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Assessing the Intersectional Impact of Domestic Migration Law: Reacting to State-Created Categories and Vulnerabilities of Asylum Seekers in Israel

Jeremy Julian Sarkin¹ and Tatiana Morais²

¹ Distinguished Research Professor of Law, CEDIS, NOVA School of Law, NOVA University of Lisbon, Lisbon (Portugal); Department of Criminology, University of the Free State, Bloemfontein (South Africa); and ² Researcher, CEDIS, NOVA School of Law, NOVA University of Lisbon, Lisbon (Portugal)

Corresponding author: Jeremy Julian Sarkin; Email: JSarkin@post.harvard.edu

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Abstract

In 2020, the Israeli Supreme Court held section 4 of the Law on Prevention of Infiltration and Ensuring the Departure of Infiltrators from Israel, also known as the Deposit Law, to be unconstitutional. Among other provisions, that law required 36 per cent of the wages of foreign workers to be paid into a dedicated account and returned when the person left the country. For years the Deposit Law had a negative impact on the lives of asylum seekers because of its racialised, gendered, ethno-national and religious impact. Its intersectional impact illustrates cultural, structural and systematic violence, which has been particularly punitive for asylum-seeking women, who are more exposed to sexual and gender-based violence (SGBV).

In this context, this interdisciplinary qualitative and empirical research article draws from empirical fieldwork conducted in Israel to understand the intersectional impact of the law. It therefore conducts a theoretical examination of the literature and connects that to the empirical study. Thus, the article empirically and theoretically investigates (i) the extent to which state-created categories foster unlawful multilayered and multilevel forms of vulnerability and discrimination; (ii) the intersectional impact of the Deposit Law and how it is related to SGBV; and (iii) how state-created intersecting vulnerabilities can be diagnosed. The overall goal of the article is to indicate the intertwined nature and interconnection between state-created categories and the inevitability of state-created vulnerabilities.

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Keywords: sexual and gender-based violence; asylum seekers; intersectionality; vulnerability

1. Introduction

Drawing from fieldwork in Israel conducted with Eritrean asylum-seeking women and key informants in Tel Aviv and Haifa (2018–2019), this interdisciplinary qualitative research article empirically and theoretically examines the intersectional impact of tensions arising from the Israeli legal framework. Specifically, it looks at the effect of section 4 of the Law on Prevention of Infiltration and Ensuring the Departure of Infiltrators from Israel,¹ also known simply as the Deposit Law. This law required undocumented foreign workers (including Eritrean asylum seekers) to deposit 20 per cent of their wages, and employers to deposit 16 per cent of the salary, into a dedicated account. Thus, a total of 36 per cent of a person's wages had to be paid into a deposit fund (participant IL3). This sum could be returned to the workers only on their departure from Israel. Thus, the law aimed to encourage the 'voluntary' departure of asylum seekers from Israel. This added to the problems that all asylum seekers and refugees, particularly from specific places, already experience in Israel, including institutional racism and structural violence.²

That law, however, was struck down on 24 April 2020, when the Israeli Supreme Court, sitting as the High Court of Justice in the landmark decision *Gersagher v The Knesset*, held section 4 (the Deposit Law) to be unconstitutional and declared it void.³

Using this Israeli Supreme Court decision as a point of departure, this study examines the following questions:

1. To what extent do state-created categories foster unlawful multilayered and multilevel forms of vulnerability and discrimination?
2. What is the ongoing intersectional impact of the Prevention of Infiltration Law and how is it related to sexual and gender-based violence (SGBV)?
3. How can state-created intersecting vulnerabilities be diagnosed?

To address these questions, the study examines state-created categories – in particular, the legal category of 'infiltrator'⁴ – to assess and determine the intersectional impact of the law.

¹ Prevention of Infiltration and Ensuring the Departure of Infiltrators and Foreign Workers from Israel (Legislative Amendments and Temporary Provisions) 5775–2014.

² Maayan Ravid, 'Making Their Lives Miserable' (2022) 11 *State Crime Journal* 128.

³ HJC 2293/17 *Esther Segai Gersagher and Others v The Knesset and Others* (23 April 2020), para 61.

⁴ Hadas Yaron, Nurit Hashimshony-Yaffe and John Campbell, "'Infiltrators' or Refugees? An Analysis of Israel's Policy Towards African Asylum-Seekers' (2013) 51(4) *International Migration* 144, 147; Oshrat Hochman, 'Infiltrators or Asylum Seekers? Framing and Attitudes Toward Asylum Seekers in Israel' (2015) 13 *Journal of Immigration and Refugee Studies* 358, 358; Rivka Weill and Tally Kritzman-Amir, 'Between Institutional Survival and Human Rights Protection:

To identify and examine the impact of different state-created categories and the effects that laws can have, particularly on vulnerable groups such as asylum-seeking women, the interdisciplinary qualitative analysis in the article draws from empirical data collected by the authors in Israel. The empirical aspect of this is an important element of the work because, as stressed in the work of Ghezelbash and Dorostkar, refugee legal studies should be more empirical in nature. They state in this regard:⁵

We acknowledge the challenges refugee law scholars face when undertaking empirical research. There is the absence of a strong tradition of empirical research in this field, and legal scholars generally lack training and experience in carrying out such research.

In this regard, this study aims to ensure that other interdisciplinary, empirical, doctrinal, normative and theoretical research on these topics is strengthened and validated, or not, by this empirical study. The study also aims to understand the implications of the law and the role it played, and in fact continues to play, to properly understand the way in which the effective and efficient protection of refugees can be implemented and the obstacles it faces in this respect.⁶

Therefore, this article, using a variety of materials from different disciplines, focuses on the intersectional impact of the law in order to understand the (in)visibility of multiple life experiences that refugees and asylum seekers suffer, which encompass different forms and levels of intersecting discrimination. The goal of the work is to ensure a greater understanding about the intertwined nature and connection of various state-created categories and the gendered and racialised impacts of such legal classifications. These interconnections reflect the relation between the state-created categories and the inevitability of state-created vulnerabilities. This is done as there is scant literature focusing on the intersectional impact of the law, especially with regard to how law, drawing from state-created categories, is responsible for creating the favourable socio-economic and legal circumstances for SGBV to flourish.

Considering the goals and the research questions, the article is an innovative, interdisciplinary, empirical and theoretical examination of the intersectional impact of the law, using tensions to diagnose the intersectional legal impact. The diagnosis of the intersectional impact of the law draws from previous research, which identified various forms of tension at different levels.⁷

Adjudicating Landmark Cases of African Undocumented Entrants in Israel in a Comparative and International Context' (2019) 41 *University of Pennsylvania Journal of International Law* 43.

⁵ Daniel Ghezelbash and Keyvan Dorostkar, 'Understanding the Politics of Refugee Law and Policy Making: Interdisciplinary and Empirical Approaches' (2023) *Journal of Refugee Studies*, fead039.

⁶ *ibid.*

⁷ Yonathan Paz, 'Ordered Disorder: African Asylum Seekers in Israel and Discursive Challenges to an Emerging Refugee Regime', United Nations (UN) Refugee Agency Policy Development and Evaluation Service, Research Paper No 205, March 2011. See also Tatiana Morais and Jennifer Gibbs, 'Doing or Not Doing Mitzvah of Hachnasat Orchim? Managing Tensions between International Obligations and the State's National Interests: The Case of Eritrean Asylum-Seekers

These legal tensions enable the identification of the intersectional impact of the law and the deconstruction of the social and the legal conceptualisation of vulnerability. These tensions also deepen and expand the understanding of the state's role throughout the process of creating internal and external others.⁸ They also shine a spotlight on the dynamics of the socio-legal construction and reinforcement of vulnerability. All these issues have an impact on the state's international obligations as they see the state not upholding its responsibilities to take steps to provide protection, as well as other matters.⁹ Moreover, these tensions create an aggravated risk of refugee and asylum-seeking women experiencing SGBV because of structural patriarchal violence embedded and reinforced by the law.¹⁰

The analysis in this article concerning the intersectional impact that results from the Prevention of Infiltration Law has five sections. Following this introduction, Section 2 surveys the main terms and theories used in the article. Section 3, the methodology, sets out the methods of data collection, data analysis and ethical clearance. Section 4, covering the findings, delves into an analysis of the Deposit Law and the Israel Supreme Court's decision. The article then analyses unlawful multilayered and multilevel forms of vulnerability and discrimination through an examination of state-created categories, testimonies of participants about the intersectional impact of the law and how this is related to SGBV cases. Finally, the article delves into specific tensions that can assist in diagnosing state-created intersecting vulnerabilities (Section 5).

2. Terminology

This article uses various terminologies to examine the intersectional impact of the former Israeli Deposit Law. Key terms include 'intersectionality' and 'vulnerability'. 'Intersectionality' was coined by Crenshaw in 1989 to shine a

in Israel' (2020) 9(1) *Oxford Monitor of Forced Migration* 101; Daniel Ghezelbash, 'Hyper-Legalism and Obfuscation: How States Evade Their International Obligations Towards Refugees' (2020) 68 *The American Journal of Comparative Law* 479; Lior Birger, "'Permanent Temporariness.'" Eritrean Refugees and Social Workers' Perceptions of Israeli Policies and Their Implications for Family Well-Being' in Dorit Roer-Strier and Yochay Nadan (eds), *Context-Informed Perspectives of Child Risk and Protection in Israel* (Springer 2020) 217; Jeremy Sarkin and Tatiana Morais, 'Why States Need to View Their Responsibility to Protect Refugee and Asylum-Seeking Women Through the Lens of Intersectionality, Vulnerability, and the Matrix of Domination to Address Sexual and Gender-Based Violence' (2022) 33 *European Human Rights Law Review* 554 (Sarkin and Morais (2022a)); Jeremy Sarkin and Tatiana Morais, 'The Importance of Adopting an Intersectionality Approach to Refugee Status Determination Procedures: Lessons from Greece, Israel and Uganda' (2022) 18(3) *International Journal of Migration, Health and Social Care* 193 (Sarkin and Morais (2022b)).

⁸ Sarah S Willen, 'Citizens, "Real" Others, and "Other" Others: The Biopolitics of Otherness and the Deportation of Undocumented Migrant Workers from Tel Aviv, Israel' in Nicholas De Genova and Nathalie Peutz (eds), *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Duke University Press 2010) 262.

⁹ Sarkin and Morais (2022a) (n 7) and Sarkin and Morais (2022b) (n 7).

¹⁰ See generally at the international level Leisy J Abrego and Sarah M Lakhani, 'Incomplete Inclusion: Legal Violence and Immigrants in Liminal Legal Statuses' (2015) 37 *Law and Policy* 265.

spotlight on multiple and intersecting forms of discrimination, grounded on gender and race, that women face.¹¹

Related to intersectionality is the term ‘vulnerability’. The term is used in this article to identify vulnerable situations grounded on socio-legal-economic circumstances imposed on refugee and asylum-seeking Eritrean women in Israel. The article builds on Fineman’s vulnerability paradox, which acknowledges that vulnerability is both embodied (constant and universal) and yet embedded (particular and specific).¹² Therefore, vulnerability is used to acknowledge inequalities and violence that asymmetrically affect refugee and asylum-seeking Eritrean women in Israel. These problems, it is asserted, arise partly because of state-created categories which create power dynamics and relations that result in structural inequalities and patriarchal violence. Patriarchal violence has been defined as the ‘comprehensive system’ of inter-related and diverse types of violence at multiple levels which ‘subjugate girls, women and all gender-oppressed people’, and which is experienced throughout their lives.¹³ The article also delves into state-created categories or, as Starr notes, the inevitability of the state’s need to create categories.¹⁴

Another term used in this article is ‘tensions’. According to Putnam, Fairhurst and Banghart, tensions represent polar opposites that ‘are mutually exclusive and interdependent such that the opposites define and potentially negate each other’.¹⁵ Thus, in this article tensions represent opposites which push policymakers, politicians and the legislators into opposite legal, political and ideological poles. As Starr notes, conflicts or pressures ‘arise over the choice and use of categories’,¹⁶ and conflicts are rooted in other stresses and pulls, especially the tension that emerges from a state’s international obligations, which may diverge from its national interests. Thus, as Starr emphasises, such official legal categories are often part of a state’s constitution and legal framework, and these official and legal state-created categories can have very significant results.¹⁷ As a result, the membership of certain socio-legal state-created categories may render the people affected invisible, oppressed and marginalised.

The tensions examined in this article are essentially grounded on state-created categories (socio-legal labels) such as ‘infiltrator’ and ‘asylum seekers’, which in this specific case result in a legal limbo because of the absence of legal status. Consequently, these state-created categories lead to state-created

¹¹ Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum*, article 8, 139, 142.

¹² Martha A Fineman, ‘Vulnerability and Social Justice’ (2019) 53 *Valparaiso University Law Review* 341.

¹³ Rona Kaufman, ‘Patriarchal Violence?’ (2023) 71 *Buffalo Law Review* 509, 509.

¹⁴ Paul Starr, ‘Social Categories and Claims in the Liberal State’ (1992) 59 *Social Research* 263.

¹⁵ Linda L Putnam, Gail T Fairhurst and Scott Banghart, ‘Contradictions, Dialectics, and Paradoxes in Organizations: A Constitutive Approach’ (2016) 10(1) *The Academy of Management Annals* 1.

¹⁶ Starr (n 14) 266.

¹⁷ *ibid* 274.

multilayered and multilevel vulnerabilities as a result of the marginalisation and exclusion that these categories produce at socio-legal-economic levels. Such exclusion is rooted in the construction of the ‘other’ while, simultaneously, reinforcing such a construction.¹⁸

The article also uses the term ‘structural violence’, an expression suggested by Galtung who identifies different types of violence (direct, indirect, structural), structural violence being stable, complex, latent, ‘silent’, invisible and built into socio-legal-economic structures grounded on multiple types of exploitation.¹⁹

Throughout the article the expression ‘sexual and gender-based violence’ (SGBV) is used as an umbrella term for violence based on gender roles (which are fluid and evolving through time, space and culture). That violence may or may not have a sexual nature, but results from ‘gendered power inequities that exploit distinction between males and females’.²⁰ In this respect, the UN High Commissioner for Refugees finds that SGBV encompasses five different types of violence: (i) physical violence; (ii) sexual violence; (iii) socio-economic violence; (iv) psychological and emotional violence; and (v) harmful practices,²¹ also known as discrepancies between legal theory and legal practice.²²

The term ‘agency’ used in the article refers to the choice that each individual has, framed in certain socio-political-economic-gendered and racialised circumstances, and thus how they react to their circumstances. These circumstances are greatly affected by the means, resources, legal framework and social settings that frame the exercise by individuals of their agentic behaviour or resilience.²³

3. Methodology

This study draws from a wider funded empirical and theoretical project that sought to understand and contribute to the literature on SGBV against refugee and asylum-seeking women. The study included a triangulation of qualitative methods of data collection: conversational interviews, non-participant observation and a literature review. The study draws from 58 conversational interviews in three countries: Greece, Uganda, Israel. These countries were chosen for fieldwork because they had significant numbers of asylum seekers and refugees, as well as high numbers of instances of SGBV. They were chosen

¹⁸ Willen (n 8).

¹⁹ John Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6 *Journal of Peace Research* 167.

²⁰ Mendy Marsh, Susan Purdini and Sonia Navani, ‘Addressing Sexual Violence in Humanitarian Emergencies’ (2006) 1 *Global Public Health* 133, 144.

²¹ United Nations High Commissioner for Refugees (UNHCR), ‘Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response’, May 2003, <https://www.unhcr.org/uk/media/sexual-and-gender-based-violence-against-refugees-returnees-and-internally-displaced-persons>.

²² Putnam, Fairhurst and Banghart (n 15).

²³ SJ Creek and Jennifer L Dunn, ‘Rethinking Gender and Violence: Agency, Heterogeneity, and Intersectionality’ (2011) 5 *Sociology Compass* 311. See also Jeremy Julian Sarkin and Tatiana Morais, ‘Agency and Vulnerability of Refugee and Asylum-Seeking Women in the Face of States’ Failure to Protect against Sexual and Gender-Based Violence’ (2024) 46 *Human Rights Quarterly* 523–48.

also because of their differing social-cultural, religious and legal contexts, which enabled useful comparisons between them to be made. This article focuses specifically on the uniqueness of the Israel dataset, which shines a spotlight on the intersectional impact of section 4 of the Infiltration Law, the former Deposit Law. This provides a singular opportunity to examine the intersectional impact of the law arising from state-created categories which result in intersecting vulnerabilities.

The fieldwork in Israel took place between October 2018 and July 2019, and included 23 conversational interviews carried out in English, with the support of an interpreter when necessary. Participants included 11 asylum-seeking women and 12 key informants. Key informants included legal scholars, humanitarian workers, activists, human rights lawyers, shelter directors and cultural mediators. The conversational interviews in Israel were conducted with the support of the Eritrean Women's Community Centre, which provided access to refugee and asylum-seeking women and cultural mediators and interpreters.

Prior to the fieldwork, the research protocol was approved and granted ethical clearance by a number of institutions in Portugal and Uganda. Before each interview, information about the study and its objectives was given and the participants' written consent obtained. The primary data was anonymised and submitted to a multimodal analysis through a combination of thematic analysis, content analysis and feminist critical discourse analysis to look for patterns, tensions and connections.²⁴

It must be noted that the judicial decisions used in the article were in Hebrew and were translated by the authors. The extracts used are the authors' translations.

4. Findings

4.1. The Prevention of Infiltration Law: Multiple amendments and multiple pushbacks by the courts

This section examines the Prevention of Infiltration Law generally, while the next section focuses only on section 4, the Deposit Law.

The Prevention of Infiltration Law, originally enacted in 1954, prohibits the entry into Israel of Palestinian *fedayeen* from Israel's neighbouring countries and other Arab and Muslim countries, including Palestine, Egypt, Lebanon, Syria, Saudi Arabia, Yemen and Jordan.²⁵ The reason for this prohibition was based on Israel's border security.²⁶

²⁴ Dan Remenyi, *Field Methods for Academic Research: Interviews, Focus Group & Questionnaires* (3rd edn, Ridgeway Press 2013); Dan Remenyi, *Grounded Theory: A Reader for Researchers, Students, Faculty and Others* (2nd edn, Lightning Source 2014).

²⁵ Reuven (Ruvi) Ziegler, 'No Asylum for "Infiltrators": The Legal Predicament of Eritrean and Sudanese Nationals in Israel' (2015) 29 *Immigration, Asylum and Nationality Law* 172; Yaron, Hashimshony-Yaffe and Campbell (n 4); Weill and Kritzman-Amir (n 4).

²⁶ Judith T Shuval and Elazar Leshem, 'The Sociology of Migration in Israel: A Critical View' in Judith T Shuval and Elazar Leshem (eds), *Immigration to Israel* (Routledge 2017) 1; Weill and Kritzman-Amir (n 4).

This law was amended over the past three decades to include people from additional countries in the category of ‘infiltrator’.²⁷ In 2007, the second amendment included Iran in the list of countries.²⁸ In 2010, the Immigration to Israel Bill proposed reforms concerning family unification, labour migration and refugees and asylum seekers.²⁹ As Ziegler notes, while this Bill adopted the 1951 Refugee Convention’s definition of ‘refugee’ – to include gender-based persecution, as well as disability, war, natural disaster and sexual orientation – it also included the refusal of applications by asylum seekers who were nationals of an ‘enemy state’, an ‘area controlled by an enemy’ or a ‘risk area’.³⁰ This Bill was eventually not tabled after failing to secure the support of the government.³¹ It is important to note that Israel has no specific refugee law.³²

One of the objectives of the law was to prevent people from working. This was to discourage them from coming into the country and to encourage them to leave when they could not obtain work. Another law relevant to the background to these issues, as well as the wider goals of limiting access into Israel, is the Entry to Israel Law 5712–1952. Under section 2(a)(5) of that law, ‘infiltrators’ are issued with a Conditional Release Visa (CRV). This is a ‘temporary permit’ that grants a residence visa to the person, but not social security benefits or a work permit.³³ It constitutes a means to limit entry into the country by making it difficult to live there. The law, however, is in violation of Israel’s international obligations as Articles 23–24 and 17–19 of the 1951 Refugee Convention provide that refugees should be permitted to work and are entitled to access to medical care and social security.³⁴ Despite the legal prohibition from working, economically and socially it has not been possible to prevent African asylum seekers from taking part in the local economy by finding work.³⁵

The law was challenged as a result of its controversial nature. On 13 July 2010, a district court ruled that CRV holders must be allowed to seek work. The court applied the precedent of an earlier judicial decision, *Gamzu*, in which it was held that ‘state policy leaving a person in destitution violates their human dignity’.³⁶ As a result of the 2010 decision, there was no ‘enforcement’ of the prohibition on a person being able to work.³⁷

²⁷ Tally Kritzman-Amir and Yvette Schumacher, ‘Refugees and Asylum Seekers in the State of Israel’ (2012) 6 *Israel Journal of Foreign Affairs* 97; Weill and Kritzman-Amir (n 4).

²⁸ Prevention of Infiltration Amendment (Crimes and Jurisdiction) 5767–2007.

²⁹ Kritzman-Amir and Schumacher (n 27).

³⁰ See Ziegler (n 25) 174.

³¹ *ibid.*

³² Yael Agur Orgal, Gilad Liberman and Sigal Kook Avivi, ‘Israel’s “Voluntary” Return Policy to Expel Refugees: The Illusion of Choice’ in Mirjam Van Reisen and others (eds), *Mobile Africa: Human Trafficking and the Digital Divide* (Langaa Research and Publishing CIG 2019) 209.

³³ Birger (n 7).

³⁴ Rotem Giladi, ‘A “Historical Commitment”? Identity and Ideology in Israel’s Attitude to the Refugee Convention 1951–4’ (2015) 37 *The International History Review* 745.

³⁵ Abdinor Hassan Dahir, ‘African Migrants in Israel: Neither Safe nor Sound’, TRT World Research Centre, 2018, <https://researchcentre.trtworld.com/wp-content/uploads/2020/11/AfricanMigrantsInIsraelNeitherSafeNorSound.pdf>; Morais and Gibbs (n 7); Ghezlbash (n 7).

³⁶ LCA 4905/98 *Gamzu v Yishaiyahu* (19 March 2001), para 20; Ziegler (n 25) 183.

³⁷ *ibid.*

However, the issue was not only about whether such people could work. A further limitation of the rights of asylum seekers lay in section 7 of the Prevention of Infiltration Law (Offences and Jurisdiction) (Temporary Order) 5773-2013, under which ‘infiltrators’ were also prohibited from transferring money abroad.³⁸ This provision, in fact, implicitly recognised that asylum seekers, despite being holders of a CRV, were actually participating in the local economy.³⁹ Therefore, the non-enforcement of the law is seen by some as a means ‘to entrench a perception of CRV holders as “labour infiltrators” ... rather than as persons in need of protection’.⁴⁰ Therefore, using this legal strategy was intended to reinforce the political discourse that these people are not refugees, but economic migrants.⁴¹

As a result of the steady increase in arrivals of African asylum seekers through the Sinai border from 2006 until 2012 (when the fence on the Sinai border was completed), the Prevention of Infiltration Law was once again amended in 2012.⁴² By that time, there were around 60,000 African asylum seekers in Israel, most of whom were Eritreans.⁴³ Since then, the Eritrean asylum-seeking population in Israel has decreased and was estimated to be around 18,782 as at 31 December 2022.⁴⁴ The third amendment expanded the definition of the term ‘infiltrator’ to include any person who is not a resident of Israel and who crosses the ‘Israeli-Egyptian border without authorisation’.⁴⁵ This consequently included African asylum seekers entering through the southern border.⁴⁶ The amendment did not distinguish refugees and asylum seekers from infiltrators. Since African asylum seekers were considered ‘infiltrators’ according to this amendment, they were consequently at risk of being automatically detained for up to three years.⁴⁷ This strategy thus intended to discourage them from attempting to enter Israel as well as encouraging their voluntary departure. The amendment entered into force in June 2012. However, the amendment was in contravention not only of Israeli domestic law (including Article 5 of the Basic Law: Human Dignity and Liberty

³⁸ Prevention of Infiltration Law (Offences and Adjudication) (Prohibition on Taking Out of Moneys of an Infiltrator from Israel – Temporary Provision) 5772-2012, Government Bill 1368; Zvika Orr and Mimi Ajzenstadt, ‘Beyond Control: The Criminalization of African Asylum Seekers in Israel’ (2020) 30 *International Review of Sociology* 142.

³⁹ Ziegler (n 25) 184.

⁴⁰ *ibid* 184.

⁴¹ Barak Kalir, ‘The Jewish State of Anxiety: Between Moral Obligation and Fearism in the Treatment of African Asylum Seekers in Israel’ (2015) 41(4) *Journal of Ethnic and Migration Studies* 580, 585.

⁴² Prevention of Infiltration Law 5772-2012 (n 38); Ziegler (n 25).

⁴³ Galia Sabar and Elizabeth Tsurkov, ‘Israel’s Policies Toward Asylum-Seekers: 2002-2014, 20 May 2015, Instituto Affari Internazionali Working Paper 15, <https://www.osce.org/files/f/documents/6/5/165436.pdf>.

⁴⁴ UNHCR, Factsheet Israel, March 2023, <https://www.unhcr.org/il/wp-content/uploads/sites/6/2023/08/Israel-Factsheet-March-2023.pdf>. In 2022, Israel hosted 25,000 asylum seekers.

⁴⁵ Ziegler (n 25) 172.

⁴⁶ Orgal, Liberman and Avivi (n 32) 209; Weill and Kritzman-Amir (n 4) 46.

⁴⁷ Ziegler (n 25).

5752-1992) but also of the protection that international law provides, especially Article 31 of the 1951 Refugee Convention.⁴⁸

On 16 September 2013, the Israeli Supreme Court, sitting as the High Court of Justice, ruled that detention under this amendment infringed Article 8 (the proportionality requirement) of the Basic Law: Human Dignity and Liberty, and ruled that the government should change the law and release those detained immediately.⁴⁹ One paragraph of the judgment notes:⁵⁰

From the manner in which the issue was presented by the State, it appears that there are two, and only two, options. The first is the implementation of the arrangement specified in the amendment, which mandates placing the infiltrators in long-term custody until they can be deported, if ever; the second is the continued presence of large numbers of infiltrators in South Tel Aviv and other areas of the country without any regulation, supervision, or care.

Following this ruling, the Prevention of Infiltration Law was once again amended. The fourth amendment of December 2013⁵¹ determined that those who broke the law would be detained for one year in the Saharonim detention centre. Those who were considered by the Ministry of the Interior to be difficult to deport would be held indefinitely in the Holot detention centre⁵² until they agreed to return to their home country.⁵³ Holot was described as an 'open' facility where African asylum seekers would stay at night but were allowed to leave during the day, despite the requirement to register three times a day, which made it practically impossible for asylum seekers to go anywhere.⁵⁴

Once again, on 22 September 2014, the Israeli Supreme Court, sitting as the High Court of Justice, in the case of *Eitan* ruled against the amendment, this time declaring Amendment No 4 (regarding indefinite holding in Holot) to be annulled. This was decided on the grounds that the amendment breached the right of African asylum seekers to liberty, autonomy and freedom of movement.⁵⁵

The legal response to this ruling was yet another amendment in 2014; thus, the fifth amendment was enacted on 8 December 2014.⁵⁶ This amendment

⁴⁸ *ibid*; Reuven (Ruvi) Ziegler, 'The New Amendment to the "Prevention of Infiltration" Act: Defining Asylum-Seekers as Criminals', The Israel Democracy Institute, 16 January 20, <https://en.idi.org.il/articles/3944>.

⁴⁹ Ziegler (n 25).

⁵⁰ HCJ 7146/12 *Adam and Others v The Knesset and Others*, ILDC 2078 (IL 2013) [2013] Justice Vogelmann, para 41; Talya Steiner, 'What Can We Learn about Israeli Policy Making from the Supreme Court's Ruling on the Anti-Infiltration Law?', The Israel Democracy Institute, 7 October 2013, <https://en.idi.org.il/articles/6769>.

⁵¹ Prevention of Infiltration Law (Crimes and Jurisdiction) (Amendment No 4 and Temporary Order) 5774-2013.

⁵² Ziegler (n 25) 186.

⁵³ Rebeca Raijman, 'Asylum Seekers and Refugees in Israel' (2017) 7 *Hagira* 2, 2.

⁵⁴ Ziegler (n 25) 186.

⁵⁵ HCJ 8425/13, HCJ 7385/13 *Eitan - Israeli Immigration Policy Center et al v The Israeli Government et al* (22 September 2014).

⁵⁶ Prevention of Infiltration and Assurance of Departure of Infiltrators from Israel Law (Legislative Amendments and Temporary Orders) 5775-2014; see also Ziegler (n 25).

established a three-month detention in Saharonim and 20 months in Holot for all new African asylum seekers arriving in Israel.⁵⁷ It also allowed no new work permits. As noted by Ziegler, '[c]ritically, the fact that detainees are barred from working and the facility's remote location render the possibility of leaving the facility during daytime rather futile'.⁵⁸

While the law was enacted in an expedited process it was later partially voided in the HCJ *Desta* case.⁵⁹ In February 2016, the sixth amendment to the Prevention of Infiltration Law reduced the period of detention in Holot from 20 months to 12 months. The Holot facility was closed in March 2018 as a result of the expiry of Chapter D of the Prevention of Infiltration Law.

The issue of asylum seekers being able to work, which the Court had permitted in 2010, was then revisited by the legislature. The new law, the Prevention of Infiltration Law and Guaranteeing the Exit of Infiltrators from Israel,⁶⁰ it was claimed, relied on the Foreign Workers Law of 2000, which had a deposit system.⁶¹ Thus, in January 2017, the amended law determined that Israeli employers were required to deduct 20 per cent of the salaries of asylum seekers and place it in the Deposit Fund.⁶² These amounts were intended to be given to the African asylum seekers upon their departure from Israel.⁶³ The law determined that an additional 16 per cent 'of the gross (pre-tax) salaries' must be deducted by the employers and handed over to the Deposit Fund.⁶⁴ The deductions began in May 2017. The Deposit Law was criticised as being intended to push asylum seekers into poverty to coerce them into leaving Israel.⁶⁵ As a result, it became a symbol and a tool of discrimination against asylum seekers to encourage their departure.⁶⁶ Some argue that it has no connection with the original aim of the deposit system, which was to 'force employees to pay social benefits for migrant workers employed in Israel and ... to protect the rights of migrant workers'.⁶⁷ That was the reason for the 2000 amendment to the Foreign Workers Law.⁶⁸ Following the January 2017 amendment to the Foreign Workers Law, which established the Deposit Law, various civil society organisations filed a petition to the Israeli High Court of Justice. As a response to that petition, the state passed a regulation in June 2018, which reduced the size of the deposit from

⁵⁷ Ziegler (n 25).

⁵⁸ *ibid* 187.

⁵⁹ HCJ 8665/14 *Desta v Knesset* (2015).

⁶⁰ Prevention of Infiltration and Assurance of Departure of Infiltrators from Israel Law (Legislative Amendments and Temporary Provisions) (Amendment) 5777–2017.

⁶¹ Foreign Workers Law 5751–1991, s 1K.

⁶² Prevention of Infiltration and Assurance of Departure of Infiltrators from Israel Law 5777–2017 (n 60). See also Baruch Shomron, 'The Capability "To Be Secure": Media Coverage of African Asylum Seekers during Covid-19 in Israel' (2021) 34 *Journal of Refugee Studies* 4361, 4373.

⁶³ Ziegler (n 25).

⁶⁴ Ziegler (n 25) 4; Morais and Gibbs (n 7); Ghezlbash (n 7).

⁶⁵ Ziegler (n 25).

⁶⁶ Sophie Crowe, 'Racial Others and Settler Colonialism in Israel: Migrant Rights Claims Refracted Through Colonial Logics' (2023) 30(4) *Identities* 549.

⁶⁷ Ziegler (n 48) 1.

⁶⁸ *ibid*; Weill and Kritzman-Amir (n 4).

20 per cent to 6 per cent for certain parts of the population;⁶⁹ this amendment came into effect on 1 November 2018. This reduction constituted a partial waiver of the deposit for women, men older than 60, trafficking survivors, and people suffering from a serious medical condition. The grounds for establishing such partial waivers were humanitarian.⁷⁰ This is a sign that the Israeli legislator acknowledged that there is no 'common' experience for refugees; thus, the 2018 regulation on the Deposit Law represents the application of an intersectional approach.⁷¹

Regardless, the Israeli Supreme Court, sitting as the High Court of Justice, nullified the Deposit Law on 24 April 2020. This decision, as with the other cases that have struck down parts of the law concerning asylum seekers, is a sign that the Israeli judiciary, along with civil society and grassroots movements, are paying attention and reacting to tensions between Israel's international obligations⁷² and Israel's national interests.⁷³ It also fits into the ongoing tensions between the Knesset and the courts over the role of the judiciary and the issues concerning Israel's democratic features.⁷⁴ Additionally, it indicates the complicated migration issues that exist in Israel.⁷⁵

This to-ing and fro-ing dynamic between the legislator and the Israeli Supreme Court shows what Paz has described as a pattern of 'trial-and-error' in the approach to the asylum system.⁷⁶ It also shows how Israel has continued to use a complex legal approach to prevent African asylum seekers from entering and remaining in Israel.⁷⁷ Besides detention, a host of strategies have been used to 'encourage' the voluntary departure of African asylum seekers,⁷⁸ including not recognising their refugee status and non-provision of work permits or healthcare.⁷⁹ By labelling them as 'infiltrators',⁸⁰ Israel has sought to

⁶⁹ Tally Kritzman-Amir and Kayla Rothman-Zeher, 'Mainstreaming Refugee Women's Rights Advocacy' (2019) 42 *Harvard Journal of Law and Gender* 371, 416.

⁷⁰ Hotline for Refugees and Migrants, 'In Broad Daylight, the Deposit Law: Implementation and Impact', 19 May 2019, <https://hotline.org.il/en/2019>.

⁷¹ Morais and Gibbs (n 7); Ghezlbash (n 7).

⁷² Mutasim Ali, 'Israel's Asylum Regime: The Inconsistencies with National and International Duties' (2023) 31 *Michigan State International Law Review* 375.

⁷³ Jeremy Sarkin and Tatiana Morais, 'A Cost-Benefit Assessment of Refugee and Asylum-Seeking Women Reporting Sexual and Gender-Based Violence in Uganda: Assessing Women's Resilience as a Means to Protect their Ethno-religious Group' (2023) 38 *Southern African Public Law* 1, 15.

⁷⁴ Ariel L Bendor and Chen Shaham-Assia, 'Is There a Countermajoritarian Difficulty in Israel? An Empirical Study' (2021) 53 *George Washington International Law Review* 101, 120 and 131.

⁷⁵ Chen Alon and Sonja Kuflinec, 'Dramatizing Displacement in Israel' (2022) 32 *Theatre Topics* 61.

⁷⁶ Paz (n 7) 5.

⁷⁷ Sarkin and Morais (n 73).

⁷⁸ Sarkin and Morais (2022b) (n 7).

⁷⁹ Shuval and Leshem (n 26).

⁸⁰ Paz (n 7); Dahir (n 35); Oshrat Hochman and Adi Hercowitz-Amir, '(Dis)agreement with the Implementation of Humanitarian Policy Measures Towards Asylum Seekers in Israel: Does the Frame Matter?' (2017) 18 *Journal of International Migration and Integration* 897; see also Weill and Kritzman-Amir (n 4).

shape the narrative,⁸¹ including the implication that such people are criminal threats.⁸²

The same narrative can be seen in other court cases. Thus, in *Eitan Israeli Immigration Policy and Others v Government of Israel*, in the very first line of the decision Justice Vogelmann writes: ‘Over the last few years, tens of thousands of “infiltrators” from Eritrea and northern Sudan have entered into the State of Israel’.⁸³ The fact that this is placed at the beginning of the judgment, and uses the term ‘infiltrator’, continues that narrative. The Court could have used the term ‘people’ or ‘individuals’, or some other less pejorative term. In fact, the problematic use of the expression ‘infiltrator’ was recognised by the Court, but it continued to use the term regardless. In this respect the Court states:⁸⁴

The Law that we are examining in this case is the Law for the Prevention of Infiltration. An ‘infiltrator’ (as such term is defined in the Law) is an individual who is not a resident, who entered into Israel by means other than border patrol stations that have been set up by the Minister of Interior. In the *Adam Case*, I presented my stance that use of the adjective ‘infiltrate’ for those same individuals to whom the statutory arrangement subject of our hearing is directed As I previously indicated there, the legislator’s rhetoric selection does not comply with our tests, however, let us not begin to obscure the essence. We must remember that the claim is not that the ‘new’ ‘infiltrators’ requested to enter our territory to execute acts of hostilities, and that many of them are requesting to be categorized as ‘asylum seekers’. Given this comment, in my opinion I will use – as I did in the *Adam Case* – the term that is designated in the Law.

The Court could easily have used different terms to refer to those affected by the law.

The Supreme Court in *Gersagher v The Knesset* seemed to soften the approach to the language used. Thus, it opted to use the term ‘infiltrator worker’, which appears more than 250 times in the judgment. While softer than the word ‘infiltrator’ alone, it still suggests negative language. The Court could simply have used the term ‘worker’ rather than the more pejorative ‘infiltrator’ in conjunction with it.

4.2. Fostering unlawful multilayered and multilevel forms of vulnerability and discrimination through state-created categories

What can be seen in the attempts to create categories is a means to prevent asylum seekers from entering the country and making it difficult for them once they

⁸¹ Adi Hercowitz-Amir, Rebeca Raijman and Eldad Davidov, ‘Host or Hostile? Attitudes Towards Asylum Seekers in Israel and in Denmark’ (2017) 58 *International Journal of Comparative Sociology* 416; Hochman and Hercowitz-Amir (n 80).

⁸² Orr and Aizenstadt (n 38).

⁸³ HCJ 8425/13 *Eitan - Israeli Immigration Policy Center and Others v Government of Israel* (3 February 2015), Justice Vogelmann, para 1, translation at <https://www.unhcr.org/il/wp-content/uploads/sites/6/2020/09/Gabrislasi-Judgement-HCJ-7385-13-8425-13.pdf>.

⁸⁴ *Eitan*, *ibid*, Justice Vogelmann, para 5.

have entered. This is not a new strategy. The quasi-legal strategy of labelling African asylum seekers as ‘infiltrators’ (via their social-legal construction as ‘others’) represents a legacy of the Israeli–Palestinian conflict.⁸⁵ The consequence of such a state-created category has been the fostering of unlawful multilayered and multilevel forms of vulnerability and discrimination.⁸⁶ As has been noted:⁸⁷

The populist movements spreading across the globe today have come in many different shapes and sizes. However, one attribute that has been relatively consistent among them is that they have thrived by stoking anger and resentment against smaller and more vulnerable sectors of society. This has been a fundamental component of the illiberal populist playbook ... In more economically developed countries, populists’ target of choice has often been immigrants and refugees.

This targeting has had a serious impact on these communities, including by criminalising a range of conduct.⁸⁸ The law also made it difficult (if not impossible) for these people to be accepted as refugees. Thus, African asylum seekers were also unable to apply individually to the refugee status determination (RSD) procedure until 2013.⁸⁹ This prohibition not only ‘denied Eritrean and Sudanese access to the RSD Procedure’⁹⁰ but also delayed refugee status recognition in the Israeli legal framework as required by the 1951 Refugee Convention.⁹¹ It needs to be noted that it was only in 2013 that Israel allowed Eritreans to apply for asylum individually, after the enactment of the third amendment to the Prevention of Infiltration Law. Despite the change, most African asylum seekers have had their claims denied: fewer than 1 per cent of claims have been accepted.⁹² Furthermore, the lack of a work permit for CRV holders has led to African asylum seekers being pushed to the margins of society.⁹³ Without work permits, they are pushed into taking unstable

⁸⁵ Sarkin and Morais (n 73); Raijman (n 53).

⁸⁶ Maayan Niezna, Yahel Kurlander and Hila Shamir, ‘Underlying Conditions: The Increased Vulnerability of Migrant Workers under COVID-19 in Israel’ (2021) 6(2) *Journal of Modern Slavery: A Multidisciplinary Exploration of Human Trafficking Solutions* 133, 150.

⁸⁷ James Yap Hilina Fessahaie and Enbal Singer, ‘Populism’s Global Impact on Immigrants and Refugees: The Perspective of Eritrean Refugees in Europe and Israel’ (2020) 35 *Maryland Journal of International Law* 189.

⁸⁸ Gila Amitay, ‘Criminalization of Asylum Seekers in Israel: Toward an Agentic Research Perspective that Opposes Othering and Estrangement’ (2023) 31 *Critical Criminology* 1.

⁸⁹ Ziegler (n 25); Ziegler (n 48). See also Lior Birger and Einat Peled, ‘Intimate Strangers: Eritrean Male Asylum Seekers’ Perceptions of Marriage and Sexuality’ (2017) 19 *Culture, Health and Sexuality* 1360.

⁹⁰ Ziegler (n 25) 181.

⁹¹ Rebecca J Garfinkel, ‘Dignity Deployed: An Examination of Refugee Rights through Domestic Dignity Jurisprudence’ (2023) 35 *International Journal of Refugee Law* 101.

⁹² Raijman (n 53); see also Rebeca Raijman, ‘A Warm Welcome for Some: Israel Embraces Immigration of Jewish Diaspora, Sharply Restricts Labor Migrants and Asylum Seekers’, Migration Policy Institute, 5 June 2020, <https://migrationpolicy.org/article/israel-law-of-return-asylum-labor-migration>; Weill and Kritzman-Amir (n 4).

⁹³ Lior Birger, Or Kedem and Yochay Nadan, ‘“Here, Parents Become Nothing”: “Unparenting” in Israel’s Policies Toward Eritrean Refugees’ (2022) 27 *Child and Family Social Work* 583.

jobs, trapping them in a cycle of poverty and instability.⁹⁴ This precariousness has had a greater impact on African women,⁹⁵ as their income is lower, often leaving them needing to hold several jobs. It also exposes them to higher risks of SGBV, including sexual harassment, rape and forced prostitution, because of labour exploitation and economic discrimination.⁹⁶

In this respect, some participants interviewed reported rape and sexual harassment cases in the workplace and at home, perpetuated by flatmates and landlords, including transactional sex. According to the United Nations, transactional sex is seen to be a negative coping mechanism involving sexual coercion with the intention to ‘exchange ... money, employment, goods or services for sex, including sexual favours and other forms of humiliating, degrading or exploitative behaviour. This includes any exchange of assistance that is due to beneficiaries of assistance’.⁹⁷

Thus, various types of SGBV were reported by the interviewees, including transactional sex and forced prostitution. These were seen as negative coping mechanisms, as reactions to the negative intersectional impact of the Deposit Law. The effect of these types of SGBV was to exacerbate the marginalisation of asylum-seeking women and act as barriers to accessing the labour market:

[T]he [employer] demanded sex from her [asylum-seeking woman], he filmed them while having sex and now the film is online (Participant IL3).

Women asylum seekers are prostitutes not by choice, but because of economic violence. Sometimes they pay the rent with sex, it is for survival (Key Informant IL4).

[T]here is a recent report on the increasing levels of prostitution among asylum-seeking women due to the 20 per cent deduction on wages as a result of the Deposit Law (Key Informant IL8).

Thus, the lack of work permits is not only a form of economic violence, but it also increases the risk and exposure to sexual violence.⁹⁸ As noted by Gebreyesus and co-authors, the ‘political and economic marginalization that affects the lives of asylum seekers and shapes the risks they incur, particularly for women’ is grounded on the impact of the legal limbo that asylum seekers face which, in turn, heavily impacts their ‘work opportunities and living conditions (which) influences their vulnerability to sexual violence and

⁹⁴ Shuval and Leshem (n 26).

⁹⁵ Morais and Gibbs (n 7); Tatiana Morais, ‘Rethinking Dealing with Sexual and Gender-Based Violence in Countries of Asylum: Intersectional Impact of Vulnerability to the State in Greece, Uganda, and Israel from a Matrix of Domination Standpoint’, NOVA University of Lisbon, unpublished PhD dissertation, 2022.

⁹⁶ Dahir (n 35).

⁹⁷ United Nations, ‘Glossary on Sexual Exploitation and Abuse: Thematic Glossary of Current Terminology related to Sexual Exploitation and Abuse (SEA) in the Context of the United Nations’, 24 July 2017, 7.

⁹⁸ See Morais and Gibbs (n 7); Ghezelbash (n 7).

exploitation'.⁹⁹ Therefore, an Eritrean asylum-seeking woman who participated in the study noted that many hardships were imposed by the former Deposit Law:

Life here is difficult for women, 20 per cent of the salary ... is very difficult. How can we pay the bills? They take 20 per cent of the salary! ... If we have work, 20 per cent of the payment is out (Deposit Law) and it is difficult to pay for living in the house ... more or less 400 [Eritrean asylum-seeking women] are in prostitution for the money. The government is forcing us to leave Israel. It is very difficult for us. Forced prostitution is a shame for us (Participant IL3).

We are not treated as citizens [in Israel]. ... We are the same. We are human beings (Participant IL10).

These testimonies of two asylum-seeking Eritrean women in Israel reflect their experience of economic hardship because of the impact of the former Deposit Law, as well as the lack of legal status recognition and protection. Thus, these testimonies provide evidence of the intertwined nature and connection between the state-created categories and multilayered, multilevel, multiple and intersecting forms of vulnerability.¹⁰⁰ They also illustrate the gendered and racialised impact¹⁰¹ that leads to the socio-legal-economic marginalisation of African asylum seekers, in particular women. This, in turn, leads to various vulnerabilities arising from the state's 'action' (policymaking, legal framework, administration of justice). Thus, testimonies from fieldwork permitted the identification of key state-created categories¹⁰² (infiltrator, asylum seekers, lack of legal status for refugees) and state-created multilayered and multilevel vulnerabilities (being labelled as 'infiltrator' rather than 'refugee', and the exclusion of asylum seekers from protection).

The idea that state-created categories – or, as Starr¹⁰³ posits, the inevitability of the state's need to create categories – may determine the (in)evitability of each state to create vulnerabilities, in turn, might jeopardise the 'responsive State'.¹⁰⁴ This may result in structural and systematic symptoms which amplify certain segments of the population's vulnerability,¹⁰⁵ as a result of structural and systematic

⁹⁹ Tsega Gebreyesus and others, 'Life on the Margins: The Experiences Of Sexual Violence and Exploitation among Eritrean Asylum-Seeking Women in Israel' (2018) 18 *BMC Women's Health*, article 135, 2.

¹⁰⁰ Romi Oren-Schwartz and others, 'Effect of Mindfulness-Based Trauma Recovery for Refugees on Shame and Guilt in Trauma Recovery among African Asylum-Seekers' (2023) 23 *Emotio* 622.

¹⁰¹ Anna Aizik-Reebs and others, 'Mindfulness-Based Trauma Recovery for Refugees (MBTR-R): Randomized Waitlist-Control Evidence of Efficacy and Safety' (2021) 9 *Clinical Psychological Science* 1164.

¹⁰² Starr (n 14) 263.

¹⁰³ *ibid.*

¹⁰⁴ Martha A Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 *Emory Law Journal* 251.

¹⁰⁵ Anna Aizik-Reebs and others, 'Prevalence and Prevention of Suicidal Ideation among Asylum Seekers in a High-Risk Urban Post-Displacement Setting' (2022) 31 *Epidemiology and Psychiatric Science* 76.

unlawful discrimination, such as patriarchal violence.¹⁰⁶ This emphasises the role of the law in reinforcing the vulnerable situation of certain parts of the population,¹⁰⁷ which is in contravention of Israel's international obligations.¹⁰⁸

This does not mean that these groups do not have agency as a means to react to these problems that were placed in their way. In Israel, as a reaction to the unjust nature of the Deposit Law, African asylum seekers and Israeli civil society over the years have developed agentic strategies to ensure legal reform. As Participant IL3 mentioned:

[The] law should be changed. They [the Israeli government] must welcome us just like they do with everyone else. They should change the law and recognise our legal status [as refugees].

4.3. Examining the intersectional impact of the Prevention of Infiltration Law

Despite its abstract and general nature, any law that is adopted anywhere affects each person differently. To examine a law's impact, it is important to consider who are the persons involved in drafting, interpreting and implementing it. For instance, as the law in Israel is designed primarily by a majority of Ashkenazi Jewish men in the Knesset, is it possible that they are able to identify and take cognisance of the asymmetrical negative impacts of the law on Eritrean asylum-seeking women? This is so, especially considering that privilege is invisible. As Khan emphasises, 'privilege is not about what you have gone through; it is about what you haven't had to go through' as a result of belonging to a certain group.¹⁰⁹ Therefore, there is a misalignment of experiences between the persons who draft and interpret the law on the one hand, and those who experience the impact of the law on the other. Consequently, it is also important to contemplate which parts of the population are affected by the law and how legal choices are made. What can be seen is that different axes of identity markers trigger different systems of oppression, creating multiple and intersecting forms of discrimination.

Some argue that the focus on identity may turn the analysis away from the criticism to neoliberal policies which produce and reinforce precarious jobs and unemployment.¹¹⁰ While there is a need to include social policy in the analysis of the causes of certain legal choices, it is also important not to turn away from the analysis of intersecting axes of identity that have the potential to trigger systems of oppression, thus reinforcing structural processes.¹¹¹ These structural processes, which are embedded, may create

¹⁰⁶ Lior Birger and Einat Peled, 'Between Crisis and Opportunity: Eritrean Refugee Men in Israel Negotiating Masculinity' (2021) 25 *Men and Masculinities* 252.

¹⁰⁷ Niezna, Kurlander and Shamir (n 86) 133.

¹⁰⁸ Nonna Kushnirovich and Rebeca Rajman, 'Bilateral Agreements, Precarious Work, and the Vulnerability of Migrant Workers in Israel' (2022) 23 *Theoretical Inquiries in Law* 266.

¹⁰⁹ Janaya Khan, '#WeVoteNext Summit: Activist Janaya Khan on Redefining Privilege', Facebook, 0:35, 22 December 2023, <https://www.facebook.com/NowThisPolitics/videos/wevotenext-summit-activist-janaya-future-khan-on-redefining-privilege/245336409482222>.

¹¹⁰ Fineman (n 12).

¹¹¹ Ravid (n 2).

experiences of oppression, though at different levels and in different forms. Therefore, just as there is diversity in women's experiences, there is also diversity among the experiences of African asylum seekers. In this respect, the Israeli legislator's choices – related to the former Deposit Law – have enhanced such differences among the diverse group of asylum seekers, who experience different levels and forms of vulnerability. Their vulnerability is recognised to some degree by the Supreme Court in some of the decisions of the various judges. This can be seen in the judgment of Justice Vogelman in which it is stated:¹¹²

[P]eople who, in any event, are less fortunate and who do not have a great deal of money; where a majority of them do not speak the language or are familiar with the details of the normative arrangement applicable to them.

This is also noted in the case of *Gersagher* when Judge Vogelman notes:¹¹³

Therefore, in any event this group is in a position of inferiority in anything related to asserting their rights and approaching the court. And so, in general, and in particular in the realm of industrial relations, the Infiltrator Workers are exposed to exploitation and to infringement of their rights.

In the same case Judge Amit stated:¹¹⁴

As a court, we are required to examine the legality of the Law and not the intelligence of the legislator. Nevertheless, it is hard to avoid the question whether the real distress that the residents of south Tel Aviv are in will not worsen the more we cause the infiltrators to be poorer, with all ensuing consequences, from the aspects of crime, violence and density.

It is, however, the financial hardship imposed on asylum seekers by the law which has caused exclusion and marginalisation. This is particularly because of the former Deposit Law, which has had an asymmetrical impact on asylum-seeking men and women. The law in Israel has a disproportionate impact on African asylum seekers, as a result of various intersecting and multiple forms of discrimination. These are particularly damaging for Eritrean asylum-seeking women because of the gender dimension of this law as it intersects with its class, religious, race and nationality dimensions, exacerbating the exposure of asylum-seeking women to different types of SGBV.¹¹⁵

¹¹² *Eitan* (83) para 179.

¹¹³ *Gersagher v The Knesset* (n 3) 85, Justice Vogelman, para 13, <https://www.unhcr.org/il/wp-content/uploads/sites/6/2020/08/Israel-High-Court-of-Justice-HCJ-2293-17-Deposit-Law-decision-English-translation.pdf>.

¹¹⁴ *Gersagher v The Knesset*, *ibid* 53, Justice Amit, para 12.

¹¹⁵ See generally Tendayi Achiume, 'Race, Refugees, and International Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 43.

In this regard, the Deposit Law in Israel incorporated economic struggle for survival as a dimension of the law. This is because the law affirmatively deprives African asylum seekers of economic resources, pushing them to the spatial margins of underprivileged and underdeveloped areas of Tel Aviv.¹¹⁶ The intersectional impact of the Deposit Law was indirectly acknowledged by the Israeli Knesset in December 2017 during the hearings against the Deposit Law. As a result of pressure by Israeli civil society, the state announced its intention to address humanitarian cases, which was the reason for introducing partial waivers in June 2018.¹¹⁷ These waivers entered into force with the amendment of the Deposit Law, and were applied to specific segments within the population of African asylum seekers who face greater levels of vulnerability. Thus, the regulation of partial waivers based on 'humanitarian cases' was the result of pressure from Israeli civil society, who submitted a petition in March 2017 to the Israel High Court, led by Kav LaOved.¹¹⁸ This recognised that there are sectors of asylum seekers who face greater discrimination and exploitation based on gender (such as lower income, hence the need to have more than one job, and higher risk of SGBV incidents), class (unstable jobs and low incomes, which pushes them to underprivileged and low-income areas of Tel Aviv),¹¹⁹ religion and ethnicity.

Similarly, the Israeli Supreme Court in *Gersagher v The Knesset* emphasised that '[p]etitioners argue that the Administrative Deductions Component also causes disproportionate infringement to the constitutional right to property, subsistence with dignity and equality'.¹²⁰ Therefore, gender interlocked with other axes of identity (such as race, religion, age, among others) resulted in multiple forms of discrimination and enhanced the asymmetries and inequalities, which were reinforced by the former Deposit Law.¹²¹

This social policy on migration status has also been used to reinforce the 'formations of under- and over-privilege[d]' sections of the population.¹²² It also reinforces the social construction of the 'other'.¹²³ Legal tactics such as the former Deposit Law indicate the main tension between Israel's international obligations under the 1951 Refugee Convention¹²⁴ and its national

¹¹⁶ Erez Tzfadia and Haim Yacobi, *Rethinking Israeli Space: Periphery and Identity* (Taylor and Francis 2011).

¹¹⁷ Hotline for Refugees and Migrants (n 70) 33.

¹¹⁸ Assaf, 'Deposit Fund Law for Asylum-Seekers', 2020, <https://assaf.org.il/en/about/deposit-fund-law-for-asylum-seekers>.

¹¹⁹ Taj Haroun and Gina Walker, 'Safety but No Stability in the "Backyard of Tel Aviv"', Feinstein International Center and Tufts University, September 2019.

¹²⁰ *Gersagher v The Knesset* (n 3) para 39.

¹²¹ Diego Alberto Biancolin, 'Welfare State as a Political Weapon: Institutional Racism Against Arabs, Asylum Seekers and the Minorities in Israel' in Fabio Perocco (ed), *Racism in and for the Welfare State* (Springer International 2022) 229.

¹²² Vicki Squire, 'Mobile Solidarities and Precariousness at City Plaza: Beyond Vulnerable and Disposable Lives' (2018) 12 *Studies in Social Justice* 111, 119.

¹²³ Julia Khrebtan-Hörhager, 'Intersectional Othering and New Border Cultures: Lessons from Italy' (2019) 42 *Women's Studies in Communication* 125, 125–29; Willen (n 8).

¹²⁴ Abigail C Bosch, 'Irreconcilable Principles: Minority Rights, Immigration, and a Religious State' (2017) 24 *Indiana Journal of Global Legal Studies* 253.

interests,¹²⁵ legal discrepancies the aim of which is to ensure a Jewish majority in the country.¹²⁶ Thus, there is a will to maintain a legal gap within the system, which results in the underdevelopment of the domestic law regarding asylum and the asylum system, with the intention of avoiding legal recognition of refugees, and thus denying or delaying protection for people who seek such status.

4.4. *The intersectional impact of the Deposit Law on the exposure of African asylum-seeking women to SGBV*

Despite being internationally obliged to respect and implement the principles of the 1951 Refugee Convention and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Israeli legal framework falls short of its international obligations. In fact, Israel has developed legal and bureaucratic barriers that have created socio-legal chaos¹²⁷ and challenges for those seeking to enter the country and obtain refugee status. This has also been done with the intention of increasing the unsustainability of asylum claims and to create obstacles in accessing the asylum procedure. This has created a legal limbo for asylum seekers¹²⁸ and left them vulnerable to precarious jobs and homelessness, which in turn amplifies their exposure to and risk of experiencing SGBV, especially for women.¹²⁹ Thus, the legal system, which should be a site of fundamental rights, instead turned it into a site of oppression.¹³⁰

As participants in the study emphasised, refugees and asylum seekers are among the sections of the population who face multiple and intersecting forms of discrimination. In this regard, the Deposit Law aggravated such vulnerability as a result of the gendered and racialised dimensions of the law, which intersected with other identity markers to make certain parts of the population even more vulnerable.¹³¹ As noted by the Israeli Supreme Court in *Gersagher v The Knesset*:¹³²

The wages of a person who is part of a disadvantaged population from the start, and who has no social rights or a financial safety system, and who often has to provide for his family, children or other supported relatives in Israel – is a major and cardinal asset in his life ... If we deprived from such a person to use one fifth of the asset, this impairs his ability to earn a living with dignity ... Hence, the violation of the right to property could also result in violation of human dignity.

Among the African asylum seekers who experienced discrimination, exploitation and abuse, there are specific groups who experienced an even greater

¹²⁵ Ali (n 72).

¹²⁶ Bosch (n 124).

¹²⁷ Paz (n 7).

¹²⁸ Tally Kritzman-Amir, “‘Otherness’ as the Underlying Principle in Israel’s Asylum Regime” (2009) 42 *Israel Law Review* 603; Willen (n 8).

¹²⁹ Gebreyesus and others (n 99).

¹³⁰ Sarkin and Morais (2022b) (n 7); Morais and Gibbs (n 7); Ghezalbash (n 7).

¹³¹ Sarkin and Morais (2022b) (n 7).

¹³² *Gersagher v The Knesset* (n 3) Judge N Hendel, section 4.

impact of such multiple and intersecting forms of discrimination¹³³ caused by strategically created legal obstacles.¹³⁴ It has also created problems in places like the city of Tel Aviv and surrounding area.¹³⁵ Economic discrimination has pushed refugees and asylum seekers, along with Mizrahi Jews and Palestinians, to the underprivileged suburbs of Tel Aviv. This has had an enormous impact on and disproportionately affected refugees and asylum seekers, especially women.¹³⁶ As noted above, to mitigate being deprived of the economic means to survive, many Eritrean asylum-seeking women have turned to prostitution. This was noted by one interviewee, who recalled that ‘more or less 400 [Eritrean asylum-seeking women] are in prostitution for money ... forced prostitution is a shame for us’ (Participant IL3).

The law amplifies the vulnerable situation of refugees and asylum seekers, including their risk and exposure to SGBV as a result of unstable economic decisions, homelessness and their vulnerability to smugglers.¹³⁷ It has forced vulnerable women to work illegally, which has increased their vulnerability, and therefore their risk of becoming victims of SGBV. In this respect, the evidence from the dataset showcases that these intersecting and multiple vulnerabilities left asylum seekers, especially women and girls, more exposed to sexual violence, including sexual harassment, forced prostitution, forced marriage, marital rape, transactional sex. This was the experience of various participants in the study who experienced sexual harassment perpetrated by authorities, as well as a lack of assistance from the police to handle SGBV cases. Both of these negative types of behaviour were seen to be part of a wider hostile and unwelcoming attitude towards African asylum seekers, which included the role of the former Deposit Law. Thus, participants noted:

Sometimes they [the authorities in the visa interviews] ask about their [asylum seekers] sex life and sexual habits. Such questions might be considered sexual harassment (Key Informant IL7).

They [the authorities] asked very intimate questions [in the visa interviews]. If a couple don’t have kids, they ask: ‘How come you don’t have kids?’ (Participant IL3).

There was a case of a refugee girl; she was raped; she called the police, they didn’t do anything, and she didn’t survive. She could be alive now (Participant IL3).

Rape cases ... Even if we go to the police they don’t help, they don’t care, they neglect (Participant IL9).

¹³³ Crenshaw (n 11).

¹³⁴ Sarkin and Morais (2022b) (n 7); see also Morais and Gibbs (n 7); Ghezelbash (n 7).

¹³⁵ Lilach Lev Ari and Arnon Medzini, ‘Forced Migrants in the City of Tel Aviv: Possible Avenues for Their Integration’ in Oshrat Hochman (ed), *Immigration and Integration in Israel and Beyond* (Transcript 2023) 173, 173.

¹³⁶ Sarkin and Morais (2022b) (n 7); See also Morais and Gibbs (n 7); Ghezelbash (n 7).

¹³⁷ Sarkin and Morais (2022a) (n 7).

These statements illustrate the asymmetric impact created by the state of the legal framework relating to asylum, caused by vulnerability to the state.¹³⁸

It seems clear, therefore, that the legislation and policy have generally had a greater impact on certain parts of the population,¹³⁹ and can result in an increased risk of SGBV.¹⁴⁰ It results from the discrepancy between the legal principle of protecting the most vulnerable sections of the population and the reality, which is quite the opposite. Such a discrepancy between legal theory and practice indicates tensions that emphasise the vulnerability of refugees and asylum seekers.¹⁴¹ Legal tensions provide an opportunity to examine such intersectional impacts arising from this vulnerability to the state¹⁴² based on state-created categories.¹⁴³

5. Tensions as a tool to diagnose state-created vulnerability

According to Fineman, vulnerability is both embodied – thus, constant, and universal – and yet embedded – thus, particular and specific.¹⁴⁴ In this regard, the *Gersagher* case¹⁴⁵ shines a spotlight on state-created categories, the intersectional impact of which results in vulnerability to the state.¹⁴⁶ This emphasises the role of the law in reinforcing the vulnerable position of refugees and asylum seekers rather than addressing their vulnerability. This incongruity between the legal requirement to protect the most vulnerable sections of the population, grounded in Article 1A of the 1951 Refugee Convention, and the reality allows for the identification of tensions that emphasise the vulnerable position of refugees and asylum seekers,¹⁴⁷ resulting in the greater risk of being discriminated against, oppressed and exploited.

Tensions between the international obligations and national interests of Israel are rooted in democratic concerns, as well as in border security issues.¹⁴⁸ It is evident, however, that the intersectional impact of the Prevention of Infiltration Law and its role in creating vulnerability exacerbates the position of refugees and asylum seekers rather than addressing it.¹⁴⁹ This tension has echoed in Israel over the decades, with an impact on refugees and asylum

¹³⁸ Sarkin and Morais (2022b) (n 7); see also Morais and Gibbs (n 7); Gina Clayton, 'Asylum Seekers in Europe: M.S.S. v Belgium and Greece' (2011) 11 *Human Rights Law Review* 758.

¹³⁹ Crenshaw (n 11).

¹⁴⁰ Sarkin and Morais (2022b) (n 7); Morais and Gibbs (n 7); Ghezlbash (n 7).

¹⁴¹ *ibid.*

¹⁴² Clayton (n 138).

¹⁴³ Starr (n 14).

¹⁴⁴ Fineman (n 12); see also Fineman (n 104).

¹⁴⁵ Emmanuel Navon, 'Israel's Nation-State Law' in PR Kumaraswamy (ed), *The Palgrave International Handbook of Israel* (Springer Singapore 2022) 1.

¹⁴⁶ Clayton (n 138).

¹⁴⁷ Tsega Gebreyesus and others, 'Barriers to Contraceptive Careseeking: The Experience of Eritrean Asylum-Seeking Women in Israel' (2020) 25 *Ethnicity and Health* 255.

¹⁴⁸ Sarkin and Morais (n 73); Ghezlbash (n 7).

¹⁴⁹ Laurie Lijnders, "'We Have to Separate So We Can Be Together Again': Eritrean Mothers' Gendered Racialisation and Family Separation within the Israeli and UK Asylum Regimes' (2023) 46 *Ethnic and Racial Studies* 338.

seekers in the country because of the absence of a domestic legal framework to implement fully the 1951 Refugee Convention.

This situation has produced secondary tensions within the Israeli domestic law: order versus disorder,¹⁵⁰ permanence versus impermanence, rejection versus acceptance.¹⁵¹ These tensions identify an aggravated risk of SGBV for refugees and asylum-seeking women because of structural patriarchal violence embedded in and reinforced by the law. However, these tensions also indicate the lack of political will by states to address these issues, which jeopardises the effectiveness of international human rights law and that system.

In fact, many industrialised countries send contradictory messages to their communities. Commonly, states choose to ratify international conventions and treaties yet fail to incorporate and implement them at the domestic level.¹⁵² In the Israeli case, this is achieved by the design and implementation of a domestic law which artificially creates exceptions to avoid complying with the state's international obligations. As noted above, these legal choices are strategically designed to encourage asylum seekers to leave Israel. All these legal strategies express management of the main tension (international obligations under the 1951 Refugee Convention and national interests) through a selection of legal measures that contravene and undermine the values and principles of various parts of international law.¹⁵³

Therefore, despite the ongoing criticism of the Refugee Convention being outdated,¹⁵⁴ the reality behind its potential ineffectiveness is the absence of political will to apply its provisions adequately, because of tensions arising from the state's international obligations and national interests. Israel has never incorporated the Refugee Convention into its law and, as noted, no refugee law or immigration law exists for non-Jews.¹⁵⁵ This has occurred purposively. The state has also narrowly interpreted its duties under the Refugee Convention.¹⁵⁶ Crucially, Israeli law applies the dualist approach to the place of international law in domestic law, which means that treaty obligations are not directly enforceable by the courts, unless the Knesset has adopted a law that specifically incorporates the treaty into domestic law.¹⁵⁷ This means that technically the Refugee Convention is not intended to apply directly in the law, but the courts have not always followed this approach.

¹⁵⁰ Paz (n 7).

¹⁵¹ Sarkin and Morais (2022b) (n 7); see also Morais and Gibbs (n 7); Ghezelbash (n 7); Birger (n 7).

¹⁵² Sarkin and Morais (2022b) (n 7).

¹⁵³ *ibid*; see also Morais and Gibbs (n 7); Ghezelbash (n 7).

¹⁵⁴ Rajeev Syal and Ben Quinn, 'UN Rebukes Suella Braverman over Her Attack on Refugee Convention', *The Guardian*, 26 September 2023, <https://www.theguardian.com/politics/2023/sep/26/un-suella-braverman-refugee-convention-unhcr-migration>.

¹⁵⁵ Shani Bar-Tuvia, 'Australian and Israeli Agreements for the Permanent Transfer of Refugees: Stretching Further the (Il)legality and (Im)morality of Western Externalization Policies' (2018) 30 *International Journal of Refugee Law* 474, 479.

¹⁵⁶ Ali (n 72) 375.

¹⁵⁷ Ziegler (n 25).

In this regard, the fieldwork conducted provided evidence of the intertwined nature of and connection between state-created categories,¹⁵⁸ leading to state-created vulnerabilities, also known as vulnerability to the state.¹⁵⁹ Therefore, the state-created categories of ‘infiltrator’ and ‘eligible’ asylum claims not only lead to these tensions, but also tensions between how the state frames the experience of asylum seekers and how the asylum seekers see themselves.¹⁶⁰ Consequently, understanding these tensions are essential in identifying the impact of the law in terms of making (in)visible multiple life experiences that encompass different forms and levels of vulnerability during different phases of a person’s life. Tensions acknowledge the social and legal construction of categories and the gendered and racialised impact of such constructions.¹⁶¹ Critically important is the state’s role in the creation, reinforcement and endorsement of various types of vulnerability.

In the Israeli case, it is the state-created categories of ‘infiltrator’ and ‘eligible’ asylum claim – and, in concert, the framing and stigmatising of African *de facto* refugees as ‘infiltrators’¹⁶² – which not only fostered unlawful multilayered and multilevel forms of vulnerability and discrimination, but also had an intersectional impact on the asylum-seeking community in Israel.

For these reasons, we argue that SGBV targeting refugees and asylum seekers results from, and reveals, a structural and systematic symptom of the state, which amplifies the vulnerable position of refugees and asylum seekers because of their precarious economic situation, homelessness and vulnerability to smugglers. Evidence from the dataset indicates that these intersecting and multiple vulnerabilities leave asylum seekers, especially women and girls, more exposed to sexual violence, including sexual harassment, forced prostitution, forced marriage and transactional sex (Key Informants IL7 and IL4; Participants IL3, IL9 and IL6). Such intersectional impacts of the law result from the state’s role in the creation, reinforcement and endorsement of multilayered and multilevel vulnerabilities, which have a gendered and racialised impact on different sections of the population, especially refugee and asylum-seeking women who are exposed to an increased risk of experiencing SGBV in the country of asylum. Thus, it is clear that state legislation and policymaking has a greater impact on certain parts of the population, resulting in an increased risk of exposure to SGBV. As Justice Vogelmann stated in *Gersagher v The Knesset*:¹⁶³

The prolonged time period the State has taken to handle these requests – not to mention ‘dragging their feet’ – leads to the applicants being trapped in a continuous and impossible state of limbo regarding their

¹⁵⁸ Starr (n 14).

¹⁵⁹ Clayton (n 138).

¹⁶⁰ Cecília Menjivar, ‘Immigration Bureaucracies, Categories of Exclusion, and Superdiversity’, IRiS Conference, 14–16 September 2022, <https://www.youtube.com/watch?v=P5hVLdRpsfw>.

¹⁶¹ Crowe (n 66).

¹⁶² Ofir Abu, Fany Yuval and Guy Ben-Porat, ‘Race, Racism, and Policing: Responses of Ethiopian Jews in Israel to Stigmatization by the Police’ (2016) 17 *Ethnicities* 688.

¹⁶³ *Eitan* (n 83) Justice Vogelmann, para 14.

status, and with grave consequences for their rights. The Deposit Scheme therefore adds 'another catch' to the impossible situation the asylum seekers are in.

6. Conclusion

Assessing a person's vulnerable circumstances is not easy, especially if the legal framework aggravates such vulnerability and renders invisible certain sections of the population because of state-created categories, which leads to inevitable state-created vulnerability. In this respect, the Israeli dataset created for this study provides evidence of multiple sites that create and reinforce the vulnerable situation of African asylum seekers by discriminating, marginalising and excluding them from protection. By doing so, the socio-legal framework at play exacerbates the risk of exposure to SGBV of Eritrean asylum-seeking women, including all types of sexual violence referred to above. This increases their vulnerability and therefore their risk of becoming victims of SGBV. Israeli domestic law, in particular the former Deposit Law, in practice shows evidence of an asymmetrical impact upon African asylum seekers. This is because of the gendered dimension of the legislation, combined with the exacerbating factors of class, religion, ethnicity and nationality.

Consequently, as Fineman's vulnerability paradox emphasises, while all asylum seekers in Israel are constantly and universally vulnerable, they are not equally vulnerable because they suffer from different racialised and gendered stereotypes in their socio-legal-economic circumstances. This exacerbates the specific and special intersecting layers of vulnerability they endure, resulting in asymmetrical discrimination against them as Eritrean asylum-seeking women, which results in SGBV at times.

What can be seen is that the effects of the Deposit Law have been felt especially by women refugees and asylum seekers in that it aggravates their exposure to SGBV. The intersectional impact of the law leads to this aggravated risk, and is rooted in structural patriarchal violence that is embedded and reinforced by the law.

The former Deposit Law, along with the lack of legal status for asylum seekers, the temporary visa with no work permit, and the gentrification of urban cities such as the city of Tel Aviv and its surrounding area (as a result of the economic discrimination that pushes refugee and asylum seekers, along with Mizrahi Jews and Palestinians, to the underprivileged suburbs of Tel Aviv), have had an enormous and disproportionate impact on refugees and asylum seekers. This is because such people are among the sections of the population that face multiple and intersecting forms of discrimination, exacerbating their vulnerable situation. The Deposit Law aggravated such vulnerability.¹⁶⁴

This article has argued, therefore, that it is necessary to examine the intersectional impact of the state's laws and policies that create or reinforce the

¹⁶⁴ Nomi Levenkron, Hadar Dancig-Rosenberg and Ruth Halperin-Kaddari, 'Crimmigration and Gender-Based Violence Against Women Asylum Seekers' in Jane Freeman, Nina Sahraoui and Evangelia Tastsoglou (eds), *Gender-Based Violence in Migration: Interdisciplinary, Feminist and Intersectional Approaches* (Springer International 2022) 135.

vulnerability of certain sections of the population. The article thus encourages states to develop the necessary measures, policies and legal reforms to ensure compliance with its international obligations.

The study also advocates the state's accountability in complying with the responsibility to host and to protect refugees and asylum seekers, especially those who face multiple and intersecting vulnerabilities, such as women and children. It is also vital to identify the legislation and policy that affect certain parts of the population in specific negative ways that result in an amplified risk of SGBV.

This article also diagnosed these issues through the notion of legal tensions. These stresses and strains are based on the tension of the state's international obligations versus its national interests. These tensions also enable the deconstruction of the social and legal conceptualisation of vulnerability, while deepening and expanding the understanding of the state's role throughout the process of creating internal and external others. This shines a spotlight on the dynamics of the socio-legal construction and reinforcement of vulnerability.

What emerges also from this article is the need for more empirical legal studies concerning migration. In this respect, the article has tried to tie together the theoretical literature with our empirical study. This is done, as few empirical legal studies have been carried out and fewer have addressed the tensions between the international obligations that exist for states under international law, including, for example, the 1951 Refugee Convention and their domestic law obligations. This represents a clear gap and limitation in the existing literature. What this empirical study has found is that while our findings are supported by the literature in general, it does pinpoint issues within the existing literature that require attention and analysis. For instance, state-created categories leading to tensions have been overlooked generally in the literature on refugee studies. In fact, there are few works on tensions and the role of state-created categories in the creation of such legal, social and/or organisational tensions. There are also gaps in the existing literature on the application of international refugee law in the domestic context. Consequently, there is a need to focus on these issues. This article hopefully is part of a process to ensure that such gaps and issues are addressed, and that there is more of a focus on such matters.

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