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Between Queer Liberalisms and Muslim Masculinities: LGBTQI+ Muslim Asylum Assessment in Germany

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Abstract
This article focuses on Germany's assessment of refugee claims made by LGBTQI+ Muslims. Based on the analysis of several asylum decisions, it seeks to render insight into the ways in which credibility is assessed at the intersection of sexuality and Islam. Drawing on Jasbir Puar's theory of homonationalism, this article first argues that Germany is more likely to grant protection in cases where the asylum seeker successfully adopts German/Western standards of moral on gay/queer sexualities. Secondly, this article discusses the manner in which "acceptance" and "tolerance" for gay and queer Muslim asylum seekers is inextricably linked to constructions of Muslim sexualities and masculinities in current asylum and immigration debate in Germany. In closing, the article offers some suggestion on how to work towards a more inclusive asylum system in Germany and Europe more generally.

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Introduction

Between 2015 and 2017, nearly 1.6 million refugees have been registered in Germany.[1] As according to Lesbian, Gay, Association Germany in Cologne, out of these 1.6 million refugees approximately 60'000 are LGBTQI+ individuals from Syria, Iraq, Afghanistan, Yemen, and Sudan, Uganda, Algeria etc.[2] Exact numbers of LGBTQI refugees and asylum seekers in Germany, however, are difficult to obtain because the Federal Office for Migration and Refugees does not separately register LGBTQI+ asylum cases. In this paper, I consider the imagination of the LGBTQI+ friendly Germany, and by its extension Europe, as a safe haven for LGBTQI+[3] refugees hailing from especially Muslim majoritarian countries. Drawing on critical queer and migration scholarship, I will discuss the manner in which the assessment of Muslim[4] LGBTQI+ asylum cases relies on the tacit understanding of Germany as a gay- (not necessarily queer)[5] friendly and progressive nation on the one hand and the construction of the claimants' countries of origin as homophobic and backward on the other. I will argue that the success of LGBTQI+ Muslim cases is contingent on the asylum seeker's capacity to establish the "ontological difference" (Mbembe 2002: 246) that predisposes Muslims and the Muslim world to misery and catastrophe through their subscription to homonormative values of sexuality, identity, and moral.

Most LGBTQI+ refugees from Muslim majoritarian countries who have arrived in Germany since 2015 have not only fled cruel wars but also severe human rights violations in their country of origin due to their sexual orientation and/or gender identity. There are currently 73 countries where the freedom of expression for LGBTQI+ people – this is to engage in same-sex conduct in public and in private – is heavily curtailed by laws that stipulate a prison sentence from 3 up to 10 years or even the death penalty.[6] Besides these legal restrictions, same-sex conduct and non-gender conform behavior is further curtailed by social stigmatization. Most of the Arab, (South) Asian, and African countries that criminalize LGBTQI+ people's desires, bodies, speech, and movements inherited these legislations from the French, Portuguese, and British colonial justice system. These empires drafted those anti-LGBT laws with the intention to moralize the colonies and to Christianize local communities.

For instance, the strict anti-LGBT laws that exist today in the MENA region, some parts of Africa

and South East Asia and Pakistan are by no means just colonial relics but an integral part of contemporary politics around nationalism and cultural authenticity geared towards establishing moral and political autonomy from the West. As Katherine Franke (2004: 64) so poignantly argues with respect to the current legal situation in Zimbabwe and Egypt, "the management of sex becomes a tool of governance that produces individual unfreedom in the name of expanding national freedom or independence". Such tool of governance has over the last decade found renewed popularity in political practices aimed at distancing and containment from perceived Western gender relations and sexual freedom and empowerment. For example, the rise of Islamic fundamentalism in the MENA region since the 1980s – but especially after the Arab Spring in 2011 – has engendered a more rigorous persecution of LGBTQI+ people in the Middle East and Africa (Holley 2015; Franke 2004; Currier 2011; Assab 2017).[7]

In the migration context, the circulation of images that depict the human rights abuse of gay and non-gender conform individuals that are executed in Iran, beaten up and subjected to corrective rape in Uganda and Nigeria, and thrown off buildings in Syria and Iraq through national and social media since 2011, tend to be referenced against the background of the expanding LGBTQI+ rights frameworks within the EU. Indeed, as Jasbir Puar (2005) so eloquently argues in *Queer Times, Queer Assemblages,* the sexual Muslim subject is constitutive to the fantasy of Western "queer liberalism". Puar (2017) elaborates on the rise of homonationalism[8] in the West where the LGBT (not Q and I)- friendly nation state with its "acceptance" and "tolerance" for gay and lesbian subjects is constituted by ideas around the homophobic "other". Such rhetoric that establishes cultural hierarchies based on "queer liberalisms", as Puar (2005) terms it, has also currency in the German asylum context. Over the last decade, Germany has followed the LGBT liberal course of the EU by increasing the adoption rights of same-sex couples in 2012 and 2017 respectively, recognizing the third gender 'intersex' option for official documents in 2019, and legalizing same-sex marriage in 2017 (after having recognized same-sex partnerships since 2001). A Pew research study shows that Germany is seen as one of the most gay-friendly countries in the world with over 80% of its people supporting homosexuality (not necessarily queerness or transsexuality) and the full inclusion of gay and lesbians within Germany's family law (Brown 2013). However, it is important to note that the conformism of LGBT rights with heteronormative neo-liberal family values, dubbed by Lisa Duggan (2002) as the "*new homonormativity*", often excludes gender non-

conform individuals and leaves inequalities along the lines of race, class, ethnicity, health, disability, and immigration status unquestioned. In contrary, as the German journalist and artist Azadê Peşmen writes, the real beneficiaries of LGBT (not Q, A, and I) liberal laws and policies in Germany are conservative white gay men and women with middle-class background. Gay folks of color, trans- and non-gender binary people, and especially those with uncertain legal status in Germany, in contrast, do not profit to the same extent from gay-friendly legislations and attitudes. In fact, for the most part, their experiences with racism and homophobia are erased – especially in the asylum context.

To substantiate such claim, I will first show how Germany's asylum law and practice confirm homonormative idealization of queer identity through institutional expectations around sex, gender, and sexuality. I will show that there is a tendency to extend refugee protection to those asylum seekers who most successfully re-create the mythological fiction of Western "queer liberalisms" as inhabited through ideas around individuality, sexual freedom, and visibility. From there, I will think through the manner in which idealizations of the "good" gay Muslim asylum seeker confirm current immigration tendencies geared towards controlling the threat of Muslim sexuality. In closing, I will offer some thoughts on the main effects such asylum practices could have in relation to the question of who deserves Germany's legal protection and how this reveals the limits of a humanitarianism approach to asylum. To this effect, I ask, how can asylum applicants with Muslim background seek protection by a hegemonic Western homonormative framework of sexuality and desire while at the same time contest them? And, how do specific idealizations of queer and Muslim masculinities influence the manner in which victimhood under asylum laws is constructed and understood for queer Muslim asylum seekers?

In order to answer these questions, I use ethnographic data from fifteen semi-structured interviews conducted between November 2018 and March 2019 with gay and gender non-binary refugees and asylum seekers from Tunisia, Syria, and Lebanon, an intersex refugee from Iran, and trans refugees from Pakistan, Syria, and Iran. All these asylum seekers and refugees are affiliated with gay and queer refugee counselling organizations in Munich, Cologne, Berlin, Mannheim, and Stuttgart with which I collaborated in the context of this research. The names of the interviewees who wish to remain anonymous have been changed and all details that could reveal their identity (i.e. places,

NGO affiliations, time of asylum claim etc.) have been removed. The analysis of the cases offered in this article is based on 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*. This article also relies 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 in Cologne, Munich, Heidelberg, and Mannheim. Lastly, I use public debate, policy reports, and legal documents that are available online to contextualize my analysis on the intersectionality of Islam and sexuality in Germany's asylum system. This data allows for teasing out how for Muslim LGBTQI+ asylum seekers to gain refugee protection they have to submit to stereotype homonormative understanding of sex, sexuality, and gender identity that confirm the moral superiority of the West. I contend that in a context of rising anti-Muslim politics and sentiments the examination of LGBTQI+ Muslim asylum claims are thus particularly important for an understanding of how larger geopolitical hierarchies that presuppose the superiority of the West are confirmed through the rejection of supposedly violent Muslim masculinities. In so doing, I use the data to illustrate some of the shortcomings within Germany's asylum system that need to be addressed so as to achieve the goal of a more just and inclusive European asylum regime.

1. **Asylum Assessment Through Western Imaginations of Islam and Sexuality**

In Germany, the right for asylum is enshrined in Article 16a of the German Basic Law (*Bundesverfassung*) and is granted to anyone who can establish a well–grounded fear of political persecution.[9] As an EU member state, Germany is required to implement asylum laws and policies in accordance with the Common European Asylum System, which has been subject to recent LGBT reform. For instance, in 2011, a EU directive established that "gender-related aspects, including gender identity and sexual orientation, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group".[10] In 2013, the European Court of Justice bolstered such directive in the case of X, Y, and Z where the Court ruled that "a person's sexual orientation is a characteristic so fundamental to

his identity that he should not be forced to renounce it".[11] In 2014 and 2018 respectively, the European Court of Justice further condemned the use of tests or stereotypes in assessing the requests for asylum.[12] However, Germany adopting an inquisitorial system of evidence gathering, it is up to the decision-maker to collect evidence for the substantiation of an asylum claim. As a result, decision makers are actively involved in gathering evidence, rather than adopting a mere role of the referee, which can contribute to stereotyping as a recent study on Germany shows (Dustin and Held 2018). In fact, as Moira Dustin and Nina Held (2018, 80) argue, the most intelligible LGBT asylum stories conform to Western stereotypes about a particular 'gay lifestyle' that includes visiting gay bars, participating in lesbian and gay groups, and Gay Prides. Such Western model of sexuality, Dustin and Held (2018, 80) contend, represents a typical white-middle class gay identity that presumes clear boundaries between hetero- and homosexuality and requires public expression of private and sexual behavior. The model of Western homosexuality is thus racialized and relies on culture-specific stereotypes which need to be confirmed through the sexual asylum story (Dustin and Held 2018, 81).

The Sexual Asylum Story

"The sexual asylum story" is everything, says Ibrahim Mokdad, an LGBTQI+ activists from Lebanon who gained refugee status in Germany in 2015. "Your asylum story needs to be well prepared and tailored to the institutional expectations around sexuality and gender identity. He [the decision-maker] has to believe that you are gay so you have to tell them your story so they can understand", Mokdad says.[13] Indeed, at the heart of the asylum process rests the asylum interview where the LGBTQI+ asylum seeker is expected to convince the decision-maker of their identity as 'gay', 'lesbian', trans', 'bi', and/or 'intersex and that such identity is "fateful and irreversible" (so the wording of the German LGBT asylum law) – presupposing the immutability of such identity as sanctioned by refugee law and practice. Moreover, the asylum seeker must illustrate that their 'membership of such special group' renders them subject to persecution on the part of the state (not so much on the part of non-state actors) by providing a detailed narrative of the abuse and violence they have suffered due to their sexual orientation. Technically, the asylum assessment based on sexual orientation and/or gender identity claims must be implemented in accordance with the UNCHR and the European Court of Justice's protection guidelines.[14] Such guidelines, for instance, state that examination of an applicant's sexual orientation must not infringe on their

fundamental human rights and condemned the use of 'tests' and stereotypes in assessing the request for asylum. However, as Ferri (2018: 2) states, EU secondary law does not formally forbid state authorities to use exams for the assessment of sexual orientation. As a result, there is no uniform assessment practice that has emerged throughout Europe. Rather EU member states are granted some leeway in how they assess LGBTQI+ asylum cases (Ferri 2018: 2). So, the balance between generating the truth about the asylum applicant's sexual orientation and/or gender identity and interfering with LGBTQI+ applicants' fundamental rights is a precarious one.

It is precisely the intersectionality of sexuality, Islam, and nationalistic immigration politics, I contend, that is crucial for an understanding of how 'victimhood' for gay and queer Muslim asylum seekers is understood. Despite the above-mentioned legislative LGBT reforms within the European asylum regime, the extent to which LGBTQI+ Muslim refugees have been granted protection in Germany is contingent on their capacity to confirm the 'immutability' of sexuality identities so as to qualify for membership in a particular group under the 1951 Refugee Convention. Gay/queer identities are thus specific to its context and for that at risk being reduced to rational and linear definitions to correspond with innate and unchangeable identities sanctioned by refugee law. These legally imagined queer/gay identities constitute the demarcation line between what is considered worth and unworthy of protection (Spijkerboer 2017; Millbank 2002, 2009; Shakhsari 2014a, 2014b; Rehaag 2017; Gaucher and DeGagne 2016; Juss 2015). Indeed, refugee protection seems to be most readily available to those whose gender identity reflect an idealized sexual orientation and gender identity discourse. Rzouga Selmi, a Tunisian gender non-binary refugee in Germany and queer activist, tells me that the successful "sexual asylum story" must reflect an "international image of *the* gay" as "flamboyant" and "outspoken". For Rzouga, asylum seekers who can "confirm and protect the queer image of Europe" are more successful with their asylum claims. According to them, institutional expectations around homosexuality and queerness in Germany neatly re-produces a globalized discourse on gay and queer identities:[15]

> A credible gay person is a person who is super relaxed to speak to them [decision-maker/translator] about when he had last sex and how it was. The sexual part of it [asylum interview] and your affiliation with organizations and groups and circles is -- it's a big part of how credible you are as a gay person. […] So the perfect profile will be gay enough for their standards. That is someone who is in a gay organization here and used to be in gay organizations in their home country. So that

would be the best profile for them because then they're having criteria of what a gay person is and what a gay life is.

Rzouga's own "sexual story" resonates with such globalized queer lifestyle that is steeped in liberal assumptions around sexual freedom, the right to privacy, and the public visibility of love, sex, and affection. They became a human and LGBTQI+ rights advocate in Tunisia at a very young age and is well-known within the Tunisian queer scene. Rzouga has a strong social media presence and has participated in international collaborations such as a photo exhibit in Paris called "Where Love is Illegal". Rzouga regularly performed as a drag queen and they were an active member of the Tunisian LGBTQI+ NGO called DAMJ. Moreover, Rzouga frequently participated at LGBTQI+ rights workshops and traveled to international LGBTQI+ events. Through their activism, Rzouga developed a deep-seated understanding around queer human rights that are a part of transnational circuits on justice and equality. They fled Tunisia in 2018 due to the impending threat of imprisonment on sodomy charges and forced anal tests.[16] Rzouga recalls their asylum interview as being "unproblematic" as they have "never been the kind of person who cannot express themselves, or open up, or really tell the story".[17] Like Rzouga, the other LGBTQI+ refugees I interviewed who made successful asylum claims were assigned male at birth, well-educated, and they all came from activist background. Moreover, they all have successfully tailored their "sexual asylum stories" to institutional expectations around sexuality and gender identity as per the advice from queer refugee organizations in Germany. Danijel Ćubelić, LGBTQI+ commissioner at the Office for Equal Opportunities at the city of Heidelberg, confirms such observation. According to him, the asylum seeker's class and education background combined with their access to local queer and gay refugee organizations in Germany is instrumental for a successful asylum claim.[18]

Eitne Luibhéid (2008, 180) raises concerns about how class and education privilege potentially undermine the anti-colonialism/imperialism project in the context of asylum. She cautions that gay and queer individuals with relatively privileged background reproduce cultural hierarchies by submitting their bodies and desires to transnational liberal discourses, and, in doing so, silence non-normative sexual asylum stories. While Germany is currently working towards creating a more inclusive LGBTQI+ asylum system through providing gender and sexuality training to a very

small fraction of its decision-makers, gay and queer asylum seekers who have internalized the silences around topics of sex and sexuality and/or might not have come out at the time of the interview remain marginalized. For instance, Ali[19], a gay asylum seeker who was born in Somalia and grew up in a Kenyan refugee camp, finds it very difficult to speak about his homosexuality. "In my community" he says, "if they found out [that he was gay], they would kill me". Ali fled to Germany in 2017, leaving behind his wife and two children. He finds it difficult to speak about his sexuality to immigration officials, doctors and psychiatrists and was terrified to reveal his sexuality during the asylum interview to the Somali translator who was known to the Somali refugee community as someone who holds conservative views on marriage and the family.[20] Ali feels that the translator's negative attitudes toward his homosexuality combined with his felt shame and fear to talk openly about his sexuality contributed to the rejection of his asylum claim.

Ali's case is by no means an exception. In many cases, LGBTQI+ asylum seekers are not only confronted with homophobic translators but also with immigration officials who lack the necessary awareness around gay and queer topics and who refer to invasive methods of questioning so as to establish the credibility of the "sexual asylum story". As mentioned by Rzouga in their quote above, "the ideal gay asylum seeker is super relaxed" to speak about their sex life. "This is important, because they do ask you about who was the last person you slept with… what's your preferred sexual position… and everything related to that."[21] Although the Court of Justice of the EU has established in 2014 that questions about the asylum applicant's sex life was not permissible, gay, lesbian, trans, and intersex asylum applicants are often expected to be able to mobilize painful and for some shameful memories in regard to their desires and sexual activities. For example, an EU-funded study of LGBTQI+ asylum recently produced a report on the interview experience of LGBTQI+ asylum seekers in Germany.[22] This report reveals that questions about sexual positions and dominance, the use of condoms, and experiences with anal sex are rather common. In some instances, the mostly gay male asylum applicants were unlawfully asked about who was acting more female or male during sex, who was more active during the act, and whether or not anal penetration was painful. Not only are these questions unlawful, but they also suggest a very Western and heteronormative dominated imagination of gay sex where one partner is expected to assume the dominant role of the penetrating partner – otherwise translated into men's domination over women.[23]

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The Performativity of Gay Masculinities

The success of the "sexual asylum story", however, not only lies in confirming institutional expectations around sexuality, sex, and gay life through rhetoric but also through performativity. For instance, Walid, a gender non-binary refugee from Tunisia, recalls their friend being asked by a decision-maker to walk in front of them so they could assess their sexuality/gender identity. Another gender non-binary friend, Walid remembers, wore make-up and a dress for the asylum interview and got rejected because their appearance was deemed as not credible.[24] "The question of how to present your queerness or gayness is central in a context where the decision-maker is actively looking for reasons to reject your asylum claim", says LGBTQI+ commissioner Danijel Ćubelić, who is coordinating the antidiscrimination and LGBTQI+ programs of the city of Heidelberg.[25] Also, for Rzouga, the performative dimension of the asylum process is rather delicate;

> For them [decision-makers] it's usually like this: You're not gay enough, so you are not gay, or, you are gayer than the standard, so you are faking it and you're not being gay. I wore make-up on the day of my interview and presented a certain gender expression which could have played against me. He [the decision-maker] could easily have said; "You could not be wearing make-up at 10 in the morning, so you are not being yourself and this is fake and you just like doing it for the sake of the interview and you are not that [gender non-binary]."[26]

Rzouga was lucky to have been interviewed by a decision-maker who "really knew what non-binary is and knew the difference between drag queen and a trans person", he says. Not everyone, however, has the privilege of being question by a sensitized decision-maker. The above-mentioned EU-funded study also shows that approximately 23% of LGBTQI+ asylum cases in Germany are evaluated based on stereotype assumptions around gender identity, sexual orientation, and gender expression. In fact, seven out of forty study participants claim that their asylum cases have been rejected because they did not "look gay or trans. An administrative court case from 2016 confirms such findings. There, the judge rejected a young Iranian's asylum appeal because his homosexuality was deemed not credible. The decision states that the asylum applicants lacked a credible gay/queer appearance (the claimant was wearing nail polish and make-up in court). For the judge, the use of make-up and nail polish seem exaggerated and thus not credible.[27] Drawing on these data and using Foucault's theory of biopower (2012) and Judith Butler's gender

performativity (2006), I would argue that the discursive technologies used by authorities are geared toward producing a gay (not necessarily queer) body that aligns with an easy-readable model of a racialized sexuality that is representing perceived Western stereotypes of white (male) middle-class gay identity. Moreover, as I will show, these institutional expectations around homonormativity are further embedded within an orientalist/colonial political framework that confirms the threat of Muslim masculinities.

Queer Freedoms and the Barbaric Other in Asylum Discourse

Critical queer scholars have made important connections between homonormativity and Orientalism in asylum discourse. They argue that stereotype idealizations of gender and sexuality are not the only convention asylum seekers need to confirm through in the asylum interview. As Sima Shakhsarai (2014b, 1004) and Eitne Luibhéid (2008, 179) point out in the context of Turkey and the US, the credibility of the asylum claim tends to be measured against the petitioner's ability to establish a "well-founded fear of persecution" that is based on structural homophobia that cannot be overcome. So, "successful asylum claims generally require generating a racialist, colonialist discourse that impugns the nation-state from which the asylum seeker comes" (Luibhéid 2008, 179). While to impugn the asylum seeker's place of origin may well be a necessity for the purpose of asylum, it is problematic, however, if it serves to confirm the moral and political superiority of the West through the myth of the ideal victim (Spijkerboer, 2017; Raboin 2017, 2016; Giametta 2016)

For instance, in a 2012 decision involving a gay man from Senegal, the Federal Office for Migration and Refugees (BAMF) in Munich describes the applicant is frail and weak and as suicidal and subject to panic attacks. Such damaged mind and body find its *deserving* place within the human rights framework through the conjured image of the state and the Muslim community in Senegal as particularly cruel. "Gay/lesbian people are turned into scapegoats. They are made responsible for, for example, increasing poverty and food prices. Especially Muslim communities hunt gay/lesbian people."[28] Similarly, the decision of a successful 2018 Administrative Court case from Berlin, that involves a gay man from Iraq, states that the claimant from Bagdad was married twice and has children. At the same time, however, the claimant had secret relationships with men

which lead to conflicts in his marriage and family. The decisions further states that the claimant was forced to marry and thus could not freely live his homosexuality. After a friend told him that he was on a death list compiled by the Iraqi government, he left the country in August 2015 and arrived in Berlin a month later. Once in Berlin, the claimant lived in a refugee accommodation for gay and lesbian asylum seekers and frequently visited gay discos. The judge found the claimant's story credible as he was able to convincingly illustrate his relief to be in Germany where he can live his sexuality freely. This is in contrast to the situation in Iraq where homosexuals are exposed to torture, honor killings, stoning, and witch-hunts on the part of the state, community, and family.[29] While protection hinges on the level of danger levelled against the asylum applicant in their country of origin[30], the stylized discourse that places the threatened and weak gay body against the background of torture, death, and stoning leaves us with the reassuring intimation that homophobic attitudes and politics are most rampant in the Middle East, South Asia, and Africa.

The flip side of such discourse is the believe that Germany with its progressive gay-friendly asylum laws is a safe haven. "How relieved was he [the petitioner] to be in Berlin where he can live his homosexuality without the fear and worries he had in Iraq", the decision reads. The well-rehearsed tale of white people (read men) saving those brown people whose bodies have been violated by non-Europeans neatly applies here. And as long as these broken, bloody, and weak bodies conform with Western moral and ideals about sexuality, they deserve protection. And as the BAMF decision in the case of a lesbian asylum seeker from Uganda shows, those who do not confirm Germany's queer liberalism, risk to loosing protection. "The fact that the claimant does not have a same-sex relationship in Germany, where she is free to do so, casts doubt on her claim of being a homosexual", the decision reads.[31]

Such cases evince a specific ideal of victimhood that is lodged at the nexus of state mandated heteronormativity and liberal ideology of universal sexual freedom. At the same time, case decisions like these illustrate the humanitarian limits of liberal protection claims in that these stereotypical representations of victimhood in asylum discourse consists of a specific 'sexual story' that privileges those who can effectively prove their disassociation with Islamic barbarism, if not Islam altogether and (pinkwashing).[32] To this end, victimhood, and thus the need of protection, finds its legitimacy through the imagery of the asylum applicant's broken and suffering

body, mind, and soul – as 'morally legitimate suffering bodies'(Ticktin 2011), that deserve care. While such imagery *humanizes* the asylum applicant in that it allows for emotional proximity for the purpose of including the individual within the framework of human rights, it simultaneously validates the dehumanization and racialization of the "other" – their country of origin, their communities, and families.

Such case decisions, as I will show below, confirm right-wing discourse in current immigration debate in Germany where the "other" – or the non-West – gets vilified through sexualized imageries that establish Muslim or Arab sexualities as a threat to national safety. Such imagery then confirms the oppressiveness of the Muslim state as contrasted with the liberal state.

Anti-Muslim politics and sentiments in Germany are on the rise and sexuality is an important component of this. A current study reveals that 54% of German's hold anti-refugee attitudes. This is 10% more than in 2016 – just after the height of the refugee crisis.[33] According to data of the ministry of the interior, more than 2,200 violent attacks against refugees have been recorded in 2017. While this is less than the 3,500 recorded attacks in 2016, violence against refugees persists in Germany also in 2018 (Bariggazzi 2018).[34] Indeed, German Chancellor Angela Merkel's concept of the *Willkommenskultur* (welcome culture) that has encouraged help and protection for the more than a million refugees coming to Germany in 2015, came under serious attack after the 2015/2016 New Year's Eve attacks. There, about two thousand men described as being of North African and Middle-Eastern background, were accused of sexually assaulting and raping at least 1,200 young (white) German women in Cologne and other major cities such as Hamburg and Stuttgart. About 120 of the suspects have been identified of which six got convicted (Noack 2016). Law officials and politicians were fast to directly link these violent attacks to immigration issues. As a result, a new law – the "No Means No" law – was passed that allows for an easier deportation of refugees and asylum seekers involved in sex-assault cases and for tighter borders. The new law orders that a "foreigner" sentenced to at least two years of prison – instead of the three as stated in the previous law – can be deported (Bleiker 2019).

In today's Germany, "terrorist masculinities" (Puar 2005: 125) inhabited by men racialized as Muslims are constitutive to the asylum discourse. As Tagesspiegel reporter Anna Sauerbrey (2018)

writes in the New York Times op-ed "The German Feminist Dilemma", "The far right has exploited these cases to support its call to defend Western culture against "Islamization." For instance, the conservative right wing parties such as the AfD (Alternative for Germany) or the anti-Islam *Freiheitlich Direktdemokratische Volkspartei*, both not generally known for their concern of sexual abuse against women, used the 2015/2016 New Year events as a platform to push for harder asylum laws and policies and arouse a form of sexual nationalism that centers around the protection of the untainted and fragile body of (white) German women (Rodriguez 2018). The media graphically took up this narrative immediately after the 2015/2016 New Year attacks. For instance, the weekend edition of the center-left newspaper *Süddeutsche Zeitung* featured a drawing of a white woman's body whose genitals were covered by a black hand that reaches between her legs. While the *Süddeutsche Zeitung* later apologized for the racialized depiction of the Cologne events, *Focus*, a major weekly news magazine, did not after it printed the photo of a blond and slender Caucasian woman with black handprints all over her naked (and untainted) body on the cover of the issue after the 2015/2016 New Year's Eve event. These degrading mediatizations which cast Muslim masculinities and sexualities as a threat to Western women, and thus civilization, ultimately draw the boundaries between the 'good' and 'bad' Muslim asylum seeker/refugee in political life. Moreover, these sexualized imageries, stripped off any political correctness, become the discursive stage for the rapidly growing national populistic force in Germany, spearheaded by the AfD, to establish a salient anti-Muslimism, especially in the Eastern part of Germany (Brubaker 2017, 3).

Such problematic political and societal discourse that collapses the image of the 'bad' Muslim refugee with the threat of Muslim sexualities and masculinities at the same time locks the 'good' male Muslim refugee within a de-racialized and de-sexualized victim-framework. Such framework provides then the ideal context to idealize those gay Muslim refugee/asylum seekers who have successfully adopted a Westernized gay lifestyle and, in so doing, equally successfully create a moral distance to stereotype Muslim, confirming the homophobia and sexism of the non-West. So basically, the homonormative recognition allows German self-representation as liberal and tolerant in relation to matters of sexuality even though political and societal attitudes toward Muslim and black communities become increasingly racist. Ultimately, such representation of the German state

as tolerant of certain Muslims but not others, reproduces Islamophobic attitudes about Muslim intolerance through a sexuality discourse.

Conclusions

The data discussed in this article highlight the central role of sexual regimes around gayness, sex, and masculinities for the construction of the legal and illegal. Moreover, the data reveals how sexual regimes in the asylum context always function in relation to hierarchies of gender, class, race, and cultural geopolitics. These intersections need to be addressed so as to establish a more just and inclusive European asylum system. So, in conclusion, I would like to offer a few suggestions as of how to manage the risks associated with asylum to expect LGBTQI+ individuals to play according to the rules that define the "good" neoliberal subject – while threatening those who do not measure up to such expectations with illegalization.

Firstly, I would like to suggest that there is a need to sensitize decision-makers, judges, and translators around the topic of LGBTQI+ and provide training that helps them understand the intricacies of the "sexual asylum story" and deepens their knowledge on LGBTQI+ identities and sexualities. While the Federal Office for Migration and Refugees has according to the Gay and Lesbian Association in Cologne (LSVD) so far trained about 100 decision-makers in regard to LGBTQI+ issues, recent asylum decisions suggest that more training is needed. Moreover, the number of trained decision-makers is by far not enough to cover the needs of the approximately 60,000 LGBTQI+ asylum seekers in Germany.[35]

Secondly, and this relates to the first suggestion, nobody should be asked invasive questions during the interview to establish credibility. Similar to what the English barrister Dr S Chelvan suggests with his Difference, Stigma, Shame, and Harm model (DHHS), which is now part of the UNHCR Guidelines on International Protection No. 9 (2013), credibility should be established in an individualized and sensitive manner and based on the applicant's personal feelings, experiences of difference, stigma, and shame rather than Western idealizations of queer/gay sex, love, and lifestyle. This also entails to acknowledge the manner in which the intersectionality of class, religion, and gender shapes individual sexual biographies that might not be easily recognized through the lens of sexual homonormativity.

Thirdly, access to legal resources and support for LGBTQI+ needs to be streamlined. In this article I have shown that LGBTQI+ asylum seekers who had access to information in regard to the asylum process in Germany – their rights and obligations – were much more likely to receive refugee protection. In fact, support for LGBTQI+ refugees should be available from the moment of reception. As already done for minor, pregnant, or disabled refugees, the camp should provide leaflets in different languages that provide information about the laws, process, and possibilities for legal support. Often, LGBTQI+ refugees find themselves in remote German villages, where they are housed with people from their countries of origin, with literally no access to support and counselling.

And lastly, actors involved in the asylum decision-making process must develop a reflexive approach to queer asylum that allows them to recognize stereotypes they might have in regard to homosexuality, race, and gender so as not to reproduce colonial and imperialistic narratives of vulnerability, sex, and desire.

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Notes

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[1] Statistic of the Federal Office in Germany. https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/MigrationIntegration/MigrationIntegration.html;jsessionid=26A0AB5B86C706FD92AC4067EAB5748D.InternetLive1. Accessed March 15, 2019.

[2] It is further important to note that there are also asylum seekers who happen to be gay but who are not claiming asylum principally on the basis of their sexuality. Personal phone interview with Lilith Raza, LSVD Cologne, November 6, 2018 and personal email conversation with the Federal Office for Migration and Refugees, September 7, 2018.

[3] Throughout the article I will use the acronym LGBTQI+ which stands for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, and gender non-binary/fluid more generally.

[4] I use the category of "Muslim" in a manner that includes practicing Muslims as well as individuals who have given up their faith and/or those who are racialized as Muslims by institutions and the general public.

[5] Throughout this article I use the term gay to describe persons who are sexually and emotionally attracted to people of the same sex. I use queer to describe person who feel that the term gay or lesbian is too confining and who see their gender identity as fluid or non-conform.

[6] World Economic Forum: "What do you need to know about LGBT rights in 11 maps." March 1, 2017. https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps/. ILGA: Maps – Sexual Orientation Laws. https://ilga.org/maps-sexual-orientation-laws. Accessed June 14, 2019.

[7] While I focus on Muslim majoritarian countries, I note that homophobic laws do not just exist in the MENA region but also in other parts of Africa such as Uganda, Kenya, Nigeria, the Caribbean, Russia, and Pakistan, and Southeast Asian. Brunei has most recently in April 2019 imposed the death penalty by stoning on sodomy and adultery.

[8] Jasbir Puar (2005; 2006; 2013; 2017) coined the term "homonationalism" to enhance our understanding of the "complex ways in which "acceptance" and "tolerance" for gay and lesbian subjects have become the barometer by which the right to and capacity for national sovereignty is evaluated" (2013, 337).

[9] This is in accordance with the 1951 Geneva Convention. However, it is important to note that refugees who seek asylum from so-called "safe countries" or who have arrived in Germany through a third country that is considered safe are usually denied asylum in Germany. LGBTQI+ refugees can claim asylum in Germany if they are persecuted in their home country due to their sexual orientation and/or gender identity and if their physical safety, life, or freedom human dignity is at stake.

[10] Directive 2011/95/EU of the European Parliament and of the Council (Article 10). This directive is geared towards establishing higher protection standards based on a full and inclusive application of the 1951 Refugee Convention and full respect of the European Convention for the Protection of Fundamental Rights and Fundamental Freedoms (ECHR), the EU Charter of Full Rights (EU Charter) as well as international standards of human rights and the Convention relating to the Status of Refugees.

[11] CJEU judgment in C-199/12, C 200/12 and C 201/12, X, Y and Z (November 7, 2013). This decision is in line with the 2008 UNHCR Guidelines for International Protection No. 9.

[12] Joined cases A (C-148/13), B (C-149/13), C (C-150/13) v Staatssecretaris van Veiligheid en Justitie (December 2, 2014) confirmed that an applicant's sexual orientation must not infringe their fundamental human rights and condemned the use of 'tests' and stereotypes in assessing the request for asylum. The Court of Justice of the EU in C-473/16 F, 25 (January 25, 2018) further ruled that "expert reports enabling the national authorities to better assess an application for international protection must be consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, such as the right to respect for human dignity and the right to respect for private and family life".

[13] Personal conversation with Ibrahim Mokdad, Cologne, March 28, 2019.

[14] UNCHR Guidelines on International Protection No.9. Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. October 23, 2012. http://www.unhcr.org/50ae466f9.pdf

[15] Personal Interview with Rzouga Selmi, Heidelberg, January 15, 2019.

[16] Tunisia has experienced an uptick in anti-homosexual politics and societal attitudes since the Arab Spring in 2011. This resulted in a stricter application of the French Penal Code of 1913 which implies a prison sentence of up to three years for sodomy. Moreover, the Tunisian government uses forced anal testing to determine whether or not someone engaged in same-sex conduct. See Human Rights Watch Report, November 8, 2018. "Tunisia: Privacy threatened by Homosexuality Threats." https://www.hrw.org/news/2018/11/08/tunisia-privacy-threatened-homosexuality-arrests

[17] Personal Interview with Rzouga Selmi, Heidelberg, January 15, 2019.

[18] Personal interview with Danijel Ćubelić, Heidelberg, January 15, 2019.

[19] Ali is a pseudonym as he wishes to remain anonymous.

[20] Personal interview, Germany, January 11, 2019.

[21] Personal Interview with Rzouga Selmi, Heidelberg, January 15, 2019.

[22] SOGICA project database. Projektbericht: Erfahrung mit der Anhörung von LGBTQ* Geflüchteten, 2018. (digital repository; accessed June 14, 2019). http://www.sogica.org/database/held-and-arbeitskreis-bamf-umfrage-projektbericht-erfahrungen-mit-der-anhorung-von-lsbtiq-gefluchteten-september-2018/

[23] In the Administrative Court of Regensburg, a gay couple from Russia has been interrogated about their intimate sex life by a judge in 2017 for four hours straight. SOGICA project database. (digital repository; accessed October 19, 2018). http://www.sogica.org/en/life_stories/sogi-asylum-seekers-stories-from-germany/.

[24] Personal Interview with Walid Berrich, Dresden, January 19, 2019.

[25] Personal conversation with Danijel Ćubelić, Heidelberg, January 15, 2019.

[26] Personal Interview with Rzouga Selmi, Heidelberg, January 15, 2019.

[27] 3 K 314.15 A. September 7, 2016. http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/?quelle=jlink&docid=JURE170032005&psml=sammlung.psml&max=true&bs=10

[28] BAMF decision. July 30, 2012. https://www.asyl.net/rsdb/m19996/.

[29] 25 K 327.17 A. June 5, 2018. http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/279b/bs/10/page/sammlung.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=JURE180010773&doc.part=L&doc.price=0.0#focuspoint

[30] According to several NGO reports, the rejection rate of LGBTQI+ refugees in Germany and other EU member states such as the Netherlands or Sweden is about 50 percent. However, as according to a report by the Queer Refugee Project in Leipzig, generally Syrian applicants have a much higher success rate (93%) than for example Iraqi (58%) or Russians (8%). This is because of the UNHCR's "Safe Country of Origin Concept" which leads to nationals of countries designated as safe to be either automatically excluded from refugee/asylum protection or they must successfully rebut the presumption of them as being non-refugees. See: https://www.politico.eu/article/gay-refugees-syria-lgbt-german-deportations-ignore-risks-asylum-seekers-face-at-home/. July 8, 2017.

[31] BAMF decision from August 2018 provided to me by the asylum petitioner I call Hope. Translation from German into English is mine.

[32] Such argument has been made by queer activists from Germany and the Netherlands at the de Balie Freedom Lecture. March 26, 2018. https://www.youtube.com/watch?v=UGqGGpLyt7A.

[33] The study was carried out by a group of researchers of Bielefeld University. https://www.fes.de/forum-berlin/gegen-rechtsextremismus/mitte-studie/. Accessed April 29, 2019.

[34] See also Aleksandra Lewicki's (2018) work on racism in Germany where she writes about the far-right pogroms against refugees and asylum seekers in the 1990's when the number of refugees in Germany peaked due to the war in Yugoslavia.

[35] Personal phone conversation with Lilith Raza, LSVD Cologne, November 6, 2018.