

# 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
E meta>A	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

---

L. Leboeuf (✉)

Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany

Faculty of Law, University of Liège, Liège, Belgium

e-mail: [leboeuf@eth.mpg.de](mailto:leboeuf@eth.mpg.de)

© The Author(s) 2025

L. Leboeuf et al. (eds.), *Between Protection and Harm*, IMISCOE Research Series, [https://doi.org/10.1007/978-3-031-69808-8\\_2](https://doi.org/10.1007/978-3-031-69808-8_2)

controls (Dennison & Geddes, 2019). But the volunteer grassroots 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; Vandevorrdt, 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’<sup>1</sup> 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).<sup>2</sup>

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

---

<sup>1</sup>When referred to as a concept, ‘vulnerability’ is used with quotation marks throughout this chapter.

<sup>2</sup>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).<sup>3</sup> Among the various legislative

---

<sup>3</sup>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).<sup>4</sup> 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).<sup>5</sup> 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.<sup>6</sup>

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)<sup>7</sup>; or the 2020

---

<sup>4</sup>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).

<sup>5</sup>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).

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

<sup>7</sup>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 capacity and outside of the EU legal frameworks (Cases T-192/16 *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 and 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’,<sup>8</sup> 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.<sup>9</sup> Similarly, international organisations, such as the IOM, have developed their own model to assess vulnerabilities in ways that seek to

---

<sup>8</sup> ‘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.

<sup>9</sup> 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).<sup>10</sup>

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,<sup>11</sup> 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).<sup>12</sup> 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.

<sup>10</sup>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).

<sup>11</sup>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](http://www.population-europe.eu))

<sup>12</sup>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; Boubilil, 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,<sup>13</sup> 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 &

---

<sup>13</sup>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.<sup>14</sup> 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

---

<sup>14</sup>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.<sup>15</sup>

---

<sup>15</sup>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.<sup>16</sup> 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).

---

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

<sup>16</sup>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.<sup>17</sup> 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.

---

<sup>17</sup>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),<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> The Court has

---

<sup>18</sup>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).

<sup>19</sup>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.

<sup>20</sup>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,<sup>21</sup> disability,<sup>22</sup> and state of health,<sup>23</sup> including their mental health condition.<sup>24</sup> 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,<sup>25</sup> or members of a religious minority,<sup>26</sup> or of being a migrant in the country of removal.<sup>27</sup>

In these rulings, the explicit emphasis on ‘vulnerability’ mainly served to justify findings of a Convention violation.<sup>28</sup> 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.<sup>29</sup> Similarly, the Court has often rejected applications, without contesting the applicant’s particularly vulnerable position in the country to which they will be expelled.<sup>30</sup> Explicit references

---

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

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

<sup>22</sup> App. 60367/10 *S.H.H. v. the UK* ECHR 29 January 2013.

<sup>23</sup> App. 41738/10 *Paposhvili v. Belgium* ECHR GC 13 December 2016.

<sup>24</sup> App. No. 57467/15 ECHR GC *Savran v. Denmark* 7 December 2021.

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> App. 27765/09 *Hirsi Jamaa v. Italy* ECHR GC 23 February 2012.

<sup>28</sup> 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).

<sup>29</sup> 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).

<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> The CJEU followed suit. It

---

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).

<sup>31</sup> App. 30696/09 *M.S.S. v. Belgium and Greece* ECHR GC 21 January 2011.

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

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup>

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 specific 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’.<sup>37</sup> 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

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

<sup>35</sup>Case C-146/17 *Jawo*, 19 March 2019, EU:C:2019:218.

<sup>36</sup>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.

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

specific vulnerabilities.<sup>38</sup> ‘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.<sup>39</sup> 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

---

<sup>38</sup> App. 36037/17 *R.R. and Others vs. Hungary* ECHR 2 March 2021.

<sup>39</sup> 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 times 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.

### List of References

#### Treaties and Legislations

- Convention relating to the Status of Refugees (28 July 1951, Geneva) *UNTS* 189: 137.
- UN Convention on the Rights of Persons with Disabilities (13 December 2006, New York) *UNTS* 2515: 3.
- Human Rights Council (2012) *UN Guiding Principles on Extreme Poverty and Human Rights* Res 21/11.
- United Nations General Assembly (2018). *Global Compact for Safe, Orderly and Regular Migration* Res 73/195.
- Charter of Fundamental Rights of the European Union (7 June 2016) *Official Journal* C-202: 391–407.
- Dir 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (20 December 2011) *Official Journal* L 337: 9–26.
- Dir 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (29 June 2013) *Official Journal* L 180: 60–95.
- Dir 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) (29 June 2013) *Official Journal* L 180: 96–116.
- Reg (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (14 November 2019) *Official Journal* L 295: 1.
- Reg (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (30 December 2021) *Official Journal* L 468: 1–54.
- Reg (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (22 May 2024) *Official Journal* L.
- Reg (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148 (22 May 2024) *Official Journal* L.

**Court Cases****ECtHR**

- App. 27238/95 *Chapman v. the UK* ECHR GC 18 January 2001  
 App. 13178/03 *Mubilanzila v. Belgium* ECHR 12 October 2006  
 App. 57325/00 *D.H. and Others v. The Czech Republic* ECHR GC 13 November 2007  
 App. 41442/07 *Muskhadzhiyeva v. Belgium* ECHR 19 January 2010  
 App. 30696/09 *M.S.S. v. Belgium and Greece* ECHR GC 21 January 2011  
 App. 8687/08 *Rahimi vs. Greece* ECHR 5 April 2011  
 App. 8319/07 and 11449/07 *Sufi and Elmi v. the U.K.* ECHR GC 28 June 2011  
 App. 36760/06 *Stanev vs. Bulgaria* ECHR GC 17 January 2012  
 App. 27765/09 *Hirsi Jamaa v. Italy* ECHR GC 23 February 2012  
 App. 16567/10 *Nacic v. Sweden* ECHR 15 May 2012  
 App. 60367/10 *S.H.H. v. the UK* ECHR 29 January 2013  
 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. 886/11 *K.A.B. v. Sweden* ECHR 5 September 2013  
 App. 70586/11 *Mohamad v. Greece* ECHR 11 December 2014  
 App. 29217/12 *Tarakhel v. Switzerland* ECHR GC 4 November 2014  
 App. 43611/11 *F.G. v. Sweden* ECHR 23 March 2016  
 App. 25794/13 and 28151/13 *Abdullahi Elmi and Aweys Abubakar v. Malta* ECHR  
 22 November 2016  
 App. 41738/10 *Paposhvili v. Belgium* ECHR GC 13 December 2016  
 App. 59793/17 *M.A. and others v. Lithuania* ECHR 11 December 2018  
 App. 47287/15 *Ilias and Ahmed v. Hungary* ECHR GC 21 November 2019  
 App. 28820/13, 75547/13 and 13114/15 *N.H. and Others vs. France* ECHR 2  
 July 2020  
 App. 36037/17 *R.R. and Others vs. Hungary* ECHR 2 March 2021  
 App. 36037/17 *R.R. and Others vs. Hungary* ECHR 2 March 2021  
 App. No. 57467/15 ECHR GC *Savran v. Denmark* 7 December 2021

**CJEU**

- 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  
 T-257/16 *N.M. v European Council* (2017) EU:T:2017:130  
 C-208 to C-210/17 *PNF, NG and NM v European Council* (2018) ECLI:EU:2018:705  
 Case C-578/16 *PPU C.K., H.F., and A.S.*, 16 February 2017, EU:C:2017:127  
 Case C-146/17 *Jawo*, 19 March 2019, EU:C:2019:218



## Policy Documents

- Commission Recommendation (EU). 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways (first October 2020) *Official Journal* L317: 13–22.
- Council of Europe. (2021). *Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021–2025)* Council of Europe Publications, Strasbourg.
- ECRE. (2017). The Concept of Vulnerability in European Asylum Procedure *AIDA Report* Available at [https://asylumineurope.org/wp-content/uploads/2020/11/aida\\_vulnerability\\_in\\_asylum\\_procedures.pdf](https://asylumineurope.org/wp-content/uploads/2020/11/aida_vulnerability_in_asylum_procedures.pdf) (last consulted on 11/07/2023).
- European Commission. (2016a). *Lives in Dignity: from Aid-dependence to Self-reliance* COM(2016) 234 final.
- European Commission. (2016b). *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)* COM(2016) 465 final.
- European Commission. (2016c). *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council* COM(2016) 468 final.
- European Commission. (2020a). *Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU* COM(2020) 611 final.
- European Commission. (2020b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum* COM(2020) 609 final.
- European Commission. (2020c). *Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.* COM(2020) 612 final.
- European Commission. (2020d). *Migration: Commission takes action to find solutions for unaccompanied migrant children on Greek islands.* Press Release.
- European Commission. (2022). Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection C/2022/1806 *Official Journal* C 1261 21 March 2022: 1–16.
- European Council. (2016, March 18). EU Turkey Statement *Press Release* Available at <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (last consulted on 10 August 2023).
- Memorandum of Understanding between the UK and Rwanda. (2022, April 13). Available at <https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r> (last consulted on 10 August 2023).
- Memorandum of Understanding on a strategic and global partnership between the EU and Tunisia. (2023, July 16). Available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3887](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887) (last consulted on 30 August 2023).

## Literature

- Adefehinti, B., & Arts, K. (2018). Challenging the odds of vulnerability and resilience in lone migration: coping strategies of Zimbabwean unaccompanied minors in South Africa. *Children's Geographies*, 17(4), 427–441. <https://doi.org/10.1080/14733285.2018.1536776>
- Afifi, T., & Jäger, J. (2010). *Environment, forced migration and social vulnerability*. Springer.
- Andreetta, S., & Nakueira, S. (2022). The governance of vulnerable migrants: procedure, resources and affect in asylum reception. *Citizenship Studies*, 26(7), 961–977. <https://doi.org/10.1080/013621025.2022.2137942>
- Andreetta, S., Enria, L., Jarroux, P., & Verheul, S. (2022). Public servants' affective and emotional entanglements in the making of the state. *The Cambridge Journal of Anthropology*, 40(2), 1–20. <https://doi.org/10.3167/cja.2022.400202>
- Armbruster, H. (2018). "It was the photograph of the little boy": reflections on the Syrian Vulnerable Persons Resettlement Programme in the UK. *Ethnic and Racial Studies*, 42(15), 2680–2699. <https://doi.org/10.1080/01419870.2018.1554226>
- Atak, I., Nakache, D., Guild, E., & Crépeau, F. (2018). *Migrants in vulnerable situations and the global compact for safe, orderly and regular migration*. Queen Mary University of London, School of Law, Legal Studies. Research Paper No. 273/2018.
- Aysa-Lastra, M., & Cachon, L. (2015). *Vulnerability and resilience of Latin American immigrants during the great recession*. In M. Aysa-Lastra & L. Cachon (Eds.), *Immigrant vulnerability and resilience. Comparative perspectives on Latin American immigrants during the great recession* (pp. 1–21). Springer.
- Bal, M. (2002). *Travelling concepts in the humanities: A rough guide*. University of Toronto Press.
- Bal, M. (2009). Working with Concepts. *European Journal of English Studies*, 13(1), 13–23. <https://doi.org/10.1080/13825570802708121>
- Baumann, H., & Moore, H. L. (2023). Thinking vulnerability infrastructurally: Interdependence and possibility in Lebanon's overlapping crises. *Environment and Planning C: Politics and Space*. <https://doi.org/10.1177/23996544231174399>
- Baumgärtel, M. (2020). Facing the challenge of migratory vulnerability in the European Court of Human Rights. *Netherlands Quarterly of Human Rights*, 38, 12–29. <https://doi.org/10.1177/0924051919898127>
- Blazek, M. (2014). Migration, vulnerability and the complexity of violence: Experiences of documented non-EU migrants in Slovakia. *Geoforum*, 56, 101–112.
- Boublil, E. (2018). The Ethics of Vulnerability and the Phenomenology of Interdependency. *Journal of the British Society for Phenomenology*, 49(3), 183–192. <https://doi.org/10.1080/00007173.2018.1434952>
- Brown, K., Ecclestone, K., & Emmel, N. (2017). The Many Faces of Vulnerability. *Social Policy and Society*, 16(3), 497–510. <https://doi.org/10.1017/S1474746416000610>
- Browne, V., Danely, J., & Rosenow, D. (Eds.). (2021). *Vulnerability and the Politics of Care. Transdisciplinary Dialogues*. OUP.
- Brun, C., & Maalouf, M. (2022). *Vulnerability amidst compounded crises in Lebanon: The experience of Syrian and Palestinian Refugees. research report on the experiences of migrants seeking protection in Lebanon* VULNER Research Report 2 <https://doi.org/10.5281/zenodo.7152232>
- Butler, J. (2016). *Rethinking vulnerability and resistance*. In J. Butler, Z. Gambetti, & L. Sabsay (Eds.), *Vulnerability in resistance*. Duke University Press. <https://doi.org/10.1515/9780822373490>
- Cardwell, P. J., & Dickson, R. D. (2023). 'Formal informality' in EU external migration governance: the case of mobility partnerships. *Journal of Ethnic and Migration Studies*, 49(12), 3121–3139. <https://doi.org/10.1080/1369183X.2023.2193743>
- Carlier, J.-Y. (2017). Des droits de l'homme vulnérable à la vulnérabilité des droits de l'homme, la fragilité des équilibres. *Revue interdisciplinaire d'études juridiques*, 79, 175–204.
- Carnassale, D., & Marchetti, S. (2022) *Vulnerabilities and the Italian protection system: An ethnographic exploration of the perspectives of protection seekers. Research report on the*

- experiences of migrants seeking protection in Italy* VULNER Research Report 2. <https://doi.org/10.5281/zenodo.7123577>
- Carpentier, S., Farcy, J.-B., Smit, S., & Orsini, G. (2021). *Quelle autonomie pour les familles migrantes? Pour une conceptualisation croisée de l’agentivité des personnes migrantes en Belgique*. In L. Merla, S. Sarolea, & B. Schoumaker (Eds.), *Composer avec les normes. Trajectoires de vie et agentivité des migrants face au cadre légal* (Cahiers Migrations 45) (pp. 296–309). Academia L’Harmattan.
- Chouliaraki, L. (2020). Victimhood: The affective politics of vulnerability. *European Journal of Cultural Studies*, 24(1), 10–27. <https://doi.org/10.1177/1367549420979316>
- Cole, A. (2016). All of us are vulnerable, but some are more vulnerable than others: The political ambiguity of vulnerability studies, an ambivalent critique. *Critical Horizon*, 17(2), 260–277.
- Cortina, A., & Conill, J. (2016). *Ethics of vulnerability*. In A. Masferrer & E. Garcia-Sanchez (Eds.), *Human Dignity of the Vulnerable in the Age of Rights: Interdisciplinary Perspectives* (pp. 45–46). Springer.
- Da Lomba, S. (2014). Vulnerability, irregular migrants’ health-related rights and the European court of human rights. *European Journal of Health Law*, 21, 339–364.
- Davis, B., & Aldieri, E. (2021). Precarity and resistance: A critique of Martha Fineman’s Vulnerability Theory. *Hypatia*, 36(2), 321–337. <https://doi.org/10.1017/hyp.2021.25>
- Dennison, J., & Geddes, A. (2019). A rising tide? The salience of immigration and the rise of anti-immigration political parties in Western Europe. *The Political Quarterly*, 90(1), 107–116. <https://doi.org/10.1111/1467-923X.12620>
- El Daif, C., Shuayb, M., & Maalouf, M. (2021). *The vulnerability of refugees amid Lebanese law and the humanitarian policies*. VULNER Research Report 1. <https://doi.org/10.5281/zenodo.5541066>.
- Eule, T., Borelli, L. M., Lindbergh, A., & Wyss, A. (2019). *Migrants before the law. Contested migration control in Europe*. Palgrave Macmillan. <https://doi.org/10.1007/978-3-319-98749-1>
- Fassin, D. (2007). Humanitarianism as a politics of life. *Public Culture*, 19(3), 499–520. <https://doi.org/10.1215/08992363-2007-007>
- Fineman, M. (2008). The vulnerable subject: Anchoring equality in the human condition. *Yale Journal of Law and Feminism*, 20(1), 1–23.
- Fineman, M., & Grear, A. (2013). *Vulnerability. reflections on a new ethical foundation for law and politics*. Ashgate.
- Freedman, J. (2018). *A gendered analysis of the European refugee ‘crisis’*. In C. Menjivar, M. Ruiz, & I. Ness (Eds.), *The Oxford handbook of migration crises* (pp. 705–720). OUP. <https://doi.org/10.1093/oxfordhb/9780190856908.013.57>
- Gilodi, A., Albert, I., & Nienaber, B. (2022). Vulnerability in the context of migration: a critical overview and a new conceptual model. *Human Arenas*. <https://doi.org/10.1007/s42087-022-00288-5>
- Gilson, E. (2014). *The ethics of vulnerability: A feminist analysis of social life and practice*. Routledge.
- Held, V. (2005). *The ethics of care*. OUP.
- Heri, C. (2021). *Responsive human rights. Vulnerability, Ill-treatment and the ECtHR*. Hart.
- Holmes, S., & Castaneda, H. (2016). Representing the “European refugee crisis” in Germany and beyond: Deservingness and difference, life and death. *American Ethnologist*, 43(1), 12–24. <https://doi.org/10.1111/amet.12259>
- Hruschka, C., & Leboeuf, L. (2019). Vulnerability: A buzzword or a standard for migration governance? *Population & Policy Compact 20* Max Planck Society/Population Europe.
- Ineli-Ciger, M. (2022). Is resettlement still a durable solution? An analysis in light of the proposal for a regulation establishing a union resettlement framework. *European Journal of Migration and Law*, 24, 27–55. <https://doi.org/10.1163/15718166-12340118>
- IOM. (2019). *The determinants of migrant vulnerability*.
- IPCC. (2015). *Climate change 2014: Impacts, adaptation and vulnerability*. CUP.
- Ippolito, F. (2020). *Understanding vulnerability in international human rights law* (p. 466p). Editoriale Scientifica.

- Jacobs, M., & Maryns, K. (2022). Agency and vulnerability in the field of immigration law: A linguistic-ethnographic perspective on lawyer–client interaction. *Journal of Law and Society*, 49(3), 542–566. <https://doi.org/10.1111/jols.12385>
- Jacobsen, C., & Karlsen, M.-A. (2021). *Introduction*. In C. Jacobsen, M.-A. Karlsen, & S. Khosravi (Eds.), *Waiting and the temporalities of irregular migration*. Routledge.
- Jacobsen, C. M., Karlsen, M.-A., & Vearey, J. (2022). *How key actors and stakeholders apply the notion of vulnerability in Europe, Canada, and South Africa* <https://doi.org/https://doi.org/10.5281/zenodo.6497223>
- Jordan, B., Strath, B., & Triandafyllidou, A. (2010). Comparing cultures of discretion. *Journal of Ethnic and Migration Studies*, 29(2), 373–395. <https://doi.org/10.1080/1369183032000079648>
- Kaga, M., Nakache, D., Anderson, M., Crépeau, F., Delisle, A., Fraser, N., Frenyó, E., Purkey, A., Soennecken, D., & Tanotra, R. (2021). *Vulnerability in the Canadian protection regime: Research report on the policy framework* VULNER Research Report 1 doi: <https://doi.org/10.5281/zenodo.5525795>.
- Kluth, W., Heuser, H., & Junghans, J. (2021). Addressing vulnerabilities of protection seekers in German federalism *VULNER Research Report 1*. <https://doi.org/10.5281/zenodo.5497309>.
- Kuschminder, K., & Triandafyllidou, A. (2019). Smuggling, trafficking, and extortion: New conceptual and policy challenges on the Libyan Route to Europe. *Antipode*, 52(1), 206–226. <https://doi.org/10.1111/anti.12579>
- Liden, H., Schultz, J., Paasche, E., & Wessmann, H. (2021). *Vulnerable protection seekers in Norway: Regulations, practices, and challenges*. VULNER Research Report 1. <https://doi.org/10.5281/zenodo.5518575>.
- Liden, H., Paasche, E., & Damsa, D. (2022). *Protection seekers' lived experience of vulnerability in times of stricter migration policy. The case of Norway*. VULNER Research Report 2. <https://doi.org/10.5281/zenodo.7375797>
- Lorenz, R., & Etzold, B. (2022). Journeys of violence: Trajectories of (Im-)mobility and migrants' encounters with violence in European Border Spaces. *Comparative Population Studies*, 47, 211–232. <https://doi.org/10.12765/CPoS-2022-09>
- Mackenzie, C. (Ed.). (2013). *Vulnerability: New essays in ethics and feminist philosophy*. OUP.
- Marchetti, S., & Palumbo, L. (2021). *Vulnerability in the Asylum and Protection System in Italy*. VULNER Research Report 1. <https://doi.org/10.5281/zenodo.5518933>.
- Mascia, C. (2020). How bureaucracies shape access to rights: The implementation of family reunification in Belgium. *Journal of Ethnic and Migration Studies*, 47(9), 2127–2143. <https://doi.org/10.1080/1369183X.2020.1726734>
- Michigan Guidelines on Well-Founded Fear. (2004). published in Hathaway, James (2019) *Michigan guidelines on the international protection of refugees* Michigan Publishing, .
- Mitchell, E. (2020). Negotiating vulnerability: The experience of long-term social security recipients. *The Sociological Review*, 68(1), 225–241. <https://doi.org/10.1177/0038026119876775>
- Mitsilegas, V. (2022). The EU external border as a site of preventive (in)justice. *European Law Journal*, 28(4–6), 263–280. <https://doi.org/10.1111/eulj.12444>
- Monforte, P., & Mestri, G. (2022). From vulnerability to trust: Personal encounters and bordering processes in the British refugees welcome movement. *Migration and Society: Advances in Research*, 5, 59–74. <https://doi.org/10.3167/arms.2022.050106>
- Moreno-Lax, V., & Vavoula, N. (2024). Vulnerability's legal life: An ambivalent force of migration governance. *International Journal of Law in Context*, 20, 1–15. <https://doi.org/10.1017/S1744552323000320>
- Motz, S. (2021). *The refugee status of persons with disabilities*. Leiden.
- Nakache, D., Purkey, A., Anderson, M., Tanotra, R., Soennecken, D., Sagay, C., Hajjar, O., Yousuf, B., & Crépeau, F. (2022). *Migrant vulnerability in the Canadian Protection System: The view of migrants, public servants and on-the ground practitioners*. VULNER Research Report 2 <https://doi.org/10.5281/zenodo.7330123>

- Nakueira, S. (2021). *Protecting vulnerable refugees. An empirical examination of the implementation practices of aid workers and state actors in Uganda*. VULNER Research Report 1. <https://doi.org/10.5281/zenodo.5518521>.
- Nakueira, S. (2022). *Lived vulnerabilities under constraints: An empirical account of how refugees experience uganda’s protection system*. VULNER Research Report 2. <https://doi.org/10.5281/zenodo.5518521>
- Ni Raghallaigh, M., & Thornton, L. (2017). Vulnerable childhood, vulnerable adulthood: Direct provision as aftercare for aged-out separated children seeking asylum in Ireland. *Critical Social Policy*, 37(3), 386–404. <https://doi.org/10.1177/0261018317691897>
- Norlock, K. (2019). *Feminist ethics* In Zalta, E. N. (ed), *The Stanford Encyclopedia of philosophy*. Available at <https://plato.stanford.edu/entries/feminism-ethics/>. (last consulted on 11/07/2023). Oxford English Dictionary. (2023). OUP, Oxford.
- Peroni, L., & Timmer, A. (2013). Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law. *International Journal of Constitutional Law*, 11, 1056–1085.
- Sarolea, S., Raimondo, F., & Crine, Z. (2021). *Exploring vulnerability’s challenges and pitfalls in Belgian Asylum System. Research report on the legal and policy framework and implementing practices in Belgium*. VULNER Research Report 1. <https://doi.org/10.5281/zenodo.5508769>.
- Saroléa, S., Raimondo, F., & Crine, Z. (2022). *Through the eyes of the “Vulnerable”: Exploring vulnerabilities in the belgian asylum system*. VULNER Research Report 2. <https://doi.org/10.5281/zenodo.7179724>
- Sözer, H. (2019). Humanitarianism with a neo-liberal face: Vulnerability intervention as vulnerability redistribution. *Journal of Ethnic and Migration Studies*, 46(11), 2163–2180. <https://doi.org/10.1080/1369183X.2019.1573661>
- Stoyanova, V. (2023). Addressing the legal quagmire of complementary legal pathways. *European Journal of Migration and Law*, 25(2), 164–199. <https://doi.org/10.1163/15718166-12340149>
- Ticktin, M. (2016). Thinking beyond humanitarian borders. *Social Research*, 83(2), 255–271.
- Tong, R., & Williams, N. (2018). *Feminist ethics*. In Zalta, E. N. (ed), *The Stanford encyclopedia of philosophy*. Available at <https://plato.stanford.edu/archives/sum2018/entries/feminism-ethics/> (last consulted on 11/07/2023).
- Triandafyllidou, A. (2017). Beyond irregular migration governance: Zooming in on migrants’ agency. *European Journal of Migration and Law*, 19(1), 1–11. <https://doi.org/10.1163/15718166-12342112>
- Tronto, J. (2009). *Un monde vulnérable. Pour une politique du care*. La Découverte.
- Tsourdi, L. (2020). *Beyond the ‘Migration Crisis’: The evolving role of EU agencies in the administrative governance of the asylum and external border control policies*. In J. Pollak & P. Slominski (Eds.), *The Role of EU Agencies in the Eurozone and Migration Crisis: Impact and Future Challenges*. Palgrave Macmillan.
- Turner, L. (2019). The politics of labelling refugee men as ‘Vulnerable’. *Social Politics: International Studies in Gender, State & Society*, 28(1), 1–23. <https://doi.org/10.1093/sp/jxz033>
- UNHCR. (2011). *Resettlement Handbook* Available at <http://www.unhcr.org/46f7c0ee2.html> (last consulted on 11/07/23).
- Vandevoordt, R. (2019). Subversive humanitarianism: Rethinking refugee solidarity through grassroots initiatives. *Refugee Survey Quarterly*, 38(3), 24–265. <https://doi.org/10.1093/rsq/hdz008>
- Virokannas, E., Liuskki, S., & Kurmonen, M. (2018). The contested concept of vulnerability. A literature review. *European Journal of Social Work*, 23(2), 327–339. <https://doi.org/10.1080/013691457.2018.1508001>

**Luc Leboeuf** is a Belgian Research Fund FRS-FNRS Research Associate / Scientific Collaborator at the University of Liège in Belgium. He was a Head of Research Group in the department of law and anthropology at the Max Planck Institute for Social Anthropology in Germany, and the coordinator of the VULNER project. Luc holds a PhD in EU asylum law from the Catholic University of Louvain (UCLouvain) in Belgium since 2015. He has held various teaching and visiting research positions, including at the UCLouvain (Belgium), the University of Antwerp (Belgium), the Max Planck Institute Luxembourg for Procedural Law (Luxembourg), and the Refugee Studies Centre at the University of Oxford (United Kingdom). His previous book in English was entitled “Humanitarian Admission to Europe. The Law between Promises and Constraints” (Nomos/Hart 2020, with Marie-Claire Foblets). Luc also practiced migration and asylum law as attorney (“Avocat”) in Belgium.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

