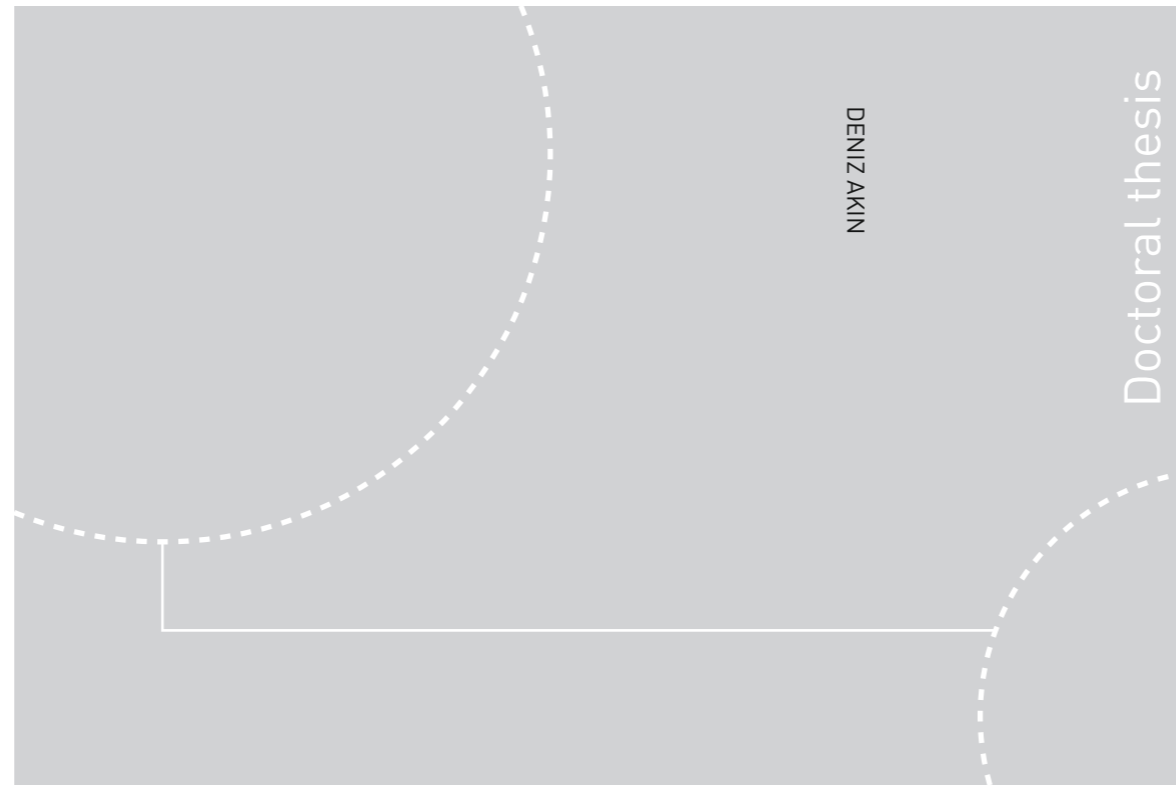


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DENIZ AKIN

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ASYLUM SEEKING IN NORWAY ON THE
GROUNDS OF SEXUAL ORIENTATION-
BASED PERSECUTION



Norwegian University of
Science and Technology



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NTNU
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DENİZ AKIN

16.01.2017

Trondheim

“what you seek is seeking you” Rumi

QUEER CHALLENGES TO THE NORWEGIAN POLICIES AND PRACTICES OF IMMIGRATION: ASYLUM SEEKING IN NORWAY ON THE GROUNDS OF SEXUAL ORIENTATION-BASED PERSECUTION

INTRODUCTION

Over the past decades, thousands of people have fled their country because of their sexual orientation and sought a safe haven in another country (Spijkerboer and Jansen 2011, Berg and Millbank 2009). However, neither the plight of sexual minorities nor their search for safer and better spaces is a recent phenomenon. Sexual minorities have been travelling across borders – either within their countries (from rural to urban areas) or outside their countries – to avoid discriminatory practices and harassment, or simply to improve their lives, for quite some time. What is relatively new is the formation of sexual orientation-based persecution as a legitimate ground for asylum claims, as established by the United Nations Refugee Convention.

The inclusion of sexual minorities in the Convention poses particular challenges centered on the interpretation and application of asylum law to sexual orientation-based claims. It also prompts the question of how sexual identities and meanings are constructed in the nexus of global sexual politics and discourse around refugees.

Focusing on the Norwegian context, this dissertation attempts to shed light on the way in which these issues – or what I call “queer challenges” – inform Norway’s policies and practices of immigration concerning sexual orientation-based asylum claims.

QUEER CHALLENGES

In this research, my engagement with the term “queer” is both political and practical.

Practically, I use the term as an umbrella concept to refer to people with non-conforming sexual orientation, even though not all such persons necessarily identify as queer. Here, sexual orientation is understood as a configuration of sexual desire, sexual enactment and self-

identification, which cannot be neatly rendered to a single parameter. Accordingly, the term “queer asylum seeker” is used to designate persons who have left their country to avoid risk of persecution and to seek protection in another country, on the grounds of their non-conforming sexual orientation.

Politically, my use of the term “queer” refers to the theoretical and scholarly project that is committed to contesting and destabilizing anything that is presented and perceived as normal and natural (Eng, Halberstam, and Muñoz 2005, Jagose 1996, Warner 1993). Accordingly, there has been a laborious effort on the frontiers of queer studies to challenge rigid identity categories. Drawing on these scholarly efforts, my use of “queer” in “queer asylum seekers” refers to the difficulty – if not impossibility – of rendering a person genuine on the basis of his/her sexual orientation. I refer to various political and practical issues raised by queer asylum seekers’ protection claims as “queer challenges” not only because the claimants are allegedly queer, but also to underline this difficulty.

LEGAL CHALLENGES

Technically speaking, a refugee, as delineated by the 1951 UN Convention and the 1967 United Nations Protocol relating to the status of refugees, is a person “who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion” (UNHCR 2011:10). Asylum seekers, on the other hand, are individuals whose request for protection has not yet been processed.

As has been made evident, sexual orientation is not included in the wording of the Refugee Convention. It was not until 1981, when the Dutch Judicial Department of the Council of State stated that persecution on the grounds of sexual orientation should entitle refugee status, that sexual minorities entered the international asylum system (Spijkerboer 1998, Jansen 2013). This legal development was later followed in other countries, such as Germany, which recognized homosexuality as a reasonable ground in 1986, and Norway, in 1998 (UDI 2001). Currently, sexual orientation or gender identity is considered a reasonable ground by at least 42 countries,

according to the United Nations High Commissionaire for Refugees¹, and claims made on this basis are often evaluated under the Convention ground of “membership of a particular group” (OHCHR 2012, UNHCR 2008).

However, there are no standardized practices concerning the evaluation of such cases across countries, as demonstrated by several reports, such as *Refugee Status Claims Based on Sexual Orientation and Gender Identity: A Practitioners’ Guide* (ICJ 2016), *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (OHCHR 2012) and *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe* (Spijkerboer and Jansen 2011).

Put simply, queer asylum seekers are required to prove their membership to a particular social group and their well-founded fear of persecution in relation to this membership, as stipulated in the UN Refugee Convention, to qualify for protection. These asylum seekers pose particular queer challenges in relation to this requirement.

Membership to a Particular Social Group

The UNHCR defines members of a social group as:

a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights. (UNHCR 2002:3)

On the basis of this definition, one could say that, for a queer person who qualifies as a member of a social group, sexual orientation should be immutable and ahistorical. This leads to what the legal scholar Sonia Katyal calls the “substitutive model” (2002:109). The substitutive model, according to Katyal, is the prevailing presumption that sexual orientation is static and

¹ The actual number, however, is unclear, as some asylum-granting countries do not have an explicit policy in this regard, and/or some countries do not keep records of the grounds on which asylum claims are made (ibid.).

the relationship between sexual conduct and sexual identity is clear; thus, individuals who perform same-sex sexual conduct can be legally identified as a member of the group called homosexuals. This interchangeability of sexual identity and sexual conduct is present in asylum adjudications in, for instance, the UK, Canada and Australia (O'Leary 2008, Berg and Millbank 2009), where adjudicators seem to reduce sexual identity to sexual conduct through sexually specific questioning of applicants. In these cases, decision makers tend to approach sexual orientation as an unchangeable trait. For instance, previous studies have reported that queer claimants tend to lose credibility if it becomes known that they have previously engaged in a heterosexual relationship (Walker 2000, Millbank 2009), or when an alleged lesbian is discovered to have a child (Lewis 2010). Sometimes, however, decision makers accept that the claimant has previously had a heterosexual relationship, as long as this experience is denounced by the presentation of a concrete, un-ambiguous homosexual identity (Berg and Millbank 2009).

This substitutive model is not only problematic because it implies an inherent, congenital understanding of homosexuality that has been laboriously criticized by critical scholars (Warner 1993); it is also misleading on the grounds that many persons find speaking about sexual conduct distressing and traumatizing. Asylum seekers are likely to reveal ambiguous and inconsistent information – if they manage to talk about their experiences at all – when they are questioned on these matters (Bennett and Thomas 2013, Berg and Millbank 2009, O'Leary 2008, LaViolette 2013, Middelkoop 2013). Therefore, queer asylum seekers' credibility tends to be weakened, in the eye of adjudicators, when they are questioned about sexual conduct. For this reason, one could say that reducing sexual identity to sexual conduct is not only a reductionist approach to verifying a person's membership to a particular social group, but also a false method of eliciting correct information from the asylum seekers.

Since there is no checklist for deciding whether a person is gay or lesbian, adjudicators find it difficult to verify an applicant's identity, which serves as the basis of their asylum claim. Queer claimants are often judged as "straight until proven otherwise" (Lewis 2010:430) and "burdened by proof" (Dauvergne and Millbank 2003:299) regarding their sexual orientation. Technically, anyone can claim to be gay or lesbian, and technically there is no way to dispute

this claim. For this reason, adjudicators are harshly criticized when they apply a verification method that is designed by their social and cultural framing of a queer person.

Well-Founded Fear of Persecution

To qualify for protection, queer asylum seekers must demonstrate a well-founded fear of persecution in relation to their membership to a particular social group. In this regard, the questions of what counts as persecution and how persecution could be proven to be well-founded play an important role in refugee determination process.

Persecution can be defined as “serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm, as assessed in light of the opinions, feelings and psychological make-up of the applicant” (UNHCR 2008:7). Although sexual minorities, as well as other minority groups, often receive less favorable treatment in diverse social settings in many countries, this does not always count as persecution, but as discrimination. Instances of discrimination and harassment can, however, amount to persecution on cumulative grounds, depending on the severity of the harm (LaViolette 2009).

The question of how one provides evidence to substantiate one’s claim for having well-founded fear of persecution is particularly difficult for queer asylum seekers because documentation on human rights violations against sexual minorities is hard to find or lacks accuracy when available. For instance, by 2016 there are 73 states around the world that criminalize same-sex sexual acts between consenting adults (ILGA 2016). However, queer people are also prone to get persecuted by non-state actors in private realm of social and family contacts (Millbank 2009, Dauvergne and Millbank 2003), a reality that is also reported to be common in many European countries (Amnesty 2013), and these experiences are hardly documented for reasons such as the ignorance of local authorities, fear of reporting abuse, lack of protective laws and so forth.

Until recently, asylum receiver countries applied what is known as the “discretion requirement” in their assessment of queer applicants’ well-founded fear of persecution. The main argument behind the discretion requirement was that queer applicants could avoid persecution by keeping their sexual orientation out of public sight; in other words, by staying “in the closet.”

In the *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, the UNHCR (2008) argues that:

A requirement for discretion would furthermore imply that a person’s sexual orientation is confined to a mere sexual act, thereby overlooking a range of behaviors and everyday activities otherwise affected by that person’s sexual orientation and gender identity. (2008:13)

Furthermore, the discretion requirement shadowed the question of “whether the need to act discreetly to evade persecution amounts to persecution in itself” (Bobis 2012:18).

Concerning this subject, in 2010², the UK Supreme Court reached a remarkable decision by over-turning a previous verdict that had used the discretion requirement as central reasoning. The judges argued that to compel a homosexual person to pretend that their sexuality did not exist, or that the behavior through which it manifested could be suppressed, was to deny that person the fundamental right to be who he/she was.

Although the decision seems to offer relief from the infamous discretion requirement, legal scholars currently seem to lack a consensus on the instrumentality of this decision. In their account “Queer cases make bad law,” James Hathaway and Jason Pobjoy (2011) argue that the UK Supreme Court did not base its decision on any articles related to human rights treaties, but invented their own articles by stating that the claimant had a fundamental right to be who he was. Hathaway and Pobjoy further argue that the scope of activities considered necessary for expressing intelligible sexual orientation or gender identity, whose denial or limitation would amount to persecution, must be clarified in asylum evaluations. They ask:

² https://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0054_Judgment.pdf.

Is refugee status owed to gay claimants whose risk follows only from holding hands, kissing in public? To those at risk because they cohabit, marry, or decide to raise children? (Hathaway and Pobjoy 2011:334)

In asking these questions, Hathaway and Pobjoy shift the debate from the juridical challenges faced by queer asylum seekers to the accuracy and consistency of the application of laws. In addition, they appear to favor a distinction between status and conduct – an *is/does* dichotomy – and can therefore be criticized for implying that sexual minorities can reasonably be expected to limit at least some activities to maintain a low profile in their society (Millbank 2012, Wessels 2013, Spijkerboer 2013).

Although the discretion requirement was officially removed in several asylum receiver countries³ between 2003 and 2012 (Spijkerboer 2013:220), discretion reasoning “turns out to be a virus that easily deal with vaccines, by mutating” (Spijkerboer 2015:5). For example, if adjudicators decide that an applicant will be voluntarily discreet about sexuality because, among many other reasons, he/she would not like to offend family members, they may determine that the applicant can be safely returned to his/her country of origin.

CULTURAL AND POLITICAL CHALLENGES

Queer challenges brought forward by queer asylum seekers are also connected to the cultural imperialism and related power inequalities that are inherent in the international asylum context.

In what follows, I elaborate on the representation of refugees as a cultural threat to Western nations and discuss how the notion of a queer refugee poses particular challenges to such representations.

³ New Zealand, Australia, the Netherlands, the United Kingdom, Sweden and Finland.

During the past decades, the notion of citizenship has undergone enormous transformation in Western nations. With the increasing number of immigrants and the political unruliness surrounding the topic of migration, the concept of citizenship has become culturalized. That is, citizenship is now largely defined by cultural terms, so that “culture (emotions, feelings, norms and values, and symbols and traditions, including religion) has come to play a central role in the debate on what it means to be a citizen, either as an alternative or in addition to political, judicial and social citizenship” (Tonkens and Duyvendak 2016:3). Particularly in relation to immigrants, cultural citizenship is not acquired automatically in the process of becoming a citizen in the legal sense (in terms of possessing a nationality and being granted particular rights and duties in relation to that nationality). Rather, cultural citizenship necessitates a manifestation of cultural adaptation along with a feeling of connectedness and belonging to the country of residence (ibid.).

The culturalization of citizenship has also taken a sexual turn. During the past decades, sexual minorities have been strategically mobilized and brought to the forefront of politics in Europe and North America (Haritaworn 2008, 2012, Mepschen, Duyvendak, and Tonkens 2010, Mühleisen, Røthing, and Svendsen 2012). In these politics, tolerance of sexual diversity is marketed as a distinct and inherent character of Western democracies that distinguishes them from the so-called barbaric countries from which refugees originate.

The new politics of inclusion of sexual minorities into the national imaginary, or what Jaspir Puar (2007) names “homonationalism,” communicates acceptance and tolerance for gays and lesbians as a cultural distinction of the West that separates white Western people from immigrants of color, who are considered intolerant of sexual diversity (Fassin 2010, El-Tayeb 2012, Mepschen, Duyvendak, and Tonkens 2010, Puar 2007). Thus, Western countries are designated “sexual democracies” (Fassin 2010:513), whose actual and symbolic borders are defended from non-European immigrants.

These politics are quite remarkable, considering that sexual minorities were once excluded from the national imaginaries of countries such as the United States, where homosexuals were

excludable and deportable on the grounds of sexual deviance until the 1990s (Randazzo 2005, Cantú 2009, Luibhéid 2002).

Amid these political formations, in which racialized and culturalized bodies are represented as a threat to white Western people and white Western queers, queer people of color occupy a peculiar social and political position (Bacchetta, El-Tayeb, and Haritaworn 2015, El-Tayeb 2012, Bracke 2012). It is argued that, in Western countries, queer people of color are often represented as victims of violence in their racialized communities and constructed persons who are void of agency and require liberation from a – supposedly – white savior (El-Tayeb 2012, Bracke 2012). Yet queer people of color also disturb and defy the normative and overwhelmingly white queer and straight spaces (Bacchetta, El-Tayeb, and Haritaworn 2015).

With respect to these culturalized and sexualized notions of citizenship, queer refugees pose particular challenges. On the one hand, their non-normative sexuality requires the protection offered by Western democracies, following their self-claimed inherent tolerance of sexual diversity. On the other hand, the non-whiteness of queer refugees provokes political anxiety about their cultural unfitness to the host society, and therefore prompts questions about the credibility of claims such as: Are they really queer, or are they misusing the asylum system?

NORWEGIAN CONTEXT

Norway is one of the leading countries concerning legislation for equality in matters of sexual orientation. In 1981, the country was the first to enact a law to prevent discrimination against gay and lesbian people in the domains of employment and services. The 1993 Act on Registered Partnership and the Marriage Act of 2009, providing same-sex couples the right to get married on an equal basis as heterosexual couples, are considered milestones for the civil rights of gays and lesbians. The approval of Norway's Lutheran Church of same-sex church weddings in 2016 is a more recent achievement.

In terms of cultural politics, the country markets sexual freedom – based on the items of legislation mentioned above – as a defining characteristic of the nation and culture that pits Norwegians against those depicted as backward and traditional at both national and

international levels (Røthing and Svendsen 2010, Sæteraas Stoum 2012, Mühleisen et al. 2009). However, sexual liberation in Norway is limited and defined for both heterosexual and non-heterosexual people (Mühleisen et al. 2009). Particular sexual ideas and practices are designated as positive and healthy, while others are rendered destructive and illegitimate. For instance, while normative formulations of love-based, long-term, monogamous relationships are encouraged in school textbooks (Røthing and Svendsen 2011), sexual education in Norway is considered resistant to discussion of sexual acts other than coitus (Svendsen 2012). Although homosexuality is included in the national curriculum at all levels of compulsory education in Norway, it is communicated in a somewhat desexualized way, leading “attention away from queer sex, and towards matters of sexual identity” (ibid.:106). Moreover, Norwegian schools, relying heavily on tolerance pedagogy, reproduce prevailing public narratives of homosexuality that are centered on vulnerability and suffering (Bolsø 2008).

This cultural and political context of Norway makes it very interesting to explore how the country’s immigration policies and practices receive and tackle queer challenges.

RESEARCH QUESTIONS

Three articles in this dissertation, through a variety of empirical material collected in Norway, investigate the following principal research question:

How do Norwegian immigration authorities understand genuine sexual orientation and a credible risk of persecution in order to determine queer claimants’ entitlement to asylum in Norway?

Extending from this central inquiry, three articles in this dissertation explore the following supplementary questions:

1. How do queer asylum seekers understand and enact their sexual orientation within the asylum context?

2. How do the sexualities of queer asylum seekers inform the policies and practices of immigration?
3. How do cultural politics of immigration inform the asylum applications of sexual minorities in Norway?

Through these questions, I seek to surface and discuss the bureaucratic and practical dimensions of queer asylum seekers' applications in Norway. In addition, I wish to flesh out the significance of these cases for a theoretical discussion of the cultural and sexual politics in Norway.

NORWEGIAN LEGAL FRAMEWORK

Norwegian asylum policies and practices are shaped by both national sources of law and legally binding international treaties that the country has ratified. This section renders a descriptive account of the legal formulations, both national and international, that are used to assess sexual orientation-related asylum claims in Norway.

INTERNATIONAL JURISDICTION

The UN Convention relating to the Status of Refugees constitutes the fundamental ground for international refugee protection. Norway ratified both the Convention and its protocol.⁴ Norwegian immigration rules for asylum are largely based on the provisions of the Convention, and the refugee definition adopted by Norway is a reproduction of the definition given in the Convention (Vegge 2012).

As mentioned above, the lack of specific wording for sexual orientation as a protected ground in the Convention gives birth to particular legal challenges.

⁴ The 1951 Refugee Convention covers those who have become refugees as a result of events occurring before 1 January 1951. With the adoption of the 1967 Protocol, this time limit was removed. Read more at: <http://www.unhcr.org/3b66c2aa10.html>.

For the purpose of clarifying the interpretation of the refugee law and raising awareness of the specific needs of lesbian, gay, bisexual and transgender (LGBT) asylum seekers, the UNHCR published an analysis in the form of guidelines in its *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, in 2008. These guidelines, however, are not legally binding for member states (Gustafsson 2016).

The UNHCR's recommendations draw upon the Yogyakarta Principles⁵ – a legal tool concerning the application of international human rights law to sexual orientation and gender identity – and its terminology. Accordingly, “sexual orientation” is defined as “a person’s capacity for profound, emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender, or more than one gender,” while “gender identity” is used to describe “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body, and other expressions of gender, including dress, speech and mannerisms.”

Pertaining to the absence of necessary wording for sexual orientation and gender identity in international refugee law, the UNHCR's guidance notes state that claims made on this basis should be considered under the convention ground of “membership of a particular social group,” underlying that sexual orientation can be viewed as a social group whose members share “either innate and unchangeable characteristic, or as a characteristic that is so fundamental to human dignity that the person should not be compelled to forsake it.”⁶ In addition, it is stated that a person should not be required to conceal his/her sexual orientation.

Another critical point relates to the assessment of whether an applicant has a well-founded fear of persecution. The central issue in this appraisal is the experience of discrimination, as this often lays the ground for the asylum claim. The question that matters a great deal for the

⁵ Considering LGBT people “vulnerable” and therefore in need of a special focus within the treaty of human rights discourse, the Yogyakarta Principles were developed by 29 experts, including one former UN High Commissioner for Human Rights, 13 current or former UN human rights specialists, office holders or treaty body members and a number of academics and activists, and was launched as a global charter for gay rights in Geneva in 2007 (O’Flaherty and Fisher 2008:233).

⁶ UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, para. 32.

UNHCR is whether the pattern of harassment or discrimination, on cumulative grounds, amounts to persecution.⁷ In this respect, a case-by-case approach that incorporates background knowledge about the claimant's country of origin is required.

NORWEGIAN JURISDICTION

The Norwegian Directorate of Immigration (UDI) processes applications for asylum, as well as residence and work permits. Appeals against the UDI's decisions are handled by the Immigration Appeals Board (UNE). The UNE is an independent, court-like administrative agency. Once the UNE has decided an appeal case, the decision cannot be further appealed. However, the UNE's decisions can be brought before the ordinary courts of law for review.

Both the UDI and the UNE are governed by the Ministry of Justice and Public Security (JP), which has overriding responsibility for the formulation and coordination of the state's policies on refugees and immigration.

The next section focuses on the laws and regulations related to asylum in Norway. First, I give a brief account of the Act of 15 May 2008 on the entry of foreign nationals into the Kingdom of Norway and their stay in the realm (the Immigration Act). I then outline the current guidelines used by the UDI on gender-related persecution and the praxis notes of the Appeals Board that are relevant to sexual orientation-related cases.

Immigration Act

Asylum-related policies and practices are regulated by the Immigration Act. A new, revised law came into effect in January 2010.⁸ In this law, Chapter 4 ("Protection") sets the standard for an asylum seeker's entitlement to protection in the form of a residence permit in Norway.

⁷ Ibid., B, para. 10.

⁸ Until 2010, Norwegian refugee protection standards encompassed only those who fell under the 1951 Refugee Convention and its 1967 protocol. The new law enlarges the target group to comprise those who also fall under the European Convention on Human Rights, prohibiting the return of people to areas where they risk torture, degradation or punishment. See also:

<http://www.regjeringen.no/en/dep/jd/Subjects/immigration/midtspalte/new-immigration-act-from-january-2010.html?id=475301>.

Pursuant to the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, the Norwegian state grants asylum if a claimant risks persecution on the grounds of race, religion, nationality, political standpoint or membership to a particular social group. The Immigration Act is gender neutral and makes no direct reference to the term “sexual orientation.” It is, however, standard practice for sexual orientation-based persecution to be assessed under the category of membership to a particular social group.⁹

The UDI and the other determining agencies of asylum use the Immigration Act as the fundamental ground for their judgment. Because the Act is neutral in terms of both gender and sexual identity, the UDI is provided certain guidelines that instruct the Directorate on how to interpret the Immigration Act for claims connected to these issues.

Guidelines on Gender-Related Persecution

Following the recommendations of the UNHCR on refugee claims relating to sexual orientation and gender identity, three guidelines have been used by the UDI. The first, *Instructions: Guidelines on Gender-Related Persecution*, was published in 2008 by the Ministry of Labor and Social Inclusion, under which the UDI was administrated between the years 2005 and 2010. In December 2009, an updated version of these guidelines was sent to the UDI. The latter version, however, contained insignificant changes in relation to sexual orientation-related claims. Finally, in 2012, the JP, under which the UDI is currently administrated, updated the guidelines to make them more applicable to protection claims of sexual minorities. Below, I give an overview of the changes in each version of the guidelines that are relevant to the assessment of sexual orientation-related cases. The 2008 and 2009 versions are considered the same because of their insignificance with respect to sexual orientation.

⁹ The UDI guidelines on gender-related persecution (G-08/2012). The report from the Immigration Appeals Board also states that gays and lesbians are evaluated under the category “membership of a particular social group.” Read more at: <http://une.no/Praksis2/Notater/Praksis-i-UNE---homofili/>.

Terminological Changes

As mentioned above, the new guidelines have a wider scope. While the former guidelines state that they are applicable to both women and men, and may be relevant to LGBT individuals, the 2012 version expands the scope and suggests that:

[the] guidelines apply to both women and men. They also concern issues that may be relevant for lesbian, gay, bisexual, transgender and intersex people (LGBTI), as well as people with a gender identity and gender expression that are different from what is considered the norm [here “LGBTI” is used as an umbrella term].

In addition to referring to “intersex” people for the first time, the Ministry also uses the terms “gender identity” and “gender expression,” indicating that these notions might also provide grounds for persecution.

The guidelines from 2012, in contrast to earlier versions, provide terminological clarification (in a footnote) for “intersex,” “gender identity” and “gender expression.” It is particularly notable that this footnote uses both English and Norwegian language. While the terms “intersex” and “gender identity” are defined in English, “gender expression” is clarified in Norwegian.

Procedural and Assessment-Related Changes

It is suggested that, as a procedure, the asylum interview should be arranged in a way that makes the applicant feel secure; this should be done by providing adequate information about the assessment process. The 2012 guidelines underline that applicants should be informed that gender-related claims – including allegations related to sexual orientation and gender identity – may form the grounds for a right to protection in Norway. Explicit use of the terms “sexual orientation” and “gender identity” as possible grounds for protection is new, as the previous guidelines did not have any direct wording for these terms and referred more generally to “gender-related claims.”

Another change is found in the “Asylum Assessment” section, which covers the application of the UN Convention to gender-related cases. The former guidelines state that both the Refugee

Convention and the Immigration Act of Norway are gender neutral and draw attention to the fact that gender, in fact, can play a determinative role in the conduct and cause of persecution. The new guidelines broaden the statement, stating that being LGBTI may affect one's experience of persecution.

With respect to the interpretation of "persecution" according to the Convention, all three guidelines follow the UNHCR's recommendations, replicating the claim that cumulative discrimination may amount to persecution. The former guidelines state that an applicant can be granted asylum if it is found that he/she is homosexual and risks persecution, regardless of his/her conduct or behavior in the country of origin prior to leaving. This suggests that whether or not a person is openly homosexual in the country of origin should not be determinative of the adjudication. This is also in line with the UNHCR recommendations.¹⁰ However, in another section, the same guidelines state:

in cases where homosexuality is argued, the question of how an individual gay applicant may be expected to accommodate himself on his return to his country of origin would then have significance for the risk assessment viewed in relation to the socio-cultural limitations of the community concerned. In many communities there are general social, cultural and statutory restrictions on expression for both heterosexual and homosexual people, which are not necessarily characterized as persecution.

This statement serves as justification for the "discretion requirement," arguing that LGBT claimants with an established sexual minority status and risk of persecution can still be returned to their country of origin if they are expected to act discreetly to avoid persecution. The discretion requirement was heavily debated in Norway. Norwegian LGBT organizations, such as LLH (currently named "Fri")¹¹ and Skeiv Verden, as well as the homo-network of the Norwegian Labor Party, pressed the Norwegian authorities to change the instructions that utilized the discretion requirement.¹²

¹⁰ UNHCR *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender identity*, para. 39.

¹¹ LLH Arbeidsprogram 2012–2014:2.

¹² http://www.blikk.no/index.php?option=com_k2&view=item&id=6754:krever-homoasyl&Itemid=2.

Concerning this subject, in 2011, the UDI submitted a request to the Ministry of Justice and Public Security for the necessary changes in the guidelines to ensure homosexual asylum seekers' right to live freely and openly without the fear of persecution.¹³ Furthermore, the UDI requested that the term "sexual inclination" (*seksuell legning*) be clearly defined, claiming that a sexual identity cannot be limited to sexual acts, but must include all the behaviors and beliefs that are related to and essential for an individual's sexual identity.¹⁴

The UDI also underlined that adaptation and limitation of life to a country's social norms is not normally considered persecution; however, in some cases, applicants are forced to hide their sexual inclination, and this may violate the Convention.¹⁵

Several months after the UDI sent this request, the Supreme Court of Norway reached an important verdict (in March 2012), arguing that if a person must hide his/her homosexuality upon return to the home country, he/she has a well-founded fear of persecution.¹⁶ Thereby, according to Grete Faremo, the former Norwegian Minister of Justice and the Police, the Supreme Court disregarded the discretion requirement and its verdict was considered to set precedent and serve as an important guide for similar cases.¹⁷

Following these legal developments, the JP not only removed the paragraph that was used to justify the practice of discretion in the new guidelines in 2012, but also published new instructions that were specifically designed for the assessment of sexual orientation and gender identity-related cases.¹⁸

¹³ UDI – Homofile Asylsøkere, submission of request to the Ministry of Justice and Public Security
<http://www.udi.no/Nyheter/2011/Homofile-asyloskere/>.

¹⁴ GI-07/2012 Instruks om tolkning av Utlendingsloven § 28 første ledd bokstav a – forfølgelse på grunn av seksuell orientering og kjønnsidentitet:
<http://www.regjeringen.no/nb/dep/jd/dok/rundskriv/2012/g042012-ikrafttredelse-av-endringer-i--2.html?id=686817>.

¹⁵ Ibid.

¹⁶ Enklere for homofile asylsøkere å få asyl i Norge:
<http://www.aftenposten.no/nyheter/iriks/Enklere-for-homofile-asyloskere-a-fa-asyl-i-Norge-6934666.html#.UiX1F21YWDA>.

¹⁷ Ibid.

¹⁸ GI-07/2012 Instruks om tolkning av Utlendingsloven § 28 første ledd bokstav a – forfølgelse på grunn av seksuell orientering og kjønnsidentitet.

GI-07/2012: Instructions on the Interpretation of the Immigration Act § 28 para. 1 – Persecution on the Grounds of Sexual Orientation and Gender Identity

These instructions provide the UDI with a five-step method, along with a note that “this method should only be used in asylum cases concerning LGBTI applicants” (Justis og Beredskapsdepartementet 2012b: paragraph 4). Throughout the document, the JP uses the term “sexual identity” as an umbrella concept to refer to both sexual orientation and gender identity.

Through this method, the JP instructs the UDI to consider the following set of issues and questions:

- 1) Is the asylum foundation claim credible?
- 2) Will the applicant be subjected to persecution if he or she lives openly?
- 3) How will the applicant act upon return? (Here, it is noted that the assessment should not be limited to sexual acts but should also include behaviors and beliefs that are associated with, and fundamental to, the individual’s sexual identity.)
- 4) Is it likely that the applicant will live openly in relation to his/her sexual identity upon return?
- 5) Is it likely that the applicant will hide his/her sexual identity upon returning? (The JP notes that if the applicant chooses to hide his/her sexual identity, arguing that it is the right thing to do because of fears for breach of family and friendship ties and to avoid shame and social pressure, then the conditions for refugee status are not met.)

STATISTICS

Norwegian authorities do not keep statistics on the grounds on which asylum claims are made. Upon request, however, the Unit for Statistics and Analysis provided me with the following numbers, based on caseworkers' manual reports. I was warned that these numbers might be incomplete.

Year of decision	Residences granted	Cases rejected	Total
2010	6	19	25
2011	3	25	28
2012	15	8	23
2013	30	43	73
2014	27	47	74
2015	23	45	68
2016 (January to November)	18	14	32

Figure 1

A recent study also provides an overview of the number of relevant cases put forward for evaluation in the Norwegian jurisdiction. For her master's thesis, law student Andrea Gustafsson (2016) was given access to the UDI and the UNE's archive of practice between 2010 and 2015. Through her scan, she found approximately 250 relevant cases that were evaluated by the UDI and 150 that were evaluated by the UNE. In her analysis, she reduced these down to 187 cases, including the practical work of both the UDI and the UNE. Gustafsson's work is particularly informative in giving us an overview of the distribution of cases by the asylum ground.

According to Gustafsson's review, the overriding majority of the queer claimants were gay identified, making up 75 percent of all claimants; lesbian identified claimants made up 13 percent. The number of bisexual and transgender claimants was relatively low, at 5 percent and 1 percent, respectively. Six percent of the claimants sought asylum based on their perceived sexual orientation, although they did not necessarily identify as LGBT (Gustafsson 2016:25).

THEORETICAL BACKGROUND

In this chapter, I illustrate the theoretical concepts I use to analyze the complex interplay among asylum seekers, immigration authorities and the legal framework that regulates the asylum context, in general. As a point of departure, I introduce my use of the term “queer” and my engagement with queer migration scholarship in the analysis. I follow this with a description of my understanding of the notion of the queer refugee subject and illustrate how this concept is explored in my empirical analysis. I then continue by discussing the concept of “genuineness,” which, as mentioned in the previous chapter, holds a significant position in the refugee determination. Here, I position myself in line with queer critiques of essential identities. Finally, I demonstrate how my empirical analysis motivates and shapes my need to develop the concept of “rainbow splash” to highlight the way in which asylum seekers navigate the immigration system that confines and assesses the genuineness of their sexual orientation and protection claim, in general.

QUEER MIGRATION

Queer perspective has enriched migration scholarship in multiple ways. Researchers with this perspective have primarily demonstrated how the “overlapping regimes of power and knowledge generate and transform identity categories” (Luibhéid 2008a:169-170) in relation to

multiple conjunctions between sexuality and migration. Moreover, bringing together issues of kinship, marriage, desire and social roles, queer theoretical lenses have lifted unexamined issues to the forefront of migration research (Manalansan 2006).

All three articles in this dissertation benefit from queer migration scholarship and its premises, which address sexuality as discursively constructed in the context of migration. This framework considers sexuality as a vehicle through which power operates, and perceives power as productive rather than repressive, following the Foucauldian tradition (Smith 2001). According to Michel Foucault (1978), modernity was marked by the construction of sexualities through scientific, religious and administrative discourses. During this period, people with what Foucault calls “peripheral sexualities” (ibid.:42) were persecuted through a new specification of individuals. The homosexual of the nineteenth century became a personage – or a species, as Foucault famously wrote – who differs from the sodomite who was once perceived to have a temporary aberration. Sexuality began to play a central role in the composition of individuals, and scientific discourses served to deploy the so-called truth of sex, “as if it was essential that sex be inscribed not only in an economy of pleasure but in an ordered system of knowledge” (ibid.:69).

Within the context of migration, discursive constructions of sexualities and categorizations of people according to their sexualities are apparent. Gay men, who were once associated with HIV and AIDS and denied access to certain territories, are currently welcomed as a symbol of Western tolerance, modernity and protectorship, as discussed earlier in this chapter (Puar 2007, El-Tayeb 2012, Fassin 2010, Mepschen, Duyvendak, and Tonkens 2010, Eng 2010b). Inclusion and the recognition of sexual minorities as migrant groups has made it further apparent that migration and sexuality are co-constituting; that is, sexuality is constantly constituted through the migratory process and is constitutive of this process (Luibhéid 2014, Cantú 2009).

It is through this mutual construction that the truth of sexualities is (re)produced by immigrants and immigration authorities, or other gate keepers who evaluate the truth of sexuality as a determinant of legitimate entry to a host country. This is apparent, for instance, when

immigration authorities in Europe focus on the authenticity of the feelings of binational couples in deciding whether their union is genuine or pro forma, or when gay asylum claimants are subjected to various tests, such as the infamous phallographic test of the Czech Republic, which involves exposure to same-sex pornographic material (see also Fassin and Salcedo 2015:1120). These techniques are indicative of the way in which immigration regulations and border controls take part in the construction and (re)production of sexual categories, identities and norms (Luibhéid 2002).

The research material analyzed in Article 2 and Article 3 is primarily based on this discursive construction of the truth of sexualities. In both articles, the sexualities of informants are rendered as not pre-given, and are instead considered constructs of intersecting socio-political discourses of the Norwegian asylum context and Norwegian queer movement. Both articles have also taken the role of exploring the ways in which queer informants' experiences were influenced by intersecting systems of race, gender, sexuality, class.

In Article 3, I approach the "queerness" of asylum seekers as an emergent feature of their interaction with immigration authorities. Here, I am inspired by Candace West and Don H. Zimmerman's approach to gender as "a routine accomplishment embedded in everyday interaction" (1987:125). Gender is not something that individuals possess, but it is an emergent feature of social situations wherein gender is expressed or reflected through various activities (West and Zimmerman 1987, 126). Similarly, queerness emerges in the asylum context as a feature that must be accomplished by asylum seekers. Here, queerness follows socially guided perceptual, interactional and micropolitical activities instead of an essence, in order to appear readable by immigration authorities.

THE "GENUINE" REFUGEE

The question of how a refugee can be genuine occupies a central position in my empirical work, which focuses on the way in which queer informants try to appear as genuine as possible to asylum adjudicators, and how adjudicators understand a genuine refugee. Deborah Cameron and Don Kulick (2003) argue that concepts should be considered within the discourse they are

understood and the language in which those discourses are (re)circulated (Cameron and Kulick 2003). Here, discourse is understood in line with Foucault's definition from 1972, in *The Archeology of Knowledge and the Discourse on Language*, wherein discourse refers to "general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a certain number of statements" (Foucault 1972:80). Discourse, according to Foucault, "finds a way of limiting its domain, of defining what it is talking about, of giving it the status of an object- and therefore of making it manifest, nameable, and describable" (Foucault 1972, 41). Keen on understanding what rules the formation of objects of discourse, Foucault suggests mapping the surfaces of their emergence, describing the authorities of their delimitation and analyzing the grip of their specification (ibid.:41-42). Following this thread, in respect to the question of genuineness, I find it useful to focus on the last couple of decades that contributed to the emergence, definition and specification of the term "genuine refugee".

Although the terms "refugee" and "asylum seeker" seem to hold an equivalent meaning to their use within international refugee law, the normative ground they are based on, as well as the discourse they operate within, seem transformed. These concepts no longer refer to a homogenized group, as they did 30 years ago; rather, they are fragmented, diverse and confusing (Zetter 2007).

Roger Zetter (2007), a renowned professor of refugee studies, provides an account of how the refugee label has been formed, transformed and politicized since 1991. Zetter states, along with other scholars in the field, that there has been a shift from the refugee images embedded in humanitarian discourse to a refugee label that is broadly managed within a political discourse of resistance to migrants and refugees (Gibney 2004, D. Fassin 2013). Another important aspect that distinguishes our contemporary times from the past is "the marked proliferation of new labels which at best nuance interpretation, at worst discriminate and detach claimants from the core attribute of being a refugee" (Zetter 2007:176). The legitimacy of people's border crossing

practices are defined and delimited by categories such as “economic migrants,” “bogus refugees” and “genuine refugees,” to name a few.

In his influential essay “The precarious truth of asylum” (2013), the French anthropologist and sociologist Didier Fassin gives an account of truth and asylum in the contemporary state of the refugee. Fassin analytically distinguishes “truth” as substance and “true” as evidence in his discussion of asylum, as both an anthropological object and a political issue. He states:

What is the truth of asylum? And how are the accounts of asylum seekers recognized to be true? The two raise significantly different issues. The first emphasizes the substance of asylum, the way it is permanently transformed through international debates and national jurisprudence and by the daily work of officers and magistrates confronted with concrete cases. The second focuses on the evidence of the asylum seekers, on the relations between what is told and what really occurred and between these alleged facts and the legal definition of the refugee. (D. Fassin 2013:40)

Following Fassin, the genuineness of refugees – arguably following an everlasting process of definition and redefinition – is strongly influenced by the changing truth of asylum. That is, genuineness is not ahistorical or context-free, but is constructed within the changing socio-political context of asylum.

Fassin argues that the truth of asylum has changed along demographic and political lines. Demographically, he states, refugee claimants no longer consist of individuals, but instead consist of thousands and millions of persons. In relation to these demographic indicators, on the political level, asylum has become an issue in which the principles of universal protection compete with the interests of national sovereignty. This political conjuncture gives rise to the increasing suspicion that economically motivated immigrants may apply for entry under the guise of refugee status (Gibney 2004). In other words, refugees have been widely considered as individuals who seek to improve their living standards in another country by pretending to need protection against persecution. As a result, one can say that there is a tendency towards perceiving asylum “as subsidiary to immigration and human rights as secondary to policing logics” (D. Fassin 2013:53).

Article 1 and Article 2 are theoretically nurtured by this political discourse around refugees, and they highlight that the genuineness of a refugee is a social and historical construct that is understood and given meaning differently, following the changing truth of asylum.

In what follows, I describe my understanding of the notion of a queer subject, which influences the empirical analysis.

THE NOTION OF A QUEER REFUGEE SUBJECT

In this section, I discuss what I call the “making of a notion of a queer refugee.” This attempt runs the risk of being perceived as undermining the conditions that turn people into refugees seeking a safe haven. I acknowledge that people are exposed to various kinds of violence and danger based on their sexual orientation, which sometimes accumulates to persecution. However, I find it theoretically useful to problematize the establishment of a notion of a queer refugee, designating a distinct category of people in need of protection. In doing so, I draw upon the politics of precarious lives and elaborate on the process that has contributed to the making of a queer refugee by rendering the lives of particular queer individuals precarious. I then problematize what Joseph Massad names “gay international” (2002) and discuss the ways in which Western gay and lesbian advocacy is utilized in global sexual politics. Although the vigorous contribution of Western gay and lesbian rights advocacy to the visibility of the plight of sexual minorities around the globe is undeniable (Manalansan 2006), one should also be attentive to its ostensibly emancipatory agenda as a regulatory process. In this respect, the notion of a queer refugee subject offers a great lens to rethink the politics of inclusion of sexual minorities in global politics and allows us to contemplate who is included in the category of queer refugee.

Politics of Precarious Lives

A useful point of departure to discuss the politics of precarious lives and its subjects is what Didier Fassin describes as “humanitarian government” (D. Fassin 2012:1), which utilizes moral sentiments to manage, regulate and support the existence of precarious lives. Precarious lives are those that are defined in relation to those who have power over them, and they are brought into existence by practices and agents that aim to protect and save them (ibid.). In other words, the protective hands that reach to persons such as queer asylum seekers, natural disaster survivors and the poor, reveal their subjects by providing them with visibility as objects of humanitarianism. This practice is located within a web of inequality, because “When compassion is exercised in the public space, it is therefore always directed from above to below, from the more powerful to the weaker, the more fragile, the more vulnerable” (ibid.:4).

In her renowned essay “Precarious life, grievable life” (2010), Judith Butler focuses on this power asymmetry by raising critical epistemological and ontological questions relating to what a life is and which mechanisms of power constitute, apprehend and render a life precarious. Butler starts by scrutinizing the recognizability of lives, which she considers a prerequisite for recognition. The recognizability of lives is bound to the schemes of intelligibility that produce the norms of recognizability; that is, “a life has to be intelligible as a life, has to conform to certain conceptions of what life is, in order to become recognizable” (Butler 2010:7). Intelligibility, according to Butler, who gives an account of culturally intelligible notions of identity in her book *Gender Trouble* (1990), is related to conformity to recognizable standards that are governed by regulatory practices.

These theoretical approaches are of great relevance and importance for problematizing the making of queer refugees as part of humanitarian government, and specifically as part of the international refugee system. They contributed to my understanding of the discourse that not only enabled the formation of a queer refugee subject but also established the frames that allow the recognition of a small fragment of people under this category as genuine. I benefit from these perspectives by asking how the queer subject is included in the category of refugee and what exclusionary effects are produced by refugee status. As Butler convincingly states, our concern should go beyond the question of “how to include more people within existing norms,

but to consider how existing norms allocate recognition differently” (Butler 2010:6). Accordingly, it is useful to problematize the shifting schemes of intelligibility that render particular queer lives precarious and worth saving, while leaving others outside the frames of recognizability.

Global Sexual Politics and the Making of Queer Refugees

The gay and lesbian liberation movement in the northwestern countries has followed different strategies and pursued various agendas to combat social oppression throughout history. Identity-based politics aimed at community-building and civil rights were predominant by the mid-1970s (Seidman 1993). These political organizations, however, were criticized for both exhibiting white, middle-class social norms and proposing the concept of a unitary gay and lesbian subject by overlooking the socio-historical variations of meanings and social arrangements of non-heterosexual desire (ibid.:117). By the early 1990s, the tension between so-called normative gays and lesbians and more radical non-normative people became acute, as they developed different opinions on how and in which ways sexual liberation should be realized. For instance, many radicals expressed discomfort and anxiety concerning politics of recognition pursued through same-sex marriage campaigns, which they accused of being assimilationist and complicit with heteronormative values and structures (Weeks 2008, Warner 1999, Duggan 2008). Considering the uncritical reception of rights and recognition as an adjustment to the imperatives of neo-liberalism, Lisa Duggan coined the term “new homonormativity”:

politics that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them, while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption. (Duggan 2003:50)

In a parallel way, David Eng coined the term “queer liberation” (2010) to designate the politics of non-heterosexual people who are willing to take on a normative vision of an acceptable queer identity and lifestyle. Queer liberation is not only criticized for its complicity with neo-

liberalism, but also for its failure to incorporate race as an intersectional tool for its politics. On the contrary, the accomplishments of queer liberationist politics are used in a national image that disguises the marginalization and stigmatization of racialized immigrants, the racialized poor and the queer individuals who fail to fit into the acceptable national image (Eng 2010:49). In a different vernacular, it is possible to say that those who are unassimilable in liberal regimes of rights and representations become “disposable” (Haritaworn, Kuntsman, and Posocco 2014:1).

The appearance of the queer refugee subject in the international terrain can be considered in relation to national and global sexual politics. Over the last decade, sexual orientation has been widely included in the scope of international asylum law and immigration regulations as a ground for protection. As one can argue, the plight of sexual minorities in many countries is not a contemporary fact; however, the formation of a queer asylum subject is rather new. Therefore, one should be attentive to the processes that have led to the inclusion of sexual minorities in global politics through the increasing visibility of discrimination and violence towards sexual minorities around the globe – mainly in non-Western geographies – while the plight of sexual minorities living in Western democracies has remained relatively unspoken. For instance, both Scott Long (2009) and Sima Shakhsari (2014) critically question the hypervisibility of Iranian queer individuals, their use for a monolithic representation of the cultures and their utilization for the justification of war. Shakhsari reminds us of the repeated circulation of one particular photo, displaying two men being hanged in Iran, along with claims on media that these men were executed because they were gay. Despite the lack of accurate and credible information on whether these men were indeed gay, and whether this was actually the reason for their execution, this image has become the symbol of the Iranian queer, “inciting the masculine protectorship of the First World and the need to rescue the victimized Iranian queer” (Shakhsari 2014:98).¹⁹ There was, however, a relatively lower degree of attentiveness when a transgender refugee committed suicide in Canada (Shakhsari 2014), or when other diverse forms of inequality and discrimination were encountered by queer minorities in other immigrant and asylum receiver countries (El-Tayeb 2012, Murray 2014).

¹⁹ These men were executed over charges of having raped a minor, Shakhsari notes.

Mobilizing a similar critique of the sexual politics of asylum in the UK, Calogero Giametta (2014) utilizes Nikola Mai's concept of "sexual humanitarianism," arguing that this term comprises a set of neo-liberal discourses and practices that particularly concentrate on the suffering of the sexual other. This one-dimensional suffering script, which is reproduced by sexual humanitarianism, determines who is eligible to receive humanitarian aid, be this in the form of an asylum status or other kinds of social support.

Another issue that has led to the overwhelming visibility of queer oppression, mainly in non-Western countries, is partly related to what Joseph Massad names "gay international" (2002). Massad argues that the missionary white Western gay and lesbian rights advocacy pervasively penetrated other cultures, imposing the Western-rooted socio-politicized identification of "gays and lesbians" on practitioners of same-sexual conduct in order to liberate them – particularly in Arab and Muslim-majority cultures. Kalundi Serumaga, a Ugandan journalist and cultural activist, states in *Getting Out* (a documentary on queer refugees in Uganda and South Africa) a similar critique concerning the representation of African countries and African queers. He asserts that the Christian Church of the imperial forces initiated same-sex persecution and condemnation of sexual dissidence in Uganda. He emphasizes the irony that the same imperial forces currently depict Uganda as a predominantly and inherently homophobic country in which gay and lesbian rights are uncritically transferred from the West.

I find it useful to think of the formation of the queer refugee subject and the increasing visibility of the plight of sexual minorities in non-Western geographies in relation to Western LGBT advocacy's emancipatory missions and local sexual politics that utilize sexual rights as a constitutive feature of Western national identities. The process that made queer refugee subjects visible can be understood in relation to a humanitarian government that brought the precarious lives of queer individuals into existence by defining them (D. Fassin 2012). By doing so, the frames of recognizability acquired enormous importance, as they determined whose lives were recognized as precarious.

In the following section I present the way in which sexual minorities are framed with respect to international refugee law by giving an account of the theoretical efforts to queer this legal frame.

QUEERING THE LAW

Both international human rights law and international refugee law have been scrutinized since their early drafting in 1945 and the 1950s, for being universalistic and setting an androcentric tone (Arbel, Dauvergne, and Millbank 2014, Otto 2015).

Pheng Cheah (2007) questions the purported universality of a pure, atemporal and context-independent human dignity as the basis of rights. Drawing attention to the inherent complexities of the distribution of rights and people's entitlement to them, Cheah famously argues that rights are violent gifts – “the necessary nexuses within imminent global force relations that produce the identities of their claimants” (Cheah 2007:172). Cheah's problematization of an ostensibly universal human subject can be considered in relation to Judith Butler's (2009) critique of the constitution and representation of the category of woman as a feminist subject. Underscoring the lack of agreement on what constitutes the category of woman, Butler persuasively argues that “the qualifications for being a subject must first be met before representation can be extended” (1999:342). In other words, the universal human subject is a constitution and, similar to other universalistic categories, its exclusionary effect requires attention (Otto 2012).

With respect to the exclusionary effects of international refugee law, a major critique has been directed towards its definition of a refugee, as this definition is considered ignorant of women's experiences (Arbel, Dauvergne, and Millbank 2014). This critique states that the presupposition of the State as the persecutor and the public characteristics of the Convention grounds of race/religion/nationality/political opinion/membership of a particular social group overlook the way in which persecution in private settings can also be political (*ibid.*). Similar to gender, sexuality-related experiences under refugee law have been difficult to recognize, because sexuality is often designated as private, personal and extrajudicial (Moran 2011).

Although neither the gender nor sexuality is a Convention ground, national guidelines are widely available concerning gender- and sexuality-related asylum claims (Arbel, Dauvergne, and Millbank 2014). One can hardly deny the contribution of these guidelines to the visibility of sexual minorities in the legal arena, as they have generated a certain sense of legal recognition. However, Diana Otto reminds us that law is “a site of discursive struggle over how gender is conceived and human possibilities are shaped” (2012:6). Following this, jurisprudential inclusion of, for instance, the concepts “sexual orientation” and “gender identity,” do not necessarily do justice to the complexity of human experience; rather, they shape human experience.

To investigate the normalizing and regulatory aspects of the law while being attentive to the intersectionality of sexuality with categories such as race, gender and class, a large number of legal scholars have successfully employed what can be called a “queer epistemology” (David, Halberstam, and Muñoz 2005:3). For instance, many have interrogated the conflation of sex and gender as putatively distinctive categories in law (Valdes 1995, Otto 2015) and questioned how these categories, along with other categories of identity, are inscribed, normalized and regulated by legislations and juridical institutions (Morgan 2000). In short, their concern is broader than the inclusion of sexual orientation and gender identity into the terminology of the law, and is more broadly concentrated on the normative configuration of these terms.

For instance, claims related to sexual orientation and gender identity are often assessed under the category of “membership of a particular social group” under the Refugee Convention. However, what this membership entails is a disputed question. In order to clarify the interpretation of the law and raise awareness of the specific needs of lesbian, gay, bisexual and transgender (LGBT) asylum seekers, the UNHCR published an analysis in the form of guidelines in its *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, in 2008,²⁰ drawing upon the Yogyakarta Principles.

²⁰ UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, available at: <http://www.unhcr.org/refworld/docid/48abd5660.html>.

However, the definitions offered by the Yogyakarta Principles have been targeted for representing Western hegemony in delimiting, describing and naming identity categories – or what Sonia Katyal delineates as “exporting identities.” According to the legal scholar Aeyal Gross (2007), the terminology offered by these principles signifies a modern Western concept of sexuality and might have no relevance in other social and cultural settings. Enhancing his arguments with what Joseph Mossad portrays as “gay international” (2002:362), Gross warns against the uncritical integration of sexual orientation and gender identity into the juridical structures, which might ahistoricize sexual cultures in different cultural settings.

Pointing at the norms and drawing upon Cheah’s formulation, Kristen Walker (1996) suggests that refugee status appears to be a violent gift, because it requires the applicant to position him/herself within a particular framework. In other words, one can think of refugee status as constituting its own subject, following its own norms that allocate recognition and the subsequent gift of asylum, differently. In this formulation, one can think of the frames of recognizability entailed in the refugee status as parallel to the way in which lives are constituted, apprehended and rendered precarious (Butler 2010).

SUMMING UP

All three articles in this dissertation put the constitution of queer refugees and the Norwegian policies and practices of immigration in dialogue with the intersecting bodies of scholarship, discussed above. The major outcome of this theoretical engagement seems to be the deconstruction of a context-free universal queer refugee subject and ostensibly coherent immigration law and regulations, which are often considered uniformly enforced.

In this respect, the article “Assessing sexual orientation-based persecution: A closer look at the Norwegian practices of asylum evaluation of gay and lesbian claimants” can be an entry point to uncovering the diversity in asylum caseworkers’ understanding of sexual orientation and their evaluations. Transforming our analytical focus from a totalizing understanding of Norwegian immigration law and regulations to individual caseworkers’ understanding of an intelligible sexual orientation and a credible risk of persecution, this article demonstrates the

importance of seemingly trivial aspects of asylum evaluations that cannot be explicitly read in legislation. In doing so, it highlights the way in which racialized and sexualized norms play a determinative role in distinguishing what may seem like a claimant worthy of protection – if not one who is genuinely worthy of protection – from others.

In the article “Queer asylum seekers: Translating sexuality in Norway,” I develop the metaphor of the “rainbow splash.” This theoretical device allows me to highlight the way in which queer asylum seekers attempt to translate their sexuality within the Norwegian context by mobilizing every kind of social and financial resource available. In this respect, the article shows how various and contesting migratory paths and enactments of sexuality impact on individuals’ rights-claiming competence. In putting asylum seekers’ agency at the center of the discussion, I extend the body of literature by challenging the universalized understanding of queer refugees as victims without agency.

In the article “Becoming family: Orientalism, homonormativity, and queer asylum in Norway,” Stine Helena Bang Svendsen and I compare the adjudication of asylum cases with cases of marriage immigration. In doing so, we demonstrate how the cultural politics of marriage immigration can also be found in Norwegian LGBT asylum adjudication. This comparative perspective leads us to extend the body of literature by turning our heads to the incorporation of cultural, racial and gendered norms of national imaginaries and cultural citizenship that exist as an extra-legal body informing immigration control.

All three articles put the Norwegian context in dialogue with global sexual politics by incorporating a critical look at the universalization of gay rights and its imperialistic, postcolonial underpinnings in the making of the recognizable queer refugee subject. In this sense, they urge us to rethink local and global queer politics and their complicity in sustaining the frames of recognizability on which immigration authorities rely in their assessment of asylum cases.

Each article can be considered an entry point for further debate. Expanded investigations are necessary to fill the knowledge cleavages between studies, which solely focus on queer refugee subjects as a homogeneous group of people and laws and regulations as internally coherent

sets of rules that are uniformly enforced.

METHODOLOGICAL CONSIDERATIONS AND DATA COLLECTION METHODS

In this chapter, I present my methodological choices and the material I collected. My aim is to discuss how these choices might have impacted the knowledge production process and results. First, I reflect on my social and political location as a researcher, which I consider to be of relevance and importance to the design of the research project and the filtering of my gaze (Denzin and Lincoln 2011). Following this, I discuss my methodology. Finally, I reflect on the methods I used to collect data for my investigation and elaborate on the challenges related to this process, with a particular focus on the recruitment of informants and ethical considerations.

POSITIONALITY MATTERS

Within the field of gender studies, it almost goes without saying that research activity and knowledge production are informed by the researcher's positionality and situatedness (Haraway 1988, Harding 1993, Smith 1974). A researcher's attachment to particular ways of looking at the world undoubtedly impacts the data that he/she collects and interprets, and this makes an account of self-reflection concerning the researcher's value commitments a necessary part of the research design (Lather 1991). Aiming to discuss the potential and limitations of my positionality, I start by outlining my social and political background, which I consider relevant to this research project.

I identify as queer and have volunteered for the organization Skeiv Verden (Queer World) – a human rights organization that assists and supports queer people with a minority background in Norway. I have been particularly active in Skeiv Verden Midt- Norge, the Trondheim arm of the organization, since September 2013.

Yet my involvement with the queer movement in Norway dates back to 2009, when I was a member of UgleZ, the queer student organization of the University of Bergen. Considering my not so active but dedicated engagement to Kaos Gay and Lesbian Organization in Ankara, while I was a student at the Middle East Technical University (METU) between 2002 and 2007, one can say that I have been an insider of the LGBTQ movement for almost 15 years, in different geographical and political contexts. The agendas of these movements in Turkey and Norway are substantially different, despite their largely shared goals of recognition, emancipation and equal access to political rights. It would, of course, be naïve to assume that these movements are homogenous, as they involve internal factions and segments. Fixing the focus back on my social and political location, I will set aside the discussion of issues that are differently raised and prioritized by LGBTQ movements in Norway and Turkey. Instead, I would like to reflect on my positionality in relation to these movements and discuss the ways in which this positionality enabled new perspectives, which I employed in my research project. I will also elaborate on the possible blockages my social location might have created.

Michael Warner argues, in *Fear of a Queer Planet*, that:

every person who comes to a queer self-understanding knows in one way or another that her stigmatization is connected with gender, the family, notions of the individual freedom, the state, public speech, consumption and desire, nature and culture, maturation, reproductive politics, racial and national fantasy, class identity, truth and trust, censorship, intimate life and social display, terror and violence, health care, and deep cultural norms about the bearing of the body. (Warner 1993:xiii)

I have never experienced stigmatization in relation to my queer identity in Turkey, which is a heteropatriarchal society that can serve as a topography of transgression at the intersection of the so-called “traditional East” and “modern West” (Baba 2011). This can partly be explained by the fact that my internalized self-control prevents me from explicitly breaching gender codifications of societal norms, by avoiding public displays of queer affection and keeping a low profile, in general, despite my engagement in queer organizations.

My queer self-understanding, following Warner's statement, has been broadened through the people I have met – people who have become friends and acquaintances. Their stories, backgrounds, political opinions and ethnic backgrounds have broadened my understanding of the inequalities surrounding us in Turkey. One thing that is particularly striking is the fact that our queer network of communication with the society at large is confined by a lack of communication channels available to queer organizations. For instance, a press declaration read by a queer community after the hate crime of a trans activist found almost no space in widely circulating media channels, but some space in queer surroundings. Similar instances and indications of the confinement of communicative spaces for the opinion and expression of sexual minorities have escalated my understanding of the value and potential of the voices that are left unheard.

Following these reflections, I conducted research on a transgender community in Turkey for my master's degree at the University of Bergen in Norway. This research project can be considered to have been politically driven. Politics are often assumed to disturb the objectivity of scientific knowledge, whose validity is conventionally measured according to the extent of its value and lack of bias. Feminist researchers have confronted these traditional understandings of scientific knowledge, arguing that value-neutral conceptual frameworks are, in themselves, loaded with norms that ensure the interests of dominant groups and help them maintain their share of power (Harding 2004, Smith 1974, Harding 1993). Through their efforts to value the women's perspective – women's experiences of the world – feminist theorists have underscored the necessity of giving voice to women, admitting the complexity and internal conflicts of the category "woman" in the process of knowledge production and therefore radically challenging the traditional belief in the necessity of separating the knower from what she knows. They have argued that women are marginalized, and that their marginalized location allows them to ask particular questions and produce particular kinds of knowledge that are not available to non-marginalized individuals. I do not claim to have held a position that granted me privileges and access to a particular type of knowledge about transgender people in Turkey; yet my research was politically driven in the sense that I wanted to give voice to a deliberately silenced and unheard community. This motivation had something to do with my queer self-understanding.

This PhD research project on queer asylum seekers in Norway can be considered a continuation of my queer self-understanding, and it therefore requires a closer look at my current positionality. At the very outset of the research design process, prior to gaining funding, I was particularly interested in issues pertaining to the Norwegian policies and practices of immigration. This interest can be justified by the fact that my residence in Norway has been continually reliant on temporary residence permits – previously as a student and currently as a university employee.

Being a citizen of Turkey, a country outside of the EU/EEA, I am accustomed to presenting an excessive number of documents to the Norwegian Directorate of Immigration in order to renew my residence permit. Prior to each renewal, a sense of anxiety fills in my stomach as I imagine the possible scenarios that could prevent a renewal of my visa, such as not being able to obtain a certain document, not being able to show the exact amount of money I need and so forth. This anxiety is rooted in the possibility of being forced to return to Turkey, in the absence of a legal ground to prolong my residency in Norway. This thought has troubled me. Having witnessed friends who have completed their PhD degrees in Norway be sent away because they could not get a job or fulfill other requirements for a permanent residence, I have been reminded of the fact that immigration regulations are no joke and they can interrupt a person's life. There is no doubt that the indeterminacies pertaining to every minute of the life of a queer asylum seeker who lacks travel or identity documents are substantially different from the uncertainties I experience. Yet one cannot deny the commonalities concerning the way we encounter, to different extents, the practices of control and containment of unwanted immigration in Norway. This has made me consider how immigrants tackle immigration policies and what kind of strategies they seek to ensure their residency in Norway, as either students or refugees. Furthermore, I have developed a curiosity about the cultural politics of immigration, which has impacted my analysis of the empirical material.

In what follows, I elaborate on the ethnography I conducted and further discuss my positionality in relation to the research subjects and issues of representation.

ETHNOGRAPHIC STUDY OF QUEER ASYLUM IN NORWAY

The context of asylum is a complex regulative and administrative terrain that encompasses a variety of actors, such as officials, caseworkers, NGOs, asylum seekers, activists and so forth (Hardy 2003). Elaborating on this highly entangled terrain to understand the way in which immigration authorities understand and assess the sexualities of queer asylum seekers cannot be restricted to a single observational site. Thus, in order to do justice to the complexity of the field, I followed a multi-sited ethnographic (Marcus 1995) approach, aiming to capture as much nuanced knowledge as possible.

A primary site of investigation was queer asylum seekers' lived experiences. Needless to say, documenting these experiences and trying to do justice to the complexity of the research participants' stories was challenging. Despite my minority background in relation to sexual orientation, religion (as a non-practicing Muslim) and visa status, I could hardly deny the power asymmetry between my researcher position and that of the queer asylum seekers. Designing a research program that is socially and politically relevant to research participants does not necessarily evaporate the power imbalance inherent in the research context. Instead of seeking an essential and generalized truth of queer asylum seekers' lived experience, my ethnographic research admits to providing partial truths that are context-specific (Richelle 2013). Research material was collected through interviews and participant observation over two years of fieldwork.

I complemented this research by focusing on the way in which queer sexual subjectivities and lived experiences were understood by the immigration caseworkers during asylum evaluations. This was investigated through interviews with caseworkers at the Norwegian Directorate of Immigration. I combined this material, gathered through personal interaction with research informants, with textual data and Norwegian laws relating to asylum, in general, and queer asylum cases, in particular.

My ethnographic study is informed by a queer epistemology that involves a continuous deconstruction of the features of positivism, as queer studies contest "any positing of a proper subject *of* or object *for* the field by insisting that queer has no fixed political referent" (Eng,

Halberstam, and Muñoz 2005:3). This anti-foundationalist perspective, at first glance, might seem challenging for empirical research, as the researcher can never define what he/she is studying. My utilization of queer epistemology does not reject meta categories; rather, it indicates a critical stance to everything that appears natural and stable during the knowledge production process. This epistemological perspective allows me to look beyond the naturalized configurations of queer sexual subjectivities formed by asylum seekers, caseworkers and legal documents by opening up the analysis to reveal the way in which these seemingly separate sites – and ostensibly detached research material – are in constant dialogue.

METHODS OF DATA COLLECTION

The research material in this dissertation consists of semi-structured interviews with queer asylum seekers, semi-structured expert interviews with UDI asylum caseworkers and participant observation in numerous social gatherings organized by Skeiv Verden. In addition to interviewing, I also analyzed the instructions and guidelines used by asylum caseworkers, a selection of court decisions that had been published on the UDI's webpage (underrettsavgjørelser), one district court verdict and daily newspaper articles that related to particular queer asylum cases and the general topic. A supplementary corpus of knowledge, information and understanding on the topic resulted from several informal and formal chats with staff at the Norwegian Organization for Asylum Seekers (NOAS) and Self-Help for Immigrants and Refugees (SEIF), as I had the opportunity to participate in two public debates on queer asylum seekers that these groups organized.²¹ Furthermore, during my two months' research stay at Vrije University Amsterdam, I interviewed the leader of the Dutch organization Secret Garden – a foundation of and for sexual minorities with an ethnic-cultural background. Secret Garden provides some queer asylum seekers with a letter that confirms their status as gay. Because of the organization's self-claimed expertise in sexual orientation, which enables

²¹ I had the opportunity to engage in a debate with representatives of NOAS, the Norwegian Immigration Appeals Board and other legal advisors, as we were all invited to the panel "In and Out of Norway – In and Out of the Closet?" arranged by Amnesty Norge during Oslo Pride 2015 (21.06.2015). Almost a year later, I met representatives from NOAS and SEIF to engage in a dialogue about Norwegian immigration policies concerning queer asylum seekers during the public debate "The Norwegian Dream," organized by the Nobel Peace Center, in cooperation with Skeiv Verden and RadiOrakel.

them to approve or disapprove a person's alleged sexual orientation, Secret Garden's assistance and advocacy are often criticized. Although I do not use material from the interview I conducted at Secret Garden in this thesis, the interview material oriented me towards new thinking in relation to organizational support. Accordingly, I developed new questions for Skeiv Verden's board and learned that Skeiv Verden's vouching for queer claimants is significantly different. I discuss this in my analysis of the empirical material.

Semi-Structured Interviews: Inducing Narratives from the Informants

The semi-structured interviews of queer asylum seekers were formulated in a similar way to narrative interviews. In this section, I discuss the analytical and methodological reasons for my decision to elicit narratives from the informants.

To put it simply, narratives refer to "talk organized around consequential events" (Riessman 1993:3). According to Catherine Kohler Riessman, people have a particular tendency to narrate issues that show a breach between what is ideal and what is real, and between society and the self.

By definition, asylum seeking is a process that invokes sequential events that inform the migratory process of (in)voluntarily leaving one's country. One can argue that departure from one's home country is the result of a breach between what is ideal and what is real. To come closer to what is ideal, safer and better, people leave their country behind. Decidedly, narratives have a great potential to capture the rupture that led to informants' odysseys to Norway. On this basis, the overall aim of the interviews I conducted was to collect narratives of informants' decision making processes about fleeing their home country, their journey to Norway and the legal process they went through to establish themselves in Norway. I began each interview with a "narrative-inducing question" (Gunaratnam 2009:5), such as "What happened to make you decide to leave your country?" In fact, the asylum seekers were accustomed to being asked by immigration officials about the events that had initiated their departure. The officials also directed open-ended questions to the asylum applicants and let them freely narrate without interruption, although this process partly surfaced through the

fact-finding function of the interview (Kjelsvik 2014). Here, what distinguishes an immigration officer from myself, as a researcher, is not only the follow-up questions we posed but also our respective methodological stances and analysis of similar forms of talk – the narratives. Prior to official asylum interviews, applicants are told that they are under legal obligation to truthfully represent real events in their narratives; the interviewer intends to elicit reportable events from the claimants, as their decision is made in relation to this narrative (Kjelsvik 2014). Approaching language as a transparent means of communication and narratives as devices that, in principle, mirror the truth, caseworkers run credibility assessments of asylum seekers' testimonies. In contrast, the credibility of the accounts was not a concern of this research project. As Yasmin Gunaratnam, a prominent name in the field of narrative interviews and analysis, stresses, narratives do not necessarily maintain accurate, factual information, given the "contingency and the ambivalent complexity of lived experience" (2003:6). Therefore, in this study, narratives were not approached with the sensitive perspective of the truth-police. Rather than reading the accounts of the informants as mirrors of their first-hand experience, I focused on the overall construction of their experience. I give a detailed account of how I analyzed the data collected from the interviews under the heading "Analyzing the Data," later in this chapter.

Semi-Structured Expert Interviews

The interviews that were conducted with the UDI caseworkers can partly be conceptualized as expert interviews, given that the objective was to elicit expert contextual knowledge. However, I also sought to analyze caseworkers' understanding of a credible risk of persecution and genuine sexual orientation. In this sense, the interviews were a combination of what Alexander Bogner and Wolfgang Menz (2009) label "systemizing" and "theory-generating" expert interviews. The interviews were systematic in the sense that the major goal was to retrieve expert knowledge that was otherwise not available to me as an outsider of the organizational body of the UDI, and the interviews were theory-generating as they sought to gather an "expert's subjective orientation, rules, points of view and interpretations, which suggest a picture of expert knowledge as a heterogeneous conglomeration" (Bogner and Menz 2009:52).

Participant Observation

Participant observation is a commonly applied method for describing “what goes on, who or what is involved, when and where things happen, how they occur, and why” (Jorgensen 1989:12) from the perspective of insiders of a particular community.

Keen on getting information on the way in which queer asylum seekers communicate, interact and negotiate their sexual orientation with each other through their organizational participation in Skeiv Verden, I used participant observation as a method of data collection. I participated in a wide range of meetings organized by Skeiv Verden in Oslo and Trondheim between 2013 and 2015. These included, but were not limited to, monthly social gatherings of Skeiv Verden Midt-Norge in Trondheim, a workshop called “A-B-C of Love,” an “Activist Weekend” in Oslo and numerous film screenings and dinner gatherings.

The fact that my engagement with Skeiv Verden pre-dated this research project made me feel, from time to time, like my participant observation was closer to what the British social anthropologist Brian Moeran describes as “observant participation” (Moeran 2009:13). Being an observant participant helps the researcher overcome the methodological problem known as “reactivity” – when the presence of the researcher influences the behavior and responses of the informants or people being observed (Jacobsen and Landau 2003). When the researcher becomes an observant participant, Moeran argues, people no longer modify their behavior because of the researcher’s presence.

Despite my overt researcher identity, I noticed almost no difference with respect to the structure of the Skeiv Verden meetings or participants’ engagement in these activities during the research versus before the research. Needless to say, however, one significant difference between these two periods was my increased attentiveness. I did not use any direct recording techniques such as video or photography, due to ethical considerations. Instead, I kept a regular log of activities and took personal notes of interesting topics that emerged from casual conversations after each meeting.

Other Sites of Data Collection

A supplementary corpus of information was obtained from my visit to the Persaunet Transit Asylum Reception Center²² and two visits to the Sandmoen Trondheim Asylum Reception Center. My first visits to Persaunet and Sandmoen involved informal conversations with employees about their relevant experiences with queer asylum seekers. My second visit to Sandmoen was different in the sense that I was invited to give a talk to the residents about gender identity and sexual orientation. These visits did not involve any interviewing or data collection, but they provided me with valuable insights concerning the reception centers' engagement with the topic.

RECRUITMENT OF INFORMANTS

In their article "The voices heard and the voices silenced: Recruitment processes in qualitative studies," Guro Kristensen and Malin Ravn (2015) remind us of the significance of the recruitment process for knowledge production and reflexivity, which are often under-communicated in research projects. Acknowledging that the final material I analyzed was formed as a result of my choices concerning the pre-defined criteria for informants, the mediators who facilitated my access to the informants and the people who actually agreed to be interviewed (Guro and Malin 2015:735), I will now elaborate on the selection of and access to informants. I will also reflect upon the potential limitations of these choices and recruitment methods.

Recruitment of Queer Asylum Seekers

All of the informants were recruited via Skeiv Verden as it is known to be the only queer organization that provides substantial assistance to queer asylum seekers in Norway. The main office of Skeiv Verden is located in Oslo, but the organization also has non-official regional offices, such as the one in Trondheim, called Skeiv Verden Midt-Norge.

²² The Persaunet Reception Center closed in July 2014.

While I used my personal and organizational network (via Skeiv Verden Midt-Norge) to find informants in Trondheim, the recruitment process in Oslo was primarily facilitated by Susanne Demou Øvergaard, the general secretary of Skeiv Verden. It would not be wrong to define Susanne's position in Skeiv Verden as one that is all-encompassing. She manages a large number of administrative and practical organizational tasks, with the help of other board members and many volunteers. Given that she is attentive to every person who seeks assistance, solidarity or just a sense of friendship in the organization, she is very much trusted by queer people with a minority background, including asylum seekers. Yet one cannot deny the fact that the trust these people have for Susanne can sometimes be pragmatic, loaded with expectations from her or Skeiv Verden. Personally, Susanne was of great help to me, as she put me in contact with potential informants and smoothed the path for the trust-building interview phase. As mentioned, people consider Susanne quite reliable, and having her as my reference and mediator made trust-building between the informants and myself much easier. In the end, mediators who connect a researcher to informants are quite powerful, as they "can make or break it-or at least make it more or less challenging and successful for the researchers" (Kristensen and Ravn 2015:725). However, I also strongly believe that my engagement in Skeiv Verden and my positionality as queer, Turkish, born and raised in a Muslim-majority culture and having temporary residence in Norway might have contributed to the trust-building phase during the recruitment process.

With appreciation for all the help I received from Susanne, I should, however, acknowledge the fact that I could only speak to informants who were – in one way or another – connected to the organization. Concerning the process of knowledge production, this fact was undoubtedly limiting, as I could not talk to anyone who was not affiliated with Skeiv Verden. Considering the solid nation-wide network the organization has established, it was hard to find an asylum seeker looking for protection directly on the grounds of his/her sexual orientation who lacked any tie to Skeiv Verden. The Norwegian Directorate of Immigration lists the contact information for Skeiv Verden on their website²³ as a support organization, and asylum caseworkers are acquainted with the organization through seminars they have attended. Apart from this, Skeiv

²³ <https://www.udi.no/ord-og-begreper/seksuelle-minoriteter/>.

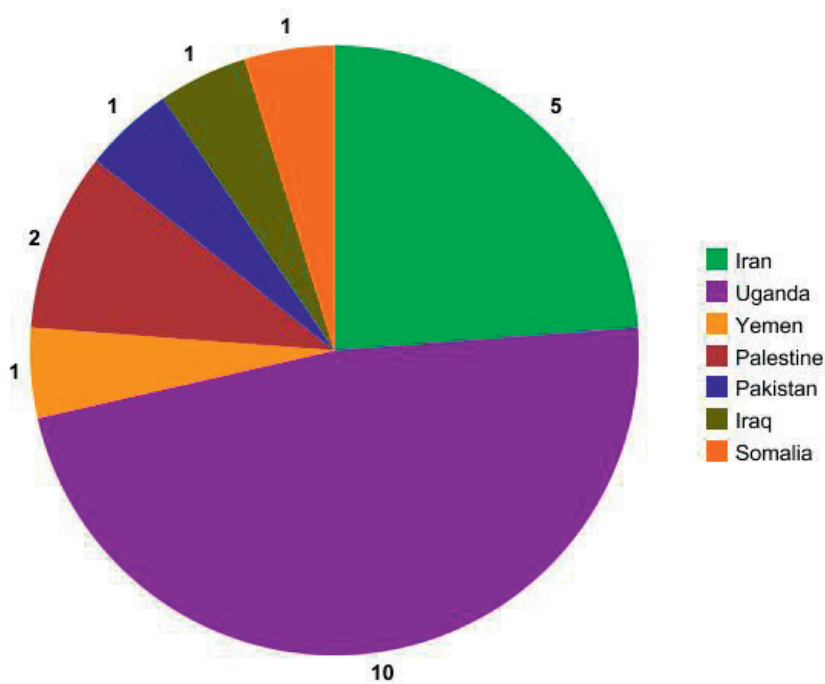
Verden has made numerous visits to asylum reception centers to draw attention to sexual minorities.²⁴ As discussed above, I personally visited the Sandmoen Asylum Reception Center and the Persaunet Transit Reception Center – which is now closed – and was surprised to discover how well the employees were equipped to deal with queer asylum seekers. Based on my observation, it is very likely that a person who openly identifies as queer and seeks asylum on this ground will be informed about Skeiv Verden. It should be noted that this study does not include people who came to Norway primarily because of their sexuality but lack the vocabulary to communicate it – persons who do not know that their sexuality is a legitimate ground upon which they can seek asylum. The experiences of such persons would have contributed to the research immensely. However, I had to eliminate such persons because of time and funding limitations that prevented me from tracing their locations.

Overview of Informants

Given that I had volunteered for Skeiv Verden Midt-Norge since September 2013, the total number of queer asylum seekers I encountered and talked to – in an interview setting or during workshops, social gatherings and other meetings organized by Skeiv Verden – was approximately 25. Some of these persons' asylum applications had been rejected and the applicants were thus waiting for the appeal; others had already been granted asylum. A few had sought asylum on grounds other than sexual orientation, although their sexuality motivated their initial flight. I also met a few gay men who had arrived in Norway from Syria yet did not reveal their sexual orientation to the immigration caseworkers, as the unruly state of politics in their country of origin was enough to grant them protection. To do justice to the complexities of their stories, I will not dictate whether it was their sexuality or the political conflict that resulted in their flight, as it would be overly simplistic for me to reduce their narrative to a single cause. Undoubtedly, their stories and our interaction at diverse social

²⁴ For example, in October 2014, Hero, the largest operator of asylum reception centers in Norway – managing around 70 centers, arranged a gathering for their social consultants. Skeiv Verden was invited to share their experiences concerning queer asylum seekers. See: <http://sv.octapet.com/ready/nyheter/2014/10/samling-sosialklienter-hero.html>.

settings provided me insight into the way in which queer bodies of color inhabit the social space in Norway with both gratitude and frustration, for various reasons. Since these persons did not have to negotiate their sexuality with Norwegian immigration authorities, I omit them from the graph below, which provides a sketch of the queer asylum seekers I interviewed, listened to and engaged in activities with.



I did not officially interview all of these individuals for this research project, because some of them had had their cases covered so excessively in the media that they were reluctant to speak about their stories again. These persons referred me to the newspaper and/or television coverage of their stories. Additionally, I was closer to some of the members, and I did not (and could not) breach the friendship line to conduct an interview for the sake of research. Several

authors have written accounts of the risks involved in research when a friendship is established between the research subject and the researcher before or during the research process. These risks encompass a sense of exploitation and/or betrayal on the part of the research informants (Kirsch 2005, Cotterill 1992), driven by a researcher's emphasis on a strategic friendship that is established for the sake of retrieving personal and private information from informants. In order to avoid this and other related discomforts and ethical dilemmas – which are elaborated under the section titled “Ethical Considerations” – I avoided interviewing persons whom I knew before starting the research project.

Taking into consideration an informant I initially interviewed but who later withdrew from the project, the official number of interviews I conducted with queer asylum seekers was ten. Yet all of the encounters and relationships described above provided immense input into the development of this project. I supplemented the research material with narratives of queer asylum seekers that took place in the media and with available court decisions, which included accounts of applicants' testimonies.

During the course of this research process, I met one transgender asylum seeker but did not interview her. As Laurie Berg and Jenni Millbank state “trans asylum claims must be examined within an overarching analysis of persecution related to gender non-conformity – a framework which allows for complex intersections between sexuality, gender identity and gender” (2013:121). The time limit of this research process prevented me from looking at the particular experiences of transgender asylum seekers, whose protection claim require further detailed analysis to do justice to their experiences.

Recruitment of the UDI Caseworkers

I recruited my informants via the Research and Development Coordinator of the Analysis and Development (A&D) section of the Norwegian Directorate of Immigration (UDI). Having read the project proposal, I sent in advance, the A&D coordinator enthusiastically replied to my email, writing that the project sounded very interesting and the UDI would be happy to help me in my research efforts. Accordingly, the A&D requested a set of additional documents, including

a letter of approval from the Norwegian Centre for Research Data (NSD) – the data protection office for researchers in Norway – concerning privacy protection and a tentative interview guide.

Needless to say, I was dependent on the A&D for the overall recruitment process. The A&D coordinator proposed to put me in contact with the units working with countries in western and southern Africa, on the grounds that these units processed more cases related to sexual orientation than did other units. Therefore, I was given the opportunity to speak to Unit C1 (responsible for applicants from Djibouti, Kenya and Somalia) and Unit C4 (responsible for applicants from the remainder of Africa), though these units reflected only a small proportion of the overall work of the UDI (see Figure 2). For example, there are many queer asylum applicants from Iran– a country that has been the subject of controversial debates concerning the rights of queer people and related homonationalist foreign interventions. In this sense, talking to the caseworkers working at the Middle East (B2) unit would have been of great relevance to this study.

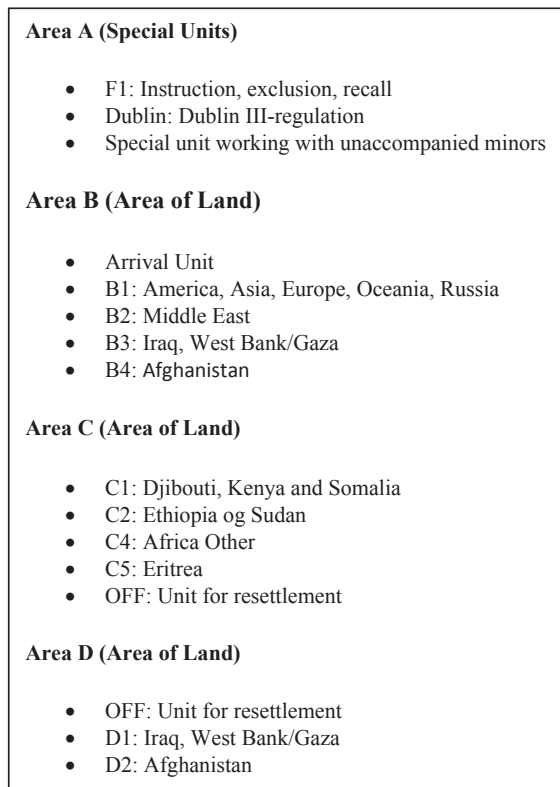


Figure 2

I conducted six semi-structured interviews with caseworkers. Four of the interviews were conducted face-to-face and two were conducted over the phone. All of the informants volunteered to be interviewed after the A&D coordinator informed them about me and my research project. They were presented to me as my informants; that is, I picked neither the unit nor the caseworkers to speak to. Rather, they were recommended to me as potential informants who would be willing to share their time and experience with me.

The hierarchical structure I had to navigate in order to access the informants can partly be explained by the fact that research participation is not a passive activity, but one that involves a risk of misinterpretation and potential placement in an uncomfortable position (Clark 2010). Yet the caseworkers I spoke to were quite eager to talk to me; they were welcoming, friendly and helpful. One of the informants told me that taking part in this research project provided a valuable opportunity for the UDI to correct misinformation and misunderstandings concerning its work. Research participation allows for “representation, political empowerment, and informing change” (Clark 2010:399), and the UDI caseworkers’ enthusiasm to be interviewed can partly be explained by their willingness to rebuild their public image and/or involve the public in a dialogue that would improve their work.

The UDI is a learning institution and caseworkers are instructed and trained on many different subjects, including – and especially – interviewing techniques. Their expertise as professional interviewers made them appear quite powerful during my encounters with them, as I was only a novice researcher. Despite the ostensibly egalitarian appearance of the interview situation, these elements of power should be considered important aspects that affected the production of data. The data gathered was not the result of an “archaeological model of data production” (Bogner and Menz 2009:45), wherein I retrieved facts from the caseworkers. Rather, it derived from a complex social process starting with my initial contact with the A&D department of the UDI, to my provision of the interview guide and my later interviews with the informants in a setting I did not fully control.

ANALYZING THE DATA

The interpretive process is an entangled one. Phenomena under investigation are deconstructed, captured, bracketed, constructed and contextualized by the researcher (Denzin 2002). I did not use a clear guideline that dictated what I ought to do with the research material – such as coding and noting down themes – mainly because the small number of interviews I conducted offered me the liberty to read them repeatedly. “Analysis cannot be easily distinguished from transcription,” writes Catherine Kohler Riessman (1993:60) in her account of narrative analysis. I carried out all the transcriptions by myself, and this formed an essential aspect of the analysis. Arranging the interview material in the form of transcriptions allowed me to hear the informants’ accounts repeatedly, and to capture informants’ pauses and emphasized points.

Since the sample was small, I had the opportunity to focus on the dialogical process between myself and the informants as I listened to and read the interview material. This allowed me to approach the material as co-constituted by the informant and myself, as I captured particular pauses, repetitions and vocal displays of emotions that affected the construction of the narratives. The small number of informants also enabled me to analyze each transcription in detail.

The analyses can be described as taking what David R. Thomas labels a “general inductive approach” (2006:238), encompassing a detailed reading of the raw material with the theory emerging from this reading. More specifically, the analytical and interpretive work in the articles can be categorized as discourse analysis. Accordingly, the transcribed material was not taken to be individually meaningful and was read with respect to the relationships between the text, discourse and context (Phillips and Hardy 2002). Interview material was scrutinized inductively, with attention to the discursive context that was invoked when the informants spoke about issues such as sexuality, sexual orientation and sexual practice.

ETHICAL CONSIDERATIONS

The project was approved and registered by the Privacy Ombudsman for Research of the Norwegian Social Science Data Services (NSD). Following the comments of the NSD, all of the personal information of the research participants, UDI caseworkers and queer asylum seekers was saved on my private computer and anonymized. That is, all directly identifiable personal information was removed. The voice recordings used during the interviews were deleted.

Gaining approval from the NSD was not sufficient to satisfy the ethical requirements, especially as this project involved asylum seekers. Research involving displaced people and people who are forced to migrate requires particular ethical considerations, due to the precarious situation of the research participants and their likelihood of feeling traumatized, vulnerable and marginalized (Hugman, Pittaway, and Bartolomei 2011, Mackenzie, McDowell, and Pittaway 2007, Jacobsen and Landau 2003). Numerous ethical issues are at play, which include but are not limited to informed consent; confidentiality; intersecting issues of agency and autonomy; harm, risks and benefits; and exploitation (Mackenzie and McDowell 2007).

Asylum seekers, regardless of their varied experiences and routes to Norway, occupy a peculiar social location that is defined by indeterminacy. Those who are waiting to appeal a rejected application and those who are simply waiting for their initial asylum application to be processed are particularly impatient, stressed and demoralized. These conditions call for extra sensitivity during the informed consent phase. Adequately informing participants about the purpose, methods and risks of the research project and reminding them that research participation is voluntary are not always enough to fulfill the ethical requirements for receiving what Mackenzie, McDowell and Pittaway call “genuinely informed consent” (2007:301). Genuinely informed consent considers asylum seekers’ capacity for autonomous agency. This autonomous agency can be interrupted by the fact that these persons may wait in reception centers for protracted periods, they may be stressed and they may feel obliged to talk to a researcher because of their fear of a gatekeeper or other agencies (ibid.). In order to ensure that the consent of the research participants was genuine, I reminded them of their right to withdraw from the research without any consequences, both during and after the research project.

With respect to the qualitative methods, such as observant participation and interviewing of asylum seekers, some methodological concerns became relevant ethical questions (Jacobsen and Landau 2003). One such question related to my potential over-involvement with the research participants, as this could have affected the material I collected and increased participants' expectations from me, as the researcher. Referring to a shared concern in feminist fieldwork, Gesa E. Kirsch (2005) urges for clear boundaries to be drawn between the researcher and informants so that "neither party unwittingly compromises expectations of friendship, confidentiality, and trust." Such boundaries do not necessarily require an impersonal and hierarchical research encounter. I maintained a fine line between the informants and myself by, first and foremost, choosing not to interview those whom I had already befriended and reminding my informants of my lack of power in influencing any ongoing asylum evaluation, in order to maintain realistic expectations of our interaction (ibid.).

SUMMARY OF THE ARTICLES

ARTICLE 1. ASSESSING SEXUAL ORIENTATION-BASED PERSECUTION: A CLOSER LOOK AT THE NORWEGIAN PRACTICES OF ASYLUM EVALUATION OF GAY AND LESBIAN CLAIMANTS

This article investigates the way in which Norwegian adjudicators run credibility assessments of queer asylum seekers. Credibility assessment is the process of examining all of the relevant information available to decision makers in order to determine whether a claimant's testimony and the material facts presented as evidence are valid for asylum. The credibility assessment of queer asylum seekers, however, poses particular challenges, as such applicants often lack material evidence of their sexual orientation and/or their well-founded risk of persecution.

Keen on investigating the parameters at play when the UDI runs a credibility assessment, I conducted six semi-structured interviews with caseworkers at the UDI based in Oslo.

On the basis of this material, I argue that the UDI, as a learning institution, has become more experienced in the specificities of sexual orientation-based asylum applications. That is, they have gained a broad understanding of sexual orientation and the scope of activities and experiences related to sexuality. For instance, one informant expressed that sexuality is fluid

and claimed that it is difficult to render people neatly as gay or straight. Norwegian caseworkers deliberately avoid asking questions about petitioners' sexual lives (i.e. the type of sexual activities they engage in). This is in line with the instructions caseworkers receive, as they are not allowed to ask questions about claimants' sexual lives because issues of sexuality may evoke sensitive and traumatic experiences (Justis og Beredskapsdepartementet 2012a). Instead, the UDI caseworkers pay particular attention to asylum seekers' reflections around being queer. These reflections, according to adjudicators, could include – but are not limited to – expressions around being different, stigmatized and vulnerable. A recent study has also indicated that claimants lose credibility if they fail to reflect these kinds of experiences (Gustafsson 2016).

One can connect this focus on sexual identity to the abolishment of discretion reasoning. Previously, Norwegian adjudicators could return queer applicants to their country of origin on the grounds that they would not risk persecution if they were to remain closeted (Muhleisen, Rothing, and Svendsen 2012). Since adjudicators can no longer pursue this discretion reasoning, we are witnessing what Jenni Millbank calls “from discretion to disbelief” (2009:391) – that is, a tendency to not believe that the applicant is, in fact, queer.

I argue that what lies behind the fashion of disbelief, which is characterized by favoring sexual identity over sexual conduct, seems to be Norwegian adjudicators' understanding of a worthy claimant who deserves protection. This worthiness is defined by neither the genuineness of the claimant's alleged sexual orientation nor his/her risk of persecution. Rather, the credibility assessment seems to be a calculation of whether the claimant is a good citizen who would fit into the society at large. What seems to be revealed when an adjudicator does not find the sexual orientation of a claimant credible is the caseworker's opinion on the appropriateness of the fashion in which the claimant expresses and lives his/her sexual orientation. For instance, as one caseworker said during the interview, engagement in same-sex sexual activity does not make a queer applicant fit for asylum. However, another applicant with no previous same-sex sexual experience can be entitled to asylum if he/she demonstrates expressions of shame and vulnerability. Caseworkers' specific focus on sexual identity runs the risk of failing to protect applicants who risk persecution based on same-sex sexual conduct and/or perceived

homosexuality.

Here, I make a distinction between testimonies that are rendered incredible on general grounds, such as by being heavily inconsistent. However, queer applicants, when their testimony is credible at large, should also have their sexual orientation appear worthy of protection in order to receive asylum in Norway.

ARTICLE 2. BECOMING FAMILY: ORIENTALISM, HOMONORMATIVITY, AND QUEER ASYLUM IN NORWAY

In this article, Stine Helena Bang Svendsen and I analyze the case of an Iranian asylum seeker whose claim for protection was rejected by both the UDI and the UNE in 2010. In the end, the district court of Norway (Tingrett) granted him asylum as the result of his appeal in 2013.

Through this case, we discuss the reasons given to justify the persecution and protection of members of a sexual minority in light of the changes to asylum regulations in 2012.²⁵ We also compare the adjudication of asylum cases with cases of marriage immigration, and use our case to illustrate how the cultural politics of marriage immigration can be located in Norwegian LGBT asylum adjudication.

In the analysis, we concentrate on the aesthetic and cultural adjustments that the Iranian applicant made to his life, which seem to have increased his chances of winning asylum. These include: instrumentalization of his relationship to a Norwegian man through a video that asks for public support for his upcoming court proceedings; involvement in the local gay community and pride parade; and changes made in his appearance and style.

We argue that all of these aspects reinforced the applicant's recognizability as a gay person by demonstrating his similarity with – or at least assimilability into – the local gay and lesbian community. This might have influenced the outcome of the final verdict.

²⁵ When the Norwegian Supreme Court ruled that if a person must hide his/her homosexuality upon returning to the home country, he/she has a well-founded fear of persecution.

In order to be considered part of this imagined community of gays and lesbians, one is required to perform particular styles of queerness. Based on our analysis, the applicant successfully performed the “right kind of queer” by presenting himself as a person who was void of agency but who aspired to establish a monogamous, love-based, family-oriented relationship. The applicant’s performance of the right kind of queerness was further reinforced by his involvement in the local queer community, who vouched for him. Through this involvement, one can see queer liberalism’s normative politics of family and kinship (Eng 2010a) and its attentiveness to “tacit subjects” (Decena 2008) who need assistance in appropriating a public sexual identity. To become “proper gays” (El-Tayeb 2012) – that is, autonomous queer individuals who are not only recognizable as such but who will also be able to be assimilated as citizens – such subjects need the help of already homonormative queer liberal subjects.

In our comparison of the adjudication of queer asylum cases and marriage migration cases, we detect substantial similarities that are grounded upon the cultural “recognizability” of the style in which the applicants perform their claim. Marriages and relationships must be perceived as real in order to not be rendered *pro forma* by the UDI and to grant a partner a residence permit. The “*pro forma*” and “not credible” decisions are not based on definitions of “true,” “authentic” or “real” marriages or asylum needs, but result from officials’ judgments about whether a potential immigrant will make a good participant in Norway’s neo-liberal capitalist democracy (Luibhéid 2008b). In both queer asylum and marriage immigration cases, the prescription of a good citizen is largely shaped by Norwegian norms of sexuality and relationships that rely on long-lasting, romance-based, family-oriented, monogamous relationships, regardless of whether the partners are straight or gay (Røthing and Svendsen 2011, Eggebø 2013).

ARTICLE 3. QUEER ASYLUM SEEKERS: TRANSLATING SEXUALITY IN NORWAY

This article investigates the way in which queer asylum seekers translate their sexuality to be readable within the Norwegian asylum context.

The empirical material for the analysis draws upon ten semi-structured interviews that were

conducted in Trondheim and Oslo. The informants were from Uganda, Yemen, Iran, Somalia, Palestine and Iraq. In addition to interviewing, I engaged in two years of participant observation with the organization Skeiv Verden (Queer World), from 2013 to 2015. In the article, I refer to my research participation with Skeiv Verden as observant participation in order to underline that my engagement with Skeiv Verden pre-dated the research process; this helped me overcome the sheer separation of researcher and research subject (Moeran 2009).

The accounts interpreted in this study demonstrate that the informants had a similar understanding of what it meant to be an intelligible queer in the Norwegian asylum context: a person who is “out of the closet,” keen on taking part in publicly visible activities and, preferably a member of a political queer organization, and one who has an active sex life.

With respect to this so-called agreed criteria for being an intelligible queer, I argue that queer asylum seekers engage in a process of “rainbow splash.” Here, “rainbow splash” is used as a metaphor to underscore the similarity between the fashion in which informants translate their sexuality and the Western style of loud and proud sexual identity. Rainbow splash can be considered in relation to the celebration of gay and lesbian visibility, which has been an essential component of both gay identity politics and its reaction to the closet, and human rights advocacy for greater visibility for the plights of sexual minorities (Seidman 2001, Shuman and Hesford 2014).

The act of translation that queer asylum seekers engage in is of great significance, as it demonstrates the fact that asylum seekers do not necessarily occupy a passive position of a victim in need of saving or liberation. In contrast, they are active participants in this process, and eager to mobilize all of their resources to better communicate their case. However, the character of this translation, appearing via rainbow splash, results in the recurrence of similar narratives painted with similar colors, and therefore contributes to a monolithic portrayal of sexualized and racialized asylum seekers. Because of rainbow splash, queer asylum seekers are unable to incorporate their own vocabularies during the act of translation, and they contribute to the (re)production of new norms about what it means to be a genuine queer person in need

of protection. Therefore, genuineness remains an unattainable ideal for individuals seeking to negotiate their sexuality before, during and after the asylum seeking process.

CONCLUDING REMARKS

In the beginning of this dissertation, I mapped out the legal, cultural and political challenges raised by asylum claims based on sexual orientation. Through the empirical material analyzed in the three articles, I explored how these queer challenges inform Norwegian policies and practices of immigration at the nexus of the prevalent socio-political discourse around refugees and Norwegian sexual politics.

In reading the three articles together, it is possible to see how the inherent tension embedded into the refugee system resulting from “on the one hand, providing protection to people who are persecuted by national governments and, on the other hand, respecting the sovereignty of individual nation-states” (Luibhéid 2005:xvii) takes a particular form when it comes to queer asylum seekers. Because the protection claims of queer petitioners are grounded upon a trait that is ostensibly embraced by the cultural politics of tolerance in Norway, namely their nonconforming sexual orientation, queer claimants occupy an ambiguous position in respect to the political tension around the refugee question.

Although Norwegian authorities are well-informed about the complexities and variations of sexualities in the cross-cultural context, in practice caseworkers have a narrow reference frame that grants protection to those “genuine” refugees who fit the culturalized and sexualized image of a good citizen. This image of a good citizen is mainly shaped by the queer sexual politics in Norway whose homonationalist complicity often goes unnoticed (Svendsen 2014). As shown in the work of the caseworkers, the “genuine” queer refugee is understood to be someone who is vulnerable and stigmatized, and preferably someone who can demonstrate aspiration to a monogamous, long-term, romantic love-based relationship. This image is further reinforced by queer asylum seekers who craft their claim into this particular

understanding in order to increase their chances of receiving a positive answer to their application.

In what follows, I will elaborate on the set of questions and issues which emerged at the intersection of the three articles, that can be of relevance and importance for further academic inquiry.

A primary issue that emerged was how to establish an asylum system which would do justice to the complexity of personal narratives of queer claimants. If one cannot disprove someone's alleged sexual orientation, following the unattainability of genuineness when it comes to historically and social constructed sexualities, how would one decide whether a queer claimant is to be given asylum or not?

This question is directly related to the convention ground "membership of a particular social group" upon which queer claimants seek protection. As discussed throughout this dissertation, the definition of a "social group" provided by UNHCR and other guidelines used in Norway implies that sexual orientation is immutable and fixed. Therefore, taking a queer approach, insisting on the impossibility of proving someone's sexual orientation genuine, risks shaking the evaluation of queer claimants under the Refugee Convention. Needless to say, this is not a desired outcome as advocates and activist have fought so hard to make the Convention applicable to sexual orientation-related claims. This is why we should strive to overcome queer challenges in a way that does not take away queer claimants' right to seek protection.

In reading the three articles together, it is possible to see how Norwegian laws and regulations of asylum are informed by both national and global cultural politics of immigration and sexuality. Therefore, seeking solutions to the queer challenges by focusing on the practice of adjudicators will likely be constraining. Rather, attentiveness to the reproduction and circulation of discourses around issues such as deserving immigrants, worthy asylum seekers, healthy sexualities and good citizens would provide us with a more useful and comprehensive lens to understand the aspects of power imbalance impacting the outcome of asylum evaluations.

Bearing this in mind, an effective way of improving the caseworkers' practices would be to open up legal spaces where many forms of affective, erotic and personal experiences of queer lives, in addition to universalistic narratives, could be communicated and heard. Needless to say, these spaces would necessitate, or would result from, the formation of corresponding queer cultures in the society at large, where no form of consensual intimacy, sexual practice or expression would be exalted or prioritized over others.

Another issue that came up during the research undertaken is the fact that the majority of the queer asylum seekers interviewed in this research project were men. Andrea Gustafsson's recent (2016) study illuminated the relatively low number of lesbian-identified women seeking asylum in Norway in comparison to gay-identified men. This prompts the question of why there are fewer women who seek asylum based on their sexual orientation. One explanation could be that the total number of women seeking asylum in Norway is lower than men: around 38 percent of all asylum applicants in 2016 were women; in 2015, this number was 23 percent (UDI 2017, 2016). A similar trend has been found in other Western countries, where women are estimated to make up one-third of all asylum claimants (Spijkerboer 2015). One can easily connect the lower number of lesbian-identified claimants to this lower number of women seeking asylum, in general. However, previous studies, noting a similar disproportion in Canada, Australia and Britain, have shown that the absence of lesbians also can be linked to the general invisibility and denial of public space to queer women, which consequently make it less likely for them to risk persecution (Keenan 2011, Dauvergne and Millbank 2003). This invisibility also makes it difficult for lesbians to imagine and enact a resistance, such as reporting an abuse or fleeing when they encounter risk of persecution. Further research should examine the specific experiences of lesbians on their journey of asylum in Norway.

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ARTICLES

Assessing Sexual Orientation-Based Persecution: A Closer Look at the Norwegian Practices of Asylum Evaluation of Gay and Lesbian Claimants²⁶

Norway has been progressive with respect to the civil rights of gays and lesbians. The country was pioneering with its 1981 enactment of a law to prevent discrimination against gay and lesbian people in the domains of employment and services. The Act on Registered Partnership of 1993 and the Marriage Act of 2009, which gave same-sex couples the right to get married on the same basis as heterosexual couples, are the highlights of the Norwegian gay and lesbian civil rights movement. The Norwegian state's liberal approach to gays and lesbians manifests itself in its asylum policies as well. The Norwegian Directorate of Immigration (UDI), the official body that processes the country's asylum cases, has been granting asylum on the basis of sexual orientation since 1997 (Lindstad 1997). However, the assessment of such cases has been and remains contested, mainly because there is a lack of consensus over how intelligible sexual orientation is manifested. Furthermore, the usual lack of evidence for the risk of persecution for gays and lesbians constitutes additional difficulties for adjudicators during the credibility assessment.²⁷ This article poses the following question: How do UDI caseworkers understand intelligible sexual orientation and a credible narrative of risk of persecution? Drawing upon semi-structured interviews conducted with UDI caseworkers, this article addresses the normative understandings of sexual orientation in the Norwegian asylum context.

²⁶ This article is published in *Lambda Nordica: Tidskrift om homosexualitet*.

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²⁷ See also, UNHCR (2008, 5).

Legal Background and Previous Studies

UDI processes all asylum cases and maintains overall responsibility for coordinating the immigration administration. The UDI Asylum department in Oslo consists of subunits that specialize in specific countries. Caseworkers in those units do not necessarily have an educational background in the country their unit specializes in. Landinfo (Norwegian Country of Origin Information Centre) is responsible for collecting and presenting updated country of origin information to immigration authorities.²⁸ Caseworkers usually hold different degrees within the social sciences and humanities.

At the heart of the asylum evaluation process lays credibility assessment. *United Nations High Commissioner for Refugees (UNHCR)* defines the credibility assessment as a process of examining all of the relevant information available to decision-makers to determine whether a claimant's testimony and the material facts presented as evidence are valid for asylum (UNHCR 2013). In her comparative study of credibility assessment practices, legal scholar Jenni Millbank (2009b) pointed to the prevalent use of the notion "ring of truth" in asylum determinations, arguing that it is problematic to refer to decision-makers as fact finders and it is misleading to approach asylum stories as self-evident.²⁹ Currently, diverse guidelines are in place to assist decision-makers in Norway during this challenging procedure.

With regards to the assessment of sexual orientation-based asylum claims, following the UNHCR Guidance Note on refugee claims relating to sexual orientation and gender identity, UDI follows the *Guidelines on Gender-Related Persecution*. Three guidelines were published in 2008, 2009 and 2012 (Arbeids og inkluderingsdepartementet 2008, Justis og Beredskapsdepartementet 2009, 2012a). The guidelines published in 2012 are significant due to their omission of the following paragraph, which was included in the previous two guidelines:

[I]n cases where homosexuality is argued, the question of how an individual gay applicant may be expected to accommodate himself on his return to his country of origin would then have significance for the risk assessment viewed in relation to the socio-cultural limitations of the community concerned. In many communities there are general social, cultural and statutory restrictions on expression for both heterosexual and homosexual people,

²⁸ Read more on Landinfo at <http://www.landinfo.no/id/162.0>.

²⁹ This study encompasses jurisdictions in Australia, the United Kingdom, Canada, and New Zealand.

which are not necessarily characterized as persecution. (Arbeids og inkluderingsdepartementet 2008, Justis og Beredskapsdepartementet 2009)

This statement used to ground the "discretion requirement," which states that gay and lesbian claimants, with an established sexual minority status and a risk of persecution, can be returned to their country of origin with instructions to act discreetly to avoid persecution. Practice of discretion requirement had been prevailing until recently not only in Norway (Muhleisen, Rothing, and Svendsen 2012), but also in asylum receiver countries like the United Kingdom (O'Leary 2008), Australia (Dauvergne and Millbank 2003, Walker 2000), Canada (LaViolette 2009) and examples are found in the majority of European Union member countries (Spijkerboer and Jansen 2011). In Norway the application of discretion requirement began to be questioned both legally and practically following the famous UK Supreme Court verdict known as *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* (2010). *In short, the Supreme Court of the United Kingdom ruled that if an applicant with an alleged sexual orientation would choose to live discreetly to avoid persecution, it means that the person in question has a well-founded fear of persecution. Following this ruling, UDI sent a request to the Ministry of Justice and Public Security (JP), which instructs UDI concerning the interpretation of the Immigration Act through the guidelines mentioned above, to make the necessary amendments to disable the applied discretion requirement. JP not only removed the paragraph that was used to justify the practice of discretion in the new guidelines, but also published new instructions specifically designated for the assessment of sexual identity (instructions refer to sexual identity as an umbrella concept to cover both sexual orientation and gender identity-related applications) (Justis og Beredskapsdepartementet 2012b). These instructions provide UDI five steps to be followed during the assessment procedures. These are credibility of the asylum foundation, assessing whether the applicant will be subjected to persecution if he or she lives openly, evaluation of how the applicant will act after returning to the country of origin (here, it is noted that the assessment should not be limited to sexual acts but include all behaviors and beliefs that are associated with, and are fundamental to, an individual's sexual identity), assessment of whether the applicant is likely to live his or her identity openly after returning to country of origin, and assessment of whether the applicant is likely to hide his or*

her sexual identity upon return (it is noted that if the applicant chooses to hide his or her sexual identity arguing that it is the right thing to do because of fears for breach of family and friendship ties and to avoid shame and social press,³⁰ then the conditions for refugee status are not met). Put simply, this guiding note closes the door of asylum for those willing to remain tacitly, or voluntarily closeted.

Nonetheless, the coherence and efficiency of the 2012 guidelines and instructions are still debated, mainly for two reasons. First, there is no consensus over what constitutes intelligible sexual orientation. Second, there are debates around the scope of activities considered necessary for expressing an inherent sexual orientation. For instance, legal scholars James Hathaway and Jason Pobjoy (2011, 335) argue that the scope of activities considered necessary for expressing intelligible sexual orientation or gender identity, whose denial or limitation would amount to persecution, needs to be clarified in asylum evaluations. Yet, Hathaway and Pobjoy's positioning is associated with being in favor of a distinction between status and conduct, an is and does dichotomy, and is also criticized for implying that sexual minorities can reasonably be expected to limit at least some activities to maintain a low key in the society they live in (Spijkerboer 2013, Wessels 2013, Millbank 2012).

Additionally, sexual orientation-based asylum claims are challenging for both adjudicators and asylum seekers. One reason for this is that allegations related to non-heterosexual identities are "easy to make, and hard to disprove" (Berg and Millbank 2009, 196). This is because the term "sexual orientation" is absent in the jurisprudence of many countries,³¹ and the plight of sexual minorities are hardly documented, generating evidentiary challenges for both the gay and lesbian asylum seekers and the caseworkers (Randazzo 2005, LaViolette 2009). With regards to this issue, the relevant UNHCR guidance (2008, 16) warns against the likely absence of evidence for persecution and country information, and suggests that the decision-maker should rely on the claimant's testimony, alone.

³⁰ The instructions add that the accumulation of these conditions can sometimes be characterized as persecution.

³¹ See also, Paoli and Zhu (2013).

Theoretical Inspirations: Queer Perspective on Law and Juridical Structures

Given that queer theoretical lenses question the notion of identity as naturally given, the queer perspective on law mainly interrogates the ways in which identity categories are inscribed, normalized, and regulated by legislations and juridical institutions (Morgan 2000, 217). Francisco Valdes makes the following insightful observation of the developments within the legal trajectory, mainly in the United States, that addresses the issues of sexual orientation:

The former, reflective of dominant norms in conventional legal scholarship, focused on "discrimination" against sexual minorities; that is, the practice of treating sexual minorities differently on the basis of sexual orientation – as in the case of marriage, for example. The later, incorporating the insights and methods of critical outsider jurisprudence from the 1990s and since, shifts focus to the "subordination" of multiply diverse sexual minority persons or groups. (Valdes 2009, 92)

Valdes' observation is crucial in pointing out that the incorporation of sexual orientation and gender identity within legal scholarship initially focused on legal inscriptions of discrimination towards sexual minorities. There was, however, a singular lens viewing sexual minorities as a homogenous group, which was inadequate to address the differences among sexual minorities who encounter legal and social oppression in various ways (Valdes 2009). Accordingly, the configuration of gay and lesbian identities into international law and complementary agreements has been of great interest to legal scholars who employ queer analytical perspective in their analyses. For instance, in her remarkable work "Exporting Identity," legal scholar Sonia Katyal (2002) presents the "substitutive model," which is predominant in the US law, but can also be applicable to jurisdictions across the Western world and its presumption of the interchangeability of sexual identity and sexual conduct. Her framing of substitutive model critically questions the relationship between sexual identity, sexual conduct and expression. She argues that traditionally the law presumes that "individuals who engage in same-sex sexual conduct can be legally classified by a fixed and clearly demarcable gay, lesbian, or bisexual sexual identity" (Katyal 2002, 101), and underlines the various divergence between identity and conduct in a cross-cultural context. In the end, as Willy Pedersen and Hans W. Kristiansen (2008, 84) demonstrate in their study on homosexual experiences, desire, and identity in Norway, the framing of people according to the categories of gay, lesbian, or bisexual is highly

dependent "on the 'strictness' of the criteria applied and whether the point of departure is sexual experience, interest desire or identity." Does an authentic sexual minority have all these characteristics simultaneously? In cases where these departure points, or similar ones, are employed to render people gay and lesbian, one might miss those who fall into what Pedersen and Kristiansen (2008, 72) call "the sexual grey zone."

Queer perspective on the law deals with more than just the inclusion of sexual orientation and gender identity in legal terminology, it also stands for a critical position that questions the norms attached to these terms. A central concern of such perspectives is the Western hegemony in delimiting, describing, and naming identity categories. For instance, legal scholar Aeyal Gross (2007, 130-132) analyzed the Yogyakarta Principles, a legal tool concerning the application of international human rights law to sexual orientation and gender identity, and argued that the terminology offered by these principles signifies a modern Western concept of sexuality that might have no relevance in different social and cultural settings. Enhancing his argument with what Joseph Massad (2002) termed "gay international" (2002), Gross warned against the uncritical integration of sexual orientation and gender identity into the juridical structures that might ahistoricize sexual cultures in different cultural settings.

The queer perspective on the law and legal institutions has much to offer our understanding of asylum caseworkers' accounts of intelligible sexual orientation and a credible narrative of risk for persecution. Here I use the word "intelligible" drawing upon Judith Butler's (1990, 16-7) discussion on culturally intelligible notions of identity, where she aptly underlines that intelligibility is related to conformity to recognizable standards that are governed by regulatory practices. In her later account of the intelligibility of lives and their labeling as grievable in times of loss, Butler (2009, 3) defines an intelligible life: "The epistemological capacity to apprehend a life is partially dependent on that life being produced according to norms that qualify it as a life or, indeed, as part of life." Similarly, the intelligibility of a lived sexual orientation depends on certain understandings of sexual orientation and the values attached to it with respect to the way it should be expressed and felt. Likewise, Alice M. Miller (2005, 146) uses the term "distinguishability" to refer to the law's separation of worthy queer claimants from the

unworthy ones. Put simply, worthy claimants are those whose suffering is grounded on their identity, not just their act of sodomy (Miller 2005, 146).

Method and Reflections

I recruited my informants via the Research and Development Coordinator of the Analysis and Development (A&D) section of UDI. A&D put me in contact with units³² that work with applicants from African countries, on the basis that these units received relatively more asylum claims based on sexual orientation than the others did. As a result, I did not get the chance to collect information about asylum seekers coming from countries other than the mentioned units' field of work, i.e., Iran.³³

I conducted six semi-structured interviews. Four of the interviews were conducted face-to-face and two of the officers were interviewed over the phone. These six informants were all volunteers to be interviewed following my research request submitted to A&D. In short, as a researcher, I did not choose either the unit or the caseworkers for the inquiry. Rather, they were recommended to me as potential informants who had the time and willingness to be a part of the research. All of the six informants were very open and enthusiastic about the research I am doing, and seem/sounded to be comfortable and confident to talk about both their strength and weaknesses in the way they make asylum evaluations. One of the informants said that being a part of this research is a valuable opportunity for UDI to be able to clarify their point of view, arguing that there exists misinformation and misunderstandings in public debates concerning their work. Additionally, she acknowledged that caseworkers in UDI are in a constant state of learning, and eager to interact more with human rights organizations and scholars to improve their work.³⁴ As Tom Clark (2010, 400) elaborately demonstrates in his

³² Unit C1 "Djibouti, Kenya og Somalia," and Unit C4 "Africa Other – Øvrige afrikanske land."

³³ Non-heterosexual asylum seekers coming from Iran are frequently mentioned in public debates, holding a certain degree of popularity in Norway. See Hojem (2009) for an insightful overview of some popular cases in Norway, regarding Iranian asylum seekers.

³⁴ For instance, UDI sent a representative as a speaker during the panel debate *Beviselig LHBT – Provable LGBT*, organized during the Pride House Oslo arrangement. There were also speakers from Queer World and Norwegian Organization for Asylum Seekers on the same panel.

work about people's research engagement and participation, being a part of the research is not a passive activity as it involves, for some, a certain degree of risk to be misrepresented or situated in an unwanted position. Yet, Clark (2010, 399) also mentions the possibilities of "representation, political empowerment, and informing change" through being involved in a research as an informant. I was lucky and privileged in that the informants considered my project an opportunity to rebuild their public image and/or brainstorm around the aspects that require further improvement.

As Tim Rapley (2004, 26) asserts in his elaborately written account on qualitative interviews and analysis of interview material, "first and foremost, analysis is always an ongoing process that routinely starts prior to the first interview." It is hard to deny that I had a set of analytical themes, derived from all the literature review and public debates around the topic, in my head that I was eager to explore further during the interviews. These themes were mainly about the stereotypical understandings of homosexuality and cultural essentialism, that diverse scholarly works on queer migration have put emphasis on (Jansen 2013, Berg and Millbank 2009, Muhleisen, Rothing, and Svendsen 2012, Lidstone 2006). Yet, I tried to formulate questions in a way that would not fish for a certain explanation or utterance. From the beginning, I invited informants into a dialogue over the dynamics and challenges – if any – of the evaluation of gay and lesbian asylum seekers. First, I asked the informants whether they find applicants who ask for protection in relation to sexual orientation challenging to evaluate. This question induced elaborations that emphasized the informants' strengths and weaknesses in the assessment process. I asked them how they could run a credibility assessment when the topic is sexual orientation and the claimant lacks evidence of a risk for persecution. I also asked them how they separate those needing protection from those misusing the asylum regulations.

Accordingly, the interview material was analyzed in such a way as to identify patterns in the caseworkers' use of a set of words and terminologies concerning sexual orientation, which gave me an idea of their understanding of intelligible sexual orientation.

Let's NOT Talk about Sex

As mentioned in the legal background section of this study, evidentiary challenges of the sexual orientation-related asylum claims constrain caseworkers to rely on applicants' testimonies as a primary focus of asylum evaluation. The credibility assessment of these testimonies are most of the time determinative in deciding if the person in question has a valid ground for protection, which, for this study, is a well-founded fear of persecution based on sexual orientation. I asked my informants whether they have a special method for the verification of an alleged sexual orientation. One of them replied:

We focus a lot on what is inside of the person. We do not focus on sexual acts or stuff like that. We focus on the life they lived, how they dealt with having a different orientation other than the norm. It is about their emotions, thoughts, reflections. [...] I think sexuality is fluid. Someone can be one hundred percent gay or straight, but then someone might be twenty percent gay. This is what I believe. I try not to involve my very liberal perception on sexual orientation in the interviews. I do not find it helpful. I do not ask people: "If you name yourself, what would it be? Do you perceive yourself as gay?" There is no need to put the words into the claimants' mouth. I try to make them create the narrative, describe how they feel.

Another one said:

You would conclude the same if you talked the person who is not gay. I do not ask people if they have sex back home, I do not ask them such questions. [...] Some try to fake by putting on stereotypes, telling stories often filled with sex. We do not only use one or two arguments to demonstrate that the person is not credible. In the decision, we write all the reasons why we think that particular person is not gay.

I did not ask informants whether they questioned their claimants about sexual practices. However, they did mark the practice of sexuality as a theme they avoided. Admittedly, this standing is in line with the interview techniques that the guidelines present in relation to the sensitivity of sexuality related topics (Justis og Beredskapsdepartementet 2012a, 2.1). The instructions also tell caseworkers to evaluate not only sexual acts, but also include all behaviors and beliefs that are associated with, and are fundamental to, an individual's sexual identity. Yet, the narratives above imply that they become very distrustful when asylum seekers voluntarily talk about their sexual experiences. Statements such as: "I do not ask people if they have sex back home" and "We do not focus on sexual acts or stuff like that," illustrate a determinant

position that intentionally strips sexual orientation from sexual conduct, rendering sexual conduct, practices, and activities irrelevant – or perhaps even misleading – for verifying a claimant’s orientation. It is also noteworthy that the informants explained their technique of verifying an applicant’s sexual orientation by telling what they do not do, implying that they are presumably aware of what Katyal (2002, 108) describes as “substitutive model,” the interchangeable use of sexual conduct and sexual identity where sexual conduct is considered to be grounding someone’s sexual identity. A great deal of literature on asylum receiver countries points to the hegemony of Western understandings of homosexuality and the requirements of unequivocal evidence of sexual identity that come into play during the evaluation of gay and lesbian asylum claimants (Randazzo 2005, Raj 2011, Luibh eid and Cant au 2005, Katyal 2002). In this sense, the divorce of sexual conduct from sexual orientation appears liberating, and even echoes a queer line of thinking when the caseworker said that she approaches sexual orientation as a wide spectrum and argued “someone can be one hundred percent gay or straight, but then someone might be twenty percent gay.” This approach also keeps the gate of asylum open for those who have not had any sexual experiences or who practices sexuality differently than what is prominent in Norway.

Despite the rejected equivalence of sexual conduct and sexual orientation, the accounts illustrate an important parameter that is used by the informants to verify a credible sexual orientation. The extracts of the interviews illuminate that caseworkers place their focus on how their claimants lived their lives in their countries of origin, in order to trace the repetitive acts and performances that showed divergence from the predominant norms of society. The extract below demonstrates a straightforward technique:

LGBT cases are different. I choose different approaches. It is on instinct really; you have to improvise here and there. I know that we have guidelines, but when you are sitting here, listening to their story you need to improvise according to what you hear. I try to get all the facts first. I sort of look for the reflections around, you know, being gay, and how do you live as a gay man. A credible person would easily be differentiated, not just in appearance, but also in what they do. [...] I hear that gay men have sex frequently, and they like speaking about it but I am not interested in hearing about it. I do not think it is true for everyone. [...] As I mentioned, each applicant is treated individually.

In this account, one might follow up a step-by-step technique that is parallel to the instructions given to the caseworkers, although she acknowledges following her gut feelings sometimes. With a magnifier, we can notice that a great deal of the informant's assessment deals with the asylum seeker's own reflections about being gay and the applicant's way of life as a gay person. A credible applicant, according to the informant, could simply be read through appearance and action. Accordingly, there is an implication that there are some measures, let us say stereotypes, being in use to identify an authentic gay appearance and action, that would convince the gut feeling about the credibility of an applicant. Conversely, the informant sounds cautious when it comes to the stereotypes regarding the sexual practices of gay men. It is something that the informant argues is irrelevant, because it might differ from person to person.

Concerning the distrust for, and distance to, accounts on sexual acts in verifying an alleged sexual orientation, quoted caseworkers seem to have a similar perspective. Their inquiry of the applicants' feelings, thoughts and reflections can be interpreted as an implicit search for a sexual identity even though the claimants are not required to name themselves as gay or lesbian. As Miller (2005, 146) argues, adjudicators distinguish a social identity from the mere action of sex between two people of same sex, because that is the distinguishing mark of a "worthy queer." Nonetheless, there exist differences among caseworkers as well. One of them utters ideas that can easily be read as queer and non-essentialist where as another one appears to be utilizing certain stereotypes in her assessment. Here I would also like to mention a news published on the website of NRK (the Norwegian government-owned broadcasting corporation) on February 26, 2014 ("*Norge tror ikke på at jeg er homofil*" 2014) that surfaced a discrepancy. Accordingly, Tone Loge Tveter, Deputy Head of the Asylum Department at UDI, described their procedure asylum assessments as: "We do not go into the sex life, but we go into the preference and practice of homosexuality and the environment they have wandered in." This is reminiscent of the caseworkers' remarks; however, her final comment about those whose asylum applications were rejected, blurs the purview. Tveter said:

Those who did not receive asylum were rejected partly because they failed to demonstrate that they were gays and partly because they were not persecuted because of homosexuality in their country. In the rejections we have stated that if they could live with their homosexuality hidden and not be persecuted, this is why they are rejected. ("Norge tror ikke på at jeg er homofil" 2014)

It is quite puzzling that this statement was made in 2014, and this triggers curiosity about whether the discretion requirement is still applied.

When reminded of Tveter's statement during a follow-up email exchange with one of the informants, I was told that Tveter's statement had been misinterpreted, as UDI follows the Supreme Court verdict from 2012 and claimants no longer are asked to conceal their homosexuality since then.

Identities to be Protected: Normative Adjudication

Regarding the question of how caseworkers separate a credible risk of persecution from a non-credible risk, I received the following responses:

Country information and the personal stories matter a lot. In Uganda, the risk is obvious. We do not need to talk about return to Uganda at all, or Nigeria where Landinfo reports risk of persecution accurately. [...] Our method is talking to the person. A very good interview is what we need. We make them talk about their life situation, their experiences, living as gay, living the trauma, stigma, and all the experiences they had in their home country. Risk for persecution speaks for itself if the applicant is homosexual.

I do not think that it is easy for an asylum seeker to lie about their situation. You cannot sit through all of the asylum interviews and be believable... I assume that a person who is LGBT, who have grown up in a community where these subjects are taboo, unspoken... You are taught that these sexualities are wrong, satan-work... I expect asylum seekers to talk about these inner feelings of denial, the struggle. [...] They do not need to speak the gay jargon to be believable; a credible account is usually obvious although the person does not talk about typical things.

What these two responses have in common is the attention predominantly paid to the authenticity of a sexual orientation as the determinant for the risk for persecution. In fact, the caseworkers' approach is not unique to Norway. In her study on jurisprudences of the UK and Australia, Millbank (2009a) notes the growing emphasis on credibility of the claimants' sexuality, following the demise of discretion reasoning. She describes this fashion as "from

discretion to disbelief” (2009a,391). In the Norwegian case, this fashion appears to be dependent on the applicants’ country of origin. In countries like Uganda and Nigeria, homosexuals are so extensively oppressed by the state that evidence of the plight is not required by UDI, leaving the proof of an authentic sexual orientation the only prerequisite.

Yet, there are examples that the “authenticity” of the non-heterosexuality plays little role, for example for claimants from Russia where sexual minorities are persecuted under the infamous propaganda law. According to the Russian law, propaganda of non-traditional sexual relations among minors are punishable with fines (Landinfo 2014) which has led to even more severe stigmatization and discrimination of LGBT people in the country whose persecution usually goes undocumented because of the propaganda law (Human Rights Watch 2014). Despite concrete examples of persecution in Russia are reported by Landinfo, Immigration Supreme Court of Norway denied protection to a lesbian couple from Russia and directed them to other parts of their country, such as Moscow or St. Petersburg,³⁵ stating that these cities are safer.

Another interesting aspect of the accounts above is related to the cultural gulf between the caseworkers and the applicants that seem to stage an Orientalist performance. Informants’ hunt for signs of wounds, stigma, and vulnerability as the assumed indicators of an authentic non-heterosexuality deserves further elaboration. Similarly, in her inspiring work on sexual minorities among African asylum claimants in the United States, Charlotte Walker-Said (2014) argued that asylum hearings host a so-called staging of the American refuge state. Throughout her work, she described how applicants are required to conform to Orientalist framings of sexual selfhood and to recognize the American government’s role as a powerful savior. A similar argument is presented in David A. B. Murray’s (2014) analysis of homonationalism in the Canadian refugee system. His data shows that refugee narratives often emphasize their gratitude towards the shelter country for rescuing them from persecution, even though they may encounter different forms of discrimination in the host country (Murray 2014, 28). He associates asylum seekers’ homonationalist sentiments, presented during both the asylum

³⁵ The Norwegian Immigration Appeals Board, practice base, Referanse: N1464151030

hearings and at the LGBT support organizations, partly to a strategy that presents them as persons fitting the Canadian model (Murray 2014, 27-8).

Accordingly, the so-called rescue narrative appears to have shaped another UDI caseworker's approach to asylum testimonies:

Actually I have interviewed two men, so far, whose claims were based on sexual orientation. One was very credible and the other one was not. The story that was not credible was from a man who told that he had met a random person when he was out one night, unexpectedly. After talking with this man shortly, they walked home together to have sex. They had sex at the claimant's own apartment and caught red handed by some radical Islamists. The rest is classic, story of persecution. [...] The level of stigma is incredible in his country, I mean, people can react wildly towards homosexuality. Living in such a society, you would not just bring someone you barely know to your place. In addition, they were caught red handed. It means that there was someone in the apartment already. I contemplate over this narrative and it is not credible at all.

The credible testimony was from another man from the same country as the man I just told about. He had never had sex with another man, had never engaged in a sexual relation with another man. His story was in short that everyone else considered himself very feminine in appearance and everybody found that he was different. I could see that he was feminine. [...] I applied the same technique as I would do with any other informant. I listened to his story and asked him questions. He was very hesitant to reply, he was embarrassed, did not know where to look. He said it was difficult. He looked very ashamed. I asked him more questions, and in the end I asked if he was attracted to men or women. [...] He finally told that he was attracted to men. I asked him how he would picture himself in the future, and his reply was: "If I can trust a man who loves me, I would like that."

The account above illustrates a comparative example of an informant's determination of credible and non-credible testimony. Arguments underpinning this judgment resemble the other caseworkers' approaches to intelligible sexual orientation.

Sexual activities were evaluated as irrelevant, or even misleading, in determining the sexual orientation of the person in question. Assessment of the risk of persecution, which was foundational to the claimant's rescue, was traced within the vulnerability script, which drew on reflections of shame, hesitation about talking about sexual identity, confusion, and so forth. The justification for the credibility assessment of the first narrative was highly personal. The caseworker contemplated the narrative from her perspective and drew a conclusion similar to: "I would not do that," or "Who would risk that?" The claimant demonstrated no hesitation over the sexual conduct he had engaged in, and told the story straightforwardly – perhaps "too directly," in that it sounded unfeasible to the caseworker or sounded merely as sex between two males, which has nothing to do with a homosexual identity to be saved. As Miller notes,

the "distinguishability" approach seems to operate in this account when the caseworker discerns sexual identity from the mere act of sex, rendering the latter not credible narrative of persecution. Although there is a strong emphasis on the disbelief of the overall testimony, the act of, and outspoken utterance about, sexual experience seems to be demonized.

The second narrative, which the caseworker found credible, clearly spoke to the so-called rescue narrative that favors identity. While the narratives of persecution that are depicted in "loud and proud" sexual practices might seem unintelligible to asylum adjudicators, obscure narrations of a wounded sexual identity appear to be found credible.

What is at stake is multifaceted, having normative implications. The authentic homosexual asylum seekers, who are worthy of protection, are romanticized with the inclusion of a love aspect and rendered vulnerable and innocent because they are being denied to love. What seems to be granted is the freedom to live out their sexual identity, rather than providing a safe haven for merely same-sex sexual conduct. Perhaps, people whose testimonies are found credible and who are rewarded with refugee status are those ones whose lives would have been grievable in case they are not saved. To be denied the freedom to engage in non-normative sexual conduct is not necessarily considered as a recognizable loss. Worthy claimants are constituted when their desire to be able to have a non-normative sexual life is accompanied by an intelligible sexual identity. The intelligibility of this sexual identity is predominantly characterized by Norwegian norms. Foreign homosexuals are depicted as victims and sufferers, which is also quite noticeable in Norwegian foreign policies that represent the country as a savior of oppressed homosexuals abroad (Sæteraas Stoum 2012, 32). Similarly, Norwegian asylum policy acts like a savior – which is plausible, given that it is an asylum receiver country. The weight placed upon the themes related to love and romance, however, requires further thinking. "Love" has also been an aspect that is frequently accentuated since the modern gay and lesbian liberation movement begun in Norway around 1950, with the use of the term *homofil* [homophile] instead of homosexual (Hellesund 2010, 306). The adoption and maintenance of the term homophile is considered to be a strategy because the term emphasizes love and friendship, in comparison to sexual connotations of the term homosexual (Hellesund 2010, Bolsø 2008).

The love aspect and the focus on homophile as an unchangeable identity, has also been used by the Norwegian national association for gays, lesbians, bisexuals, and transgender people (LLH) as a strategic maneuver to press the Norwegian authorities to welcome more people who seeks asylum based on sexual orientation. In her short essay "Identitet på flukt" [Fleeing Identities] in the Norwegian newspaper *Dagsavisen* on June 30, 2009, Karen Pinholt, the leader of LLH at that time, reminds the Norwegian authorities about the horrific circumstances gays and lesbians live outside Norway: "In some places, people even risk death penalty because they love a person of the wrong gender." (Pinholt 2009) In 2009, when discretion requirement was still applicable, Norway used to send people back to their country advising them to adapt the sociocultural norms of their country of origin. In her essay, Pinholt criticizes this policy with a strong emphasis on the immutable traits of sexual orientation and gender identity by writing:

Homophile and transgender are about identity, not just sexuality, and cannot be given up. Until all the officers of immigration administration realize this, these groups are not ensured protection in Norway. (Pinholt 2009)

This style of advocating, with frequent vocalization of the assumed love aspects and immutability of homosexuality, for non-heterosexual asylum seekers are quite analogous to the understanding of an intelligible sexual orientation expressed by the caseworkers mentioned in this study.

An emphasis on love and romance is also known to be a sexual norm of the Norwegian gender equality policy, based on heteronormative families and long-lasting marriages, including same-sex unions (Røthing and Svendsen 2011, 1956-1957). Romantic love is also an issue frequently mentioned in studies on Norwegian immigration policies, mainly family reunification policies, as a determinative aspect of the marital legitimacy (Muller Myrdahl 2010, Eggebø 2013). Furthermore, love is an aspect that is frequently brought up in the international arena for the rights of LGBT people and asylum seekers. For instance, Amnesty International's (2015) famous slogan, "Love is a human right," was used to urge for the legalization same-sex marriages around the world and, soon after, was adopted for diverse campaigns to

decriminalize homosexuality in various countries. In 2009, UNHCR published a report on asylum seeking on the grounds of sexual orientation, named "Fleeing for Love" (Hojem 2009).

Concluding Thoughts

This paper illuminates that it is not easy to talk about a pattern or a standard practice that caseworkers follow to evaluate their asylum applicants. Previous studies noted that reduction of sexual identity to sexual practice during asylum assessments are fallible due to its essentialist premises. In this sense, informants of this study demonstrated a different position as they considered sexual orientation independent of sexual practice. However, their practice of evaluation remains problematic as they have a tendency to render accounts on sexual experiences irrelevant or misleading for the overall assessment. Because of this forceful detachment of sexual practice from sexual identity, informants trap into a reverse essentialism where sexual identity is favored at the expense of sexual act and practices.

To sum up, this paper examined a selection of interviews conducted with UDI asylum caseworkers in Oslo regarding the subject of gay and lesbian asylum seekers in Norway. It is crucial to underline that these examples neither represent nor constitute the overall complex texture of asylum evaluation in Norway for sexual minorities. Asylum assessment is a complex and dynamic procedure that situates caseworkers amid legislations, guidelines, and asylum testimonies. The interview material analyzed here only provides the insights of the UDI asylum units I interviewed. A more profound investigation would entail further research that would encompass other asylum units of the UDI. In this sense, I prefer to present this work as an entry point for discussing the dynamics of assessment of sexual orientation-based asylum claims in Norway.

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Paper 2

Becoming Family: Orientalism, Homonormativity, and QueerAsylum in Norway

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Introduction

'Innocent until proven guilty', originating in Article 11 of the Universal Declaration of Human Rights, is a phrase we are accustomed to hearing.⁴⁴ However, a reverse logic can be spotted in the evaluation of asylum cases. Asylum seekers are often considered to be misusing the asylum system, and therefore guilty until proven innocent. As Anthony Gard, a human rights campaigner from the UK, bluntly portrays: 'In asylum cases, you're guilty until you find some way, after you've fled from a country, often without papers, to prove you are genuine';⁴⁵ that is, until you prove you are who you say you are and that you are in need of protection. In cases related to sexual orientation, the process of rendering someone 'not guilty' usually has two focal points: genuineness of sexual orientation and risk of persecution. Accordingly, individuals who are allegedly non-heterosexual in their country of origin and can demonstrate a well-founded fear of persecution related to their non-heterosexuality can claim asylum under the refugee convention on the grounds of 'membership of a particular social group'. Because the plight of sexual minorities around the globe usually goes undocumented and there is a lack of consensus on what constitutes sexual orientation and how sexual orientation is manifested, queer individuals are often 'burdened by proof' (Dauvergne and Millbank 2003, 299) and troubled with racialized and colonized scripts of victimhood in addition to rigid understandings of sexuality (Cantú 2009, Walker-Said 2014, Muhleisen, Rothing, and Svendsen 2012, Giametta 2014, Spijkerboer and Jansen 2011, Murray 2014, Middelkoop 2013). In the end

⁴³ This article is published in *Journal of Ethnic and Migration Studies*.

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⁴⁴ The article states: 'Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.'

⁴⁵ <http://www.newstatesman.com/politics/2015/03/guilty-until-proven-innocent-trial-lgbt-asylum-seekers-detained-uk>.

“asylum seekers and the asylum officials operate with different vernaculars”, as Amy Shuman and Carol Bohmer (2012, 205) claim in their discussion of how different conceptions of what counts as normal and plausible for adjudicators plays a determining role in the evaluation of asylum cases.

This paper focuses on the burden of proof that queer asylum seekers encounter in Norway and analyzes their way of tackling it. Drawing on interviews with ten asylum seekers, I seek to answer the question of how sexuality is narrated and shaped, sometimes strategically, to become readable in the Norwegian context. In other words, I seek to discuss the way in which queer applicants translate their sexuality. In this regard, I also intend to underscore the benefits and limitations of particular strategies that are (un)intentionally utilized by claimants to improve their chances of asylum seeking in Norway.

Why do queer asylum seekers need translation?

Ensuring legal protection based on sexual orientation under refugee law has been an ongoing struggle for both legal advocates and non-governmental organizations working in the field. Despite the fact that sexual orientation is now widely accepted as a ground for asylum in many asylum receiver countries (Berg and Millbank 2009, Spijkerboer and Jansen 2011), the contested ideas and understandings of sexuality locate queer asylum seekers amid particular challenges. In theory, individuals are entitled to asylum if they convincingly demonstrate that they are a member of a particular social group and risk persecution on the grounds of this membership.

The Refugee Convention ground of ‘membership of a particular social group’, under which queer asylum seekers are assessed (UNHCR 2008), is defined by the UNHCR (2002) as:

a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.

Furthermore, the UNHCR states that what members of a particular social group share is historical, and therefore cannot be changed because it is so closely linked to their identity (p4, paragraph 12). According to this definition, one can say that people who seek asylum based on sexual orientation form a particular social group, as long as their sexual orientation is immutable and fundamental to their identity. This argument is problematic, as it paves the ground for ahistorical and essentialist understandings of sexuality, which critical scholars have laboriously worked to deconstruct (Warner 1993). Amid the absence of a standard definition and checklist for determining genuine sexual orientation, adjudicators have used different measurements to verify and evaluate queer asylum seekers' credibility and genuineness. For instance, in 2010, Czech authorities were found to have applied a sexual arousal test to their asylum applicants who claimed to be gay. Through this infamous method, the claimants were exposed to homosexual and heterosexual pornographic material while their level of sexual arousal was measured.⁴⁶ Following a less scandalous but still questionable technique, British immigration authorities have reportedly been very intrusive during their interrogation of petitioners' sexuality, asking detailed questions about, for example, their manner of engaging in sexual activity (Lewis 2014, Gartner 2015, Bennett and Thomas 2013). The 2015 report of LGBT Asylum, an organization working for the rights of LGBT individuals in the Danish asylum system, points to a similar tendency in Denmark, where adjudicators often ask asylum seekers questions related to details of their sexual conduct and encounters, such as the color of the bed sheets used during sexual activity (LGBT Asylum 2015). This does not seem to be the case in Norway, however, where the Norwegian Directorate of Immigration values the notion of an inherent and modern homosexual, in contrast to the so-called sodomite, who engages in same-sexual conduct but lacks an all-encompassing identity (Muhleisen, Rothing, and Svendsen 2012). The all-encompassing identity, according to Norwegian adjudicators, can be traced to applicants' reflections on traumatization, victimization and stigmatization with regard to their sexual identity, and caseworkers deliberately avoid asking questions that are related to sexual activity (Akin 2015).

⁴⁶ 'Czech gay asylum "phalometric test" criticised by EU', available at: <http://www.bbc.com/news/world-europe-11954499>.

In the absence of standardized procedures for verifying someone's sexual orientation, and further disagreements on what genuine sexual orientation is, queer asylum seekers look for means to improve their chances of receiving protection through individual and organizational efforts, as studies have illustrated in the UK (Lewis 2014), Canada (Murray 2014) and the USA (Cantú 2009).

Policies and practices in Norway

Norway has been granting protection based on sexual orientation for almost 20 years. According to the manual reports kept by asylum caseworkers, which might be inaccurate and missing data, 23 people sought asylum based on their sexual orientation in 2012, while this number tripled with 73 and 72 people seeking asylum in 2013 and 2014, respectively. In 2015, the number was registered as 68.

Asylum caseworkers at the Norwegian Directorate of Immigration (UDI) are instructed by particular guidelines developed for the assessment of applications related to sexual orientation and gender identity. The current guidelines state that sexual orientation should not be defined by sexual acts but should encompass all behaviours and beliefs associated with, and fundamental to, an individual's sexual identity (Justis og Beredskapsdepartementet 2012). As mentioned above, the UDI often favours sexual identity over sexual conduct (Akin 2015; Muhleisen, Rothing, and Svendsen 2012). A particular issue that attracts substantial critique of UDI's assessment procedures is the application of the discretion requirement – that is, the idea that queer applicants will be safe upon return to their country of origin as long as they keep their sexual orientation out of public sight and remain closeted. Paradoxically, following a series of Supreme Court ver-dicts in Europe ruling that people cannot be compelled to hide their sexual orientation, the application of the discretion requirement was suspended in Norway, as well as in many other asylum receiver countries between 2003 and 2012 (Spijkerboer 2013)⁴⁷. However, as legal scholar Thomas Spijkerboer puts it, 'discretion reasoning turns out to be a many-headed monster: once

⁴⁷ New Zealand, Australia. The Netherlands, the United Kingdom, Sweden and Finland.

they succeeded in chopping off what brave advocates took to be its head, it turned out to have many others' (Spijkerboer 2013, 220). For example, if adjudicators decide that an applicant would be voluntarily discreet about their sexual orientation because, among many other reasons, they would not like to offend family members, the applicant can safely be returned to the country of origin, according to the current instructions used by the UDI⁴⁸.

Translating sexuality: Theoretical perspectives

Throughout this paper, I refer to claimants whose protection claims are related to sexual orientation as 'queer'. 'Queer', as an overarching term, has been mostly used to destabilize and contest rigid definitions of identity categories, and its own definitional indeterminacy makes it a widely charming term (Jagose 1996, 1-3). 'Queer', in 'queer asylum seekers', suggests complexity in claimants' sexualities that is continuously constructed by the individuals, legal actors, various human rights organizations and the socio-political discourse in which the claimants navigate. Therefore, 'queer' in 'queer asylum seekers' offers an acknowledgment of the fierce difficulty, if not impossibility, of being proven as genuine.

For analytical purposes, I approach the 'queerness' of informants as an emergent feature of their interaction within the Norwegian asylum context. Here, I am inspired by Candace West and Don H. Zimmerman's approach to gender as 'a routine accomplishment embedded in everyday interaction' (1987, 125). Gender is not something individuals possess, but it is an emergent feature of social situations wherein gender is expressed or reflected through various activities (West and Zimmerman 1987, 126). Similarly, queer informants' queerness is a recurring accomplishment that requires a transformation of emphasis on what is individual in the interactional and institutional arenas of asylum.

This study is also informed by literature focusing on the intersection of migration and sexuality as co-constituting, which has been subjected to inquiry among scholars over the past 15 years (Luibhéid 2014, Cantú 2009). Some scholars also invite the issue of love to the equilibrium in understanding the imaginations and enactment of migration, be it voluntary or

⁴⁸ GI-07/2012 Instruks om tolkning av Utlendingsloven § 28 første ledd bokstav a – forfølgelse på grunn av seksuell orientering og kjønnsidentitet, 5(a).

forced (Mai and King 2009). These scholars do not see sexuality as an add-up category of different factors that shape people's motivation to leave their country of origin. Rather, they emphasize that sexuality is constantly constituted throughout the migratory process and is constitutive of the migratory process. Eithne Luibheid (2002, 138), a leading scholar in sexuality and migration studies, reminds us of the temporality of categories such as gender, sexuality, race, class and nationality, and warns that these categories do not pre-exist and wait to simply be uncovered at the borders of nation-states. Rather, she calls for analytical efforts to recognize various temporal practices and discourses, which vary according to the individuals involved, who constitute sexual identities, acts and norms. Accordingly, Luibheid (2002, x) suggests that immigration control apparatus actively take part in the construction and (re)production of sexual categories, identities and norms. In a similar tradition, Lionel Cantu offers a theoretical framework that he refers to as 'a queer political economy of migration' (2009, 163), which understands sexuality as a dimension of relations of power, race, class and gender that shapes the mobility of bodies in various ways. Cantu's framework is very fruitful for an analysis of how sexuality influences queer asylum seekers' migratory processes. It allows one to explore the multifaceted operations of power that constitute the experiences of individuals, both in their country of origin and in the host country in which they seek asylum. Such an analysis goes beyond approaching queer asylum seekers as simple victims of misrecognition in their country of origin and potential victims of the misapplication of refugee law in their host country. Acknowledging that their plight might involve aspects of misrecognition, a profound analysis is required to map the economic, racial and cultural dimensions of their lived experiences. In a parallel line of thinking, Eric Fassin and Manuela Salcedo suggest, in their article 'Becoming gay? Immigration policies and the truth of sexual identity' (2015), that the truth of sexual identity is unattainable. Thus, one should focus on the reality of identification rather than the truth of identity (Fassin and Salcedo 2015). The process of identification goes beyond migration experts' attempts to determine genuine gayness and involves what it means for the migrant to be exposed to the 'police of identity' (2015, 1121).

Empirical data

This study draws upon ten semi-structured interviews I conducted in Trondheim and Oslo during 2013 and 2014. The informants were from Uganda, Yemen, Iran, Somalia, Palestine and Iraq. Informants' countries of origin are not included with the interview material presented here, for the sake of privacy. All the informants were recruited via Skeiv Verden (Queer World), a human rights organization that assists and supports queer people with a minority background in Norway. The main office of Skeiv Verden is located in Oslo, but the organization also has non-official regional offices, such as one in Trondheim called Skeiv Verden Midt-Norge.

Given that I had volunteered for Skeiv Verden Midt-Norge since September 2013, the total number of queer asylum seekers that I encountered during workshops and various arrangements organized by Skeiv Verden was around 25. However, I didn't interview each of them in an official setting, mainly because some of them had had their cases covered so excessively in the media that they were reluctant to speak about their stories again. Additionally, I was closer with some of the members and did not want to – and indeed could not – breach the friendship line to conduct an interview for the sake of research. Therefore, the actual material covered in this article consists of ten interviews: two of the respondents were women who identified as lesbian and eight of the informants were men who identified as gay. I was not able to contact as many women as men simply because fewer women had applied for asylum based on sexual orientation. A number of researchers have noticed a similar disproportion in Canada, Australia, Britain (Keenan 2011, Dauvergne and Millbank 2003). As no studies have focused on this disproportion within the Norwegian context, one can only speak speculatively and say that the general invisibility of the queer women subject in both public and legal arenas not only makes it less likely for queer women to risk persecution (Keenan 2011) but also makes it more difficult for them to imagine and enact a resistance, such as fleeing from risk.

My two-year engagement with Skeiv Verden could also be characterized by my role as an 'observant participant' (Moeran 2009, 13). Being an observant participant can be characterized as being an insider and being provided with informal knowledge in a social setting

that goes beyond the sheer separation of researcher and research subject (Moeran 2009, 14). In addition to conducting interviews, I attended various arrangements of Skeiv Verden between 2013 and 2015, such as a workshop called 'A-B-C of Love' in Trondheim, an 'Activist Weekend' in Oslo, numerous film screenings and other social gatherings.

The rainbow splash: Translating sexuality to make it readable in Norway

An important style in which informants translate their sexuality appears to be a Western style of loud and proud sexual identity. On the one hand, use of this style can be considered embracing of a lifestyle that was denied to informants in their country of origin. On the other hand, the sudden 'rainbow splash' on their lives, as I call it, can be a strategy used to fit in. The metaphor of the 'rainbow splash' is inspired by the photo editing computer application 'Color Splash', which allows users to add color to a black and white photo.⁴⁹ There are numerous ways of adding color to a black and white photo to make it appear partially or fully colorful. Similarly, there are various kinds and degrees of rainbow splash utilized by queer asylum seekers.

Going public

A frequent application of rainbow splash manifests itself when some informants seek to go public in a strategic manner through social media, newspapers and interaction with particular queer organizations in order to communicate their sexual orientation and sometimes produce evidence for their alleged sexual identity.

The application of rainbow splash can be observed through the account of an informant, Mahmut. He had a well-paid occupation and a fast-rising career back in his country of origin. Mahmut had been in a relationship with another man, who had also been engaged in polygamous relations with other people. Mahmut, however, had only been involved with this particular man and told me that he had truly loved him. The relationship he had lived out in

⁴⁹ <https://www.microsoft.com/en-us/store/apps/fotor-color-splash-studio/9wzdncrfhwr5>.

secrecy had been neither a burden nor a threat to him. In fact, he repeatedly mentioned that he valued the privacy of intimate life. Mahmut's career broke down after his relationship was accidentally revealed to a colleague who happened to spread rumors about Mahmut's relationship at the workplace. During the subsequent weeks, he was in trouble with the local authorities, who began to threaten and harass him.

I am not a liar. I had a life back there [in his country]. I owned everything. Now, I have nothing. Why do you think I would put up with all these...I am a prisoner here, no work permit. (...) I packed just a little rucksack before I left. [pointing at the fashionably tailored coat he is wearing] This is the only coat I have. The woman who rejected my asylum thinks I am dripping oil. I am too successful for her. I am not like one of those African immigrants who would say 'yes' to everything. I stand strong. They don't like it. (...) My lawyer is gay. I trust him. A journalist interviewed me and I have gay friends who will testify if necessary. I attended *fuckshop*⁵⁰ in Oslo, people know me (...) if I get my residence permit in Norway, I will be out of sight for a while. My brother and my mother are on the same boat with me. They don't approve my homosexuality, but they wish me the best. If I keep appearing on the news, on internet, it would nurture the enemy. Maybe in the future I go to Kuwait or Turkey to work. I don't want more troubles. (Mahmut, 30)

Mahmut is frustrated, and feels trapped as an asylum seeker impatiently waiting for his appeal. The relationship he voluntarily kept discreet back home turned his life upside down, which, according to Mahmut, was chiefly unexpected. Keen on proving his sexual orientation, Mahmut suddenly and perhaps strategically goes public in Norway. The way he lives out his sexuality openly can hardly be read as the fulfillment of an aspiration, and seems like an attempt to become readable. Accordingly, Mahmut sounds quite confident and perhaps too proud to position himself as someone needing to be saved. In this sense, he challenges the role of victimization and the lack of agency that is often ascribed to asylum seekers. He emphasizes his success, social status and determination as traits that distinguish him from other immigrants. As Cantu (2009, 72) points out, queer immigrants might mobilize a profession or skill in a strategic manner to speak from a so-called legitimate site rather than a queer location. Mahmut mobilizes his profession and skills, however, through an arrogant posture, maintaining a racist tone by presuming that African immigrants lack agency and are submissive. In doing so, he unwittingly echoes Western narratives of African queers that cast them as victims in need of

⁵⁰ A workshop on anal sex arranged by Helseutvalget Gay&Lesbian Healthy Norway.

saving (Ekine 2013). Mahmut's frustration, based on the fact that he has been declined asylum and his life has been on pause, can explain some of the sharp edges in his statements.

However, Mahmut's emphasis on his difference from 'Africans', who he frames in a homogeneous manner, requires further attention. A number of scholars have emphasized on the marginalization and exclusion of people of color in white gay and lesbian communities (Randazzo 2005, Lee and Brotman 2011, Seidman 2004). Research has also found that queer racialized communities do not necessarily attract equal participation; for instance, women and trans people might experience exclusionary practices within these spaces (Lee and Brotman 2011). Both areas of scholarship could be enriched with studies focusing on racialized and culturalized dynamics of power among queer people of color as negotiation strategies with the host country- representing fights for becoming not only legible, but also desirable as a prospective citizen who will benefit the host society in the long run.

Another important aspect of Mahmut's narrative is the use of media channels. Use of multiple communication platforms is common among asylum seekers, who are eager to have their case heard publicly. Visibility serves also as a deportation strategy, as it increases the risk of asylum seekers' persecution back home by escalating the likelihood that they will be recognized or perceived as queer in their country of origin (Lewis 2013). Yet, not everyone can afford the social costs of an out status. Mahmut states that public recognition might nurture the enemy in his description of a social cost. Being out might also lead to the stigmatization of queer people among other asylum seekers as the previous research has indicated (Bennett and Thomas 2013, Lee and Brotman 2011).

One should also be attentive to the accessibility of 'going public' as an option. To put it differently, it is important to see who gets to be interviewed by the newspapers and have their cases getting published. One of the informants I spoke to, who had been previously interviewed by a regional newspaper along with three other asylum seekers from his country of origin told:

We were crossing that bridge and Henry noticed the newspaper building and said "Let's go". We had not planned it before. It was a decision taken on spot. Henry spoke to the woman in the reception and told

her that our lives are in danger because we are gay. We were told to wait for a short while and one journalist came to meet us. (Brad, 30)

The newspaper *Adresseavisen* published the story and photo of these four men on September 12, 2015, noting that they were planning to attend the gay pride event a couple of days later⁵¹. It would be simplistic to draw major arguments based on one example. However, this account illustrates the role of agency in making particular cases visible. Asylum seekers actively engage in practices and mobilize their resources to 'go public'. In what follows, I engage more in issues pertaining to the resources necessary for asylum seekers' utilization of rainbow splash.

Organizational support

Channels for appropriating a visible and political queer identity are not easily accessible to all asylum seekers, for various reasons. Jess is a lesbian asylum seeker who lives in one of the remote asylum reception centers in Norway, and therefore does not have the opportunity to commute to big cities in Norway where the majority of gay culture is concentrated. She mentions feeling very lonely and threatened among other asylum seekers in the reception center, who, according to her, make it impossible for her to speak about and act on her sexual orientation. She feels partly deprived of 'all the fun in the city', in her words. She also expresses a sense of feeling disadvantaged in relation to the prospective outcome of her asylum application. She believes that regular participation in a queer organization would facilitate the translation of her sexual orientation in Norway.

I try to come here [Oslo] as often as possible but it is too expensive. Our *mottak* [reception center] is far away, cold, very lonely (...) I want to attend Skeiv Verden's social gatherings more often. I miss them but also I know that they have volunteers. Some of them are also asylum seekers. It is unfair that others [other queer asylum seekers] can spend more time there and people like me do not have the opportunity. I wish I could work for them. Then UNE [the immigration appeals board] would give me residence permit. What do you think? (Jess, 25)

⁵¹ <http://www.adressa.no/nyheter/trondheim/article11550827.ece>

A joint initiative of Skeiv Verden and SEIF, whose representatives travelled to several asylum receptions to interview queer residents, reported that openly queer individuals encountered formidable challenges during their residency at the reception centers.⁵² An example is illustrated via the Norwegian National Broadcasting Corporation's (NRK) coverage of the story of a gay Sudanese refugee who talked about his experience of harassment by his roommate in the asylum reception center.⁵³ In light of this, it is understandable that Jess wants to live closer to Oslo, where she can socialize with other sexual minorities, or at least feel less lonely.

In addition to missing social aspects, Jess expresses an aspiration to have stronger ties with Skeiv Verden, such as by having a volunteer position there to secure a better chance of convincing the appeals board that she is genuine and in need of protection. According to the Canadian anthropologist David Murray (2014), volunteering for an LGBT rights organization is often considered beneficial for queer asylum seekers in Canada, as it demonstrates engagement in a local queer community. Similarly, Lee and Brotman (2011) found, in their empirical research on the intersectional experiences of sexual minority refugees living in Canada, that racism within mainstream queer communities and homophobia within particular racialized communities intensify the importance of queer racialized communities, which help to tackle intersectional marginalizing experiences. However, there is no guarantee that involvement with Skeiv Verden will secure a positive response to an asylum application in Norway, given that the organization does not officially sponsor queer applicants' sexual orientation. However, they do sometimes send letters to the UDI and courts to document the volunteer activities asylum seekers participate in with the organization.⁵⁴ In that sense, similar to Murray's argument, engagement with Skeiv Verden could be considered by adjudicators as a mark of belonging to a queer community, if not a sign of genuine sexual orientation. Furthermore, engaging with a queer community and building grassroots support structures are chiefly important in bringing sexual minorities together and providing them a sense of solidarity

⁵² http://www.blikk.no/index.php?option=com_k2&view=item&id=11046:s%C3%A5rbar-p%C3%A5-asylmottak&Itemid=164.

⁵³ I livsfare på asylmottaket, <http://www.nrk.no/magasinet/-i-livsfare-pa-asylmottaket-1.11550259>.

⁵⁴ A board member told me via e-mail when I asked her.

with the opportunity to engage in knowledge production and experience sharing concerning sexuality, exile and asylum bureaucracy (Lee and Brotman 2011, 268). During my participation in Skeiv Verden social gatherings, I found myself in several heated debates over what one should say and how one should speak to the UDI with respect to one's asylum claim. The striking element of this act of experience sharing was its exclusionary aspects, marked by silences and pauses when someone – whom others thought of as a so-called faker – entered the room.

Born this way

The following account has a subtle rainbow splash colored with a thin brush, which is inscribed in the informant's 'born this way' narrative.

I will tell you the truth, it is not as hard as you imagine in my home country. A young gay man barely faces danger in the capital. Be gay but do not be a gay feminist or activist if you want to remain safe. What can I say about my life back home? There are many gays, sexually active. They quarrel a lot among themselves. It is common to repent after sex. After having sex, people often feel guilty and they repent and blame each other for seduction. It is a circle of a ritual: fuck, repent, blame each other and then have sex again at another time. Be gay, have sex, it is hardly risky. (...) I wanted to live freely as a gay man. I thought I could create a better life for myself in Europe. Being a refugee was never a part of the plan but it appeared to be my only option. If I stayed in X, I would need to marry a woman in the end. I did not want to lie to any woman and I do not want to lie to my nature. I was born gay, I do not know others, but I was gay since I was little. I know some gay people who try to forget that they are gay by taking a wife and having a child. (...) What about the kind of family I would like to have? (Rashit, 34)

Rashit's statement, 'it is not as hard as you imagine in my country', suggests his awareness of prejudices against his country, and presumably other Muslim majority countries. Therefore, his narration of his life back home initially sounds like a defense against the so-called Western designation of the 'oppressive', 'barbaric' Muslim majority countries where people are mistreated (El-Tayeb 2012, Shakhshari 2014). He explains, in a pedagogical manner, what is okay and not risky for a gay man to do in his country, and he also underlines certain restrictions concerning the expression and display of male same-sex affection.

Rashit depicts gay men in his country as tacit. To be tacit is a little different from being discreet or closeted. 'What is tacit is neither secret nor silent' (Decena 2008, 340), but simply not vocalized. This is mainly where the boundary is drawn for identity claims made by 'gay feminists or activists', as Rashit puts it. Talking about his future concerns over people who might interrogate him for not being married, Rashit refers to another story of being gay and the inevitable closet. Here, the closet is defined similarly to Steven Seidman's (2004, 7) description of a life-shaping pattern of concealment to pass as straight. Tacit lives, apparently, have an expiry date.

What is striking in Rashit's overall narration is his continuous swinging between depicting his country as not such a dangerous place and justifying his flight. These two paths demonstrate two different understandings, speaking for and against Western understandings of sexuality. His narrative speaks against the demonized portrayal of non-Western countries. Nonetheless, his grounds for asylum surprisingly speak to another story by holding a position that refers to the socio-political identification of gayness. This can also be interpreted as an asylum strategy. Laurie Berg and Jenni Millbank (2009) point out that presentation of an internal identity with a static and linear sexual desire is a Western construct, and necessary for the validation of queer asylum narratives in legal terms.

In his empirical study on the lived experiences of queer asylum seekers in the UK, Calogero Giametta (2014) discusses the circumstances under which asylum seekers take themselves in and outside the narratives of liberation and victimhood. Accordingly, asylum seekers sometimes strategically use emancipatory narratives, occupying the victimhood position that is attributed to them, so as to be recognizable within the receiving society.

Emphasis on the sex life

Another means of translating sexuality is to place an overwhelming emphasis on sexual activity. This is a risky strategy, for two reasons. First, it serves to reduce sexual orientation to sexual acts. Second, it translates sexual orientation to a language that is rather unacceptable or

received as doubtful by immigration authorities in Norway, judging from how they argue to assess claims.

Tooraj's narrative can be considered an example of how asylum seekers try to generate their own evidence when encountered with disbelief from authorities.

He [the caseworker who interviewed him] showed me a video captured from a gay party in X. He said 'Where are you? I can't see you in this video'. This is ridiculous. I told him that I lived in Y not in X. (...) How can I prove that I am in danger when their system has no logic? He could see I was gay but he chose to look at nonsense videos. (...) Doctors can understand if you are different. I asked him to send me to a doctor and I would get a report showing that I am 90 percent bottom. If you do not trust doctors, I have nothing to tell you more. (Tooraj, 24)

Tooraj is identified as an effeminate gay man who had breached the gendered clothing codes in his country of origin as he liked to wear tight colorful tops and put on make-up. During the two times I interviewed Tooraj, he only talked about his sex life in relation to his asylum application. That does not mean that his alleged sexuality had something to do with his sexual experiences or reflections. It is, however, interesting that the topic only emerged as a means of generating evidence for the decision makers. His emphasis on being sexually passive – in his words, being '90 percent bottom' – and his belief that this could be medically proven, can be considered an attempt for him to become more readable.

A similar perspective was also voiced by Kazim:

The interpreter didn't interpret exactly what I said because of the language, and I realized this when UDI sent me the rejection letter and I read why they didn't give me protection. The same thing happened to me with the lawyer they provided me to appeal my case. I am terrified, and can't sleep during the nights. My friend suggested taking a photo of me, you know, when he takes me from behind. It is shameful. I can try it anyway if there is no other option. (Kazim, 25)

Kazim is complaining about the bad translation the interpreter provided during his asylum interview. It is this linguistic handicap, according to Kazim, that prevented him from expressing himself correctly to the caseworker and therefore led to the denial of his asylum claim. In the absence of proper linguistic translation, Kazim seeks to follow another means of translation

that he believes will facilitate his communication with the decision makers. He is contemplating over whether to produce photos of himself with another man while having sex. The staging of the sexual position, which would display Kazim as being penetrated, implies that his claim for genuineness – similar to Tooraj’s overwhelming emphasis on being effeminate and ‘bottom’ – relies on his passivity in same-sexual conduct. These representations of effeminate gay men or gay men who are being penetrated alludes not only to the normalization and application of gender hierarchies in male same-sex encounters (Martino 2006, 58), but also echoes the Oriental image that is attributed to the sexuality of the Other, which is penetrable, controllable and moldable (Said 1978, 44).

Another way of generating evidence is to share one’s username and password on queer dating websites or mobile applications with the decision makers, as a Ugandan applicant did, according to the Norwegian newspaper *Morgenbladet* on October 10, 2014. Similarly, Mahmut, as mentioned above, suggests that his participation in a workshop on anal sex in Oslo might be useful for his upcoming appeal. All these attempts to underscore an active sex life are questionable, as they could also reinforce a stereotypical understanding of queer male homosexuality. Furthermore, as Lewis (2014, 963) argues in her article on the display of photos taken during same-sex conduct as a frequent strategy employed by mainly male asylum seekers in the UK, sex-related strategies run the risk of rendering lesbian asylum seekers vulnerable, as their sexuality is argued to be less visible. In the following paragraph, the story of Hamit can be considered illustrative of how the process of translating sexuality is a never-ending process.

Hamit (18) is a gay man who came to Norway a year ago. He was quite lucky because his case was evaluated in less than a year and resulted in a positive verdict. Hamit was born in a country that punishes homosexual acts between consenting adults with the death penalty. He had it quite rough at home. His parents, worried about their son’s overtly effeminate look and behavior, kept him locked in the cellar and restricted his contact with the outside world. In his early childhood, Hamit felt like a woman. He did not, however, have any discomfort in relation to his body. Currently, he identifies as a gay man who ‘sometimes feels like a woman’. Hamit comes from a culture that is strictly patriarchal, and the weakening of masculinity is seen as a threat to society at large. This is why, according to Hamit, only gays like him – who are very

effeminate – attract fierce condemnation. Hamit communicates the validity of his and other allegedly gay asylum seekers' sexual orientation through sex. A sexually active life is not just the determining aspect of sexual orientation, but also the sign that someone truly needs protection, in his view. Therefore, Hamit is very critical of other male asylum seekers who claim to be gay but do not practice same-sex acts as openly or extensively as he does. He persistently challenges those who get in touch with Skeiv Verden, warning that some might misuse the organization. He once claimed that one of the frequent participants of Skeiv Verden was actually straight. When I asked him how he could be so sure, he replied confidently: 'I tried kissing him, he did not kiss me back'. Having received his residence permit, and perhaps feeling validated as queer, Hamit engages in a new identification process that not only restores his sexuality, but also informs a self-righteous position that he uses to police the truth of other allegedly queer people's sexuality. This demonstrates how immigrants are interpreting subjects, and how they 'classify themselves just as they are classified' (Fassin and Salcedo 2015, 1122). Furthermore, it is illustrative of how asylum seekers continuously negotiate their sexuality with their peers, hoping to build alliances as well as to eliminate the traitors whom they believe to be fraudulent according to parameters such as engagement in reciprocal sexual activity.

Discussion

This study illuminates that queer asylum seekers engage in a process of 'doing queerness', similar to Candace West and Don H. Zimmerman's conceptualization of 'doing gender', which entails informants following pursuits that are rendered conventional and therefore readable. Following socially guided perceptual, interactional and micropolitical activities (West and Zimmerman 1987, 126), queer informants seek to be readable and worthy of protection. By doing so, they engage in a gambling situation with the Norwegian norms of sexuality they consider correct. They attempt to translate their sexual ideas and practices into a language that makes them readable and worthy of protection.

The act of translation appears to take the form of a rainbow splash over the lives of the informants. Rainbow splash can be considered in relation to the celebration of gay and lesbian

visibility which has been an essential component of the gay identity politics and its reaction to the closet, and the human rights advocacy of bringing greater visibility to the plights of sexual minorities (Seidman 2001, Shuman and Hesford 2014). Queer asylum seekers try to become as visible as possible to be believed by the adjudicators. Ironically, their battle is not, entirely, about the limitations of the closet, but the limitations of the images of sexual minorities created and maintained by mainstream gay and lesbian advocacy.

The accounts interpreted in this study illuminate that the informants have a similar understanding of what it means to be an intelligible queer in the Norwegian asylum context: a person who is out of the closet, keen on taking part in publicly visible activities and preferably a member of a political queer organization, and one who has an active sex life. In spite of these so-called agreed upon criteria, the informants have different ways of communicating and translating their sexuality. This is partly because they have diverse migratory processes, self-perceptions and enactments of sexuality. Queer bodies do not share a common destiny in places where sexual dissidents are condemned on many levels. Rather, the plight of sexual minorities is connected to other aspects. There are examples of social status preventing anti-gay harassment in the country of origin, and financial and social resources enabling people's immigration process and rights-claiming competence in the host country (Randazzo 2005, Giametta 2014). Keen on translating and communicating their sexual orientation within the Norwegian asylum context, queer asylum seekers mobilize every kind of resource they consider helpful. However, acts of translation and communication might also lead to unwanted consequences. Heavily nurtured by Western understandings of an openly queer lifestyle, queer asylum seekers sustain the universalized and hegemonic understanding of a credible narrative of being non-heterosexual. However, people who are unable to utilize these means, such as by participating in a queer organization, walking in a gay parade, or talking to the media, might get lost in translation, as their means of communication run the risk of not being understood correctly.

In her study 'Deportable subjects: Lesbians and political asylum' (2013), gender scholar Rachel Lewis analyzes the way in which media and cultural advocacy is mobilized to contest the deportation of lesbian asylum seekers. Lewis sees the act of turning toward media and cultural

productions in filmmaking, online activism and so forth as a means of resisting deportation. She observes that these means of resistance do not always convince adjudicators of the genuineness of claimants' sexuality, and that advocates are aware of this. Therefore, they argue that 'perceived homosexuality', if not the genuineness of their claimants' sexual orientation, risks persecution (Lewis 2013, 175). Similar to various components of the rainbow splash, means of resisting deportation in Lewis's study do not fundamentally challenge the established rules of asylum and their confining understandings of sexuality. Rather, they provide a route to navigate asylum law by escalating the risk of persecution, as going public via different media channels makes queer asylum seekers' alleged sexual orientation knowable to the authorities in their country of origin and attracts future risk of persecution.

It is hard to deny the benefits of strategies adopted to make queer asylum seekers win their battle for asylum, such as the rainbow splash or deportation resistance. However, one should remain attentive to the side effects of these strategies. Frequent and over-use of belonging to a wider gay community and embracing this community's most visible aspects might close the door to other ways of translating sexuality, as it can reinforce a linear and univocal way of being readable as gay. A verdict from 2014 is illustrative of this:⁵⁵

It is documented that A has participated in a parade for homophiles in 2012 with Skeiv Verden. A declaration from Skeiv Verden (...) stated that A has been active in the organization and participated in the meetings and has initiated conversations- in any case not very long time.(...) He was introduced to the organization by his ex-boyfriend, and he stopped going there after they broke up.

The verdict further states that A was denied asylum on the ground that he could not be said to have extensive or disruptive practices or behavior as gay in Norway. Underpinning the decision, it is added that the applicant 'wishes to live with a man, or hire a man – not necessarily tell the outside world something about sexual orientation'.⁵⁶ 'Telling the outside world' or being voluntarily out of the closet is a debated condition for giving someone asylum, given that

⁵⁵ Underrettsavgjørelser Dokument- ID: LB-2014-31488.

⁵⁶ Underrettsavgjørelser Dokument- ID: LB-2014-31488.

'coming out is always partial, that the closet is a collaborative social formation, and that people negotiate it according to their specific social circumstances' (Decena 2008, 355). People can be selective about whom they share their sexual orientation with. Regardless of this, the verdict seems to also evaluate the applicant's degree of openness through his or her engagement in Skeiv Verden activities. It is questionable whether attending a queer organization's social gatherings is the only way to manifest an openly queer identity. Queer asylum seekers, who lack access to this means of a rainbow splash (for instance because of a strong fear of visibility in the media, a lack of trust in queer organizations or not knowing that such organizations exist), risk being rendered non-visible, not being translated properly or being lost in translation.

One should also pay attention to the way in which queer asylum seekers are trapped in a never-ending search for genuineness that continues even after receiving a residence permit. The belief that some people misuse the asylum system prevails among asylum seekers, as they police each other's life to control whether the person in question is in fact queer. For instance, a queer asylum seeker from Uganda told the Norwegian newspaper *Aftenposten* on September 18, 2015 that he had once helped another allegedly queer person get asylum in Norway. He felt angry and used, however, when he found out that the person he had helped travelled back to Uganda and got married to a woman after having received asylum. In narratives such as this, one can easily spot the policing of sexualities that is exercised by queer individuals. When an allegedly queer person chooses to have a heterosexual union at a later stage in life, they risk being labelled as straight, while the reverse is often narrated as the story of a late bloomer.

Conclusion: Genuineness, an unattainable ideal

This study sheds light on the way in which queer asylum seekers communicate their sexuality by engaging in a process of 'rainbow splash' as they attempt to translate their sexuality in Norway to make themselves readable and worthy of protection. This act of translation is of great significance, as it demonstrates that asylum seekers do not necessarily occupy a passive and victimized position in need of saving or liberation. In contrast, they are active participants in this process, and eager to mobilize all their resources to communicate their case better. In

that sense, one should be attentive to 'immigrant subversion' (Luibhéid 2002, 98), which opens up possibilities of negotiation for people who present themselves in one way or another to penetrate the border. This study, however, avoids using the term 'subversion' in the sense that queer asylum seekers' means of translating their sexuality in Norway is hardly subversive. Rather, the strategic maneuvers undertaken by informants are attempts to become readable within the social and cultural codifications of sexuality in Norway, which they – to a certain degree – sustain.

Sexual liberation in Norway is limited and defined for both heterosexual and non-heterosexual people. In addition to the mobilization and celebration of romantic love, which is often represented as a fixed criteria for Western civility (see also Mai and King 2009, 300), particular sexual ideas and practices are designated as positive and healthy, while others are rendered destructive and illegitimate in Norway (Mühleisen et al. 2009, 23). Normative understandings of sexuality do not only idealize particular practices as Norwegian, but also construct and represent the sexuality of ethnic others as primitive and oppressive (ibid., 2009, 27–29). In this sense, the strategies utilized by asylum seekers do not wipe out the normative understanding of sexuality in Norway, but rather seek a way for the asylum seekers to fit in. Asylum seekers who go public through media and queer organizations run the risk of reinforcing the idea of a proper autonomous Western-type queer individual and contributing to the demonized image of their countries of origin as inherently oppressive and homophobic. Furthermore, the overwhelming emphasis placed upon sexual activity contributes to the framing of non-Norwegian sexualities as non-compatible with Norwegian values. Moreover, it reinforces the myth that showing evidence of same-sex conduct, which troubles many asylum seekers, can prove someone's sexual orientation. The recurrence of similar narratives painted with similar colors contributes to a monolithic portrayal of sexualized and racialized asylum seekers, as they are unable to incorporate their own vocabularies during the act of translation. As a result, queer informants contribute to the (re)production of new norms about what it means to be a genuine queer person in need of protection. Therefore, genuineness remains an unattainable ideal for individuals seeking to negotiate their sexuality before, during and after the asylum seeking process.

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Appendix 1: Interview guide designed for the asylum seekers

General Information:

Where are you from?

How old are you?

How long have you been in Norway?

What is your immigrant status?

How do you identify your sexual orientation?

Asylum-Related Information:

Can you tell me about why and how you left your country?

How was your daily life back in your country of origin?

Why and how did you travel to Norway?

How long have you been in Norway?

Did you seek for protection primarily based on your sexual orientation?

Are you familiar with the jargon of the gay community in Norway?

How would you compare your life in Norway to your life in your country of origin?

Do you think that it is different to be queer in Norway than being queer in your country of origin?

How did you get in touch with Skeiv Verden? What do you think about the organizational work of Skeiv Verden? How often do you attend the social meetings with the organization?

Are you in touch with other queer asylum seekers?

Can you talk a little about your experiences at the asylum reception center?

Can you tell me about your asylum application process, asylum interview and your other experiences with the UDI caseworkers?

Appendix 2: Interview guide designed for the caseworkers at UDI

How old are you?

What is your educational background?

How long have you been working for UDI?

Have you ever had an asylum case related to sexual orientation-based persecution?

Do you find sexual orientation-related asylum claims challenging to evaluate?

Could you please tell about the general asylum assessment process?

How do you apply credibility assessment for sexual orientation-based protection claims?

How can you detect someone who is giving you a false information?

How could, if necessary, the policies and practices of immigration be further developed to ensure the validity of the asylum evaluations?

What do you think of the current guidelines related to gender-related persecution that is being in use by UDI? Are they useful?