



# EUROPEAN POLICY BRIEF

## VULNER

**VULNER POLICY BRIEF: BELGIUM**

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### KEY MESSAGES

- Asylum authorities should be highly sensitive to the special needs of asylum seekers that fall into categories of vulnerability commonly recognised (minors, pregnant women, etc.), as well as those that result from other complex and intersecting factors of vulnerabilities. This policy brief exemplifies such needs through a case study in Belgium.
- Special needs are often identified based on standardised assessments that focus on straightforward personal characteristics, such as age, gender or physical condition. A systematic and holistic approach should consider more complex and deep-rooted vulnerabilities.
- Parallel vulnerability identification procedures carried out by multiple agencies – such as in the Belgian case, by Fedasil (the government agency in charge of reception), the Office of the General Commissioner for Refugees and Stateless Persons (CGRS) and the Immigration Office – should not be conducted in a fragmented manner. Communication channels between asylum authorities should be examined for efficiency.
- A more coherent assessment of vulnerabilities throughout the asylum procedure should be guaranteed. Authorities' margin of discretion should be better framed through guidelines to ensure consistent decision-making regarding asylum seekers' special needs.
- The training of public servants on how to identify and address deep-rooted and complex vulnerabilities, beyond obvious personal characteristics, should be improved.

### INTRODUCTION

EU law requires to identify and address the special reception needs of vulnerable asylum seekers, and to provide for special procedural guarantees (such as the assistance of a representative during the asylum hearing of an unaccompanied minor). Similarly, the UN Global Compacts for Migration

and on Refugees require states to develop their migration and asylum policies in ways that consider the vulnerabilities that migrants and refugees may be facing.

To this end, the Belgian team of the VULNER project studied how vulnerable asylum seekers (and other vulnerable migrants) are identified, and how their special reception and procedural needs are assessed and addressed by Belgian asylum authorities. They examined legislation, case-law, policy documents and administrative guidelines and conducted 60 interviews with civil servants, judges and social workers in Belgium.

This policy brief explores the findings, highlighting the challenges and the shortcomings observed in Belgium as well as proposing concrete policy recommendations.

## EVIDENCE AND ANALYSIS

Our research shows three main findings:

- **A standardised approach**

The vulnerability identification and assessment tools developed by asylum authorities as well as the timing of their implementation are better suited to those special needs resulting from vulnerabilities that are immediately visible (such as issues related to age, gender, health conditions) and for which there are already institutionalised solutions. These tools include a questionnaire, medical examination and observation of the asylum seeker. Furthermore, most of the vulnerabilities identified among asylum seekers are dealt with by a *standardised* approach. In this way, very different vulnerabilities and special needs are sometimes treated in a uniform way, with similar responses based on pre-established vulnerability policies.

Therefore, despite the wide range of possible vulnerabilities and special needs among asylum seekers, the Belgian asylum system adopts a *one-size-fits-all* approach. As a result, more complex and deep-rooted vulnerabilities may be overlooked.

- **Discretionary assessments**

Civil servants, judges and social workers favour a case-by-case approach in detecting vulnerabilities of asylum seekers when supporting their special needs. The case-by-case approach enables a more individualised and flexible assessment of vulnerabilities and, as a result, more adequate responses. More specifically, a careful evaluation of an asylum seeker's special procedural and reception needs is of utmost importance to ensure that they are in the best possible condition to be interviewed and ultimately, that they receive a fair opportunity to present their case.

However, because decision makers have ample discretion, there is a real risk of highly inconsistent decisions. Therefore, in the same way a flexible approach allows to account for the individual specificities of each case, it can also sustain administrative practices in which the identification of vulnerabilities vary greatly depending on the decision-maker in charge.

- **Lack of communication between the authorities in charge**

Each of the authorities in charge of dealing with protection and reception needs assesses applicants' vulnerabilities and special needs for one specific step of the procedure. A dedicated assessment at

each stage serves a different purpose in light of the different roles of each of the authorities involved in the whole procedure.

Yet our research shows that there is no common channel of communication to ensure that the relevant information is shared among these different authorities. This results in an incomplete and fragmented assessment of vulnerabilities and special needs.

## POLICY IMPLICATIONS AND RECOMMENDATIONS

Based on our research, we make four policy recommendations:

### 1. Tailor the vulnerability assessment

Our research indicates that the standardised approach to vulnerability leads decision makers to focus mainly on straightforward personal characteristics such as age, gender and health condition. This focus may reflect current state capacities rather than the vulnerabilities asylum seekers actually face most frequently. Public policies should work to reduce these gaps, most notably among vulnerable groups often left out such as:

- addressing the special needs of “young adults” (who have turned 18): authorities should ensure a period of “transition” support to ensure that they can benefit from appropriate assistance in their first steps into adulthood and to prevent them from being placed in a vulnerable situation due to a lack of follow-up. The Fédasil has already begun to respond to this need by housing the specific group of “vulnerable young adults” in certain reception centres;
- addressing the special needs of asylum seekers with severe mental health challenges: they are often placed in unsuitable housing due to the lack of appropriate reception centres to care for them;
- avoiding gender bias, as young and healthy men are often considered as *a priori* non-vulnerable. The analysis of their special procedural and reception needs should be as complete and thorough as the one developed for other profiles;
- improving the training of reception centre staff. Staff sometimes have very different backgrounds, and sometimes feel helpless in identifying and addressing more complex vulnerabilities. This feeling is reinforced by the fact that centres are often understaffed and lack the resources to take the time to clearly identify the needs of the residents in their care. In addition, high staff turnover prevents long-term continuous training and in-depth knowledge of the vulnerable population that the centre receives. Continuous training should be put in place in order to provide social workers with in-depth training in identifying vulnerabilities. Ideally, a greater number of social workers should be employed in the centres to ensure that asylum seekers are given optimal care.

### 2. Ensure that the identification of vulnerabilities implies practical consequences

This report shows that there is no consistency in the use of the label “vulnerable”, nor in the way asylum seekers are subsequently treated. The actors interviewed often perceive this notion as an “empty shell”. Therefore, there is a need for clear guidelines and appropriate training.

Moreover, the placement in reception centres should be adapted to the special needs of the asylum seekers identified as vulnerable. This is already happening with the establishment of the dispatching unit<sup>1</sup>. But asylum authorities should also ensure that the consideration of vulnerabilities in reception is not conditional on the number of places available in reception centres and that housing in a centre with accommodations is not allocated "by chance". Ideally, placement and support in centres should be tailored to asylum seekers' special needs.

Public policies should therefore:

- organise systematic and interdisciplinary training for all the asylum authorities on vulnerability. Guidelines should be established to ensure that each authority reacts in an informed, coherent and adapted manner to certain vulnerable profiles;
- provide more places in centres adapted to the identified special reception needs of vulnerable asylum seekers (centres reserved for women victims of gender violence, centres adapted for people with reduced mobility, centres close to medical facilities for people requiring regular treatment, etc.). They should also guarantee the presence of specific services within the centres to respond to the needs of the asylum seekers (such as nurseries for the care of children of single women) as well as to increase their autonomy.

### **3. Ensure continuous assessment of the special needs throughout the asylum procedure and develop communication channels among the asylum authorities**

The assessment of vulnerability should not be "fragmented", or conducted only at specific moments of the procedure. On the contrary, for vulnerability to be assessed and addressed effectively, it should be observed over time, in a holistic assessment as UNHCR recommends<sup>2</sup>. This research shows that the existing communication gaps between the different asylum authorities prevent a coherent assessment of vulnerability. To this end, we suggest:

- Setting up a common file (that could be named "vulnerability diary") in which all authorities could record their observations on the special needs of the asylum seeker. This file could be used as a means of communication between the authorities to ensure that the asylum seeker's vulnerable profile is clearly identified throughout the procedure. This would also allow a more transversal understanding and assessment of the special needs of vulnerable asylum seekers, from the inception of the procedure to the final hearing.

### **4. Ensure reasoned and careful assessment of special procedural needs**

Vulnerability assessment tools (questionnaires to identify specific needs, medical examination, observations) are important to ensure an individual and detailed assessment of the asylum seeker's profile. A careful assessment of an asylum seeker's special procedural needs is essential to ensure the best possible interview environment, and ultimately, an accurate assessment of their asylum application.

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<sup>1</sup> The dispatching unit is a service of Fédasil in charge of designating a suitable reception spot for each asylum seeker so that they can benefit from customised material aid (accommodation, food, medical care).

<sup>2</sup> See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), Comments of the Office of the United Nations High Commissioner for Refugees on Bill 2548/003 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners (Unicameral Bill) [opinion], 4 October 2017, point 25.

The margin of discretion asylum authorities have in deciding whether an asylum seeker may have special procedural needs (or not) can lead to the risk that the protection safeguards vary depending on the decision maker in charge and ultimately, diminishing the minimum protection and safeguards asylum seekers have. It is important to make sure that these guarantees are fairly granted. To avoid these pitfalls, this research recommends:

- that the CGRS, in its decisions, gives detailed reasons why it considers that the asylum seeker does not require procedural adaptation/has no special procedural needs. To date, these decisions do not include a reason.

## THE VULNER RESEARCH PROJECT

This policy brief has been issued by Sylvie Saroléa, Francesca Raimondo and Zoé Crine. It reflects the result of their own scientific data and analyses, which they developed within the framework of the VULNER research project.

The VULNER research project is an international research initiative, which objective is to reach a more profound understanding of the experiences of vulnerabilities of migrants applying for asylum and other humanitarian protection statuses, and how they could best be addressed. It therefore makes use of a twofold analysis, which confronts the study of existing protection mechanisms towards vulnerable migrants (such as minors and victims of human trafficking), with the one of their own experiences on the ground.

This policy brief reflects only the authors' views. The European Union and the project coordinator are not liable for any use that may be made of the information contained therein.

## PROJECT IDENTITY

<b>PROJECT NAME</b>	VULNERABILITIES UNDER THE GLOBAL PROTECTION REGIME - How Does the Law Assess, Address, Shape and Produce the Vulnerabilities of the Protection Seekers? (VULNER)
<b>COORDINATOR</b>	Department of Law & Anthropology, Max Planck Institute for Social Anthropology, MPG, Halle a.d. Saale, Germany
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**WEBSITE & TWITTER** [www.vulner.eu](http://www.vulner.eu) | @VULNERproject

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**FURTHER READING** Saroléa, S., Raimondo, F., Crine, Z., *Exploring Vulnerability's Challenges and Pitfalls in Belgian Asylum System - Research Report on the Legal and Policy Framework and Implementing Practices in Belgium*. 2021. **VULNER Research Report 1**. [doi: 10.5281/zenodo.5508769](https://doi.org/10.5281/zenodo.5508769)



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