

The Agency of Refugees and Asylum-Seeking Women in the Face of the Inability of States to Provide Protection Against Sexual and Gender-Based Violence

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ABSTRACT

Drawing on fieldwork in Greece, Uganda, and Israel, this empirical study is an enquiry into the forms of agency adopted by refugee and asylum-seeking women who are survivors of, or in situations of risk of, sexual and gender-based violence. The article identifies the main agentic behaviors reported by participants to prevent and address multiple and intersecting discriminations leading to sexual and gender-based violence. It ascertains various types of agency, including passive versus active agency; silence as agency versus silence as oppression; and individual versus collective agency. The study then also asks what functions these forms of agency fulfill. It finds that they are responses to the state's failure to prevent and address sexual and gender-based violence in four ways: (1) to acknowledge asylum-seekers sufficiently; (2) to protect asylum-seekers from sexual and gender-based violence; (3) to guarantee access to justice to sexual and gender-based violence survivors; and finally (4) to prevent further discrimination of the hosted community. Thus, this article argues that refugees and asylum-seekers adopt different types of agency to react against the state's inability to provide protection from sexual and gender-based violence.

Keywords: Agency, Asylum-Seekers, Protection, Refugees, Sexual and Gender-Based Violence (SGBV), Vulnerability

INTRODUCTION

People flee their country of origin or residence to seek protection in another country, due to intersecting discrimination and violence based on multiple identity markers. In this context, this article draws on fieldwork in Greece, Uganda, and Israel to focus on different agentic behaviors displayed by refugee and asylum-seeking women who are sexual and gender-based violence (SGBV) survivors and/or are at risk of experiencing SGBV. The study's goal is to identify refugee and asylum-seeking women's agency, understood to mean "how individuals can exercise their will to determine their own fate"¹ as a reaction to the state's inability to protect them from SGBV, whilst acknowledging intersecting and multiple systems of oppression which interfere

with individuals' choice.²

The article identifies different types of agentic behaviors adopted by refugee and asylum-seeking women as a reaction to the state's failure to prevent and address multiple and intersecting discriminations. At stake is the state's failure to provide protection. Such failure results from state-created categories³ which reinforce multiple and intersecting forms of discriminations⁴ due to multiple systems of oppression that devalue certain identity markers.⁵

This article has two objectives: to identify and to examine different types, forms, and functions of agency used by refugee and asylum-seeking women. The findings of this work make an empirical contribution to the literature by providing a better understanding of the various forms and functions of agency displayed by refugees and asylum-seekers. It showcases that refugee and asylum-seeking women's vulnerability and exposure to SGBV lead these women to adopt agentic behaviors to mitigate and address state-created vulnerability or, as has been noted, refugees' and asylum-seekers' vulnerability *to the state*.⁶ In this regard, the fieldwork for this project shines a light on state-created vulnerability based on the legal framework, the administration of justice, and legal and political discourses. State-created vulnerability results, mainly, from what Steven Vertovec identifies as the assignment/assertion tension.⁷ Such a tension arises from the primary tension between the state's international obligations versus its national interests.⁸ This tension is useful in this context as a lens for examining the discrepancy between the state's created categories versus refugees' life experience. This discrepancy leads to what has been identified as the misalignment⁹ between law and reality, creating multiple secondary tensions.¹⁰ These combined tensions trap asylum-seekers in the country of asylum, unable to continue their journey, and yet also unable to go back to their countries of origin or residence. Most asylum-seekers experience tensions with a particular gendered, racialized, and

religious impact, which thus push asylum-seeking women further into the social and legal margins.¹¹ There they face an aggravated risk of and exposure to homelessness (especially African asylum-seekers, as the Greece dataset showed) and precarious jobs, which therefore exacerbated vulnerability.¹² Thus, to mitigate such vulnerability and to respond to the state's failure to provide protection, refugee and asylum-seeking women adopt different types of agency with different functions regarding different vulnerabilities emerging from the state's failure to protect them.

This study identifies four main functions of refugee and asylum-seeking women's agentic behaviors. These are to address the state's failure: (1) to acknowledge refugees sufficiently; (2) to protect asylum-seekers from SGBV; (3) to guarantee access to justice to SGBV survivors; and finally (4) to prevent further discrimination of the hosted community.

Drawing from multiple examples, the study indicates various types of agencies. These are passive versus active agency; silence as agency versus silence as oppression; and individual versus collective agency. It will be noted that specific forms of collective agency include the use of traditional justice systems. These alternative customary non-judicial mechanisms for accessing justice focus often on community healing by providing solutions to heal the conflict between the victim and the perpetrator.¹³

To analyze the different types, forms, and functions of agency reported by participants, the article begins by providing details of the various terms used in the article (Section I), and the methodology used (Section II). The article then identifies and examines different types and forms of agentic behaviors adopted by refugee and asylum-seeking women that have emerged from the data to showcase how they fulfill different functions (Section III).

I. UNDERSTANDING AGENCY, RESILIENCE, AND VULNERABILITY

In this section we focus on key terms used throughout the article, including agency, resilience, vulnerability, and the state's failure to provide protection.

As far as agency is concerned, this article advocates for a complex understanding of agency and avoids a simplistic definition which would overlook the impact of socio-legal-cultural-economic circumstances on agency. We therefore believe that agency is about power.¹⁴ It is also about the "capacity to process social experience and to devise ways of coping with life, even under the most extreme forms of coercion."¹⁵ However, agency also involves "an individual's capacity to determine and make meaning from their environment through purposive consciousness and reflective and creative action."¹⁶ Thus, while it has a lot to do with choice and will, it is also about resistance and the ability to gain control over a person's life.¹⁷

It does need to be noted that agency also has a gender dimension.¹⁸ This is deeply connected with issues of vulnerability. As emphasized by feminist theory, it is crucial to reflect and deconstruct terms "that favor men and preclude or disadvantage women, [so it is necessary] to inspect carefully what it is that such terms measure and authorize, and to observe who is doing the authorizing and measuring."¹⁹ Similarly, bell hooks emphasizes that "exploited and oppressed groups of women are usually encouraged by those in power to feel that their situation is hopeless, that they can do nothing to break the pattern of domination" and that this might in fact trigger agentic behaviors as a way to challenge and overcome oppression and domination.²⁰

Therefore, this article considers agentic behaviors in the intersection of the individual's social and cultural context to identify which behaviors ought to be considered as "agency," and as an act of resistance in a specific socio-legal context in time, space, and culture. We emphasize that agency has a lot to do with resistance and resilience against the discrimination, violence, and

oppression within a certain socio-legal-cultural-economic context, which impact the use of different types of agencies, and their function. Agency is also based on women's socialization, perception, and resources.²¹ The study also considers the crucial role of agency in conceptualizing social resilience.²²

Intertwined with the term agency is that of vulnerability. This is a “slippery” concept that can be used in numerous ways, sometimes resulting in the stigmatization of the individuals to whom it may be applied.²³ Some socio-legal definitions of vulnerability depict certain segments of the population (i.e. women, children, and the elderly) as having a “childlike status.”²⁴ This suggests and perpetuates the idea that vulnerable persons are dependent, weak, and susceptible of being harmed and violated.²⁵ These same descriptions engage in a *continuum* of violence²⁶ while not recognizing, and therefore denying, that vulnerable persons, such as refugees and asylum-seekers, do have agency and actually do exercise it.²⁷ The reality is that all people have agency, though people choose to exercise their agency in different ways and at different times, triggered by different factors. However, such denials of this socially constructs refugees and asylum-seekers as hopeless individuals with no initiative, despite the fact that many have walked miles with a destination in mind: they are determined to reach safer shores. The result of such a denial is that the socio-legal construction of who are refugees, and who is “worthy” of recognition and protection as a refugee, is based on an unrealistic and stereotyped set of expectations of how refugees and asylum-seekers should behave and what they should look like.²⁸

This idea constitutes a stigmatizing and disempowering perception of refugees and asylum-seekers and their experiences²⁹ which results in the invisibility of the real experiences of refugees and asylum-seekers, including agentic behaviors, as illustrated by all three datasets examined in Section III.

In this regard, the article acknowledges the complexity of the reality experienced by refugees and asylum-seekers, which includes both vulnerability and agentic behavior. Consequently, the work does not represent women as vulnerable per se but emphasizes how refugee and asylum-seeking women mitigate multi-layered and intersecting vulnerabilities by adopting agentic behaviors which are a reaction against a state's failure to provide protection.

Interconnected with vulnerability is resilience. As has been pointed out: “the counterpoint to vulnerability is . . . the resilience that comes from having some means with which to address and confront misfortune.”³⁰ Consequently, individuals need the means and the resources to be able to exercise their resilience through agentic behaviors. Thus, there is a need for a “broad societal responsibility”³¹ through the conceptualization of vulnerability as “inevitable dependency.”³²

II. METHODOLOGY

This article draws from a wider funded project that sought to understand and contribute to the literature on SGBV against refugee and asylum-seeking women while in Greece, Uganda, and Israel. The study included a triangulation of methods of data collection: interviews, non-participant observation, and literature review. The study draws from fifty-eight interviews in the three countries under review. The data was collected through conversational interviews and non-participant observation in Athens, Kampala, Tel Aviv, and Haifa. Interviews were of a conversational nature, which ensured that participants' agency, power, and will, was acknowledged and respected.³³

The three countries were chosen for carrying out fieldwork because they are on different

continents, and have differing socio-cultural, ethno-religious, and legal contexts. They were also chosen because of the number of refugees hosted and the high number of reports of SGBV among refugees and asylum seekers. While Greece and Uganda have hosted many refugees and asylum seekers, Israel is unique in its refugee populations.³⁴ Thus, each country provides interesting and rich data. Each of the three also have differences in their asylum procedures which make comparative research useful. Further, each of these countries provides researchers with access to information and to the people involved (the host population, refugees, and asylum seekers). These countries were also useful to conduct the research in because of the possibility of building partnerships with non-governmental organizations (NGOs) and grassroots movements in each country, as well as the support from cultural mediators and interpreters who were also crucial when deciding which country to do fieldwork.

These countries were also selected because they reflect common struggles among refugees and asylum-seekers against these countries' failure to protect them. This allows useful comparisons to be made between them. Furthermore, while these three countries represent different maturity stages of their country-level asylum law, all three countries illustrate the intersectional impact of their law, and the gender and racialized legal dimension, despite the diversity of their refugee and asylum-seekers population.

Fieldwork in Greece between August and October 2017 included twenty interviews (eleven with refugees and asylum-seeking women and nine with key informants). Fieldwork in Uganda in September 2018 included fifteen interviews (eleven with refugees and asylum-seeking women and four with key informants). Finally, fieldwork in Israel between October 2018 and July 2019 included twenty-three interviews (eleven with asylum-seeking women and twelve with key informants). Across all three datasets, participants included refugees and asylum-seeking

women. Key informants included legal scholars, humanitarian workers, community leaders, activists, human rights lawyers, shelter directors, and cultural mediators. Key informants were crucial to provide details about socio-legal-cultural-economic contexts while also providing complementary information about political decisions on support and protection provided to refugees and asylum-seekers and, how that impacted their livelihoods.

Participants and key informants from the Greece dataset were nationals from: Afghanistan, Pakistan, Syria, Iraq, Greece, France, and Egypt. Participants and key informants from the Uganda dataset were nationals from: Somalia, Eritrea, Ethiopia, South Sudan, the Democratic Republic of the Congo, and Uganda. Participants and key informants from the Israel dataset were nationals from: Eritrea, Israel, Brazil, and the United States of America.

Ethical clearance was obtained prior to fieldwork, and after the data collection, the data were anonymized, analyzed, and coded through a triangulation of thematic analysis, content analysis, and feminist critical discourse analysis.³⁵ Thematic analysis was used to look for patterns in the datasets. Content analysis was used to determine the frequency of topics, which enabled the identification of silence as agency. Feminist critical discourse analysis was used to identify power dynamics that sustain “oppressive social structures/relations [which] contributes to ongoing struggles of contestation and change through what may be termed ‘analytical activism.’”³⁶ Such triangulation of coding methods is useful and relevant to provide an overview of relevant topics and omissions emerging from the data, including different types of agentic behaviors adopted by and/or witnessed by participants while identifying multiple and intersecting discriminations. Thus, this triangulation of coding methods was useful to identify how and to what extent the state (in this case the country of asylum) is inefficient to provide protection to refugees and asylum-seekers.

III. RESEARCH FINDINGS: TYPES AND FORMS OF AGENCY

This section examines the different types and forms of agency that refugee and asylum-seeking women adopt to mitigate their risk of experiencing SGBV. Across all three datasets, similar examples of agency emerged, which were then classified into the major types of agentic behaviors. These types are passive versus active agency; silence as agency versus silence as oppression; and collective versus individual agency. This supports the understanding that refugees and asylum-seekers display different levels and forms of agency throughout the refugee cycle as a reaction to state-created vulnerability, which results from the state's failure to provide protection.

The second part of this section examines the different functions of the various types of agencies. These are classified into four categories, namely agency as a reaction to the state's failure: (1) to acknowledge asylum-seekers as refugees; (2) to protect refugees and asylum-seekers from SGBV; (3) to guarantee access to justice to SGBV survivors; and finally (4) to prevent further discrimination of the hosted community. Throughout this section the intertwined nature of different types and functions of agentic behaviors is examined.

A. Types of Agencies

1. Passive versus Active Agency

What emerged during the study is that most participants indicated both passive and active forms of agency. Similarly, Ulrike Krause's study in Uganda also identified examples of active agency (2021).³⁷ With respect to passive forms of agency from participants in the Greece dataset,

testimonies were more common among participants living in informal settlements. These informal settlements included not only squats, but also non-official refugee camps, such as the former Idomeni refugee camp, which was a spontaneous gathering of refugees who were trying to cross the border into Macedonia. This informal “camp” was closed by the Greek authorities in 2016, and individuals were forced to relocate to Athens.³⁸ Participant GR#1 remembered how negative the experience was, mentioning that “no one likes to be in the camp.” As a result of this negative experience, she avoided leaving her tent at Idomeni, exercising her agency in a passive way, using the tent as a cocoon. Similarly, participant GR#9, who was in a squat, engaged in a passive form of agency: she revealed that she stayed inside her room most of the time to avoid leaving her belongings unattended there. Another example of passive agency, which was common to many participants, was choosing not to go to the latrines at night and not without company, whether of family members or of a friend.³⁹ Participants in the Greece dataset also mentioned the fear of leaving their tent, especially without the company of relatives or friends.⁴⁰ In fact, participant GR#10 mentioned that her husband would avoid leaving her and their children alone inside the tent, which hosted groups of single men from different countries:

I feared for my safety and my children's safety . . . My husband would avoid leaving me and our children alone in the tent. The tent had twenty persons, two families from Syria and one from Morocco. There were also many single men.⁴¹

Similarly, the Ugandan dataset provided examples of passive agentic behaviors. For instance, participant UG#2 reported that some refugee and asylum-seeking women would choose to stay at home, thus becoming invisible, to avoid stigmatization or further violence. This example of individual passive agency was similar to cases reported in the Greece dataset.⁴² Avoiding leaving home was an expression of a women’s fear of experiencing SGBV or being “named and shamed” as a SGBV survivor in public.⁴³ Consequently, such individual passive

agentic behavior not only re-victimized the survivor (secondary victimization), but also made the survivor feel ashamed and isolated.⁴⁴

In the Israeli dataset, examples of passive agentic behaviors included silence. However, while some examples depict silence as agency, other examples show silence as a manifestation of oppression. Both examples of silence will be further examined in Section III A(1)(a) to distinguish silence as agency from silence as oppression.

Alongside the examples of passive agency, participants also indicated evidence of active agency. For instance, in the Greece dataset participant GR#4 reported having sprayed vinegar on her clothes and on her floor to keep men away. She also mentioned that she preferred to wear dirty clothes to avoid drawing men's attention to her.⁴⁵ There were also cases of women who would change sidewalks every time they came across men in the streets of the refugee camps.⁴⁶

Like that which was found in Greece, fieldwork in Uganda also revealed specific forms of active agency both at the individual and collective levels. For instance, some participants in the Uganda dataset decided to move from the city back to the refugee camps (participants preferred to use the expression camps to settlements) despite the prevalence and risk of SGBV in the camp, which illustrates their individual active agency. This choice resulted from extreme hardship and the lack of access to basic services in the city.⁴⁷ Their decision showed that going back to the refugee camp was a basic survival matter and made it easier for them to access housing, food, healthcare, and education.⁴⁸ This individual active agency, thus focused on survival and emphasized the refugees' and asylum-seekers' major dependence on support from the United Nations High Commissioner for Refugees (UNHCR) and NGOs.⁴⁹

Another form of active individual agency which emerged from the fieldwork in Uganda was SGBV survivors' decisions to actively seek information and educate themselves about

human rights in order to fully exercise their agency.⁵⁰ According to the same participant, education is important to address SGBV cases:

I know a case where a woman was raped and applied for asylum, she did not talk about the rape and her case was dismissed. She was not educated. Once she learned about it, she was free, and she was safe. She was able to save her life . . . we must teach women this: to speak up. The truth will set her free.⁵¹

Therefore, education is key for women to access information related to women's human rights and regarding pathways to claim those rights. If individuals do not know their rights, their choices will be less informed and result in poor decision making. Not having information may negatively impact a SGBV survivor's asylum claim.⁵² For instance, participant UG#3 mentioned that it would be important to hold meetings with women to encourage them to report, while also stressing that “we cannot force someone to speak.”⁵³ Thus, it is important to provide women with access to key information for them to make sound decisions on whether or not to report SGBV. It also allows them to exercise their active agency.

Thus, as is indicated by this sub-section, both active and passive agency was present across all the datasets. Some agency occurred individually, while others took place collectively, as further examined in Section III A(2).

a. Silence as Agency versus Silence as Oppression

Among the different forms of passive agency found in the dataset, there were examples of silence as a specific form of passive agency.⁵⁴ These were cases in which women chose silence (or to remain silent). Thus, silence was a choice.⁵⁵ This illustrates that silence may be a form of agency, an instrument to react against oppression. There were, however, some other instances of

silence, that indicated manifestations of oppression, such as SGBV survivors being silenced.⁵⁶ The difference between choosing silence and being silenced is key to distinguishing between silence as a form of agency, as an act of resistance to fight against oppression and patriarchy,⁵⁷ and silence as a form of oppression.⁵⁸ For example, in the Uganda dataset, there were signs of both silence as agency and silence as oppression. Reports of silence as agency included participant UG#2's testimony, who suggested that not reporting intra-community violence was to avoid further "fights among Somalis."⁵⁹ Participant UG#1 also mentioned she would prefer not to report SGBV to avoid being seen or perceived as a "troublemaker," an example of using silence as an agentic behavior.⁶⁰ Similarly, Krause also identified silence as a form of agency based on examples of underreporting.⁶¹ Likewise in our fieldwork, some individuals deliberately chose to remain silent, as a form of agency to resist and react against patriarchy and other systems of oppression.⁶² Nonetheless, there were also examples of silence as a form of oppression. This included having been taught since childhood to not speak about sexual violence, which should stay within the community. Thus, one participant noted that "there is a saying within the Eritrean community, if you are raped you have to be quiet . . . We cannot force someone to speak if they are afraid."⁶³ The same participant also emphasized the peer pressure that she experienced not to report SGBV to the authorities. Both of these examples depict silence as a manifestation of oppression. This reinforces Carol Gilligan's study on the relevance of the process of socialization (1982)⁶⁴, and Yuval Noah Harari's work (2011)⁶⁵ that stresses the impact of socialization on women's decision-making process throughout their lives. Likewise, key informant UG#2 mentioned that:

Women who go through this rape, sexual violence, sexual mistreatment, they have this fear. They have this fear inside them. They fear to go to public places to talk about their problems. They do not want to go public and tell this openly to police . . . They feel that society would mistreat, look badly to them, and ostracize

them.”⁶⁶

This stigmatization may create obstacles for them to get married within their group. This is an important issue as women wish to remain in their own community. This contributes to an increase in silence as a form of oppression, along with issues such as peer pressure and women's socialization.⁶⁷

Like the Uganda dataset, the Israeli dataset depicts reports of silence as a manifestation of oppression. This is because of peer pressure not to report SGBV cases to avoid further discrimination by the host community. One participant noted that:

[T]hey [women] are afraid in case the perpetrator is arrested if the community will turn against them. Women fear community's pressure on them to not to report these cases. That's why so many women do not report sexual violence.⁶⁸

Refugee women fear reporting SGBV as it might increase the already negative perceptions in the host community towards the hosted communities.⁶⁹ Other examples of silence as a manifestation of oppression in the Israeli dataset includes underreporting due to shame and potential stigmatization. This can be seen in the cases of forced prostitution⁷⁰ and the cases of SGBV in the “torture camps” in the Sinai Desert.⁷¹ Usually, survivors do not report SGBV to family members, to members of their community, or to the authorities.⁷² Similarly to the Uganda dataset, also in the Israeli dataset silence as a form of oppression is rooted in the survivor's fear of not being able to marry within the same group:

Women who have survived the Sinai Desert . . . are afraid of opening up because, if they have no husband, it might be difficult to marry and have a family if anyone knows that she is a SGBV survivor.⁷³

These examples of silence, as a manifestation of oppression, are due to the internal and external othering of refugees and asylum-seekers, in particular women.⁷⁴ There were however cases of

SGBV survivors who did not acknowledge violence as such, because of the lack of a naming-blaming-claiming process⁷⁵ which is rooted in women's cultural socialization process.⁷⁶

Thus, as can be seen in this sub-section, silence may be an expression of agency or an expression of oppression. As can be seen from the fieldwork, silence as agency had a specific function to prevent further discrimination and violence just like silence as an oppression. The difference between both relies on choosing silence versus being silenced.

2. Collective versus Individual Agency

In this section, the article focuses on collective and individual agency, whether active or passive. Similarly, Krause's study also identifies collective practices/coping strategies and single actions/individual practices.⁷⁷ In this article, we frame these two types of agencies as collective versus individual agency. As illustrated by participants, collective agency usually results from community-based solutions, which provide an alternative pathway to seek justice based on common cultural features.⁷⁸ These are appealing to refugees and asylum-seekers, enabling an opportunity to reproduce familiar social structures from their homeland in the asylum country.⁷⁹ Such community-based solutions encompass examples of agency by refugees and asylum-seekers, who highlighted the importance of having traditional justice systems as an alternative to turn to each time retributive justice--the national legal system--fails. The pivotal role of the community leader, to manage the conflict amongst members of the same community, was emphasized by participants GR#2 and GR#3 in the Greece dataset. They stressed that some community leaders not only arbitrate conflicts, but also assist the camp manager by acting as cultural mediators and interpreters, thus potentially preventing SGBV.⁸⁰ For instance, in the

Greece dataset, key informant GR#1 mentioned that community leaders in former Elliniko I refugee camp would gather the community to reveal which behaviors were not welcomed in Greece and the consequences perpetrators could expect from the Greek criminal justice system.⁸¹ The same participant stressed that community leaders also intervened to prevent any kind of conflict and would address earlier stages of a dispute.⁸² Hence, fieldwork in Greece provided evidence of arbitration in informal and formal settlements.⁸³ Participant GR#6 highlighted that individuals would often prefer to go to their community leaders because they did not have documents, which may have ramifications for them: “We have no documents. It is better not to report (to the police) because individuals want to go, to carry on with their journey.”⁸⁴ Thus, the lack of documentation acted as a barrier to reporting SGBV to the authorities. It pushed individuals towards traditional justice systems as a potentially faster, more reliable, culturally attuned, and friendlier response to their conflicts, including SGBV.

The “single narrative”⁸⁵ and the “‘other’ narrative,” through the process of othering refugees and asylum-seekers,⁸⁶ was perceived as a determining factor in the choice to seek justice through the traditional justice systems over using the local system of retributive justice. It is the discrimination and social marginalization⁸⁷ that refugees and asylum-seekers face, which creates the perception of not belonging. This pushes SGBV survivors towards community-based solutions that are based on familiar cultural norms. This was emphasized by key informant GR#8, who mentioned that since “NGOs are from a different culture from the refugees' culture, and since individuals vote for community leaders, it is good to have a traditional justice system.”⁸⁸ This idea about the importance of a distinct cultural background has been pointed out as a trigger to build a traditional justice system in the asylum country, privileging “sameness” over “otherness.”⁸⁹ Thus, this combination of circumstances pushes SGBV survivors towards

their own traditional justice systems, which are also a way of keeping alive the existing social structures of refugee communities⁹⁰ despite patriarchal features within those traditional justice systems which jeopardize women's human rights.

Similarly, in the Uganda dataset there were examples of collective active agency and collective passive agency, both privileging the group interests over women's interests. On the one hand, participant UG#1 suggested a collective active agency through tribe meetings among Somalis to address SGBV, privileging community-based responses. On the other hand, participant UG#2 suggested a collective passive agency, which included not reporting SGBV incidents to avoid further intra-community violence: “There are [SGBV] cases within the Somali community, for instance a gang rape case, it should be handled inside the community, otherwise it will add more fights between and against Somalis.”⁹¹

Thus, women’s agency would be exercised in consideration of the best interests of the whole community. Group identity had a stronger impact on women’s agency than their individual identity, i.e. as refugee and asylum-seeking women.⁹² This is a result of the intersection of gender, ethnicity, nationality, and religion that creates multiple and intersecting discriminations that push women to the margins of the fruition of their human rights.⁹³ Women's choices are affected by the intersection of these identity markers shaping their agency.⁹⁴ It is noteworthy that patriarchy does place the responsibility for community cohesion on women as an element of women's traditional role.⁹⁵ As the Organization for World Peace stresses, “[t]his male dominance dictates women's career paths, personal image, safety, security and countless other aspects of their lives.”⁹⁶ This reduces women’s freedom to make personal choices that benefit them.

As the Uganda dataset shows, community-based mechanisms, such as the traditional

justice system, provided a pathway to overcome the fear of villainization of the community, while providing a faster way to seek justice and an easier mechanism to show evidence of SGBV.⁹⁷ These were used by women, despite the patriarchal features of traditional justice systems, which disregard SGBV survivors' well-being, interests, and fundamental rights.⁹⁸ This again reinforces how patriarchy places the responsibility for community cohesion on women and their traditional roles. This was also expressed by women's preference for community-based response which again reflected a tendency to work in collaboration, solidarity, and cooperative ways, bringing individuals together to solve matters.⁹⁹ For instance, participant UG#1 expressed her preference for a community-based response: "It is better to have a tribe meeting, to sit down and talk about issues."¹⁰⁰ Indeed, most individuals interviewed showed solidarity and a tendency to act as a part of a large family. This brought everybody together to solve the issues through a restorative process that focused on healing, not punishing. Thus, while women preferred to address these cases inside their community, which partially explains the significant rate of under-reporting, women's agency is also exercised as a consideration of the interests of their community. There was a mindset of community welfare, and the sense of a need for a collective response as well as the notion of sisterhood present in the Uganda dataset. It is worthy to note that such a feeling of community, collectiveness, and sisterhood was also present among Eritrean refugee and asylum-seeking women based in Tel-Aviv, Israel, who were interviewed for this study. Such feeling of community, collectiveness, and sisterhood led participants in the Uganda and Israel datasets not to adopt a victim-blaming attitude towards SGBV survivors.

In the Israel dataset, the most relevant example of collective active agency was the grassroots movement of the Eritrean Women's Community Centre (EWCC), which provided women with a safe space to meet. The EWCC was highly praised by all participants because of

its “bottom-up” or ground-level approach, in other words its grassroots nature. This contrasts with other NGOs, which were criticized, as also occurred in the Greece dataset. In this regard, one participant noted that the support she wanted from a specific NGO was not the support she received: “NGOs want us [a couple] to separate, to divorce.”¹⁰¹ This testimony stressed the participant's concern about differing points of view, because of differing cultural backgrounds, on how to address specific matters. It also emphasized the power dynamics between the views of an NGO on how to tackle an issue, and the affected individual's own agency and desire to go in a different direction to tackle the same problem. Despite these power dynamics between some NGOs and asylum-seekers, there were also reports of very positive support from some NGOs, which would identify and report some SGBV cases to the UNHCR.¹⁰² This report would then assist women to resettle elsewhere:

Go to NGOs and they will inform UNHCR to help women to be resettled. There are cases where if women mentioned that they have survived SGBV, the NGO tells UNHCR, and the latter helps women to resettle.¹⁰³

Despite various power dynamics between refugees, asylum-seekers, and some NGOs, participants did acknowledge positive outcomes of the work of some NGOs that worked with the EWCC.

Thus, evidence of collective active agency was very strong in the Israeli dataset. This highlights the motivation of Eritrean asylum-seeking women to develop grassroots structures to promote their views and hopes, instead of being passive agents that were “receiving” instructions or services determined by others. This was a particularly significant factor, especially when they highlighted having different aims and goals from those that some NGOs wanted them to pursue. Such grassroots structures were also, in part, a reaction to socio-legal-cultural-economic discrimination that saw no work permits being issued.¹⁰⁴ This forced women in particularly

vulnerable situations to work illegally,¹⁰⁵ putting them at higher risk of surviving SGBV.¹⁰⁶ Consequently, Eritrean refugees and asylum-seekers have developed an active agency.¹⁰⁷ Therefore, some participants manifested a preference for seeking the support of grassroots organizations movements, such as the EWCC. One participant noted that:

[The] Centre [EWCC] gives power to women. The Centre [EWCC] provides a safe environment, for Eritrean refugee and asylum-seeking women, including for single mothers, women may come here and find support.¹⁰⁸

Another participant noted that “EWCC is especially important for us. It is like a mother’s house; it is a second house.”¹⁰⁹ Thus, for them, grassroots structures were key to providing a space where they could exercise their personal and collective agency and their ability to decide how to address certain issues, including SGBV cases, i.e. domestic violence, and marital rape. They sought an approach based on shared experience and knowledge instead of one with a controlling narrative. Thus, collective agency privileged sameness over otherness while also leading women to privileged community cohesion over their individual interests and fundamental rights. This led to peculiar functions of agency as examined in the following sections.

B. Different Functions of Agency

When considering the different types of agencies reported by participants across all three datasets, it is noticeable that agency represented not only a reaction to mitigate their risk to survive SGBV, but also as a reaction against the state's failure to provide protection. All three datasets illustrate that participants adopted or witnessed agentic behaviors to overcome the state's failure to fulfill its obligations to provide protection to its citizens and persons in its territory. This is particularly so for segments of the population that face multiple and intersecting

discriminations, hence, overlapping layers of vulnerabilities which amplify their risk to survive SGBV.

In the following sub-sections, this study delves into the different functions of agency aimed to tackle four dimensions of the state's failure to provide protection.

1. The Reaction to the State's Failure to Acknowledge Refugees

Different types of agentic behavior manifest for different reasons. In the database connected to this study, what can be seen is that the overall goal of agentic behavior is to prevent and/or address the state's failure to protect refugees and asylum-seekers. This occurs in four different ways.

This sub-section focuses on the first of these manners. This is agency as a reaction against a state's failure to legally acknowledge refugees. Although refugees flee their country of origin or country of residence to seek protection abroad, many of them endure and experience more violence and discrimination, throughout the entire refugee cycle.¹¹⁰ Such experiences in the country of asylum might be aggravated by the social and legal framing about who is considered to be vulnerable and thus worthy of protection.¹¹¹ This results in state-created vulnerability due to state-created categories.¹¹² This may be the effect of the tension between the state's international obligations and its national interests, which sometimes is managed by selecting certain legislative options, which is the upshot of the tension between assignment and assertion.¹¹³ This tension, identified by Vertovec, results in what Cecilia Menjivar calls a misalignment.¹¹⁴ In this case, there is a misalignment between the legal framework and what occurs in practice, and a misalignment between how asylum-seekers perceive themselves--as

refugees--and how the legal practice and administration of justice perceive them--as not being refugees. This thus narrows down the perceptions, recognition, and acknowledgement of refugees, which leaves asylum-seekers not only in a legal limbo, but also more vulnerable and exposed to SGBV due to an increase in vulnerability to homelessness, precarious jobs, and other issues.¹¹⁵

These combined factors result in a state-created “perfect storm” of multi-layered vulnerability, in breach of the state’s international obligations. This is exacerbated by the state creating structural and systematic circumstances which amplify the asylum-seekers’ vulnerability. Reinforcing multi-level and “poly-hierarchical” formal and informal power dynamics¹¹⁶ creates the opportunity and space for SGBV to occur. Spaces and territories which ought to be safe havens are turned into violent and hostile spaces for asylum-seekers.¹¹⁷ This state-created vulnerability is embedded in state structural patriarchal, ethnoreligious and racialized discrimination, and violence.¹¹⁸

These findings reinforce the view that agency is deeply affected by circumstances, especially where intersecting and multiple systems of oppressions are found to be embedded in power dynamics.¹¹⁹ The acknowledgement of women’s agency provides an understanding of how women use private and public spaces to protect themselves from the “outside.” This provides a glimpse into the level of patriarchy that women face daily and their reaction to it. Thus, women’s discourses provide insights into the level of inequality between men and women, many times expressed by silence, whether as a manifestation of oppression or as a reaction against that same oppression. Ultimately, these examples of agentic behaviors from the fieldwork pinpoint women’s reaction against the country of asylum’s failure to protect refugees and asylum-seekers against any sort of violence, including SGBV.

Thus, the first function of agency, according to the participants, is a reaction against the state's failure to provide protection, in this case to asylum-seekers, by not acknowledging them as refugees. Quite often the state, the community, and society in general fail to acknowledge the fact that despite being in a vulnerable situation, both asylum-seekers and refugees maintain their agency. Precisely because of their vulnerable situations, refugees find themselves needing to exercise their agency to reach their final destinations. That same agency keeps them travelling for many miles to reach where they want to go. It keeps them motivated to mitigate the risk of and their exposure to SGBV because of the state's lack of protection (or failure to protect them) against it.

As a reaction against the state's failure to acknowledge asylum-seekers as refugees, some participants, especially in the Greece dataset, displayed examples of agentic behaviors at a family level. Families would adopt various strategies to reach their final destinations, which was not Greece, for example by planning on the men staying in Athens and sending their wives and daughters to Germany or to other European countries with the intention of applying for reunification afterwards.¹²⁰ These findings are similar to the trend emanating from Jane Freedman's study where refugee women would work with "the idea of their vulnerability to advance their migratory strategies."¹²¹ Paradoxically, this same agentic behavior increased their vulnerable situations and exposure to SGBV.¹²² As one key informant GR#6 mentioned: "I know a case of a young woman, she was travelling alone, and she had the money to pay to the smuggler. The smuggler took her money and raped her."¹²³ Thus, whether choosing to stay in the country of asylum or fleeing to another country to request family reunification, asylum-seekers and refugees face aggravated risk and exposure to SGBV. They displayed multiple forms of agentic behaviors to react to such risk and exposure, in part because of the state's failure to

acknowledge asylum-seekers as refugees and to provide them with protection.

2. A Reaction to the State's Failure to Prevent SGBV

The second function of agency, according to the participants, is a reaction against the state's failure to prevent SGBV. In particular, it is a response to the state's failure to provide the policy, legal framework, means, resources, and infrastructure to prevent SGBV.¹²⁴ It is the systematic failure of the state to provide protection which leads women to seek support from informal power structures. As a reaction to the state's failure to prevent SGBV, all three datasets provided examples of refugees' and asylum-seekers' agency, whether passive or active, individual, or collective. Such examples, showcase that despite being in vulnerable situations, refugees and asylum-seeking women are not helpless and do choose and display different levels and forms of agency. They use a variety of strategies to do this.

Some participants emphasized the key role of family, especially their husbands, in supporting and protecting women and children from SGBV, by simply being present. Their presence, in most cases, was a deterrent to SGBV perpetrators. As stressed by participant GR#1, in the Greece dataset, "if my husband was there, it would be different,"¹²⁵ emphasizing the importance of the men's social role as "protector." This also points out the social dynamic and power relations inside her community. This reflects the importance of the protective and "preventive role" of men in supporting women, and the importance of traditional non-formal power dynamics whenever the formal power of state institutions fails.

To deal with some of the dangers that the participants had to face, some women often attempted to shield themselves from potential sources of harm by being accompanied by men.

Unfortunately, perpetrators may also threaten or attack the men who play a protective role towards women. As key informant IL#2 in the Israel dataset reported, there were cases in which perpetrators would be deterred by the presence of men, but would persist at times in their resolve to attack women by using guns to scatter the men protecting the women:

A refugee was fleeing with a group of refugee men and two refugee women. They were flying to Israel when the Bedouins came and tried to kidnap both women. The refugee men protected both women and saved them. However, the next night, the Bedouin men attacked again the group with guns and weapons. They were forced to leave both women behind and run away. He is still traumatized by that because he couldn't save both women. He still has nightmares because of this.¹²⁶

These cases reveal multilevel non-formal power dynamics, in which men deter other men from attacking women, unless force is used to resist their intervention. This impacts men too who feel traumatized, which emphasizes the complexity and extension of SGBV impact, thus affecting not only the survivors but also others, including bystanders.

Therefore, there are different reasons and functions for agentic behaviors amongst refugees and asylum-seeking women. Such a response can be active or passive as well as collective or individual. They are taken up to address the state's failure to prevent SGBV.

3. A Reaction to the State's Failure to Provide Access to Justice

The third function of agency, according to the participants, is as a reaction to the state's failure to provide access to justice and the inability of the justice system to play a sufficient role. Each time the state fails to prevent SGBV, as well as each time agentic individual or collective strategies fail to prevent SGBV, another core of agentic behaviors emerges to address access to justice.

Across all three datasets, participants provided evidence of collective active agency to

react to the state's failure to provide access to justice to SGBV survivors. The most common collective active agency seen across all three datasets was the use of traditional justice systems. However, as noted, there are problems in those systems because of the patriarchal and traditional roles of elderly men who play key roles in some of the refugees' communities because of their influence on traditional justice systems.¹²⁷ While traditional justice systems were pointed out by participants as an alternative to retributive justice, especially when the latter failed, traditional justice systems presented patriarchal features that jeopardize women's human rights, interests, and well-being. Some participants (i.e. participants IL#8 and IL#10) highlighted that there is a significant probability of traditional justice systems reinforcing the inherent patriarchal structures, and their power dynamics based on gender roles, which are root causes of SGBV. There were women who were aware of the potential reinforcement of patriarchy, and preferred instead to use their agency, to make their own choices and decisions. However, there were participants who preferred to seek help and support from their families, particularly because the family is a crucial element of social structures. As was noted by one participant:

The country starts with the family. If there are nice families it will be a nice country, family is the base . . . If it was in Eritrea there would be a priest to help all the family, to reconcile all family members, to unite and to heal the family.¹²⁸

This highlights the fundamental role of the family, and of traditional justice systems, in rebuilding (to a certain extent) the social structures from the home country. For some participants, the community leader--the priest--was considered the crucial person to heal a family and, therefore, a community. Thus, in the Israel dataset, some participants saw in their priest a possible alternative to retributive justice, despite the patriarchal features of the traditional justice system, which jeopardizes women's human rights.

Thus, there were multiple examples of agentic behaviors to react against the state's failure

to provide access to justice, with collective active examples of agency, the most significant examples emerging from the datasets. These examples of collective active agency included the use of traditional justice systems.

4. The Reaction to the State's Failure to Prevent Discrimination Against Refugee Communities

The fourth function of agency, according to the participants, is a reaction to the state's failure to provide protection to refugees, specifically, to prevent discrimination against refugee communities.

The difference between silence as agency and silence as a manifestation of oppression is about the following choice: choosing to be silent about SGBV incidents or being “pressured” to be silent about SGBV incidents.¹²⁹ Both cases intend to prevent further othering, whether internal othering or external othering--i.e. intra-community or inter-community discrimination and violence.¹³⁰ In the Israeli dataset, there were reports of silence as oppression because of peer pressure not to report SGBV cases, to avoid further discrimination by the host community.

The peer pressure intends to avoid further discrimination against the refugee community, as it might increase the already negative perceptions in the host community towards the hosted community. Other examples of silence as a form of oppression were the cases where SGBV was not reported because of shame and stigma. This can be seen in the cases of forced prostitution¹³¹ and the cases of SGBV in the “torture camps” in the Sinai Desert.¹³² Thus, often women did not report the SGBV to their families, to their communities, or to the authorities. This is often the case, as they feel pressured to prioritize group interests over individual interests. There were examples of collective active agency, such as grassroot movements and traditional justice

systems. Both examples of collective active agency were aimed at preventing further discrimination of the refugee community, while privileging sameness over otherness, and the community's cohesion over women's individual interests.

Overall, the functions of agentic behaviors are deeply connected to the modes of the state's failure. Each way a state fails, builds on the others. Therefore, the different forms of agency display different functions, but are nevertheless intertwined with each other. For example, an agentic behavior to address the lack of sufficient recognition as refugee, also has an impact on the prevention of subsequent violence and discrimination arising from the other dimensions of a state's failure. Likewise, agentic behavior to address the state's failure to prevent SGBV, also has an impact on the prevention of subsequent violence and discrimination arising from other modes of a state's failure. Thus, different types of agentic behaviors display different functions with the purpose of addressing a specific state's failure, while preventing and mitigating the impacts of forthcoming and intertwined modes of the state's failure.

IV. CONCLUSION

Drawing on fieldwork conducted in Greece, Uganda, and Israel, this study has identified different forms of agency displayed by refugee and asylum-seeking women. These are associated with different functions to prevent and/or address the four dimensions of the state's failure to protect. The different types of agencies displayed by these refugee and asylum-seeking women were passive versus active agency and collective versus individual agency. The fieldwork also identified silence as a form of agency, including some examples of silence as a manifestation of oppression to stop another form of oppression, that of othering of the asylum-seekers'

community by the host community.

These different types of agentic behaviors express refugees' and asylum-seekers' resilience. Based on the diversity of agentic behaviors reported by participants, the study identified four different functions of the reported agentic behaviors. These are reactions to the state's failure: (1) to acknowledge refugees; (2) to provide protection from SGBV; (3) to provide access to justice; and finally (4) to prevent further discrimination and further villainization of the refugee community.

By adopting agentic behaviors to prevent discrimination and violence, refugee and asylum-seeking women prevent further overlapping layers of violence and discrimination, which further marginalize them socially and legally. Thus, they turn sites of aggression and of oppression into sites of disputing power, resistance, resilience, and of claiming their rights and freedom.

One such site is the state's legal framework. Crucially, the way various categories are created (refugees, SGBV survivors, victims, access to justice, and the process of "othering" hosted communities) may also result in state-created vulnerability. Thus, refugee and asylum-seekers' agency is important to ensure that sites of oppression are identified and transformed into sites of power, dispute resolution, and agency. This can foster a pathway to address and deconstruct the state's failure to provide protection to asylum-seekers.

Therefore, the examples of agency emerging from the fieldwork conducted for this study illustrate that, despite being in vulnerable situations, refugees and asylum-seekers are not helpless, and that they choose, and display, different levels and forms of personal and collective agency. Refugees and asylum-seekers use agency to advance their mobility agenda, to mitigate their risk of and exposure to SGBV, to respond to SGBV incidents, and to respond to the

discrimination against the refugee community. All of these are a consequence of a state's failure to provide protection. However, it is also crucial to acknowledge the intersectional gendered, racialized, religious, and other asymmetrical socio-legal impact of such issues on refugee and asylum-seeking women. Their agency, whether passive or active, whether collective or individual, is a reminder of such impact.

Endnotes

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⁸⁴ Participant GR#6.

⁸⁵ Chimamanda Ngozi Adichie, *The Danger of a Single Story*, TED CONFERENCES (July 2009), <https://perma.cc/NVC7-WU32>.

⁸⁶ SIMONE BEAUVOIR, *THE SECOND SEX* (H. M. Parshley trans., Jonathan Cape ed., 1st ed. 1972) (1949); ELENA FIDDIAN-QASMIYEH, *PROTECTION CHALLENGES UNHCR PANEL ON RECEPTION AND ADMISSION* (2017), <https://www.unhcr.org/5a745f4f7.pdf>.

⁸⁷ Crenshaw, *supra* note 4.

⁸⁸ Key informant GR#8.

⁸⁹ FREEDMAN, *supra* note 79.

⁹⁰ *Id.*

⁹¹ Participant UG#2.

⁹² *See* Sarkin & Morais, *supra* note 13.

⁹³ *Id.*; see also Amanda Gouws, *Feminist Intersectionality and the Matrix of Domination in South Africa*, 31 AGENDA--EMPOWERING WOMEN FOR GENDER EQUITY 1 (2017).

⁹⁴ Leah Boyd, *Global Patriarchy: Women of the World*, ORGANIZATION FOR WORLD PEACE (Mar. 25, 2018), <https://theowp.org/reports/global-patriarchy-women-of-the-world/>, [<https://perma.cc/E9GN-LDUT>].

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ ROMI SIGSWORTH, GENDER-BASED VIOLENCE IN TRANSITION, Centre for the Study of Violence and Reconciliation (2008); Ulrike Krause, *A Continuum of Violence? Linking Sexual and Gender-Based-Violence During Conflicts, Flight and Encampment*, 34 REFUGEE SURVEY Q. 1, 4 (2015); Smith-Khan et al., *supra* note 43.

⁹⁸ Sarkin & Morais, *supra* note 13.

⁹⁹ Participant UG#2; Participant UG#3.

¹⁰⁰ Participant UG#1.

¹⁰¹ Participant IL#5.

¹⁰² Participant IL#6.

¹⁰³ *Id.*

¹⁰⁴ See Morais & Gibbs, *supra* note 8.

¹⁰⁵ Michal Shamai & Yair Amir, *Not the Promised Land: African Asylum Seekers and Refugees in Israel*, 26 QUALITATIVE HEALTH RSCH. 504, 505-506 (2015).

¹⁰⁶ Tamar Arev, *Between Clothes and the Body: National and Gender Identity Among Eritrean Women Refugees*, 32 J. REFUGEE STUD. 302 (2018); See also Morais & Gibbs, *supra* note 8.

¹⁰⁷ Lisa Anteby-Yemini, *African Asylum-Seekers in Israel: Illegalization, Incorporation and Race Relations*, 7 HAGIRA (2017); Tanja R. Müller, *Realising Rights Within the Israeli Asylum Regime: A Case Study Among Eritrean Refugees in Tel Aviv*, 37 AFR. GEOGRAPHICAL REV. 134 (2017); see also Arev, *supra* note 106.

¹⁰⁸ Participant IL#2.

¹⁰⁹ Participant IL#5.

¹¹⁰ Sarkin & Morais, *supra* note 8.

¹¹¹ *Id.*; Heaven Crawley & Dimitris Skleparis, *Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe's "Migration Crisis,"* 44 J. ETHNIC & MIGRATION STUD. 48 (2018).

¹¹² Starr, *supra* note 3.

¹¹³ Vertovec, *supra* note 7.

¹¹⁴ Menjivar, *supra* note 3.

¹¹⁵ *See* Sarkin & Morais, *supra* note 8.

¹¹⁶ Ulrike Krause, *Protection / Victimisation / Agency? Gender-sensitive Perspectives on Present-day Refugee Camps,* 45 ZEITGESCHICHTE 499 (2018).

¹¹⁷ *Id.*

¹¹⁸ Starr, *supra* note 3; Menjivar, *supra* note 3; Clayton, *supra* note 6; *see also* Lauren Carruth et al., *Structural Vulnerability: Migration and Health in Social Context,* 6 BMJ GLOB. HEALTH (2021).

¹¹⁹ O'Hara & Clement, *supra* note 2.

¹²⁰ Participant GR#2; participant GR#3; key informant GR#1; *see* Talitha Dubow & Katie Kuschminder, *Family Strategies in Refugee Journeys to Europe,* 34 J. REFUGEE STUD. 4262 (2021); *see also* Jane Freedman, *Engendering Security at the Borders of Europe: Women Migrants and the Mediterranean "Crisis,"* 29 J. REFUGEE STUD. 568, 580 (2016).

¹²¹ Freedman, *supra* note 120.

¹²² *Id.*

¹²³ Key informant GR#6.

¹²⁴ Morais & Gibbs, *supra* note 8.

¹²⁵ Participant GR#1.

¹²⁶ Key Informant IL #1.

¹²⁷ *See* Thalia González & Annalise J. Buth, *Restorative Justice at the Crossroads: Politics, Power, and Language,* 22 CONTEMP. JUST. REV. 242 (2019).

¹²⁸ Participant IL #5.

¹²⁹ Hedge, *supra* note 54; Koscianska, *supra* note 54; Zevallos, *supra* note 74; Polat, *supra* note 74; Mortensen, *supra* note 74.

¹³⁰ *Id.*

¹³¹ Participant IL#3.

¹³² Participant IL#9.