Tschalaer, M. (2020). Victimhood and femininities in Black lesbian asylum cases in Germany. *Journal of Ethnic and Migration Studies*. <https://doi.org/10.1080/1369183X.2020.1772735>

Peer reviewed version

Link to published version (if available):
[10.1080/1369183X.2020.1772735](https://doi.org/10.1080/1369183X.2020.1772735)

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Victimhood and Femininities in Black Lesbian Asylum Cases in Germany

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Abstract

This paper focuses on refugee claims made by lesbians racialized as Black in Germany. While there exists a relatively large body of works that examine the manner in which the categories of sexuality and gender identity underpin the assessment of LGBTQI+ asylum, very little work has been dedicated to the precarity of lesbian asylum claimants whose racialized and sexualized bodies directly challenge emblematic idealization of victimhood. This paper seeks to contribute to the nascent discussion in the area of queer migration that asks about how imaginations of blackness, gender, and sexuality shape perceptions of “true” victimhood. In thinking through the ‘double discrimination’ lesbian asylum seekers face within Germany’s asylum system – as women and lesbians – this paper explores how race as it pertains to constructions of femininity further contributes to the marginalization of lesbians racialized as Black. I will use the example of two lesbian asylum cases from Uganda – both of which I have closely followed over the course of 14 months – so as to outline some of the main effects of such asylum practices as they relate to the question of who deserves Germany’s legal protection and how this relates to normative conceptualizations of female victimhood and humanitarianism. I contextualize such in-depth analysis with data collected through semi-structured interview and case analysis.

Keywords: Lesbian, refugee victimhood, femininity, asylum, Germany, intersectionality

Acknowledgements: I very gratefully acknowledge the research participants who have so generously shared their asylum stories with me and have helped me to obtain a better understanding of the working of asylum institutions and law in Germany. I also acknowledge Bridget Anderson, Michael Yarbrough and the participants at the Law and Society Association Junior Scholar Workshop which took place in Washington in May 2019 for their comments on earlier versions of this article. I further acknowledge the two anonymous reviewers whose insightful comments helped me to further hone my arguments.

Note

The research that supported the writing of this article has received funding from the European Union’s Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie Individual Fellowship Programme [grant agreement No 793497] European Commission.

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Introduction

NGO estimates suggest that in Southern Germany, about 95 percent of asylum cases lodged by lesbian-identifying women¹ from mostly Sub-Sahara African countries get rejected after the first asylum interview.² While tangible numbers on LGBTQI+ asylum cases in Germany are unavailable due to the lack of official statistics³, the staggering number of lesbians racialized as Black who see their asylum cases rejected in southern Germany, however, let me to ask how LGBTQI+ asylum practice is conditioned by the uncomfortably linked categories of gender, sexuality, and race. Overall, we know very little about how gender and sexuality structure the access of lesbian asylum seekers to refugee protection (Pittaway and Bartolomei 2001; Lewis 2010; Sheill 2009; Manalansan 2006, 2018). We know even less about how race complicates lesbians' access to asylum. Indeed, the asylum experiences of lesbian womxn racialized as Black remain by and large invisible in practice and unrecognized in the literature on LGBTQI+ asylum in Europe. This paper seeks to contribute to the nascent discussion in the area of queer migration that asks about how imaginations of blackness, gender, and sexuality along with practices of containment and distancing shape perceptions of “true” victimhood.

Over the last decade, literature on queer asylum in the Global North has mushroomed and the so-called ‘refugee-crisis’ has brought new momentum to the study of one of the least visible group of persons seeking asylum in Europe – LGBTQI+ individuals from South Asia, South-East Asia, the Middle-East, Northern Africa, Sub-Sahara Africa, the Carribean as well as Russia and Central Asia. In conversation with the ground-breaking work produced by queer and migration scholars such as Eithne Luibhéid (2002), Martin Manalansan (2018, 2006), Laurie Berg and Jenni Millbank (2002), or Nicole LaViolette (2009), amongst others, the scholarship that has emerged in the wake of the humanitarian crises at the borders of Europe, the UK and the US since 2016, stresses the continued struggles of LGBTQI+ asylum claimants to be recognized and rendered visible within otherwise heteronormative⁴ asylum systems. Such scholarship increasingly adopts intersectionality⁵ as an analytical and theoretical concept in queer asylum studies to disentangle the establishment of ontological borders that distinguish legality and illegality within global asylum regimes along lines of race, gender, sexuality, ethnicity, and religion (Held and McCarthy 2018; Dustin and Held 2018; Tschalaer 2019; Giametta 2014; Manalansan 2018; Morgan 2011). These scholarly accounts reveal that seemingly benign asylum discourses that shape the

emblematic figure of the deserving and un-deserving refugee is scripted on the surface of Western idealizations around gender and (homo-)sexuality – “erasing the particular sexualities of Blacks or persons ‘of color’”, to borrow from Bachetta, El-Tayeb, and Haritaworn (2015, 769).

While such critical queer asylum scholarship makes an important contribution to debates about decolonizing migration and humanitarian politics and policies by calling on Western asylum regimes to reflect on the manner in which they uphold imperialistic patterns of domination through migration and asylum politics, it by and large foregrounds the asylum experiences of individuals assigned male at birth (Lewis 2010; Morgan 2011). The asylum experiences of those who identify as lesbians or bi remain, apart from a few studies in the UK (Held 2015; Bennett 2014; Bennett and Thomas 2013; Lewis 2010) and Turkey (Sari 2019) or the US (Neilson 2005), conspicuously understudied. This lacuna is particularly gaping in Germany which features Europe’s largest refugee population. According to the records of the United Nations⁶, Germany has registered nearly 1.6 million refugees between 2015 and 2018 out of which about 60,000 are believed to be LGBTQI+.⁷ Despite a few excellent studies that focus on the intersectionality of sexuality, gender identity and race in the German asylum and migration context (Markard 2014; Hübner 2016, Soulier 2017; Dustin and Held 2018; Küppers and Magnus Hirschfeld Stiftung 2019; Tschalaer 2019, Träbert and Dörr 2019), work focusing on the asylum experiences of claimants who identify as lesbians is missing. This article focuses on the experiences of lesbians racialized as Black with the aim to advance the conversation on racialized sexualities in queer asylum scholarship using an intersectionality lens.

My analysis focuses on Germany as a case study and foregrounds the asylum experiences of two Ugandan lesbians seeking asylum whom I name Hope and Livia⁸. In Uganda, Hope and Livia have both lived in abusive forced marriages while at the same time secretly entertaining a relationship with a female partner. Both have ultimately been detained because their sexual orientation was discovered and have left Uganda out of fear of future imprisonment, mob violence, and ostracization on the part of their family and community. Once in Germany, both their asylum claims have been denied because they were not believed to be lesbians. Hope and Livia’s asylum experiences are by no means exceptions nor are they a sheer tragic bureaucratic oversight. As a psychologist at a lesbian counselling center in Bavaria says; “Lesbian asylum seekers face a double

discrimination within Germany's asylum system because they are women and lesbians. Such discrimination stems from their complex biographies that are interlaced with episodes of violence related to their gender as well as homosexuality."

In what follows, I will first, examine this 'double discrimination' lesbian asylum seekers face within Germany's asylum system and second, test how such discrimination intersects with racialized idealizations around female victimhood. I argue that the sexual asylum stories of lesbian asylum claimants racialized as Black often do not satisfy normative idealizations around (white) female victimhood. In conclusion, I offer some recommendations on how to work towards a more inclusive and just European asylum system.

Methodology

This paper is based on data I collected in the context of my research which examines the manner in which sexual orientation and gender identity asylum claims are assessed within the socio-politically charged context where queer liberal politics seem to clash with anti-immigration policies and attitudes (Tschalaer 2019). This research project draws on data gathered in the Southern German states of Bavaria, North Rhine-Westphalia, and Baden-Württemberg. I use qualitative research methodology such as semi-structured interviews, discourse analysis of legal documents and the media as well as shadowing⁹. While I do adopt a critical approach to qualitative research that embraces reflexivity, I recognize that as a white cis-woman with a European background I am not immune to re-producing the same epistemic shortcomings I attempt to refute; this is to rely on universalizing identity categories that presupposes a white and visible gay aesthetics when – consciously or unconsciously – reading sexualities in everyday social practice. Indeed, the various asylum experiences have urged me to critically re-examine my own racialized assumptions in regard to sexual freedom, bodily integrity, and love and desire. The aim of writing this paper is to analyze the manner in which Black sexualities are read by bureaucrats in Germany whose positionality is often very similar to mine. Drawing on in-depth interviews and case analysis, it is my intention to shed light on some of the dominant institutional discourses and practices used to make sense of sexualities in the asylum context. Facilitated by several LGBTQI+ refugee organizations, I have conducted eight in-depth interviews with women identifying as lesbians from Kenya, Tanzania, and Uganda on their experience with the bureaucratic aspect of

Germany's asylum process.¹⁰ I further analyzed several transcripts of asylum interviews conducted with the Federal Office for Migration and Refugee which have been kindly provided to me by the participants themselves. To give context, I further analyzed twelve lesbian, ten trans, and nine bisexual asylum court decisions which I retrieved through the databank of the administrative courts in Germany and that have been sourced by applying a sensitive keyword search that included the terms *homosexuality*, *asylum*, *transgender*, *intersex*, *bisexual*, and *lesbian*. I further rely on data from nine semi-structured interviews conducted with asylum lawyers and judges at the administrative courts in Berlin and Cologne as well as representatives of LGBTQI+ refugee counseling centers and LGBTQI+ anti-discrimination offices in major cities in the federal states of Bavaria, North-Rhine Westphalia, and Baden-Württemberg. Lastly, I use public debate, policy reports, and legal documents available online to contextualize my analysis of the discussed asylum cases. So as to minimize the risk to take authority over someone else's experiences, I have written this article in close consultancy with Livia and Hope.

The Intersectionality of Gender and Sexuality in Germany's Asylum Law

In Germany, the right for political asylum is enshrined in Article 16a of the German Basic Law (*Grundgesetz*) and is granted to anyone who can establish a well-grounded fear of political persecution. The right to asylum based on race, religion, nationality, or membership of a special social group is enshrined in Article 3 (1) of the Asylum Act and Article 60 (1) of the Residence Act. Both incorporate the wider definition of the Refugee Convention from 1951. In line with a European Union Directive from 2005 and the recast Directive 2011/95/EU, Germany recognizes human rights violations based on sexual orientation and gender identity as grounds for seeking asylum. Moreover, queer asylum law and policy in Germany is in accordance with several recent Court of Justice of the European Union (CJEU) rulings that recognize sexual orientation as a characteristic so fundamental that nobody should be forced to renounce it and that condemn intrusive questioning and the use of 'gay tests'.¹¹ For instance, the Federal office for Migration and Refugees has formulated its asylum guidelines for persons who are members of a special social group in accordance with these CJEU rulings.¹² However, asylum practices and policies are highly gendered (McKinnon 2009; Shuman and Bohmer 2004; Luibhéid 2002).

For instance, a UNHCR report from 2017 shows that asylum claims based on gender-specific violence (forced marriage, rape, forced pregnancies, marital and domestic violence etc.) often go

unrecognized within a system that was initially set out to protect persons (read: men) from political persecution. Indeed, while a Council of the European Union Directive 2004/83/EC specifically includes sexual violence and violent acts of gender-specific nature as grounds for persecution, the courts in the EU predominantly rule that gender-based violence does not qualify for refugee protection as it is not based on race, religion, nationality, social grouping, or political beliefs – the five grounds for asylum included in the 1951 Refugee Convention.¹³ In response to such shortcoming, Germany ratified the Council of Europe Istanbul Convention in February 2018 – a legally binding human rights document that recognizes gender-based violence as a specific form of violence that particularly affects women and confers refugee protection on these grounds.¹⁴ As of February 2019, twenty-two percent of Germany's 42 percent female asylum seekers have successfully gained refugee status as victims of gender-specific persecution (i.e. forced marriage, FGM, honor killing, rape, domestic violence, or sex trafficking).¹⁵ However, as a report by the Women Refugee Commission shows, Germany lacks a standardized process that allows to systematically identify gender-based violence victims during the asylum process.¹⁶ The two asylum lawyers I interviewed for this research confirm such concerns. They contend that accounts of gender-based violence are often deemed as not credible because concrete evidence is amiss and detailed accounts of violence are often absent due to trauma. Moreover, they are both concerned that the particular vulnerability of women on the move who are very likely to become victims of gender-based violence and/or trafficking, remains unrecognized.¹⁷ So, despite these legal amendments, women's particular experiences with violence are likely to remain invisible.

In my research, it appeared that lesbians, or womxn¹⁸ who identify as being sexually attracted to other womxn, are less likely to file an asylum claim based on sexual orientation and/or gender identity than gay men. While exact numbers cannot be substantiated due to the missing data on sexual orientation and gender identity asylum claims, out of the hundred-and-fifty-five LGBTQI+ asylum cases that I have accessed through publicly available adjudication databases administered by the various administrative courts in Germany, only fourteen were filed by women (thirteen identified as lesbians and one as bisexual) and three by transwomen. These numbers are bolstered by NGO statistics from Baden-Württemberg, South Germany, which state that generally only one out of ten LGBTQI+ asylum cases concern lesbian or bisexual women.¹⁹ Queer migration scholarship shows that the global LGBTQI+ asylum system is highly men-dominated (Lewis 2013;

Bennett 2013; Schuman and Bohmer 2014; Neilson 2005; Rigo 2017) within which the suffering of gay men (racialized as white) is most readily recognized (Vogler 2019; Spijkerboer 2017; Raboin 2016; Giametta 2014; Shakhsari 2014; Dustin and Held 2018; Tschalaer 2019). It is precisely the invisibility of women's experiences, Rachel Lewis (2014, 177) argues, that ultimately constructs lesbians as "deportable subjects". I would add that race in its sexualized form further contributes to the exclusion of lesbians from refugee protection.

Female victimhood and Femininities in Asylum Discourse

Fatima El-Tayeb (2011, 74-75) asserts that in white-dominated Europe, Black womxn's sexualities are not only erased by their sexualized status as having "failed femininities and heterosexualities" but also by their racialized status as "deficient and inferior". In thinking through El-Tayeb's account of racialized sexualities that at once silences the intricacy of Black womxn's sexualities and renders ever visible the "deficient and inferior" character of the latter, I begin here by looking at how such rhetoric disturbs the image of female victimhood as produced by aid- and refugee discourse. This is an image that conflates the victimhood as evoked around the morally-abiding (white) heterosexual cis-woman (Blair and Hoskin 2015, 232) – with the emblematic mother-with-child victim trope. In the context of the increasing feminization of asylum since 2016²⁰, representations of female refugees holding their children in despair and/or crying for their children lost in the Mediterranean Sea, of single mothers trying to provide for the bare minimum for their young children in refugee camps in Europe and in the Middle East, and of mothers who are waiting for family reunification in Europe came to be pervasive in the media, policy making, and humanitarian debates.

Indeed, the "Madonna and child" trope depicting a woman's tenderness, grief, and vulnerability that emerges from her motherhood came to characterize victimhood of women asylum seekers in Europe. And as the author Emily Cousens of a 2015 Independent article entitled "We Need to Stop Telling Ourselves that Women and Children are the only Refugees that Matter" points out, women and children, mediatized and idealized through the "Madonna with child" trope, were seen as the most vulnerable and thus most protection worthy subjects during the 'migration-crisis'.²¹ Such imagery, I contend, simultaneously humanizes and de-humanizes the female asylum seeker/refugee in that it depicts the well recognizable pain of a mother for her children while at

the same time universalizing such experience through the rationalization of the mother-child refugee that allows for the collective identity of the “good” female asylum seeker/refugee.

Sex trafficking is yet another area where we can observe the stylized representations of women on the move as vulnerable and passive victims. A European Commission report from February 2019 points out that among the migrants who currently seek asylum in Europe from war and conflict in sub-Saharan Africa, North Africa and the Middle East, many of them are victims of trafficking either in their countries of origin or in the EU upon their arrival - constituting a ‘particular vulnerable group’ which is in need of extra protection.²² Scholars of gender and migration have long voiced their dissatisfaction with the representation of victims of trafficking as predominantly victims of barbaric conditions in their countries of origin and/or as passive and enslaved and thus devoid of agency (Andrijasevic 2016; Doezenia 2013; Hua and Nigorizawa 2010). As Andrijasevic (2016, 2) reminds us, stereotypical trafficking representations consists of a specific script around a “sexual story” that locks women and girls into a position of absolute powerlessness. The mythological function of the trafficking plot is simple: Young, naïve, and beautiful women are kidnapped from their homes and coerced into migration before they are imprisoned in brothels and forced into prostitution (Andrijasevic 2016; Doezenia 2013). And, as Hua and Nigorizawa (2010, 402) contend in the US context, even in cases where women made a conscious choice to migrate for sex-work and thus not necessarily conceive themselves as victims, the courts tend to victimize them as mere pawns in the hand of a corrupted cultural belief system.

In short, women who reproduce patriarchal as well as imperialistic notions of victimhood as either victims of sexual slavery and/or of violence inflicted upon them by cultural barbarism, are institutionally more likely to be recognized as ‘protection-worthy’. And the (visual) rhetoric of the helpless and suffering mother or the naïve and sexually exploited victims of sex-trafficking constitutes an important dimension of human rights law and practice (Hesford 2011).

The Construction of Victimhood in the Black Lesbian Asylum Story

Against this background, I begin here to unravel the (im)possibilities of victimhood for womxn racialized as Black within Germany’s asylum system. An admittedly small sample of twelve administrative court decisions concerning lesbians²³ reveals that the six cases concerning lesbians from Georgia, Macedonia and Albania were rejected based on the “safe country” argument. While

rejecting claimants who come from countries labelled as “safe” is quite straightforward, those claimants whose countries are not on that list are being scrutinized in regard to their credibility and the possibility for persecution.²⁴ The six cases concerning lesbians from Nigeria, Uganda, and Cameroon were rejected because the judge either cast doubt on the womxn’s account of their sexual orientation and/or did not see an imminent threat for persecution. For instance, in a case from Cameroon, the administrative judge ordered the deportation of a young lesbian because the court was not convinced of her accounts of homosexual desire/lifestyle, pain and suffering;²⁵

The court is, based on the oral presentation of the case, convinced that the claimant is homosexual. The court, however, does not believe that she was persecuted because of her sexual orientation. The facts presented that lead to persecution, including political activity and homosexuality, are not credible. [...] The claimant speaks repeatedly about having been beaten up in different contexts, but the accounts are very thin and they do not contain any details and seem thus not real. [...] Furthermore, the claimant was not able to persuade the court that she had a homosexual relationship in Cameroon and that it was important to her to live such relationship openly. [...] In this regard, the narratives of her homosexuality remain superficial and unrealistic.

Apart from the lack of evidence and accuracy underpinning the sexual asylum story, cases where LGBTQI+ claimants fail to reveal their homosexuality during the first interview are rarely successful. For instance, in a lesbian case from Nigeria²⁶, the court orders the deportation of a lesbian claimant because “it was not understandable that the claimant did not mention her homosexuality and relationship with her female partner during the first asylum interview with the Office for Migration and Refugee but presented an impending forced marriage instead” – so the judgment. The administrative court judgments in the Cameroon and Nigerian cases both violate existing Court of Justice of the European Union rulings.²⁷

Marlen Vahle from the Refugee Council in Cologne is deeply concerned about the manner in which asylum claims are readily rejected if claimants cannot produce an evidence-based and consistent narrative of their “sexual biography” that establishes their homosexuality as “irreversible and fateful”²⁸ – or as an “innate characteristic” as per German asylum law.²⁹ The case of Amira, a lesbian from Uganda further confirms such concern. She tells me that her asylum claim got rejected in 2012 by the Office for Migration and Refugees (BAMF) because she was scared to

openly talk about her sexuality in the presence of the Ugandan translator who expressed her disapproval of her sexual orientation. Moreover, she felt that her marriage and motherhood cast doubt on the authenticity of her homosexuality claim.³⁰ However, what I found really striking is that the significant violence she endured on the part of her community, family and husband, which culminated with her being locked up in a goat shed for over two months and the pronouncement of the death penalty by the local Shariat council, did not strengthen her asylum claim. Instead, it was completely sidelined.

These cases are not exceptions. A psychologist supporting lesbians primarily from the Sub-Sahara region with their asylum claims in Bavaria is deeply troubled by the manner in which massive forms of sexual and physical violence – ranging from domestic rape over gang rape to the disfigurement of their bodies – are easily brushed aside by shallow stereotype imaginations of the lesbian biography in asylum decisions. She says:

“The BAMF decision-makers often rely on obvious stereotypes in their assessment of lesbian cases, such as; ‘If she was married to a man and she has children, then she can’t be a lesbian.’ Also, ideas about forced marriages in Sub-Sahara Africa is somewhat rendered irrelevant and that lesbians have children even after having arrived here [Germany] is beyond their imagination. They can’t imagine that lesbians have a desire to have children. [...] Lesbian biographies are never even. There is no linear coming-out story like – this is the point where I knew I was a lesbian. Rather, most coming out stories are stories of violence within forced marriages and the community.... So, even if they manage to out themselves in front of the decision-makers, about 95% of our clients from Sub-Saharan African countries receive a rejection because they are not believed to be lesbian.”³¹

As I will show below, such unmet bureaucratic expectations about Black lesbian biographies in the asylum context create what Evelyn Hammond (1994, 18) has termed the “trope of the black hole” where black sexualities – and particularly homosexualities – are rendered invisible. In this vein, Eithne Luibhéid (2019, 9) in a very recent publication on lesbian asylum, explicitly identifies the connection between the deserving and undeserving and the victim and agent in lesbian asylum discourse and practice as shaped by colonialist tropes of the in/visibility of non-Western homosexuality. She argues that institutional recognition of sexuality tends to re-inscribes a

racializing and colonializing logic that normalize Western queer liberal lifestyle and politics while positioning governments and individuals as Other or lacking (Luibhéid 2019, 9).

The case of a lesbian from Uganda whom I call Nsubuga neatly reproduces such stylized discourses where the suffering of brown and black female bodies gets so conveniently validated through the imagery of cruel governments and barbaric communities. She says:

“When I was in Uganda, basically, I spent seven months in prison without seeing light. I was naked in the room, and men used to come in to say that they want to teach me how to be a straight woman. [...] I was also denied by my own parents. They say they cannot have a child who's like me because I'm evil and satanic. They even wanted to kill me, which is really hard.”

Nsubuga was granted refugee protection in 2018, only three months after her arrival in Germany. As Nsubuga tells me, the quick decision was, amongst others, thanks to the police reports she brought with her as evidence. So far from being neutral administrative boundaries, institutional acknowledgment of “true” victimhood tends to rely on tangible evidence (i.e. police reports, NGO letters of support, social media etc.). In addition, the LGBTQI+ asylum process is highly gendered and racialized (see also Tschalaer 2019) and it is here where the intersectionality of gender, sexuality, and race proves to be particularly complex.

The Denial of Victimhood in Hope and Livia's Asylum Story

Hope tells me the story of her life as a closeted lesbian in Uganda and as an asylum seeker in Germany over dinner in an Afghan restaurant. Hope was fifteen years old when she had her first sexual encounter with a friend from High School. Both girls were expelled from school after their relationship was discovered. At age seventeen, her father married her off (against her will) to a friend of his— an elderly man with multiple wives — so as to “correct” her sexual orientation. After about a year, Hope left the abusive marriage, that caused her to lose two pregnancies as a result of physical violence and convinced her father to let her study at the university in Kampala. At university, she met her partner with whom she was in a relationship for almost ten years. In a context of rapidly increasing anti-LGBT politics and violence in Uganda, which culminated in the Anti-Homosexual Bill of 2014³², the couple was very cautious to keep their relationship secret.

However, in 2017, their apartment was raided by a mob of neighbors who got suspicious over the years. Hope's partner got heavily injured and was ultimately brought to the hospital. Hope, on the other hand, ended up in police custody for almost a week (she does not want to talk about her time in jail). This incidence firmed her decision to flee Uganda. With the support of her mother, Hope arranged for her air travels to Italy through a local "travel agent". However, as it turned out, the "travel agent" was a member of a trafficking ring. So, instead of fleeing to safety, Hope became victim of sex trafficking. After serving about five 'clients' a day over the course of a month, one of her regulars helped her to make the journey to Germany where she registered as an asylum seeker in February 2018. Hope currently lives as a closeted lesbian in a refugee camp in a small Bavarian town together with other asylum seekers and refugees from mostly Sub-Saharan countries – the same people she fled from in the first place.

In August 2018, the Federal Office for Migration and Refugees (BAMF) in Bavaria rejected her claim on the grounds that her account of her homosexuality, harm, and pain was not credible. The decision states that Hope does not fall under the protection of the Refugee Convention of 1951 in the strict sense because "she [the petitioner] has not successfully established a substantiated fear of being persecuted". The fact that Hope was subject to a forced marriage and victim of marital rape, domestic violence, and sex trafficking – violations directly connected to her sexual orientation – was entirely erased in the decision itself. These severe human rights violations were deemed as either not directly related to her LGBT asylum claim or simply as not credible. The decision states that "the forced marriage was not in direct relation to her current asylum case and can thus not be considered". The BAMF further dismissed the sex-trafficking episode as not credible stating that "it is not clear whether the petitioner's account of sex trafficking has ever taken place as the highly educated petitioner can't remember names nor exact places. [...] However, if it were to be true than there would be no threat of re-trafficking since she is no longer in touch with her family [who organized her travels]." Lastly, the BAMF dismisses the mob violence and ensuing detainment as irrelevant since Hope's injuries were not severe and the police detention not long enough. The asylum rejection and the unknown future weigh heavy on Hope: "Before [coming to Germany] I used to have dreams. I used to have a future. But now, I can't even get myself to go out", she says.³³

Livia's asylum story is similar. Livia discovered her homosexuality in high school. Once her family found out, Livia was forced into a marriage with an abusive man with whom she has one son. A secret relationship with a woman led to the divorce. Shortly after the separation from her first husband, Livia entered a second marriage so as to conform to a heterosexual lifestyle and to shield herself from persecution and ostracization in a context of growing homophobia in Uganda. After the second husband, with whom she has two children, found out that she was a lesbian he beat her so badly that she now suffers from chronic back pain. The police detained her for three days after her husband told them about her homosexuality. During these three days, Livia was victim of "corrective rape" by several police officers. After her release, she lived on her own and focused on raising her three children while avoiding all social contacts out of fear to be outed. However, in 2016, Livia fell in love with a woman with whom she lived for a short time period before their house was raided by a mob. Both women got heavily injured and Livia was afraid that the mob would actually kill them in the future. After that incidence, Livia took the opportunity of a conference in Germany, organized by her local church, to get a tourist visa and flee Uganda. She left her three children behind with her sister. Once in Germany, Livia filed for asylum in April 2017. Her claim was rejected in November 2018. The BAMF justified the rejection arguing that Livia's narratives of mob violence, police detention, forced marriage, and corrective rape do not seem credible as they lack "concreteness", "clarity", and "richness of detail". The decision further reads that in the event that these violations have actually occurred, "it is not clear whether or not they directly relate to the petitioner's sexual orientation".

The decisions in these two cases show the disconnect between gender-based violence and sexual orientation in the construction of victimhood for the purpose of asylum. Why have the episodes of violence in Hope's and Livia's sexual biographies not been linked to their homosexuality, one might ask. And, why is it that both of them have been denied victim-status under refugee law despite the endured violence being protected by the Istanbul Convention of 2011. I would like to attempt to answer these questions by arguing that Hope and Livia's asylum story does not fit the mythological fiction of the "helpless", "mute", and "naïve" victim identity that presupposes heterosexual conceptualizations of female fragility and sexual vulnerability (Andrijasevic and Mai 2016; Hua and Nigorizawa 2010; Hua and Rey 2010; Sheill 2009). As queer womxn racialized as Black, both of them have made conscious decisions to "mess up the pristine homo/hetero

normative social order of things” (Manalansan 2018, 1288) by choosing not to conform to normative ideals of female victimhood. In fact, both actively and willfully acted on their homosexual desires even if that meant to cheat on their marital partners, to deceit their families, and to leave children behind in their pursuit for sexual freedom and happiness. So, their “sexual story” is not primarily about helplessness – but about agency.

Indeed, the manner in which Livia and Hope come to bear out colonial assumptions about non-white womanhood and sexualities, illustrates the limits of the gender-based protectionist model of human rights law as framed around immobility, passivity, and lack of choice (Hua and Ray 2010, 262). To this end, Livia and Hope’s assertions of sexual freedom lead to what Schuman and Bohmer (2014, 941) term in the UK asylum context as “cultural silences” where institutional expectations of the “good” and “credible” victim render invisible alternative vulnerabilities – and, to speak with Hammond (1994, 21), Black womxn’s “alternative sexual universe”. These “cultural silences” are thus not void of meaning. Instead, they open up new spaces of sexual visibility, hypervisibility, and intelligibility embedded in homonormative logics of recognition and racialization.

The Sexualization of Lesbian Asylum Seekers Racialized as Black

Hope and Livia’s asylum narratives show how they navigate and produce complex regimes of silences, in/visibility, and hypervisibility in the process for gaining refugee protection. They also show that visibility/invisibility and victimhood/agent are never static nor mutually exclusionary but constantly shifting – in sometimes paradox ways – within a highly racialized legal and political context. Both Livia and Hope told me that while they are proud lesbians, they felt uncomfortable to render visible their sexual experiences in great detail to the decision maker. “It’s private”, says Hope. “I feel uncomfortable sharing the details of my sex life and I do not think that this should be the point of the asylum interview”, she adds. Hope’s resistance to render visible the details about her sex life to the decision maker correlates with the “failure” of many (Black) lesbians to out themselves as lesbians, as I have discussed earlier. Institutional expectations, however, reflect a Western/neoliberal logic of homosexuality where lesbian (or gay) identification is linear and can be publicly shared (Luibhéid 2014). What goes amiss according to such logic is that the silences and invisibilities as practiced by Hope and Livia are often needed for survival in their country of

origin as well as within homo- and transphobic contexts within and outside of asylum accommodations in Germany. As Hope says: “I never came fully out. I can’t do it in Uganda otherwise people will beat you to death or you end up in jail. The police do not protect you. So, I never talk about these things. [...] Also, in Germany, I do not feel safe to come out as a lesbian. It’s not safe.” In what follows I will show how silences around Black lesbian experiences with sex and love opens up room for institutions to bring in the above-discussed colonial trope of Black womxn’s hypersexuality that is simultaneously ever visible and invisible.

Hope is single. She suffers from PTSD related to her experience as a victim of sex-trafficking and she feels extremely isolated in the little Bavarian town where she has been staying as a closeted lesbian together with other refugees – the same people she fled from in the first place. Her dream would be to find a female partner with whom she would have a family – one day. “I am not ready yet. I need time to deal with what happened to me in Italy.... I need to open up to someone. Right now, I am trying to get by on a day to day basis without going crazy”, she says. The judgment reveals how the absence of a romantic relationship troubles the decision-maker’s expectation of lesbian lifestyle and practice. “The fact that the claimant does not have a same-sex relationship in Germany casts doubt on her claim of being a homosexual”, the decision reads. Indeed, the decision-maker’s imagination of the sexual desire of queers racialized as Black seems to be severely challenged by Hope’s assertion that she did not entertain sexual relationships with women between age seventeen and twenty-one after she was involuntarily outed as a lesbian at High School – facing severe threats from her family and community as a result. “The fact that the petitioner was not sexually active and did not express desire to have sex during puberty seems not credible”, the decision reads.

What emanates from this judgement is that the institutional recognition of sexuality intersects with racialized body politics. Indeed, it seems that the partial absence of sex and desire in Hope’s asylum narrative disturbs a particular race discourse that historically has reduced Black women to their embodiment of sex (Crenshaw 2018; Collins 2007) and that has inscribed racialized subjects as sexually deviant in current European migration discourse (Bacchetta et.al. 2015). Why did the claimant not have sex during her best years of her life [puberty]? And, why is it that the claimant shows no desire to engage in a sexual relationship in Germany where she is free to do so? The manner in which these questions structure the assessment of Hope’s asylum case – rather than the

episodes of violence and suffering – suggests an institutional logic where victimhood as legitimized by the pain and suffering inflicted by the “Other” (in a homonationalist manner) gets replaced by the racialized sexualization of the claimant.

An analysis of Livia’s BAMF judgment further helps us to understand how the invisibility of a Western-connoted straight forward and public queer lifestyle structures deserving/undeserving and ultimately legal/illegal in lesbian asylum cases. Livia has been married twice and is mother of three children from two different partners. During the time of her marriages, Livia entertained two secret relationships with women. For Livia, the marriages (and children) were not a choice. She contends that “if you [women] stay alone and you are not married, people start questioning your status. So, for me, in order to hide my status [homosexuality] I definitely had to get married so I can hide. Of course, that is also how children come. You cannot stay with a man and not have sex with him.”³⁴ For the decision-maker, these negotiations around visibility and invisibility of sexual identity as a means to stay safe is not quite obvious. The decision reads that;

[T]he claimant cannot credibly explain why she, as a homosexual, has three children from two different men. Particularly her explanation about why she married a second time does not make sense when she says that people kept asking her why she was not married. Because during that time, she was already the mother of a child from her first husband. So, the pressure to marry is not the same as with a young childless woman.³⁵

Similar to the case of Hope, Livia’s asylum claim based on the severe violence experienced on the part of the community and the state-administered “corrective rapes” was dismissed. Instead, the decision focuses on her multiple marriages and children as a deviation from normative queer lifestyle. Indeed, the decision maker clearly expresses their disliking of Livia’s second marriage which they consider unnecessary because Livia satisfied heteronormative societal expectations through her first marriage which produced two children. Livia’s conscious decision to engage in (another) sexual relationship with a man so as to conceal her sexual identity and avoid violence and further state persecution goes unnoticed. Indeed, the ambiguity of invisible queerness and visible hetero-sex (as evidenced by the children) in Livia’s asylum narrative let the decision-maker to stress sex over pain. Sexual agency in this context overpowers vulnerabilities otherwise most commonly read and understood through the lens of the passive and helpless female subject. The registers of Western-connoted homo- and heteronormative in this decision enable the forcible writing of the claimant as sexually deviant (through her promiscuity) in both areas. Thus, her

complicity in re-producing her sexuality in uneven and institutionally illegible ways erases her possibility for victimhood. It is precisely these regimes of power as nested at the intersection of gender, race and sexuality, and which are geared towards producing neoliberal immigration interests, requires questioning and scrutiny when working towards a more inclusive LGBTQI+ asylum system in Europe.

Conclusions

Policy and law makers, decision makers, politicians, and ministries want, in principle, a fair Common European Asylum system that recognizes the protection needs of the most vulnerable persons. They want a system that is free of ethnocentrism, racism, and sexism and that is fair to those who seek safety as much as to those who are extending protection and wish to remain safe. Queer migration scholarship has shown that it is exactly in this tenuousness of the desired “fairness” and desired “safety” that allows for constructions of the “Other”, the “intruder”, and the “bogus asylum seeker”. While there exists a relatively large body of works that examine the manner in which the categories of sexuality, race, religion, and ethnicity is negotiated in the asylum process underpin politics and ideologies of securitization in the Global North, very little work has been dedicated to the manner in which such negotiations contribute to the precarity of lesbian asylum claimants whose racialized bodies (and minds) are cast as the “Other” in predominant white spaces. In this article I made a point that idealizations around “safety” and “fairness” that dominate policy talks around the Common European Asylum System remain by and large unattainable for Black lesbians.

Indeed, the broken and violated racialized bodies of lesbian womxn from Sub-Saharan Africa often appear as mere casualties from violent patriarchal societies “back home” in asylum decisions. In this vein, Black lesbians’ asylum stories that are shaped by human rights violations such as forced marriages, domestic violence, marital rape, sexual violence, forced pregnancies and forced abortions – while relating to their sexual orientation – seem to echo the all too familiar and universalized canon of Third World patriarchy. As a result, their claims risk to go unrecognized and their individual stories erased in bureaucratic deliberations around “true victimhood”. So, while, as according to the Gay and Lesbian Association in Germany (LSVD), the Federal Office for Migration and Refugees has so far trained about 100 decision-makers in regard to LGBTQI+

issues, these recent asylum decisions suggest that more training is needed and that such training must include training components that stress the intersectionality of race, sexuality, and gender-based violence. To this end, decision makers should be provided with the tools to critically interrogate systemic racism and colonialist tropes about the hyper sexuality of black women.

Firstly, decision-makers and practitioners must recognize the ways in which sexual orientation and/or gender identity exacerbates violence against womxn within families, communities, and governmental settings. Moreover, once non-heterosexual womxn decide to move, they are particularly vulnerable to rape, sex-trafficking and other forms of physical violence while making their journey to Europe due to the lack of family and community support. Decision makers must be sensitive to this heightened isolation as well as exposure of non-heterosexual womxn on the move who are also more likely to experience gender-based violence in reception centers, asylum accommodations, and refugee camps.

Secondly, their minority status as women, homo-, bi-, or transsexuals and as womxn of color result in complex asylum narratives that need to be assessed using an intersectionality lens. This is to acknowledge the multi-faceted ways in which non-heterosexual womxn try to protect themselves in their everyday lives, so as not to overstep entrenched social and religious boundaries, which includes heterosexual marriages, children, and, in some cases, the absence of any form of non-heterosexual relationships. Decision-makers and practitioners must receive training that allows them to recognize the – on the surface – often invisible narratives around homo, bi, and transsexualities.

Thirdly, decision-makers must ensure that they provide a safe space that allows for non-heterosexual Black womxn to fully disclose their claims without being subject to gender, race, and sexuality stereotypes. Womxn must feel safe to disclose their biographies and it must be ensured that the assessment of the latter includes is reflexive and carefully assesses prejudice and stereotypes in regard to gender, race, and sexuality that might affect the asylum decision.

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¹ I note here that not all persons who are legally categorized as "lesbians" necessarily adopt this label to describe their sexuality.

² These numbers are drawn from the statistics of two LGBTQI+ refugee counselling centers in southern Germany with whom I collaborated in the context of this research. This numbers must be looked at in relation to the general rejection rate of homosexual men and non-binary persons in Germany of 50 percent, as NGO reports suggest (see <<https://www.politico.eu/article/gay-refugees-syria-lgbt-german-deportations-ignore-risks-asylum-seekers-face-at-home/>> accessed 19 October 2018). A UN report from 2016 further shows that, in Germany, about 43 percent of female asylum seekers were granted refugee status, ca. 24 percent received subsidiary protection, and ca. another 3 percent received domestic protection. Available at < <https://www.refworld.org/pdfid/59201c884.pdf>> (accessed 23 March 2019).

³ The Federal Office for Migration and Refugees (BAMF) does not separately register asylum claims based on sexual orientation and gender identity.

⁴ I understand heteronormativity as theorized by Adrienne Rich (1980) as a compulsory socio-political institution that relies on gender binaries and, in so doing, producing patriarchal power hierarchies that devalue and render invisible non-heterosexual experiences.

⁵ The analytical and theoretical concept of Intersectionality was originally developed by the writings of U.S. black feminists such as Kimberley Crenshaw (2010) to grasp the simultaneity of oppression created at the intersection of multiple identities such as race and gender.

⁷ It is further important to note that there are also asylum claimants who happen to be LGBTQI+ but who are not claiming asylum primarily on the basis of their sexuality.

⁸ Hope and Livia are pseudonyms as both womxn wish to remain anonymous.

⁹ I have observed some of the research participants over several months – and sometimes years – using communication technology such as Whatsapp and Facebook.

¹⁰ I would like to mention here that some participants identify as gender fluid or bi-sexual but find it easier to adopt the "lesbian label" in the asylum context as they become more recognizable within the rather narrow legal framework.

¹¹ These are the 2013 CJEU ruling in C-199/12, C 200/12 and C 201/12, X, Y and Z, the 2014 CJEU ruling in the joined cases A (C-148/13), B (C-149/13), C (C-150/13) v Staatssecretaris van Veiligheid en Justitie and the 2018 CJEU ruling in case C-473/6.

¹² This guideline was sent to me via email by the Office for Migration and Refugees and is not openly accessible.

¹³ Report on the Legal Rights of Girls and Women Asylum Seekers in the European Union (2017). Available at <<https://www.refworld.org/pdfid/59201c884.pdf>> (accessed 18 March 2019).

¹⁴ The Istanbul Convention is available at <<https://rm.coe.int/168046031c>> (accessed 7 February 2019).

¹⁵ For the gender specific numbers of asylum cases see the Federal Office for Migration and Refugee statistic available at < <http://www.bamf.de/DE/Infothek/Statistiken/Asylzahlen/AktuelleZahlen/aktuelle-zahlen-asyl-node.html>> (accessed 15 March 2019). For the numbers of gender specific persecution cases see the Federal Office for Migration and Refugee statistic available at < http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2017.pdf?__blob=publicationFile> (accessed 15 March, 2019). Unfortunately, Germany only publishes the acceptance rate of gender-based violence cases but not the number of initial applications nor the rejection rate in this

- context. For more information see:
 <<http://www.bpb.de/gesellschaft/migration/kurzdossiers/280272/geschlechtsbezogene-verfolgung-rechtlicher-schutz>> (accessed 15 March 2019)
- 16 Falling through the Cracks: Refugee Women and Girls in Germany and Sweden. Available at
 <<https://www.womensrefugeecommission.org/gbv/resources/1308-protection-germany-sweden>> (accessed 21 March 2019).
- 17 Interview with two asylum lawyers, Bavaria, 25 March and 27 March 2019.
- 18 The term womxn is a more inclusive alternative term to woman and includes trans identifying persons.
- 19 It is important to note that the numbers I cite referring to the administrative courts and NGOs reflect the appeals and not the actual total of asylum claims made by women. While this might lead to some distortion of the statistic, I nevertheless think that they do reflect the tendency that women are less likely to file SOGI asylum claims than claimants assigned male at birth.
- 20 See UNICEF report available at < <https://www.unicef.org/eca/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children>> (accessed 9. April 2019)
- 21 See Emily Cousens. The Independent, “We Need to Stop Telling Ourselves that Women and Children are the only Refugees that Matter”. Available at <https://www.independent.co.uk/voices/comment/we-need-to-stop-telling-ourselves-that-women-and-children-are-the-only-refugees-who-matter-10493332.html>> (accessed 27. March 2019)
- 22 The EU report is available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631734/EPRS_BRI\(2019\)631734_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631734/EPRS_BRI(2019)631734_EN.pdf)> (accessed 24 March 2019).
- 23 Georgia is currently debated as a candidate for the safe list The Upper Chamber of the German Parliament would like to add Georgia to the list in the near future. See <https://www.infomigrants.net/en/post/13284/germany-s-list-of-safe-countries-of-origin-and-what-it-means> (accessed 7 January 2020).
- 24 As I am revising this article, the Bavarian Administrative Higher Court granted, after 11 years of waiting, asylum to a lesbian from Uganda in March 2020 based on the long-overdue recognition that Uganda is not safe for gay and queer people. This case has the potential to influence future asylum decision for LGBTQI+ cases from Uganda.
- 25 Decision from the Administrative Court Sigmaringen, 2013, A 6 K 1827/13. Translation from German into English is mine.
- 26 Decision from the Administrative Court Oldenburg, 2015, 1 B 1483/15
- 27 The CJEU ruled that deportation based on the expectation that LGBTQI+ persons can hide their sexual orientation in their country of origin or that a claimant needs to reveal their sexual orientation as grounds for persecution on the first occasion are not permissible. See: 2013 CJEU ruling in C-199/12, C 200/12 and C 201/12, X, Y and Z and 2014 CJEU ruling in the joined cases A (C-148/13), B (C-149/13), C (C-150/13) v Staatssecretaris van Veiligheid en Justitie
- 28 This language is based on a Federal Constitutional Court decision from 1988 where the judge granted refugee protection to a gay man from Iran because his homosexuality was deemed as “irreversible” and “fateful” (BVerwG, 15.03.1988 – 9 C 278.86).
- 29 Interview with a counselor at the Cologne Refugee Council, Cologne, 28 March 2019. The German Asylum Law can be found on the website of the Federal Ministry for Justice and for Consumer Protection: https://www.gesetze-im-internet.de/englisch_asylvfg/ (accessed 16 April 2020)
- 30 Interview with lesbian claimant in Southern Germany, 27 March 2019.
- 31 Interview with a psychologist and asylum counselor working for a lesbian organization in Bavaria, 14 January 2019.
- 32 See <<https://edition.cnn.com/2014/02/24/world/africa/uganda-anti-gay-bill>> (accessed 9 April 2019)
- 33 My account of Hope’s story is based on several semi-structured interviews conducted between November 2018 and February 2019.
- 34 Interview with Livia, 12 January 2019.
- 35 The translation from German into English is mine.