



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

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

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EXECUTIVE SUMMARY

Throughout the VULNER project, the Canadian team seeks to answer three questions:

1. How are the ‘vulnerabilities’ of migrants defined in the relevant Canadian legislation, case law, policy documents and administrative guidelines?
2. How do Canadian decision-makers understand and address the ‘vulnerabilities’ of migrants?
3. How do the legal frameworks and the implementation practices concretely affect vulnerabilities as experienced by migrants in Canada?

Question 1 was addressed during the first phase of the project (April-December 2020), where we focused our research activities on compiling and analysing Canadian government documents and court cases pertaining to the vulnerability of migrants. These preliminary research findings were presented in our first report (VULNER Research Report 1). Questions 2 and 3 were addressed during the second phase of the project (January 2021-July 2022), where we conducted interviews with migrants and other key informants (i.e., civil servants from the federal government and ‘on the ground’ practitioners, including lawyers and NGO representatives). In this second report, we present some key results based on this second phase of the project.

The position of the Canadian team is unique in comparison to other partner countries in the VULNER project, as the second report is the first opportunity to present our findings based on interview data. Indeed, given the massive amount of documentation that we had to review in the first phase of the project, our first report only included a presentation and analysis of the desk research data. Therefore, our second report includes both an analysis of how civil servants understand and mobilize ‘vulnerability’ in their decision-making process (which was done by the other teams in their first report) and an analysis of migrants’ experiences of vulnerability. It is also worth recalling that the Canadian research covers a broad range of protection procedures:

- Refugee protection, granted to individuals who meet the strict 1951 Geneva Convention definition of a refugee, who are in circumstances considered similar to those of a Convention refugee, or whose removal to their country of origin would subject them to torture or inhumane and degrading treatment according to the Convention Against Torture (permanent residency status, with pathway to citizenship);
- Permanent residency (with pathway to citizenship), granted to individuals who are about to be removed from Canada and who demonstrate an imminent danger of torture, risk of persecution or of cruel and unusual treatment or punishment if sent back to their country of origin (Pre-Removal Risk Assessment (PRRA));
- Permanent residency (with pathway to citizenship), granted to individuals who are inadmissible or who do not meet the requirements of the immigration legislation, but have compelling Humanitarian and Compassionate (H&C) grounds to remain in Canada (Humanitarian and Compassionate Grounds (H&C));
- Permanent residency (with pathway to citizenship), granted to individuals who are inadmissible or do not meet the requirements of the existing immigration legislation, but are justified by public policy considerations to remain in Canada (Public Policy Grounds);

- Temporary protection granted to migrant workers on a valid employer-specific work permit who demonstrate experiencing abuse - or being at risk of abuse- in the context of their employment in Canada (Open Work Permit for Vulnerable Worker (OWP-V));
- Temporary protection granted to individuals recognized as victims of human trafficking or of family violence (Temporary Resident Permit (TRP)).

In addition, certain categories of migrants considered in government policies as particularly “vulnerable” - such as immigration detainees, unaccompanied minors, and undocumented migrants - are also addressed in our study.

In total, during Phase 2 of the project we conducted 104 semi-structured interviews with 110 participants. The breakdown is as follows:

- 21 interviews with 25 civil servants from the federal government (17 current employees from Immigration, Refugees and Citizenship Canada (IRCC); 6 current and 2 former employees from the Immigration and Refugee Board (IRB)).
- 55 interviews with 56 ‘on the ground’ practitioners.
- 28 interviews with 29 migrants.

Migrants’ various personal circumstances and life experiences and the complexity of the Canadian protection system - with a multiplicity of different programs, each having its own objectives, requirements, and particular clientele - result in a diversity of perspectives among our research participants and ultimately makes any generalizations challenging. However, the findings from this report reflect some common themes that emerged during our field research activities and as such, represent a first-hand, valuable source of information. Our main findings can be summarized as follows:

- Perception/understanding of vulnerability. Vulnerability is seen as an important concept in the protection system in Canada by all practitioner and civil servant interviewees, but the specific understanding or interpretation of this concept varies widely. For migrant participants, their views and understandings of “vulnerability” also vary greatly: some migrants do not understand the word “vulnerability” and its related notions, while others have a very articulated understanding of vulnerability. Also, some migrant participants do not view themselves as “vulnerable” while others do. Interestingly, when we asked our migrant participants if they felt that they were “more” vulnerable than other groups of migrants, most of them answered that they cannot speak for the others: that their perception of vulnerability is *only* linked to their own/individual experience of migration. However, most migrants indicated that having one’s immigration status in limbo is a great source of vulnerability.
- How vulnerability is addressed and accommodated within the claims for protection, according to civil servants and practitioners. Civil servants were asked how vulnerability impacts both the procedures and outcomes of the decision-making process and their answers varied significantly depending upon the program line in question. Broadly speaking, the recognized vulnerabilities of migrants seem to be a substantive factor in the outcome of decisions in the context of the following applications: humanitarian and compassionate (H&C) claims, open-work permits for vulnerable worker (O-WPVW), temporary resident permits (TRP) and overseas resettlement applications. This can be contrasted with the narrower approach adopted for in-Canada asylum claims, where the impact of vulnerability is primarily procedural. The flexibility that decision makers have in accommo-

dating vulnerabilities during the in-Canada process is a source of frustration for legal professionals seeking procedural accommodations for their clients, especially since securing a psychological report (as support for a request for accommodation) is particularly difficult. These legal professionals also shared concerns around the role of Immigration and Refugee Board (IRB) Members in making a medical assessment beyond their legal expertise.

- Key factors of vulnerability in migrants' lives. Overall, participants' responses indicate that immigration status and health (both mental health and physical health) act as intersecting factors of vulnerability in migrants' lives. At a personal level, our migrant participants also identified family as a factor that can either reduce or exacerbate vulnerability. With respect to migrants' interactions with various key stakeholders, unscrupulous lawyers/ immigration consultants and long delays in immigration proceedings were reported as creating or exacerbating migrant vulnerabilities. The uncertainty created by the exercise of broad discretionary powers by decision makers, especially in certain applications for protection (such as H&C, TRP and OWP-V applications), were also seen as sources of migrant vulnerability. At the policy level, quotas and target numbers imposed by government policymakers were identified as negatively impacting migrant vulnerabilities. A related concern that was raised pertained to the limited availability of external recourse for migrants faced with a negative decision. Finally, the absence of measures allowing for the appointment of designated representatives in IRCC or Canadian Border Services Agency proceedings, and the lack of settlement and free legal services for migrant workers, were identified by interviewees as increasing migrant vulnerabilities.

RÉSUMÉ EXÉCUTIF

À travers le projet VULNER, l'équipe canadienne cherche à répondre à trois questions :

1. Comment les «vulnérabilités» des migrants sont définies dans les documents Canadiens (la législation, la jurisprudence, les documents politiques et les directives administratives pertinentes)?
2. Comment les décideurs Canadiens comprennent et abordent les «vulnérabilités» des migrants ?
3. Comment les cadres juridiques et les pratiques de mise en œuvre affectent de manière concrète les vulnérabilités vécues par les migrants au Canada ?

La première question a été abordée durant la première phase du projet (avril-décembre 2020), où nous avons concentré nos activités de recherche sur la compilation et l'analyse des documents gouvernementaux et de la jurisprudence concernant la vulnérabilité des migrants au Canada. Ces résultats de recherche préliminaires ont été présentés dans notre premier rapport (VULNER Research Report 1). Les questions 2 et 3 ont été abordées lors de la deuxième phase du projet (janvier 2021-juillet 2022), au cours de laquelle nous avons mené des entretiens avec des migrants et d'autres informateurs clés (c'est-à-dire des fonctionnaires du gouvernement fédéral et des praticiens «sur le terrain», notamment des avocats et des représentants d'ONG). Dans ce deuxième rapport, nous présentons certains résultats clés basés sur cette deuxième phase du projet.

La position de l'équipe canadienne est unique par rapport aux autres pays partenaires du projet VULNER, car le deuxième rapport est la première occasion de présenter nos conclusions basées sur nos données d'entrevue. En effet, compte tenu de l'énorme quantité de documents que nous avons dû examiner au cours de la première phase du projet, notre premier rapport ne comportait qu'une présentation et une analyse des données de la recherche documentaire. Par conséquent, notre deuxième rapport comprend à la fois une analyse de la façon dont les fonctionnaires comprennent et mobilisent la «vulnérabilité» dans leur processus décisionnel (ce qui a été fait par les autres équipes dans leur premier rapport) et une analyse des expériences de vulnérabilité des migrants. Il convient également de noter que la recherche canadienne couvre un large éventail de procédures de protection :

- **La protection des réfugiés**, accordée aux personnes qui répondent à la définition stricte de réfugié contenue dans la Convention de Genève de 1951, mais également aux personnes qui se trouvent dans des circonstances considérées comme similaires à celles d'un réfugié au sens de la Convention, ou dont le renvoi dans leur pays d'origine les exposerait à la torture ou à un traitement inhumain et dégradant selon la Convention contre la torture (statut de résident permanent, avec voie d'accès à la citoyenneté).
- Résidence permanente (avec voie d'accès à la citoyenneté) accordée aux personnes qui sont sur le point d'être renvoyées du Canada et qui démontrent un danger imminent de torture, de persécution ou de traitements ou peines cruels et inusités advenant leur renvoi dans leur pays d'origine (**examen des risques avant renvoi (ERAR)**).
- Résidence permanente (avec voie d'accès à la citoyenneté), accordée aux personnes qui sont interdites de territoire ou qui ne satisfont pas aux exigences de la législation sur l'immigration, mais qui ont des motifs d'ordre humanitaire impérieux de rester au Canada (**motifs d'ordre humanitaire**).

- Résidence permanente (avec voie d'accès à la citoyenneté), accordée aux personnes qui sont interdites de territoire ou qui ne satisfont pas aux exigences de la législation existante en matière d'immigration, mais qui ont des raisons d'ordre public de rester au Canada (**motifs d'ordre public**).
- Protection temporaire accordée aux travailleurs migrants titulaires d'un permis de travail relié à un employeur unique et qui démontrent qu'ils sont victimes d'abus - ou qu'ils risquent d'être victimes d'abus - dans le cadre de leur emploi au Canada (**permis de travail ouvert pour travailleur vulnérable (PTVA)**).
- Protection temporaire accordée aux personnes reconnues comme victimes de la traite des êtres humains ou de la violence familiale (**permis de séjour temporaire (PST)**).

En outre, certaines catégories de migrants considérées dans les politiques gouvernementales comme particulièrement «vulnérables» - tels que les détenus en matière d'immigration, les mineurs non accompagnés et les migrants sans statut – font également l'objet de notre étude.

Durant la phase 2 du projet, nous avons réalisé 104 entretiens semi-structurés avec 110 participants. La répartition est la suivante :

- 21 entretiens avec 25 fonctionnaires du gouvernement fédéral (17 employés actuels d'Immigration, Réfugiés et Citoyenneté Canada (IRCC) ; 6 employés actuels et 2 anciens employés de la Commission de l'immigration et du statut de réfugié (CISR)).
- 55 entretiens avec 56 praticiens «sur le terrain».
- 28 entretiens avec 29 migrants.

Les circonstances personnelles et expériences de vie variables des migrants et la complexité du système de protection canadien – un système doté d'une multiplicité de programmes différents, chacun ayant ses propres objectifs, ses propres exigences et sa propre clientèle – entraînent une pluralité de perspectives parmi les participants à notre recherche et rendent toute généralisation en lien avec nos résultats de recherche difficile. Cependant, les conclusions de ce rapport reflètent certains thèmes communs qui sont apparus au cours de nos activités de recherche sur le terrain et, à ce titre, représentent une source d'information de première main précieuse. Nos principales conclusions sont résumées comme suit:

- Perception/compréhension de la vulnérabilité. La vulnérabilité est considérée par tous les praticiens et fonctionnaires interrogés comme un concept important dans le système de protection au Canada, mais la compréhension ou l'interprétation spécifique de ce concept varie considérablement d'un groupe de participants à l'autre. Pour les participants migrants, leur point de vue et leur compréhension de la «vulnérabilité» varient également beaucoup : certains migrants ne comprennent pas le mot «vulnérabilité» et ses notions connexes, tandis que d'autres ont une compréhension très articulée de la vulnérabilité. De même, certains participants migrants ne se considèrent pas comme «vulnérables» alors que d'autres considèrent qu'ils le sont. Il est intéressant de noter que lorsque nous avons demandé à nos participants migrants s'ils se sentaient «plus» vulnérables que d'autres groupes de migrants, la plupart d'entre eux ont répondu qu'ils ne pouvaient pas parler pour les autres personnes migrantes : que leur perception de la vulnérabilité est uniquement liée à leur propre expérience de la migration. Toutefois, la plupart des migrants ont indiqué que le fait d'avoir un statut d'immigration en suspens est une grande source de vulnérabilité.

- Comment la vulnérabilité est abordée et prise en compte dans les demandes de protection, selon les fonctionnaires et les praticiens. Les fonctionnaires ont été interrogés sur l'impact de la vulnérabilité dans une demande de protection– tant pour ce qui relève du processus décisionnel que des aménagements procéduraux- et leurs réponses varient considérablement en fonction du programme en question. D'une manière générale, le fait d'être identifié comme « vulnérable » consiste un facteur important dans le résultat de la décision pour ce qui relève des demandes de protection suivantes : motifs humanitaires, permis de travail ouvert pour travailleurs vulnérables, permis de séjour temporaire et demandes de réinstallation à l'étranger. Cette approche contraste avec celle, beaucoup plus étroite, utilisée dans le traitement des demandes d'asile au Canada, où l'impact de la vulnérabilité est principalement procédural. La souplesse dont disposent les décideurs pour tenir compte des vulnérabilités des demandeurs d'asile est une source de frustration pour les professionnels du droit qui cherchent à obtenir des accommodements procéduraux pour leurs clients, d'autant plus qu'il est particulièrement difficile pour eux d'obtenir un rapport psychologique. Ces professionnels du droit ont également fait part de leurs inquiétudes quant au rôle des membres de la Commission de l'immigration et du statut de réfugié (CISR), qui doivent procéder à une évaluation médicale dépassant leur expertise juridique.
- Facteurs clés de vulnérabilité dans la vie des migrants. Dans l'ensemble, les réponses des participants indiquent que le statut d'immigration et la santé (tant la santé mentale que la santé physique) sont des facteurs de vulnérabilité interreliés. Au niveau personnel, nos participants migrants ont également identifié la famille comme un facteur qui peut soit réduire soit exacerber la vulnérabilité. En ce qui concerne les interactions des migrants avec les différents acteurs clés, les avocats/consultants en immigration véreux et les longs délais dans les procédures d'immigration ont été signalés comme créant ou exacerbant les vulnérabilités des migrants. L'incertitude découlant de l'exercice de larges pouvoirs discrétionnaires par les décideurs, en particulier dans le cadre de certaines demandes de protection (telles que les demandes pour motifs humanitaires, pour permis de séjour temporaire et pour permis de travail ouvert pour travailleur vulnérable), a également été considérée comme une source de vulnérabilité pour les migrants. Au niveau politique, les quotas et les chiffres cibles imposés par le gouvernement ont été également reconnus comme ayant un impact négatif sur la vulnérabilité des migrants. Une préoccupation connexe soulevée concerne la disponibilité limitée de recours externes pour les migrants confrontés à une décision négative. Enfin, l'absence de mesures permettant la nomination de représentants désignés dans les procédures à IRCC (Immigration, Réfugiés et Citoyenneté Canada) ou à l'ASFC (Agence des services frontaliers du Canada), ainsi que le manque de services d'établissement et de services juridiques gratuits pour les travailleurs migrants, ont été identifiés par les personnes interrogées comme augmentant la vulnérabilité des migrants.

ABBREVIATIONS

CBSA	Canada Border Services Agency
ESDC	Employment and Social Development Canada
GSR	Government Sponsored Refugees
Guideline 8 OR Vulnerable Persons Guideline	Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB
Guideline 9 OR SOGIE Guideline	Chairperson Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression
H&C	Humanitarian and Compassionate
IAD	Immigration Appeal Division
ID	Immigration Division
IRB	Immigration and Refugee Board of Canada
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
OWP-V	Open-Work Permit for Vulnerable Worker
PRRA	Pre-Removal Risk Assessment
PSEP	Public Safety and Emergency Preparedness
PSR	Privately Sponsored Refugee
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
SPO	Nongovernmental service provider organization
STCA	Safe Third Country Agreement
SOGIE	Sexual Orientation and Gender Identity and Expression
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Program
TRP	Temporary Resident Permit

Table of Contents

ABOUT THIS PUBLICATION	2
EXECUTIVE SUMMARY	4
RÉSUMÉ EXÉCUTIF	7
ABBREVIATIONS	10
I. INTRODUCTION.....	13
II. METHODOLOGY	15
2.1. Civil servant participants	17
2.2. Practitioner participants.....	18
2.3. Migrant participants.....	19
2.4. Ethical foundations of our research	21
III. SETTING THE LEGAL AND BUREAUCRATIC SCENE	23
IV. VULNERABILITIES AND PERSONAL CIRCUMSTANCES	25
4.1. How migrant participants understand vulnerability	26
4.2 Individual and community factors of vulnerability	27
4.2.1. Immigration status.....	27
4.2.2. Age, health and psychological vulnerability	30
4.3. Family factors	31
4.3.1. Family as a key motive for migrating.....	31
4.3.2. Family as an essential support of family members to navigate the asylum/immigration system	32
4.3.3. Long periods of family separation.....	33
4.3.4. Gendered dynamics of migration and domestic family situation	34
4.3.5. Health condition and personal family circumstances.....	35
V. VULNERABILITIES AND THE PROTECTION PROCEDURES	36
5.1 How vulnerability is defined/ understood by civil servant and practitioner interviewees.....	36
5.1.1. Contrasting perceptions of vulnerability	37
5.1.2. Avoiding narrow/limited understanding of vulnerability	40
5.2. How vulnerability is addressed and accommodated within the claims for protection, according to civil servants and practitioners.....	41
5.2.1. Accommodating claims for protection from vulnerable claimants: the perspective of civil servants and legal professionals.....	41
5.2.2. Vulnerability in refugee resettlement and sponsorship both pre- and post-arrival: the perspective of practitioners	45
5.3. The exacerbation of vulnerabilities through migrants' interactions with various key stakeholders, according to civil servant, practitioner and migrant participants.....	47
5.3.1. Representation and legal incompetence.....	47
5.3.2. Delays in case processing	49
5.3.3. Specific problems re- Open Work Permit for Vulnerable Workers (OWP-V) and Temporary Resident Permit (TRP) applications.....	50
5.3.4. Exercise of discretion in decision-making	51
VI. HOW CURRENT STATE NORMS AND PRACTICES TOWARD PROTECTION SEEKERS IMPACT THEIR VULNERABILITIES	53
6.1. Quotas or target numbers imposed by policymakers.....	53
6.2. Limited recourses for migrants with a negative decision on their claim for protection.....	54

6.3. No designated representative in IRCC or CBSA proceedings 55

6.4. Lack of settlement services and free legal assistance for temporary migrant workers..... 56

VII. CONCLUSION 59

BIBLIOGRAPHY 61

I. INTRODUCTION

In Canada, there are a variety of pathways for vulnerable migrants to gain legal status and temporary or permanent protection. Each pathway has its own specific criteria as to who can apply and under which conditions protection is granted. In addition to these protection mechanisms, legal and policy documents recognize that certain categories of migrants are likely to experience heightened vulnerability, such as immigration detainees, unaccompanied minors, stateless persons, or individuals from countries to which there is a moratorium on removals, and that their specific situation should be considered in proceedings affecting them. Criteria and procedural consequences with respect to vulnerability thus vary widely across immigration and asylum proceedings.

The Canadian team focused its research activities in the first phase of the VULNER project (February-December 2020) on compiling and analyzing the massive amount of Canadian documentation pertaining to the vulnerability of migrants. Therefore, at the time of writing the first report, in December 2020, interviews had not started yet. Field research activities were conducted during the second phase of the project (January 2021-July 2022) and included interviews with migrants, “on-the-ground” practitioners (mainly lawyers and NGO workers), and civil servants. While our first report drew solely on desk research data, our second report presented here includes an analysis of interview data from the second phase of the project.

In our first report (Kaga et al. 2021), we examined over 377 legal and policy documents, including legislation and regulations, guidelines, manuals, and ministerial instructions contained in government documents. Our study was complemented by an analysis of over 884 cases of the Supreme Court, Federal Court (Trial Division and Appeal Division), Provincial Courts, and the Immigration and Refugee Board of Canada (the IRB, which is Canada’s largest administrative tribunal, responsible for making decisions on immigration and refugee matters, including refugee claims). Over 100 secondary sources from UN agencies, Civil Society Organizations (CSOs), lawyers, as well as academic scholarship were also analyzed. The aim of these multiple research efforts was to understand how the concept of vulnerability is approached in these documents; what obligations (if any) this recognition of ‘vulnerability’ imposes on migrants; whether there is a focus on the vulnerabilities of certain migrants, and if so, what consequences are attached to this recognition of vulnerability.

In our first report, we found that the Canadian protection regime has made many positive and unique steps towards the increasing recognition of migrant vulnerability. For example, with respect to asylum seekers, several government documents and procedural guides were developed to assist decision makers to better address and respond to vulnerability in their decision making, such as the IRB ‘vulnerability’ guideline (Guideline 8, created in 2006 and revised in 2012) or the IRB ‘sexual orientation and gender identity and expression’ (SOGIE) guideline (Guideline 9, revised in 2021). With respect to refugees resettled directly from overseas, Canada regularly admits a certain number of applicants with special needs (for more on this topic, see Anderson and Soennecken. 2022). However, we also found that, despite the growing recognition of the existence of ‘vulnerability’ among migrants in need of protection in Canadian government documents and processes, ‘vulnerability’ is rarely defined and lacks clarity in Canadian law and policy. More particularly, it is not easy to understand who a vulnerable migrant is, and how exactly that vulnerability must be addressed. The few definitions available also vary substantially across the different federal agencies. Canadian law and policy provide measures to mitigate the difficulties that ‘vulnerable’ migrants may face in immigration proceedings, and hence, offer certain procedural accommodations to these migrants (such as priority processing of some claims, allowing a support person to be present, varying the order of questioning, or creating a more informal atmosphere in refugee hearings), however,

being identified as a 'vulnerable' or potentially 'vulnerable' migrant on its own does not typically lead to the granting of a protection status. Equally, recognition of vulnerability is rarely paired with the promise to address the underlying issues that contribute to vulnerability in the first place. We discussed how the lack of clarity of the concept of 'vulnerability' leads to policy and accountability gaps that create a range of additional, administrative 'vulnerabilities.'

In our second report, we use data from interviews conducted with migrants, civil servants and practitioners to refine some findings from the first report. For example, we rely on interviews with civil servants to clarify how immigration officials use their broad discretionary powers to address migrants' vulnerabilities in practice. We also rely on the experience and perspective of practitioners and migrants to get a better understanding of how migrants' experiences of vulnerabilities could result from personal circumstances or be shaped by the Canadian legal and bureaucratic framework. We start (Part 1) by explaining the methodology used in the second phase of the project (field research activities) and (Part 2) by reminding the reader of what was stated in the first report- i.e., how vulnerability is used to assess protection needs in Canada. We continue (Part 3) by providing an analysis of the personal circumstances that can create or exacerbate migrants' vulnerabilities. This is followed by an analysis of migrants' interactions with the Canadian protection system (Part 4) and of migration policies' impacts on migrants (Part 5). In both cases, we seek to understand how migrants' vulnerabilities can increase or decrease depending on the specific context under study.

II. METHODOLOGY

With the VULNER project, the Canadian team seeks to investigate how the ‘vulnerabilities’ of migrants are defined in relevant Canadian documents and how they are assessed by Canadian decision-makers. The team also seeks to shed light on the concrete experiences of ‘vulnerability’ lived by migrants, including the strategies they use in interacting with the legal and bureaucratic frameworks and on the impacts of specific measures on these migrants. Three research questions form the basis of our study:

1. How are the ‘vulnerabilities’ of migrants defined in the relevant legislation, case law, policy documents and administrative guidelines?
2. How do decision-makers understand and address the ‘vulnerabilities’ of migrants?
3. How do the legal frameworks and the implementation practices concretely affect vulnerabilities as experienced by migrants?

Question 1 was addressed during the first phase of the project (April-December 2020), where we focused our research activities on compiling and analyzing Canadian government documents and court cases pertaining to the vulnerability of migrants. In our first report, we presented our research findings based on the first phase of the project. Questions 2 and 3 were addressed during the second phase of the project (January 2021-July 2022), where we conducted interviews with migrants and other key informants (i.e., civil servants from the federal government and ‘on the ground’ practitioners, including lawyers and NGO representatives). In this second report, we present some key results based on the second phase of the project.

The position of the Canadian team is unique in comparison to other partner countries in the VULNER project, as the second report is the first opportunity to present our findings based on interview data. Indeed, given the massive amount of documentation that we had to review in the first phase of the project, our first report only included a presentation and analysis of the desk research data. Therefore, our second report includes both an analysis of how civil servants understand and mobilize ‘vulnerability’ in their decision-making process (which was done by the other teams in their first report) and an analysis of migrants’ experiences of vulnerability. It is also worth recalling that the Canadian research covers a broad range of protection procedures, including refugee protection, permanent residence following a Pre-Removal Risk Assessment (PRRA) application, permanent residence following a Humanitarian and Compassionate Grounds (H&C) application, permanent residence on public policy grounds, as well as temporary protection following a Vulnerable Worker Open Work Permit (VWOWP) application and temporary protection following a Temporary Resident Permit (TRP) application. In addition, certain categories of migrants, such as immigration detainees, stateless persons, or unaccompanied minors, are considered by the Canadian government as particularly ‘vulnerable’, and there are special measures in place for them in proceedings affecting them. It is also worth noting that, while there are no accurate figures representing the size of undocumented migrant population in Canada, it is estimated that there are over 500,000 migrants, including families, living without status in Canada (Mojtehedzadeh & Keung, 2022; CBC, 2022; Hershkowitz and al. 2021). As the government noted recently, “undocumented migrants are a vulnerable group due to their lack of immigration status, as was seen during the COVID-19 pandemic” (IRCC, 2022a). The above categories of migrants are therefore also the focus of our study (for more on this topic, see pages 4-5 and 14-15 of our first VULNER report (Kaga et al 2021).

In total, we conducted 104 semi-structured interviews with 110 participants. Due to COVID-19 restrictions, all interviews were conducted either on the phone or online, using MS Teams, Zoom or WhatsApp. Interviews followed a semi-structured, conversational format. We started with more general questions about the participants' backgrounds before asking more focused questions related to the main research questions. These interviews were used to triangulate information obtained through documentary research (in Phase 1 of the project), but also to compare and verify information received through other interviews. The breakdown of these interviews is as follows:

- 21 interviews with 25 civil servants from the federal government (17 current employees from Immigration, Refugees and Citizenship Canada (IRCC); 6 current and 2 former employees from the Immigration and Refugee Board).¹
- 55 interviews with 56 'on the ground' practitioners.
- 28 interviews with 29 migrants.

We conducted interviews with federal civil servants who work in the National Capital Region (Ottawa/Gatineau) and in regional offices, including overseas. Since many of the key services to migrants in Canada are provincial services, such as health care, legal aid, and settlement services, it is important to compare the dynamics across different provinces. Thus, interviews with practitioners and migrants were conducted across several Canadian provinces: Ontario, Quebec, and the Prairies (Alberta, Manitoba, Saskatchewan). Together, these provinces are home to almost 80% of all permanent residents in Canada in 2020 (IRCC 2021, p. 38). Also, team members have an extensive network of community contacts in these provinces, which facilitated participant recruitment.

Depending on the person, interviews with civil servants were aimed at understanding how the concept of 'vulnerability' is understood and assessed in decision-making processes, whether some vulnerabilities are seen as warranting greater protection and, if so why, if and how recognition of 'vulnerability' impacts a decision, what the reasons behind policy changes with regards to the concept of 'vulnerability' are and what the challenges faced in implementing policies/guidelines/laws or in making decisions regarding 'vulnerable' migrants are. Topics discussed during interviews with practitioners included: how policies and policy changes impact migrants' decisions, life trajectories and rights, especially for the most vulnerable ones; challenges faced by practitioners in serving 'vulnerable' migrants; and practitioners' understanding and use of the concept of 'vulnerability'. Finally, topics discussed during our interviews with migrants included their understanding of 'vulnerability' and, if they themselves were vulnerable, their interaction with immigration authorities and experience of immigration system in Canada, their reasons for seeking protection, and their strategies/challenges to secure a legal status.

All interviews were audio-recorded, transcribed, and coded (using NVivo, a qualitative data analysis program). Our codebook was developed following mixed methods of deductive and inductive reasoning: A few coding categories were pre-determined according to our research objectives, but we also adopted an inductive approach to code other themes that emerged from our discussion with interviewees and as part of the coding process.

In the following sections, we discuss the processes of recruiting, selecting, and interviewing civil servants, practitioners, and migrants separately. This is because these processes were quite distinct. We also briefly address the limitations and ethical foundations of our research.

¹ As explained below, we conducted 3 interviews with 2 current IRB employees at the same time (for a total of 6 IRB participants). We also conducted once an interview with 2 civil servants together.

2.1. Civil servant participants

In Canada, there are three key immigration “players”: the Canada Border Services Agency (CBSA), Immigration, Refugees and Citizenship Canada (IRCC) and the Immigration and Refugee Board (IRB) (for more on this topic, see Chapter 3 below). Civil servant participants in our project include individuals from IRCC and the IRB. Despite many attempts to seek the participation of civil servants from the CBSA, we finally received a refusal letter from the organization in November 2021 indicating to us that “while the research subject is of interest to the Agency, competing operational priorities are such that [they] are unfortunately unable to commit the resources necessary to collaborate on the research at this time” (on file with principal investigator). This is a limitation of our study because CBSA is an important player in several areas of our research. Indeed, as Canada’s national security agency responsible for border security, it is making important decisions regarding (among others) admission of people to Canada, initiating the PRRA (Pre-Removal Risk Assessment) or detaining foreign nationals. A further limitation is the lack of interviews with members from the judiciary. Despite the prior experience of two team members in interviewing judges, unfortunately, we could not secure the participation of Federal Court and Federal Court of Appeal justices in our project.

It is beyond the scope of this report to explain in detail all the steps that were taken to reach out to the judges and to the civil servant population (this will be done in a future methods paper). Suffice it to say that overall, and despite tremendous efforts on our side, seeking the collaboration of the various bureaucratic agencies and the judicial branch to conduct this project was more difficult and complicated than initially anticipated.

Immigration, Refugees and Citizenship Canada (IRCC)

In the spring of 2021, we signed a “Research Partnership Arrangement” with the Knowledge Mobilization and Partnerships Branch of Immigration, Refugees and Citizenship Canada (IRCC). This agreement stipulates that IRCC will circulate information to its employees concerning the research project, together with an introduction letter to participants from the research team inviting them to participate to a 60 min interview with us, a project summary and a list of topics/themes covered during the interview. The agreement also indicates that IRCC will provide the research team with a list containing the names and coordinates of IRCC officials interested in and available for an interview with the team. The list, which was updated by IRCC a few times, was used by the research team to reach out to IRCC participants. Interviews with civil servants were conducted between May 2021 and November 2021.

In total, we conducted 16 interviews with 17 IRCC civil servants comprising of policy analysts and officers rendering decisions on Temporary Foreign workers, H&C, PPRA, protection claims, resettlement abroad, Open-work permit for vulnerable workers, admissibility of in-Canada refugee claims, sponsorship applications, citizenship applications and TRP applications (to preserve the anonymity of our interviewees we do not provide more specific detail). Except for two policy analysts interviewed at the same time for this project (i.e., in the same interview), other interviewees are civil servants with past or current experience as immigration officers processing a variety of applications. Some of these civil servants are now at a senior level or higher, but they all spoke mainly about their experience rendering decisions on migrants’ applications.

Immigration and Refugee Board

In July 2020, we received confirmation from the IRB’s Chairperson that the IRB was willing to participate in our project, but, after months of negotiations, we could not reach an agreement on the terms of their participation. Following another letter sent to the Chairperson in February 2021, we finally came to an agreement in March 2021, whereby we accepted to have 3 interviews with 6 IRB representatives: 1) one interview with two policy and legal representatives at the same time; 2) one interview with two members from the Refugee Protection Division (RPD) at the same time; and 3) one interview with two members from the Refugee Appeal Division (RAD) at the same time (note that RPD and RAD members are making decisions on asylum claims). The three interviews took place in the Summer of 2021. Interviewees were selected by the Deputy Chairpersons and took place after the IRB had reviewed our interview questions, which we had to send in advance. We also conducted interviews with 2 former IRB employees who were recruited through our own networks: a former employee on the policy side and a former member of the Immigration Division.

2.2. Practitioner participants

In each region, most interviewees were invited to participate in the research by way of our own personal and professional contacts. Yet, we also used the assistance and networks of some initial interviewees (“snowball technique”) to conduct a few more specific interviews. Between May 2021 and June 2022, we conducted 55 interviews with 56 participants:

- 31 interviews with 31 legal professionals.
- 24 interviews conducted with 25 non-legal professionals.

Most legal professionals interviewed provided legal services for a variety of immigration application types. Certain legal professionals had further specializations, such as working predominately with migrant detainees, or working only with migrants who had specific medical diagnoses. Legal professionals interviewed reflected a variety of career tenures, from those who had started practicing more recently (i.e., roughly 5 years in immigration law) to those who have been working many decades in the field.

Non-legal professionals include community workers (22), UN employees (1), and migrant network representatives (2). Legal professionals include immigration lawyers (30) and immigration consultants (1). While most immigration lawyers worked in a law firm, some of them worked in the non-profit sector.

The regional breakdown of interviewees is as follows:

- Legal professional participants: 13 in Ontario; 11 in Quebec; 7 in the Prairies.
- Non-lawyers: 11 in the Greater Toronto Area (GTA); 5 in Montreal; 9 in the Prairies.

2.3. Migrant participants

Recruitment

Since Canada has no dedicated “reception centers” (such as in several European states), we partnered with migrant service community organizations to reach out to the migrant population. Several of these partners are organizations with which our team members enjoy a reliable long-term relationship and have had successful research partnerships in the past. Migrant interviews simply could not have taken place without the support of our community partners. They were our point of contact with migrant participants and their insight/expertise in this area has been essential to the success of our research. Our community partners are:

- Brooks & County Immigration Services (Prairies)
- Calgary Catholic Immigration Society (Prairies)
- Saskatoon Open Door Society (Prairies)
- CANA (carrefour d’aide aux nouveaux arrivants) (Québec)
- Centre Social d’aide aux Immigrants (Québec)
- Solidarity across Borders (Québec)
- COMPASS Refugee Centre (Ontario)

We relied on our partners to distribute posters and/or send emails advertising our research project. Several of these partners also referred us directly to some migrants who had been made aware of the project by these partners and who indicated to them their interest in participating in the project. In a second phase, we recruited some migrants through migrant interviewees’ networks (by word of mouth). To incentivize interview participation, we offered each participant a 40-dollar (Canadian) honorarium for their time.

The pandemic put enormous pressure on our community partners, which are organizations already working with limited resources. In Ontario, where migrant recruitment was initially more difficult to execute, our local team also used additional strategies, for example, they contacted all practitioners from the first round of interviews and asked them if they could forward the team’s call for research participants to their clients and service users.

Inclusion criteria

Migrants (18+ years old) were required to meet three initial criteria: (1) having been in Canada for at least 6 months; (2) having applied to any of the categories under study (i.e., refugee applications; pre-removal risk assessment (PRRA); temporary resident permits (TRPs); humanitarian and compassionate grounds (H&C); open-work permit for vulnerable workers; spousal sponsorship (domestic abuse)); and (3) having received either a negative or positive decision on these applications. For those who had received a positive decision, an additional criterion was that this positive decision had been decided within the last 2-3 years. There was no restriction regarding migrants’ country of origin and trajectories, although we indicated to our community partners that we were particularly interested in hearing from the following migrant participants:

- Those who had applied for more than one protection status.

- Those who are stateless, elderly, falling under the Canada-US Safe Third Country Agreement (STCA)'s exceptions, from countries to which there is a moratorium on removals, without access to healthcare.
- Those who experienced SGBV and SOGIESC.
- Those who experienced immigration detention.
- Those who experienced any other difficult situation that made their applications more complicated/lengthier etc.

Number of interviews conducted:

Interviews with migrants were conducted between October 2021 and July 2022. In total, we conducted 28 interviews with 29 migrants. The regional breakdown is as follows:

- Ontario: 6 interviews.
- Québec: 11 interviews.
- Prairies: 11 interviews with 12 migrants (one husband and wife interviewed at the same time). The specific breakdown is as follows: Alberta (8 interviews with 9 migrants) and Saskatchewan (4 interviews with 4 migrants)

Two-thirds of the interviews were in English and one-third in French. In the Prairies, one interview was conducted with the assistance of an interpreter, from Tagalog to English. This interpreter was a community partner staff.

Basic profile of migrant participants:

Migrant participants include men (41.5 %) and women (51.5 %). Participants vary greatly in terms of source country, age, length of residence in Canada and protection status used to stay in Canada. At the time of interview:

- The 29 participants came from 16 different countries.² Top 5 countries were: Philippines (20.5 % of all participants), Algeria (10.5%), Mexico (10.5%), Guinea (10.5%), and Syria (7%).
- Although all participants were 18 years or older, most participants were aged between 30 and 39 (45% of all participants). 20.5 % of participants were aged between 20 and 29 and 20.5 % between 40 and 49. Only one participant was older than 60 accounting for 3.44% of the migrant participants.
- 41% of the participants were married, 38% were single, 10% divorced, 7% in a common law relationship and 4% widowed.
- In terms of family size, 59% of the migrant participants had between 1-3 children (21% with 1 child, 31% with 2 children and 7% with 3 children), and 41% of participants had no children at the time of the interview.
- Most (66%) of the participants had been in Canada for three to five years, although we did have some participants who had lived in Canada for almost ten years.

² The 16 countries are: Philippines, Algeria, Mexico, Guinea, Syria, Nepal, India, Eritera, Zimbabwe, DRC, Palestine, Sudan, Angola, Jamaica, Chile and Nigeria.

- Participants had the following immigration status when interviewed:
 - Without status = 9 out of 29 interviewees (31%)
 - Permanent residence = 7 out of 29 interviewees (25%)
 - » 3 successful refugee claims
 - » 3 resettled refugees
 - » 1 following transition to permanent residence with a post-graduation work permit (PGWP).
 - Recognized as a refugee (positive inland refugee claim, but no permanent residence yet) = 5 out of 29 interviewees (17%)
 - Received a Temporary Resident Permit (TRP) = 3 out of 29 interviewees (10%)
 - Received an Open-Work Permit for Vulnerable Workers = 2 out of 29 interviewees (7%)
 - On a visitor visa = 2 out of 29 interviewees (7%)
 - Received a positive H&C claim= 1 out of 29 interviewees (3%).

2.4. Ethical foundations of our research

All ethical aspects of our study have been reviewed and approved by ethics boards from the University of Ottawa (file number S-02-20-5463), McGill University (file number 20-05-020), York University (file number 2020-105) and the University of Waterloo (file number 43248). The data collected was treated in accordance with the Canadian *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (2020). The research also complies with the *Ethical Considerations: Research with People in Situations of Forced Migration* (2017), including its clauses pertaining to diversity of perspectives, informed consent of participants, and confidentiality and privacy of personal information collected.³

Interviews with civil servants and practitioners

We had two different consent forms: one for practitioners and one for civil servants. All practitioners and civil servants were asked to read and sign the four-page consent form BEFORE the interview starts (they also had received a two-page summary of the project attached to our first communication with them). Although both forms specify that the practitioner and civil servant participants “may wish to remain anonymous”, all interviews with practitioners and civil servants are treated anonymously. Practitioners are divided in our report into two broad categories: the legal professionals (referred to as “lawyers”) and the non-legal professionals (referred to as “practitioners”). They are identified by participant number, province of interview and date of interview. For example: “Lawyer 24, Ontario, 2020/11/12” or “Practitioner 5, Alberta, 2021/08/24”. For civil servants, since the names of interviewees were provided by the government, the research team took additional steps so that the information provided cannot be directly attributed

³ A common and detailed ethics strategy was also established for the VULNER project. It was approved by the VULNER project coordinator’s ethics review board (Ethikrat der MPG, Decision of 29 November 2019 on the Application No. 2019_15), as well as by the ethics review boards of all the partner institutions involved. For more on this topic, see: <https://www.vulner.eu/106307/Ethics>

to any specific individual. For example, we assigned pseudonyms to all civil servant participants, and we removed locations of their workplaces. We also do not specify in our publications the exact date when the interview took place, and we use a numbering system that does not correspond to the order civil servants were interviewed. As an example, civil servants are identified as follows: “Civil Servant 14, 2021”.

Interviews with migrants

Each interview with migrants was preceded by a short meeting between them and one member of our research team, to provide them with as much information as necessary regarding the project and what their participation would involve, to assess their eligibility for this project and to find a date and time for the interview that would be convenient for them. On the day of interview, and before the interview started, we explained one more time to the participant, in plain language, our research project (what it seeks to do and how) and what their participation would consist of. We highlighted their right to withdraw from the research at any time, as well as their freedom to refuse to answer any question. We also asked if they had any questions regarding the project. We always asked for oral consent to conduct the research (and recorded it), but we did not require the migrants to sign consent forms. To minimize risks to migrants, all migrant participants are treated anonymously and are assigned pseudonyms (many migrants chose themselves their own pseudonyms). Migrant participants are identified by participant number, province of interview and date of interview. For example: “Migrant 26, Saskatchewan, 2022/01/16”.

III. SETTING THE LEGAL AND BUREAUCRATIC SCENE

As highlighted in our first research report, there are three major immigration “players” in Canada: the Canada Border Service Agency (CBSA), which is responsible for managing Canada’s border, including determining an individual’s initial admissibility at ports of entry and carrying out enforcement duties (detention, removal, etc.); Immigration, Refugees and Citizenship Canada (IRCC), which is responsible for developing and administering all of Canada’s immigration programs, from economic to humanitarian admission, including Canada’s overseas refugee resettlement programs and applications to remain in Canada on humanitarian and compassionate grounds; and the Immigration and Refugee Board (IRB), an independent tribunal with four distinct divisions (the Refugee Protection Division (RPD), responsible for adjudicating eligible inland claims for refugee protection; the Refugee Appeal Division (RAD), responsible for reviewing most denials of protection by the RPD; the Immigration Division (ID), responsible for detention reviews and admissibility matters; and the Immigration Appeal Division (IAD) responsible for ruling on appeals regarding family sponsorship rejections (from citizen and permanent resident sponsors)) (Kaga et al. 2021).

From our analysis, we recognized that there are a variety of pathways for vulnerable migrants to gain legal status and protection in Canada, ranging from permanent status through refugee protection, Pre-Removal Risk Assessment (PPRA), Humanitarian & Compassionate (H&C) Grounds and Public Policy Grounds, to temporary status through Open Work Permit for Vulnerable Worker (OWP-V), and Temporary Resident Permit (TRP) granted to individuals recognized as victims of human trafficking or family violence. Each pathway has specific criteria for who can apply and under which conditions protection is granted. Depending on the protection mechanism, the various key immigration players assigned to assess an application may conduct vulnerability assessments differently. For example, for Pre-Removal Risk Assessment (s.112(1) of IRPA), it is stated in the legislation that persons in Canada may apply for a Pre-Removal Risk Assessment if they are subject to a removal order that is in force. This is the last formal risk assessment given to individuals before they are removed from Canada. Notification of entitlement to PRRA is given by a Canada Border Services Agency (CBSA), but an IRCC officer makes the PRRA assessment. (Kaga et al. 2021). IRCC immigration officers assessing PRRA applications are required to determine whether individuals would be at risk of persecution or torture, or other cruel and unusual treatment or punishment if returned to their country of origin (Kaga et al., 2021). However, for failed refugee claimants, any new, credible, relevant, and material evidence of facts that might have affected the outcome of an appellant’s refugee claim hearing must be considered, unless the refugee claimants are coming from a designated ‘safe third country (i.e., the United States of America, see 112(2)(b) IRPA).

Persons in Canada who do not qualify in any class may also apply for permanent residence if there are enough compelling humanitarian and compassionate grounds according to s.25(1) IRPA. Applicants’ circumstances are assessed by precise criteria, such as evidence that the applicant is sufficiently established in Canada and that the applicant’s circumstances are considered outstanding and extraordinary enough to make an exemption from the standard procedure. Migrants may also be admitted as permanent residents under s.25.2 IRPA if the Minister considers it justified by public policy considerations (IRPA, s.25.2). For consideration under PPRA, H&C, and public policy considerations, though the “at-risk” assessment varies, a positive decision will lead to the applicant protected person status towards a permanent resident status. For refugee claimants, the actors involved in the assessment would be determined by where the claim was made. For refugee claimants abroad, IRCC and visa officers assess refugee claims based on a ‘referral system.’ The assessment of these claims is based on whether the protection seeker meets the narrower 1951 Geneva convention definition of a “refugee” (s.96 IPRA) or is in a situation considered similar to those

of convention refugees (s.146 IPRP). For claims made at the port of entry or in an inland office, Immigration officers with the IRCC must first decide whether such claims are eligible to be referred to the Immigration and Refugee Board of Canada (IRB), where the RPD decision maker has to determine whether the claimant is a Convention Refugee (s.96 IPRA) or whether the claimant is a 'Person in need of Protection' (s.97 IPRA).

From this analysis, we recognized that Canada is a leader in creating specific guidelines to assist decision-makers in assessing inland refugee claims by vulnerable claimants. In particular, it is a leader in ensuring that these decision-makers understand the unique challenges pertaining to these claimants and that they avoid any stereotypes or inappropriate assumptions in their decisions. Good examples here are the IRB's 'Vulnerability' guideline (Guideline 8, created in 2006 and revised in 2012) and the 'sexual orientation and gender identity and expression' (SOGIE) guideline (Guideline 9, revised in 2021). We also found that Canadian law and policy provide measures to mitigate the difficulties that 'vulnerable' migrants may face in immigration/asylum proceedings and hence, offer certain procedural accommodations to these migrants (such as priority processing of some claims, allowing a support person to be present, varying the order of questioning, or creating a more informal atmosphere in refugee hearings). However, since Canada has no dedicated state-owned reception center for asylum seekers, vulnerability has no impact on reception conditions for asylum seekers identified as such.

Additionally, we found that there are "special considerations" that must be kept in mind by decision makers when assessing applications directly affecting vulnerable migrants, such as, for example, the best interests of the child. However, being identified as a 'vulnerable' or potentially 'vulnerable' migrant on its own does not lead to the granting of protection status. Two notable exceptions to this were identified as being (1) the open work permit for vulnerable worker initiative, which allows migrant workers hired on an employer-specific work permit experiencing abuse from their employer to receive a temporary open work permit; and (2) the administration of Canada's overseas resettlement program, wherein the recognition of vulnerability can positively and substantially influence decisions around refugee resettlement. In other words, the identification of a migrant as 'vulnerable' does not generally mean that this person will automatically receive a specific status.

We also found that officers (IRCC and CBSA) and members (IRB) have broad discretionary powers in recognizing, addressing, and assessing 'vulnerability'. This is essential to render independent decisions on a case-by-case basis, but this may also result in inconsistencies for migrants in the assessment of their vulnerability. Finally, we found that recognition of vulnerability is rarely paired with the promise to address the underlying issues that contribute to vulnerability in the first place.

IV. VULNERABILITIES AND PERSONAL CIRCUMSTANCES

In what follows, we present our findings based on data from interviews conducted with migrant participants. We analyze how personal circumstances, including migrants' individual profiles and life experiences, create or exacerbate their vulnerability. Our findings are presented according to the IOM's Determinants of Migrant Vulnerability model (2019). This model "uses the definition of vulnerable migrants set out in the *Principles and Guidelines on the human rights protection of migrants in vulnerable situations*" (IOM, 2019, p.4),⁴ which was specifically developed to identify, protect and assist migrants who have experienced or are vulnerable to violence, exploitation and abuse (...) and to guide the development and implementation of interventions to reduce such vulnerability" (IOM, , 2019 p.5). The Determinants of Migrant Vulnerability (DOMV) Model provides a conceptual tool for describing "both risk factors (which contribute to vulnerability) and protective factors (which improve capabilities to avoid, cope with or recover from harm), and the way that the two interact" (*ibid*). It recognizes that vulnerabilities may arise at each specific stage of the migration process and that they may apply to individual migrants or to groups of migrants. The DOVM model identifies four broad categories of factors, which constantly interact with each other at different levels (IOM, pages 6-8)::

- *Individual factors.* These are factors related to individuals: their status in society; their physical and biological characteristics; their histories and experiences; their beliefs and attitudes; their individual emotional, psychological, and cognitive characteristics; and their physical and mental health and well-being. Some examples of individual factors are age, sex, racial and/or ethnic identity, sexual orientation, gender identity, personal history, mental and emotional health, and access to resources such as money, goods, or support.
- *Household and family factors.* These factors are related to the family circumstances of individuals and their family members, the role and position of individuals within the family, and family histories and experiences. Examples of household and family factors include family size, household structure, socioeconomic status, migration histories, employment, livelihoods, education levels, gender discrimination, and family dynamics.
- *Community factors.* Individuals and their families are situated within a broader social community context. They are affected by their community's economic, cultural, and social structures, and their positions within these structures. Examples of community factors include availability of quality educational opportunities, health care and social services, equal access to resources, livelihood and income-generating opportunities, the natural environment, and social norms and behaviours.
- *Structural factors.* At the broadest level, these factors are the political, economic, social, and environmental conditions and institutions at national, regional, and international levels that influence the overall environment in which individuals, families and communities are situated and which shape their beliefs, decisions, and behaviours. Examples of structural factors include histories of colonization and conflict, political systems, migration policies and governance, respect for human rights, and the rule of law.

⁴ These guidelines were co-authored by the UN High Commissioner for Human Rights, UN Global Migration Group, and the UN Working Group on Migration, Human Rights and Gender Equality.

An in-depth discussion of all factors is beyond the scope of this report. While some structural factors are addressed in Chapters 5 and 6, our analysis in this chapter is structured around the some of the three remaining factors (i.e., individual factors; community factors; household and family factors). First, we briefly explain how our migrant participants understood the concept of vulnerability. Second, we look at immigration status, age, and health as major determinants of migrant vulnerability. Finally, we discuss the crucial importance of family in migrants' lives, more particularly how family is a key factor in the decision to migrate to Canada and how family can act as factor in the reduction or exacerbation of migrant vulnerabilities.

Before proceeding, it is important to note that the broad range of pathways through which migrants seeking protection in Canada navigate, and the diversity of migrant participants' personal circumstances and life experiences, create a complex model for analysis. This makes it particularly challenging to offer any firm assertions on how vulnerability manifests before and during the immigration process. However, the information in this chapter highlights certain themes that emerged when we sought the views of migrant participants on what vulnerability means for them and when they explained to us their reasons for and experiences of seeking protection in Canada. As such, this is a first-hand, valuable source of information.

4.1. How migrant participants understand vulnerability

When we asked our migrant participants if they themselves felt "vulnerable" (and why), their responses varied. Some did not understand the word "vulnerability" and its related notions while others understood the concept but did not view themselves as "vulnerable". Some had a very articulated understanding of vulnerability. For example, this migrant participant told us:

"OK. For me, I think vulnerability is a continuum. For me, if you're not vulnerable, you will not take the decision to migrate in the first place. And then it continues to where I move. When you are in a new society, you have different challenges that you have to face. Based on the trauma that is bringing you there, and, you know, the – the situation where you are, where you are migrating to. There are all kinds of issues involved. How do I settle here? Am I going to be successful here? How does what is driving you impact your position where you are? The continuum continues. Look at somebody like me. I spent so many years of my life outside from my country. I'm in a new place. How do I fit into this society? What do I lose as a person? What have I lost as a person? It's a question that we have to continue to answer" (Migrant 13, Quebec, 2022/04/14 (Recognized Refugee)).

This other participant referred to vulnerability as being multidimensional:

If you are vulnerable, you're putting yourself into all kinds of risk, you know, mentally, emotionally, financially, and not knowing how it will end. If you're going to lose your sanity or not, or you're going to go home to your family back home intact (...) So, that's vulnerability for me, like, just, you know, too much fear going on (Migrant 28, Saskatchewan, 2022/06/06, (OWP-V Recognized)).

Most of our migrant participants did, however, self-identify as being “vulnerable” when their legal status was in limbo:

Yeah, I was vulnerable [until] I got my permanent residence. Because I was not able to get a loan like others do (...) Because I could not get the job I wanted (...) I was underemployed. I could do more, but I was just doing – just running a machine. I was just part of a machine. But I could do more (...) So I was waiting for my [permanent residence] to come (Migrant 2, Ontario, 2021/11/29 (Recognized Refugee)).

Many also expressed that the workplace is a place where they experience(d) vulnerabilities. Moreover, health and psychological vulnerability are themes that emerged frequently from our interviews with migrants.

Finally, when we asked our migrant participants if they felt that they were “more” vulnerable than other groups of migrants, most of them answered that they cannot speak for the others: that their perception of vulnerability is *only* linked to their own/individual experience of migration (although a few migrants who were not themselves without status indicated to us that being without status was for them what made them the most vulnerable, as is discussed below).

4.2 Individual and community factors of vulnerability

Overall, migrant participants’ responses indicate that immigration status, age, and health act as key factors of vulnerability in migrants’ lives.

4.2.1. Immigration status

We recognize that listing certain categories of migrants as “particularly vulnerable” is a simplistic way of understanding vulnerability and can also lead to gaps in protection for those who are not included in the list. However, the responses from our migrant participants offer interesting insights into the connections between hierarchies of vulnerability and specific profiles of migrants.

A key theme that emerged from our interviews with migrants was the unique vulnerability of two groups of migrants: those without status (i.e., undocumented migrants) and those admitted to Canada under the Temporary Foreign Worker Program (i.e., with a work permit that “ties” them to a specific employer). This is important in a context where 2016-2019 recorded a steady increase in the number of temporary migrant workers in Canada (IRCC 2021, p. 17).

Some migrants who had not been themselves out-of-status viewed undocumented migration as a particularly difficult situation in Canada. For example, for one migrant interviewee (a Recognized Refugee), having seen one’s refugee claim rejected and continuing to live in Canada without status was what makes you “more vulnerable”:

“And there are some people who are being deported, and there are some people who are still living but rejected – their case is rejected, and they are still living here as refugee claimants for years. These are more vulnerable.” (Migrant 2, Ontario, 2021/11/29 (Recognized Refugee)).

Our out-of-status migrant interviewees highlighted the lack of access to all basic services and the constant fear of arrest and deportation as key factors of vulnerability:

Interviewee: Tout est pesant. Travailler, c'est quelque chose. Circuler sans papiers, c'est quelque chose. Avoir un compte bancaire, c'est quelque chose. Les soins de santé, c'est quelque chose. Puis ça, faire des études, c'est quelque chose. Tout ça est important, mais on se contente du minimum pour le moment

Interviewer: Comment faites-vous pour la banque, les permis de conduire? Comment ça se passe pour vous?

Interviewee: Ça, oublie ça (...) j'ai même peut-être oublié de conduire (Migrant 14, Quebec, 2022/04/18, (Without Status))

Interviewer: La police de Montréal, vous avez déjà eu affaire à eux?

Interviewee: Non, jamais. J'ai tellement peur, alors quand je prends le bus et je vois deux qui disputent, même si ce n'est pas ma destination, mais je descends. J'ai peur.

Interviewer: Vous avez peur?

Interviewee: Oui (...) Depuis que j'ai eu le kit de déportation, je vis avec la peur. Avant, non.

(Migrant 11, Quebec, 2022/04/12, (Without Status)).

High levels of exposure to exploitation at work (mentally, financially, and physically) were also constantly reported. Perle⁵, for example, is a migrant without status. She applied for asylum first, but her refugee claim was rejected. At the time of her interview, she was awaiting a decision on a H&C application. She described her working conditions as follows:

Interviewer : Quand elle vous a engagée, elle savait que vous étiez sans papiers?

Participant : Oui.

Interviewer : Déjà là, c'était compliqué, ou les choses se sont empirées avec le temps?

Participant : Les choses se sont empirées avec le temps. C'était comme, chaque jour, il y avait une tâche de plus. Et puis je me suis retrouvée avec toutes les tâches de la maison, juste moi (...) Je ne pouvais rien dire, et c'était pour toute la journée, de 9 h du matin jusqu'à 11 h du soir pour 80 \$.

Interviewer : Par jour?

Participant : Oui.

Interviewer : Elle vous payait 80 \$ par jour pour 11 heures de travail?

Participant : Oui

(Migrant 11, Quebec, 2022/04/12 (Without Status)).

⁵ A reminder that, in this report, pseudonyms are used for all migrant participants.

Being in constant state of vulnerability amplified the frustration that many of these migrants experienced with the immigration system. Farid, for example, arrived in Canada in 2009 after spending 3 years in Europe (Italy and France). He was detained for 25 days (for identity reasons) and claimed refugee status, but his claim was denied. He made an PRRA application, which was denied as well. He made several H&C applications, all of them were denied. Farid has been without status since 2012, but he decided to stay and work even though his life and working conditions are very hard:

Interviewee: Moi, je suis ici, je ne sais pas, presque 13 ans, je ne sais pas combien. Je suis intégré, je travaille, je parle la langue, je paie des taxes, et ils ne m'ont pas aidé (...) Rien.

Interviewer: Vous êtes déçu? Vous êtes fâché?

Interviewee: Bien oui, bien sûr que je suis déçu. Moi, pendant la pandémie, j'ai travaillé toute la pandémie. Jusqu'à maintenant, je n'ai pas stoppé. Même, quand je suis malade, j'avais peur de perdre mon job. Et plusieurs fois, je suis malade, je suis allé travailler, juste pour garder ma place. C'est ça. Pendant la pandémie, ça fait deux ans et quelques, je ne me suis jamais absenté. Là, je travaille toute la pandémie, parce que c'est un travail de service essentiel. Et j'ai travaillé. Moi, je n'ai rien gagné. C'est comme, je veux juste un statut, c'est ça.

(Migrant 14, Quebec, 2022/04/18).

Under the TFWP, migrant workers are on a closed work permit, which means that they are tied to one employer and job position. As is discussed in Chapter 5, the connection between these workers and their exploitative living and working conditions is well-established in the Canadian literature. Not surprisingly, the theme of migrant workers' vulnerability emerged clearly from our interaction with migrant workers from the TFWP. Kate, for example, came to Canada under the TFWP to work as a care home worker. She was employed in a private care home and her employer asked for many personal favours that she could not say no to, including dating men and doing online medication exams for her daughter and for her husband. This caused her serious emotional and mental stress. Kate eventually filed for and received an open work permit for vulnerable workers (OWPV-W). She explained to us that she sees herself as "vulnerable", not only because of the abuse she endured in her recent past, but also because of the hurdles she is going through now as a result of the trauma caused by these working conditions. She said:

Many employers (...) abuse their employee financially, mentally and physically. So, I kind of like, just obey her all the time, all throughout working for her because she's doing my papers. So, I can't, because I'm in a closed work permit, I feel stuck with her, even if I want to leave (...) She said that many times. So it is just draining mentally and emotionally. It's even better if she just hurt me physically, you know, wounds physically will just heal, but mentally and emotionally, she's doing that, so it affected my sleep. I got scared, so even my family physician knows about it and recommended some medication to help me with my anxiety and depression and sleeping problems.

Kate recommended an end to closed work permits.

4.2.2. Age, health and psychological vulnerability

Another predominant theme in our migrant interviews was migrants' health condition as a factor triggering or exacerbating migrant vulnerabilities. Health condition was rarely in itself the unique factor of vulnerability. For example, for some of our migrant participants, age and mental/physical health are directly linked to vulnerability:

According to me, a vulnerable person is a person who is old, cannot walk, who needs more support than others (Migrant 5, Ontario, 2022/02/05 (Permanent Resident (Private Sponsored refugee))).

Je pense que ma mère est vulnérable parce qu'elle n'a pas accès à quoi que ce soit. Moi, je me suis dit : « je suis jeune. OK, je peux accepter ça, c'est mon choix. Peut-être un jour, j'aurai tout ce que je veux. » Mais quand je pense à ma mère, c'est ça qui me fait le plus mal. Je me dis qu'elle est vulnérable, franchement (...) Elle a peur de sortir ... il y a beaucoup de choses (Migrant 11, Quebec, 2022/04/12 (Without Status)).

For many other interviewees, the intersection of health and immigration status influenced and, in some cases, exacerbated their vulnerability. For instance, one participant who had been admitted to Canada as a resettled refugee, noted that living in camps prior to arriving in Canada greatly impacts the physical and mental well-being of refugees, inevitably creating additional layers of vulnerability (Migrant 5, Ontario, 2022/02/05 (PR (Private Sponsored refugee))). Mental health and anxiety linked to abuse and exploitation of migrants without status were also repeatedly echoed in migrant interviews. For example, this participant told us:

Interviewee: Yeah, and I did my [H&C] file (...) But I'm lost, like I don't know what to do; everyone was saying something different. And at that time, I had depression; I had PTSD anxiety. So, I really wasn't in a good situation (Migrant 15, Quebec, 2022/06/28, Permanent resident (H&C))

Interviewer : Est-ce que vous avez peur?

Interviewee : La peur (...) c'est quelque chose que ça ne part pas. Même, j'avais même un problème d'anxiété à cause de ça. J'ai développé, je ne sais pas, c'est comme, crises de panique (Migrant 14, Quebec, 2022/04/18 (Without Status)).

Lack of appropriate health care for many temporary migrants who transition from one status to the other also could plunge them into more vulnerable states, creating situations where migrants would have to make drastic choices about going into significant debt to get medical attention or watch their health conditions deteriorate:

Interviewer: So, in this time did you have any trouble accessing healthcare, for example?

Respondent: Yes, so the first thing was because my original work permit, the one that I had, the valid one expired, which is the postgraduate open work permit, it expired in – it was late June 2019 (...) So, after that, in theory, I couldn't access health services but then I called Alberta Health Services and they said, OK, yes, your work permit has expired, we're going to give you a couple of month's grace for you to access health services you need, so they extended my health services card until September 2019. But then after 2019 I was on my own (...) My body and mind were under a lot of stress. I started having many kinds of problems, health problems... It was January 1st, 2020. I thought I was having a heart attack, so I called the ambulance and then – but with no health services and

that's something that you have to pay anyway. That doesn't – the coverage doesn't – it's not for ambulances. So, I thought, OK, so I'm going to have to pay for this. I don't know how, so they took me to the ER and then immediately before a doctor came to see me there was the financial manager coming to see me to discuss that situation. So, they took my credit card number and everything (Migrant 25, Alberta, 2022/02/08 (Permanent Resident)).

Our findings are echoed by research highlighting the numerous post-migration stressors that can further negatively impact the health of migrants once in the destination country (i.e., labor market challenges, poverty, difficulty accessing key services, linguistic barriers, isolation and discrimination etc.; see e.g., Siriwardhana C., Roberts B., and McKee M., 2017; Wilson, Murtaza and Shakya, 2018; IOM 2019).

4.3. Family factors

Different motives for migrating to Canada are rarely mutually exclusive. However, among a variety of factors that influence migrants' decision to seek protection in Canada, two were identified by our participants as the most important: Canada being a "safe country to live in,"⁶ and "doing this for the family". Our participants also identified family as a factor that can either reduce or exacerbate vulnerability. Indeed, having family and social support networks while navigating the immigration system is considered as crucially important in navigating the immigration system. However, family can also exacerbate migrant vulnerabilities, especially when migrants are faced with family separation or when they cannot financially support their family as they are expected to. Lastly, interpersonal vulnerabilities that are family-related (e.g., domestic and health situations) can heighten the vulnerabilities that some migrants experience in the immigration system.

4.3.1. Family as a key motive for migrating

One of our clearest findings concerns migrants' strong family ties, either in Canada or abroad (i.e., marital status and/or child dependants), as a motivating factor for migrating to Canada. If a migrant has left a family behind or has built a family since arriving in Canada, the decision to migrate to Canada is made first and foremost "for the family." Whether the goal is family reunification or greater financial stability for family members in Canada and/or the country of origin, the family's well-being is always prioritized at the expense of the migrants' own well-being (professional life, social life, stability, etc.) when taking the decision to leave:

⁶ Many participants spoke of difficult circumstances in their home countries (or in countries where they had previously stayed) relative to life in Canada as a key reason for migrating to Canada. International news coverage of Canada's Prime Minister greeting resettled Syrian refugees at a Canadian airport in December 2015, and his 2017 tweets following US Presidential travel ban (i.e., "To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength. Welcome to Canada"), also led some migrants to choose Canada as their destination. For example, those participants explained:

"At that time, I didn't know I was planning to apply there, to seek asylum over there, but at that time, with Trump as president, it was really scary for me (...) At the same time, I was hearing on the media, I see everyday like many people are like passing the borders from the US to Canada and they are welcoming the refugees. And as I know, like here is maybe better, I don't know, but at that time, it was very scary for me to stay there because I was detained in Syria for fourteen months for political reasons" (Migrant 15, Quebec, 2022/06/28 [H&C approved]).

"We (...) knew that here in Canada society they were, like, probably one of the best countries to live. Also, we read about that many, many times (...) in Facebook or on the social media generally, like, "Hey, come here; Canada is a friend Country. Canada is a good place to live. Everything is really good here. Come and give it a try." You know, the news (...) We were really struggling too much in our country. So, we were – we were looking for a country that give us that second chance that we needed to make a better life" (Migrant 6, Ontario, 2022/06/22, [H & C applicant]).

“Most of my work in the Philippines is all junior executive. I worked in a pharmacy. I worked in different industries, like pharmacy, pharmaceuticals. I worked in retail, I worked in sales, I worked in fast food as a junior executive. And I left the Philippines because I believed that I could be able to give a better future for my children here in Canada (...) That’s not for myself because I already, you know, I already had my peak in my country, like I’ve told you (...) But for my children, because I believe that in Canada, they could be able to have more brighter future” (Migrant 22, Saskatchewan, 2021/12/03 (Closed Work Permit not recognized)).

“I have my own business in my country. My wife was working in good company. I own my houses. I don’t have any mortgage to pay (...) I don’t have any problem with economic. When it comes to money, I don’t have any problems. Some people, they say this guy is crazy. He left the country; he starts a new challenge with a new culture and a new language (...) No, I am not crazy. You know why? Because I believe your investment is your family, is your kids, that’s it. It’s not the money, it’s not something material. You can make yourself from anywhere. You can make money, you can build house, you can do anything. But investment, your kids, you know. Your family. This is the biggest part” (Migrant 20, Alberta, 2021/10/25 (TRP granted)).

“Yes, exactly, because we were thinking about the kids because there were so many things going on at the time in Jamaica... (A)nd the soldiers and the police had to get involved. We were just looking at this country and how this country is running. It would be best for the kids to grow there” (Migrant 21, Saskatchewan, 2021/12/01 (OWP-V not granted)).

Leaving family behind for economic and political reasons while needing to support them still with all the uncertainties that lay ahead in their migration path, one migrant who received recognition as a refugee stated:

“So, we didn’t have the best of resources back home, but I would try to make do with what we have. And unfortunately, it just got to a stage where political influence was overshadowing what we were doing and my life personally. So those circumstances, unfortunately, made home not the best place for me to be for, like, various reasons. So, I – the next best thing for me was to leave my family behind like all my family is back home. So, I had to try and look for another place to go for my safety and just to find a normal life. So, I made my way over to Canada. I came through; I think it’s Lacolle Roxham Road” (Migrant 3, Ontario, 2021/12/13).

4.3.2. Family as an essential support of family members to navigate the asylum/immigration system

Not surprisingly, one similar theme that we found among many migrant participants was the essential support of strong family connection and ties while navigating the immigration/asylum system. This finding is well supported by studies in the field (for more on this topic, see generally (IOM, 2019). For example, this migrant participant alluded to the fact that when you belong to a family group in a refugee camp, it is easier to gain access to basic necessities such as food:

“Well, in the camp, we (...) have challenges. Sometimes there is shortage of food, shortage of water (...) Honestly in the camp, there are people that are really vulnerable (...) Those people are more vulnerable because some of them are single, they don’t know where their parents are, they don’t know where their siblings are, and in the camp, they are lonely, there is no one to talk to, to take help from... Sometimes it’s safer to stay in a group than being single. Because they give the food when you’re in a group. And some of the children don’t have parents. They are orphans (...) Kids without (...) parents, yeah. And if there is a shortage of food, no one can actually help you” (Migrant 5, Ontario, 2022/02/05 (Permanent Resident (Private Sponsored refugee))).

Interaction with family members in Canada was also presented as “buffering” migrant participants against vulnerabilities by housing them, helping them to find jobs, getting them oriented to their new cities, cultures, and new ways of life, and by assisting them to navigate and access settlement services. For some migrant participants, connections to family members even helped them obtain protection, for example through the Safe-Third Country Agreement (Migrant 1, Ontario, 2021/11/29 (Recognized Refugee); Migrant 2, Ontario, 2021/11/29 (Recognized Refugee); Migrant 9, Quebec, 2022/04/08, (Without Status))⁷. For many migrants that we spoke to, friends who stood-in as family were also seen as another source of critical support for migrant participants. For example, this migrant participant noted:

“Personally, I think I am just blessed. Like, the way I stayed in, I have made friends, which are family now. There was my aunt’s friend, like her mom. Like I call her my Nan now, unfortunately she just passed away two months ago unexpectedly, but from the time that I came without even saying a word, she welcomed me with open arms. We went places, we did things, she took me for my driver’s test, she took me for my job interview. We went everywhere. The community that my aunt was in was “No questions asked. When you are here, you are part of us, we are one, doesn’t matter where you come from, what you did” (Migrant 3, Ontario, 2021/12/13, (Recognized Refugee)).

One migrant participant stressed the importance of having a support from a community of family members to address their vulnerabilities:

“We are alone here (...) We grow up with our community; uncles, cousins, grandpa, grandma all together. But if you think that you are strong enough to come and face life alone (...) There’s a lot of immigrants (...) that they, after a while, they go back because they cannot live without the support of the family. The family support” (Migrant 9, Quebec, 2022/04/08, (Without Status)).

4.3.3. Long periods of family separation

Many migrant participants described the hardships involved in maintaining relationships with their spouses and children abroad. They were constantly worried about leaving their family behind and not being able to continue to support them financially. They were ready to accept any type of jobs (even if it was not in their professional field) to support their families financially. The stress of sending enough money “back home” was constant:

Interviewer: So tell me, how do you do to financially support the family?

⁷ Under Article 4(2)(a) and 4(2)(b) of the Safe Third Country Agreement, a refugee claimant coming from the USA who has a family member living legally in Canada (i.e., spouse, son, daughter, parent, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew) qualifies for an exception under that agreement and hence will not be returned to the U.S.A.

Participant: Well, my children are with my sister, so, yeah. It's quite a shame, you know, that it's almost a year. And then missing some money, when I work (...) Sometimes I have no choice. You know, I do cleaning just to support my family (Migrant 22, Saskatchewan, 2021/12/03 (Closed Work Permit)).

For those who had finally received a protection status in Canada, the long processing times – which prevented them from visiting family members they had been separated from for a long time or from reuniting with them in Canada – were another source of anxiety, which continued to make them vulnerable.

Finally, one migrant participant, who had been resettled to Canada (as a Privately Sponsored Refugee) explained that they could not understand why they had been “forcibly” separated from their family members during the process:

Interviewee: Again, I wanted to ask to come as a family, but they split us. And the reason for splitting us, I don't know why (...) I don't know. Of course, my mom could have come, but, they called her, she didn't see the message, she didn't see the call, and received the message the following day, and she tried to follow up, she was being told, “we will call you back” “we will call you back” until now. Yeah.

Interviewer: Your mom is still in the camp?

Participant: Yeah, she is in the camp with my other siblings. Because she didn't see the call. And she tried the following day, until now. So some of our family is still in the camp.

(Migrant 5, Ontario, 2022/02/05 (Permanent Resident)).

4.3.4. Gendered dynamics of migration and domestic family situation

Several female migrant participants highlighted how their gender and family situation made them “particularly” vulnerable. For example, one female participant came to Canada with her two young children (2 and 5 years old) and left her husband behind. She felt she was “particularly” vulnerable because she was alone to care for her two children, and everything “traditionally falls on mothers” to look after their children. She had received refugee protection after several years but could not yet reunite with her husband (Migrant 28, Saskatchewan, 2022/06/06). Another participant left her country to come to Canada in search of a better life for her children. She joined her spouse in 2017, who first came to Canada on a student visa in 2016. The participant stated that she was emotionally abused by her spouse, who eventually divorced her and moved out of the home, leaving her and her children with no resources. The participant stated that she has been unable to renew her work permit because she is no longer with her spouse. She explained:

No, I couldn't work (...) Because I got a spousal work permit (first) and we were separated, they refused (to renew it). So, I didn't get it, which is very unfair to me knowing that there are many wives in my position who come here to support their spouse. Then they refused my permit, and the husband can still continue doing what he is doing, getting ahead. I think that that is very, very much unfair (...) The person that is in IRCC, they should sit and look and consider these things because do you borrow money, spend all your money, leave your country, come here to support somebody else? And at the end of the day, that person is ahead and leaves you behind? What about your kids? Don't the kids need both parents? (Migrant 21, Saskatchewan, 2021/12/01).

4.3.5. Health condition and personal family circumstances

For some migrants, their personal family circumstances include situations of pressing familial and financial obligations as parents, spouses, or children of elderly or ailing parents back in their home countries. While the pressing desire to provide for and support families back home propels the need to migrate, in some cases, their inability to do so is a source of stress and can exacerbate their vulnerability. For example, we interviewed a Filipino migrant who came to Canada in 2013 as a migrant worker (under the Temporary Foreign Worker's program (TFWp)). In 2017, they applied for permanent residency under the Alberta Nominee Program and were asked in 2018 to do a medical examination. The medical examination revealed that they had hypertension, and they were immediately admitted to the hospital. The participant explained their reluctance in undergoing a dialysis operation because of their family circumstances:

And the doctor said to me "this is a critical situation. You will die if you're not going to undergo to dialysis". And I told him: "I take first the medication for this hypertension because I have a family in the Philippines that I'm going to support. And I have a daughter. She just born two weeks ago. I need to support her too (...) And I have a family back in the Philippines that needs support. I am a breadwinner. I am a number one child of my family. I have my younger two sisters and younger brother in the Philippines, and I have two kids in the Philippines and one here in Canada. They are depending on me. I'm going to support them because my mother and father didn't have a work in, back in the Philippines. Yeah, and also my younger sisters and my younger brother, I support him to go to the school (Migrant 17, Alberta, 2021/10/18).

This participant finally underwent a dialysis operation. Since the operation, their application was switched by IRCC to an H&C instead, due to health-related matters. In 2019, they lost their status (under the TFWP), though they were still undergoing kidney treatment at a hospital 3 times a week. They felt extremely helpless and depressed, while having to take care of their then baby. In 2021, they received a negative decision from IRCC, and, at the time of the interview, were still out of status with a hospital bill of \$500,000 and a daughter to raise.

In sum, this chapter underlines the malleability of vulnerability. It also illustrates the many challenges that migrants face even after their arrival in Canada. Factors that are often downplayed and taken for granted as part of the immigration and settlement process, including separation from family members and integrating into Canada can be the causes of prolonged hardship and vulnerability. Gender, age and health conditions, perhaps not surprisingly, emerge as central axes of vulnerability that define migrants' own perceptions of belonging to and safety in Canada.

V. VULNERABILITIES AND THE PROTECTION PROCEDURES

In this chapter, we present some findings based on data from interviews conducted with migrants, practitioners (i.e., community workers and legal professionals) and civil servants (i.e., immigration officers processing a variety of applications and board members making decisions on asylum claims). We explain (1) how these practitioner and civil servant informants understand migrant vulnerabilities and (2) how they use vulnerability within the legal setting. Finally (3), we analyze how all participants see vulnerabilities as being exacerbated or reduced through migrants' interactions with key players across the immigration platform (i.e., health care professionals, public servants in charge of deciding on migrants' applications, lawyers, employers etc.). It is thus useful to note here that some of our findings in this chapter are solely based on our interviews with civil servants and practitioners, or with migrants, while other findings are based on interviews with all groups of research participants.

Before proceeding, it is important to keep in mind that the protection system in Canada is very complex. This system is fragmented with a multiplicity of different programs, each of which has its own objectives, requirements, and particular clientele. The diversity of programs results in a diversity of perspectives among civil servants and practitioners and ultimately makes any generalizations challenging. Migrant participants also expressed mixed sentiments in their interaction with the protection system. For example, some migrants reflected on their positive interaction with border agents who, at the time of arrival, assisted them in their initial claims. In contrast, other migrants described the border agents as aggressive, "paranoiac" and even "ruthless". Consequently, the conclusions below, which reflect some common themes that emerged during our field research activities, may not be relevant or applicable to each and every program line. Wherever possible, these distinctions have been noted. In addition, COVID-19 exacerbated many existing challenges and tensions already present in the system. It also led to a complete halt of application processing for a period of time.

5.1 How vulnerability is defined/ understood by civil servant and practitioner interviewees

Vulnerability is seen as an important concept in the protection system in Canada by all interviewees, but the specific understanding or interpretation of this concept varies widely. For example, although the majority of civil servants interviewed recognized vulnerability as a complex concept, their view on vulnerability can be summarized as being at two opposite ends of the spectrum: either they associate vulnerability with a traditional category-based approach (gender, age, sexual orientation) or they see vulnerability as being produced by some specific government programs. In contrast, legal professionals' descriptions of vulnerability are more elaborate and include references to identity-based, situational, and administrative vulnerability, with these categories being described as often overlapping. Another finding is the broad consensus among all interviewees that using vulnerability to create hierarchies of worthiness could be problematic, particularly in the asylum context.

5.1.1. Contrasting perceptions of vulnerability

In our first VULNER report (Kaga et al. 2021), we found that ‘vulnerability’ is rarely defined and lacks clarity in Canadian law and policy. We also found that the few definitions available vary substantially across the different federal agencies. Interestingly, this does not seem to be an issue for the civil servants we interviewed. Civil servants displayed a general understanding of migrant vulnerability as being much more complex than what is captured in the legislation and policy documents. However, when asked to provide specific examples of vulnerabilities that they see in their work, their descriptions of vulnerability were primarily identity or category-based (children; single women or older persons at risk; migrants with medical conditions, psychological trauma; mental illness; migrants in detention; victims of sexual and gender-based violence; migrants with cases involving sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) etc.). This shows that vulnerability is primarily seen by civil servants as something that is attached to the migrant, a characteristic which the claimant brings with them to the protection-seeking process, but which is not a product of that process itself. In the rare instances where vulnerability was considered as created or exacerbated by the process of seeking protection, the main causal factors were identified as being the lack of adequate counsel or representation, the impact of mental health issues and trauma within these processes, or exceptional circumstances associated with disclosure and confidentiality.⁸ Instead of emphasizing the role that administrative processes play in creating vulnerability, civil servants focused on how mechanisms for mitigating these risks, particularly with respect to security concerns, are built into certain program guidelines: for instance, in asylum cases, they will avoid seeking information from authorities in the country of origin; in the case of vulnerable migrant workers, they will avoid disclosing the source of a complaint to an employer given the risks (of reprisal or retribution) that migrant workers are taking in coming forward (Civil Servant 10, 2021).

There was one group of civil servants with a particularly comprehensive understanding of vulnerability: the civil servants working with vulnerable migrant workers. These interviewees recognized that government programs can produce vulnerability and that there is nothing inherently vulnerable about migrant workers. For example, one interviewee stated:

“If you continue to use this narrative, you are actually neglecting or even reproducing those structural issues, because you are placing blame on a person, rather than taking kind of some type of responsibility for the structures, which we have complete control of, that are kind of producing those vulnerabilities” (Civil Servant 10, 2021).

This position regarding migrant workers was similarly held by the community workers and legal professionals we interviewed. These interviewees highlighted many times that the vulnerabilities of migrant workers are not inherent but rather a product of the system itself. Noting that the Temporary Foreign Worker Program (TFWP), a program that ties migrant workers to one specific employer “...is designed for exploitation on every level” (Lawyer 20, Quebec, 2021/07/08), they discussed at length the unique vulnerability of these workers. They described how, without access to settlement services funded by the federal government (an issue which is discussed at length in Chapter 6), migrants remain unaware of their rights and receive misinformation from unreliable sources. They also mentioned that many of those migrants spend a long time in Canada yet are never able to obtain a permanent status. Even if “... structurally, every single mi-

⁸ For example, one interviewee noted the potential problems that could arise if a migrant wished to conceal their sexual orientation, which could be a potential ground for protection, from other members of their family who were also included on the claim (Civil Servant 22, 2021).

grant coming in through the [TFWP] is vulnerable to exploitation” (Practitioner 2, Ontario, 2021/05/27), temporary foreign workers employed on farms in rural areas were considered as “particularly” vulnerable. As expressed by a community worker, “...just reaching out to them, connecting with them takes so much time and it’s many times impossible” (Practitioner 13, Saskatchewan, 2022/02/03).

Interviewees’ comments regarding the vulnerability of migrant workers from the TFWP are supported by an abundant scholarly literature in the field. Indeed, the connection between these workers and their exploitative living and working conditions is well-established in the Canadian context, and there is even an increasing number of studies discussing the difficulties that these workers face in their transition to permanent residency, especially those in occupations who need employer support to complete the application process (see e.g. Mooten, 2021; Goldring and Landolt, eds., 2013; Akbar, 2022; Ellermann and Gorokhovskaia, 2020; Hennebry, 2021; Cedillo, Lippel and Nakache, 2019; Salami et al., 2022; Binford and McLaughlin, 2021; Haley et al., 2020; Nakache and Dixon-Perera, 2015). It is also worth noting that it is not unusual for Canadian courts to address issues of vulnerability among workers from the TFWP (for more on this topic, see Atak et al., 2018, p. 16).

The vulnerability of undocumented migrant workers in particular has been brought to the fore with the COVID-19 pandemic. With a large number of outbreaks and infections on farms, the pandemic brought about public awareness of unsafe working conditions (Baum and Grant, 2020; Doyle, 2020; Beaumont2021). But rather than use the pandemic as an opportunity to ensure the health and safety of *all* workers, one community worker explained how clients told them that employers would keep undocumented workers away from the worksite on days that Public Health Canada would arrive for COVID testing:

“And on the days that they knew that that was going to happen, my boss would keep all of us without status in – at home, so none of us would go to work that day. Everyone that was coming through the program would get tested, none of them were aware of the protocols or anything. Which I think kind of speaks in itself to the continued discrimination that continues to happen in workplaces” (Practitioner 3, Ontario, 2021/05/31).

This quote illustrates that practitioner participants showed an understanding of vulnerability as being created or exacerbated by the system, while most civil servants viewed themselves and the system which they are involved in as part of the response to the inherent vulnerability of migrants.

When asked to define (or conceptualize) migrant vulnerability, legal professionals’ answers were particularly useful in highlighting the different types of vulnerabilities that they see in their work:

- *Identity-based vulnerability.* One legal professional explained that, for them, migrants with identity-based vulnerability are “the ones with real language barriers as well as (...) refugee claimants with mental health issues”, which “complicates the lawyer-client relationship quite a bit and also makes it difficult for them to [prove their case] with government agencies” (Lawyer 17, Saskatchewan, 2022/05/03). Further examples of identity-based vulnerability included migrants in detention with mental health diagnoses, migrants with disabilities as well as young and older migrants. One interviewee described how at times, external social forces linked to identity-based discrimination had resulted in violence for their clients, stating that: “...it can be violence in the context of gender, abuse, or illness such as mental health illness” (Lawyer 7, Ontario, 2021/06/23).

- *Situational vulnerability.* Legal professionals indicated that they see in their work distinct situations or specific individuals taking advantage of migrants seeking protection, often referring to them as “unscrupulous” or “malicious” third parties. Common expressions by legal professionals on situational vulnerability include for example: “...someone who is in a position where they could – they are reliant upon or they are easily subjected to mistreatment or harmed by others without really an effective means of kind of protecting themselves” (Lawyer 4, Ontario, 2021/06/08) or “...who are unable effectively to enjoy their human rights and at increased risk of violation and abuse...” (Lawyer 18, Saskatchewan, 2022/05/05).
- *Administrative vulnerability.* Multiple aspects of administrative vulnerability were reported by legal professionals, such as consequences of delays in case processing and decision making (a point that is examined further in this chapter), barriers to accessing bail programs and alternatives to detention, issues with technology and bureaucracy, weak legal regulatory bodies, and gaps in social services between immigration statuses to name only a few. Significant difficulties were also reported with the navigation of Canada’s immigration system, with multiple lawyers describing situations of bureaucratic vulnerabilities. For example, one interviewee stated:

One of the bigger vulnerabilities is this bureaucracy thing where people are coming from systems that do not function like ours do. That is like a cultural miscommunication kind of a thing. That makes people really vulnerable; it makes them less able to – just from the get-go, it makes them less able to understand what they’re being asked for – (Lawyer 2, Ontario, 2021/05/14).

The very structure and design of specific immigration programs themselves, such as the Temporary Foreign Worker Program and the Seasonal Agricultural Worker Program discussed earlier, were also reported as being a cause of administrative vulnerability.

In their description of the three categories of vulnerability, many practitioners highlighted that those categories are often overlapping and thus cannot be easily separated. Several legal professionals, for example, identified the intersections of a migrant’s specific racialized identity and their immigration status as a particular kind of vulnerability in encounters with stakeholders in the immigration/asylum system. One lawyer, who reported experiences with perceptions of racism towards refugee claimants by decision makers, indicated specific tactics they employed to circumvent such experiences, including: “...I will often go in telling my clients that they are going before a racist Board and that they have to understand that and that there’s implicit biases in that...” Further commenting, this lawyer noted:

I always say something, like [to] my Roma clients, I will spend way more time making sure that they understand every – you know, can memorize almost every piece of their forms, much more than I would a client from somewhere else, because I know that the Board is racist and believes this idea that Roma are liars in their heads... My Black male clients have to be, you know, 10 times more prepared than my other ones, because there always is a racial bias that is portrayed towards them... You know, I think it’s the courts; I think it’s officers... I think race is a vulnerability, but not because the people are vulnerable but because the system makes them more vulnerable (Lawyer 7, Ontario, 2022).

In another example, a lawyer shared their experiences with their client experiencing racism within the health care sector:

“There is a lot of racism in the system. And the first day, when he [the client] was taken to the hospital, he met a (racialized) psychiatrist who talked to him, someone who treated him like a human being. And the next day, on a Sunday, uh, he met a Quebecois psychiatrist who saw him and within ten minutes was signing the papers to send him to the Immigration Detention Center because they said we’re not here to help people who have – who want to avoid deportation...” (Lawyer 28, Quebec, 2022/06/14), (specific ethnicity replaced with “racialized” for confidentiality).

Interviews with community workers also revealed that the word “vulnerability” at times can be interpreted as a cause for alarm by some civil servants. For example, in an interaction with an Immigration Officer, the community workers described assisting a witness of a human trafficking case at a trial. The witness had been granted an initial six-month TRP and then had to pay for its renewal after six months (they were initially denied the renewal until a letter from the Ontario Provincial Police was provided that supported their need to remain in Canada). The interviewee explained that they had asked the immigration officer whether with the re-submission of the TRP application, the witness would have to pay again because of their vulnerable status, to which the response from the officer was: “Woah – woah – woah, wait a minute, when you say vulnerable, it is hard to decide if someone is vulnerable or not because that will have so many implications. And why are you saying that they are vulnerable because of their migrant status or because they are facing some financial issues?” This interaction has led to these community workers no longer using the term “vulnerable” when speaking with immigration about their clients, as for officers, vulnerability can appear different. Interestingly, the participant notes that this conversation came up where the immigration officer said, “What do you mean by vulnerable?” (Practitioner 3, Ontario, 2021/05/31). Such an example illustrates that vulnerability for this immigration officer may have been understood differently.

5.1.2. Avoiding narrow/limited understanding of vulnerability

In discussing migrant vulnerability, several civil servant participants highlighted the importance of not creating hierarchies of worthiness among protection seekers. As one civil servant put it, saying that “there are people that deserve protection more than others, (...) that some are the most vulnerable and some are less vulnerable” would “open up the space for us to say that there are only some refugees that really need resettlement, that deserve resettlement” (Civil Servant 11, 2021).

However, many community worker participants expressed a concern that the approach used by decision makers in claims for protection is in fact too narrow. With respect to asylum claims, for instance, community workers noted that refugee claimants must neatly fit into how vulnerability is understood by decision makers. A migrant network representative concluded that because of that, the refugee system is “totally broken and a horror show” and an “impossible game to win,” as it forces persons to present their vulnerability in a manner that will make the decision maker “empathize” with them (Practitioner 28, Quebec, 2022/05/25). When stories do not fit these expectations, it leads to many who are indeed vulnerable to be left out, they added. In cases involving human trafficking, one community worker also noted that, although vulnerability necessarily involves some consideration of intersectional identities, women are still regularly seen as more vulnerable than men (a point that is discussed in the next section)⁹:

⁹ One civil servant also noted that the gendered way in which vulnerability is understood means that certain groups, specifically men who have suffered sexual violence and torture, often fall through the cracks. (Civil Servant 11, 2021)

“Oftentimes, I think men are seen as less vulnerable than women to having experienced human trafficking because they’re not the right kinds of victims, particularly racialized men. And having worked on the same case where there were women and men, the women were treated differently than the men, particularly young, strong men who were not seen as victims as such” (Practitioner 1, Ontario, 2021/05/19).

Newer academic research corroborates those assertions, by showing that men are clearly labelled as not being a priority when it comes to vulnerability (Turner, 2021), and hence less likely to be granted protection.

A migrant network representative also highlighted the importance of adopting an individualized, trauma-informed approach in meeting the needs of specific clients to address their specific vulnerabilities instead of assuming a standardized approach that works for all, especially in cases involving mental health. They recalled an incident where they accompanied a youth to a settlement agency which required filling out a checklist to access their services. Several of the questions were “quite invasive” around mental health and experiences of violence. After the checklist, there was no follow up with the client:

“Like, once they had checked that ‘Yes, you have had mental health issues in the past’, they moved on. And because that person had and carried that very heavily and was very vulnerable as a result, left that interaction feeling quite upset by it. And it wasn’t the intention of the organization to upset anyone, they needed to tick boxes. But because that sheet was sort of standardized for all intakes, it didn’t really meet the person where they were at and really recognize their specific needs as a vulnerable young person” (Practitioner 1, Ontario, 2021/05/19).

The intersectional nature of vulnerability, and the fact that many vulnerabilities may not be visible or openly discussed (for instance in the case of sexual and gender-based violence or cases involving SOGI-ESC), calls for further consideration given that we live in a world where the number of migrants seeking protection far outstrips the availability of protection spaces.

5.2. How vulnerability is addressed and accommodated within the claims for protection, according to civil servants and practitioners

In this section, we analyze how vulnerability is addressed and accommodated within the relevant procedures. We discuss first how decision makers understand the impact of vulnerability on the process and outcome of the decision, and the experience of legal professionals in asking for such accommodations. Second, we analyze how practitioners address and accommodate the role of vulnerability in refugee resettlement both pre- and post-arrival.

5.2.1. Accommodating claims for protection from vulnerable claimants: the perspective of civil servants and legal professionals

Civil servants were asked how vulnerability impacts both the procedures and outcomes of the decision-making process and their answers varied significantly depending upon the program line in question. Broadly speaking, the recognized vulnerabilities of migrants seem to be a substantive factor in the outcome of decisions in the context of the following applications: humanitarian and compassionate (H&C) claims, open-work permits for vulnerable worker (O-WPVW), temporary resident permits (TRP) and

overseas resettlement applications.¹⁰ Regarding H&C claims, for example, several interviewees noted that those claims are intended to act as a last resort measure for migrants who have fallen between the cracks of other programs, and hence, decision-makers can adopt a comprehensive approach to the claims by considering a wide range of factors including the various vulnerabilities of the claimant which may impact their need for protection. One interviewee even noted that the evaluation of vulnerability has become a key component of H&C claims over the years.

“We have changed (...) the discourse (...) has changed. We really (...) acknowledge vulnerability of all kinds in how we interpret section 25-1 of the [Immigration and Refugee Protection Act]” (Civil Servant 6, 2021).

In situations of human trafficking and family violence, a claimant’s additional vulnerability (for instance if they are a minor) may also result in them being granted a lengthier temporary resident permit (TRP) than they would get otherwise.

The substantive impact on the outcomes of claims in the above immigration categories can be contrasted with the narrower approach adopted in asylum claims, where the impact of vulnerability is primarily procedural. Decision makers indicated that any individual claiming asylum in Canada has some degree of vulnerability, and that procedural accommodation will only be provided when the recognized vulnerability is *above and beyond the norm*; in other words, only when it is due to specific circumstances or characteristics that render one claimant *more* vulnerable than the average refugee claimant.

The recognition of the vulnerability of refugees (and others in similar situations) leads to significant variation in the assessment of their protection claims depending on the context.

In the overseas context, recognized vulnerabilities in the determination of applications for protection are a procedural *and* substantive factor in the outcome of resettlement decisions. Applications for resettlement are not conducted on a first-come, first-served basis. Instead, UNHCR, private sponsors and humanitarian agencies refer cases that they think fit Canada’s resettlement criteria in the region to Canada’s IRCC officers (UNHCR, 2018). More interestingly perhaps, a vulnerability-based assessment is used when establishing priority for interviews, and even in determining which requirements might be waived (Civil Servant 9, 2021). Claimants who are at risk of imminent removal, face an immediate threat to their physical safety, require medical treatment, women who are deemed to be at risk, people under indeterminate detention, can self-identify, or be identified by UNHCR, a referring humanitarian agency or the IRCC visa officers (“urgent” or “special needs” cases, S. 138 and 139(2) IRPR). Claimants thus identified can have their cases expedited through Canada’s Urgent Protection Program (UPP) (UNHCR, 2018) or on an informal basis. In addition to having their cases expedited, these vulnerable claimants may also benefit from certain other discretionary concessions. For example, the Immigration officer may decide to waive the need for an interview or a certain document if the refugee is identified as vulnerable. According to Civil Servant 5 (2021), approximately 30-35% of claimants in their region were treated as vulnerable in some way compared to others. The option to expedite certain cases provides officers with the flexibility needed to respond to indi-

¹⁰The inclusion of humanitarian and compassionate claims in this list is in contrast to the findings of our first report. It is possible that this oversight in the first report is a result of a lack of caselaw concerning these claims. Humanitarian and compassionate claims where the claimant was found to be vulnerable and thus entitled to protection are unlikely to be challenged and consequently are not reflected in the original review of case law.

vidual circumstances and tacitly acknowledges the impact that lengthy delays can have on the safety and well-being of vulnerable claimants. Most importantly, immigration regulations stipulate that vulnerable applicants do not need to demonstrate an ability to settle in Canada, a significant concession compared to other applicants (Brekke, et al., 2021).

In the context of asylum claims processed from within Canada, civil servant participants consistently asserted the flexibility and discretion that they have in accommodating vulnerabilities during the refugee determination procedures, yet little data is available on this point. Moreover, vulnerability is not a substantive factor in their decision making. Although guidelines regarding accommodations are set out in the IRB's Chairperson's Guidelines (on the "vulnerable persons" (Guideline 8), "gender considerations" (Guideline 4) and "SOGIESC" (Guideline 9)), the granting of procedural accommodations before the IRB is not tied to any formal recognition of vulnerability. Instead, accommodations are generally viewed as being a necessary part of ensuring procedural justice and protecting the integrity of the process. The range of procedural accommodations available is broad and includes: assigning a female officer or decision-maker, providing extra breaks and water during the hearing, rescheduling the hearing, allowing an accompanying person, providing translator of a specific gender, avoiding specific questions around sexual abuse, changing physical positions for a more informal setting, changing the order of questioning, allowing hearings by video or in-person as desired, appointing a designated representative, etc. While some accommodations may be requested ahead of time, in other cases the situation is more fluid, and accommodations are made as needed during the process.

Regarding the in-Canada asylum determination, our interview data reveal that – most of the time – it is left to the claimant to raise a vulnerability that may require accommodation (for more on this topic, consult: Cameron, 2018). This brings us to the issue of legal representation because it is unlikely that unrepresented claimants request any accommodations themselves. Civil servants noted that effective legal representation does not eliminate the vulnerabilities at play during the process, but that it can help to mitigate them. A couple of interviewees also commented on the perils of ineffective counsel (a point that is discussed later in this section), noting that sometimes lawyers can hurt more than they help (Civil Servant 2, 2021) because there are certain assumptions attached to lawyers, namely that they know what they are doing. Consequently decision-makers that are not legally trained may defer to them and not call them on their failures.

The flexibility that decision makers have in accommodating vulnerabilities during the in-Canada process is a source of frustration for many legal professionals seeking procedural accommodations for their clients. However, some legal professionals expressed satisfaction with Guidelines 8 (the Vulnerable Persons guidelines). They expressed this satisfaction directly with the guideline and the ability to request specific accommodations for their clients. For example, two interviewees reported: "I'm actually very happy that the IRB has the vulnerability guidelines" (Lawyer 4, Ontario, 2021/06/08). Or: "As a lawyer I can make special accommodation request, they're not always granted, but I can do it. So, I think we have a lot of ways that we do already support these vulnerabilities" (Lawyer 2, Ontario, 2021/05/14). However, legal professionals also indicated a concern with the consistency of the application of the guidelines as well as the broad discretion from one decision maker to another (i.e., "...it ultimately kind of depends on the member whether or not the guidelines are applied" [Lawyer 10, Ontario, 20221/07/13]). For example, consider two examples shared by interviewees:

“Someone could have dementia and still understand the nature of a proceeding... The bar is “Do you understand what this refugee claim is about?” And it’s like someone is “Yeah. It’s to let me stay in Canada, where I can be safe.” It’s like, “That’s appreciating the nature of the proceeding.” My four-year-old can tell you that, right? That doesn’t tell you anything about (...) that person’s ability to give testimony and provide evidence, or to meaningfully participate...” (Lawyer 9, Ontario, 2021/07/13).

“I said, “Listen, you know, this claimant is vulnerable, she’s unable to present her case. You know, we’re asking for her daughter to be designated by her representative.” ... In this particular case, it was just age, you know, really advanced age. Obviously, people’s minds at that age are not as sharp as they were, and so on. And the board member asked her a question: “Madam, do you know why we’re here today?” And she answered to her interpreter, “Oh, you are going to grant our claim to stay in Canada,” something like that, “and thank you very much.” And he’s like, “Well, counsel, I don’t see a problem here.” I just remember, like, that’s not enough to, you know, determine that she’s not a vulnerable person.” (Lawyer 8, Ontario, 2021/07/09).

When the guidelines are referenced in the IRB’s decision making, some lawyers also indicated that they felt the guidelines were simply being referenced but not necessarily applied. For example: “They cite the guidelines, but they don’t apply them... It’s something that they know they have to put forward, but they don’t actually apply them” (Lawyer 10, Ontario, 2021/07/13). In contrast, civil servant interviewees from the IRB asserted that knowledgeable decision-makers will infuse their decision-making with compassion and acknowledgement of vulnerabilities whether or not they mention the guidelines explicitly.

When requesting procedural accommodations, legal professionals are required to provide evidence or a rationale that satisfies the decision maker that their client meets the IRB’s official definition of vulnerability, which states that “...individuals whose ability to present their cases before the IRB is severely impaired” (IRB Chairperson Guideline 8, 2012). To satisfy this requirement, many legal professionals turn to securing psychological assessments as a form of evidence that their client may experience difficulties in understanding the nature of their legal proceedings, and in turn would benefit from specific requested procedural accommodations. However, legal professionals indicated the difficulties that they regularly face in securing such assessment for their client. As one lawyer explained:

“...Legal Aid Ontario will pay a specialist 300 dollars plus tax to do an assessment and write a report (...) I’ve had doctors be like, “I treat it as pro bono, because, like, my hourly rate and the amount of time I spend,” so interviewing the client, often with an interpreter, which of course makes things take twice as long, and then writing (...) a useful report and then sending it to counsel... so it’s like 10 hours of work, and they’ve been paid for one hour... so finding people who are willing to do this is really tough. I can think of less than 10 psychiatrists and psychologists in the GTA who will do them, and so they are often like you’re trying to book weeks and weeks and months in advance...” (Lawyer 8, Ontario, 2021/07/09).

In addition to the difficulty involved in securing a psychological report, legal professionals also shared concerns around the role of Board decision-makers in making a medical assessment beyond their legal expertise. For example, one lawyer stated: “the psychological reports inevitably come back with “a client has PTSD and, you know, anxiety or depression.” I’ve found that the board doesn’t take them seriously” (Lawyer 8, Ontario, 2021/07/09). In another interview, a lawyer further elaborated on this concern:

“I think we have to really get out of the idea that the board can do this, and really look at their expertise and say, “This is an absurdist idea that a board member could even make this determination.” And so, we have to get out of this guideline principle and say, “No. This has to go to a medical professional. A medical professional will make the determination as to whether they can appreciate the nature of the proceedings.” And I don’t think board members should even be allowed to touch that decision” (Lawyer 7, Ontario, 2021/06/23).

The mental health of refugee claimants is an issue that was raised by several civil servants in the context of accommodation. Civil servants indicated that it is very difficult to process claims from refugee claimants with mental health issues. As Civil Servant 2 (2021) noted: “. . .it’s really hard to invest in a person who has no psychological training the ability to assess whether somebody needs help.” Even when psychological reports are submitted by the claimant, civil servants highlighted that the final decisions regarding protection and/or accommodation remain with civil servants who have no substantial mental health training and who are asked to interpret and assess these reports and the potential impact of a particular diagnosis or prognosis. That multiple interviewees noted the challenges of dealing with cases involving mental health considerations highlights the need for additional training and guidance on this issue. This is particularly important since much of protection-related decision-making depends upon an assessment of the credibility of the claimant and mental health and evidentiary issues intertwine.

One positive takeaway from the interviews with civil servants, however, is that there is a heightened awareness of the impact that trauma may have on refugee claimants (even if the decision-maker is unsure how to cope with that impact). There is also support among decision-makers for the adoption of a trauma-informed approach to decision-making which is reflected in the revised Chairperson’s guidelines at the Immigration and Refugee Board (IRB Chairperson Guideline 4, 2022, Pt. 5).

5.2.2. Vulnerability in refugee resettlement and sponsorship both pre- and post-arrival: the perspective of practitioners

The overseas refugee resettlement program is a premier example of how Canada has put its best foot forward to accommodate and address vulnerability from start to finish for refugees in both the pre- and post-arrival phase through its various streams. One special resettlement program that recognizes that some refugees may require more support than others is the Joint Assistance Program (JAS). JAS admits refugees with special needs, which can include a large number of family members, individuals who have experienced trauma resulting from violence or torture, those with medical disabilities, or individuals suffering from the effects of systemic discrimination. Under this program, refugees receive support for up to 24 months rather than other sponsored refugees who receive support for one year.¹¹ While the number of JAS cases resettled in Canada per year is smaller than in other streams (such as government or private sponsorship), the joint sponsorship between the government and Sponsorship Agreement Holders (SAHs)¹² in JAS cases works to ensure that smooth integration in the post-arrival phase is possible. However, balancing the needs of resettled refugees and addressing their vulnerability post-arrival can be challenging when trying to navigate the system, especially for refugees with complex medical needs.

¹¹ The Joint Assistance Sponsorship (JAS) program is for refugees with special needs, who require more support than others to resettle in Canada, which includes medical needs, or victims of trauma and torture. Refugees receive support from both private sponsors and the Government of Canada for up to 24 months, in comparison to GARs, PSRs, and BVOR, who receive one year support (Immigration, 2013).

¹² SAHs are organizations (such as faith-based or community organizations) that help refugees to resettle in Canada (Immigration, 2007)

One community worker experienced in dealing with JAS cases involving complex medical needs explained how the information collected and provided by the UNHCR does not address settlement needs post-re-settlement. The focus of the UNHCR is on immediate protection needs, which can pose structural challenges when sponsors/SAHs try to access this information. They explained that while the profiles provided did indicate medical needs, these needs ended up being much more complex. The community worker therefore reinforced the need for implementing structures that can allow for pre-arrival communication between sponsors and refugees so that the necessary steps can be taken to ensure that vulnerability is accommodated for once refugees arrive (Practitioner 6, Ontario, 2021/06/10).

Providing an example where complex medical needs were not known prior to arrival, the community worker explained how they had one case where initial sponsorship was under the Blended Visa Office-Referred (BVOR), a resettlement stream where IRCC and private sponsors jointly commit to providing support. In this case, the father of the family needed a kidney transplant and required blood transfusions three times a week to maintain his health, which was not known to the sponsors prior to arrival. The family was resettled in a rural community away from a hospital, which meant that the sponsors had to arrange travel one and a half hours three times a week for his appointments (Practitioner 6, Ontario, 2021/06/10). In order to address this vulnerability, the SAH submitted paperwork to convert this BVOR case into a JAS, so that financial support would be provided for two years by the government. With the conversion to a JAS, the SAH were able to “figure out” how to make medical support available closer to where the refugee lived. However, navigating the JAS program still presented as challenging:

“The JAS program has been a challenge to navigate, because IRCC has not made it easy for sponsors first of all to understand their roles and responsibilities clearly; second, to access the professional settlement support that’s needed; and thirdly, again, this pre-arrival communication is a critical part of what helps sponsors prepare, what helps the SAH as a sponsor facilitator help manage expectations and know what kind of training to target and focus on. I do think that there is a lack of survivor agency” (Interview with Practitioner 6, Ontario, 2021/06/10).

In another JAS case, a resettled Syrian refugee family where each member had medically complex needs was matched with first time sponsors. The interviewee reported that the SAH was “naïve” to think that they would be able to address all the needs of the family, and experienced significant challenges in case management and understanding what all their roles were. In trying to navigate the system, the sponsors became burnt out, which led to tensions between the sponsors and the family. Raising again the importance of pre-arrival preparation to accommodate and address vulnerability, the participant asked:

“How do we build infrastructure in the post-arrival settlement side that creates the intentional connections between sponsors and settlement workers, clarifies the rules and responsibilities so that sponsors can lead out on their strengths, and settlements who have expertise in system navigation can lead out on their strengths?” (Practitioner 6, Ontario, 2021/06/10).

Learning from this example, the community worker reported that, in the future, they would match high-vulnerability cases that require complex medical or psychosocial needs with more experienced sponsors.

In another interview focusing on private sponsorships, the participant who is a SAH, stated that considerations on how to make their decisions internally on who to sponsor is like “splitting hairs” because there is so much vulnerability (Practitioner 8, Ontario, 2021/06/21). An example they provided was a “named” resettlement case where an already resettled refugee had an elderly mother with mobility issues, and a

sibling with medical issues. The SAH sponsored the mother and sibling who were resettled for family reunification reasons but also because they were identified as clearly vulnerable. Such examples demonstrate that community workers and settlement agencies view intersectional analyses as crucial to accommodating and addressing vulnerability within their work and decision making and, that in the case of private sponsorships, it is the sponsors who address and accommodate vulnerability, instead of the government.

Overall, while resettlement is a small part of the overall work that the UNHCR does, Canada's involvement in resettlement is much larger (Practitioner 9, Ontario, 2021/06/30). In specialized resettlement streams, such as the JAS cases, it means having access to sponsors who are willing and able to do "extra hand holding" to ensure that vulnerability is addressed post-resettlement (Practitioner 10, Ontario, 2021/07/20). For private sponsorships, which do not involve UNHCR, the "sharing" of social capital by sponsors provides the "one-on-one engagement" refugees need to "step up their integration" (Practitioner 10, Ontario, 2021/07/20), which is particularly important for vulnerable migrants. In all resettlement streams, vulnerability is addressed and accommodated by providing access to support networks and services, such as healthcare and counselling early on after arrival to increase the likelihood that "their [refugees'] trajectory is going to be more positive" (Practitioner 10, 2021/07/20). Thus, accommodating and addressing vulnerability occurs throughout the resettlement process and by a variety of actors.

5.3. The exacerbation of vulnerabilities through migrants' interactions with various key stakeholders, according to civil servant, practitioner and migrant participants

In this section, we analyze how migrant vulnerabilities may be exacerbated through migrants' interactions with various key stakeholders, as reported by the civil servants, practitioners, and migrants we interviewed. First, we focus on the exacerbation of migrant vulnerabilities by discussing the situation of unscrupulous lawyers and immigration consultants who take advantage of migrants. This is followed by an examination of the negative impacts of delays on migrants seeking a protection status. Third, we highlight how the vulnerability of migrants may be exacerbated when they interact with immigration officers in the process of their Open Work Permit for Vulnerable Worker (OWP-V) or Temporary Resident Permit (TRP) applications. Finally, we discuss how the uncertainty created by the exercise of broad discretionary powers by decision makers has real life implications for the most vulnerable applicants.

5.3.1. Representation and legal incompetence

Throughout the protection procedure, migrants interact and engage with many players, including immigration consultants and lawyers. While all groups of interviewees highlighted the crucial importance of legal representation in immigration/asylum proceedings, each group also raised concerns regarding the incompetence, negligence and fraud routinely exhibited by consultants and lawyers in their representation of vulnerable immigrants and refugees.

The legal professionals that we interviewed for this project were deeply troubled by their peers, both lawyers and immigration consultants, who have taken advantage of migrants through negligence as well as by overcharging. A particular concern was raised regarding the lack of repercussions for these unscrupulous third parties, a sentiment echoed by at least one civil servant who noted the lack of accountability in such situations (Civil Servant 2, 2021). For example, these lawyers told us:

“I had one dealing with them (immigration consultant) where the client came to me and I started representing them and they said, “My immigration consultant took all this money from me” and she had receipts.... But they charged me for a PR application when I hadn’t even won my refugee hearing yet so I can’t even apply for PR, but I had to pay them for the PR application... I complained to the IRCC and I – and the guy said, “OK, I’ll give her money back.” And the IRCC did no punishment to them, no reprimand, just said, “OK, well, he gave the money back so that’s fine; this matter’s closed” (Lawyer 4, Ontario, 2021/06/08).

“... Parfois ça fait en sorte que les gens, juste au niveau de la qualité de la représentation, se retrouvent à être exploités par des réseaux de consultants en immigration qui, finalement, leur vendent une procédure qui n’existe même pas, parce qu’ils n’ont aucune manière de vérifier” (Lawyer 22, Quebec, 2021/07/14).

“The Law Society only cares if you take money from clients. Like, you can do a piss-poor job representing them, you can take advantage of them, you can exploit them, whatever, but, like, as long as you’re not stealing money, they don’t care. And, I mean, it’s the same for immigration consultants, but even more so” (Lawyer 6, Ontario, 2021/06/15).

The negative implications for migrants with poor legal representation are well-documented in Canada (see e.g., Canadian Bar Association, 2017; Smith, Rehaag, and Farrow 2021; and Rehaag 2011). Therefore, the lack of repercussions for both lawyers and immigration consultants arbitrary overcharging their services or found guilty of negligence is very concerning. Not only is there financial loss for migrants in these situations and exploitation by legal professionals, but there is also a risk of loss of employment, health care coverage, housing and basic needs, as well as a risk of deportation. As one lawyer noted: “...people get slapped on the wrist for doing really egregious things...but, like, the ramifications for the person are huge, being deported, right, versus just losing money” (Lawyer 3, Ontario, 2021/05/18).

Luckily, some of the migrants that we interviewed had very positive interactions with lawyers and immigration consultants. They referred to them as knowledge intermediaries who assisted tremendously with their application process leading to successful outcomes. However, for other migrants, immigration consultants and lawyers were described as unhelpful, and a waste of time and money. In fact, those migrants expressed frustration with lawyers and immigration consultants for failing in their roles, resulting in some of them having to take matters into their own hands. For example, this migrant explained:

“So, I was the one who suggested the temporary foreign worker permit to her. I was the one that suggested it because I realized that these consultants are like you have to go on to the research. They are not willing to tell you what is up. You have to be the one to go and do the research yourself and then come and tell them” (Migrant 21, Saskatchewan, 2021/12/01, [OWP-V not recognized])

Many of the migrants who had negative interactions with lawyers and immigration consultants described them as unethical (i.e., suggesting they tell fictitious stories), dishonest, underprepared for their hearings, and as such, unable to vigorously pursue their cases. One migrant participant even described a system of collusion between lawyers and the government:

“[Lawyers] and the government, they work together (...) These lawyers are not really well qualified. That is what I understand, that is my own opinion (...) There is always the government that pays for these lawyers, so it is like they create a system. “There are immigrants coming. Okay, work with these people. We’re going to catch it, we’re going to send it back home” (Migrant 27, Saskatchewan, 2022/05/20 [Refugee Status granted]).

In one case, a migrant participant indicated that their negative interaction with a bad lawyer led to a deportation order against them (Migrant 11, Quebec, 2022/04/12, Without Status).

5.3.2. Delays in case processing

Delays in case processing were seen as highly problematic by practitioners and migrant participants. Those delays became even worse during COVID-19. For example, one lawyer explained a multiple month delay resulted in their client (a refugee claimant) not having their identification records or the ability to apply for a work permit for 6-8 months:

“J’avais un client qui est arrivé du (pays) peut-être au mois de mars 2019, juste au début de la pandémie. Et nous avons déposé sa demande d’asile dans les semaines, je ne sais pas, dans le mois ou dans les quatre, cinq semaines qui suivaient son arrivée. Donc tout le monde a dû s’adapter à la nouvelle situation, à la nouvelle réalité, mais ça a pris six, sept, huit mois avant qu’il n’obtienne son entrevue d’éligibilité. Alors, il était là pendant, je dis six mois, peut-être plus que ça, peut-être presque neuf mois avant d’avoir son entrevue d’éligibilité. Il n’avait même pas un papier d’identité parce qu’on avait confisqué ses papiers. Il n’avait pas la possibilité de demander un permis de travail. Sa situation est devenue très, très précaire à cause de la situation” (Lawyer 21, Quebec, 2021/07/13, country replaced for confidentiality).

Delays were reported as exacerbating the vulnerability of migrants in many ways.

First, delays prevent migrants from accessing many basic opportunities and services (such as legal employment and health care). One migrant participant noted:

“From the time I got my acceptance as a protected person [i.e., refugee] (...) it was more than two years. In these two years, there’s a lot of things that a refugee claimant cannot enjoy because of his or her status” (Migrant 2, Ontario, 2021/11/29, Recognized Refugee).

Second, lengthy delays leave migrants in limbo and negatively impact their mental and physical health. As one lawyer put it, “[t]hey can get stuck for years in this system in a precarious position that they don’t know from day to day if they’re going to have status” (Lawyer 2, Ontario, 2021/05/14). One migrant, who had made an H&C application following a failed refugee claim and who was still awaiting a response on their application, described themselves as a “vulnerable ghost” to explain the negative impact of delays on their life. This migrant added that despite their young age and all the successes they had achieved before moving to Canada, the feeling of vulnerability was overwhelming in the face of administrative delays in their quest for protection in Canada (Migrant 9, Quebec, 2022/04/08, Without Status). For many migrants, the process for obtaining status was so long and arduous that they wanted to give up altogether. IRCC was seen as not supportive in this process:

“I didn’t feel supported by IRCC at all, on the contrary. I felt (...) at some point I felt that I was being toyed with, that this lack of transparency and this kind of – “oh, it’s your fault because you filled these forms wrong and the fact that – it’s an application for a vulnerable situation. I think that deserves more attention, more compassion and more focus because I felt more abandoned than protected. That’s what they made me feel like” (Migrant 25, Alberta, 2022/02/08, (Permanent Resident)).

Even after a successful protection status, delays continue to be a source of stress for migrants who successfully obtain a protection status. For example, receiving open-work permits after a positive decision on an Open-Work Permit for Vulnerable Worker (OWP-V) application was described as a particularly complicated and lengthy process. One participant noted that it is already “a lot of energy and stress to go through the whole complaint process”, so “when that open work permit takes like four months to be processed, it doesn’t really help the worker in any way that they need” (Practitioner 16, Saskatchewan, 2021/02/10). Echoing this person, a migrant who waited a long time before receiving their OWP-V permit noted:

“Well, financially, I am struggling, but it’s (...) the emotion and the mental that I’m struggling most that time because I think of my status here. How long do I need to wait? How will this end? Will I get an open work permit, or will I go home? What will happen to me in my country? Can I start over again? So, those thoughts were running in my mind (...) I came here to work, but I got abused and now, the waiting of my permit is also like an abuse because it’s taking so long (...) I can understand that there’s like millions of applications, but I hope IRCC processing times will be better in the future because it’s damaging (...) They have no idea how immigrants struggle and some of them, like me, are alone so we don’t have our families beside us to comfort us, so, it’s even more difficult. I mean, they don’t want these immigrants to go insane, so that’s what I am trying to keep at the moment to not break down with all the struggles I’m in.” (Migrant 28, Saskatchewan, 2022/06/06)

Clearly, the institutional and resource (structural) constraints that result in extensive delays are a critical factor in the exacerbation of the vulnerability of migrants. Addressing these constraints and reducing delays, without sacrificing the integrity of the system, is an ongoing challenge.

5.3.3. Specific problems re- Open Work Permit for Vulnerable Workers (OWP-V) and Temporary Resident Permit (TRP) applications

As discussed earlier, migrant workers admitted under the Temporary Foreign Worker Program (TFWP) are seen by all research participants as “particularly” vulnerable. However, one of the ways vulnerabilities may be exacerbated for this population is when interacting with immigration officers in their Open Work Permit for Vulnerable Worker (OWP-V), an application which is precisely aimed at helping migrant workers leave an abusive situation. Similarly, while victims of human trafficking may secure their immigration status with a special temporary resident permit (TRP), their interaction with immigration officers in TRP applications is sometimes a source of increased vulnerability for them.

Recent research has highlighted the numerous barriers that migrant workers face in their OWP-V application, including difficulties in accessing legal assistance, translation services or in providing sufficient evidence of abuse in support of their application (Depatie-Pelletier, E, Deegan, H., and Berze, K. 2022). This research has also revealed that immigration officers are more likely to accept financial abuse that occurred in the context of unpaid wages or reduced hours, whereas the collection of recruitment fees from workers and early termination from employment are not recognized as abusive (Aziz, 2022). Immigration officers’ limitations in the investigation and determination of migrants’ claims for protection were also reported by our practitioner participants.

For example, several practitioners criticized the focus of immigration officers on physical threats and the fact that immigration officials are unable to consider that abuse can manifest in intersecting ways and does not always appear in physical forms when applying for an OWP-V. As one community worker explained, vulnerability as a result of forced labour exploitation is seen “in this very mainstream way of being locked up and tied to a room” (Interview with Practitioner 3, Ontario, 2021/05/31). Or again, for male migrant

workers who are abused by their employers, their claims are not taken seriously, and they are seen as less vulnerable than female migrants in a similar situation. A third example mentioned by interviewees pertains to the psychological aspect of how employers can control and manipulate migrant workers by forcing them to work in unsafe conditions. The participants explained that the “psychological sides” of how employers take advantage of migrant workers through coercion and intimidation to exploit them are not taken into account by immigration officers:

“For many of those that we see, they are like “OK, I understand that I’m being underpaid and receiving ten dollars an hour and I understand that the working conditions are not ideal, but it’s better than it was back home and I understand that all this is illegal here in Canada, but even though it is better than what I had”. And this is how exploiters are using this to control – to control the victims” (Practitioner 3, Ontario, 2021/05/31).

These aspects, because they are psychological and not physical, are not considered when victims apply for an OWP-V in cases of abuse.

Interestingly, the safe assumption would be that multiple stories of abuse from a specific location could provide legitimacy to claims for protection. But one community worker stated that for immigration officers in charge of processing TRP applications, several claims of abuse from one location are sometimes seen as potentially fraudulent:

“In fact, I think, we learn the other day about that sometimes if there’s too many TRP’s from one farm and the stories are too similar, then the immigration officer will often see that as a fraudulent claim. Which, from my end, I was like, I would think more than anything, you’re getting more people saying “No, this happened to me – this happened to me”. And if you’re seeing the story as “The boss was yelling at all of us; the boss was doing it to all of us” and you have all these workers coming forward, I would think that adds more credibility, not more “Oh, someone is trying to just get status here in Canada”” (Practitioner 3, Ontario, 2021/05/31).

5.3.4. Exercise of discretion in decision-making

Although it was not acknowledged as such by any civil servant interviewees, one significant contributing factor to the vulnerability of migrants that arises from their interactions with civil servants is the breadth of discretion afforded to those decision-makers.

Discretion afforded to a decision-maker varies depending on the program line. For example, with respect to PRRA cases, interviewees reported that their discretion is much more limited compared to H&C cases because a positive PRRA can only be granted on the basis that a person would be at risk of physical harm (i.e., torture, persecution or cruel and unusual treatment or punishment) if they were to be deported to their country of nationality. The specific vulnerabilities of the individual have no place in this assessment. In contrast, the main objective of an H&C application is to “mitigate the rigidity of the law in an appropriate case,” (Kanthasamy 2015, SCC, para. 19) and to provide recourse to migrants who would not qualify in any other immigration class. As a result, a high level of discretion is fundamental to the integrity of the program given that immigration rules are necessarily general and “cannot precisely accommodate all the variety of individual circumstances” (House of Commons 1967, p. 13267; cited in Delisle and Nakache, 2022). As noted in a recent article, “H&C consideration is thus conceived as a unique ‘safety net’ for vulnerable migrants falling through the cracks of the immigration system” (Delisle and Nakache, 2022, p. 4).

While a high level of discretion allows for flexibility, it also results in uncertainty and unpredictable outcomes. As one interviewee told us:

“As a decision maker, I struggled a lot with that, because I could understand that another decision maker could take a different decision on a specific set of factors, but I could not understand why me [sic], with the same view of things could one day approve, one day refuse a similar case” (Civil Servant 20, 2021).

Similar observations were made by other interviewees, with several noting that the immigration officer’s own experiences (of life, work, family...) or knowledge could impact the assessment of a case. For example, one IRCC officer noted: “people make very different decisions before they have children versus after (Civil Servant 6, 2021).”

In discussing the decision-making process, IRCC interviewees highlighted the usefulness of policy and procedural guidelines which constitute a critical guide for immigration officers. Nevertheless, courts have repeatedly held that “administrative guidelines are not binding and cannot be applied in a manner that unduly fetters a decision maker’s discretion” (*Kaur*, 2019, FC, par. 32). Thus, the tension between discretion and flexibility on the one hand, and consistency and predictability in terms of decision-making on the other was a common theme in the interviews. As noted recently by the Supreme Court of Canada in *Vavilov* (2019, para 129): “[t]hose affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker”. As is discussed below, the uncertainty created by the exercise of broad discretionary powers by decision makers coupled with the absence of broader recourse options has real life implications for the vulnerable applicants.

VI. HOW CURRENT STATE NORMS AND PRACTICES TOWARD PROTECTION SEEKERS IMPACT THEIR VULNERABILITIES

In our first VULNER report (Kaga, et al., 2021, pp 4754), we highlighted some of the ways in which the Canadian protection regime can create or increase migrant vulnerabilities. Our practitioner and migrant participants referred to many of the problems identified in our first report. For example, several of them emphasized the challenges in obtaining legal representation in refugee claim proceedings and the increased vulnerability resulting from the refugee claims backlog. While our first report was primarily focused on refugee claimants' vulnerabilities, in what follows, we extend our analysis to other groups of migrants seeking protection. We first discuss how quotas and target numbers imposed by government policymakers can negatively impact migrant vulnerabilities (1). A related concern that follows is the limited availability of external recourse for migrants faced with a negative decision (2). This is followed by an examination of how the absence of measures allowing for the appointment of designated representatives in IRCC or CBSA proceedings can be detrimental to the interests of the vulnerable migrants appearing before the IRCC or the CBSA (3). Finally, we discuss how the lack of settlement and free legal services for migrant workers can have negative consequences for them (4).

6.1. Quotas or target numbers imposed by policymakers

As was discussed earlier (Chapter 5), delays in case processing and decision making were seen by migrant and practitioner participants as exacerbating migrant vulnerabilities. In Canadian administrative law, undue delay is an aspect of procedural fairness (see for example the latest Supreme Court decision on this topic in *Saskatchewan v. Abrametz* (2022) SCC 29), but it has also been long recognized that it is very difficult to balance the competing interests of fairness and speediness in immigration or asylum proceedings (see e.g. Yeates, N. 2018). While civil servants are aware of this challenge, some highlighted the pressure from their institution to render fast decisions and meet targets while alluding to the fact that such pressure could have negative repercussions for both applicants as well as immigration officers assessing claims.

Of particular concern were the quotas imposed by leadership or the target numbers identified by government policymakers. While decision-makers from the IRB asserted that it was unethical to make a quicker decision for their own administrative convenience and that one should not compromise either quality or quantity in terms of decision-making, other interviewees drew attention to the fact that the quotas established did not take into consideration the level of difficulty of individual cases. Thus, while the quotas should not impact the outcome of a procedure, the human element of decision-making means that they may very well be a consideration when making decisions, such as whether or not to hold an in-person hearing or to request additional documentation. Similarly, the establishment of higher targets for admissions set by the government without adding additional human resources was identified by some interviewees as potentially having an incidental impact on the decision-making process (for more on this topic, see also Delisle and Nakache, 2022). Indeed, in situations where decisions are made more quickly and with more limited resources, the possibility of errors is increased. In this context, recourse for negative decisions becomes even more important. However, as is discussed below, the remedies for applicants faced with a negative decision regarding their claim for protection are very limited.

6.2. Limited recourses for migrants with a negative decision on their claim for protection

Since legislative changes came into force in 2012 (through Bill C-31), there are greater restrictions limiting access to other immigration procedures for a certain period for most failed refugee claimants. More particularly, refused refugee claimants are prevented from applying for a Temporary Resident Permit (TRP), a Pre-Removal Risk Assessment (PRRA) or Humanitarian and Compassionate (H&C) consideration until one year has passed since either the date of their last negative decision by the IRB on their refugee determination, or since the date of the last negative decision by the Federal Court concerning their application for leave or judicial review of the IRB decision (IRPA, s. 25(1.2)(c)); IRPA, s. 112(2)(b.1) & 112(2)(c)). As highlighted in our first VULNER report (Kaga et al., 2021 p. 24), this one-year bar raises serious concerns that the migrants could be removed from Canada without having a timely risk assessment done, irrespective of whether new evidence or new risks have arisen, or new information become available since their refugee hearing. In the case of an H&C application, which is processed in two stages, it is also worth noting that there is no stay of removal for those under a removal order who are awaiting a Stage 1 decision: they must leave on or before the date stated on their removal order, unless they apply for—and successfully receive—a stay of removal from the Federal Court, which is very unlikely.¹³ This is concerning given the long waiting times mentioned in Chapter 5 (i.e., usually more than 12 months for a Stage 1 determination) and since the IRCC does not always communicate those Stage 1 decisions in a timely manner (for more on this topic, see Delisle and Nakache, 2022, p.13). As this lawyer participant explained:

“Il y a aussi le fait que la demande humanitaire est impossible pendant le traitement d’une demande d’asile, alors que ce sont deux études ou deux considérations complètement différentes. S’il y a des motifs humanitaires clés, pourquoi est-ce qu’on ne peut pas soumettre une demande à motif humanitaire en même temps que le demande d’asile? Et, le cas échéant, on pourrait se désister de la demande d’asile si la demande humanitaire est acceptée, puis voilà. Donc, ça aussi, c’est ridicule parce que la Commission ne cesse de répéter, de toute façon, qu’il n’y a pas de compétences humanitaires à la Commission (...) donc, dans ce cas-là, pourquoi est-ce qu’on interdit de déposer une demande humanitaire? Ça, c’est aussi une problématique. Et, évidemment, sauf exception, on n’a pas le droit de demander l’humanitaire dans l’année qui suit le refus de la demande d’asile (...) Pourquoi? Ça n’a aucun rapport. Pourquoi est-ce que ça existe même, cette interdiction-là? C’est un problème en soi.” (Lawyer 24, Quebec, 2021/07/28).

Noting that “economic migrants can get landed in under six months,” and that humanitarian cases “can take five years”, another lawyer suggested that if Canada had an “effective humanitarian program,” it would prioritize the cases of people who have already contributed because they are already in the country:

“We have a lot of people in this country who have, from children onward, who have grown up here or lived here for many, many years. That’s the other thing that bothers me about Canada. It’s this kind of moralism. We have Dreamers. What are we doing about Dreamers? We’re talking about those poor Dreamers in the US, but who in Canada cares about the ones that we have here? Not at all.” (Lawyer 5, Ontario, 2021/06/10)

¹³ H&C claim is processed in two stages. First, a humanitarian and compassionate assessment of the requested exemption(s) is completed. The immigration officer assesses the application to determine whether H&C considerations justify the granting of the requested exemption(s) from the requirements of the IRPA or of the Immigration and Refugee Protection Regulations. A positive Stage 1 assessment puts into effect a stay of removal (s. 233 of the IRPR) and allows the applicant to request a work permit, a study permit, or both (s. 207(d) and s. 215(g) of the IRPR). Second, a final decision is made on the permanent resident application (Stage 2).

A related concern is that, except for most failed refugee claimants who can appeal to the Refugee Appeal Division of the IRB¹⁴, judicial review is the only way for other migrants in need of protection to correct errors made by IRCC or CBSA in immigration decisions. More particularly, refused applicants may file an Application for Leave and for Judicial Review of the refusal at the Federal Court of Canada if they believe that the decision is unreasonable (i.e., that there is an error in the decision-making process). However, the deadline to file a leave application is very short (15 days from the date that the refusal letter was received) and the Federal Court process can take many months. It is also worth noting here that the Federal Court process comprises of two steps: first, the leave application (permission to go to court) and second, the judicial review hearing. It is only if applicants get permission (which is rarely granted) that they can argue their case within a hearing at the Federal Court. If the hearing is successful, then the refused application is generally sent back to the IRCC or CBSA office for a redetermination based on the Federal Court decision. A successful judicial review cannot be conducted without the assistance of an experienced lawyer who can carefully determine if it is worth contesting the decision and who ensures that the file is processed correctly (see Delisle and Nakache, 2022; Rehaag 2012; Nakache and Blanchard 2014) . In certain cases, such as with respect to the assessment of overseas applications for resettlement, it is highly unlikely that an application for judicial review could even be made (Thériault, 2020). As one civil servant noted:

“The vast majority of our cases are never going to go before the federal courts. Government-assisted refugees don’t have the resources to file judicial review, and they’re often the most vulnerable cases we deal with, and therefore we have a special obligation to make sure that we’re being extremely fair in the way we implement our decisions. It’s also the case that a refusal from Canada will likely lead to a refusal from other countries, if those cases are referred elsewhere. So we’re kind of the last hope for these people, and I need them – my officers – to understand that when they’re making decisions” (Civil Servant 9, 2021)

In sum, the above policies are seen as additional factors contributing to the uncertain environment for migrants described earlier (see Chapter 5) and as having particularly challenging implications for those who are vulnerable among them. This is particularly concerning given the time, effort and money applicants put into their claim for protection.

6.3. No designated representative in IRCC or CBSA proceedings

In Canada, pursuant to s.167(2) IRPA, a ‘designated representative’ must be appointed by the Immigration and Refugee Board to assist an unaccompanied child or an adult who is unable to appreciate the nature of the proceedings due to mental illness or cognitive issues. The designated representative is appointed to ensure that the interests of the person appearing before the IRB are protected during the proceedings. Unfortunately, and as already noted in our first VULNER report (Kaga et al., 2021 pp. 45-46), designated representatives are only available at the level of the IRB. There is no such designated representative in IRCC or CBSA proceedings. This, according to the lawyers we interviewed, is very problematic:

“There’s no legal mechanism to have a designated representative appointed when it comes to a PRRA. There’s no mechanism to have someone appointed. The same thing with humanitarian and compassionate applications and TRPs. All of those immigration processes and applications, which are made to IRCC or ministers delegate, there is no statutory authority to allow for a litigation guardian to be appointed under the immigration law. And the Public Guardian trustee says they have no jurisdiction. And so, this

¹⁴ In Canada, there are 5 specific groups of refugee claimants who are barred from accessing the Refugee Appeal Division. For more on this topic, see our first VULNER report (Kaga et al., 2021), section 6.3 (page 53).

particularly matters for some of the most vulnerable migrants (...) Let's just take the example of the person who (...) immigrated as a child in their 20's. Some serious psychiatric disorder manifests itself. Maybe they get involved in the criminal justice system. If they are unable or choose not to, or what have you, avail themselves of any process intentionally. The deportation process just unfolds with its own momentum. Someone - one day, they'll reach the end of the process, an officer will walk in and say, "Do you want a PRRA"? And they may say yes, they may say no, they may do nothing. And if they don't actively apply for a PRRA, deportation, we'll just proceed. I think that when the CBSA serves a PRRA on someone who does not have capacity to understand what that PRRA is, there should be a legislative regime to ensure the appointment of a litigation guardian. To make sure that someone [who doesn't have the capacity to understand the decisions (...) does not get deported]" (Lawyer 12, Ontario, 2021/08/23).

"And sometimes, Humanitarian and Compassionate applications take some time to put together, so some months, you're working with them, and that keeps getting worse and worse, and then I've had, or see cases where they come to a point where let's say we're ready to file, we have everything, we worked with them and their family members. They just don't have the cognitive ability to understand the forms anymore. They don't have the physical... I have a client who physically can't sign and also has dementia. So, it's just like double, right. At least in the refugee context, I could say, "Look. Here's the doctor's letter or the medical records. We need a designated representative. We need the Vulnerable Person—" (...) There are things that we could do for them. But the humanitarian and compassionate, it's not that simple (...) And it's actually something that (...) we're struggling with right now. It's, like, a power of attorney. It's other legal processes, which just complicates the whole situation a lot more. So, I would say, in other contexts as well, apart from the Refugee Protection Division, the kind of vulnerabilities, with cognitive issues, are very lacking in policy or guidelines, or there's nothing really to guide us as practitioners, outside of the refugee context" (Lawyer 9, Ontario, 2021/07/13).

As powerfully illustrated by the above quotes, the consequences of a lack of proper representation can be devastating in such circumstances. Since designated representatives are essential players to ensure that vulnerable persons understand the process and make decisions in their best interests, they should be available in any immigration proceeding, not only at the level of the IRB.

6.4. Lack of settlement services and free legal assistance for temporary migrant workers

As discussed in Chapter 5, migrant workers, especially those admitted under the Temporary Foreign Worker Program, are seen by many of our participants as a "particularly" vulnerable group of migrants. A theme that emerged regularly from our interviews with practitioner and migrant participants was limited government funded services for these workers.

In Canada, except for Quebec, which has sole responsibility for delivering integration and settlement services within its own borders, the federal government sets eligibility criteria for settlement programs and for managing the delivery of these programs in all provinces and territories. Yet it is not the federal government that delivers those services: federally funded settlement services are delivered by provincial, nongovernmental service provider organizations (SPOs) through quasi-contractual agreements. Federally funded settlement services are only available for refugees and newcomers: temporary migrants, such as international students and temporary migrant workers, and out of status migrants cannot not access such services (for more on this topic, see Nakache and Dixon-Perera 2015). One former migrant worker, previously on an open work permit, who is currently out of status shared her experience of the financial burden resulting from pregnancy and birthing a child with Down's syndrome without access to health care:

“It’s just me and my partner. So when I first knew that I was pregnant and then I do the prenatal checkup (...) they asked me to do a deposit of \$5,000.00. It was first around \$15,000.00 but my family doctor had helped me [a bit so] the amount could be lessened. So, all the checkups have been paid by me personally, and then all the laboratories’ tests since then (...) The bill now reaches around \$56,000.00” (Migrant 23, Alberta, 2021/12/23)

Some provinces have stepped in to provide orientation and settlement support to migrant workers, but the result is a great variation between provinces in the field of service provision for migrant workers, which makes it particularly difficult for migrants to reach out to the right persons. For example, one migrant worker previously on a closed work permit, and now without status, recounts their experience with one of the SPOs in Saskatchewan.

“Yeah, they said that I should talk to [someone]. And then when I talked to [that person], she said “we cannot help you because it’s [a problem with the immigration]” (Migrant 22, Saskatchewan, 2021/12/03).

It is also worth noting the essential role played by religious and ethnic communities, which have come together to organize aid packages for migrant workers in their local communities.

“There’s a Filipino community in Calgary. First, they give me that cheque, 492 to rent my house every month. Because my wife here is very... struggles to find our, to find the rest of the money because she’s the only one working and her work is just only part time because of pandemic.” (Migrant 17, Alberta, 2021/10/18 (Without Status))

In Alberta, the provincial government directly provides some services to migrant workers. There are also specific SPO-delivered services for migrant workers, funded by the provincial government or by foundations. One of these services is providing information sessions for migrant workers, a service that is not available in all other Canadian provinces. Several practitioner participants highlighted the crucial importance of providing information sessions for migrant workers in Alberta. They noted the language barriers that migrant workers face upon arrival, and their lack of knowledge on Canadian laws, policies, and institutions. Without access to proper information sessions, migrant workers remain unaware of their rights and receive misinformation from unreliable sources. This practitioner participant told us:

“Being informed is a big challenge. And from information you become empowered. So if you don’t know the correct information then it’s really a big issue. So our migrant people will tell us this, “Oh, according to da, da, da, oh my friend – oh, my co-worker said this.” “That’s not right. Where did you get that information?” So that’s why it’s important for you to attend da, da, da, da and it’s the government speaking here so we are sure that this is the correct information” (Practitioner 14, Alberta, 2022/02/04).

Another practitioner highlighted that many migrant workers have low literacy rates and are not able to speak English well. Therefore, information sessions provided by their organizations accommodate migrants’ language needs by hosting workshops with interpreters and picture-heavy presentations (Practitioner 15, Alberta, 2022/02/08).

Even if Alberta does better than many other provinces in their service provisions to migrant workers, there was a widespread agreement among all participants that the lack of free legal assistance is an important service gap for migrant workers across Canada (on this topic, also consult our first VULNER report), leading many migrants to pay thousands of dollars to unscrupulous third parties (recruiters, lawyers, or

immigration consultants) for poor immigration services. In our interaction with migrants, many of them expressed frustration on the lack of and expensive nature of acquiring reliable legal representation. One migrant explained to us that they paid so much money to an immigration consultant for the restoration of their immigration status that they could not pay the fees to process another visa:

“And then I applied for restoration through him. I had to pay him a lot of money. So, when I got the restoration, I got the restoration for only four weeks. I only had four weeks to put in for that study permit because I did not know what else to do. So, I asked a friend to put in for that school permit for me. And they refused it because I don’t have any money to pay again because that immigration consultant took so much money out of me. I don’t have any money” (Migrant 21, Saskatchewan, 2021/12/01).

As noted elsewhere (Nakache and Dixon-Perera, 2015), research has well illustrated the negative consequences for migrant workers who are unable to access settlement services, including social exclusion and social isolation. It is also now acknowledged that, when migrant workers experience these difficulties, the effects linger even after the transition to permanent residence (when permanent residence is available for migrant workers, which isn’t the case in all provinces). The federal government seems increasingly aware of this problem and has recently taken some important measures to improve the situation of migrant workers. During the COVID-19 pandemic, the federal government provided funding to five SPOs across Canada to support workers affected by COVID-19 (ESDC, 2022a). In May 2022, the federal government launched the Migrant Worker Support Program aimed at providing funding to specific organizations, with the objective of “supporting migrant workers in Canada to learn about and exercise their rights” (ESDC, 2022b). These are important steps in the right direction, but only a very small number of SPOs are currently eligible to receive funding from the federal government to assist migrants. Directing funding to more SPOs and broadening migrant worker eligibility for free legal services would therefore greatly contribute to reducing migrant vulnerability.

VII. CONCLUSION

In Canada, there is an increased recognition of ‘migrant vulnerability’ in government policy making related to refugees and asylum seekers, migrant workers being abused in relation to their job in Canada, and victims of human trafficking; all of whom may be provided with pathways to temporary or permanent protection (and status). In addition to these protection mechanisms for vulnerable migrants, legal and policy documents recognize that certain migrants (including for example immigration detainees, unaccompanied minors or, more recently, undocumented migrants) may experience heightened vulnerability during their interactions with the Canadian government. The specific situation of each of these migrants must be taken into consideration in the proceedings affecting them and thus the procedural accommodations vary widely across immigration and asylum proceedings.

Our first VULNER report, which was solely based on desk research data, revealed that ‘vulnerability’ is an unclear and often ill-defined concept in Canadian law and policy. This, as we noted, raises critical questions regarding how “vulnerability” is understood and assessed by decision makers involved in immigration and asylum proceedings. In this second report, which is based on interview data, we have discussed how vulnerability is addressed and accommodated within the claims for protection, according to civil servants and practitioners, and hence have refined the findings from our first report. Civil servants were asked how vulnerability impacts both the procedures and outcomes of the decision-making process and their answers varied significantly depending upon the program line in question. Broadly speaking, the recognized vulnerabilities of migrants seem to be a substantive factor in the outcome of decisions in the context of the following applications: humanitarian and compassionate (H&C) claims, open-work permits for vulnerable worker (O-WPVW), temporary resident permits (TRP), and overseas resettlement applications. This can be contrasted with the narrower approach adopted for in-Canada asylum claims, where the impact of vulnerability is primarily procedural. The flexibility that decision makers have in accommodating the vulnerabilities of refugee claimant applicants during the in-Canada process is a source of frustration for legal professionals seeking procedural accommodations for their clients, especially since securing a psychological report (as support for a request for accommodation) is particularly difficult. These legal professionals also shared concerns around the role of Board decision-makers in making a medical assessment beyond their legal expertise. Finally, although this was not acknowledged as such by any civil servant interviewees, we have shown in this report how the high level of discretion in certain applications, which allows for flexibility but also results in uncertainty and unpredictable outcomes, can be a contributing factor to the vulnerability of migrants that arises from their interactions with civil servants. Two related concerns which can negatively impact migrant vulnerabilities are quotas and target numbers imposed by government policymakers on decision makers and the limited availability of external recourse for migrants faced with a negative decision.

In this report we also identified key factors of vulnerability in migrants’ lives. Immigration status and health were reported by all groups of participants as intersecting factors of vulnerability. And a key theme that also emerged from our interviews with migrants and practitioners was the unique vulnerability of migrants without status (i.e., undocumented migrants) and migrants admitted to Canada under the Temporary Foreign Worker Program (i.e., with a work permit that “ties” them to a specific employer). At a personal level, our migrant participants identified family as a factor that can either reduce or exacerbate their vulnerability. In regard to migrants’ interactions with various key stakeholders, unscrupulous lawyers/ immigration

consultants and long delays in immigration proceedings were reported as factors that also exacerbated vulnerability. Finally, the absence of measures allowing for the appointment of designated representatives in IRCC or CBSA proceedings, and the lack of settlement and free legal services for migrant workers, were identified by interviewees as increasing migrant vulnerabilities.

We offer several policy recommendations that address key issues identified in our report and that, we believe, will greatly contribute to reduce migrant vulnerabilities. Some recommendations may be easier to implement than others; however, each deserves reflection given the findings of our research. Note that some of these recommendations have already been made elsewhere (see e.g., Nakache et al., 2021; Nakache and Dixon-Perera, 2015).

Among the relatively concrete and attainable recommendations, we suggest the following: expanding the mandate of a ‘designated representative’ to all immigration proceedings; addressing all backlogs through the hiring of immigration officers and ensuring that claims for protection from vulnerable migrants are subject to priority processing¹⁵; removing the employer-specific or “tied” work permits and replacing them by sector/regional work permits; directing more federal government funding to nongovernmental service provider organizations (SPOs) that offer assistance to migrant workers and broadening migrant worker eligibility for legal aid; introducing an inclusive and easy to apply regularization program for migrants who are currently without status in Canada¹⁶.

Among the recommendations that require further study and discussion, we suggest: allowing migrant workers of all skill levels to bring their family members to Canada; expanding legal aid so that migrants are not left to navigate complex claims for protection without representation; developing effective and just oversight and appeal mechanisms to ensure the consistent application of existing guidelines by decision makers; ensuring that the training of decision-makers is closely followed by independent and publicly accessible monitoring and evaluation of the decisions being made; and developing tools for key stakeholders aimed at implementing an individualized, trauma-informed approach to meeting the needs of migrants with specific vulnerabilities (instead of assuming a standardized approach that works for all, especially in cases involving mental health).

Although these recommendations would necessitate an extensive re-imagining of the current protection framework, the resulting benefits to the integrity of the Canadian migration/asylum system, Canada’s international reputation, and the experience of individual migrants would far outweigh the costs.

15 In August 2022, the Minister of Immigration, Refugees and Citizenship Canada announced (IRCC, 2022b) that 1,250 new employees will have been hired up by the end of the Fall of 2022 to increase the government’s “processing capacity and tackle the backlogs in the short term”. This is a first step in the right direction, but the resources should not be solely focussed on processing permanent resident applications from members of the economic class (i.e., skilled workers).

16 In December 2021, Prime Minister Trudeau instructed the Minister of Immigration to “explore ways of regularizing status for undocumented workers” (Office of the Prime Minister, 2021). However, at the time of finalizing this report (October 2022), it is still unclear which regularization program will be introduced. Ministry officers have approached several advocacy groups in recent weeks and over the summer of 2022 to consult them on the program, but potential criteria and a launch date are still unknown.

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