



EUROPEAN POLICY BRIEF

VULNER

VULNER POLICY BRIEF 2: CANADA

Migrant Vulnerability in the Canadian Protection Regime: The View of Migrants, Public Servants, and on-the Ground Practitioners

The Canadian VULNER Team¹

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KEY MESSAGES

- In Canada, there is an increased need to recognize and properly address migrant vulnerability. However, the specific understanding and application of this concept varies widely across and within various groups of stakeholders.
- In some proceedings, vulnerability is a key factor in the procedures and outcomes of decisions, but in others, the impact of vulnerability is much more limited.
- Even if some legal and policy measures have been adopted to address certain specific vulnerabilities faced by migrants, there has been a failure to fully address the reality that the system itself is responsible for creating or exacerbating many of these vulnerabilities. In other words, many of the key factors contributing to vulnerability are not properly addressed.
- **Our short-term recommendations include:**
 - Address backlogs and long processing times by hiring more immigration officers and ensuring that claims for protection/legal status from migrants in vulnerable situations are subject to priority processing.

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- Reduce migrant workers' vulnerability by raising the duration of all work permits to a minimum of 3 years and removing the employer-specific work permits (replacing them with broad sector/regional work permits allowing the worker to move without the employer's permission).
 - Give clear information to migrants in claims for protection/legal status: in all rejection letters to applicants, explain the reason(s) for the refusal and the possible recourses in plain language.
 - Develop effective and just oversight and appeal mechanisms to ensure the consistent application of existing guidelines by decision makers in claims for protection/legal status.
 - Implement a vulnerability framework: develop tools for key stakeholders aimed at implementing an individualized, trauma-informed approach to meet the needs of migrants with specific vulnerabilities (instead of assuming that a standardized approach works for all, especially in cases involving mental health or re-traumatization).
 - Direct more federal government funding to nongovernmental service provider organizations offering assistance to temporary migrants (including undocumented migrants).
 - Introduce an inclusive and easy to apply to regularization program for migrants who are currently without status.
 - Increase communication flow regarding complex needs overseas resettlement cases in the pre-arrival space so that community sponsors are better equipped to address these vulnerabilities post-arrival.
- **Our long-term recommendations include:**
 - Expand the mandate of a 'designated representative' beyond the asylum proceedings to ensure proper representation of vulnerable migrants in *all* immigration proceedings.
 - Expand legal aid so that temporary migrants are not left to navigate complex claims for protection without representation.
 - Study and discuss a system that would allow all temporary migrants admitted into Canada to work or to study for more than 6 months to bring their family members with them.

INTRODUCTION

In current legal and policy discourse on asylum and migration, there is an increasing emphasis on the need to address the specific protection needs of the most vulnerable refugees, asylum seekers, and migrants. For example, the UN Global Compact on Refugees requires addressing the specific protection needs of the most vulnerable asylum seekers and refugees, and Objective 7 of the UN Global Compact for Migration calls on states to 'address and reduce' vulnerabilities in migration more broadly. Yet, there is no common understanding of what migrants' vulnerabilities are, nor how they should be assessed and addressed.

To produce scientific knowledge that assists policymakers in designing policies and implementation strategies that will contribute to reducing vulnerabilities among migrants seeking protection, the VULNER project conducted a large inquiry in 8 countries located in Europe (Belgium, Germany, Italy, and Norway), the Middle-East (Lebanon), Africa (Uganda), and North America (Canada) – thus encapsulating different policy contexts that range from the humanitarian response in first countries of asylum (Lebanon and Uganda), to asylum and other relevant processes to address the protection needs of migrants in Global North countries. The objective is to reach a better understanding of the multiple challenges, promises, and pitfalls of relying on 'vulnerability' as a conceptual tool to design and implement institutional responses to migrants' protection needs.

In the first research phase (April-December 2020), the Canadian team of the VULNER project studied how the 'vulnerabilities' of migrants are presented/defined in the relevant Canadian documents. During this first research phase, which solely relied on desk research data, the team examined over 377 legal and policy documents, including legislation and regulations, guidelines, manuals, and ministerial instructions produced by government departments. Our study was complemented by an analysis of over 884 court cases and over 100 secondary sources from academic and grey literature. This resulted in a first [research report](#) (2021) and a first [policy brief](#) (2021), with specific policy recommendations.

In the second research phase (January 2021-July 2022), the Canadian team used data from interviews with migrants, civil servants, and practitioners to analyze how migrants' vulnerabilities are understood and assessed in practice, and to get a better understanding of how migrants' vulnerabilities are created or exacerbated. The team conducted **104 interviews**, including 21 interviews with 25 civil servants, 55 interviews with 56 on-the-ground practitioners, and 28 interviews with 29 migrants across several Canadian provinces: Ontario, Quebec, and the Prairies (Alberta, Manitoba, Saskatchewan). This resulted in a second [Canadian report](#) (2022). This policy brief presents some key findings based on this second report. It also makes some key recommendations, drawing from the second report and a March 2023 workshop with key stakeholders and our community partners (in which we presented and discussed the findings of our second VULNER report).

Perception/understanding of vulnerability. All interviewees, including practitioners, civil servants, and migrants expressed the view that vulnerability is an important concept in the protection system in Canada. However, the specific understanding or interpretation of vulnerability varied widely among the interviewees. For example, civil servants' view on vulnerability was most often associated with a traditional category-based approach (i.e., vulnerability based on gender, age, sexual orientation) while practitioners' descriptions of vulnerability were more elaborate and included references to identity-based, situational, and administrative vulnerability (with these categories being described as often overlapping).

How vulnerability is addressed and accommodated within the claims for protection/legal status. Civil servants were asked how vulnerability impacts both the procedures and outcomes of the decision-making process and their answers varied significantly depending upon the program line in question. Vulnerability may be a substantive factor in the outcome of decisions in certain applications, such as humanitarian and compassionate claims, temporary resident permits (for victims of trafficking and domestic violence) and overseas resettlement applications. However, decision makers have a wide margin of discretion in assessing these applications, and more particularly in prioritizing one "vulnerability factor" over the other. Given their different views of who is a "vulnerable" migrant, this can create space for potentially subjective and unpredictable decisions. Regarding in-Canada asylum claims, the approach is much narrower since the impact of vulnerability is primarily procedural. Here, the flexibility that decision makers have in accommodating the vulnerabilities of refugee claimant applicants was identified as a source of frustration for practitioners. For example, legal professionals seeking procedural accommodations for their clients expressed how difficult it is to secure a psychological report (as support for a request for accommodation). They also shared concerns around the role of decision makers in making medical assessments that are well beyond their legal expertise. One positive takeaway from the interviews with civil servants, however, is that there is a heightened awareness among them of the impact that trauma may have on refugee claimants (even if they are unsure on how to cope with that impact). There is also support among these civil servants for the adoption of a trauma-informed approach to decision-making. Regarding the resettlement of refugees with special needs, practitioners indicated that their vulnerability is properly accommodated and addressed in the pre-arrival phase. However, balancing their needs and addressing their vulnerability post-arrival can be challenging when trying to navigate the system, especially for refugees with complex medical needs.

Key institutional factors of vulnerability in migrants' lives. Long delays in proceedings and the limited availability of external recourse for migrants faced with a negative decision were identified by migrants and practitioners as factors exacerbating the vulnerability of migrants in many ways, for example by leaving them in an indefinite state of uncertainty or by negatively impacting their mental and physical health. The lack of settlement and free legal services for all temporary migrants, and the absence of measures allowing for the appointment of designated representatives in situations where temporary migrants are unable to understand the nature of the proceedings were also seen by these groups as detrimental to migrants already in vulnerable situations. Finally, our research found that migrant vulnerabilities may be greatly exacerbated through their interactions with various key stakeholders involved in navigating migration options and protection claims, such as unscrupulous lawyers and immigration consultants.

Our policy recommendations are divided into short- and long-term recommendations, i.e., those that are relatively concrete and attainable, and those that require further study and discussion. Both will result in benefits to the integrity of the Canadian migration/asylum system, and Canada's international reputation.

Our short-term recommendations include the following:

- **Address backlogs and long processing times** by hiring more immigration officers and ensuring that claims for protection/legal status from migrants in vulnerable situations are subject to priority processing.
- **Reduce migrant workers' vulnerability** by raising the duration of all work permits to a minimum of 3 years and removing the employer-specific work permits (replacing them with broad sector/regional work permits allowing the worker to move without the employer's permission).
- **Give clear information to migrants in claims for protection/legal status:** in all rejection letters to applicants, explain the reason(s) for the refusal and the possible recourses in plain language.
- Given the broad discretionary powers wielded by decision makers, **develop effective and just oversight and appeal mechanisms** to ensure the consistent application of existing guidelines by decision makers in claims for protection/legal status.
- **Implement a vulnerability framework:** develop tools for key stakeholders aimed at implementing an individualized, trauma-informed approach to meet the needs of migrants with specific vulnerabilities (instead of assuming that a standardized approach works for all, especially in cases involving mental health or re-traumatization).
- **Direct more federal government funding to nongovernmental service provider organizations offering assistance to temporary migrants** (including undocumented migrants).
- **Introduce an inclusive and easy to apply regularization program** for migrants who are currently without status.
- **Increase communication flow between UNHCR, IRCC, and community sponsors regarding complex needs resettlement cases** in the pre-arrival space so that community sponsors are better equipped to address these vulnerabilities post-arrival (such as in cases involving complex medical needs).

Our long-term recommendations include:

- Since designated representatives are essential players in ensuring that vulnerable persons understand the process and make decisions in their best interests, **expand the mandate of 'designated representative' beyond the asylum proceedings**, to ensure proper representation of vulnerable migrants in all immigration proceedings.
- Given the variety of potential claims and the complexity of the legal terrain migrants are left to navigate while seeking protection, **expand legal aid programs to a broader range of migrants**, which will ensure that more migrants are able to access the professional skills they require to put forth their claims.

- In our interaction with migrant participants, family was identified as a very important factor that can either reduce or exacerbate their vulnerability. We recommend further study and discussion on a system that would allow all migrants admitted into Canada to work or to study for more than 6 months to bring their family members with them.

THE VULNER RESEARCH PROJECT

This policy brief has been issued by Delphine Nakache. It reflects the scientific data she obtained and analyses she developed within the framework of the VULNER research project.

The VULNER research project is an international research initiative aiming at gaining a deeper understanding how migrants applying for asylum and other humanitarian protection statuses experience vulnerabilities, and how they could best be addressed. It thus uses a twofold analysis, which compares the study of existing protection mechanisms for vulnerable migrants as they are defined, designed, and implemented in various local bureaucratic contexts with an examination of migrants' experiences

The VULNER research project is coordinated by Dr. Luc Leboeuf, from the Department of Law & Anthropology of the Max Planck Institute for Social Anthropology in Halle a.d. Saale (Germany). It is being funded from February 2020 to June 2023 under the Horizon 2020 research programme. The Canadian portion of this research is funded by the Canadian Research Council (SSHRC) and the Fonds de recherche du Québec – Société et Culture (FRQSC).

The views contained in this policy brief are those of the authors. The European Union and the project coordinator are not liable for any use that may be made of the information contained therein.

For more information on the VULNER research project and its outputs and events, have a look at our website (www.vulner.eu) and follow us on Twitter (@VULNERproject).

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PROJECT IDENTITY

PROJECT NAME	VULNERABILITIES UNDER THE GLOBAL PROTECTION REGIME - How Does the Law Assess, Address, Shape and Produce the Vulnerabilities of the Protection Seekers? (VULNER)
COORDINATOR	Department of Law & Anthropology, Max Planck Institute for Social Anthropology, MPG, Halle a.d. Saale, Germany
CONSORTIUM	Max Planck Institute for Social Anthropology – MPG, Halle, Germany Ca'Foscari University of Venice – UNIVE, Venice, Italy Catholic University of Louvain – UCL, Louvain, Belgium Center for Lebanese Studies – CLS, Beirut, Lebanon Institute for Social Research – ISF, Oslo, Norway Martin Luther University Halle-Wittenberg – MLU, Halle, Germany Population Europe – PE, Berlin, Germany University of Ottawa – UOTTAWA, Ottawa, Canada
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DURATION	February 2020 – June 2023 (41 months).
BUDGET	EU contribution: 3 030 932,50 €.
WEBSITE & TWITTER	www.vulner.eu @VULNERproject
FOR MORE INFORMATION	Contact: Dr. Luc Leboeuf, Department of Law & Anthropology, Max Planck Institute for Social Anthropology, MPG, Halle a.d. Saale, Germany, info@vulner.eu
FURTHER READING	Kaga, M., Nakache, D., et al., <i>Vulnerability in the Canadian Protection Regime: Research Report on the Policy Framework</i> . 2021. VULNER Research Report 1. https://doi.org/10.5281/zenodo.5525795 Nakache, D., Purkey, A., et al., <i>Migrant Vulnerability in the Canadian Protection System: The View of Migrants, Public Servants and on-the ground Practitioners</i> . 2022. VULNER Research Report 2. https://doi.org/10.5281/zenodo.7330123 Nakache, D., et al. VULNER Policy Brief: Canada. 2021. www.vulner.eu/96691/VULNER_PB_Canada_2021_2.pdf