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**To cite this article:** Marry-Anne Karlsen (06 Oct 2023): Governing migration through vulnerability at Spain's southern maritime border: a malleable concept in a securitised and marketised regime, Journal of Ethnic and Migration Studies, DOI: [10.1080/1369183X.2023.2264516](https://doi.org/10.1080/1369183X.2023.2264516)

**To link to this article:** <https://doi.org/10.1080/1369183X.2023.2264516>



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Published online: 06 Oct 2023.



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# Governing migration through vulnerability at Spain's southern maritime border: a malleable concept in a securitised and marketised regime

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## ABSTRACT

Vulnerability has emerged as a central policy concept in migration governance. Despite its growing importance, the concept remains contested and ambiguous. As multiple conceptions of vulnerability circulate, it becomes crucial to gain a better understanding of how 'vulnerability' might shape practices on the ground. In this article, I explore how different actors in the province of Cádiz, located at Spain and the EU's southern maritime border, understood, and operationalised 'vulnerability'. The aim is to advance understandings of vulnerability as a mechanism of governance in the reception of people on the move in the context of so-called 'mixed movements'. My focus is on how vulnerability as a new classifying label overlaps with and fragments previous labels that underpin migration governance. Through the analysis, I show how the malleability of the notion of vulnerability constituted an opportunity for actors on the ground to challenge categorical and legal distinctions between migrants. However, civil society organisations' engagement with vulnerability not only represented a 'push-back' of restrictive policies but was also a way to adapt and survive in a securitised and marketised regime.

## ARTICLE HISTORY

Received 13 April 2023  
Accepted 11 September 2023

## KEYWORDS

vulnerability; migration; asylum; governance; Spain

## Introduction

Vulnerability has increasingly emerged as a central policy concept in migration governance. The adoption by the United Nations in 2018 of the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM) exemplify this trend. Whereas the GCR stress the specific needs of particular asylum seekers and refugees, the GCM includes as one of its key objectives addressing and reducing the vulnerabilities that migrants face, at the different stages of their journey and regardless of their migration status. In the EU context, vulnerability is emphasised in the Common European Asylum System (CEAS). Similarly, to the GCR, the CEAS emphasise certain subcategories of asylum seekers who are perceived to have specific needs.

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Despite the growing importance of vulnerability in migration and asylum governance, the concept remains contested and ambiguous. As noted by Leboeuf (2022, 3), vulnerability is ‘one of those fuzzy notions that generate broad acceptance precisely because their vagueness allows them to be mobilised in varying ways depending on the political agenda’. The vagueness of the concept has served to conceal how vulnerability has come to harbour different meanings in different contexts (Brown, Ecclestone, and Emmel 2017) and even within the same policy text (Jacobsen, Karlsen, and Vearey 2022). As multiple conceptions of vulnerability circulate in the context of migration governance, it becomes crucial to gain a better understanding of how ‘vulnerability’ might shape practices on the ground.

In this article, I seek to advance understandings of vulnerability as a mechanism of governance in the reception of people on the move in the context of so-called mixed movements. Mixed movements is a fraught concept that has been used by the EU and member countries to justify securitisation practices at the southern maritime border to deter ‘bogus asylum seekers’ (Oelgemöller 2021). My focus is on how vulnerability, as a new classifying label, overlaps with and fragments previous labels such as asylum seeker and irregular migrant that fundamentally underpin migration governance at the EU border. Empirically, the article is based on qualitative research into how different actors in the province of Cádiz, located at Spain and the EU’s southwestern maritime border, understood and operationalised the notion of vulnerability. Spain provides a particularly interesting case as the country has established two separate reception programmes for those arriving by sea – one for asylum seekers and one for migrants in a ‘vulnerable situation’. The distinction between irregular migrants and asylum seekers in this case is therefore not a demarcation that excludes the former from access to basic social protection. However, the system still maintains the categorical distinction, and facilitates differential treatment. Through the analysis, I show how attempts to define and prioritise forms of vulnerability are constantly changing. For actors on the ground, the malleability of the notion of vulnerability constituted an opportunity to challenge policy distinctions between the ‘deserving’ and ‘undeserving’ of protection. However, it also represented a continuing on-the-ground challenge. The engagement of civil society organisations (CSO) with vulnerability not only represent a ‘push-back’ of restrictive policies but was also a way to adapt and survive in a securitised and marketised regime. By invoking categories of vulnerability to raise funds, CSOs risked naturalising and reproducing the governmental logics of nation-states.

Before analysing the perspectives and practices of key actors involved in field-level governance in the province of Cádiz, I will first introduce the literature on vulnerability as a policy concept within migration governance and the methodology and context of the study, including the concept of vulnerability in Spanish reception policies.

## Vulnerability in migration governance

The concept of vulnerability has received increased attention in migration scholarship, both to theorise and analyse situations of disadvantage (Gilodi, Albert, and Nienaber 2022) and as a policy concept in need of scrutiny (Sözer 2020). This article contributes to the latter literature, by examining vulnerability as a mechanism of governance in the context of so-called mixed movement. As migration scholarship has documented,

the governance of international migration relies on different and often overlapping labels that either facilitate or criminalise the movements of certain people. The most basic distinctions made are between ‘voluntary’ migrants (economic, irregular), and ‘forced’ migrants (asylum seekers, refugees). In the context of labelling people on the move, vulnerability has become a new crucial classifying label (Sözer 2020). In Europe, the CEAS importantly introduced a concern for ‘vulnerable’ subcategories of asylum seekers. However, after the ‘long summer of migration’ in 2015, there has been increased attention, both academically and in policy terms, on the broader notion of ‘migrants in a vulnerable situation’ (La Spina 2021a) and what this might add or imply in terms of protecting people on the move in the context of ‘mixed movement’ (Garlick and Inder 2021).

Mixed movement is a contested concept that emerged in the 1990s (Van Hear, Brubaker, and Bessa 2009). The concept was initially used by scholars to highlight the complexity of human mobility that makes it difficult to differentiate between ‘refugees’ and ‘migrants’ in practice. However, the concept maintains the distinction between refugee and migrant categories. In the policy arena, the concept has been closely associated with the agenda of governments in the global north and their perception that large scale abuses of the asylum system are taking place. As argued by Oelgemöller (2021, 250) ‘mixed migration’ is ‘the condition of possibility for “illegal migration” to be intelligible in policy terms’. References to mixed movement or migration is therefore used by governments to justify border surveillance and externalisation. It has also allowed the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) to enlarge their fields of activities, with vulnerability emerging as a way for them to address ‘protection gaps’.

Particularly, the adoption of the Global Compacts on Refugees and for Migration revitalised concerns regarding mixed movement and potential protection gaps. Although, the Global Compacts acknowledge that ‘refugees and migrants’ face similar challenges and vulnerabilities, the adoption of two separate compacts, rather than one compact addressing both categories, has been criticised. This criticism, as noted by Garlick and Inder (2021), is grounded in concerns regarding the validity of the refugee-migrant distinction, and the potential for vulnerable individuals to fall into a perceived protection gap between the two Compacts. The GCM, however, contains an explicit commitment to respond to the needs of migrants who face situations of vulnerability, including in responses to mixed movements (objective 7). Advocates of the compacts therefore see the notion of ‘migrants in vulnerable situations’ as a way to address the needs of people on the move who may need protection and assistance but who do not otherwise qualify for international protection (Garlick and Inder 2021). However, the precise meaning and implications of ‘migrants in vulnerable situations’ in the compact is not clear (Atak et al. 2018). Scrutiny of the GCM, for example, reveals that it does not provide a consistent definition of, or approach to, vulnerability. The compact both applies a categorical approach to vulnerability, by listing categories presumed to be in need of special treatment, and suggests a dynamic approach to vulnerability by emphasising a gender-, age-, and disability-responsive approach.

The lack of clarity of the concept of vulnerability in the context of migration is not exclusive to the Global Compacts. Scholars have shown how the usage of the concept is inconsistent in the policy documents of the UNHCR and IOM (Flegar 2018), and in

EU law and policy (Leboeuf 2022). For example, the categories perceived as vulnerable vary between different directives and the reasons for why someone is categorised as vulnerable are not always clearly distinguishable (Hruschka and Leboeuf 2019). The terminology used during the different phases of the CEAS has also changed, with EU seemingly moving towards a more implicit conceptualisation of vulnerability by favouring the term ‘special needs’ to ‘vulnerable groups’ (e.g. in the 2016 reform proposals and the new EU Pact on migration and asylum proposed in 2020) (ECRE 2017; La Spina 2021b). Regardless of inconsistencies and changing terminology, it is the categorical approach to vulnerability, which views individual vulnerability as contingent upon membership of an accepted vulnerable sub-population group, that has mainly taken root in policies.

An expanding body of scholarship has highlighted the pitfalls of the increased reliance of migration governance on the concept of vulnerability. Vulnerability discourses are particularly criticised for the association between (female) gender and vulnerability, and for linking deservingness of protection with innocence and a lack of individual agency (Turner 2021). Research suggests that the concept tends to reinforce stereotypes, and facilitate social control, and can result in exclusionary practices (Flegar 2018; Sözer 2021). Protection organised around the notion of vulnerability may work to negate state responsibilities to provide universal, rather than targeted, care (Fassin 2016).

Scholars have attempted to reconceptualise vulnerability more fundamentally, that is as a shared feature of our existence that could constitute a new basis for governmental responsiveness (Butler 2014; Fineman 2008). There have also been efforts to develop more nuanced conceptualisation of vulnerability by classifying types and sources of vulnerabilities (e.g. inherent characteristics, situational factors, structural dynamics) (Gilodi, Albert, and Nienaber 2022). Particularly, legal scholars have drawn on Fineman’s work to make migration governance, including judicial practice, more attuned to asylum seekers experiences. Fineman (2008) rejects the categorical approach to vulnerability, and instead emphasises vulnerability as relational. Her vulnerability theory thus turns the inquiry onto the institutional setup within which an individual is embedded. Examining asylum case law of the ECtHR and the Court of Justice of the European Union (CJEU), scholars have argued that these already offer glimpses of what such an approach might look like. For example, the ECtHR in *M.S.S. v Belgium and Greece*, and the CJEU’s ruling in *Abubacarr Jawo v Bundesrepublik Deutschland*, both arguably applied a dynamic, context-sensitive approach (see Küçüküsu 2022; Peroni and Timmer 2013). This is an approach that recognise the vulnerability of asylum-seekers in the face of the hardship they endure during their migration process, systemic deficiencies in the receiving state’s asylum system and reception conditions, and asylum seekers’ dependency on the state due to their legal status. However, the Courts’ approaches to vulnerability have also been criticised for being inconsistent and for ultimately confounding the context-sensitive and categorical approach (Baumgärtel 2020). For example, the *M.S.S. v Belgium and Greece* was a landmark ruling also in the sense that it recognised asylum seekers as a particularly vulnerable group per se. Scholars have therefore argued that, as the ECtHR continues to reaffirm this categorical approach, the context specific or migratory vulnerability of non-asylum-seeking migrants on account of the perilous journey across the Mediterranean remains unrecognised (Hudson 2018; La Spina 2021a).

As I have shown so far, the literature on vulnerability as a policy concept has highlighted a tension between categorical and context-sensitive deployments of vulnerability. While there are variations and nuances within these two broad frameworks, the distinction between them is a useful analytical tool that will inform my analysis.

## Context and methodology

The article draws on research conducted in the Spanish province of Cádiz, as part of the PROTECT research project (2019–2023). This research did not start from one particular definition of vulnerability, but sought to explore how vulnerability was understood and operationalised on the ground in relation to asylum seeking and non-asylum-seeking migrants (e.g. ‘irregular migrants’) arriving by sea. Particular attention was paid to how field-level governance took into account gender and legal status, and how actors collaborated with regard to mechanisms for identification, access to legal information and assistance, and access to healthcare and shelter.

The analysis is based on online data collection and document analysis, and fieldwork conducted on site over a period of three months during the autumn of 2021.<sup>1</sup> The website and document analysis included a broad scope of written sources (legislative and public documents, reports and other published literature by key actors, websites, social media sites and local online media). During the fieldwork, 26 in-depth interviews were carried out with 34 individuals who were involved in different ways, areas and phases of the reception of migrants and asylum seekers in four different cities within the province (Cádiz, Jerez de la Frontera, El Puerto de Santa Maria and Algeciras). Nine of the interviews were with migrants, and twelve of the interviews were with people involved in a broad range of CSOs. Interviews were also carried out with representatives from two municipalities (political and administrative staff), regional authorities in the province, Guardia Civil and the UNHCR. The names of those interviewed have been anonymised. I am responsible for all translations from Spanish texts and interviews.

Its location by the Strait of Gibraltar and its proximity to the coast of Morocco has made Cádiz one of the primary access points for migrants arriving to Europe by sea since the late 1980s. At the Strait’s narrowest point, just 14 kilometres separate northern Morocco from Spain. However, the number of sea arrivals has fluctuated over the years, reaching a historic high in 2018, with more than 20,000 migrants arriving by sea.<sup>2</sup> Cádiz is also primarily a point of transit – few migrants stay for long periods. In 2019, the number of arrivals decreased considerably, with around 5600 persons crossing the Strait to Cádiz, and remained low in succeeding years. This decrease in arrivals have been linked to increased collaboration on border control with Morocco and COVID-19 restrictions. However, these factors rather seem to have deflected sea crossings to the more dangerous route to the Canary Islands as nationally the numbers of boat migrants remained high (with more than 41,900 in 2021) (ADPHA 2021).

The policies pursued by the EU and Spain at Spain’s southern maritime border have, as argued by López-Sala and Moreno-Amador (2020), importantly been shaped by the labelling of African migrants primarily as labour migrants (or as ‘bogus’ asylum seekers). This has resulted in an emphasis on surveillance, containment and deterrence mechanisms that have prevented access to the Spanish protection system. Scholars have highlighted aspects such as an extensive bureaucratic procedure and low probability of

obtaining some kind of legal protection status as additional factors that have discouraged migrants arriving in Spain from applying for asylum (Moreno-Amador 2021). However, asylum applications have risen markedly in Spain since 2015, reaching a historic high in 2019 with 118,264 applications. The increased number of asylum applications is not primarily explained by the rise in sea arrivals during the same period. Indeed, most asylum applications come from Latin Americans, particularly Venezuelans and Colombians, arriving by plane to cities such as Madrid and Barcelona. The arrival of Syrian citizens at Melilla in 2015 did, however, prompt some efforts to strengthen access to, and awareness of, the asylum procedure at the maritime border (Moreno-Amador 2021). For example, the UNHCR has been conducting monitoring and training activities through a physical presence in Algeciras, which covers the province of Cádiz and Ceuta, since May 2016.

### Vulnerability in Spanish reception policies

Spanish reception policies have adopted different approaches to vulnerability. Most interestingly, the labelling of those arriving by sea as predominantly labour migrants has prompted the construction of two distinct reception programmes at Spain's southern border that approach vulnerability differently. First, like other EU countries, Spain has a reception and integration programme for international protection seekers that defines specific vulnerable categories of asylum seekers and refugees who, in theory should be given specialised treatment (Law 12/2009 of 30 October 2009, hereafter the Asylum Act). As an EU country, the transposition of the EU's Reception Conditions Directive (Recast 2013) influenced the introduction of this category-based approach to vulnerability into Spanish asylum law. Hence, Article 46 of the Asylum Act refers to categories such as minors; unaccompanied minors; persons with disabilities; elderly persons; pregnant women; single-parent families with minors; persons who have suffered torture, rape or other serious forms of psychological, physical or sexual violence; and victims of human trafficking. This indicative list is identical to the one defined in the Reception Conditions Directive, which, as previously noted, contains ambiguities related to the reasons for why someone is categorised as vulnerable. However, whereas the Reception Conditions Directive states that 'Member States shall take into account *the specific situation of vulnerable persons*', the Spanish Asylum Act refers to 'applicants or beneficiaries of international protection *in a situation of vulnerability*' (my emphasis). The phrasing in the Spanish Act thus seem to go further in indicating that the vulnerabilities of for example minors and pregnant women should be understood as circumstantial rather than inherent (this understanding is further reinforced by the Regulation on the reception system for international protection approved in March, 2022, see below). However, this situational understanding is still within a categorical approach to vulnerability. Second, in contrast to other EU countries, Spain established a humanitarian reception programme, in 2005. This programme, which is aimed at migrants who are 'in a situation of vulnerability due to physical deterioration and lack of social, family and economic support' (Royal Decree 441/2007, of 3 April), draws on a context-sensitive understanding of vulnerability. In this programme, basic social protection is linked to needs rather than legal status, and the irregular travel across the sea is considered a situational condition of vulnerability. Assistance within this programme can consist of accommodation, language



learning, education and legal guidance. However, the focus is on providing basic care rather than on facilitating access to legal status. The programme generally lasts three months, with the possibility to extend it for ‘particularly vulnerable cases’. The criteria for deciding who are included in these cases are defined by the Ministry of Inclusion, Social Security and Migration, and have varied over time.

The implications of the conceptions of vulnerability in the two programmes, however, have been unclear and changing. As highlighted by CSOs and other critical voices, Article 46 of the Asylum Act, which defines vulnerable categories, was not really implemented in practice due to a continued lack of a regulation on the implementation of the 2009 Act (Garcés Mascareñas and Moreno-Amador 2019). This meant, for example, that Spain did not implement a systematic bureaucratic process to identify vulnerable protection seekers, beyond adopting formal protocols for the identification of minors and victims of human trafficking (Barrio Lema, Castaño Reyero, and Diez Velasco 2019). However, the Ministry updated on a regular basis a management handbook that stipulated a continuous identification and assessment of an applicant’s vulnerabilities and specific needs, and how these circumstances should guide the allocation of specialised places (Manual de Gestión). This handbook also provided the possibility to extend the maximum period for which asylum seekers and beneficiaries of international protection could reside in the reception system from 18 months to 24 months for the vulnerable profiles referred to in the Asylum Act. As such, there was an effort to place protection seekers in the reception place which best suited their profile and needs. However, as noted by CSOs, the limited capacity within the reception process was not sufficient to effectively achieve neither the identification of, nor specialised placement, of vulnerable categories (see also ECRE 2020).

The eagerly awaited regulatory framework for the Asylum Act was finally approved in March 2022 (Royal Decree 220/2022, of 29 March). As this occurred after the interviews for this study were carried out, it had not yet informed practices on the ground. However, the regulation is an interesting example of the increased importance of vulnerability in asylum governance. The document refers to vulnerability no less than 25 times. The regulation also appears to address some of the objections that have been raised concerning the notion of vulnerability. First, the regulation explicitly defines a ‘situation of vulnerability’ as ‘the convergence of circumstances that increase the probability of the person suffering contingencies that diminish their most basic well-being’. This is in line with the traditional ‘vulnerability-as-harm’ framework (Cole 2016) that has dominated policy work, and underscores the situational understanding of vulnerability. The regulation also expands the list of categories to include, in addition to those already mentioned in the Asylum Act, people with serious illnesses, victims of any manifestation of violence against women, people belonging to ethnic or national groups subject to discrimination, people with mental health problems, and LGTBI+ persons. Moreover, the regulation consistently emphasises the importance of assessing vulnerability at various stages, and the importance of a gendered and intersectional approach. However, the regulation states that the ‘assessment will be carried out in accordance with the criteria established by the Secretary of State for Migration and their *corresponding gradation*’ (my emphasis). Also, in terms of allocating resources, the recipients will be referred to the accommodation that is considered most appropriate according to ‘the age, sex, disability and family situation, as well as, *to the extent possible*, other characteristics associated with



their possible vulnerability and any specific reception needs that are detected' (my emphasis). These phrases point towards the potential use of vulnerability as a hierarchising, and as such an exclusionary, tool in the reception process.

Both the two reception programmes are managed by the Directorate General for Inclusion and Humanitarian Assistance (Dirección General de Inclusión y Atención Humanitaria, DGIAH), which is part of the Ministry of Inclusion, Social Security and Migration. Whereas the DGIAH funds and allocates reception places, the services are mainly managed by different CSOs. As Spain has not increased the capacity and resources sufficiently to meet the influx in asylum applications and sea arrivals since 2015, both reception systems have suffered from overcrowding. In response, Spanish governments have increasingly limited the criteria for entry into the programmes. For example, in July 2017, the government restricted access for those not categorised as vulnerable and who had spent more than six months in Spanish territory or two years in the EU at the time the asylum application was accepted for processing (Garcés Mascareñas and Moreno-Amador 2019). In 2019, the government also formalised the practice of referring applicants and beneficiaries of international protection arriving by sea to reception facilities within the framework of the humanitarian reception programme (Royal Decree 450/2019, of 19 July). This blurred the distinction between the two reception programmes. In September 2021, the Minister of Inclusion, Social Security and Migration, José Luis Escrivá, further announced the intention to limit access to the humanitarian reception programme in situations where there are not enough places by prioritising people who, based on the new requirements, were considered 'truly vulnerable' (Sánchez 2021). In an instruction letter sent to CSOs, the Ministry sought to establish the following order of priority: first, people in a situation of vulnerability defined as 'single women, women with children, sick people, people with disabilities, and other vulnerabilities detected in the screening carried out', second, asylum seekers, and third, nationals of countries with which there is no repatriation agreement.

The reasons for defining these groups as 'truly vulnerable' is unclear, but the list problematically merge the humanitarian programme's context-sensitive approach to vulnerability with a categorical approach. The prioritisation plan was criticised by CSOs for being designed to mainly exclude single, healthy men from Morocco and Algeria by defining them as 'not vulnerable' without an individual assessment. These were the two most numerous nationalities among sea arrivals, and who could be deported to their countries of origin due to bi-national agreements. Although the instruction was quickly put on hold after criticism from regional authorities and CSOs, the Minister maintained the need for a system of prioritisation. However, studies of Spanish reception policies (Boza Martínez and Medina 2019), as well as actors interviewed in Cádiz for this study, criticised an already established practice of discriminating migrants on the crude basis of nationalities, with sub-Saharan Africans admitted to the humanitarian reception programme, and people from the Maghreb region automatically sent to the detention centre (CIE) after the 72 h migrants could be held by the National Police following disembarkment.

### Overlapping and contested notions on the ground

Despite the attempts to define and prioritise forms of vulnerability in national policies, the concept of vulnerability remained, as outlined so far, ambiguous. Different actors

in Cádiz were also not always sure or clear what was meant by it. They would, for example, stress that vulnerability is a very broad concept. There was furthermore a consensus across differently positioned actors that irregular migration across the Strait of Gibraltar in fragile boats – or ‘pateras’, as they are known as in Spanish – constituted in itself a source of vulnerability. As Luis, a government actor, explained: ‘In the scenarios in which we work, everyone is vulnerable. Who is not vulnerable? [...] So, to your question. Do we identify vulnerabilities? Yes, but I insist, everyone is vulnerable’.

Although, there was, to some extent, a shared categorisation of irregular migrants travelling by sea as being in a situation of vulnerability (which is in line with the humanitarian reception programme), the different actors interviewed differed on the reason why this was a source of vulnerability. Whereas government actors and some CSOs would highlight how the context of irregular migration and migrants’ lack of legal status exposed them to exploitation and abuse by smugglers and traffickers, more critical CSOs would highlight how migrants were rendered vulnerable by the border control measures implemented and the refusal of states to afford migrants their human rights. This is important as it is not only the recognition of vulnerability but also what is recognised as the source of vulnerability that shapes responses. The recognition of irregularised travel by sea as a source of vulnerability was, for example, used by government actors to justify security measures such as the extensive surveillance of the coast, which other actors again highlighted as a source of vulnerability.

The CSO actors interviewed also highlighted vulnerabilities as being produced and/or exacerbated by inadequacies in the reception system. Here, actors were critical of what they saw as a narrow and rigid approach to vulnerability found in Spanish reception policies. This, in their view, led to a continuing production of protection gaps. Paula, a CSO volunteer providing legal guidance, explained it in the following way:

There is a distinction between what the government and the legislation understand as vulnerability and what we understand as vulnerability. They are different concepts. We detect people who are vulnerable, very young people, who do not know if they will have relatives who can pick them up, people who do not know Spanish or another language with which they can defend themselves.

Although Paula acknowledged the potential vulnerability of categories highlighted in the Spanish Asylum Act (e.g. women, victims of trafficking), she emphasised situational factors in a context-sensitive rather than categorical manner (e.g. unfamiliarity with a new context and lack of networks). The significance of Cádiz as primarily a point of transit for migrants meant that those who had networks and resources would continue their journey promptly to other areas of Spain and the EU.

Similar understandings of vulnerability as Paula’s were also expressed by service providers working within the two reception programmes. They also tended to favour a more context-sensitive discretionary-based approach to vulnerability than the categorical approach found in the Asylum Act, as the following quote by Camila, who worked at a CSO-run centre for asylum seekers, shows:

From my perspective, when I am doing a social report, I think that if a young man does not know any Spanish it is a significant vulnerability in truth. He is very vulnerable because anyone can deceive him. This is not recognised either by the Red Cross or by the Ministry.

Is a single-parent family more vulnerable? Well yes, I can accept that, but you have to study the specific cases. [...] I see myself as a social worker, and I look at each case in a specific way, it is very difficult for me to study them based on generalities. It is difficult for me to understand how a social worker can understand vulnerability in the same way that the Ministry or the Red Cross understands it. In truth, these institutions limit it a lot.

Camila's and Paula's context-sensitive understanding of vulnerability that do not rest on predefined categories opened a space for recognising that those usually not considered as vulnerable – that is, young single men – could be rendered vulnerable by social circumstances and context. Taking gender into account, however, generally meant 'helping women'. For example, although the categories of single-parent families with minors, and victims of human trafficking and sexual and gender-based violence were framed in a gender-neutral way in the law, they tended to be associated with women by actors in the field. Although gendered assumptions of women as 'particularly vulnerable' were widespread, it was not always clear whether all women or just some (and if so which ones) were seen as 'particularly vulnerable', and whether women were seen as vulnerable due to inherent characteristics, circumstances or structural factors. Actors often combined these factors, as seen in this quote by Sofia, a CSO service provider who worked within the framework of the humanitarian reception programme:

Yes, we identify that the fact of being a woman is another reason of vulnerability. It is that the women, during the journey that they make, have suffered violations or violence for being a woman, and, although we do not work with women directly, we know that there is a double or triple or more vulnerability due to the fact of being a woman.

Camila was a rare voice on this issue, questioning the gendered (although implicit) assumption that everyone within the category of women was inherently or equally 'vulnerable'. As she explained:

Well, for me, I don't understand that women are considered vulnerable in and of themselves – that just the fact of being a woman makes them vulnerable. There are times when women are overprotected in migration. Women are not always vulnerable. This is a super-paternalistic vision.

The term 'in a situation of vulnerability', which was favoured by the Spanish legislation, responds to some extent to the criticism of the (gender) essentialism of naming certain categories (such as women) as inherently vulnerable. As this criticism resonated in academic and policy circles, the term 'situational vulnerability' signalled a shift from this earlier essentialism to acknowledging these groups' vulnerabilities as related to their circumstances and positionality in society. However, as argued by Sözer (2021), the use of the same categories but with different grounds is still underpinned by biological essentialism. Moreover, she suggests, an effect of this shift seems to be to fragment and narrow the scope of the vulnerability label. Now it is not all women who are vulnerable, but pregnant women, single-parent women and women who are victims of gender-based violence.

The quotes above illustrate how 'vulnerability' remained an ambiguous and contested concept among actors in the field. They also show a similar tension between categorical and context-sensitive deployments of vulnerability as found in international and national

policy discussions. Actors on the ground drew on and combined these understandings in sometimes contradictory, sometimes complementary, ways. However, CSO actors in Cádiz remained largely critical towards the way in which vulnerability was operationalised by the Spanish government – that is, as a tool of prioritisation that served to exclude ever-larger groups from the reception systems.

### **Vulnerability in practice**

The reception of migrants and asylum seekers in Cádiz involved a complex interaction between a range of actors at different levels of government, international and regional organisations, and CSOs with different spatial reach. The Spanish reception system has as such been described as a ‘collaboration’ or ‘partnership model’ between the state and non-governmental organisations (López-Sala and Godenau 2019). Multi-actor and multi-level collaboration has also been promoted by international and regional actors and policies as a key strategy to improve migration and refugee governance and to reduce vulnerabilities in migration (see the GCR and the GCM). However, such collaborations most often take place within asymmetric relations between different actors, and how collaboration is configured in different contexts can significantly impact the way vulnerability is understood and operationalised. In the following, I will address two central contextual factors that importantly shaped interactions between actors and the ways in which the notion of vulnerability was deployed in Cádiz: the securitisation of the border, and what López-Sala and Godenau (2019) have called the ‘reception market’.

### ***Uneasy alliance of care and control***

The reception of migrants arriving by sea to Cádiz closely combined practices of assistance and surveillance. Whereas sea rescue was generally carried out by Salvamento Marítimo (SASEMAR), Spain’s public and civil sea rescue service, it was Guardia Civil, Spain’s military police, that was responsible for coordinating both surveillance and rescue operations. In Spain, all migrants arriving by sea who were detected were placed in police facilities for up to 72 h while the Spanish National Police and the European Border and Coast Guard Agency (FRONTEX) registered them (in EURODAC). In Cádiz, they were held at a specialised Centre for the Temporary Assistance of Foreigners (CATE), which was established in 2018 and located in the municipality of San Roque, close to the city of Algeciras. During this phase, the Spanish Red Cross played an important role, as they have had a formal collaboration agreement with the Spanish Government since 2002 regarding assistance in response to migrant arrivals by sea. This means that an ERIE (Equipos de Respuesta Inmediata en Emergencia) team of the Spanish Red Cross carried out a clinical, humanitarian and social assessment of migrants upon arrival and during the 72 h for which migrants could be held by the National Police. Their report on the different profiles of the recently arrived migrants was used to allocate reception places. Several other actors could also be present at disembarkment and in the CATE, such as lawyers from Cádiz Bar Association who provided legal assistance, and organisations such as Save the Children, CEAR (The Spanish Commission for Refugees) and the UNHCR that monitored activities and provided information on international protection.

Previous research on humanitarian practices in maritime border areas has argued that there is not necessarily any contradiction between the securitisation and humanitarian discourses and practices at the border (Pallister-Wilkins 2017). However, this ‘uneasy alliance’ could create tensions in the day-to-day collaboration between actors with different objectives. CSO actors in Cádiz, for example, pointed to the ways in which a lack of shared framework and coordination created a fragmented approach in which there was no comprehensive engagement with the vulnerabilities faced by those arriving by sea. Assessing vulnerability was a peripheral aspect of many of the actors’ main duties, and the interviewees highlighted a lack of competence and appropriate facilities as key obstacles for detecting vulnerabilities in the initial phase of the reception. Moreover, the framework of police custody for all recent arrivals complicated the identification and assessment of vulnerabilities, as it created time pressure for carrying out the different tasks. As Inés, a CSO actor present in the CATE, explained:

The reality is that we have the National Police always rushing us, because they have 72 h to complete the expulsion order, which is what they normally issue. The 72 h start counting from when the person touches the ground. [...] So, the Police are always in a hurry and do not let us do our job well. But we try. [...] We have the fight of ‘not you first’, ‘I’m next’, ‘let me ask you a question’, ‘you have to come here first’. That’s a continuous fight.

The dilemma posed by the temporal frame of police custody has been highlighted in other studies, particularly in relation to the provision of healthcare and identification of vulnerabilities (Granero-Molina et al. 2021). The actors interviewed for this study also stressed the challenges that the 72-hour deadline posed for legal aid. During police custody, migrants have the right to legal assistance from a lawyer paid for by government funds. The Cádiz Bar Association organises legal assistance through a rotation scheme. While some lawyers provided individual counsel in person in the CATE, others did this in groups or by telephone, which limited what could be addressed in the sessions. The overall result of the different obstacles highlighted was a focus on vulnerabilities that could easily and quickly be identified through short interactions.

### ***Commodity in a reception market***

The Spanish reception system is highly centralised in the sense that it is the state that funds and allocates places, and thereby defines the criteria for inclusion in both reception programmes. The state also defines their duration, which is demarcated by strict time limits. CSOs are mainly drawn into migration governance as sub-contractors, and thereby as competitors for public funding. CSO actors interviewed for this study drew attention to how CSOs running reception programmes have little room for manoeuvre in such a rigid top-down system. For example, Sara, who worked for a CSO focusing on advocacy and legal assistance, noted:

The organisations that work with programmes of this type, they really have their hands tied because they cannot welcome any person who does not have the approval of the Ministry. [...] However, it is frustrating when you encounter people who are living on the street.

Penelope, a CSO service provider, problematised further how their work was affected by the government’s changing and narrowing vulnerability criteria for extending the stay in the humanitarian reception programme:

They can request extensions based on certain vulnerability criteria. Health is one such vulnerability factor. What happens? These criteria change. [...] There are times when a single vulnerability is reason enough to grant an extension, and there are other times when the same vulnerability is no longer considered a reason for an extension. For example, for a while young age was considered a reason for being vulnerable, and women and men between the age of 18 and 21 could get an extension. After a while this stopped. The criteria tend to vary depending on demands. The criteria that never changes is health, and women with minor children.

In general, the CSO actors interviewed raised similar concerns to those raised in López-Sala and Godenau's (2019) research on what they labelled the 'reception market' in Spain. These included how funding and sub-contracting relationships with public authorities influenced the CSOs' agendas (such as categories of migrants receiving attention and assistance), their internal structure (e.g. more professionalisation and bureaucratisation) and their readiness to oppose state policies. These types of concerns were not only raised by those associated with CSOs not receiving government funding for reception programmes, but also by those working in CSOs that did receive such subsidies. As Gabriela explained:

We must also bear in mind that those of us who have decided to work in this sphere have this drawback. We have decided to work with what we are not satisfied with. [...] From our perspective, it generates a continuous questioning, also of ourselves.

While CSOs in the field collaborated both formally and informally, the sub-contracting system did cause a certain amount of friction between CSOs. As Sofia, who worked in a CSO running a humanitarian reception programme, noted: 'Many times the unity is missing, and what we do is duplicate services because each one wants to have their territory and their power'.

Penelope, Sara, Gabriela and Sofia all called attention to the political, economic and institutional structures within which the CSOs operate and the constraints and pressure this created for them in their work. I suggest that the central aspects of the Spanish reception system in this regard were the competitive structure created by the funding system and the protection gaps created by the rigidity of the system and the lack of resources (e.g. strict time limits, overcrowding and lack of sufficient places). CSOs attempt to fill these gaps, but must compete for scarce public funds in an environment that is inhabited by numerous organisations. In such a marketised setting, vulnerability can become a commodity for organisations to sustain their existence (Bird and Schmid 2023; Dadusc and Mudu 2020).

The malleability of the concept meant that vulnerability could be mobilised by various actors to both justify and contest exclusionary practices towards certain migrants. As vulnerability signals an ethical duty to take action (Brown 2017), invoking the term can legitimise the expanding of assistance to, for example, groups or individuals who lack legal status. In Cádiz, CSOs mainly directed their attention at two categories – migrant women 'in a vulnerable situation' and so-called 'ex-tutelados' (i.e. unaccompanied youths that find themselves in an irregularised situation after turning 18). Here, they were able to acquire the support of regional and local governments. For example, the Andalusian government's annual funding programme for CSOs working with migrants decided to prioritise funding initiatives particularly for these two groups.

However, the focus on migrant women in a vulnerable situation and ex-custodial youth illustrates some of the dilemmas attached to mobilising around vulnerability. As



noted by Gilson (2016), the dichotomous character of the notion generally means that the deployment of vulnerability to the advantage of some requires disadvantaging others. Moreover, who is recognisable as vulnerable tends to depend on prevailing gendered, classed and racialised social norms. This means that the essentialised notion of vulnerability can be more easily mobilised in accessing support and resources (Mesarič and Vacchelli 2021). Likewise, the CSOs in Cádiz strategically invoked essentialist understandings of vulnerability related to (female) gender and age to ensure the incorporation of these groups into the support structure. For example, the attention to ex-custodial youth was largely a result of grassroots mobilisation, which in this way succeeded in expanding support for a group of young men usually labelled as irregular/economic migrants. By focusing on ‘ex-tutelados’, rather than young men in general, the campaign benefitted from the recognition of vulnerability already afforded to unaccompanied migrant minors. However, by invoking vulnerability only for a particular sub-group of irregularised migrants, they risked serving an agenda of narrowing state responsibilities to targeted interventions rather than universal care (Fassin 2016).

However, the campaign for ex-custodial youth also gained sympathy and support by drawing attention to how the system itself vulnerabilised the youths (e.g. by not adequately addressing their legal situation while under care). Furthermore, ex-tutelados were not only framed as vulnerable but also as a potential labour resource. This proved effective in terms of opening up pathways to legal status, and not only social assistance. Several scholars have highlighted how Spanish migration governance has traditionally been informed by demands for formal and informal labour, and how this co-exists with the securitisation focus on the maritime border (Moreno-Amador 2021). For example, the distinction between irregular migrants and asylum seekers, which characterises the reception policies and practices at the maritime border, importantly does not exclude migrants in an irregularised situation from access to certain basic social rights, such as health care or registration in a municipality. The Spanish system also offers pathways for migrants to regularise their status. While the regularisation procedure known as ‘arraigo’ (roots) could be seen to address the vulnerability associated with a lack of legal status, it is not based on a notion of vulnerability but employability. This strong emphasis on employability was problematised by Sofía, a CSO service provider, when asked whether the current legal framework was sufficient: ‘We are critical, because they [the government] do not see the migrant as a person, they see them as labour resource. In fact, all the changes that have occurred in the legislation have always been linked to employability’. However, for the ex-tutelados in Spain, their perceived combination of vulnerability and employability opened up new and limited pathways to legal status for this group. For example, at the beginning of the COVID-19 pandemic, Spain introduced temporary agricultural work permits to former unaccompanied minors between 18 and 21 years old. In October 2021, the government reformed the Regulation of the Aliens Act to further facilitate access to residence and work permits for unaccompanied minors and ex-tutelados (Royal Decree 903/2021, of 19 October).

## Conclusion

The concept of vulnerability remains ambiguous and contested despite its increased centrality in migration governance. This article examines field-level governance of



vulnerability – not to advance clearer definitions, but to contribute to further understandings of what the concept does for various stakeholders on the ground. From this perspective, the problem of the vulnerability concept is not necessarily its vagueness. I make two key observations from interrogating the role the concept of vulnerability has come to play in the reception of people on the move at Spain and EU's southern maritime border. First, perceptions and operationalisation of the concept were importantly shaped by the political, economic and institutional structures within which local actors operate. In Cádiz, this entailed a close combination of assistance and surveillance, and the emergence of a 'reception market'. The two reception programmes were notoriously under-resourced, creating a competitive environment for CSOs as well as protection gaps that needed to be filled. The CSOs' engagement with vulnerability does not therefore only represent a push-back of restrictive policies, but also a way to adapt and survive in a securitised and marketised regime. Second, using the notion of vulnerability strategically is powerful, albeit double-edged. As argued by Brown (2017), vulnerability works as a power-laden way of framing social issues and signals an ethical duty for action to be taken. This, combined with the concept's malleability, means that it can easily be seized upon by various actors and groups to support at times opposing claims. In Cádiz, the same ambiguities and tensions found in international and national policies were present, including between categorical and context-sensitive conceptions of vulnerability. However, there was a stronger presence of more structural understandings of vulnerability, which were drawn upon to criticise and oppose government policies. In some cases, such framing succeeded in expanding the protection space beyond the categories usually defined as vulnerable (e.g. the case of the *ex-tutelados*). However, the strategic turn to vulnerability risked further narrowing entitlements in favour of targeted interventions and detracted attention from the state's inability to provide for all, due to the insufficient assignment of resources to the reception systems.

## Notes

1. All necessary ethical approvals for the data collected in this study have been approved by the European Commission and the University of Bergen's Data protection Officer. All participants provided informed consent.
2. The UNHCR provides weekly statistics of the number of sea arrivals and asylum applications. These are available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5226>.

## Acknowledgement

I would like to thank my interlocutors and my research assistants Álvaro Rosa García, Lorena Calvo Mariscal and Maria de los Angeles Bellido Lora. I am also grateful to Alejandro del Valle and Jesús Verdú at the University of Cadiz for their support in the early phase of fieldwork, and Christine M. Jacobsen, Leti Volpp, Kathryn R. Abrams and the anonymous reviewers for constructive feedback on earlier drafts.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

## Funding

This article is part of PROTECT The Right to International Protection: A Pendulum between Globalisation and Nativisation? funded by the European Union's Horizon 2020 Framework Programme and coordinated by the University of Bergen (Grant Agreement No 870761).

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