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'Vulnerability' as an Emerging Legal and Bureaucratic Concept in the Field of Asylum and Migration

Dr. Luc Leboeuf

Max Planck Institute for Social Anthropology
Department of Law & Anthropology

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The VULNER Project in Brief (1)

- 'Vulnerability' From an Analytical Concept to a Tool for Resource Allocation
 - Widely used in social sciences to analyse and document the social positions of individuals
 - With multiple resonances in humanitarian and aid policies (with a focus on supporting resilience strategies) (OHCHR and GMG, 2017; COM, 2016, 234final)
 - Currently flooding the legal and policy discourse on asylum and migration
 - ✓ UN Global Compacts and IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse, 2019
 - ✓ EU New Asylum and Migration Pact COM(2020)609fin
 - ✓ Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe CM(2021)67-final

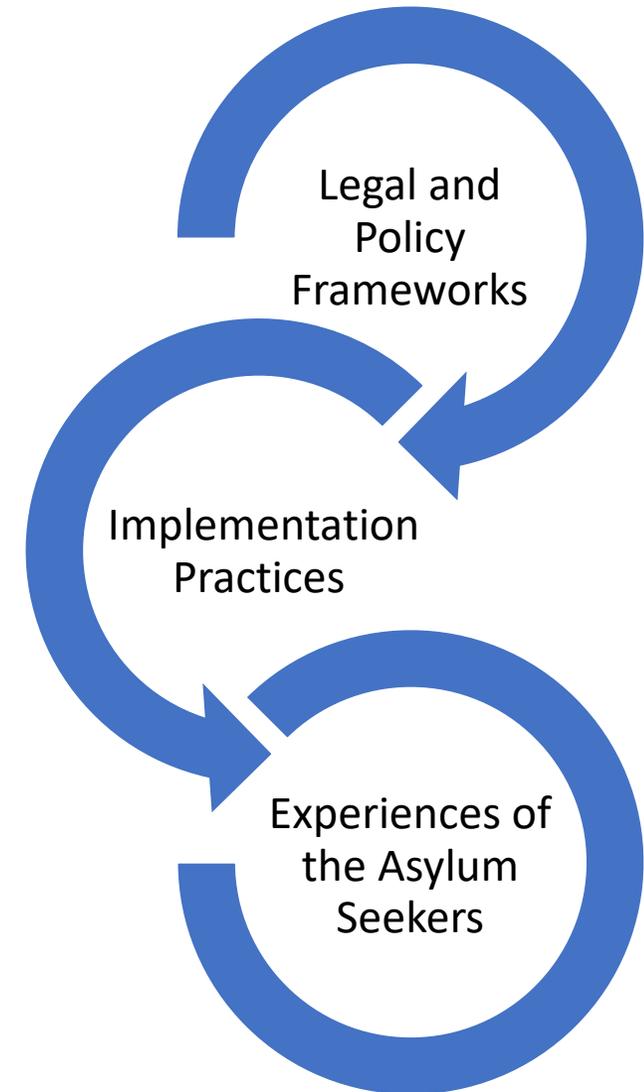
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The VULNER Project in Brief (2)

Confronting the *legal and policy frameworks* and *implementing practices*

To the *experiences* of the asylum seekers

With the objective of *preventing stereotyped understandings* of vulnerabilities and identifying the *best practices*



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The First Phase of the VULNER Project (year 1)

- Legal analysis (asylum procedure and reception conditions)
- Combined with 216 Interviews with decision-makers
 - Social workers
 - Public servants and judges in charge of deciding on asylum applications
- The countries under study are located in Europe (Belgium, Germany, Italy and Norway), Africa (Uganda), the Middle East (Lebanon) and North America (Canada)

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Various Legal and Bureaucratic Purposes of 'Vulnerability' Assessments (1)

- 'Vulnerability' and 'special/specific needs'
 - // EU law (Reception Conditions Directive; Asylum Procedures Directive)
 - A focus on immediate and manifest reception and procedural needs
 - ✓ With a formalised identification procedure in some countries (BE, NO), an approach that varies depending on the Federal entity concerned (DE) or a pragmatic approach (I)
 - Interviewed public servants emphasise the need of having a sufficient leeway to address individual situations (emotional aspect)
 - ✓ BUT also regret a lack of resources and clear guidelines
 - A risk of 'sanitised' vulnerability assessments?

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Social worker in Norway (Lidén, Schultz, Paasche and Wessmann, 2021 at 54):

"We are capturing the more serious things, such as disabilities and whether a person is deaf. In these cases, we know where to start. You know in these cases that something needs to be done.

Less visible needs are more difficult to discover. Vulnerabilities caused by what happened in their home country or on the journey to Norway are not easy to voice. They need to settle down before opening up to difficult experiences and feelings."

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NGO case-worker in Italy (Marchetti and Palumbo, 2021 at 86)

'Their vulnerability does not emerge, because there is no interest in letting it emerge. Commonly, there is not the competence to let it emerge, apart from when it is striking. A person in mental distress like schizophrenia, yes, but situations like depression and post-traumatic stress disorder are rarely recognized for what they are or represent'

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Belgian Protection Officer (Asylum authority) (Sarolea, Raimondo and Crine, 2021 at 78)

'[...] too many rules kill the rule, so in the end we have to leave a little bit of freedom of appreciation, not too many guidelines, because I mean, it must remain something natural to grasp a story, it must not be mechanical. We are not machines.

And that's the big trend at the moment, and it's very dangerous, we're going to stop the procedure as it is at the moment, we're going to dehumanize it, and we're going to entrust it to machines in fact'

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Various Legal and Bureaucratic Purposes of 'Vulnerability' Assessments (2)

- 'Vulnerability' as a tool to guide the individualised assessment of the specific circumstances supporting the asylum application
 - // Case-law of the ECtHR (*M.S.S. v. Belgium and Greece*; Baumgärtel, 2020; Ippolito, 2020)
 - Brings the attention to broader inequalities and the actual position the asylum applicant will have in the country of removal
 - Allows to evaluate the credibility of the applicant's claim
 - Flexible and elastic interpretative concept

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A Belgian judge (Sarolea, Raimondo and Crine, 2021 at 73):

'To identify them [the vulnerabilities], first of all I'm going to see the documents I received, there are still a lot of files where we have medical or psychological documents so that warns us about vulnerabilities.

Then I'm going to see the person's story, so I already have an idea of their profile: is it a young academic or is it a young woman fleeing a forced marriage and so there already, based on their profile, I know that they will be more or less fragile or vulnerable. And then I'm going to see which persecutions are also put forward as a justification for fleeing one's country [...] it also warns me about the vulnerability of the person in view of what they have gone through'

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Some Common Challenges

- Lack of a systematic and consistent engagement with the 'vulnerabilities' faced by asylum seekers in their complex and intersecting dimensions
 - A focus on identifying some specific and practical reception needs through standardised tools (such as a questionnaire)
- Lack of consistent communication channels between the state actors involved
- Reluctance by some state actors (especially higher courts) to further engage with the 'vulnerability' concept from a legal perspective
 - In some countries: reluctance supported through legislative modifications (NO)

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Acknowledging the Political Dimensions of 'Vulnerability'

- Implied exclusionary effects
 - Need to keep a connection with the experiences of asylum seekers
 - ✓ Avoid stereotyped understandings of their vulnerabilities
 - ✓ Acknowledge their agency
 - ✓ Forecast the concrete consequences on the ground that will result from the legitimising effect of the 'vulnerability' label ('vulnerability' competition)
- Awareness of the connection with feminist theories and 'ethics of care'
 - Particular attention to children and inequalities that are related to traditional gendered roles

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