

## Vulnerable People or Vulnerable Borders?

### EU External Migration Policies and Gendered Vulnerability

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#### Abstract

The concept of vulnerability is blurred and often evoked in the context of refugee and forced migrant women. Paradoxically, it is also employed by the EU with regard to its external border security. Thus, the question arises of how the EU conceptualizes vulnerability in its external migration policies and who is perceived to be vulnerable – refugees and migrants, or external borders? Using a systematic lexical keyword search to identify relevant policy aims in the EU Pact on Migration and Asylum, the latest policy agenda on migration and asylum of the EU Commission published in September 2020, this paper highlights the mostly one-dimensional concept of vulnerability in external EU policies. In this article, it is argued that this entails significant gendered implications for asylum-seekers and migrants en route to Europe. It further reveals the detrimental effects for migrants and refugees caused by the EU's focus and prioritization of its vulnerable borders. Ultimately, this paper by adopting a gendered lens calls into question whether the European Commission fully incorporates human rights commitments in its policy guidance on asylum and migration.

**Keywords:** European migration and asylum policies; vulnerability; gender; securitization; externalization

#### Introduction

The external border of the European Union (EU), particularly the Mediterranean Sea, has been recognized as the deadliest route for migrants and refugees worldwide (International Organization for Migration, 2018). Amid the high numbers of casualties among those trying to cross international borders into the EU, the EU maintains a “battle against irregular migration”, citing the need for “creating an area of ‘freedom, security, and justice’” (Gerard & Pickering, 2014, p. 338). This nexus of increasing border security and increasing migrant deaths prompts the question of *whom* the EU perceives to be vulnerable – its external borders or those who try to cross them to seek international protection? Over the past two decades, the concept of vulnerability has gained increasing relevance in the context of migration and asylum. However, until today, the notion remains blurred and contentious. There is still no

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legal definition of vulnerability and those described as ‘vulnerable’ are often associated with passive characteristics of helplessness. This paper contributes to the larger academic debate on the concept of vulnerability by answering the question of how the EU conceptualizes vulnerability in its external migration policies. The research shows that a mostly one-dimensional concept of vulnerability can be found in external EU policies, which entails significant gendered implications for asylum-seekers and migrants on their journey to Europe. Further, this paper argues that the EU’s understanding of vulnerable borders and its subsequent border security measures represent a source of vulnerability for refugees and migrants by creating and exacerbating harm along their journey to the EU.

This article situates the research question in the broader academic literature on vulnerability, particularly, through the lens of International Human Rights Law (IHRL) and feminist critical theories. These approaches offer a more nuanced taxonomy of different states and sources of vulnerability beyond the common conception of victimhood and helplessness. Second, based on the theoretical assumptions, this paper assesses the understanding of vulnerability in the recently published EU Pact on Migration and Asylum. The Pact mentions vulnerability in two contexts – first, with regard to women and children, and second, with regard to EU borders. Subsequently, the paper points to the gendered implications and prioritization of external borders over human life of the existing policy, arguing that the Pact harms migrants and undermines their agency.

Lastly, the paper concludes with three tangible policy recommendations encouraging the EU to eliminate the gendered implications of its external policies on refugees and migrants. This includes, first, the need for an enhanced vulnerability definition, second, the collection of gender-disaggregated data in asylum and migration processes, and lastly, the facilitation of legal pathways to asylum.

## **Vulnerability in Theory**

While human rights are universal and inherent to everyone, specific human rights safeguards are foreseen for certain ‘vulnerable’ groups that are perceived to need enhanced protection, such as women, children, and the differently abled. Considering these specific protection standards, human rights jurisprudence, however, lacks a consistent approach on how to define vulnerability in legal terms (Timmer, 2013).

In its landmark ruling ‘MSS v. Belgium’, the European Court of Human Rights (ECtHR) acknowledged the vulnerability of asylum-seekers due to their absolute dependence on the state to fulfill basic needs (*M.S.S. v. Belgium and Greece, Application no. 30696/09*, 2011). The ECtHR applied the concept of vulnerability as a “magnifying glass” that “point[s] to the exacerbated dimension that the harm inflicted on a person takes due to the vulnerability or reduced resilience of the person” (Mustaniemi-Laakso et al., 2016, p. 25). The judgment was later complemented by the ‘Tarakhel’ ruling that highlighted children’s vulnerability in the context of asylum (*Tarakhel v. Switzerland, Application no. 29217/12*, 2014). Despite its normative and practical importance in human rights jurisprudence and humanitarian assistance, little systematic clarity of the concept of vulnerability existed. Today, the notion remains intertwined with ideas of harm, need, dependency, and exploitation (Mackenzie et al., 2013). More recently, scholars of Feminist Studies, Research Ethics, and Applied Philosophy have started to disentangle these connotations and approach the concept itself more systematically through the taxonomy of vulnerability.



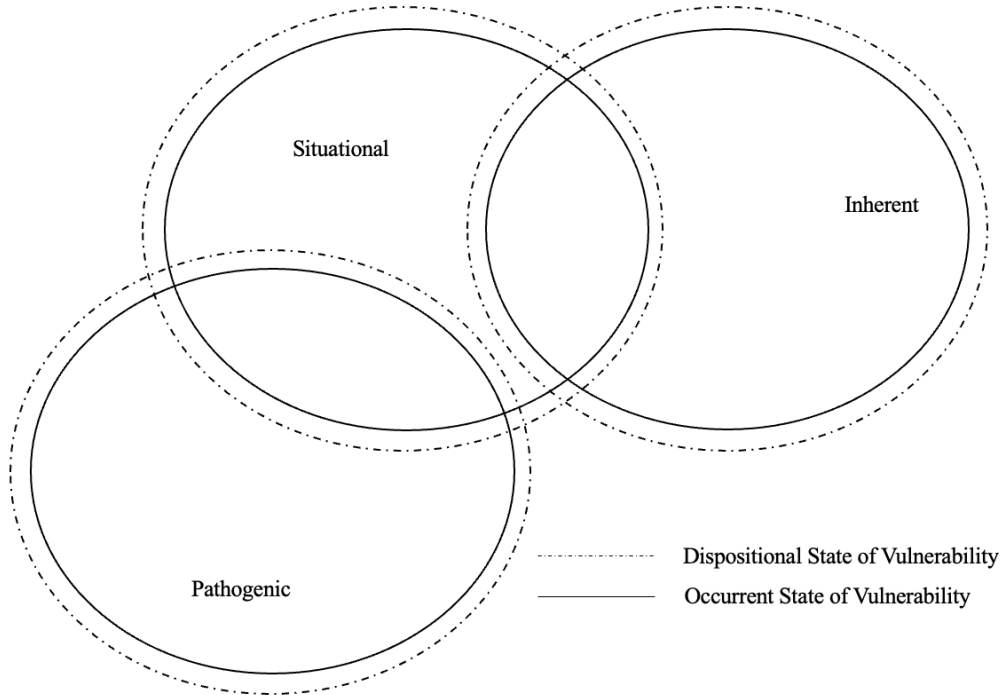
## Vulnerability Taxonomy

A purely group-based understanding of vulnerability, such as the one promoted in the ‘MSS v. Belgium’ and ‘Tarakhel’ cases, perceives individuals with certain common characteristics as vulnerable, e.g., being a woman or a child, or having physical or mental disabilities. Scholars note that such a one-dimensional conceptualization risks denying a person’s agency or ignoring the needs of persons that fall outside the scope of this rigid understanding of vulnerability (Mustaniemi-Laakso et al., 2016). Further, this group label of vulnerability is often evoked together with victimhood, deprivation, and dependency. This might lead to “discrimination, stereotyping, and unwarranted and unjust paternalistic responses” towards the supposedly vulnerable (Mackenzie et al., 2013, p. 6).

In contrast, the concept of vulnerability introduced by Fineman (2008) understands every human being as inherently vulnerable. Hence, she understands vulnerability as a universal and constant human condition. Simultaneously, this condition is described as a context-dependent condition because every individual holds a different degree of resilience according to their position in the “web of economic and institutional relationships” (Fineman, 2008, p. 10). This understanding of vulnerability shifts the focus away from the vulnerable individual and towards the deeper inequalities that produce vulnerability, as well as the positive obligations that the state must actively meet to overcome them (Fineman, 2008).

Butler et al. (2016), however, criticize Fineman’s definition of vulnerability as it continues to evoke passivity that requires the active protection of a superior actor. They argue that by categorizing specific groups as vulnerable, the human rights discourse risks actively eliminating modes of political agency and resistance of the individual in question. By grouping, *a priori* perceived vulnerable individuals as inferior to powerful states and International Organizations, such an approach confines these people into a “political position of powerlessness and lack of agency” (Butler et al., 2016, p. 24). Further, Mackenzie et al (2013) criticize Fineman’s universal vulnerability approach for oversimplifying complexities and veiling different sources and states of vulnerability. Indeed, Fineman’s definition of universal vulnerability is based primarily on the human embodiment. Thereby, it neglects the context-specific and multifaceted causes of vulnerability, such as interpersonal and social relationships, or economic, legal, and political structures. Considering this criticism, Mackenzie et al. (2013) propose a more nuanced and fine-grained taxonomy of vulnerability that is based on three different sources – inherent, situational, and pathogenic – as well as two different states of vulnerability – dispositional and occurrent; illustrated in Figure 1.

First, inherent vulnerability is based on Fineman’s understanding of “embodied vulnerability”, which refers to sources of vulnerability that are “ineradicable” or permanent features of an individual (Mackenzie et al., 2013, p. 38). The notion of vulnerability derives from the Latin word *vulnus* (wound) and highlights that the “capacity to suffer” is inherent in the pure bodily existence of humans (Mackenzie et al., 2013, p. 4). As embodied and social beings, we have intrinsic human needs that make us vulnerable to hunger, thirst, sleep deprivation, and physical harm but also to the actions of others. Thus, embodied vulnerability is linked to the inherent “sociality of human life” (Mackenzie et al., 2013, p. 4). Second, Mackenzie et al. (2013) acknowledge that vulnerability is context-specific and created or aggravated by the personal, social, political, economic, or environmental circumstances of social groups or individuals. This is described by the so-called situational vulnerability sources.

**Figure 1.** Vulnerability Taxonomy (Author's own visualization).

Third, Mackenzie et al. (2013) name a particularly morally challenging sub-set of situational vulnerabilities as pathogenic vulnerability that can be caused by a wide range of sources. A central feature of pathogenic vulnerability sources is the insufficient fostering or even undermining of autonomy that aggravates powerlessness. For example, some policy responses intended to alleviate vulnerability, however, may have a contrary effect of exacerbating or causing vulnerabilities. This category serves as a useful means to unveil the paradoxical effect of policy interventions that were designed to diminish vulnerabilities but instead exacerbate existing or create new vulnerabilities (Mackenzie et al., 2013).

However, “inherent sources of vulnerability reflect to a greater or lesser extent features of the environment” and therefore, are intertwined with the context-specific sources of situational vulnerability (Mackenzie et al., 2013, p. 8). Thus, inherent and situational vulnerabilities are not entirely categorically distinct, and definitional boundaries remain blurred. Nevertheless, the distinction can serve as a useful tool to identify the broad range and contextual sources of vulnerability that otherwise are overseen by one-dimensional and group-based approaches.

The taxonomy of vulnerability does not only differentiate between sources but also between two states of vulnerability. First, dispositional vulnerability describes a potential state of vulnerability, and occurrent refers to an actual state of vulnerability. This distinction helps to recognize vulnerabilities that are currently not representing a source of harm but require immediate action to prevent them from becoming one. In practical terms, acknowledging dispositional vulnerabilities entails a preventive dimension and enables to limit imminent harm (Mackenzie et al., 2013).



## Critiques of the Vulnerability Taxonomy

Considering the lived experiences of refugees and migrants, theoretical efforts to systematize the concept of vulnerability have been criticized. Sözer (2019) highlights that the refugee experience as such is contextual and therefore, their vulnerability is highly contextual. Further, on an operational level of humanitarian action, considering vulnerability often leads to “selective rather than additional assistance” that reduces “the vulnerability of all refugees to the vulnerability of only some” (Sözer, 2019, p. 2). It is further emphasized that any normative taxonomy treating vulnerabilities as static conditions oversimplifies the complexities of vulnerability, which is “often both intrinsic and variously situational, and at once potential and actual and always more” (Sözer, 2019, p. 8). In brief, preemptive categories and *a priori* definitions cannot entirely reflect the lived experiences of refugees and migrants and therefore, may “blind us” in the policymaking and humanitarian communities from adequately perceiving these realities (Sözer, 2019, p. 4). Therefore, to ensure a coherent standard of action, a nuanced and detailed understanding of vulnerability criteria for EU migration and asylum policies is required.

## The EU Pact and Vulnerability

In September 2020, the EU Commission published a new Pact on Migration and Asylum (‘the Pact’ hereinafter), its most recent policy agenda that aims to establish a ‘Common European Framework for Migration and Asylum Management’. In contrast to internal policies that relate to reception conditions, asylum procedures, and refugee status determination processes, EU external migration action covers policies involving countries other than the EU Member States. This includes third-country cooperation in the form of border control, fighting migrant smuggling, readmission agreements, and other forms of assistance and development aid to tackle the “root causes of migration” (European Commission, 2020b, para. 1). Drawing on a systematic lexical keyword search, this paper analyses the Pact’s external policy aims that relate to vulnerability.<sup>2</sup> In the Pact, vulnerability is mentioned in two regards: First, the vulnerability of refugees and migrants, mainly in the context of the safety of women and children is highlighted. Second, the Pact focuses on the vulnerability of borders for which two mitigation measures are suggested: the fighting of migrant smuggling networks and increased cooperation with third countries to limit cross-border movements. The implications of these policies have gendered dimensions that will be illuminated in the following.

## Vulnerability of Refugees and Migrants

Throughout the years, the concept of vulnerability has been increasingly incorporated in European asylum and migration policies, partly to address criticism accusing the EU of a lack of gender-sensitive policies and ignoring the specific situation of refugee and migrant women and girls (Freedman, 2019). The Pact explicitly emphasizes that a common EU approach needs to sufficiently provide support to “children and the vulnerable” by acknowledging the “special needs of vulnerable groups” (European Commission, 2020b, para 2.4). It underlines that women and girls face a high risk of becoming victims of trafficking for sexual exploitation or other forms of sexual and gender-based violence (SGBV). The Pact further stresses the need to “identify potential victims” to fight human trafficking and thereby, refers to the new Security Union Strategy, a policy framework that designates priority areas in which the EU

<sup>2</sup> The keyword search included the terms “vulnerability” and “vulnerable”.

can support member states in increasing security. Despite mentioning gender mainstreaming, the security strategy stipulates that “[p]articular efforts are required when it comes to minorities and the most vulnerable victims, such as children or women” (European Commission, 2020a, pp. 25–26). Other factors that render a person inherently or situational vulnerable, as well as references to documents that might have included such sources of vulnerability, cannot be found in the Pact. Integrating the notion of vulnerability in external policy documents by the EU can be “welcomed in that it acknowledges the increased risks and dangers faced by some asylum seekers and refugees” (Freedman, 2019, p. 7). However, the understanding of the EU of who is vulnerable and who is not risks perpetuating and essentializing existing perceptions of migrants and refugees for two main reasons.

First, by exclusively naming children and women as vulnerable, the Pact is limited to a one-dimensional and group-based conception of vulnerability. Further, those who fall within the Pact’s rigid categorization of vulnerability are portrayed as passive and in demand of increased assistance. Such policies risk paternalizing the ones they seek to protect and hence, ignore their autonomy and agency. Paternalism is usually understood as “coercive interference with the individual liberty to protect or promote the person’s welfare, good, happiness, needs, interests, or values” (Mackenzie et al., 2013, p. 47). According to Mackenzie et al.’s vulnerability taxonomy, such action might represent a pathogenic source of vulnerability. The wording of the respective paragraph collectively groups women and children under a framework of victimhood and denies complex intersections of inherent, situational, and pathogenic vulnerability.

Second, the Pact’s scope of vulnerability is underpinned by the belief that vulnerability is a visible characteristic that can be easily and superficially identified by national and EU border officials. As such, it ignores hidden, invisible, or forms of vulnerability that do not fit preconceived gender roles such as mental illnesses or male survivors of sexual violence among other manifestations of vulnerability (Freedman, 2019, p. 8). The Pact also points to a reductionist binary perspective on gender that omits the even higher risks faced by non-binary individuals. Further, considering the rising share of elderly persons among displaced people – 4% of the overall displaced population (United Nations High Commissioner for Refugees, n.d.) – the specific needs of elderly migrants and refugees are gaining increasing importance since they may face heightened risks of violence, exploitation, and discrimination (United Nations High Commissioner for Refugees, 2013). In brief, vulnerabilities that do not fit *a priori* categories and preconceived conceptions of age and gender are left out, exacerbating risks for these migrants and refugees who are left out of the classification and conversation (Sözer, 2019).

## **Vulnerability of Borders**

The EU has been approaching migration in a contradictory way. On one hand, it acknowledges the urgent necessity to provide international protection to refugees and asylum seekers. On the other hand, it prioritizes border protection and rhetorically illustrates migration as an “irregular” and harmful act that requires effective control to be reduced or stopped (European Commission, 2020b, para 2.6). The latter trend has been described as the ‘securitization’ of migration, a term that characterizes a process whereby “an issue is defined as an existential threat and thereby lifted above the normal into the extraordinary” (Kremer, 2013, p. 19). The result is “an increasing acceptance of retributive and forcible measures taken



to tackle unwanted irregular migration” (Mustaniemi-Laakso et al., 2016, p. 19). Paradoxically, the pact mentions vulnerability in the context of the EU’s Border and Coast Guard Agency’s (Frontex) yearly assessments to examine “the readiness of Member States to face threats and challenges at the external borders and recommending specific remedial action to mitigate vulnerabilities” (European Commission, 2020b, para 4.1). The document suggests two main measures to mitigate the vulnerability of borders, first, the fight against migrant smuggling networks, and second, cooperation with third countries on migration control.

### **Fighting Migrant Smuggling**

The Pact focuses on combatting migrant smuggling without offering alternative and legal pathways to claim asylum. In this context, Frontex plays a central role in the integrated European approach to external border controls (Stachowitsch & Sachseder, 2019). The policy document entails several passages that highlight the potential of Frontex and the expansion of the border agency’s capacities and resources (European Commission, 2020b). Further, the pact dedicates a section to target criminal smuggling networks. For instance, the pact endorses the 2021 – 2025 EU Action Plan Against Migrant Smuggling and further states that existing anti-smuggling measures “have proven an effective legal framework” (European Commission, 2020b, footnote 29). Empirical evidence reveals the detrimental correlations between combating smuggling, the absence of legal pathways to claim asylum, and the deteriorating safety of those who wish to seek protection (Gerard & Pickering, 2014; International Organization for Migration, 2018). Despite the increase in arriving individuals, policies that combat smuggling have not resulted in a proportionate increase in detentions of smugglers between 2012-2016. Due to the lack of legal alternatives, refugees and forced migrants cannot resort to other channels than smugglers to enter the EU (International Organization for Migration, 2018). Fighting migrant smuggling without providing adequate legal pathways not only causes the paradoxical effect of even more people relying on illegal migration facilitators (Ferrier & Kaminsky, 2017), but it also renders the journey to the EU increasingly difficult, dangerous, and costly – at the expense of money but also human rights (Bosworth et al., 2018). To this end, the price that an individual is asked to pay a smuggler depends on “the distance and complexity of the route, the degree of institutional control of the route, and the reception of migrants in transit and destination countries” (Migration Data Portal, 2020). If the EU continues to fight smuggling without providing alternative pathways, the route becomes then notably more dangerous and costlier, especially for women, whose bodies in the lack of adequate financial assets “may become a currency” (Gerard & Pickering, 2014, p. 347). Further, for refugee or migrant women who experience family and conjugal violence, it becomes difficult to leave their abuser because of the challenge of continuing the journey alone and/or with their children (Freedman, 2016). SGBV, transactional sex,<sup>3</sup> the violence of smugglers and border officials, and family and conjugal violence increase as the EU claims to crack down on smuggling. Thus, these policies “contribute to the conditions in which mobility comes at a higher price, literally and metaphorically” (Gerard & Pickering, 2014, p. 353).

### **Third-Country Cooperation**

One of the most controversial debates concerning asylum is the scope of international obligations toward individuals who are not yet on national territory or under the jurisdiction

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<sup>3</sup> Transactional sex means the pressure to exchange sexual relations in return for the passage when a migrant does not have enough money to reimburse smugglers (Freedman, 2016).

of the state they wish to seek asylum in. A common interpretation is that obligations do not arise until the applicant has crossed the physical border. Thus, both the EU and the Member States have increasingly implemented “extraterritorial activities aimed at preventing refugees from reaching their territories” (Mustaniemi-Laakso et al., 2016, p. 30). In recent years, a “new generation of non-entrée policies based on cooperation with third countries, notably diplomatic relations and financial and technical aid” have emerged (Gammeltoft-Hansen & Hathaway, 2014, p. 243). Prominent examples of EU third-country cooperation are bilateral agreements with Turkey, Libya, and Morocco that “have been implemented to avoid obligations owed to illegalized travelers at sea” (Gerard & Pickering, 2014, p. 352).

The Pact endorses third-country cooperation in the form of tailor-made counter-migrant smuggling partnerships, readmission agreements, and attempts to harmonize safe-country notions (European Commission, 2020b). It suggests that third-country cooperation should be approached in a broad context of “development cooperation, security, visa, trade, agriculture, investment and employment, energy, environment and climate change, and education” (European Commission, 2020b, para 6.1). Yet at their core, these practices further externalize migration and asylum responsibilities away from the EU. The European Commission emphasizes that over €9 billion have been spent on “refugees and migration issues” outside the EU since 2015 (European Commission, 2020b, para 6.1). The trend of the EU funding for refugee protection programs in third-countries, particularly in North Africa, serves to decrease refugee and migrant mobility and to justify potential readmission efforts from the EU to countries like Libya and Morocco (Gerard & Pickering, 2014, p. 355). Throughout the past two decades, an increasing number of migration agreements have been concluded between the EU and so-called transit or migration-sending countries that do not resemble “fair multilateralism” but primarily serve the EU’s aim of limiting migration (Adepoju et al., 2009, p. 67). Such policies and their consequences can be seen in the examples of Morocco and Libya.

First, the case of Morocco illustrates the EU’s third-country cooperation in the context of migration and asylum. The EU focuses its cooperation with the Kingdom of Morocco, a relatively stable and developed country to the south of Spain, on readmission, border controls, and the reception of asylum-seekers (Carrera et al., 2016). The fences of the Spanish enclaves Ceuta and Melilla in Morocco represent a physical manifestation of Europe’s walls built to hinder and stop migration (Saddiki, 2010). In 2012, the humanitarian organization Doctors Without Borders reported having assisted at least 600 individuals with injuries caused by direct and indirect violence at the border between Morocco and Spain (Gazzotti, 2020). More recently in June 2022, at least 23 deaths occurred in an attempt by around 2,000 people to climb the wired fences around Melilla. Judith Sunderland, the acting deputy Europe and Central Asia director at Human Rights Watch (2022) describes video and photo evidence that “show[s] bodies strewn on the ground in pools of blood, Moroccan security forces kicking and beating people, and Spanish Guardia Civil launching teargas at men clinging to fences”. Incidents such as those mentioned above underline that the EU – Moroccan border governed through third-country cooperation represents a “space of no rights” for migrants and asylum seekers (Gazzotti, 2020, p. 413). Another example of third-country cooperation efforts can be seen between the EU and Libyan authorities (Hamood, 2008). This cooperation is particularly delicate since Libya is war-torn and lacks a government with a power monopoly. To avoid breaching the International Law principle of *non-refoulement* and the physical involvement of EU officials, the EU provides the Libyan Coast Guard (LYCG) with training,





equipment, and technical support to intercept refugees and forced migrants in Libyan waters and prevent them from reaching EU territory (Amnesty International, 2022). Subsequently, refugees and forced migrants that have been intercepted in the interest of the EU are held in Libyan detention facilities, where human rights violations occur on a large scale, ranging from torture and ill-treatment to SGBV, and death (Amnesty International, n.d.).

In sum, the EU's third-country cooperation leaves the responsibility to protect asylum seekers to third countries, some of which do not recognize or enforce standards of International Law such as the 1951 Refugee Convention. This results not only in diminished legal obligations for EU countries but generally affects refugees and forced migrants negatively by placing them in a legal gray zone with little to no recourse to advocate for their human rights. Findings suggest that EU policies of increased border protection and externalization of obligations create a more hostile and violent environment for refugees and migrants attempting to reach the EU, especially for women (Bosworth et al., 2018). Considering the vulnerability taxonomy of Mackenzie et al. (2013), the external migration policies focusing on migrant smuggling and third-country cooperation that create more gendered harm and aggravate powerlessness represent a source of situational and pathogenic vulnerability for refugees and forced migrants.

### **Policy Recommendations and Conclusion**

As demonstrated by the Pact, the EU incorporates a vague notion of vulnerability in migration policy documents rather than considering the intersectional and context specific vulnerability of individuals seeking asylum and migrating to the EU. However, as this research shows from its analysis of the Pact's language around vulnerability, due to systemic and institutional misconceptions of who and what is vulnerable, the EU Commission first, does not consider contextual vulnerability. The existing policies attribute vulnerability primarily to individuals in need of "special protection" which denies individual agency by imposing externally-construed assumptions of helplessness (Welfens, 2020, p. 517). Second, policies with the aim to prevent refugees and forced migrants to cross the Mediterranean Sea under the pretext of protecting migrants by curtailing smuggler's criminal activities and deaths at sea represent and exacerbate existing vulnerabilities and can, therefore, be referred to as pathogenic sources of vulnerability (Mustaniemi-Laakso et al., 2016). Specifically, by considering gendered implications of the EU's limited understanding of vulnerability it reveals the "contexts of induced vulnerability" to which the EU contributes (Gerard & Pickering, 2014, p. 343). According to International Law provisions and the theoretical reflections of scholars, the concept of vulnerability gives rise to moral obligations and positive duties of justice. Shifting the focus from the vulnerable individual to the deeper societal roots and inequalities that produce vulnerability highlights the positive obligations a state must actively meet to overcome them (Fineman, 2008). Thus, the following three recommendations encourage the EU and Member States to bear this responsibility and to alleviate the gendered harm of EU policies on refugee and migrant women.

### **Gender-Disaggregated Data Collection**

The lack of official gender-disaggregated data concerning border crossings of refugees and forced migrants contributes to the invisibility of women in gendered processes of migration and asylum (Freedman et al., 2017). EU Member States do not collect data on reported gender-based violence towards refugee and migrant women who recently arrived in the EU

(European Union Agency for Fundamental Rights, 2016). If asylum and migration statistics are available, women and children are often merged into one category, which undermines women's adulthood and autonomy by infantilizing them. The lack of concise and updated data is an obstacle to research and academia seeking to answer questions related to vulnerability in migration comprehensively. These findings manifest the need for further policy action to undertake data collection and precisely map the realities of asylum-seekers and migrants. Thus, the EU should establish official and publicly accessible statistics that include gender-segregated data. This would further enable politicians, humanitarians, and researchers to better understand, anticipate, and respond to multiple states and sources of vulnerability.

### **The Understanding of Vulnerability**

As Butler et. al. (2016, p. 1) state, "there is always something both risky and true in claiming that women or other socially disadvantaged groups are especially vulnerable". Indeed, the EU's step towards considered gendered experiences of migration is not inherently bad, but rather its current scope and understanding of the notion of vulnerability are flawed. Therefore, the EU should pursue first a definition of vulnerability that is capable of fully capturing the contextual and relational elements of vulnerability, and acknowledge vulnerability irrespective of identity or status (Freedman, 2016). Instead of employing a preemptive definition that essentializes existing gendered categories, the EU should focus on strengthening the agency of those who are perceived and perceive themselves as vulnerable. This also includes the need to overcome a reductionist binary perspective on gender that is implied in the EU's one-dimensional understanding of women refugees and migrants who are perceived to be per se vulnerable. A fine-grained taxonomy of vulnerability can develop enhanced yet flexible categories that can guide policymaking and activities on the ground to create strategies that will limit migrants' and refugees' harm.

### **Legal Pathways and Non-Deterrence Policies**

Most importantly, existing EU policies that aim at the deterrence of migration represent sources of vulnerability across general and gendered dimensions. Hence, the EU should refrain from policies that cause detrimental effects and human rights violations of those who should be protected by the EU. Entities and authorities who are in positions of power bear "special responsibilities toward those over whom they have power or who are particularly dependent on them" (Mackenzie et al., 2013, p. 13). Instead of increasing risks and potential harm along the route of refugees and forced migrants, the EU should establish legal pathways to the right to asylum that decrease the reliance on smuggling and reduce vulnerability across the passage to the EU. A promising approach to comply with positive obligations to alleviate vulnerability is to implement policies that aim at fostering autonomy and promoting capabilities. Finally, to truly enhance the situation of refugees and forced migrants at risk the EU must change its racialized and gendered perception of seeing them as a risk. If the EU continues to prioritize the protection of 'vulnerable' borders instead of vulnerable individuals many more lives will be lost at the external frontiers of the EU.

To conclude, implementing these recommendations would enable policymakers to first, understand the gendered realities of refugees and forced migrants, second, based on this enhanced understanding, conceptualize vulnerability in an intersectional and inclusive way,



and third, mitigate vulnerabilities of refugees and forced migrants on their way to Europe more effectively.

## References

- Adepoju, A., Van Noorloos, F., & Zoomers, A. (2009). Europe's Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review: Europe's migration agreements. *International Migration*, 48(3), 42–75. <https://doi.org/10.1111/j.1468-2435.2009.00529.x>.
- Amnesty International. (n.d.). Libya 2020, Rights of refugees, asylum-seekers and migrants. <https://www.amnesty.org/en/location/middle-east-and-north-africa/libya/report-libya/>.
- Amnesty International. (2022, January 31). Libya/EU: Conditions remain 'hellish' as EU marks 5 years of cooperation agreements. <https://www.amnesty.org/en/latest/news/2022/01/libya-eu-conditions-remain-hellish-as-eu-marks-5-years-of-cooperation-agreements/>.
- Bosworth, M., Fili, A., & Pickering, S. (2018). Women and border policing at the edges of Europe. *Journal of Ethnic and Migration Studies*, 44(13), 2182–2196. <https://doi.org/10.1080/1369183X.2017.1408459>.
- Butler, J., Gambetti, Z., & Sabsay, L. (Eds.). (2016). Rethinking Vulnerability and Resistance. In *Vulnerability in Resistance* (pp. 12–27). Duke University Press. <https://doi.org/10.1215/9780822373490-002>.
- Carrera, S., Cassarino, J.-P., El Qadim, N., Lahlou, M., & Den Hertog, L. (2016). EU-Morocco cooperation on readmission, borders and protection: A model to follow?
- European Commission. (2020a). Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy (COM (2020) 605). <https://ec.europa.eu/info/sites/default/files/communication-eu-security-union-strategy.pdf>.
- European Commission. (2020b). Communication from the Commission on a New Pact on Migration and Asylum COM(2020) 609 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM%3A2020%3A609%3AFIN>.
- M.S.S. v. Belgium and Greece, Application no. 30696/09, (21 January 2011). [https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/case-mss-v-belgium-and-greece-application-no-3069609\\_en](https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/case-mss-v-belgium-and-greece-application-no-3069609_en).
- Tarakhel v. Switzerland, Application no. 29217/12, (European Court of Human Rights 4 November 2014).
- European Union Agency for Fundamental Rights. (2016, June 14). Women refugees at high risk of being victims of gender-based violence. <https://fra.europa.eu/en/news/2016/women-refugees-high-risk-being-victims-gender-based-violence>.
- Ferrier, T., & Kaminsky, P. (2017, June 2). An industry built on human misery. *Global Spotlight*. <http://www.mindsglobalspotlight.com/2017/06/02/32072?slug=global-spotlight-the-overview>.
- Fineman, M. A. (2008). The vulnerable subject: Anchoring equality in the human condition. *Yale JL & Feminism*, 20.
- Freedman, J. (2016). Sexual and gender-based violence against refugee women: A hidden aspect of the refugee 'crisis'. *Reproductive Health Matters*, 24(47), 18–26.
- Freedman, J. (2019). The uses and abuses of 'vulnerability' in EU asylum and refugee protection: Protecting women or reducing autonomy? *Papeles Del CEIC*, 2019(1), 204. <https://doi.org/10.1387/pceic.19525>.
- Freedman, J., Kivilcim, Z., & Baklacioglu, N. Ö. (Eds.). (2017). *A Gendered Approach to the Syrian Refugee Crisis* (1st ed.). Routledge. <https://doi.org/10.4324/9781315529653>.
- Gammeltoft-Hansen, T., & Hathaway, J. C. (2014). Non-refoulement in a World of Cooperative Deterrence. *Colum. J. Transnat'l L.*, 53, 235.
- Gazzotti, L. (2020). Deaths, Borders, and the Exception: Humanitarianism at the Spanish–Moroccan Border. *American Behavioral Scientist*, 64(4), 408–435. <https://doi.org/10.1177/0002764219882990>.
- Gerard, A., & Pickering, S. (2014). Gender, Securitization and Transit: Refugee Women and the Journey to the EU. *Journal of Refugee Studies*, 27(3), 338–359. <https://doi.org/10.1093/jrs/fet019>.
- Hamood, S. (2008). EU-Libya Cooperation on Migration: A Raw Deal for Refugees and Migrants? *Journal of Refugee Studies*, 21(1), 19–42. <https://doi.org/10.1093/jrs/fem040>.
- Human Rights Watch. (2022, June 29). Morocco/Spain: Horrific Migrant Deaths at Melilla Border. <https://www.hrw.org/news/2022/06/29/morocco/spain-horrific-migrant-deaths-melilla-border>.

- International Organization for Migration. (2018). Migrant smuggling data and research: A global review of the emerging evidence base, volume 2. [https://publications.iom.int/system/files/pdf/migrant\\_smuggling\\_data\\_vol2\\_0.pdf](https://publications.iom.int/system/files/pdf/migrant_smuggling_data_vol2_0.pdf).
- Kremer, J. (2013). Exception, Protection and Securitization: Security Mindsets in Law. In *Law and Security in Europe: Reconsidering the Security Constitution* (pp. 7–38). Intersentia.
- Mackenzie, C., Rogers, W., & Dodds, S. (2013). *Vulnerability: New Essays in Ethics and Feminist Philosophy*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199316649.001.0001>.
- Migration Data Portal. (2020, June 9). Smuggling of migrants. Migration Data Portal. <http://migrationdataportal.org/themes/smuggling-migrants>.
- Mustaniemi-Laakso, M., Heikkilä, M., Del Gaudio, E., Konstantis, S., Nagore Casas, M., Morondo, D., Hegde, V. G., & Finlay, G. (2016). The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration. FRAME.
- Saddiki, S. (2010). Ceuta and Melilla fences: A EU multidimensional border? University of Fez, Center of International Studies (Rabat), Morocco, Paper Presented at the Annual Meeting of the Theory vs. Policy.
- Sözer, H. (2019). Categories that Blind Us, Categories that Bind Them: The Deployment of Vulnerability Notion for Syrian Refugees in Turkey. *Journal of Refugee Studies*. <https://doi.org/10.1093/jrs/fez020>.
- Stachowitsch, S., & Sachseder, J. (2019). The gendered and racialized politics of risk analysis. The case of Frontex. *Critical Studies on Security*, 7(2), 107–123. <https://doi.org/10.1080/21624887.2019.1644050>.
- Timmer, A. (2013). A quiet revolution: Vulnerability in the European Court of Human Rights. In *Vulnerability: Reflections on a new ethical foundation for law and politics* (pp. 147–170). Ashgate.
- United Nations High Commissioner for Refugees. (n.d.). Older Persons. UNHCR. Retrieved 4 December 2020, from <https://www.unhcr.org/older-persons.html>.
- United Nations High Commissioner for Refugees. (2013). Working with older Persons in forced Displacement. <https://www.refworld.org/pd/4ee72aaf2.pdf>.
- Welfens, N. (2020). Protecting Refugees Inside, Protecting Borders Abroad? Gender in the EU's Responses to the 'Refugee Crisis'. *Political Studies Review*, 18(3), 510–524. <https://doi.org/10.1177/1478929919887349>.

