22] It should be noted that, particularly since 2015, proposals to introduce a distinct subsidiary protection status have been made by both the previous and current Norwegian governments.

[23] For example, with regard to pre-Taliban controlled Afghanistan, the authorities recognized that in provinces where threats associated with the conflict are not so dangerous that they give rise to a generalized need for asylum, 'exposed groups', in particular families with children and UAMs may have a specific need for protection vis-à-vis their area of residence. Children may also be less able than adults to resist certain harms, such as forced recruitment by the Taliban, and they might have a stronger fear of such recruitment.

schooling and work experience, history of abuse and age) may be emphasized to support a finding that the person faces a risk of re-trafficking. Here, we see the tendencies to use the adjective 'vulnerable' on the one hand to identify exposed groups, and on the other to distinguish individual claimants from others in the same general group.

Partial Application of a Vulnerability-Sensitive Approach

The plethora of detailed guidance ensures that decision-makers at the Immigration Directorate and the Immigration Appeals Board are aware of various sources of vulnerability that are relevant to their substantive assessment of a protection claim.[24] At the same time, this detailed steering has its own risks. First, groups and individuals who are not addressed by this guidance may be overlooked, or their claims to asylum may not be considered credible (Lidén et al., 2021). Second, eligibility criteria tend, across the board, to overestimate the protective capacities of private actors, including individuals and clans. This has conflicting consequences for the refugee claim. For example, while 'single women' from certain countries may be recognized as refugees because they lack protection from a male relative, the reestablishment of family links is just as automatically presumed to negate the need for protection. No assessment is made of whether protection is practically available, or the potential of such networks to be a source of harm instead of protection. In one decision involving a 'woman without a male network' from Afghanistan, the alleged domestic violence inflicted by the claimant's assumed protector was disregarded.[25]

A second problem relates to uncertainty in the credibility assessment. Despite official recognition that factors related to age, maturity, gender, social class, culture and health status may affect individuals' ability to present their claims in a perfectly coherent way,[26] doubts about *any* aspect of a claim affect, in practice, an individual's chances of having their protection needs recognized for the long term. In our research with unaccompanied Afghan minors, we found that despite the duty to make a 'child sensitive assessment' of protection claims (IA §28 para. 3) including a 'child sensitive credibility assessment',[27] questions about a UAM's actual age, their journey, and so on can negatively influence the decision-maker's assessment of the risk upon return to the country of origin. This is also true when protection needs change over time, for example when a risk arises later as a consequence of activities in Norway.

[24] Norway has a large number of guidelines for various population groups and topics, which decision makers at UDI are obliged to follow in order to promote equal treatment of like cases and limit the scope for discretionary treatment.

[25] LB-2016-10,512, 09.18.2017. Discussed in Lidén 2021: 101.

[26] https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-006/

[27] https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-007/#3.3._Barnesensitive_vurderinger_ at para. 6.

The case of Hamid, an unaccompanied minor who arrived in 2015, highlights some of these challenges. Hamid told the police in the arrival center (PU) he was about 15 years old and belonged to the Hazera minority group in Afghanistan. The policeman suspected him to be 18, and sent him to a transit center for adults, where he stayed about a year. In the asylum interview nearly 1 year later, the interviewer accepted that he was likely younger, and Hamid was moved to a reception center for unaccompanied minors. He turned 17 before receiving the decision on his asylum application, which accepted his original age. He was granted a temporary permit until the age of 18 after which he was expected to return to Afghanistan.

Meanwhile, during his stay in the transit center for adults, Hamid felt unsafe, keeping either to himself or close to the staff. The staff believed him to be a minor and in need of extra care. They introduced him to the local Pentecost church, where he explained how the holy spirit of the Christian faith overwhelmed him. The relationship with the staff who included him in the congregation made him feel more relaxed and secure. He explains: "All the bad experiences and harm I have gone through—in a way, it was in the name of Islam, they always said that you will end up in hell. Their God was not good to me."

In the asylum interview, Hamid talked about his new faith, and the conversion to Christianity was also an issue in his appeals. The administrative guidelines on conversion to Christianity stress that when assessing whether the conversion is real, relevant factors include the applicant's reflections on the decision to convert, ability to explain the conversion, and knowledge and thoughts about the religion (UDI, 2020). Even though the guidelines also acknowledge that conversion can be difficult to talk about and that people experience it differently, Hamid was denied protection on credibility grounds; his reflections on the consequences of his conversion to Christianity for his future life were deemed inadequate. Nor was credibility given to his other claims for protection and his experiences of violence and exploitation before and during his journey to Norway. In the assessment of his appeal and in two court cases, where several statements made by priests and members of his congregation were included, the same valuation of credibility was emphasized—even though, in the last court case one of the three judges acknowledged the lack of a child-sensitive approach taken in the decision, despite the duty to take one explicitly established by law.[28] This case illustrates how the lack of credibility concerning certain aspects can taint the overall claim. Further, it shows how decision-makers overlook how particular experiences as a migrant child create forms of vulnerability that shape protection needs as an adult.

[28] Borgarting Appeals Court, LB-201920655 (20.042020).

11.3.2 Vulnerability and Limits to Refugee Status in Norway

Thus far, we have outlined how Norwegian law and administrative guidelines integrate age, gender and other sources of potential vulnerability into the protection assessment, and how this vulnerability-sensitive approach is imperfectly implemented. However, there are also areas of asylum practice where vulnerability-related factors are explicitly *excluded* by law. The following sections briefly review two significant examples: (1) the restrictive interpretation of the 'internal protection alternative' (IPA) following amendments to the IA in 2016 and (2) the narrow scope for derived refugee status for close family members. These exclusions have the effect of increasing vulnerability for people with recognized protection needs within their countries of origin.

Vulnerability and the Internal Protection Alternative (IPA)

The IPA is an implied limit on the right to refugee status, permitting refusal of an asylum claim if a person can safely and reasonably relocate to another area of their country of nationality (UNHCR, 2003). While international refugee doctrine conditions IPA practice on this two- part test of 'safety' and 'reasonableness', this latter criterion was controversially removed as part of a package of restrictive asylum measures passed in 2016 (Schultz, 2017). Therefore, vulnerability-related factors that would have previously rendered relocation *unreasonable*, such as the lack of a network or skills or medical needs, are only legally relevant if they would make removal *unsafe*. For example, in one case, the Board of Appeals (UNE) considered whether an IPA in Baghdad would be safe for a young Sunni-Muslim man. It found that given his lack of connection in the city, it was not certain he could settle there at all. In addition, however, his age, gender, and background would render him "vulnerable to controls" and therefore insecure. On the other hand, in a different case the Board emphasized an Afghan claimant's long migration history and his youth as signs of resourcefulness, not vulnerability, and referred him to an IPA *despite* his lack of a network, education, and skills. Here UNE presumed that relatives had invested in his travel to Europe and would support him upon his return.

The changes to IPA criteria have also a significant impact on the legal status granted to UAMs. While previously UAMs who established a risk of harm in their home area typically received refugee status because relocation would be 'unreasonable', they may now be refused refugee status because 'effective protection' is available in an IPA as soon as they turn 18 years old. In the meantime, they will receive residence on humanitarian grounds (Sect. 11.3.3).

Interpretation of Derivative Refugee Status for Close Family Members

A second example of how restrictive interpretations of refugee law can overlook or even produce vulnerability relates to limits on derived refugee status. UNHCR practice under its mandate is to grant derivative status, at a minimum, to all members of a refugee's nuclear family, including spouses, children under 18, as well as parents and minor siblings of refugees under the age of 18.[29] Norwegian law, however, takes a narrower position, providing that only spouses, partners and minor, unmarried children receive derivative refugee status (§28 para. 6). This means that non-refugee parents whose children have refugee status have historically had to apply for family reunification to remain with those children in Norway. This process, which involves significant costs (approximately 800 Euro in 2022) and can take years to resolve, leaves children and their parents in a kind of legal limbo in Norway, living in reception centers without the possibility of relocating to a municipality and starting to integrate in a stable community. While practice now provides that the non-refugee parents may qualify for residence on humanitarian grounds,[30] many affected individuals are not aware of this change and have endured great insecurity during their children's formative years.

One of our informants, Rahel, is an Eritrean woman refused refugee status by UDI who believed she was in fact from Ethiopia. While waiting for her appeal to be processed, Rahel had a daughter who was immediately granted refugee status based on the risk of FGM if returned to Ethiopia. Rahel was advised to seek family reunification with her refugee child. However, she could not afford the fees, and the pair remained in a reception center awaiting resolution of her status during the child's first years.

When her daughter turned three, Rahel became severely ill with cancer. She explains how hard this time felt, being on her own with the responsibility for her daughter. She received some help with care of her daughter while staying in the hospital from the reception center's staff and co-residents, but she is still unable to work and receives only basic support from the Immigration Authorities. This sum is not enough to cover food and basic needs, much less her medicine costs of about 300 Euro per year: "I have to live with the pain." While humanitarian status is a better solution than the family reunification route, the policy change has been poorly communicated and many single parents with refugee children remain in unstable and deprived conditions. The fact that Rahel's identity is unresolved means that a humanitarian permit is likely to be granted for only one year at a time, extending her insecurity indefinitely (see Sects. 11.3.3. and 11.4).

[29] UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, 5.1 Available at https://www.refworld.org/pdfid/42d66dd84.pdf

[30] Grand Board of Immigration Appeals, N2205490120, January 2022. Available at https://www.une.no/kildesamling/praksisbase-landingsside/2022/januar/n2205490120/

11.3.3 Vulnerability as a Basis for Residence on Humanitarian Grounds: Between Duties and Discretion

Asylum seekers who do not qualify for international protection under §28 IA can nonetheless receive a residence permit according if strong humanitarian considerations or special "connections to the realm" apply (§38 IA). This provision is permissive rather than mandatory and immigration-control related considerations are accorded significant weight in determining whether a §38 permit is granted. Factors that may be considered include those traditionally associated with the concept of vulnerability, including whether:

(a) *the foreign national is an unaccompanied minor who would be without proper care if he or she were returned,*
(b) *the foreign national needs to stay in the realm due to compelling health circumstances,*
(c) *there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit, or*
(d) *the foreign national has been a victim of human trafficking.*

Children who do not qualify for international protection may be granted a §38 permit for conditions that are less serious than those granted to an adult (para. 3). It is also here, under consideration of §38, that a formal 'best interests of the child' assessment is made, which involves factors related to both the return situation and the child's circumstances in Norway.[31]

Section 38 is a place holder for both hard legal obligations (derived from the Convention on the Rights of the Child (CRC), the Palermo Protocol, and the non-refoulement obligations under Article 3 ECHR relating to medical issues and severe deprivation) and discretionary measures adopted on humanitarian grounds, particularly in cases where a person's multiple challenges intersect to make the prospect of return risky or deeply unreasonable. However, its protective potential is diluted by its discretionary nature. Being situated within an immigration category outside the asylum regime means that human rights may yield to state interests, with limited scope for judicial review.[32] Where vulnerability is mentioned explicitly, it is used as a yardstick—to say that an applicant would or would not be among the '*most* vulnerable' if returned to the country of origin (Lidén et al., 2021). Concern with creating pull factors to Norway means that UAMs may be granted residence only until

[31] Immigration Regulations provide that the length of the child's residence in Norway, together with the child's age, should be a fundamental consideration (§8–5 IR). Other relevant factors include the child's need for stability and continuity; what language the child speaks; the child's psychological and physical health situation; the child's attachments to family, friends, and community in Norway and in the country of origin; the child's care situation in Norway; the child's care situation upon return, and the social and humanitarian situation upon return.

[32] The Act specifically mentions the following: (a) possible consequences for the number of applications based on similar grounds, (b) social consequences, (c) the need for control, and (d) respect for the other provisions of the Act.

the age of 18, and the cases we reviewed show that highly vulnerable migrants may be excluded entirely if there are many people in a similar situation in their country of origin.[33] Both the legal weight given to children's best interests *and* the practice of assessing them are compromised, due to a combination of legal and administrative constraints (Lidén et al., 2021). Finally, as discussed in the next section, beneficiaries of §38 status have weaker rights compared to refugees, including the right to family reunification and security of residence.

The 'October Children': From the Right to Refugee Status to Compassionate Leave on Vulnerability Grounds

The case of the so-called 'October children', unaccompanied minors who came mainly from Afghanistan in the autumn of 2015, illustrates how the concept of vulnerability has been used to legitimize unlawful applications of refugee law. These minors had been denied refugee status because of two changes in law and practice affecting Afghan asylum seekers: one was a significant changed assessment of security conditions in common regions of refugee origin, and the other was the removal of the 'reasonableness' criteria from IPA practice (Schultz, 2017). While previously UAMs with protection needs vis-à-vis their area of origin would be granted refugee status because removal to internal displacement was deemed 'unreasonable', many 'October children' received limited permits under §38 IA until the age of 18. As the deadline for deportation loomed in 2017, a report published by the Norwegian Organization for Asylum Seekers (NOAS) with other NGOs revealed that limited permits had been granted to youths with serious psychological health problems consistent with PTSD and psychosis; with only weak connections to their home countries and/or no work experience; and with trauma following violence, sexual assault, and/or the murders of close family members (NOAS et al., 2017).

For example, one boy whose father had been murdered by the Taliban had survived physical and psychological abuse, including forced drug use, in the home of an uncle his widow mother had been forced to marry. He lived for 8 years in a neighboring country, where his mother and sisters still live, had not returned to Afghanistan for 11 years, and has no remaining family there. He self-harms, has suicidal thoughts, and the fear of being killed prevents him from sleeping many nights. He was diagnosed with PTSD and an adjustment disorder and has no education. And yet he was only granted a limited permit until the age of 18, because relocation at that point to Kabul or another city was deemed safe (NOAS et al., 2017). Furthermore, the NOAS report noted that only in a minority of cases were the child's best interests explicitly assessed (NOAS et al., 2017: 7).

[33] Concerns with creating pull factors to Norway was explicit expressed in the "White paper on more restrictive legislation in the Immigration Act" (Prop. 90 L (2015–2016 Endringer i utlendingsloven mv. (innstramninger II)). The ministry justified the proposal to allow UAMs to stay until they reach the age of 18 with "that the regulations should be designed in such a way as not to provide incentives to send children on long and dangerous journeys (Sect. 6.5.2).

Faced with this knowledge and public outcry about sending youths back to an insecure country, the government decided to soften its policy by re-evaluating the October children's claims and introduced "vulnerability criteria" in the assessment of whether to grant a time-restricted permit or a regular residence permit under §38 IA. In cases where the child's asylum claim was denied based on a safe IPA, the lack of a caregiver, other network, and resources to establish oneself were relevant factors in this regard—a clear departure from previous practice.[34] Further, any time limits on residence would have to be defensible from a child's best interest perspective (§8–8 IR). The instructions also emphasize that a holistic assessment must be taken of each child's situation, so that one single factor will not have decisive impact on what kind of permit is granted. So, for example, while it might be easier in general for a 16-year-old to be granted a regular permit, an individual who is nearly 18 years old may be vulnerable in other ways that justify not limiting residence. It is interesting that the guidance recognizes migratory vulnerabilities: children who have been in flight over a long period of time or have lived in many different places may have an especially strong need for stability and continuity. Hence, vulnerability criteria both legitimates and moderates the vulnerabilising effects of restrictive migration policies.

Eighty percent of the 'October children' who met the criteria for reassessment of their claim received residence, but only two of those were granted a regular §38 IA permit without any restrictions. The normal rule for residence is that the applicant must document his or her identity (§8–12 IR). This proved impossible for most of the Afghan UAMs. In one October child decision, for example, the Appeals Board agreed to give a 'regular' permit to an illiterate Afghan boy with no network or resources upon return to Afghanistan. Because he lacked legitimate travel documents, however, his permit was only granted for a one-year period. Permits limited for ID reasons can be renewed indefinitely, but they do not provide the basis for permanent residence, leading to a protracted limbo for those who cannot produce the requested documentation. Consequences of having an ID-limited residence permit are wide-ranging, including exclusion from banking services and employment, limits on mobility, restrictions on family reunification, problems getting resettled from a reception center to a municipality, and mental and physical health deterioration (NOAS, 2020).

The 'October children' case highlights the conflicting ways in which the concept of vulnerability shapes access to protection in Norway. Rather than reinstating, as required under international law, the reasonableness criteria in the application of the IPA limit on refugee status, the government chose to frame the assessment of risks

[34] Other criteria to be considered include: the child's age (i.e., barely 16 or close to 18); what language the child speaks; the child's psychological and physical health situation; the child's need for stability and continuity: the child's attachment to family, friends, and the local community in his country of origin or Norway; the child's care situation in Norway; and the social and humanitarian situation upon return. Decision-makers should also consider whether the child has been exposed to trafficking, abuse, or neglect; and the length of time for consideration of the case unless the minor himself or herself has contributed to any delay.

related to internal displacement in a war-torn country as a matter of compassion. Rather than supporting the resilience of these youths deemed particularly 'vulnerable', the consequence for most of them was continued insecurity of residence in Norway.

11.4 Durable Solutions and the Responsive State of Refuge

Refugees and humanitarian protection holders in Norway receive a 5-year temporary residence permit, with the opportunity to apply for permanent residence after that time provided that other criteria—a continued protection need, sufficient income, language skills and so on—are met (Schultz, 2022). While the state's duty to provide a 'durable solution' for refugees is most directly derived from a purposive reading of the Refugee Convention (Hathaway, 2021: 1128), human rights law also imposes a positive obligation to ensure access to rights, enabling lives in dignity, to those within their jurisdiction. Vulnerability theories, meanwhile, add the insight that our universal vulnerability implies the need for an active and responsive state that builds resilience[35] and plays a role in "lessening, ameliorating, and compensating for vulnerability" (Fineman, 2010: 269). This informs a more inclusive concept of 'protection' that addresses sources of migration-related vulnerability: legal insecurity and immobility, family life (or barriers to such), and health-related challenges (Lidén et al., 2022; Nakache et al., 2022).

In Norway, however, we see that migration control policies make the prospects of long-term stay more insecure, including for refugees who have traditionally had a predictable path to citizenship. This 'temporary turn' (Schultz, 2022) is produced within multiple policy fields, and through the interaction between them. Sources of temporariness include sharpened requirements for permanent residence, retroactive punishments for criminal activities, and the mandatory withdrawal ('cessation') of status when protection needs are deemed to no longer exist. These affect refugees' health as well as their motivation and ability to integrate in Norway despite long periods of legal residence (Brekke et al., 2020; Schultz, 2022). The incorporation of the IPA into cessation criteria also means that residence in Norway may be revoked even if return to one's previous residence remains unsafe—prolonging displacement within the country of origin. The grant of time-limited residence permits to UAMs children and families whose identities remain unresolved is another example of how policies produce vulnerabilities through their effects on health, education, mobility and social belonging (NOAS, 2020).

[35] Resilience as defined by Fineman relates to "the means and ability to recover from harm, setbacks, and the misfortunes that affect our lives" (2017: 146).

11.5 Vulnerability: Obscuring or Reinforcing Refugee Rights?

In this chapter, we ask how the concept of 'vulnerability' is understood and applied in the assessment of claims to protection in Norway. Does attention to migrant vulnerability reinforce refugee rights, by promoting a more nuanced, context-specific analysis of an individual's need for protection? Or does it exacerbate the exclusionary dimensions of asylum policy by framing responses to vulnerability as matters of state discretion? The answer, not surprisingly, is both.

To set the scene, we first discussed how 'vulnerability' has been leveraged to calibrate general human rights law to the particular needs of individual and groups. The impact of the concept is evident in the proliferation of specialized international human rights treaties and references to vulnerability in the legal reasoning of human rights courts and treaty monitoring bodies. However, as jurisprudence from the ECtHR reveals, attention to 'vulnerability' can be a double-edged sword. On the one hand it can clarify states' duties to ameliorate exposure to risk; on the other, it can promote vulnerability contests and reinforce the exclusion of certain vulnerable groups.

While vulnerability is not a legal concept in Norway, it permeates the law and guidance that informs asylum practices. For example, the Immigration Act requires that consideration be given to whether the applicant is a child when determining refugee status and specifies that persecution includes sexual violence and acts of a gender-specific and child-specific nature. Detailed practice notes related to topics and countries of refugee origin cover multiple and intersecting sources of migrant vulnerability. However, extensive guidance presents its own risks since situations not described on paper may be considered less credible. Further, vulnerabilities related to internal displacement are systematically undervalued, because of changes to the legal criteria for IPA application. And finally, despite the recognition that multiple factors (age, maturity, gender, social class, culture, and health status) can impact a person's ability to present a coherent refugee claim, our research illustrates how even a single source of uncertainty in the mind of the decision-maker can derail the entire assessment.

This chapter also shows how vulnerability considerations shape access to residence on humanitarian grounds for people who are deemed not to qualify for asylum. While the criteria for humanitarian residence capture recognized sources of vulnerability related to trafficking, poor health, and status as an unaccompanied minor, the qualification threshold is high and differs depending on the country of origin. When it comes to UAMs, the 'vulnerability criteria' introduced to determine whether return to an IPA at the age of 18 is appropriate reinforces the discretionary nature of the protection provided. The case of the 'October children' shows how vulnerability discourse distracts from practices that arguably violate refugee law, giving credence to Carlier's warning about its potential to "substitute human rights with a vague charity, and therefore weaken them" (Carlier, 2017: 175). Finally, the chapter describes how migrant vulnerability is produced by policies that prolong the experience of protracted displacement through temporariness of residence.

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