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Compatible Compacts? The "Social Life" of Vulnerability, Migration Governance, and Protection at the Zimbabwe–South Africa Border

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Abstract

The central argument of this paper is that interventions of humanitarian organizations at the Zimbabwe–South Africa border reveal the importance placed on making very clear distinctions between those needing protection and those who do not. This is the case even in times wherein migrants have other protection needs that fall outside these boundaries or intersect with those of others. These boundaries are retained in the stable definitions of migrant in/vulnerability that have been legitimized by the increased emphasis of two separate frameworks: one, the Global Compact for Safe, Orderly, and Regular Migration (GCM) for managing migration and the other, the Global Compact on Refugees (GCR) that determines a set of stable norms for international refugee protection. These mandates are also connected to other tidy, established identities of vulnerability that pertain to gender, health, legal standing, and persecution. In contexts marked by conflicting and overlapping experiences for persons on the move, and mixed migration flows, these ideas are unstable as a way of governing migration. This is because they can also reproduce and intensify social divisions that may lead to inconsistencies and unethical practices in international protection and migration governance for irregular migrants, as well as failures to respond to "the 'social life' of vulnerability." We propose this novel concept in the paper to capture and reimagine the limits and possibilities for protection.

Keywords: migration, borders, refugees, vulnerability, global compacts, governance

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INTRODUCTION

From around 2007, the border town of Musina became a base for several non-governmental organizations (NGOs) and international non-governmental organizations (IGOs) that began to slowly move there to establish their presence by opening local offices and building capacity. This was in response to the crisis in Zimbabwe that left many with little choice but to leave in search of livelihoods and protection. This context is well presented and documented by scholars (Rutherford, 2008; Bourne, 2011; Compagnon, 2011; see also Bolt, 2012; 2016). Migrants who came to, or through Musina had access to a range of service providers, including local and international NGOs, faith-based organizations, legal service providers, local civil society organizations (CSOs), humanitarian organizations, health care providers, and governmental and intergovernmental organizations (Amit, 2012: 8). The programs of these organizations were framed mostly along the lines of addressing the perceived vulnerabilities of migrants, but other categories of vulnerability such as unaccompanied minors (pregnant unaccompanied minors, physically or intellectually disabled unaccompanied minors) and survivors of sexual and gender-based violence were also incorporated (Amit, 2012). With the government not assisting these migrants – at least in the beginning – these non-state and international organizations began to provide immediate humanitarian services (Vanyoro, 2024).

In recognition of the increased numbers of cross-border migrants arriving in Musina, the Department of Home Affairs (DHA) opened a Refugee Reception Office (RRO) in 2008. Zimbabwean cross-border displacement has resulted in many migrants remaining in Musina for extended periods of time while waiting for asylum documentation; particularly as the town was – initially – ill-equipped to respond to this increasing migrant population (Nel, 2016). Recent years have seen increasing numbers of NGOs and IGOs opening local offices. The International Organization for Migration (IOM) opened an office in 2007 and the United Nations High Commissioner for Refugees (UNHCR) established an office in 2008 (Amit, 2012). Since 2007, responses to understand and address the legal, humanitarian, social, and medical needs of migrants in Musina have developed. These responses have evolved to include coordination and collaboration between governmental and non-governmental actors, such as the development of bilateral responses between South Africa and Zimbabwe.

Our analysis is limited to the programming of two local NGOs in Musina: one providing migrants with legal assistance and the other offering social assistance. Both are doing so in their capacity as UNHCR implementing partners, which became more necessary after UNHCR closed its field office in the area in December 2019 (Vanyoro, 2024). The central argument of this paper is that the interventions of these organizations reveal a well-mannered yet problematic humanitarian response that highlights the importance placed on clearly distinguishing between those who require protection and those who do not. This was the case even in times where migrants had other protection needs that fell outside these boundaries or intersected

with those of others. These boundaries, this paper argues, are retained through the stable definitions of migrant in/vulnerability that have only been strengthened and legitimized by the two – very separate – global compacts. Whereas one, the Global Compact for Safe, Orderly, and Regular Migration (GCM) focuses on managing migration, the other, the Global Compact on Refugees (GCR) aims to strengthen existing norms for international refugee protection. These mandates are also connected to other tidy, established identities of vulnerability that relate to gender, health, legal standing, and persecution.

In the South African context, which is marked by conflicting and overlapping experiences for persons on the move (Vanyoro, 2023) and mixed migration flows, these ideas of vulnerability are unstable as a way of governing migration because they can also reproduce and intensify social divisions, both among migrants as well as in the communities they live in. This paper demonstrates that this tension can lead to inconsistencies and unethical practices in international protection and migration governance. It can also result in failures to respond to what the paper refers to as "the 'social life' of vulnerability," which we observed as a key characteristic of this border town. This is a concept we use to capture how responses to the disconnect between single points of rights violations, such as lack of documentation, can lead to conditions that permeate society to the extent that it puts migrants in a position of making decisions that can create more forms of risk and vulnerability for themselves or others living in the same space, regardless of their nationality.[4]

In this context, one form of vulnerability is not removed from another, and more vulnerabilities can emerge from the one form to the extent that suffering and living precariously in conditions of risk and uncertainty begin to appear as a natural characteristic of border life. The social life of vulnerability is a concept that exposes the dangers of emphasizing regular legal status in determining protection in contexts where the majority of those on the move cannot access documentation for different reasons. In these spaces, issues of migration have become so banal because of the kinship and conviviality that are disturbed by the border, crudely known as "the devil's fence" (McCullum, 1992), so much so that imposed vulnerabilities take a life of their own in the community because people are trying to exist in a way that challenges this historical anomaly. This banality is not too far from the ways in which this social life serves as a mobilizing force for humanitarian activities because it keeps present the same representation of suffering that gave rise to the establishment of humanitarian government in the border in the first place.

To develop the core argument, this paper begins by laying out its methodology, followed by an articulation of the social life of vulnerability as a concept and how it can be used to capture the indeterminacy and intersections of different kinds of vulnerability imposed on migrants. This section reveals how focusing on specific kinds of vulnerability assumes invulnerability on the part of "others" who reside in the intermediate space of the migrant/refugee binary categorization, in ways that can

[4] We are indebted to a community activist in Musina who brought this understanding to our attention during fieldwork.

present further vulnerability to everyone else. It also presents both the conceptual and practical difficulties of differentiating between people with agency and those without it, considering how the lines between vulnerability and precariousness are blurred in the context at hand. This paper then locates this discussion in the GCM's and the GCR's approaches to this vulnerability. Furthermore, it explores the limitations by using a case study of the programming of two local NGOs: one providing migrants with legal assistance and the other offering social assistance; both do so in their capacity as UNHCR implementing partners.[5] This helps the paper to illustrate how this all plays out on the ground in South Africa. Finally, the paper offers conclusions and insights about rethinking vulnerability as a mode of interpreting humanitarian and border contexts in migration research.

METHODOLOGY

This paper is based on research we did as part of a project titled "PROTECT: The Right to International Protection. A Pendulum between Globalization and Nativization?" Because of the COVID-19 pandemic, we began our research by conducting remote fieldwork, which took place virtually and telephonically in 2021 and consisted of an initial identification and mapping of relevant organizations based on website and document analysis, and preliminary interviews with key informants. Based on the initial mapping, we identified two key actors for more in-depth study: one organization providing basic care services and one focusing on legal assistance. We conducted remote interviews with organizational representatives to gain insight into the role of these actors in identifying and assisting non-nationals whom they considered to be vulnerable or to have special needs. We were also interested in (i) how these representatives interact with other actors and organizations in relation to these populations; and (ii) what understandings of vulnerability – including negotiations on this notion – characterize the assistance provided by and collaborations with other actors. In 2022, with less-restrictive COVID-19 regulations, we conducted in-person fieldwork. This took the form of participant observations and interviews with ten migrants – five serviced by the legal NGO and the other five by the social-assistance NGO.

We complemented this process with consultative engagements and a community workshop in Musina, in collaboration with local organizations, which aimed at upskilling and training community members on issues relating to protection and statelessness. Finally, we completed a desk-based review and discourse analysis of the GCR and the GCM. The University of the Witwatersrand granted ethical clearance (Protocol Number H20/07/45).

[5] We do not extend our analysis to the impact of cross-border officials on the vulnerability of migrants and other categories of cross-border actors that the paper considered, although we are aware that the UNHCR operates within South Africa's immigration framework. Yet even with this being the case, both the UNHCR and the state adhere to the same principle of separating migrants from refugees.

A CASE FOR USING THE SOCIAL LIFE OF VULNERABILITY AS A CONCEPT TO CAPTURE MIGRANT EXPERIENCES IN SOUTH AFRICA

This theoretical exercise aims to illustrate the limitations of dichotomous and linear portrayals and framings of vulnerability, as set out in the GCM and the GCR. We argue that the social life of vulnerability as a concept captures the indeterminacy and intersections of different kinds of vulnerability. It also reveals how focusing on specific kinds of vulnerability assumes invulnerability on the part of others who reside in the intermediate space of the migrant/refugee binary categorization, in ways that can present further risk and vulnerability. For example, undocumented migrant women who have not qualified for international protection in South Africa, can suffer uneven power relations in spousal relationships they develop with South African men because they have very little bargaining and economic power. This can put them in a vulnerable position to abuse and separation. In the latter situation, this may leave them alone with children who, in turn, are undocumented and resultantly are often unable to be admitted into schools or to write exams due to the lack of the requisite documents.

Some vulnerability literature suggests that rigid social hierarchies and fixed identities rooted in legal forms are the results of the frequently gendered vulnerable/invulnerable binary (Cole, 2016). There is, unsurprisingly, a dichotomy between "migrants" and "refugees" settled in public and policy discourse and international legal norms such as the GCM and the GCR; not to mention a bifurcated perception of the experiences of men and women. This distinction is viable for targeted humanitarian interventions, although this does not mean that the work it does should be ignored. This status quo can sometimes mean that migrants who travel erratically and do not fit the strict criteria of the 1951 Refugee Convention or the rules governing labor migration have limited legal rights (Pijnenburg and Rijken, 2021). The only remaining alternative for them is "irregular" migration, as they do not fall into the category of officially recognized "deserving refugees" or into the exclusive group of "desirable" or "deserving" migrants (those who serve an economic interest) (Pijnenburg and Rijken, 2021: 277).

Political camps in the migration world have tried to target those identified as being susceptible by creating two strict regimes. Responses to "displaced populations" largely refer to a kind of vulnerability that denotes "a range of negative conditions, disabling qualities and diminished capacities including underdevelopment, abject poverty, conspiracy, violation, injury, harm, weakness, susceptibility, fragility, deficiency, dependency and helplessness" (Cole, 2016: 264). This framing is related to the portrayals of the refugee as a figure of "bare life" in forced migration literature (Bauman, 1990; 2002; 2013). These "wasted lives" give vulnerability its figure as "a shortcoming, an impending failure" (Cole, 2016: 264). This means that while the condition of refugee vulnerability presents protection needs, it is also conceived "as a condition best avoided," which also turns it into a problem or a "burden" that must be

minimized, such that the best way to contain its fecundity is "through various forms of securitization" (Cole, 2016: 264).

Working with Cole (2016), we clearly see the paradoxes of responding to refugee vulnerability because it can slip to a place of trying to protect the host community from succumbing to its own preconceived vulnerabilities. In this way, vulnerability takes on a life of its own, to defend and award limited resources. In an attempt to protect themselves from impending vulnerabilities, host societies can create vulnerability for others by marking them as dangerous to it (i.e., criminals or "illegals"); an act Cole interprets as "biopolitical securitization." This paper shows that this is the political consequence that the framing of the well-intentioned GCM has for groups outside the connoted norm of what it has defined as political "order" in the international system.

This analysis can be extended to the migration governance regime of South Africa. It appears to rationalize policies that are difficult to navigate amid a slow bureaucratic system that is not helped by strict visa regulations. Acting based on the securitization of most forms of cross-border migration and national interest, these systems thrive on the presumptive basis that poor, black, African migrants moving to South Africa are a threat. They are regarded as a burden and blamed for the poor service delivery of the social protection system and social services, which should be reserved to address the concerns and interests of the black citizenry. In a context where corruption runs amok, measures like Growth, Employment and Redistribution (GEAR) (1998), Accelerated Shared Growth Initiative for South Africa (ASGISA) (2006), the New Growth Path (2010), and, most recently, the Economic Redistribution and Recovery Plan (2019) have not reduced poverty and unemployment to the extent that they should have (Vanyoro and Musyoka, Unpublished). Immigration has featured prominently in the election manifestos of opposition parties like the Democratic Alliance (DA) and ActionSA.

Guided by this rationality, the South African state has been aggressive in its response to protect its own interests by ensuring that visa application processes are inaccessible to the poor. Would-be migrants applying for long-term visas are required to show guarantees that they will be self-sufficient, be it in the form of medical aid, job offers or contracts, security deposits, and proof of sufficient funds. These arrangements are inherently elitist, hence exclusionary to poor migrants. In this gatekeeping process, these groups are marked by proxy as more likely to be economically vulnerable because of their class through a process of suspicion meant to uncover their hidden identities and agendas.

This reproduces a further position of vulnerability that emerges from being in the country without legal status. Such migrants move below the radar, undetected and evading spot checks, arrest, and deportation. In certain instances, this may entail hiding from social protections or services meant to improve their immediate material circumstances that would not necessarily require documentation to access, often in fear of arrest, deportation or further victimization. Victims and potential victims of

xenophobic violence may, for example, rely on social networks and local protections, or, if none exist in the nearby vicinity, "suffer" in silence.

Atak et al. (2018) argue that in this instance, migrants are being rendered vulnerable by state authorities. However, while useful, this understanding requires further engagement with how this vulnerability takes a life of its own by creating a condition of illegality that affects other strands of well-being such as livelihoods, to the extent that those who occupy liminal border spaces in poor, low-income households (like the shacks in Campbell in Musina) live with it in their daily lives and distribute it in shared border spaces. In such spaces, residences already have a short supply of electricity, running water, and good waste disposal due to the withdrawal of mining capital (Chiguvare, 2022).

In this context, the lines between vulnerability and precariousness may also become blurred. The term "precariousness" in the literature is used to indicate that a large portion of the migrants' "vulnerability" is policy-driven, rather than related to their fundamental traits (Atak et al., 2018: 4). It suggests that it is critical to distinguish between vulnerability and precariousness, since doing so enables discussion of precariousness' manufactured nature and the state's influence in it (Atak et al., 2018: 4). This conception also emerges because some scholars stress vulnerability as "potentiality" or "constitutive." According to Cole (2016), however, there is a risk of blurring the (temporal) line between a general susceptibility to damage and the actual harm that particular people and groups are presently experiencing. We argue that there is also a point at which people's present experiences of vulnerability become a fundamental trait that is most often characteristic of the liminality that comes with being put in a position to reside in limbo. With it comes a certain way of life that relies on the vulnerability that the individual would like to be addressed.

This scenario invokes the sheer spectrum of vulnerability, such that it cannot be captured by a single ideal position. It is here that we argue for the need to think of vulnerability less as a fixed social condition but more as relational: a lived experience that involves people experiencing social harm due to structurally determined susceptibility to social harm as a result of limited access to resources (e.g., services, social support, social protection). Additionally, this entails acting in harmful ways that are potentially generative of different kinds of undesirable social conditions for other social groups. This also means that the individual is not inherently vulnerable because they arrive in Musina as a migrant or asylum seeker, but rather that they begin to experience social harm because of limited access to resources. This interpretation suggests that focusing only on specific categories of vulnerability in humanitarian programming is not the most useful way to respond to social problems faced by groups like migrants, asylum seekers, and refugees living in already poor communities. The GCM and the GCR thus are likely to be problematic in such contexts, as we discuss below.

THE GLOBAL COMPACTS AND VULNERABILITY

How do the global compacts address the question of vulnerability? This question arises from a context where global CSOs involved in the policy process that gave rise to the compacts expressed optimism about their potential significance in national migration governance. With the Dhaka Global Forum on Migration and Development (GFMD) focused on making a case for a compact for migration, the one that followed it in Berlin (2017) was preoccupied with a focus on designing this social contract on "safe, orderly and regular migration." The outcome was a comprehensive but non-binding global agreement on a shared pathway for the management of migration called the GCM. After states sat side by side during the intergovernmental negotiations phase that led to the New York Declaration to negotiate and come to an agreement on specific wording on international migration, the GCM was ultimately endorsed by the United Nations (UN) General Assembly on December 19, 2018 (Schierup et al., 2019). Also following the New York Declaration and two years of comprehensive consultations with Member States, international organizations, refugees, civil society, the private sector, and experts under the direction of the UNHCR, the UN General Assembly also approved the GCR on December 17, 2018. The GCR recognizes that without international cooperation, a durable solution to refugee crises cannot be accomplished, so it provides a framework for more equal and predictable responsibility-sharing (UNHCR, 2018).

On both fronts, it still remains to be seen whether the compacts will in the long term be engaged by local and national actors, particularly policymakers, with the seriousness the authors feel they deserve. Certainly, there was optimism expressed in the preparation of the GCM's ultimate adoption in Marrakech when civil society was tasked with the role of taking the GCM to local and national levels. This air of hope has been countered by concerns about the fitness of these documents for local contexts; that is, how compatible the compacts would be for different geographic and political spaces. While the emergence of the GCR and the GCM has brought to light the crucial role that global governance can play in national-level international protection and migration governance, as explored below, it has also strengthened and given legitimacy to the efforts opposing the claimed difference between "migrants" and "refugees" in the "vulnerability chain." This linear and dichotomous approach does not engage adequately the complex social life of vulnerability described above.

The GCM represents a "remarkable advancement" in international collaboration since it is the first agreement encompassing a broad range of migration issues to be negotiated at the intergovernmental level on a global scale. The discussions that preceded these negotiations included several topic consultations and a stock-taking exercise. The GCM is clear from the outset about the fact that migrants and refugees are two different populations that are governed by two different legal systems. It recognizes that the unique international protection that is outlined in international refugee law is only available to refugees, so it uses the term "migrants."

The extent to which migrants and refugees are distinct groups governed by separate legal frameworks is, however, questionable as argued previously.

The GCR is a response to "an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees" (UNHCR, 2018: l). With the help of other pertinent stakeholders and all UN Member States, it aims to provide a foundation for predictable and equitable burden- and responsibility-sharing. The very obvious connotation at the core of the GCR's guiding principle is the notion of "burden-sharing," which rightly captures the stated observation that without international cooperation, it will be impossible to adequately address refugee issues because granting asylum could cost some nations excessively (UNHCR, 2018). The GCM also sets out, among others, "shared responsibilities" and unity of purpose regarding migration, making it work for all.

This terminology, particularly in the GCR, nevertheless and perhaps unintentionally, implies that host states and their economies are vulnerable to refugees. This in turn runs the risk of turning the refugees' vulnerability against them while at the same time trying to strengthen "solidarity with refugees and affected host countries" (UNHCR, 2018: 2). It is also more likely that this framing will influence how the local community view refugees, especially if they are not willing to extend the benevolent act of "a generous approach to hosting refugees." The GCR "is entirely non-political in nature, including in its implementation, and is in line with the purposes and principles of the Charter of the United Nations" (UNHCR, 2018: 2). This political aloofness is also a questionable approach to a document that is trying to address issues related to vulnerabilities that are political in nature, particularly the precariousness that immigration policies help produce.

In the context of South Africa and COVID-19, state-wide lockdowns and the resulting loss of jobs and income, saw the accountability of the state toward migrants and refugees become even more limited (Mukumbang et al., 2020). As a result, civil society has not seen much in the way of real benefits from the GCM or the GCR filter down to the ground level, in terms of ensuring an inclusive response by the government to COVID-19. Instead, civil society has had to respond to the needs of persons of concern in the country, in many cases, replacing functions of the state to support and protect persons in vulnerable situations. The GCR seems to want to separate questions of vulnerability from politics. Yet as Butler (2012) contends, in addressing vulnerability, we must presume that if the political infrastructure itself is destroyed, so too are the assemblies that rely on it. In short, this shows that politics is at the heart of any kind of discrimination.

The GCR also calls for dedicated efforts to address root causes. According to the GCR, climate change, environmental degradation, and natural disasters increasingly interact with the causes of refugee flows even though they are not causes in themselves. Initially and foremost, it is up to the nations where refugee flows first began to address the underlying causes. It also necessitates early measures to address their drivers and triggers, as well as increased coordination among political,

humanitarian, development, and peace players, to prevent and resolve massive refugee situations, which are of serious concern to the whole international community. This recognition of structural vulnerability is laudable. It is framed in the language of respecting peace, promoting human rights, and resolving global conflict.

However, this does not seem to put in place measures to redress the historical imbalances that continue to structure human mobility, which overemphasizes the situatedness of vulnerability over structural forces. For the GCM, that is rooted in the 2030 Agenda for Sustainable Development, which is framed in the language of development. This is most succinct on GCM Objective 2, which aims to minimize the adverse drivers and structural factors that compel people to leave their country of origin. None of these mechanisms are redeemable on the basis of historical injustices or reparations – a growing call in the decolonizing migration literature.

Vulnerability in both compacts is also framed around specific groups. This, the GCR argues, requires resources and targeted needs that can address specifics needs. Persons with specific needs include: children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse, or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons. In the setting of massive refugee situations, the GCR specifically recognizes that women and girls may encounter specific gender-related challenges that necessitate a change in approach "while also taking into account the particular needs and situation of men and boys" (UNHCR, 2018: 28–29). GCM is also a gender-responsive framework that ensures that the human rights of women, men, girls, and boys are protected throughout the migration process, that their unique needs are adequately recognized and met, and that they are given the tools necessary to act as change agents. In all these instances, there is reticence regarding the distinctions between vulnerability and precariousness, which is problematic, as it is important to be aware of instances in which responses to the victimization of women and girls, often taken as inherent, can create conditions of precariousness for men. LGBTQI+ groups are also not considered.

Legal status is another important consideration in delivering protection. To provide basic support and protection, including for those with special needs, registration and identification of refugees are essential for the persons affected, as well as for states to know who has arrived. For these reasons, the GCR highlights the importance of the UNHCR, working in conjunction with states and relevant stakeholders, to "contribute resources and expertise to strengthen national capacity for individual registration and documentation, including for women and girls, regardless of marital status, upon request" (UNHCR, 2018: 22). In a clinical way, the GCM complements this narrative by emphasizing that, "we must ensure that current and potential migrants are fully informed about their rights, obligations and options for safe, orderly and regular migration, and are aware of the risks of irregular migration" (UN, 2018: 3). This can be discursively read as a warning of moving

illegally if the wrath of the hosts pushes migrants back into dangerous situations. This becomes a way of excluding irregular migrants and legitimizing forms of violence against them such that it reveals how "concern to address one category through the GCM might even eclipse concern to protect another" (De Vries and Weatherhead, 2021: 300). This framework of safe, orderly, and regular migration for the benefit of all is framed as a benchmark for solidarity and "unity of purpose" "in a spirit of win-win cooperation" (UN, 2018: 3).

In sum, it is clear that there are several blind spots in the compacts regarding vulnerability because they strengthen and give legitimacy to the claimed dichotomy between "migrants" and "refugees" in the "vulnerability chain," as well as other binaries of men/women, legal/illegal, etc. As examined next, this linear and dichotomous approach does not engage adequately with the complex social life of vulnerability evident in border areas in South Africa. Instead, the compacts continue to separate questions of vulnerability from politics; show limited awareness of instances in which responses to the victimization of women and girls, often taken as inherent, can create conditions of precariousness for men; and ignore the intersections of different experiences in between the migrant/refugee binary.

UNDERSTANDINGS OF VULNERABILITY IN FIELD-LEVEL GOVERNANCE

So far, this paper conceptually explored a framework of vulnerability and in doing so, introduced the concept of the social life of vulnerability. It also critiqued the two global compacts and their approaches to vulnerability. Now we turn to the case study to show how these ideas manifest in practice. To this end, we consider the interaction between the types of vulnerability described in the GCM and the GCR with the experiences of irregular migrants in South Africa, particularly in how they are articulated in the programming of local NGOs providing legal and social assistance on behalf of the UNHCR in Musina.

It is worth noting that South Africa's two international migration systems provide fertile ground for the incompatible compacts to thrive. Indeed, the UNHCR contributed to the creation of a system that separates migrants from refugees. In 1995, the UNHCR provided the DHA with a suggested draft Refugee Bill based on the Zimbabwe Refugees Act of 1983, which the agency had a hand in drafting (Klaaren et al., 2008). In 1997, South Africa produced a Green Paper on Migration that contained a draft refugee policy. The new refugee policy, which had received a great deal of input from international scholars, had a focus on temporary protection and burden-sharing across the Southern African region (Crush and Williams, 2002; Klaaren et al., 2008). It also recommended separate policy processes for migrants and refugees (Crush and Williams, 2002). While some hailed the final 1998 Refugees Act as a beacon of progressive African-centric legal frameworks (Smith, 2003), others regard the last-minute changes to the Act by the DHA as severely weakening the law. The Act's focus on protecting refugees with official status creates legal and normative gaps for the protection of asylum seekers and other forced migrants (Amit, 2015).

Klaaren et al. (2008) suggest that the primary purpose of the 1998 Refugees Act was to gain control over groups of people who were not covered by the 1951 Refugee Convention's refugee definition. Thus, a tense relationship emerges between the national refugee system and the immigration system. In turn, the Immigration Act (No. 11) of 2002 and its accompanying regulations (the "2002 Immigration Act") has created a highly restrictive immigration regime that assists highly skilled immigrants but closes immigration to most low-skilled workers (Johnson, 2015).

Legal status: Vulnerable "persons of concern"

There are tensions relating to how different actors approach refugee protection in Musina. This includes differing opinions on how to help those most in need. Most noteworthy is how the UNHCR operates and how its funding drives the operations of implementing partners' under-funded and under-resourced local organizations and more independent, more financially viable international organizations. While the kind of vulnerability the UNHCR responds to in its operations is associated with those seeking asylum, it does not really reflect the needs of irregular migrants in Musina. Here, most migrants tend to be undocumented and occupy a space where they do not fit the refugee definition as set out in the 1951 Refugee Convention. The intersections of different kinds of vulnerability with human mobility make it difficult for a UNHCR social assistance implementing partner to respond to the needs of the community they serve, particularly given their broader mandate as a welfare NGO.

We selected a social-assistance NGO for this study because it runs the Refugees and Asylum Seekers Social Assistance Project, which it implements on behalf of the UNHCR. Under this project, it provides social assistance (food vouchers and transport subsidies) to newly arrived asylum seekers and refugees, who are largely from the Democratic Republic of the Congo (DRC), Cameroon, Burundi, Somalia, and Ethiopia. It is also responsible for assessing cases to categorize the vulnerability of individuals, and based on these assessments, it allocates services through material support, psychosocial support, and referrals for refugees and asylum seekers across the Limpopo province.

A requirement from the UNHCR is that the organization only assists migrants who are legally in the country. This creates some conflict, with members of the organization questioning the material difference between Congolese asylum seekers and Zimbabwean migrants. For example, Julie was a 49-year-old woman from Cameroon who arrived in Musina in 2013. She had married in a Catholic union before separating when her husband converted to Islam. Her circumstances forced her to abandon her tertiary studies after spending two years at university. She noted that she left because of the fighting in the family: "I was not having peace – every time fighting, fighting. A relative said, 'If you stay, we are going to lose you and your children.' So, I just decided if I can make things straight here" (*Julie, Musina, September 14, 2022*). Julie left immediately and traveled to South Africa with the assistance of truck drivers who smuggled her into the country without a passport.

She was able to obtain an asylum permit on arrival, but when it expired, she was unable to renew it during the COVID-19 pandemic. She said, "I applied 2-3 times; they didn't reply, so I don't know what to do. Even that document they gave me, it's not for me. How can I say you apply for Cameroon, and they give you DRC?" Thus, at that stage, it becomes very difficult for a UNHCR implementing partner to assist a person like Julie. Nevertheless, "… with the help of this social-assistance NGO, I start[ed] [to make] samosas, but with the grace of God, I leave samosas. I cook from home and deliver [to] Senegal, Nigeria" (*Julie, Musina, September 14, 2022*).

The social workers observed that "people who face the most challenges are the migrant population, not asylum seekers." As "asylum seekers they have an option … they can approach Home Affairs and apply for their documentation. But what about the majority of Zimbabweans, what about the majority of Mozambicans, Malawian[s] and the like?" (*social worker, social-assistance NGO, November 2, 2021*). In such instances, the organization would write motivation letters citing their reasons for defaulting assistance to the UNHCR "non-persons of concern" who are largely undocumented. This was only acceptable to the UNHCR in instances when "non-persons of concern" had critical health-related needs and challenges related to chronic illness or serious injuries. This was the case when there was "a guy who was mauled, who was eaten [bitten] by some dogs; he's from DRC and he is not documented. And because he is not documented, I cannot say, 'I cannot provide you with a service'" (*social worker, social-assistance NGO, November 2, 2021*).

These layers illustrate that only those in extreme circumstances are eligible for help, implying that only those facing extreme danger or death qualify for assistance. Yet even then, assistance cannot be guaranteed. It explains why a Zimbabwean woman at the local Roman Catholic Church Shelter for Women relied on her own "piece jobs" by waiting for cars that came by the shelter looking for women to do laundry for R100, as well as the goodwill of church patrons to afford her sick child's medical care in Pretoria. This was Sandy, a 39-year-old woman from Mwenezi, and a married mother of three, whose husband was in Zimbabwe. She studied up to Grade 7 and came to South Africa regularly to seek treatment in Pretoria for her child who had "a problem with his bones" (*Sandy, Musina, September 15, 2022*).

Sandy had managed to secure shelter at the Roman Catholic Church Shelter for Women. Despite the social-assistance NGO's acknowledgment that all people on the move are potentially vulnerable and while the organization had a large presence, it was inaccessible to the Zimbabwean migrants residing in the transit shelters as well as those in the Campbell shacks because they were largely undocumented. For example, Sandy said, "I just travel through the border by asking the officials to let me in because I don't have a passport and I just want to take my child to the hospital. They also can see the situation. I just have to show them his hospital card, even when I'm coming with him for a review" (*Sandy, Musina, September 15, 2022*).

Those in the Campbell shacks lived in congested and unsanitary conditions, which created other vulnerabilities related to health and education. Chiedza, a

40-year-old woman, arrived in the border town in 2004 from Marange with her grandfather who had cared for her because her parents had died and life became difficult. She arrived at the border without a passport and just walked through, much like Sandy. She went to Venda and worked there until she got married in Musina. She later brought Shamiso (a 20-year-old woman) who had grown up in Musina after arriving there as a child. Shamiso had fallen pregnant as a teenager after dropping out of school because she did not have the required documentation to register for her Grade 12 exams. Reflecting on this experience, albeit appearing unperturbed, Chiedza said that their children could attend school "under the understanding that their papers should be sorted. And it's not all schools that allow this. There are only two schools that allow this. This also means they must walk far to school when there are schools nearby, for example this one is 2 km [away]. They must walk to town. They do not have birth certificates because my child has [a] baby clinic card from Zimbabwe." This also means that they are forced to drop out of school because ultimately, they cannot register for their Grade 12 exams (*Chiedza, Musina, September 15, 2022*). Similar experiences threatened the lives of undocumented children who are born to South African fathers.

The only time that legal status did not really matter was when the social-assistance NGO provided psychosocial support or gave families with large numbers of children preference. These families would also undergo best interest case assessments to determine if the family was at risk or the children were subjected to child labor or exploitation. The Zimbabwean families with undocumented children residing in Campbell also had large families but expressed no knowledge of these services.

Shalimba was from Bukavu in the DRC. She had married in Durban but subsequently divorced. She studied up to Grade 3. She arrived in South Africa in 2009, fleeing the war and applied for asylum. However, having children gave her access to shelter where her children were fed twice a day and one of her children who was four years old attended the shelter preschool run by one of the nuns. "Here I am helpless because of the kids, but in Durban I was a car guard. If they give me money, I can go to Durban" (*Shalimba, Musina, September 14, 2022*). She was waiting for a travel subsidy, with the social-assistance NGO being the most likely people to help when they came by to assess the shelter residents. It was a common thread, as Julie, whose son had been born prematurely and was currently nine, noted how the Catholic church give her rice and cooking oil in times of need. "But this is only because I have [a] child. But if you don't have children, you take care of yourself," said Julie. Hence, she identified having a child as "a special need" (*Julie, Musina, September 14, 2022*).

Legal status also played a key role in the work done at the legal assistance organization chosen for this study. At the time of the Zimbabwean crisis in 2008, the UNHCR gave the office a project on case management, general management, and queue management. The office would facilitate the Zimbabwean migrants' access to shelter, and then advised them to find ways of regularizing their lives. This approach

reveals that the office's understanding of vulnerability is also centered on legal status. The office quickly determined that the main reason these migrants were vulnerable was that there was no reception office in Musina to process their asylum claims, which led them to take riskier routes. Their direct engagement with the DHA saw the opening of an RRO in 2009. Undoubtedly, legal status is an important focus in ensuring that people are documented and protected. However, as discussed above, it is also a gateway to the exclusion of migrants from accessing services provided by the UNHCR implementing partners like the social-assistance organization. For example, Memory, a 42-year-old mother, came to South Africa in 2004 because jobs were hard to find in Zimbabwe. She was recruited at Gate 4 by a white farmer from Beitbridge. He got her a work permit to work on the farm, which would be renewed every six months. From 2005, farmers needed to apply for corporate permits, which allowed them to recruit a fixed number of foreign workers in line with immigration law (Rutherford, 2008). When the farmer's lease with government expired, Memory came to Musina. At this juncture, she resorted to using the asylum system as the only means of accessing documentation (*Memory, Musina, September 15, 2022*). The situation presented by Memory raises all sorts of vulnerabilities that included reducing their lives to living off waste: "We go to the dirt, the dumping site where we look for things that people say have expired and we carry it and come eat it here with our children because we can tell that there is no other way" (*Memory, Musina, September 15, 2022*).

Gender

Gender was also an important consideration on the social-assistance organization's work, with a slant toward an overarching understanding that "women are important." In fact, the NGO appeared to view their vulnerability as greater than that of men, which was then compounded by age and legal status. A social worker found that "women are more vulnerable" because of the circumstances they find themselves in either as primary caregivers, or having other dependents. However, this binary notion of vulnerability is challenged by the narratives and experiences of male asylum seekers in Musina. Raheem was a 36-year-old asylum seeker from Burundi, married with three children and educated up to Grade 12. He came to South Africa in 2018, fleeing political persecution, narrowly escaping an assassination attempt as a member of an opposition political party who refused to join the main one. He considered himself vulnerable, stating that he had five people under his "shoulders" staying with him at the salon and some "Zimbabwean ladies" who occasionally came to ask for bread. "I have a very big responsibility, so I need organizations to come and assist me" (*Raheem, Musina, September 14, 2022*).

Similarly, Manqonqo, a Congolese asylum seeker lived with his wife and son in Musina. He had been waiting for his refugee status determination for nine years, which he only received in November 2022. During our conversation, prior to receiving his status notification, he said: "According to my understanding, all

of us, we are vulnerable … since we don't know anything and since you are in need of anything, meaning you are vulnerable." He defined his vulnerability in relation to his mental health and the anxiety he experienced while waiting for his refugee status, which was ultimately granted in February 2023 (*Manqonqo, Musina, September 14, 2022*).

The conception of vulnerability skewed toward women is also challenged in relation to LGBTQI+ people. When doing their assessments, the social-assistance organization also considered LGBTQI+ people as a risk category. However, when asked if sexual orientation is something that stands out as well in this context in terms of layers of vulnerability from his experience, the social worker indicated that these groups often chose to remain invisible rather than seek protection on that basis. They would either change their claim at DHA or remain in these communities without documentation, oblivious to the fact that this constitutes grounds to claim international protection. This is consistent with a recent report on LGBTQI+ asylum seekers in South Africa (Mudarikwa et al., 2021) that found that when engaging with LGBTQI+ refugees' and asylum seekers' claims, many DHA officials regarded them as duplicitous claims and frequently disregarded them based on the assumption they were fabricated. One client was told that they could not be gay and "had to find a way of proving it." This bias feeds into a broader context of abuse of queer people.

The question of gender as a key aspect of vulnerability has often meant that the protection of LGBTQI+ people and men becomes more precarious. Defining vulnerability in this way was informed by the imperative to address the protection needs of migrant women in the border area, as they encounter several risks, especially when they move with children. However, it does not respond to the relationality of vulnerability, which this paper argues entails that effective programming on protection issues has to also consider the needs of other groups because, if ignored, could be generative of different risks imposed on others, including migrant women and children.

PERCEPTION OF THE COMPACTS

Migrant interviewees and attendees at our validation workshop confirmed our findings that knowledge about the global compacts at this level is very limited, if non-existent. This is related to the rather limited knowledge regarding applicable laws in general during the workshop. This shows the limited efficacy of these documents for experiences on the ground, which we argue is particularly grounded in the disparity between a context marked by conflicting and overlapping experiences for persons on the move and mixed migration flows and ideas of vulnerability that are unstable as a way of governing migration.

In our interview with a legal advocate from the legal assistance office, he made no reference to the compacts and even evaded the question, almost dismissively. He maintained that these "beautiful documents" were useful in ensuring that practice was aligned but that they were inaccessible, which makes one wonder who they

are intended for. The GCM's insistence on safe, orderly, regular migration means they can only work effectively in contexts where migrants are documented. On the contrary, they have been accompanied by border securitization, militarization, and greater enforcement. This has in turn worsened the vulnerabilities of migrants by producing more undocumented migrants who are unable to access either labor migration permits or refugee papers.

The UNHCR's insistence on legal status has meant that their partner responsible for implementing social-assistance programs feel "defeated" when it comes to accessing other services that require people to have documentation. During our webinar for the 2nd Expert Forum (September 22, 2021), a participant from the legal assistance partner of the UNHCR observed that many migrants do not use the official border crossing when entering or leaving South Africa. Almost daily, the social-assistance NGO, in collaboration with the Red Cross, writes letters to hospitals or clinics for at least ten undocumented people, typically saying: "Please allow this person to access healthcare, they are undocumented, these are their names, these are their issues" (*social worker, social-assistance NGO, November 2, 2021*). Despite these limitations, the social-assistance NGO has used the compacts in one project and in developing an office manual.

The social worker also indicated that when it comes to vulnerability, the GCM stresses the importance of providing information to those in need, every step of the migration journey – but this does not happen. These imperatives are difficult to implement because the protection space is shrinking due to a lack of funding, and "people are exhausted, or they are fatigued with these migration issues or issues of migrants because the dynamics change every day" (*social worker, social-assistance NGO, November 2, 2021*). This limits the mechanisms of ensuring that migration is legal because migrants do not know the "protection avenues" available to them, such as the means for unaccompanied and separated minors to access documentation. There was almost an expectation from the informant that the GCM could help answer all these questions. However, evidence presented at the previously cited expert forum suggests otherwise. In terms of the GCR, there remains several concerns for African countries related to financial and technical capacity, political will, xenophobia, and data gaps.

In sum, a disconnect is evident between the apparent and perceived influence of the compacts within international organizations, and at the ground level within NGOs and the UNHCR's implementing partners. Local NGOs are unclear about or unconvinced of the influence of these global initiatives. Yet in terms of how the UNHCR operates and informs its implementing partners in South Africa on how to act, these global initiatives appear to be having an impact (directly or indirectly). As noted above, there are numerous praiseworthy elements in the compacts; for example, the GCR in many ways is simply reaffirming norms that exist within the current global refuge regime, such as global responsibility-sharing. Yet the binary distinction between refugees and migrants and the framing of vulnerability outlined

in both compacts remains problematic in a context like Musina. These underlying elements appear to be slowly filtered down to ground-level implementers, even if they are perhaps unaware of how these practices are reinforcing existing problematic approaches that are generated at the international level. This also raises some difficult yet tentative questions around the notion that refugees, migrants, and civil society, particularly from the "Global South," are sufficiently the main actors in these global initiatives.

CONCLUSION: TOWARDS A PROTECTION REGIME THAT ENGAGES "SOCIAL LIFE OF VULNERABILITY"

The global compacts present vulnerability as distinctive and hence capable of being addressed by separating the regimes of migration governance from refugee protection. However, this paper has shown that the two categories are not stable or separable in the Zimbabwe–South Africa border scenario that is characterized by mixed migration. In these contexts, the language of the compacts seems more likely to reinforce and even worsen social hierarchies and the vulnerability of irregular migrants by simply legitimizing state securitization.

The compacts' unclear distinctions between vulnerability and precariousness also make for a concerning situation that allows vulnerability to be removed from the role of strict borders and hostile policies. Responsibility is shifting from the state and UN agencies to the individual as someone who should know better than jump the border, or they should be prepared for the violence that follows. This explains why the uptake of the compacts has been slow and expedient at best for local NGOs who simply would like to secure funding in a difficult operating environment. Realizing the limitations of the compacts and other dichotomous arrangements, these organizations venture into partnering with organizations with more elaborate mandates that can fill the void. Working in collaboration across the Limpopo also allows them to address the needs and vulnerabilities of everyone on the move. Moreover, it is an indictment on the limits of exceptionalizing vulnerability, as it creates programming that is narrowed to silos while inhibiting them from addressing the ways that vulnerability assumes a social life of its own. This is why we have outlined as a concept and heuristic the social life of vulnerability.

It will be interesting to see how the global compacts are rolled out further in the coming years. In particular, it will be important to see whether their "influence" will fully reach border areas such as Musina. However, it appears that many within civil society still remain skeptical about how the compacts will be able to advocate for positive responses and improved protection on the ground for all refugees and migrants in South Africa (ACMS, 2021). Instead, they view them as reinforcements of prevailing migration norms. They appear to find more efficacy in working in collaboration, as they are aware that they are dealing with a cross-cutting and intersectoral issue that has far-reaching implications for the wider border context.

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