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## **(Des)haciendo fronteras: Latin American LGBTIQ\* asylum seekers in Spain in the process of credibility assessment**

Aurora Perego

With reference to the required evidence, we note the scant credibility accorded to the asylum seeker's account of persecution on the grounds of sexual orientation or gender identity, and we can maintain that there is a general suspicion of abuse of the right [to international protection] against individuals who apply on such grounds, [a suspicion] that does not apply in asylum claims based on other grounds.

(CEAR 2016, 134)<sup>1</sup>

You're in Spain, the 'First World', one of the freest countries in terms of human rights. Outside of Spain we have a rather good image of Europe. You think you will arrive in Europe and then everything is done. So, when you are in the [asylum] process you say: 'Wow, they lack sensitivity here! ... They have patriarchy and sexism here, too. ... What's the difference between here and there? Well, none. Despite 1,500 years of alleged progress and civilisation, the sex-gender matrix (*los esquemas de género y machismo*), violence and misogyny are still present.

(Extract from an interview with F., 2017)

Cuando vives en la frontera  
people walk through you, the wind steals your voice,  
you're a *burra*, *buey*, scapegoat,  
forerunner of a new race,

half and half – both woman and man, neither –  
a new gender;

...

To survive the Borderlands

you must live *sin fronteras*  
be a crossroads.

(Gloria Anzaldúa, *Borderlands/La Frontera: The new mestiza*, 1987, 194–5)

## Introduction

In recent years, the adjudication of international protection has received prominent attention in the so-called global North. Against this backdrop, in the last decade scholars and advocates have started to address the delicate situation of LGBTIQ\*<sup>2</sup> asylum seekers, that is, individuals who seek protection on the grounds of their gender identity or sexual orientation. Data gathered by international organisations shows that all over the world LGBTIQ\* individuals are subjected to severe forms of violence and are forced to leave their countries in high numbers (UNHCR 2015). Despite a lack of official statistics, ILGA-Europe (2016) indicates that asylum applications on the grounds of gender identity or sexual orientation have increased alarmingly since the 1990s. Furthermore, these claims seem to encounter specific problems in comparison to those made on other grounds, most notably the ‘growing trend of rejections based on non-credibility of the sexual orientation or gender identity itself, in many cases based on stereotypes’ (ILGA-Europe 2014, 4).

As emphasised by both practitioners and academics (ILGA-Europe 2016; Spijkerboer 2013), these dramatic rejections are mainly related to what is known as the ‘credibility assessment’, defined as the process through which applicants are required to gather and show evidence that their fear of persecution is well founded (UNHCR 2013).<sup>3</sup> Decision-makers examine such evidence together with any other relevant materials and then determine whether the applicants’ statements can be regarded as ‘credible’. Only if they are found credible do asylum seekers qualify for international or subsidiary protection. In other words, the credibility assessment plays a fundamental role in the possibility of being recognised as a refugee. Therefore, the often implicit meanings given to

'credibility', the criteria for assessing it and the methods of evaluating it are crucial components of the whole asylum system.

Building on these considerations, the aim of this chapter is to explore the experiences of Latin Americans<sup>4</sup> seeking asylum in Spain on the grounds of gender identity or sexual orientation, with a specific focus on the credibility assessment performed by Spanish asylum institutions. In particular, the analysis outlined in the following sections presents interconnected aims: on the one hand, it seeks to interrogate the role of the credibility assessment in the (re)production of hegemonic discourses that might justify and foster the rejection of Latin LGBTIQ\* populations; on the other hand, it aspires to explore the multiple ways queer Latinxs negotiate their identities in their attempts to deal with the credibility assessment and the whole asylum system. To address these concerns, this research draws on queer migration scholarship, understood as a body of research that 'insists on recovering, theorizing, and valorizing histories and subjects that have been largely rendered invisible, unintelligible, and unspeakable in both queer and migration studies' (Luibhéid 2008, 171). In particular, the analysis presented in the following sections will build on the concept of 'border/frontera' elaborated by queer feminist scholar Gloria Anzaldúa to problematise conventional notions of 'border' and 'border crossing'. In her seminal work *Borderlands/La Frontera: The new mestiza* (1987), Anzaldúa indeed argues that a border is both a dividing line and an undetermined place that drags marginalised populations into a 'constant state of transition' (p. 3). Drawing on this conceptualisation, borders are hence not merely cartographical representations of lines that demarcate sovereign states but also symbolic boundaries that both sustain and are (re)produced through power hierarchies (Mezzadra & Nielson 2013). On the other hand, border crossing is understood not simply as the material transit from one (delimited) state to another but also as a trespassing of societal processes that categorise and marginalise individuals (Epps, Valens & Johnson González 2005). Within this framework, Anzaldúa (1987) claims that the only way for marginalised individuals to survive borders is to embrace their intersectional identities so as to live across and beyond them. Informed by such an intersectional problematisation of the concept of borders, this chapter contributes to an interrogation of the borders that delimit the domain of asylum through the credibility assessment as well as to an exploration of the strategies developed by LGBTIQ\* asylum seekers to cope with such borders.

The analysis outlined in the following pages stems from an investigation conducted between February and August 2017 and developed under the framework of community-based participatory research

(CBPR); that is, it involves a range of practices aimed at questioning the hierarchy and power structures inherent in knowledge production. The research was indeed as far as possible developed in collaboration with the respondents themselves, especially with regard to the analysis and dissemination of results. The research process took place in two phases. The first phase concerned a discourse analysis of 112 rulings delivered by the Spanish national Courts on the asylum claims filed by LGBTIQ\* Latin Americans between 1998<sup>5</sup> and 2016. These rulings do not represent the decision-makers' first adjudication of the asylum claims but address appeals presented by asylum seekers against the negative decisions previously made by asylum institutions. Although these rulings cannot be representative of the totality of asylum applications on the grounds of gender and sexuality presented over the years, they provide us with relevant information on how the 'credibility' of such claims is assessed and interpreted. The second phase of the research used in-depth interviews and participant observation conducted with a group of eight LGBT asylum seekers based in Madrid between February and May 2017. The analysis of the feelings and memories recounted by the research participants was combined with the insights gained through expert interviews held with two professionals (a community liaison practitioner and a lawyer) who have been working with LGBTIQ\* asylum seekers for years. This qualitative approach aims to problematise traditional representations of refugees and asylum seekers as both 'helpless victims' (Eastmond 2007, 253) and as 'objects of governmental regulation, depersonalized statistical inquiry, and legal abstraction' (Epps, Valens and Johnson González 2005, 22).

As mentioned above, this investigation focuses on the Spanish asylum context. Previous studies examining the credibility assessment and its consequences for the lives of asylum seekers have tended to concentrate on Northern Europe, Australia and North America. By looking at Spain, this research represents an attempt to contribute to filling the gap that surrounds Southern European asylum procedures. In this sense, before we move to the analysis, it is important to address the peculiarities of the Spanish asylum context in comparison with the rest of the European Union. Eurostat, the Directorate of the European Commission in charge of statistical investigations, reports a drop in asylum applications issued in the 28 EU member states since 2015.<sup>6</sup> Despite this average decrease, Spain has registered an increase in asylum applications, reaching a peak of 55,749 applications in 2018 (OAR 2019, 24).<sup>7</sup> Furthermore, Spain is the only EU country in which most of the claims were made by individuals coming from the Americas (37,025 applications in total), in

particular Venezuelans (20,053) (OAR 2019, 21).<sup>8</sup> Throughout the following sections, this special relationship between Spain and its former colonies will inform the analysis of both the rulings and the interviews.

The chapter is structured as follows. The first section briefly contextualises the Spanish asylum system, with specific attention to gender- and sexuality-based persecution. The core of the section is devoted to an analysis of the rulings, which shows that the credibility assessment is deployed by Spanish institutions as a means of border control, meaning that it is aimed at creating the image of the 'exceptional queer refugee' (Giametta 2016), from which queer Latinxs are systematically excluded. The second section will explore the asylum experiences recounted during the in-depth interviews. Starting from an enquiry into the material and symbolic borders that characterised their lives as queer Latinxs, the section will develop around the erasure of their stories of persecution at the hands of asylum institutions. It will conclude with an emphasis on the strategies articulated by the respondents to deal with the borders reinforced through the credibility assessment.

## Queer (in)credibility: how Spanish jurisprudence adjudicates LGBTIQ\* Latin American asylum seekers

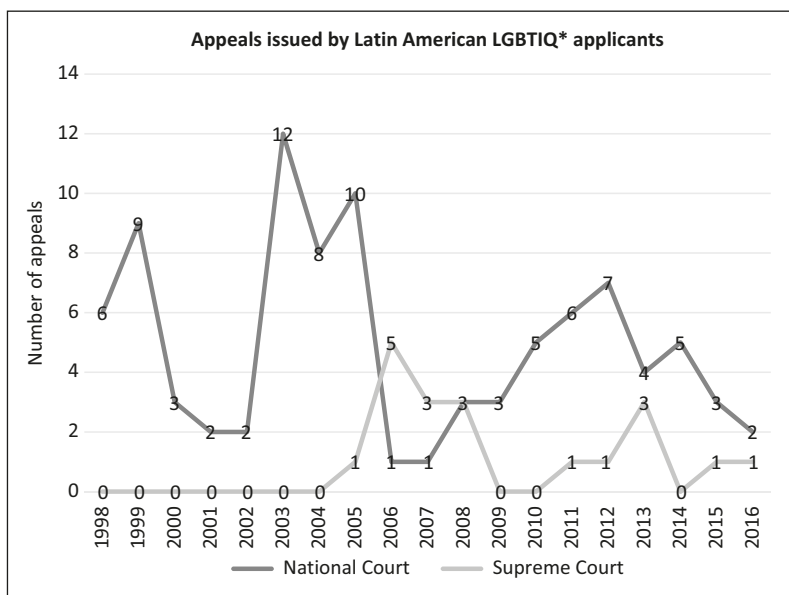
In Spain, the institution of international protection is regulated by Law 12/2009 of 30 October, which, in accordance with the European legislative framework, includes a direct reference to gender identity and sexual orientation as characteristics of a social group that is at risk of persecution (Art. 3).<sup>9</sup> This Law also regulates the asylum procedure in the following way. The asylum claims are examined by the *Oficina de Asilo y Refugio* (Office of Asylum and Refuge – OAR), which first evaluates the formal aspects of the application to decide if it is admissible and, if it is, examines the content of the application. The OAR then presents a report to the *Comisión Interministerial de Asilo y Refugio* (Inter-ministerial Asylum and Refugee Commission – CIAR), which is responsible for proposing the response. The final decision is taken by the Ministry of the Interior and is one of the following options: (1) granting the status of refugee, (2) granting subsidiary protection, and (3) denying the status of refugee and requiring the applicant to leave the country within 15 days of the notification. Art. 29 of the Spanish Asylum Law establishes that appeals against negative decisions can be either submitted to the OAR within one month, or presented before the *Juzgados Centrales* (Central Court, in the case of inadmissibility) or the *Audiencia Nacional* (National

Court, in the case of denial) within two months of the decision.<sup>10</sup> The latter court has the jurisdiction to re-examine the evidence and to change the decision without returning the case to the Ministry. If the National Court rejects the appeal, Art. 29(2) of Law 12/2009 allows for a further appeal to be filed before the *Tribunal Supremo* (Supreme Court), which is the highest jurisprudential authority and has the power to nullify the decision taken by the National Court in the event that it considers there were irregularities in the way the Law was applied. In other words, the Supreme Court does not examine the evidence provided by the applicant but interrogates the way the examination was conducted by the Ministry.

Against this backdrop, the courts had already considered the possibility of granting asylum on the grounds of sexual orientation and gender identity before Law 12/2009 was introduced. In 1998, the National Court delivered a ruling (SAN 143/1998) on an appeal against the inadmissibility of the asylum application made by an Ecuadorian citizen identifying as a *travesti* (cross-dresser). In 2005, the Supreme Court also issued a ruling (STS 4171/2005) on an appeal filed against the denial of refugee status to a Cuban homosexual man. According to legal scholar José Díaz Lafuente (2014, 468), national jurisprudence has been particularly influential in giving meaning to two criteria, according to which asylum claims are evaluated: on the one hand, consideration of the applicant's country of residence or origin (the so-called 'objective element'), on the other, evidence of personal (fear of) persecution due to the applicant's gender identity and/or sexual orientation (known as the 'subjective element').

To examine how Spanish jurisprudence defines and interprets the 'credibility' of LGBTIQ\* Latin Americans' asylum claims, the analysis presented in the following pages tracks the rulings<sup>11</sup> issued by the two national Courts between 1998 and 2016. Out of 112 rulings in total, 93 were issued by the National Court and 19 by the Supreme Court. As mentioned above, the National Court has engaged with asylum claims on grounds of gender and/or sexuality since 1998, while the Supreme Court issued its first ruling in 2005. The Courts present a similar shift in the applicants' national profiles: for a few years after the first appeal, most claimants came from Central and South America, while since 2009 (National Court) and 2011 (Supreme Court) the number of African and Asian applicants has been on the rise. Concerning Latin Americans, the number of appeals varies from year to year, without showing a specific trend (Figure 7.1).

Regarding the claimants' profiles, while until 2006 the majority came from Cuba and Ecuador, the number of Costa Ricans, Colombians, Nicaraguans, Venezuelans and Panamanians has increased since 2006.



**Figure 7.1** Appeals issued by Latin American LGBTIQ\* applicants before the Spanish National and Supreme Courts between 1998 and 2016. The figure is based on my own elaboration of the rulings available on the official website: <http://www.poderjudicial.es/search/>. These rulings were downloaded in February 2017 and analysed between March and May 2017.

Few Mexicans and Salvadorians, just one Brazilian, one Argentinian, one Paraguayan and two Peruvians (a couple) appealed to the National Court. No reference to other Latin American countries was found in the rulings. Concerning the grounds for asylum, only 31 out of 112 appeals were on grounds of gender identity (all of them made by self-identified transgender women). Of the claims on the grounds of sexual orientation, most of the appeals were presented by cisgender gay men, five by lesbian women and one by a bisexual man. None of the applicants identified as intersexual or as a transgender man.

The last important information concerns the number of rejections and admissions: out of 93, the National Court considered five appeals legitimate (5.4 per cent of the total), while four out of 19 appeals were accepted by the Supreme Court (21 per cent). Of the latter, only one claimant appealed against the denial of asylum, while in the remaining three cases the Court revoked previous decisions on the inadmissibility of the applications, meaning that the asylum applications had to be

re-examined through a process that could still lead to a final denial of refugee status. As expected, the negative adjudications concerned how ‘credibility’ was assessed by looking at the two aforementioned elements of the asylum claims: the situation in the country of origin (objective component), on the one hand, and the personal and targeted persecution, or fear thereof, suffered by the applicant on the grounds of gender identity or sexual orientation (subjective component), on the other.

## The ‘objective element’: the situation in the country of origin

With regard to the objective element of the asylum claim, the general jurisprudential assumption concerns the presumed ‘safety’ of the countries from which the applicants fled. The judges do not explicitly address the meaning of the concept of ‘safety’ but indirectly refer to the features that a country is expected to show to be considered ‘unsafe’ for LGBTIQ\* individuals: criminalising legislation enforced by state agents. In the Courts’ understanding, the lack of a criminalising legislation means that members of the LGBTIQ\* local community are protected by the state. However, this criterion seems to be ambiguously applied. On the one hand, LGBTIQ\* Latin Americans leaving countries in which discriminatory laws allegedly function *de jure* but not *de facto* are denied refugee status precisely because such legislation is not enforced. On the other hand, applicants reporting harms that are tolerated by state institutions but not legally fostered are rejected. The following extracts exemplify this contradictory situation:

Here we are questioning not the [applicant’s] homosexuality but whether this constitutes grounds for asylum. To our knowledge, Ecuador does not have legislation that specifically criminalises such situations or, at least, the claimant does not report anything more than police harassment. We do not know why specific manifestations of homosexuality prompt such alleged harassment or whether – which we do not believe – it is just due to failure to conform [to heterosexual norms]; given this lack of precision we cannot affirm that the adjudicators were wrong to consider the application vague and weak; we would almost say that there are no grounds at all for seeking [asylum].

(Spanish National Court, SAN 4388/1998, 2, para. 6<sup>12</sup>)

While the applicant insists that Cuban legislation punishes homosexual conduct, a report in the case file shows that there is greater tolerance towards such practices nowadays. As a result, we cannot consider that the mere fact of having such a tendency generates the type of persecution which would require refugee protection.

(Spanish Supreme Court, STS 6142/2008, 2, para. 4)

These extracts outline how allegations of gender- and sexuality-based persecution are not conceived as valid *per se* but as always related to a presumed 'unsafe' legislative context. However, paradoxically, the Courts maintain that personal persecution on the grounds of sexual identity and gender orientation cannot occur where and when LGBTIQ\* identities, desires or practices are not criminalised, while simultaneously asserting that punitive legislations do not necessarily represent persecution. 'Safety' and 'harm' thus seem to acquire contradictory meanings deployed precisely to support and justify rejections of asylum claims related to homo- and transphobia.

Furthermore, both courts often refer to some sort of formal recognition of the local LGBTIQ\* community as a sign of an inclusionary society and, hence, of a lack of persecution. For instance, in the case of a homosexual man from Paraguay, the National Court maintains that 'a parliamentary committee is even working on ensuring that the right to sexual freedom is recognised as a human right to be protected' (SAN 4550/2010, 2, para. 2). Similarly, in the case of a transgender woman from Colombia, the Court argues that the fact that she could change her name on her documents is 'evident proof of an absence of persecution of transgender people in the country' (SAN 2858/2015, 4, para. 4). In the Court's understanding of 'safety', a committee working on the recognition of sexual orientation as a human right equates to lack of individual persecution against the LGBTIQ\* community. In the same manner, specific procedural mechanisms, such as those concerning sex registration, are interpreted as a sign of socio-political acceptance of the social group to which the asylum seeker belongs. However, as argued by Jansen and Spijkerboer (2011), legislative improvements cannot prevent violence against LGBTIQ\* individuals. On the contrary, such a strong reliance on the legislative and procedural framework reveals that the jurisprudential understanding of 'safety' and 'harm' fails to recognise the multiple shapes taken by homo- and transphobia (Spade 2013). In other words, the intersectional violence suffered by LGBTIQ\* asylum seekers is erased by uncritical accounts of the national legislation.

The final aspect concerning the jurisprudential adjudication of the 'objective element' refers to the fact that most of the rulings<sup>13</sup> report the applicants' failure to provide proof of the (un)safety of the local context together with the risk of being the personal targets of persecutory acts. In other words, the applicants need to provide evidence of both the situation in the country of origin and the (fear of) personal persecution. Consequently, the burden of proof on queer asylum seekers requires *both* components if it is to be considered 'sufficient'. An example is shown by the following extract:

Well, the applicant has not provided any proof, even circumstantial, of the existence of personal persecution understood within the legal framework of asylum law. In addition, reliable sources confirm that in Paraguay there is no systematic and generalised persecution on grounds of sexual orientation beyond being rejected to some degree in particular areas and concrete situations, which could include the personal incidents recounted by the applicant. ... However, even if the situation of homosexuals is not exempt from criticism by some conservative sectors of society (which happens all over the world), the claimant does not cite facts which are sufficient for him to be granted effective protection, i.e., the fact that not all of society approves of his sexual orientation and, above all, does not respect it, is undoubtedly to be criticised, but does not per se entail persecution within the framework of the Geneva Convention, since in Paraguay homosexuality is not formally prohibited.

(SAN 4550/2010, 2, para. 2<sup>14</sup>)

In this ruling, the argument articulated by the Court concerns the lack of indications that the applicant was targeted by persecution. Yet the judge reiterates that the insufficiency of evidence is linked to the absence of formal criminalisation of homosexuality in Paraguay, thus implying that in effect persecutory acts occur only through the enforcement of punitive laws. Furthermore, the Court seems to assert that 'mere' social rejection and lack of respect are unfortunate characteristics of every society around the world, which, while despicable, are not 'serious' enough to be considered 'real' persecution. The events recounted by the applicant, understood as 'simple' discrimination, consist of child abuse, social exclusion and systematic unemployment. However, as outlined above, the judges' understanding of persecution as primarily linked to criminalising legislation fails to consider the harmful and violent consequences that

could be (and actually are) caused by the multifaceted shapes assumed by homo- and transphobic violence.

## The 'subjective element': personal and targeted persecution

The jurisprudential differentiation between 'socio-political rejection' and 'personal persecution' expressed in the previous quote introduces another important component of the credibility assessment performed by Spanish national Courts: the so-called 'subjective element'. As mentioned, LGBTIQ\* asylum seekers are required to present not only evidence of their (fear of) persecution but also proof of the fact that such persecution is related to their gender identity or sexual orientation. Within this framework, an in-depth analysis of the rulings reveals the Courts' persistent tendency,<sup>15</sup> over the years, to evaluate the facts as 'mere harassment' or 'common crimes', especially when committed by non-state agents.

With reference to 'mere harassment', violent events occurring within the applicant's family, neighbourhood or working environment are often dismissed as 'not severe enough' or 'not sufficient', especially in relation to the fact that, in the judges' account, national authorities could offer protection inside the country. This is, for instance, the case with an Ecuadorian transgender woman, when the National Court asserts that 'conflicts generated within the family are not comprised within the institution of asylum' (SAN 6856/1999, 2, para. 3). In a similar fashion, the Court maintains that the offences committed by non-state agents are 'common delinquency' (SAN 1662/2016, 4, para. 4) linked to the socio-political environment of instability that, according to the judges, characterises many Latin American countries. In this respect, the fact that local gangs systematically threaten, harm, and even kill LGBTIQ\* individuals is understood as an incidental feature of a context marked by endemic violence. This interpretation often leads to processes of victim-blaming, particularly in the case of transgender women, as we can see in the Courts' argument that 'the reported problems seem to be mostly related to prostitution [*actividad de la prostitución*] and the conflicts generated because of it' (SAN 3195/2008, 5, para. 4), as in the case of an appeal filed by a Costa Rican transgender woman. This position seems to hold responsible not the subjects who commit the offences but the activity itself, thus implying that every person who engages in sex work cannot seek protection. In this respect, Spanish jurisprudence

appears to deploy a sort of 'you asked for it' argument that shifts the focus from the persecution experienced by transgender individuals to the victims of persecution themselves. Furthermore, according to Millbank's (2009a) understanding of the so-called 'discretion reasoning', the judges' emphasis on the claimants' responsibility and 'choice' might be read as a 'discretion requirement'. In other words, if transgender female applicants had not made themselves visible as sex workers and had remained 'discreet', they would not have been persecuted. Millbank (2009a, 40) adds that the logic of discretion is not limited to the expectation that one will hide one's sexuality or gender identity but is also related to a 'lack of recognition of the multiple and intersecting forms of harm' suffered by LGBTIQ\* populations. Within this framework, the consequences of such a reasoning not only lead to asylum rejections but contribute to the marginalisation of a whole social group (transgender female sex workers, for instance) that can hence be harmed with impunity.

A final aspect of the 'subjective element' refers to the fact that, when persecutory acts are committed by non-state actors, asylum seekers are required to prove that the offences occurred with the protection and/or complicity of national authorities. In this regard, the only way to show that institutions, such as the police, shelter the perpetrators of persecutory acts would be to give evidence that the applicant turned to those authorities but was rejected. This requirement is articulated in the case of a Colombian transgender woman (SAN 2858/2015), in which the Court maintains that 'in any case, the reported persecution stems from third agents, without any evidence confirming the possibility that national authorities either promote or protect it' (4, para. 4). In other words, the Courts require LGBTIQ\* asylum seekers to denounce abuses and seek protection before public institutions in an 'unsafe' environment in order to be able to demonstrate that their requests had been dismissed. Following this logic, applicants are expected to endanger their lives by dealing with authorities that not only tolerate but foster persecutions. Contradictorily, when the perpetrators appear to be state agents (usually police officers), the Courts argue that they did not act as representatives of the national authorities, as was the case in the appeals filed before the National Court by a transgender woman from Panama (SAN 3365/2014) and another from Colombia (SAN 4536/2010). Similarly to how the judges refer to the presence of criminalising legislation, it seems that they refer to state actors in ambiguous and contradictory ways with the aim of rejecting LGBTIQ\* asylum seekers. This position not only justifies the denial of the appeals but also endangers LGBTIQ\* lives by requiring applicants to turn to national institutions that are often trans- and homophobic.

## The discourse of queer (in)credibility

The analysis presented above shows that, when dealing with asylum claims on the grounds of gender identity and sexual orientation, Spanish jurisprudence tends to articulate a discourse<sup>16</sup> of ‘credibility’ that turns to either one side or the other of the same argument to justify rejection of the appeal. In this sense, the Courts seem to adjudicate on the ‘incredibility’ of the asylum claims rather than their ‘credibility’. However, they do not question the applicants’ gender identity or sexual orientation. Rather, the applicants’ ‘credibility’ seems to be the actual target of jurisprudential enquiry, since asylum seekers are expected to provide vast amounts of evidence on several aspects of their claims (local context, enforcement of criminalising legislation, personal persecution, geographical and temporal details). According to previous studies, this tendency is entangled in an institutional fear of abuse of the right to international protection (Díaz Lafuente 2014). In other words, national authorities suspect that non-LGBTIQ\* individuals and LGBTIQ\* people who are not persecuted could take advantage of the difficulty of assessing gender- and sexuality-based persecution so as to be granted asylum (Spijkerboer 2013). To deal with presumed abuses, the Courts rely on a differentiation between ‘true (queer) refugee’ and ‘bogus (economic) migrant’. For instance, the National Court refers to the claim of an Ecuadorian transgender woman as ‘the case purely and simply of an economic migrant looking for better life conditions in the “European paradise” [*paraíso europeo*] and not the one of an authentic refugee’ (SAN 2449/1999, 2, para. 5). Here the judges assume that the lack of persecutory evidence implies a fraudulent desire to benefit from the economic privileges of the ‘European paradise’. To phrase it differently, claimants who, according to the Court, cannot present proof of such systematic and physically violent persecution are ‘lying’ about their necessity to seek international protection. In this respect, Spanish jurisprudence shows its limited and stereotyped understanding of the intricate entanglement of sexuality, gender and homo- and transphobia as well as of the complex realities that lead people to migrate. By failing to address the intersectional violence to which LGBTIQ\* individuals are subjected and considering them ‘bogus migrants’, Spanish jurisprudence directly excludes sexual and gender minorities and reinforces the cis-heteronormative borders of refuge.

Cis-heteronormativity might nonetheless not be the only border against which the ‘credibility’ of LGBTIQ\* asylum seekers is assessed. Building on previous research on the entanglement of international protection with colonialism and racialisation (Luibhéid 2002), the analysis

of the rulings also examines references to the applicants' ethnic origin. In SAN 5907/1999, the National Court refers to a group of appeals that present shared characteristics being filed by 'Ibero-Americans' (*ibero-américanos*) on the grounds of gender or sexuality and being rejected either because the reported facts did not constitute persecution or because they were considered manifestly false (p. 2). Concerning the first statement, we have already seen how sexuality- or gender-related violence is not considered 'bad enough' to constitute persecution, since LGBTIQ\* subjectivities 'merely' endure 'social discrimination', 'familial rejection' or 'common delinquency'. Yet dominant representations of Latin American countries (particularly if located in Central America) as marked by corruption and conflict make it rather difficult to prove that persecutory acts are specifically directed at individuals who do not conform to gender and sexual norms. Within this framework, the processes of intersectional violence that target LGBTIQ\* subjectivities are not considered persecution but understood and justified in terms of 'social insecurity' (*inseguridad ciudadana*) (SAN 2471/2015, 2). In other words, if gender identity and sexual orientation are not 'enough' to account for persecution, Spanish jurisprudence belittles their relevance even more in the case of Latin American applicants. According to the Courts the facts do not constitute persecution because every Latin American citizen, LGBTIQ\* or not, is potentially in danger. In this way, Latin American asylum seekers' 'queerness', their lack of adherence to the dominant sex-gender matrix, disappears by means of their racialisation through the construction of *latinidad*.<sup>17</sup>

Furthermore, another reason for rejection is the alleged 'evident falsity' of the asylum claims. The common position adopted by the judges in this respect is based on the belief that the 'European paradise' attracts people living in situations of economic precarity and lack of opportunities. Without verifying if they are embedded in systematic discriminations of LGBTIQ\* individuals, Spanish jurisprudence interprets the claimants' references to their economic conditions as suspicious. As Anker and Ardalan (2012) explain, legislative understandings of 'persecution' developed after the 1951 Convention do not consider the different forms persecutory acts could assume, including those related to inequalities generated during the current neoliberal era. On the contrary, individuals who move because of intersecting asymmetries of race, gender, sexuality and class are labelled 'bogus migrants'. Furthermore, throughout the rulings we can see that this tendency is fostered by neo-colonial narratives on the (economically) developed 'centre', i.e., Spain, and the backward 'periphery', namely Latin America (Gil Araújo 2010). By

means of its supposed socio-political and economic instability, *latinidad* is configured as the implicit reason why LGBTIQ\* Latin Americans are denied asylum.

In conclusion, discourse analysis of the jurisprudential assessment of 'credibility' suggests that the hierarchical categories that divide 'bogus migrants' from 'genuine refugees' are traced along the intersections of gender, sexuality and ethnicity. Within this framework, the Spanish judges perform the credibility assessment of LGBTIQ\* Latin Americans' asylum claims by relying on the borders of cis-heteronormativity and racialisation. On the one hand, the Courts appear a priori suspicious of LGBTIQ\* claimants and tend to deploy controversial arguments to prove the incredibility of their allegations. On the other hand, they resort to the applicants' Latin American origins to maintain that the violence they experience is not personally targeted at them but rather is related to the generalised context of political and economic instability. In both ways, the judges contribute to constructing an understanding of LGBTIQ\* Latin Americans as 'bogus migrants' through a discourse that we could name as 'queer (in)credibility'. 'Queer (in)credibility' functions as a coherent and solid narrative that conforms to the cis-heteronormative and racialising borders of asylum (re)produced by Spanish jurisprudence.

### ***Queer Latinxs (des)haciendo fronteras: how LGBT Latin Americans experience asylum***

Building on the analysis presented in the preceding paragraphs, this section seeks to analyse the personal narratives of LGBT Latin Americans living in Madrid with the aim of exploring their experiences across the material and conceptual borders of asylum. As mentioned in the introduction, interviews with eight asylum seekers and two experts based in Madrid were undertaken between February and May 2017. While the experts were interviewed only once, there were at least two meetings with each research participant. The first meeting lasted approximately 20–30 minutes and was intended to position myself, address the aims and methods of the research, clarify the details of the interviews and discuss possible doubts. Such conversations were not recorded but configured crucial spaces in which to build mutual trust and informed consent. The second meeting constituted the main body of the interview, which was held in Spanish and recorded. The conversations varied from person to person, both in terms of time (ranging from 45 minutes to two hours) and level of intimacy. Interviews were opened with my only

predetermined question, in which I asked the research participants to describe themselves in the ways they felt most comfortable with. This was intended to avoid reproducing the power dynamics which they had to cope with during asylum interviews. In other words, I did not want them to feel obliged to share traumatic and violent experiences or to disclose personal details; on the contrary, such a broad question was meant to give them space to navigate across content, modes of narration, pauses, geographies and temporalities. This approach resulted in unique conversations touching upon intertwined topics, which I consequently coded as (1) self-identification in terms of gender identity and/or sexual orientation, as both an internal process and an externally perceived identity, (2) life before and after migration, and (3) experiences of the credibility assessment.

At the time of the interviews, the research participants were aged between 18 and 30 and were at different stages of the asylum procedure: three had just entered the second phase (finding a job and accommodation), one was close to this stage, two had recently had their asylum interviews and one was waiting to be interviewed. One person had been given notice of the rejection of her application in 2016 but had decided not to appeal against the decision. As for their nationality and personal identity, four were gay men from Venezuela, one was a gay man from El Salvador, two were transgender women from Brazil and Mexico and one was a transgender man from Honduras.

## Narrating the credibility assessment: '*Como abrir un baúl*'

As explained in an earlier section, the Spanish institution responsible for the evaluation of asylum applications is the Oficina de Asilo y Refugio (OAR). According to one of the experts interviewed, Dr Juan Carlos Arnaiz,<sup>18</sup> Senior Protection Associate of the UNHCR Spanish delegation, in Spain the credibility assessment is mainly conducted through oral interviews aimed at verifying the asylum seeker's personal details and the consistency of their application. Since international protection can be sought at the OAR, aliens' offices, Centros de Internamiento de Extranjeros (detention centres) or at any authorised police station, the interviewers are either asylum officers or police officers, who are also responsible for transcribing the interview onto a document signed by the applicant. In Juan Carlos's account, the OAR is not provided with clear directives on how to assess and evaluate

the credibility of asylum cases – an absence that leads to different procedures being followed. In line with the jurisprudential tendency analysed above, LGBTIQ\* applicants' self-identification is apparently not questioned. Indeed, none of my respondents was required to provide material evidence of their gender identity or sexual orientation. Nevertheless, Juan Carlos states that a certain degree of proof might contribute to a positive evaluation. In the metropolitan area of Madrid, LGBTIQ\* asylum seekers are therefore usually advised to participate in the activities carried out by local organisations (such as the Federación Estatal de Lesbianas, Gais, Trans y Bisexuales) and to present a psychological report written by the Programa LGBT de la Comunidad de Madrid,<sup>19</sup> a governmental institution aimed at supporting LGBTIQ\* people living in the province of Madrid. Yet such a document does not per se constitute sufficient proof of a well-founded fear of persecution. As Juan Carlos explains, the burden of proof mainly lies in the interview itself. In his experience, the lack of procedural directives and appropriate training leads to superficial and problematic interviews that consequently affect the credibility assessment and the overall evaluation of the applications.

Within this framework, my informants recounted paying great attention to the *expediente* (their asylum file). All of them devoted time both to collecting documents and to structuring their stories in the most accurate way. As previously found by Giametta (2016), the phase of preparation is crucial not only in terms of what to say but also in terms of how to present it. In this respect, the free counselling and support provided by lawyers, psychologists and social workers is indispensable for the articulation of 'a recognisable script that will give [the applicant] more chances to obtain the right to remain in the country' (Giametta 2016, 58). However, because of a lack of information, half of my research participants had not been in contact with any organisation before their asylum interview. This meant that no experts advised them or helped them cope with the emotional implications of remembering and recounting traumas. Consequently, during their asylum hearing, they did not mention the persecution they had endured because of their sexuality. Although Juan Carlos explains that it is possible to modify the *expediente* after the interview, he asserts that any changes must be clearly motivated in order to be considered 'credible'. In this respect, as Millbank (2009b) maintains, the absence of (proper) counselling might lead asylum seekers to present their stories in ways that are perceived as 'inconsistent'. Building on these accounts, we can see that the first obstacle faced by my informants is lack of information about their asylum

options and scarcity of support in preparing for their interviews and dealing with the requirement to recount traumatic experiences.

Another transversal issue discussed by my informants is the emotional burden triggered by the interview, from preparing for it to the actual hearing. They referred to their experiences in terms of anxiety, vulnerability and lack of privacy. The intensity of such emotions can be exemplified by the following statement:

It is like opening a trunk [*como abrir un baúl*] and leaving everything there: your life, your traumas, your privacy. ... Everything at the mercy of those who pass by.

(W., Brazilian transgender woman  
interviewed on 11 March 2017)

Through W.'s words, the asylum interview is described as the act of being forced to open a trunk that reveals one's vulnerabilities. In this respect, W. offered a powerful image of the emotional burden imposed by the credibility assessment, emphasising that such emotions are not only triggered by the asylum interview but are also expected by the adjudicators. This is testified by S., a Venezuelan gay man, who affirms that 'They [asylum adjudicators] want us to be dramatic. But my life has been dramatic enough' (interview conducted on 22 March 2017). Like S., most of my research partners had felt this obligation to show suffering as another burden imposed on them by the asylum procedure: not only were they required to be open about traumatic experiences but they were also expected to show certain feelings. Within this framework, the expression '*como abrir un baúl*' reveals a profound contradiction in the credibility assessment as it was experienced by my informants: on the one hand, there was the emotional burden of dealing with the interviewers' questions, on the other the emotional burden of being faced with the interviewers' expectations. '*Como abrir un baúl*' hence speaks of how LGBTIQ\* asylum seekers are at the same time made vulnerable and victimised by the credibility assessment. Remarkably, as explained by Giametta (2016), the consequences of these requirements are dramatic, since individuals who do not adhere to the 'victim' role are considered 'bogus migrants' and denied asylum. In other words, like Northern European asylum institutions, Spanish adjudicators seem to rely on fixed and Western-centric understandings of gender identity, sexual orientation and 'victims' of gender- or sexuality-related persecution. These cis-heteronormative and racialised requirements function as other borders of asylum that create the 'genuine queer victim' as an inaccessible domain.

## **'Esto es lo que soy': (un)doing the borders of queer (in)credibility**

Through an exploration of the ways my informants deal with and respond to the credibility assessment, in this final section I will look at how (queer) identities disciplined by the asylum process contribute to challenging and changing its borders. As argued in the previous sections, the credibility assessment reinforces racialised and cis-heteronormative assumptions of who counts as a 'genuine queer refugee'. The way I have hitherto addressed the concept of 'border' concerns its disciplinary force as a biopolitical mechanism that both symbolically and materially restricts access to the domain of life (Mezzadra & Nielson 2013, 269). Yet, as Mezzadra and Nielson contend, 'the "illegal" migrant [] is not only subject to exclusion but also becomes a key actor in reshaping, contesting, and redefining the borders of citizenship' (2013, 256–7). Against this backdrop, the final section of this chapter will be devoted to an exploration of my respondents' strategies for existing across and beyond the borders of asylum. To do this, I will draw on Epps, Valens and Johnson González's (2005) articulation of border struggles as 'passing lines': strategies to both 'pass as', that is, adhere to the set of norms embodied by 'proper citizens', and 'pass through', that is, cross the material and symbolic borders of citizenship (Epps, Valens & Johnson González 2005, 4). In other words, the concept of 'passing lines' speaks of how migrant subjectivities may undo the hierarchical borders that render them non-citizens by striving to conform to the logic of border control and thus exposing the constructed origin of such lines.

By means of this theorisation, I approached my informants' responses to the credibility assessment as expressions of their agential efforts to pass the interlocking lines of asylum. I argue that their strategies to deal with the precarity and emotional burden triggered by the asylum procedure can be described through an expression that appeared several times throughout the interviews: '*Esto es lo que soy*' ('This is who I am'). After migrating and seeking asylum, my respondents indeed felt the need to rebuild their lives in Spain. However, they reported feeling stuck in a precarious situation, since they were aware that their ability to live their lives as 'who they were' would mostly depend on the acquisition of long-term legal documents. Within this framework, at the time of the interviews they had been developing their own particular mode of coping with their lives as asylum seekers, combining opposition to and cooperation with asylum institutions in a nuanced interplay.

However, negotiation concerned not only their experiences of the asylum procedure but more broadly referred to how they navigated their queerness and *latinidad* in relation to and even beyond asylum. Within this framework, '*Esto es lo que soy*' speaks of how my informants articulated their identities as queer (and) Latinx asylum seekers in Spain. All of them already identified as Latinx before their asylum application. However, after migrating they dealt with their *latinidad* in different ways:

Spain is not such a racist country as people say.

(D., Venezuelan gay man interviewed on 26 April 2017)

The truth? Here I am exotic. It is what people tell me and I love it.

(L., Venezuelan gay man interviewed on 10 April 2017)

Many [adjudicators] think that people leave Venezuela because of its economic and political situation. ... Or better, that the economic situation is merely an addition to the asylum application [meaning that it is not enough to seek asylum]. Yet I think this is totally dehumanising, because in my country people cannot even get a paracetamol. ... People cannot get food. You tell me if this does not constitute a reason for leaving your country.

(S., Venezuelan gay man)

As these passages emphasise, my respondents have contrasting understandings of their *latinidad*: an identity that is no longer subjected to Spanish racism; an interplay of physical appearance and behaviour that renders one 'exotic', and therefore interesting to Spanish eyes; and a sublimation of one's geographical origin into one's social status and class. In other words, some of my interviewees seemed to adapt to the narrative of 'ethnic affinity' (Gil Araújo 2010), a principle applied by current Spanish migration policy to facilitate the entrance of migrants who are thought to share the same cultural values as 'modern Spain'. As explained by Gil Araújo (2008, 2010), the principle of 'ethnic affinity' is achieved through the erasure of the histories of exploitation, slavery and colonisation that have accompanied the violent imposition of Spain on Latin American territories. By appealing to the principle of 'ethnic affinity', my respondents strove to fulfil the Western-centric or 'Hispanic' requirements of 'genuine refugees', that is, the dramatic nature of their accounts, the hypervisibility of their gender identity and the exoticism of their bodies (Giametta 2016). However, by playing with these normative discourses that structure the image of the 'truthful (queer) victim' they

may appear as 'desirable refugees' and may be granted asylum. Hence, their apparent 'desirability', achieved by adapting to the principle of 'ethnic affinity', becomes the way to access international protection.

Yet '*Esto es lo que soy*' appears to resist hierarchical categorisations. S. indeed emphasised the racialised equation that links *latinidad* to economic precarity, and that consequently materialises Latinxs as 'bogus economic migrants'. He troubles the relations between 'safety' and 'ethnic affinity', according to which LGBTI\* Latin Americans do not experience gender- and sexuality-based persecution but 'only' live in a context of widespread violence. This position is supported by F., a transgender woman from Mexico, who adds:

You're in Spain, 'First World', one of the freest countries in terms of human rights. Outside of Spain we get a rather good representation of Europe. You think you will arrive in Europe and then everything is done. So when you are inside the [asylum] process you say: 'Wow, they lack sensitivity here!' We cannot be sure about what they publish. ... Here they have patriarchy and sexism, too. ... What's the difference between here and there? Well, none. Despite 1,500 years of alleged progress and civilisation, sex-gender matrix, violence and misogyny are still present.

(F., Mexican transgender woman interviewed  
on 25 April 2017)

F. offers a crucial perspective that condemns the abuses and discrimination suffered both throughout the procedure and in asylum centres. By doing so, she contributes to unveiling the fallacy of the credibility assessment and of the Western-centric liberationist narratives, according to which asylum liberates non-Western queers (Giametta 2016). F.'s and S.'s claims indeed reveal how LGBTIQ\* Latinxs are targeted by asylum institutions as both queers and Latinxs: the persecution they suffer is not recognised precisely because the asylum domain excludes queer and racialised subjectivities who do not conform to dominant narratives of 'true queer refugees'.

Within this framework, by unveiling the inextricability that links violence in public spaces with discrimination carried out in private or privatised spheres of life, '*Esto es lo que soy*' also represents my respondents' efforts to exist across and beyond the cis-heteronormative and racialising borders of asylum. It describes the multiple and perhaps even contradictory strategies through which my partners strive to live as free, safe and worthy subjects. The presented excerpts show

that they articulate responses aimed at passing the lines of asylum through two different strategies: on the one hand, they present themselves as ‘desirable’ migrants who are capable and worthy of integration through the institution of international protection; on the other, they directly question the exclusionary rooting of the asylum system and of the credibility assessment. Although they might seem to reproduce the cis-heteronormative and racialising borders of ‘queer (in)credibility’, such strategies nevertheless function ‘as a response to the continuous monitoring and surveillance’ (Viteri 2008, 66). In this way, they have the potential to blend themselves and bend the filtering logic of asylum. By doing (conforming to) and undoing (opposing) the pillars that sustain exclusionary interpretations of ‘safety’ and ‘persecution’, their negotiations blur the rigid borders that trace the antagonistic domains of ‘genuine (queer) refugee’ and ‘economic (Latin) migrant’. By reaffirming themselves as ‘*Esto es lo que soy*’, my respondents open up a space for transformative articulations of their identities beyond the discourse of ‘queer (in)credibility’.

In summary, the research participants’ stories show that queer Latinxs experiencing asylum in Spain are caught between the necessity to become the ‘good subject’ of the asylum system – the ‘genuine refugee’ – and their materialisation as ‘bad subject’, namely ‘bogus migrant’. However, the complexity of their nuanced lives exceeds the fixity of such categories, unveiling how individuals cannot be easily reduced to ‘mere’ queers or Latinxs, refugees or migrants. Through the reiteration of ‘*Esto es lo que soy*’, my respondents strive to make sense of their identities beyond the constraints imposed by the credibility assessment, which pushes them to conform to a dominantly structured way of being queer and Latinx. Building on the margins of queerness and *latinidad*, they contrast the exclusionary individuality sustained by the asylum system with the multiplicity of their positions, embodiments and desires. In this respect, ‘*Esto es lo que soy*’ contributes to a collective imagining of infinite ways to trespass the borders of queerness and *latinidad*, hence to exist across and beyond normative lines as non-normative subjects. In other words, ‘*Esto es lo que soy*’ might have the potential to decolonise queerness and queer *latinidad* so as to open up a space for queer Latinxs to exist by *(des)haciendo fronteras*.

## Conclusions

This chapter has articulated a twofold analysis of the borders inherent in the process of the credibility assessment of the asylum cases presented

by LGBTIQ\* Latin Americans in Spain: on the one hand, it has examined how such borders are constructed upon interlocking modes of governance; on the other, it has engaged with the strategies of 'passing lines' that permit my research participants to undo the normative borders of asylum and exist as who they are. In other words, this contribution has explored the interplay of doing (*haciendo*) and undoing (*deshaciendo*) the borders (*fronteras*) that surround LGBTIQ\* Latin American asylum seekers.

Yet this investigation leaves us with open-ended questions that need further problematisation. First of all, the living conditions of LGBTI\* asylum seekers coming to Spain remain a dramatically under-researched issue: what do sexual and gender minorities experience in asylum centres? How does living in asylum and detention centres affect their identities? What strategies for survival do they adopt? Furthermore, hardly any research has been written with specific regard to how racialisation functions in the case of asylum seekers coming from other regions of the world to Spain. In this respect, a comparative analysis between the Latin Americans and citizens from other former Spanish colonies (such as the Philippines or the Spanish portion of Morocco) might offer a crucial entry point. In conclusion, I believe that academic scholarship needs to engage more and more with subversive practices that unveil hegemonic in/exclusions. By doing so, scholars could support the struggles articulated across the borders of normativity not only by migrants and asylum seekers but also by every subjectivity who is intersectionally materialised as 'non-worthy'.\*

## Appendix: list of analysed rulings

Audiencia Nacional (National Court):

1. SAN 143/1998
2. SAN 4388/1998
3. SAN 5089/1998
4. SAN 5109/1998
5. SAN 5446/1998
6. SAN 5453/1998
7. SAN 1840/1999
8. SAN 2449/1999
9. SAN 2745/1999
10. SAN 4278/1999
11. SAN 5907/1999

12. SAN 6085/1999
13. SAN 6483/1999
14. SAN 6569/1999
15. SAN 6856/1999
16. SAN 1603/2000
17. SAN 1606/2000
18. SAN 7079/2000
19. SAN 3311/2001
20. SAN 3708/2001
21. SAN 5684/2002
22. SAN 7018/2002
23. SAN 1080/2003
24. SAN 1173/2003
25. SAN 1357/2003
26. SAN 1477/2003
27. SAN 1482/2003
28. SAN 2263/2003
29. SAN 2628/2003
30. SAN 3058/2003
31. SAN 3418/2003
32. SAN 4391/2003
33. SAN 4491/2003
34. SAN 7167/2003
35. SAN 60/2004
36. SAN 62/2004
37. SAN 99/2004
38. SAN 2717/2004
39. SAN 4724/2004
40. SAN 5170/2004
41. SAN 6480/2004
42. SAN 6635/2004
43. SAN 1763/2005
44. SAN 1790/2005
45. SAN 1820/2005
46. SAN 2858/2005
47. SAN 3039/2005
48. SAN 5962/2005
49. SAN 6046/2005
50. SAN 6433/2005
51. SAN 6495/2005
52. SAN 7460/2005

53. SAN 3138/2006
54. SAN 200/2007
55. SAN 1492/2008
56. SAN 3195/2008
57. SAN 3530/2008
58. SAN 4033/2008
59. SAN 5465/2009
60. SAN 6009/2009
61. SAN 2141/2010
62. SAN 2297/2010
63. SAN 4536/2010
64. SAN 4550/2010
65. SAN 5206/2010
66. SAN 1758/2011
67. SAN 1338/2011
68. SAN 1893/2011
69. SAN 4405/2011
70. SAN 4839/2011
71. SAN 5139/2011
72. SAN 2186/2012
73. SAN 2539/2012
74. SAN 2862/2012
75. SAN 3109/2012
76. SAN 4025/2012
77. SAN 5299/2012
78. SAN 5353/2012
79. SAN 140/2013
80. SAN 1040/2013
81. SAN 1256/2013
82. SAN 1693/2013
83. SAN 159/2014
84. SAN 2122/2014
85. SAN 2984/2014
86. SAN 3365/2014
87. SAN 4099/2014
88. SAN 4565/2014
89. SAN 2221/2015
90. SAN 2471/2015
91. SAN 2858/2015
92. SAN 15/2016
93. SAN 1662/2016

## Tribunal Supremo (Supreme Court):

1. STS 4171/2005
2. STS 2266/2006
3. STS 2331/2006
4. STS 3122/2006
5. STS 5782/2006
6. STS 8650/2006
7. STS 149/2007
8. STS 5650/2007
9. STS 8251/2007
10. STS 27/2008
11. STS 6142/2008
12. STS 6881/2008
13. STS 3854/2011
14. STS 5907/2012
15. STS 4500/2013
16. ATS 8316/2013
17. ATS 9065/2013
18. ATS 2016/2015
19. ATS 11354/2016

## Notes

- \* This investigation is the basis of my final dissertation of the Research Master's Programme in Gender and Ethnicity at Utrecht University (the Netherlands). Therefore, my intention in this chapter is to give an overview of a broader work, whose results are only partially discussed here.
1. The original quotation is in Spanish. Unless otherwise specified, translations from Spanish into English are my own.
  2. Throughout the chapter, I use both 'LGBTIQ\*' and 'LGBT'. I deploy 'LGBT' specifically to describe the group of asylum seekers who collaborated with my research, because of the absence of self-identified intersexed, gender-variant, gender-fluid, gender-queer and gender-non-conforming participants. When making a more general reference to all those individuals who, in different ways, do not conform to hegemonic notions of heterosexuality and cisnormativity, I use 'LGBTIQ\*'.
  3. Academic scholarship enquiring into practices of evidentiary assessment has unveiled its multiple pitfalls when it comes to defining, and consequently evaluating, the 'credibility' of LGBTIQ\* applicants in the USA, Australia and Northern Europe. For an overview and analysis of the credibility assessment in asylum procedures, see: Bobis 2012; Millbank 2002, 2009a, 2009b; Berg and Millbank 2007; Dauvergne and Millbank 2003; Noll 2005. For an investigation into queer migration to the USA, see Luibhéid and Cantú Jr 2005. Refer to Epps, Valens and Johnson González 2005 to explore the entanglement of sexuality and migration with a specific focus on Latin America. For accounts of the various asylum procedures carried out in Europe in relation to the evaluation of credibility, see: Akin 2017; Cohen 2001; Connely 2014; Gartner 2015; Giametta 2016; Jordan 2009; Lewis 2014; Spijkerboer 2013; Wessels 2013. Although this list is not exhaustive, it is important to notice a lack of research on credibility assessment in Southern Europe.

4. With the development of the analysis, I will problematise the terms 'Latin American' and 'Latinx', and their embodied identity known as *latinidad*. Although these references represent the geographical focus of the investigation, their significances will be problematised through an enquiry into the dominant discourses that construct *latinidad* as a neo-colonial essentialised category. Building on Rodríguez (2003, 2014) and Viteri (2008), my use of the term 'Latin American' speaks of individuals from Central and South America, whose *latinidad* will not be taken for granted but scrutinised in relation to both queerness and asylum.
5. The year of the first ruling issued by the Audiencia Nacional in the case of a homosexual asylum seeker from Ecuador.
6. Data available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) (accessed 15 October 2019).
7. See OAR (2019).
8. See OAR (2019).
9. A 'refugee' is defined in Spanish Law as any 'person who, owing to well-founded fears of persecution on the grounds of race, religion, nationality, political beliefs, membership of a particular social group, linked to either gender identity or sexual orientation, is outside their country of nationality and cannot or, given such fears, does not want to seek protection in that country; or any stateless person who, not being a citizen of any country and being outside their country of habitual residence, cannot or, given such fear, does not want to return to that country due to well-founded fears of persecution ...'. The original text: 'La condición de refugiado se reconoce a toda persona que, debido a fundados temores de ser perseguida por motivos de raza, religión, nacionalidad, opiniones políticas, pertenencia a determinado grupo social, de género u orientación sexual, se encuentra fuera del país de su nacionalidad y no puede o, a causa de dichos temores, no quiere acogerse a la protección de tal país, o al apátrida que, careciendo de nacionalidad y hallándose fuera del país donde antes tuviera su residencia habitual, por los mismos motivos no puede o, a causa de dichos temores, no quiere regresar a él ...'. Available at: <https://www.boe.es/buscar/pdf/2009/BOE-A-2009-17242-consolidado.pdf> (accessed 1 August 2020).
10. Before 2004 both types of appeal were filed before the National Court (CEAR-Euskadi 2009, 119).
11. The rulings were collected from the website of the National Council of Jurisprudential Power ([www.poderjudicial.es/search](http://www.poderjudicial.es/search)) by entering each of the following terms (translated into Spanish): gay, lesbian, homosexual, bisexual, transsexual, transgender, *travesti*, intersexual. The personal details of the applicants are not included in the publicly available copies of the sentences. However, references to specific events that recur in some of the appeals may indicate that different sentences issued by the National and Supreme Courts concern the same person. Consequently, the presented data might may not reflect the actual number of applicants.
12. The original text: 'La condición de homosexual no vamos a cuestionarla aquí pero lo que sí cuestionamos es que ello sea causa de asilo. En lo que sepamos no hay normativa específica en Ecuador represora de estas situaciones, o al menos no se nos habla más que de acoso policial. Ignoramos por qué manifestaciones concretas de la homosexualidad se produce ese supuesto acoso o si es, que no creemos, por el simple hecho diferencial, y en esta nebulosa no podemos decir que sea errónea la calificación administrativa de la pretensión como evanescente y poco sólida, casi diríamos nosotros, que no hay ni siquiera causa de pedir.'
13. To name a few: SAN 143/1998; SAN 4278/1999; SAN 7018/2002; SAN 1080/2003; SAN 1820/2005; SAN 2186/2012; SAN 2471/2015. A complete list of the analysed rulings can be found in the appendix to the chapter.
14. The original text: 'Pues bien, el interesado nada ha acreditado, ni directa ni indiciariamente, sobre la realidad de una persecución personal susceptible de ser incardinada en el régimen jurídico de asilo, siendo así que a la vista de fuentes fiables puede afirmarse que en Paraguay no existe una persecución generalizada o sistemática por razones de orientación sexual, más allá de cierto rechazo en determinados ámbitos y situaciones concretas, como incluso pudieran ser los incidentes personales que el promovente relata. ... Sin embargo, a pesar de que la situación de los homosexuales nunca está exenta de críticas por parte de ciertos sectores conservadores de la sociedad (lo cual ocurre en todo el mundo), el solicitante no alega hechos de entidad suficiente que hagan necesaria una efectiva protección, es decir, el hecho de que no toda la sociedad apruebe su condición sexual, y sobre todo, que no la respete, es algo sin duda digno de crítica, pero no conlleva en sí mismo una persecución en el sentido que la Convención

de Ginebra otorga a ese término, pues en Paraguay la homosexualidad no está prohibida formalmente.’

15. To name a few: SAN 4278/1999; SAN 6856/1999; SAN 7079/2000; SAN 4550/2010; SAN 1662/2016.
16. The term discourse is used in line with Stuart Hall’s definition as ‘a group of statements which provide a language for talking about – i.e. a way of representing – a particular kind of knowledge about a topic. When statements about a topic are made within a particular discourse, the discourse makes it possible to construct the topic in a certain way’ ([1996] 2006, 165).
17. The term ‘*latinidad*’ is here understood not as a fixed and stable identity but as an expression that ‘contains within it the complexities and contradictions of immigration, (post)(neo)colonialism, race, color, legal status, class, nation, language, and the politics of location’ (Rodríguez 2003, 10).
18. Interview conducted on 26 April 2017.
19. For more information, please consult: [http://www.madrid.org/cs/Satellite?c=CM\\_ConvocaPrestac\\_FA&cid=1142667355193&noMostrarML=true&pageid=1331802501671&pagename=PortalCiudadano%2FCM\\_ConvocaPrestac\\_FA%2FPCIU\\_fichaConvocaPrestac&est=1331802501621](http://www.madrid.org/cs/Satellite?c=CM_ConvocaPrestac_FA&cid=1142667355193&noMostrarML=true&pageid=1331802501671&pagename=PortalCiudadano%2FCM_ConvocaPrestac_FA%2FPCIU_fichaConvocaPrestac&est=1331802501621) (accessed 28 October 2019).

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