

# Getting Out: Political asylum, sexual minorities, and privileged visibility

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## Abstract

As part of an emerging field of films documenting the obstacles faced by sexual minorities fleeing persecution and seeking political asylum, the film *Getting Out* documents both the persecution of sexual minorities in Uganda and the obstacles individuals face in their attempts to get political asylum in South Africa. Using the film as a springboard, we assess the larger issues of recognition, visibility, hypervisibility, and performativity in encounters between sexual minorities, their advocates, and political asylum officials. The rhetorical power of *Getting Out* lies in its performative staging of LGBTQI asylum seekers' navigation of often competing cultural and legal logics on sexuality. The film calls attention to profound contradictions in the political asylum system for sexual minorities and for any others who challenge the normativity of a social group.

## Keywords

Anti-gay laws, narrative, political asylum, rhetoric, sexual minorities, visibility

Lesbian, bisexual, gay, transsexual and intersex individuals, whose home countries either condone persecution or refuse to protect individuals from it, face great obstacles when they seek asylum in another country that, ostensibly at least, protects LGBTQI individuals from persecution. The political asylum system is only a small part of the larger politics of persecution and protection, but it has become a growing high-profile site of advocacy, including the production of human rights films calling attention to both the persecution and inequities in the political asylum system, such as *Dangerous Living: Coming Out in the Developing World*

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(dir. Scgalotti, 2003), *Getting Out* (dir. and produced by Neumann et al., 2011), *God Loves Uganda* (dir. Williams, 2012), *Call Me Kuchu* (dir. Wright and Worrall, 2012), *Abominable Crime* (dir. Fink, 2012), and *Born This Way* (dir. Kadlec and Tullman, 2013). In this essay, we undertake a close reading of one of the films, *Getting Out*, a 60-minute documentary film produced by the Refugee Law Project at Makerere University in Kampala, Uganda in collaboration with the Ugandan Civil Society Coalition on Human Rights and Constitutional Law.

*Getting Out* is situated between recent anti-gay legislation in Uganda and the political asylum bureaucracy in South Africa. The personal portraits provide a first-person perspective that gives agency to the individuals deprived of not only agency but also any recognition as citizens first in their home countries and then as they seek asylum. We are interested in how LGBTQI asylum seekers are produced as unrecognizable by the state systems and in how the film portrays them as individuals with legible stories, thus compelling the film viewer to see their vulnerability and the impossible subject positions they are forced to occupy. This form of educational advocacy ideally compels the viewer to identify with otherwise illegible, invisible individuals and their social justice campaign. The goals of our essay are fourfold: (1) to identify the limitations of identity-based frameworks for addressing the complexities of sexuality, visibility, and the subjection of sexual and gender minorities; (2) to illuminate the political and personal consequences for those rendered socially illegible or unrecognizable; (3) to consider the value of scholarship on queer migration for understanding how sexuality and gender identity norms, as well as norms of race, class, nation, and health, structure asylum law; and (4) to consider efforts to queer human rights, especially the potential of coalitional subjectivities, as a means to counter the essentialist logics that produce the persecuted subject. Finally, we turn to *Getting Out* because it reveals the severe consequences of 'violent refusals of complexity to which the self-appointed normalizers of sexual desire so readily resort,' to draw from Malcolm Bowie's introduction to Judith Butler's 2002 Amnesty Lecture (2005: 46).

*Getting Out* portrays the struggles of five LGBTQI Africans fleeing persecution, some of whom are applying for political asylum. Founded in 1999, the Refugee Law Project provides legal aid to asylum seekers and refugees in Uganda. As the film title argues, some LGBTQI Africans need to 'get out' to escape further persecution before they can 'come out.' 'Coming out' has serious consequences, beyond the stigma or exclusions one might experience from family and others. *Getting Out* also exposes the political consequences of the state's control of queer visibility in its dispersion of the concealing logic of discretion. In the film, the officials determine that someone who has experienced persecution based on sexual preference can return to his/her country, perhaps to a different region, where he/she can be 'discreet' and thus safe. Filmed in Uganda, South Africa, Geneva, and London, with footage from Malawi and Zimbabwe, the film explores not only the homophobia the individuals face in their home communities and countries but also the hypocrisies and failings of asylum systems in the countries where they seek refuge. In addition, it exposes the limitations of the identity-based

categories of LGBTI as not necessarily matching the ways the individuals understand themselves as sexual and gender minorities. As an educational advocacy documentary, *Getting Out* provides an opportunity to examine the multiple and changing discourses about sexual minorities, social violence, and human rights. The film uses documentation of personal lives, media representations, and the legal turmoil of new anti-gay legislation to foster debate and, ideally, social justice.

*Getting Out* corroborates how political asylum has become a site for interrogating persecution and compels us to think about sexual rights as transnational iterations of state regulated concepts of sexuality, desire, and identity.<sup>1</sup> In presenting sexuality, and more particularly, the struggles of LGBTQI individuals, as 'the new frontier of human rights work,' *Getting Out* fosters critical reflection about how sexuality and sexual rights take on various meanings in the transnational contexts that asylum law compels. The film narrator reports, 'Nobody lives this frontier more intensely than LGBT persons themselves, particularly when they try to cross it to seek asylum.' In Judith Butler's terms, the political asylum process is a site of cultural translation of human rights discourses. Observing that universal human rights refer to 'a reality that does not yet exist,' she 'arrived at a second view of universality in which it is defined as a future-oriented labor of cultural translation' (1999: 9). Here Butler points toward the universalizing logic of human rights and its erasure of cultural particularity. LGBTQI subjects may challenge these universalizing logics, but as *Getting Out* demonstrates, asylum law and rulings on the persecution of gender and sexual minorities do not escape these logics. *Getting Out* shows how sexual rights are shaped by imperial imaginaries and the privileging of visibility, and therefore provides timely insights about the contradictory role of normative social categories in asylum law and its translation into justice at the local level. *Getting Out* affords scholars and activists an opportunity to contemplate these contradictions and the obstacles that LGBTQI asylum seekers face as they navigate legal and cultural systems confounded by heteronormative assumptions.

Early in *Getting Out*, we see a clip from another film, *Before Night Falls*, about the Cuban writer Reinaldo Arenas, portraying a fictionalized political asylum hearing in which the hearing officer asks a young man 'What position do you like in bed?' To which the young man replies, 'I like it from behind and on my knees.' Then the officer commands him to walk to the other side of the room and back. The young man performs a stereotypical gay walk. The public humiliation in the exchange introduces the film audience to one of the obstacles to 'getting out,' and also calls attention to the complexity of performing sexual identity. The film presents a variety of such performances, all pointing to the ways that various governmentalities depend upon their own expectations to assess conformity to expected sexual categories. Although the hostility and the request for the performance are exaggerated in the scene from the fictionalized film, political asylum hearings are interrogations in which the applicants are obligated to prove that they are who they claim to be and that they are victims of

persecution (Bohmer and Shuman, 2010). The gay applicant also must prove that he is gay.

In addition to excerpts from *Before Night Falls*, *Getting Out* includes footage from political speeches and events. Together, these embedded films and news videos serve to highlight the contradiction between, on the one hand, the asylum system's suspicions that LGBTQI claims might be fraudulent,<sup>2</sup> and, on the other hand, the lens of suspicion that motivates police and other authorities to raid people in their homes and expose them as committing sexual crimes. In the hearing, the gay man performs gayness in accordance with the hearing officer's expectations of conventional 'gay behavior.' The footage from the individuals' homelands portrays different sets of expectations that motivate the police or other officials who apprehend sexual minorities who are 'caught in the act,' exposed, arrested, and/or persecuted. In their homelands, individuals express fear of this exposure; in the political asylum hearings the force of possible exposure is often misunderstood. Until recently, individuals who were denied asylum were instructed to return to their homelands and act discreetly to avoid persecution (Keenan, 2011: 35; Shuman and Bohmer, this issue).

The hearings and the experiences of persecution are presented in the film as competing discourses that expose the ineptitude, suspicions, and humiliations in the political asylum process and the increasing violence against LGBTQI individuals in various communities. In our discussion, we explore the competing discourses in more detail, and in particular, we examine how the film uses the exposure of inconsistencies and stereotypes to call attention to differences between East and West, colonizer and colonized, urban sophistication and rural backwaters in its depiction of categories of multiple sexual and gender identities.<sup>3</sup> We discuss the climate of suspicion that saturates the political asylum process and the particular suspicion of gay, lesbian, and transgender people within that climate. For example, asylum officials' demand that asylum seekers prove that they are gay relies on unquestioned, stereotyped assumptions about the kind of questions a gay person should be able to answer, the kinds of affect that signify being gay, and the consequences of public displays that signify identity as a sexual minority in different cultures. We begin by considering the ocularcentricity of the asylum process and how visibility structures the articulation of LGBTQI<sup>4</sup> identities and the state's socio-political recognition or subjection of sexual minorities. In exposing these contradictions, *Getting Out* demonstrates how the political asylum process often exacerbates and perpetuates stereotypes and actually defeats the purpose of differentiating between genuine and fraudulent applications. The political asylum process is one of the central sites for negotiating categories of social violence (Baillot et al. 2012); LGBTQI claims call attention to some of the limits of the system. At the same time, as this film demonstrates, LGBTQI claims have captured public interest, and unlike many other areas of political asylum in which cases are treated individually, LGBTQI cases have mobilized social groups such as the NGOs involved in the film.

## Sexual minorities: Visibility, recognition, and subjection

Article 14 of the United Nations Declaration of Human Rights (UDHR) states, 'Everyone has the right to seek and to enjoy in other countries asylum from persecution.' According to the United Nations High Commissioner for Refugees (UNHCR), a refugee is someone who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.' The category 'social group' is the most difficult to define: individuals seeking asylum to escape persecution as sexual minorities fall into this category. Social group is not uniformly defined; sometimes it depends on sharing an immutable characteristic and sometimes the emphasis is on the visible performance of membership. Yet many LGBTIQI people, as the film suggests, suppress their identity and/or social group affiliation precisely because greater visibility may instigate further persecution (Hazeldean, 2011: 380). Several sexual minority claims have been successful (Mohyuddin, 2001); all hinge on the applicant's ability to demonstrate credibility, both in terms of sexual identity and persecution (Millbank, 2009). In *Getting Out*, the suspicion of deception is linked to the seemingly arbitrary or dismissive practices on the part of asylum officials. Persecution requires no such proof; in fact, a person can be labeled lesbian or gay by association. Attending a gay church does not make you gay to the asylum officials, but it can make you gay in Uganda. The asylum process is designed to differentiate between fraudulent and legitimate asylum seekers and the asylum officials often suspect that asylum applicants are actually economic migrants. Yet, as Karma R Chávez notes, '[E]conomic persecution remains outside the purview of asylum law' (2013: 69). Consequently, the focus of asylum law on the homophobic state erases the 'economic persecution of queers and non-queers alike' (2013: 69).

NGOs offering assistance to sexual minorities play an increasingly important role helping individuals to navigate the political asylum process, and NGOs have become leaders in the effort to call attention to the obstacles sexual minorities face in applying for political asylum. *Getting Out* is one of several recent films designed to create an awareness of these obstacles. However, as noted earlier, *Getting Out* must cautiously navigate the tension between visibility and subjection in its promotion of the rights of sexual minorities. For example, the US premiere of *Getting Out* was hosted by the Open Society Foundation, which also provided support for the making of the film, and Human Rights First. The premiere took place on 6 April 2011, in the wake of the January 2011 murder of David Kato, the Ugandan gay activist who worked with Sexual Minorities Uganda. The murder of Kato was directly tied to his visibility as a gay rights activist; Kato's photograph was published in a local Ugandan tabloid *Rolling Stone* (no relation to the US publication) with other LGBTIQ individuals with the headline 'Hang Them.' Clearly, for socially stigmatized groups, such as sexual minorities, public visibility is not empowering in all contexts.

*Getting Out* follows the liberal humanist trajectory of bringing greater visibility to the struggles of LGBTQ asylum seekers and attests to the benefits of social media. For example, we learn about the importance of Val Kalinde's access to social media as she was growing up. Kalinde, one of five individuals featured in the film, turned to social media to connect with other LGBTQ persons and organizations. Yet, importantly, the film also draws attention to the risks of visibility, for when Kalinde came out as a teenager she was featured in a Ugandan newspaper, and because of that visibility she was subjected to harassment, sexual violence, and publicly stigmatized. She was kicked out of her church and moved out of her neighborhood to avoid further harassment. Moreover, the film draws attention to those who are hidden in plain sight, including the sex workers who are hypervisible yet rendered invisible through legal exceptions or habitual acts of looking away. The narrator reports: 'In the red light area in Kampala, male sex workers work hidden in plain sight.' Not only are the sex workers hidden in plain sight but many are refugees, which compounds their public invisibility.

The field of human rights' embrace of an ocular epistemology (the seeing-is-believing paradigm) heightens the salience of normative scenes of social and legal recognition—or misrecognition—(Hesford, 2011: 57). Human rights advocates' privileging of visual representations intersects with the LGBT right movement and its celebration of gay and lesbian visibility and the 'coming out' narrative. The seeing-is-believing paradigm and the challenges that it poses for certain social groups is particularly apparent in asylum law, which requires that asylum seekers prove membership in a social group (lesbians, bisexuals, gay, transgendered) and fear of persecution on the basis of that membership. The social group must be socially recognizable and therefore, to one degree or another, socially visible. To put it differently:

Unlike other refugee claimants who are not compelled to perform a visible identity in the country to which they migrate, lesbian and gay asylum applicants frequently are expected to conform to neoliberal narratives of sexual citizenship grounded in visibility politics, consumption, and an identity in the public sphere in order to be considered worthy candidates for asylum. (Lewis, 2013a: 179)

In a discussion of political asylum and stigmatized categories of social practice, Amy Shuman and Carol Bohmer describe how the visibility, invisibility, and hyper-visibility of social practices are related to the tellability or untellability of particular narratives (Bohmer and Shuman, 2008; Shuman and Bohmer, 2004). Stigmatized social practices can be either more or less visible and more or less legible. 'Stigma works by assigning, legitimating, and disputing value...and then naturalizing those positions' (Shuman and Bohmer, 2012: 217). Stigma works in conjunction with the public spectacle, especially with regard to the policing of sexuality. In *Getting Out*, Florence Kizza describes how police in Uganda invaded her home, found her in bed with her partner, and paraded both her and her girlfriend around town naked. Footage of police in Malawi escorting the first married gay couple in

handcuffs through the town and a police raid of a gay wedding in Kenya serves as a backdrop to Kizza's narration. These scenes effectively capture the state's command of the visual regime and the deployment of the public spectacle to shame LGBTQI individuals. Crowds gather and laugh as the gay couples are escorted to the police station and courtroom. The film's inclusion of the public shaming spectacle aligns viewers with the state's objectifying gaze and as witnesses to this objectification, and foregrounds the significance of the visual realm in upholding relations of power.

Questions of visibility surface crucially in the immigration officials' arguments for 'discretion' as a solution to the persecution of sexual minorities. The British officials' argument that a person who is LGBTQI can return to their country and be discreet is a perpetuation of the colonial view of sexual discretion. The discretion argument, now overturned,<sup>5</sup> did not take into account the fact that once the person has made an asylum application, he or she has become a target for persecution. Alice M Miller writes:

The adjudicators construct a circular argument: burdening sexual dissidents with the obligation to be discreet, the adjudicators are then unable to understand how a woman who has been discreet can be 'gay'—after all, she has not even been sexually 'out' or active. (Miller, 2005: 160)

Further, the idea of discretion depicted in the film is based on British legal concepts of the public and private that do not necessarily apply to other cultures and places. Just to identify the simplest problem, a woman who is neither a wife nor mother, or who isn't both, may be presumed to be a lesbian in some communities. Such identifications are not necessarily about discretion or even necessarily about sexual encounters. One of the more complex problems is the category of sex for pay and the question of whether same sex for pay is considered categorically different. Rachel Lewis addresses the issue of "perceived homosexuality" and its recognition or lack thereof in asylum cases and narratives in her work. As she argues in a recent essay:

The primary obstacle facing lesbian asylum applicants is the lack of representational space within heteronormative asylum narratives for the articulation of female same-sex desire, evident in the notion that (to quote one asylum adjudicator) a 'homosexual lesbian can avoid the risk of harm by being discreet in her conduct'. (Lewis: 2013a: 180)

Early in the film the narrator says, "In order to be able to come out, they first have to get out." Here the narrator confirms the centrality of the coming out/gay rights liberation narrative to the film's advocacy stance. Yet the individual coming out narratives that the state requires of claimants in order to meet the conditions for political asylum also point to how the state circumscribes the narrative parameters of recognition of sexual rights. The film's focus on the narratives elicited through the asylum process importantly draws attention to the state's regulation of

sexuality and its perpetuation of essentialist identity categories (Berg and Millbank, 2009).<sup>6</sup>

### **Contending vulnerabilities, identities, and narratives**

Mid-way through the film we meet the Director of the Refugee Law Project, Chris Dolan, who draws attention to contending vulnerabilities and identities, such as that of Leon (who uses only his first name), a refugee, father, and sex worker. Leon, a refugee from the Congo, now in Uganda, left his home country because his sexuality was discovered. Due to discrimination in Uganda, however, Leon did not disclose his fear of persecution based on his perceived sexuality. Sexual-preference-based discrimination was not part of his asylum narrative. Instead, he describes being introduced to sex with men as something that would bring him luck as a magical act. When asked why he continued, he said he “got used to it.” Given that Leon was once married and has two biological children and seven orphaned children whom he supports, Dolan tells us, Leon doesn’t fit the stereotype of a gay man from western Europe or Australia. Moreover, Leon doesn’t think of himself as gay; instead, he foregrounds his identity as a sex worker. His account is that he has sex with men for pay to support his children. He says that the man who introduced him to sex with men explained that it would be something that might be useful later, as, indeed, has turned out to be the case in Leon’s ability to support his children. Dolan’s goal is to learn how to guide asylum clients such as Leon to better represent these contending vulnerabilities in their testimonies for resettlement in safer countries. The challenge that such asylum seekers and their advocates face, however, is that intersecting vulnerabilities challenge the normativity underlying the category of ‘membership in a social group,’ one of the four categories that qualify for political asylum.

In Leon’s case, as a man who has sex with other men, being gay seems to be more visible to both activists and police than being a sex worker. Leon’s self-description as a man who has sex with other men for money blurs the categories of LGBTQI, which do not include, for example, male prostitutes, or even more particularly for some contexts, local men who have sex with visiting tourists for money. Leon is, then, ‘out’ as a sex worker if not as a gay man. Leon’s case demonstrates how the deployment of sexuality in the global sexual rights movement poses dilemmas at the local level (Howe and Rigi, 2009: 298). Leon’s case prompts us to ask: What are the limitations of identity-based legal frameworks for addressing the complexities of sexuality, visibility, and structures of subjection, especially if we take into account confounding vulnerabilities?<sup>7</sup> In keeping with Butler’s call for ‘future-oriented labor of cultural translation,’ the film describes cases such as Leon’s not as exceptions but as examples of the problem of being uncategorizable (1999: 9). Butler describes the problem of uncategorizability in relation to violence, specifically:

The person who threatens violence [against someone who does not conform to gender norms] proceeds from the anxious and rigid belief that a sense of world and a sense of



self will be radically undermined if such a being, uncategorizable, is permitted to live within the social world. The negation, through violence, of that body is a vain and violent effort to restore order, to renew the social world on the basis of intelligible gender, and to refuse the challenge to rethink that world as something other than natural or necessary. (Butler, 2005: 71)

The asylum system itself perpetuates the vulnerability of seemingly uncategorizable individuals who do not conform to the asylum officials' expectations for the category.

Many of the individuals in the film have multiple vulnerabilities and sometimes competing narratives. Of particular note, Tatenda Ngwara tries without success to convince the asylum officials that she is a transgendered woman. Her claim is refused, but we learn in a subsequent film that she was raped and became pregnant. We do not know what motivated the decision, whether by Tatenda or the film-makers, to exclude the category of intersex from her narrative. However, we can observe that intersex and transgender are culturally specific categories. In some cultures, intersex and transgender overlap; in some they are distinct categories (Chase, 1998). The case of Florence Kizza, who was held, raped, and brutalized for three days by Ugandan officials, eventually escaped her captors and migrated, with the help of human traffickers, to the UK to seek political asylum, further illustrates the incapacity of the juridical system to account for the complexities of persecution based on sexual orientation. Once Kizza arrived in the UK, she struggled not only with physical illness and depression because of her horrific experiences in Uganda, but she also struggled through the UK asylum process. She indicates that she felt 'degraded' by the legal system in having to prove her sexual identity as a lesbian. Her initial asylum claim was rejected, the judge argued, because there was no proof of rape based on sexual orientation. The judge therefore ruled that she could go back to Uganda, relocate, and be more discreet. Unfortunately, these are fairly common rulings. With the help of a legal rights agency, Kizza was granted discretionary leave to remain for three years, and still has had no contact with her partner. Rachel Lewis describes how the 'discretion logic that underwrites queer asylum policy in the UK not only produces the expectation of particular performances of identity in the public sphere but, perhaps more disturbingly, has resulted in an excessive focus on the sexuality of individual claimants' (2013a).

Harriet Baillot, Sharon Cowan, and Vanessa Munro point out that cultural conventions for talking about stigmatizing experiences such as rape play a significant role in the asylum system's culture of suspicion and suggest that "Legal advice, where it is available, can help applicants to 'reframe' their narratives to fit the persecution paradigm" (2011: 120). The issues Baillot et al. raise are further intensified in political asylum claims by sexual minorities (Swink, 2006). Claims of rape are, as they observe, dependent on conventions for disclosure/non-disclosure; rape is currently recognized as persecution in many countries, although applicants who can prove they were raped do not necessarily receive asylum (Dorling et al., 2012).

Claims based on persecution of sexual minorities face the additional problem of what Jasbir Puar describes as sexual exceptionalism, producing exceptional vulnerabilities (2007: 7) and impossible subjectivities (2007: 19). In other words, not only is disclosure not the whole problem, but disclosure is always compromised. The individuals claiming political asylum based on violence they experienced as sexual minorities are, in a sense, unknowable, because unrecognizable, to the asylum officials. By telling their individual stories, *Getting Out* does not make them known but instead points to the problem of unrecognizability.

*Getting Out* is an effort to create visibility for otherwise unrecognizable victims of persecution. We have suggested that this lack of recognition can be attributed in part to the political asylum policies requiring demonstration of membership in a social group and to the necessity of non-disclosure for people fearing persecution. But the film also points to the ways in which visibility logics sanctify singular identities and the atomistic legal subject of liberalism, and in so doing erase the social factors that may be less visibly intelligible, such as the economic persecution of queer communities. The persecution of sexual minorities is, interestingly, one of the areas in which political asylum applicants have become activists confronting inequalities, in part through documentary films, such as *Getting Out*, that importantly raise the profile of political asylum decision making. Political asylum is not a widely understood or recognized problem; some categories of political asylum applicants—and individuals fleeing sexual violence is an example—have received publicity. The argument that some, or even many, political asylum applicants are actually economic migrants is unsubstantiated. For example, in a South African Broadcast Corporation 'Special Report,' the narrator suggests that with few other avenues open to immigrants seeking work, the political asylum process has become flooded, with South Africa becoming the largest country receiving applications—and also, turning them away. Just getting into the process is nearly impossible.<sup>8</sup>

People who work on political asylum, whether the lawyers, judges, policy makers or scholars, recognize that highly politicized cases have been more successful and that without publicity, some cases would not succeed at all. Celebrities seeking asylum, for example, famous athletes or artists, also benefit from an already recognized country profile. Individuals who do not have a sufficiently political profile, according to the officials, to warrant receiving asylum, have, in some cases, been granted asylum after their cases received so much publicity that they have been considered to be at risk for return because of the publicity, rather than because of the persecution they claim in their application (for example Fauziya Kansinjda). Films such as *Getting Out* create a profile for the individuals portrayed and thus, perhaps, enhance their success with the asylum process. In particular, applicants seeking asylum based on sexuality face the problem of proving that they have a political profile that puts them in danger. Their activism in the UK and their participation in the film help to substantiate their claim to that profile.

Without a doubt, politicians and activists have made significant inroads into greater success for asylum applicants; several successful sexual minority cases relied

on publicity and advocacy (Mohyuddin, 2001). At the same time, political advocacy has fueled persecution; in some cases, the categories of LGBTQ have been seen as western and/or colonial imports; this perception has then been used as a warrant for persecution. *Getting Out* includes an excerpt from Hilary Clinton's speech to the United Nations, in which she makes a plea to end persecution of LGBT individuals. In the longer speech made to the UN, she argues that LGBT people are everywhere and that being LGBT and/or Q is not a choice but a way that people are. She argues fiercely against persecution, but as we see in the film, her views are an example of what the persecutors in Uganda regard as imported colonial values. *Getting Out* thus prompts viewers to consider the degree to which the identity categories LGBT reflect a western understanding of sexual minorities based on individual conceptions of selfhood that do not necessarily address the complexity of the experiences of sexual and gender minorities from diverse cultures.

In a discussion of the complexities of cross-cultural influences, impositions of categories, and stereotypes regarding sexuality, Joseph Massad argues, 'The Gay International is *correctly* perceived as part of Western encroachment on Arab and Muslim cultures' (2002: 375). Massad recommends a complex understanding of highly visible (and often negative) westernized gay discourses in the Arab world, including the role of sexual tourism. *Getting Out* refuses easy categories of sexuality and, for example through Leon's story, includes the contexts of sexual tourism. Some of the people portrayed are themselves activists, and although they may be unsuccessful in gaining any recognition from the bureaucracies, they are clearly in control of their own stories. Part of the problem, as the film makes clear, is that the political asylum discourse looks remarkably like the persecution discourse in its dismissal of the LGBTQI applicants for asylum. Although positioned to offer protection as a remedy for persecution, the political asylum discourse, as represented in the film, sustains the negative discourse of the persecutors. The problem may be the discourse of protection itself. Matthew Price argues that discourses of protection inevitably fail and that instead recommends an accountability approach. 'The protection approach, which looks to a refugee's exposure to harm rather than to the identity of the agent responsible for the harm, relegates asylum to an essentially humanitarian, rather than political, role' (2005: 357).

The rhetorical power of *Getting Out* therefore lies in its performative staging of LGBTQI asylum seekers' navigation of often competing cultural and legal logics on sexuality. As Judith Butler pointed out in her 2008 lecture 'Performativity, precarity and sexual politics,' '[N]orms are not only instances of power; and they do not only reflect broader relations of power; they are one way that power operates' (2009: ii). 'There is no gender without this reproduction of norms that risks undoing and redoing the norm in unexpected ways' (2009: i). The film prompts us to ask: What normative assumptions about the conditions of recognition underwrite the public and officials' engagement with LGBTQI asylum seekers? And how do/can LGBTQI asylum seekers and their advocates navigate the legal regulation of sexuality as a mechanism of exclusion?

Within the first few minutes of the film, viewers are presented with an example of the strategic use of discourses of contagion, invasion, and negation by parties that support anti-gay legislation and those that oppose anti-gay legislation, and more broadly, the legacy of using sexuality as an exclusionary mechanism of the state. On 14 October 2009, the Ugandan anti-homosexuality law, known as the 'Kill the Gays Bill,' was introduced by a Member of Parliament David Bahati. (The bill was reintroduced in 2012.) The bill aims to broaden the criminalization of same-sex relations in Uganda domestically, includes provisions for Ugandans who engage in same-sex relations outside of Uganda, and penalties for individuals, companies, and organizations that support LGBTQ rights. The bill also includes a provision for the death penalty for 'aggravated homosexuality.' Daniel Englander notes that, 'the Bill sparked a nationwide flare of homophobia, where citizens, politicians, and the media have branded homosexuals as "un-African"' (2011: 1264). Supporters argue that the 'law [is] designed to protect their traditional values against the invasion of Western homosexuality' (this disposition was represented in the film). As the narrator of the film notes, "The outdated provisions on unnatural offenses echo those found in the penal codes of many of the former colonies of the British Empire." Although local supporters in Uganda, who were interviewed in the film, view the bill as a 'law against the invasion of Western homosexuality,' a western man, interviewed by ABC news, tries to distance the West from its colonial past by framing western interventions in support of the anti-gay bill as an effort to bolster existing cultural values in the community. In the ABC news interview, when asked if his comments might yield 'unpleasant outcomes' he replies: 'Do you think that these people have not already had a strong opinion against homosexuality?' In an ironic appropriation of anti-colonialist criticism, he argues that the accusation that western Christian groups have brought homophobia to Uganda is racist and an example of the 'colonial mindset all over again.'

Human rights entanglement with colonialism points to a core debate between cultural relativism and philosophical universalism in the history and development of human rights law and its mobilization. Although justifications for the persecution of sexual minorities sometimes refer to anti-colonialist rhetoric, they represent a more complex web of Christian, local religious, historical, and cultural moral discourses. The cultural traditions to which the relativist features of the Uganda law and its supporters refer are not isolated or singular. Indeed, supporters' arguments are clearly inflected by Christian modalities and narratives that continue to have traction in the West, namely the focus on the sin, not the sinner. 'We love homosexuals but hate homosexuality.' Anti-gay rhetoric in Uganda draws its authority from religious discourse as well as from the Christian lobbyists who promise billions in aid to Uganda (Englander, 2011: 1270). Thus in addition to asylum reforms, cross-border activist collaborations, and international pressure, LGBTQI rights activists must also engage the religious debates. By focusing on the multiple layers of power and cultural discourses operating in the political asylum process as well as transnational movements for LGBTQI justice and local responses to these movements, *Getting Out* essentially prompts viewers to

think about how sexuality and sexual rights operate as forms of transnational exchange.

### **Queering human rights and political asylum**

The political asylum process has several fundamental flaws. On the face of it, the most obvious flaws that are revealed in this film are: (1) the perpetuation of homophobic stereotypical assumptions embedded in asylum officials' expectations that applicants prove their sexual status; (2) more generally, the problem of applying western categories of sexuality to culturally different situations; and (3) contradictory ideas about the public and private display of sexuality (which led to the now discredited idea that discretion is a solution to persecution). However, the film points to a deeper flaw in the political asylum process, the idea of countries that persecute and countries that offer safe haven. The political asylum process offers safe haven but at the cost of sustaining a distinction between East and West, global South and global North, developed and undeveloped countries. *Getting Out* therefore prompts us to approach LGBTQI rights from a transnational framework attuned to how state mechanisms police sexuality and sexual liberty.

In using *Getting Out* as part of the genre of human rights documentary to bring a transnational approach to the study of LGBTQI rights and political asylum, our goal has not been to arrive at some 'uncontaminated' rights discourse but rather to consider how overlapping cultural and political discourses delimit the parameters of public exchange on and legal recognition of the rights of gender and sexual minorities. Here we refer to transnationalism to account for the circulation of people, policies, and categories of sexual minorities that are central to political asylum. However, as the film demonstrates, the contexts in which LGBTQI individuals negotiate their rights are either relentlessly local, designed to prohibit any sort of circulation, whether of individuals or ideas, or blatantly transnational, in media messages intended for far distant audiences. In the local contexts, the officials deny the rights of asylum seekers who base their claims on their status as persecuted sexual minorities. The film is part of a transnational public exchange, and at the same time, with its focus on individual cases, it acknowledges that this public exchange about human rights may have little impact in the local arena of decision making. *Getting Out* also suggests through its depiction of Leon, that LGBTQI asylum claimants face intersecting forms of oppression, and, as Susan Hazeldean notes in her research, that LGBTQI asylum seekers are also vulnerable to stigmatization and to the outmoded status [identity] and conduct [behavior] distinction (2011: 405, 394).

*Getting Out* calls for a transnational sexual rights discourse that does not treat confounding identities and vulnerabilities as an obstacle to political recognition. To develop this critical rights discourse we turn to the insights that queer migration scholarship offers with regard to these confounding identifications, the limits of identity-based systems of analysis and legal implementation, and the legal recognition of the multiple, contingent identities of the queer migrant (Chávez, 2013: 27).

In 'Queer/migration: An unruly body of scholarship,' Eithne Liubhéid observes that LGBT activism and queer studies scholarship offer two contrasting approaches to identity-based rights. On the one hand, LGBT activism has long been perceived as a recovery and valorization of histories and identities rendered invisible and/or unspeakable (those who identify or are identified by others as LGBTQ, tomboys, queens, etc.), and the LGBT rights movement has long been focused on bringing LGBT persons into the language of the law, as same-sex marriage rights. On the other hand, queer studies scholarship tends to focus on identities that exceed existing categories, or that have been cast as "impossible subjects." Queer studies scholarship tends to place methodological emphasis on how "regimes of power and knowledge . . . generate structures of impossibility" and "heteronormative governance" (Liubhéid, 2008: 175). Similarly, queer migration scholars and activists call for the development of a coalitional political vision. For example, Chávez argues that the 'queer migrant is an inherently coalitional subject, one whose identities and relationships to power mandate managing multiplicity' (2013: 9). Clearly, the universalizing logic of human rights can work in ways that erase cultural particularities. Can asylum law accommodate a more fluid understanding of sexuality and sexual identity? How do asylum cases based on culturally different concepts of sexual minority challenge the idea of universally applied human rights? And further, if gay and lesbian activism has emphasized the immutable nature of sexual identity, what is at stake in adopting a 'queer' framework for sexual rights?

*Getting Out* may point us toward but does not overtly address the queering of human rights. Importantly, *Getting Out* reveals how the obstacles to political asylum are part of the heteronormativities that operate in both the countries people flee and the countries where they turn to for refuge. The film juxtaposes scenes of brutality and hate-mongering in Uganda with encounters with political asylum system bureaucracy and presents them as book-end obstacles representing the fear of coming out in one's home country and the difficulty of getting out (and getting asylum). But *Getting Out* does not fully address how both situations make queer individuals into impossible subjects, unrecognized and unknowable according to preconceived categories of normalcy. Butler observes the political predicament that rights discourse imposes on those who argue for protection against discrimination. Rights discourse calls forth a presentation of oneself as 'distinct, recognizable, delineated, a subject before the law, a community defined by sameness' (2005: 52). 'Although this language may well establish our legitimacy within a legal framework ensconced in liberal versions of human ontology,' Butler argues, and we concur, 'it fails to do justice to passion and grief and rage, all of which tear us from ourselves, bind us to others, transport us, undo us, implicate us in lives that are not our own, sometimes fatally, irreversibly' (2005: 52). Likewise, in her essay 'Queering vulnerability: reconceptualizing the erotic in political asylum narratives,' Lewis calls for the 'queering' of lesbian asylum narratives, which involves recognition of how violence and erotic agency co-exist. Lewis turns to queer conceptions of vulnerability and precarity as offering "something other than sexual

autonomy as an alternative to state violence” (2013b: 22).<sup>9</sup> Lewis also calls for a “theory of sexual rights grounded in the notion of erotic vulnerability or contingency” (2013b: 18). She argues that such a theory would be a “useful tool to adopt in the context of the political asylum process insofar as it helps to pose the problem of identity in lesbian asylum narratives” (2013b: 18). Queering human rights thus represents a shift from the atomistic subject of rights law toward the recognition of coalitional subjectivities that reach for the causes of vulnerability and conditions of belonging to the nation-state. Efforts to queer human rights, however, do not escape universalizing logics. Rather as *Getting Out* demonstrates, LGBTQI asylum seekers must carefully navigate both the universalizing logic of human rights and the logic of fixity that the asylum system engenders.

## Conclusion

In sum, *Getting Out* calls attention to profound contradictions in the political asylum system for sexual minorities and for any others who challenge the normativity of a social group. Of course, persecution itself targets individuals who fail to conform to various locally and politically imposed normativities. *Getting Out* offers important insights about how the political asylum process sustains those normativities; as the film makes clear, the discourses of protection and the discourses of persecution are both complicit in rendering LGBTQI individuals invisible and illegible. Adopting a queer framework may push scholars and activists beyond an understanding of sexual rights as solely a matter of navigating entrenched cultural and historical norms. Chávez articulates a theory of rhetorical interactionality that “highlights the complicated and dynamic way in which identities, power, and systems of oppression intermesh, interlock, intersect, and thus interact” (2013: 58). Similarly, we propose that queering human rights is not about the delineation or fixity of intersecting identities, though certainly persecuted subjects experience interlocking oppressions. Queering human rights aims to counter the logic of fixity that sustains oppressive social norms to produce the persecuted subject of asylum law. A queer framework compels an analysis of what prevailing protocols of intelligibility do not account for and render invisible and/or unknowable. Rendered unintelligible, invisible, and unrecognized in the political asylum process, sexual minorities attempting to “get out” are faced with the ultimate exclusion, without any safe place to go.

## Notes

1. Here we build on C Howe and J Rigi (2009) *Transnationalizing desire: Sexualizing culture and commodifying sexualities*.
2. For an overview of obstacles faced by LGBTQI individuals, see the Fahamu Refugee Report (n.d.). The first successful applicant claiming political asylum on the basis of persecution as a sexual minority was Fidel Toboso-Alfonso, a gay man from Cuba, who received asylum in 1990, 10 years after he left Cuba on the Muriel boatlift (Mohyuddin, 2001: 400; Canning, 2011; see also Neilson, 2005).

3. Keenan writes, “The very operation of refugee law in the context of sexuality confirms the Western state’s status as place of modernity, cultural tolerance and political superiority, and that of the county of origin’s primitiveness, homophobia and general inferiority” (2011: 43).
4. As we discuss, the categories LGBTQ and I are themselves fraught and, in many cases, limiting. Transgender and intersex applicants face particular problems. Fatima Mohyuddin discusses the term “third gender” to describe “people around the world who live outside of culturally imposed sexual and gender boundaries” (2001: 388). In some cultures, third categories, such as the hijiras in India, are recognized. Mohyuddin provides descriptions of several transgender and intersexed applicants, some of which were successful (2001: 404–410). Also see Tom Boellstorff’s *The Gay Archipelago*, which focuses on queer activism in Indonesia or Martin Manalansan’s ethnography of queer Filipinos, *Global Divas*. Both demonstrate that LGBTQ terms often co-exist with local terms and/or are adapted with differential meanings in non-western societies.
5. See Keenan’s discussion of the overturning of the discretion requirement (2011: 35).
6. Keenan argues that, “refugee law produces particular spaces and identities that most queer women fleeing state-tolerated persecution fail to fit into” (2011: 32).
7. See Keenan’s discussion of “producing the vulnerable lesbian subject” in the political asylum process (2011: 35).
8. Documentary films and news articles about political asylum have pointed to inequities in the system and also to controversies about the idea of providing safe haven, a relatively non-controversial policy when it was first instituted, in part in response to the embarrassment of *not* protecting refugees fleeing Hitler during the Second World War. It was relatively non-controversial to offer political asylum to individuals fleeing Communism during the Cold War or to individuals from South East Asia in jeopardy from collaboration with the USA after the Vietnam War. Interestingly, the first sexual minority to gain political asylum in the USA was from Cuba, so his success may have included a predisposed positive attitude toward his case (Mohyuddin, 2001).
9. See also Miller’s observations about “how complexly queerness migrates, how it is constituted and constitutes itself differently on different sides of borders” (2005: 163–164). See also Pulitano’s discussion of the role of race in asylum hearings (Pulitano, 2013).

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