



LGBT Asylum Claims: Examining the limits of citizenship in Post-1994 Cape Town, South Africa

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Abstract: *LGBT asylum claimants and refugees receive little attention in South Africa despite the state's progressive constitution specifically in terms of sexual orientation. This primarily qualitative study conducted through in-depth semi-structured interviews with LGBT asylum seekers and NGOs examines the ways in which refugee status is limited through, what I term, afro-homophobia. I argue that the implicit heteronormativity of the South African state detrimentally affects LGBT refugees applying for asylum within its borders. I explore two sides of this argument: 1) The Department of Home Affairs (DHA) in South Africa is incapable of justly evaluating sexual minority asylum claims due to poor training; bureaucratic backlog and disorganisation and the persistence of homophobic and afro-phobic¹ mindsets. 2) South Africa—specifically Cape Town—is not a safe haven for forcibly relocated LGBT migrants and the state continues to de-prioritise LGBT issues assuring that violence follows sexual minorities from their country of origin to their re-location sites in Cape Town. In doing so this research contributes to refugee and migration studies through the examination of sexual minority refugees who navigate a system which excludes them.*

Résumé: *LGBT demandeurs d'asile et les réfugiés reçoivent peu d'attention en Afrique du Sud, malgré la constitution progressive de l'état spécifiquement en termes d'orientation sexuelle. Cette étude qualitative menée principalement par le biais des entrevues en profondeur semi-structurées avec les demandeurs d'asile LGBT et des ONG examine les façons dont le statut de réfugié est limitée par, ce que je terme, afro-homophobie. Je soutiens que l'hétéronormativité implicite de l'Etat sud-africain a un effet défavorable réfugiés LGBT demande d'asile au sein de ses frontières. Je explore deux côtés de cet argument: 1) Le ministère de l'intérieur (DFI) en Afrique du Sud est incapable d'évaluer justement revendications sexuelles minorité d'asile en raison de la mauvaise formation; arriéré bureaucratique et de la désorganisation et de la persistance des mentalités homophobes et afro-phobiques. 2) Afrique du Sud spécifiquement Cap-ne est pas un refuge pour migrants LGBT déplacés de force et de l'État continue de dé-prioriser les questions LGBT assurant que la violence suit les minorités sexuelles de leur pays d'origine de leurs sites re-localisation à Cape Town. En faisant cette recherche contribue à des études de réfugiés et de migration à travers l'examen des réfugiés des minorités sexuelles qui naviguent d'un système qui les exclut.*

¹ As I will show afro-phobia refers to the fear of the non-South African—African 'other'.

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Chapter 1: Introduction and Background

The United Nations High Commission for Refugees (UNHCR) issued a guidance note regarding the issue of Lesbian, Gay, Bisexual, Transgendered (LGBT) asylum seekers and refugees in 2008. This note affirmed that individuals were unequivocally able to claim asylum when facing persecution due to their sexual orientation or gender identity. Asylum seekers should no longer feel compelled to hide their gender or sexual identities.

As Clause 31 states: *That an applicant may be able to avoid persecution by concealing or by being “discreet” about his or her sexual orientation or gender identity, or has done so previously, is not a valid reason to deny refugee status. As affirmed by numerous decisions in multiple jurisdictions, a person cannot be denied refugee status based on a requirement that they change or conceal their identity, opinions or characteristics in order to avoid persecution. LGBT² people are as much entitled to freedom of expression and association as others.* (UNHCR 2008).

South Africa—a country which receives a large number of refugee claims, and where discrimination on the basis of sexual orientation is expressly prohibited under the terms of Article 9.3 of the 1996 constitution—might be thought to be among the jurisdictions where LGBT refugees would find an especially positive response (Vos 2007). However, despite LGBT positive rhetoric from the state and pressure to match a developing norm on LGBT refugee rights

² I have dropped the “I” part of this abbreviation in my analysis as I did not interview or come across cases with intersexed individuals claiming asylum. However, the “I” is often used and could be politically useful to emphasize the struggles of intersexed individuals. Although I do not feel comfortable using the letter in my own work clearly these individuals are under studied. I would further argue that Intersexed individuals are packed into the growing LGBT acronym but have not yet received particular attention on an international scale.

internationally, South Africa continues to discriminate against sexual minorities seeking refuge within its borders.

This thesis shows that the asylum claim adjudication process of sexual minorities in South Africa is characterized by a disparity between the state's progressive rhetoric on the international scale and practice within its borders. I analyse this disparity using the concept of heteronormativity which brings valuable insight to particularities of the South African case³. Heteronormativity is a systemic representation of a heterosexual hegemony or “common sense”. In the Gramscian sense, hegemony refers to the concept of consent, that is to say, a norm which is ingrained and remains unchallenged. In this thesis, I use heteronormativity in reference to the refugee administration system—an (heteronormative) ideal which remains an under-examined constant. Asylum seekers in South Africa are assumed straight and as evidence in this thesis will show, the expression of non-cis or hetero sexual orientation or gender identity is detrimental to their claim. LGBT asylum seekers simultaneously challenge and desire to be incorporated into the heteronormative state which structures relationships between state and society and continues to cast sexual minorities as undesirable citizens of post-apartheid South Africa. I argue that the implicit heteronormativity of the South African state detrimentally affects LGBT refugees applying for asylum within its borders. I explore two sides of this argument: 1) The Department of Home Affairs (DHA) in South Africa is incapable of justly evaluating sexual minority asylum claims due to poor training; bureaucratic backlog and disorganisation and the persistence of homophobic and afro-phobic⁴ mindsets. 2) South Africa—specifically Cape Town—is not a safe

³ As I will elaborate in further sections, state led heteronormativity (Luibheid 2008) refers to the system (services and policies) which is designed for heterosexual gender conforming individuals thereby alienating ‘LGBT’ identities in favour of U.N based rhetoric on women's rights and gender equality.

⁴ As I will show afro-phobia refers to the fear of the non-South African—African ‘other’.

haven for forcibly relocated LGBT migrants and the state continues to de-prioritise LGBT issues assuring that violence follows sexual minorities from their country of origin to their re-location sites in Cape Town. In doing so this research contributes to refugee and migration studies through the examination of sexual minority refugees who navigate a system which excludes them.

Although many countries in the Global South remain difficult places for sexual minorities South Africa has promoted itself as a ‘safe haven’ for LGBT persons since democratic transition in 1994 (Department of Home Affairs 2013). Thus, South Africa forms the single-case for this thesis because it is the only African country to provide any legal protections for LGBT persons. An important aspect of this thesis is the recurring theme of violence which begins at the country of origin for sexual minorities who are forced to migrate.

The empirical chapters of this research are primarily based on qualitative semi-structured interviews with experts from prominent NGOs and sexual minorities who have claimed asylum in South Africa. Literature in South Africa regarding this topic is scarce and qualitative research is necessary to unveil this information. Importantly, the DHA does not collect statistics on sexual minority claims. More, it is rare for LGBT asylum seekers to reveal their sexuality (Portman and Weyl 2013) and so discrimination is insidious and based on heteronormative misunderstandings of sexual orientation and gender identity.

This thesis is structured as following: The first chapter will contextualize the research problem by providing an overview of LGBT rights and refugee practice in South Africa. Chapter 2 comprises the literature review and conceptual frameworks which inform the broader analysis of this research. Using interviews from NGOs/experts and asylum seekers chapters 3, 4, and 5

examine the circumstances of origin stories of sexual minorities seeking asylum in South Africa, their interactions with the state, and their lives upon relocation to Cape Town respectively. Finally, Chapter 6 provides conclusions and possible avenues for further research.

A Brief History of LGBT Rights in South Africa

South Africa became the first country to prohibit discrimination on the basis of sexual orientation in the post-apartheid constitution and the first country in Africa to amend the Civil Union Act to allow same-sex marriage in 2006 (Nullis 2006). Although South Africa's constitution can be deemed "progressive" this section will focus on the ways these rights are accessed unevenly throughout the country. In this section, I argue that the inclusion of LGBT rights into South Africa's constitution was due to strategic political linkages by key LGBT positive organisations in the formation of the post-apartheid state. Unlike countries such as Argentina, South Africa's LGBT movement did not engage grassroots populations. Understanding the inclusion of LGBT rights is an important part of this thesis which primarily explores the disparity between rhetoric and practice. As this section will show, the inclusion of LGBT rights in the constitution is juxtaposed with approximately half of South Africa's citizens finding homosexuality unacceptable. Here I provide a brief history of sexual regulation in apartheid era South Africa. I then examine the ways in which certain organisations, vis-à-vis political alliances, were able to insert gay rights into the constitution. Finally, I contextualize the landscape of LGBT rights in South Africa through survey data on acceptance of homosexuality and the persistence of violence in racialized spaces specifically in Cape Town.

Prior to the Civil Union Act in 2006, South Africa, like other countries, established anti-homosexuality legislation on the grounds of morality. The Amendment to the Immorality Act of

1957⁵ is the most relevant document regarding sexual regulation in the country. Although the focus of this act was to prevent sexual relations across the races, homosexuality was deemed unnatural and therefore undesired within apartheid state (Thompson 1990). Homosexuality was not entirely forbidden in this Amendment; however, the amendment officially barred homosexual behaviour in public (Gay and Lesbian Archives University of Witswatersand 2014). This implied that gay cruising sites such as public bathrooms or private bathhouses could no longer operate. The amendment to the Immorality Act also increased the age of consent from 16 to 19 and disallowed more than two or more men to be together and perform any act that would arouse sexual passion. (Gevisser 1995).

The Act stated the following: *20A Acts committed between men at a party and which are calculated to stimulate sexual passion or to give sexual gratification prohibited*

(1) A male person who commits with another male person at a party any act which is calculated to stimulate sexual passion or to give sexual gratification, shall be guilty of an offence.

(2) For the purposes of subsection (1) “a party” means any occasion where more than two persons are present.

(3) The provisions of subsection (1) do not derogate from the common law, any other provision of this Act or a provision of any other law (Section 20A Immorality Act 1967)

Thus, although homosexuality—that is to say being a homosexual—was not illegal committing any act indicating same-sex desire was illegal. More, the use and production of sex toys for any “unnatural sex acts” was also banned. Importantly, women are not mentioned in this

⁵ That is to say, since 1910 although anti-sodomy laws and laws surrounding unnatural sexual offences were present before this

act which indicates the mentality of the time which focused on the same-sex desire of predominantly (white) gay men.

Up until the 1980s gay organisations were predominantly white and male and although the apartheid government increased sexual regulation enforcement of this legislation was relatively lenient due to the class and racial privileges of the majority of offenders (Gevisser 1995). The first official gay rights CSO—The Gay Association of South Africa (GASA) (1973)—was in fact an apolitical answer to gay needs. The 70s and 80s embodied a subculture of gay needs in the form of clubs, bars, and gay owned newspaper *EXIT*; however, none of these entities were political in their challenge to the apartheid state (Croucher 2002). GASA ceased to exist by 1986 and other gay rights organisations such as GLOW and the Organisation of Lesbian and Gay Activists (OLGA) formed in 1988 and 1989 respectively took its place. GASA became outdated due to its focus on gay subculture while GLOW and OLGA had now attached gay rights to the broader struggle of the anti-apartheid movement within the country. OLGA became officially affiliated with the United Democratic Front (UDF) which was politically aligned with the African National Congress (ANC) (Vos 2007). Here, it becomes clearer that the onset of legitimized LGBT organisation in South Africa was tied to gaining political leverage through party-based alliance with the ANC. And this makes sense, as de Vos suggests, the powerful masterframe of apartheid allowed the gay-liberation to be packaged with anti-racist legislation as well. An important strategy deployed by OLGA was to minimize the effect of the sexual orientation clause—the focus was not on same-sex desire in order to circumvent Christian morals within the ANC. The ANC, having a heavy religious base, was not eager to allow sexual equality; however, the rights were framed as an end to oppression and discrimination of gays and

lesbians as being similar to other forms of repression (Vos 2007). In this regard, LGBT rights did not forge a path to challenging the vehemently hetero-patriarchal state.

OLGA was the first organisation to create a gay and lesbian charter which tied gay rights to liberal notions of universal rights aiming to all forms of discrimination in the apartheid state. Many in OLGA felt that the ANC owed them due to their contribution in the anti-apartheid struggle. The case for gay rights inclusion was made easier as “comrades” of the struggle were being harassed. Since members of OLGA also fought against the anti-apartheid regime the inclusion of LGBT rights was seen as politically necessary instead of being forced into public discussion. Thus, instead of engaging the grassroots OLGA was able to use their political connections to foster inclusion of LGBT rights into the constitution (Thoreson, Somewhere over the Rainbow Nation: Gay, Lesbian and Bisexual Activism in South Africa 2008).

As Natalie Oswin suggests, if it was not for the National Coalition for Gay and Lesbian Equality (NCLGE) the constitution may have never included sexual freedoms (Oswin 2007). Although the NCLGE went on an extensive lobbying campaign, even employing lobbyists, in order to retain the clause, the strategy was certainly passive and controlled by a few elites. The NCLGE wanted to retain control of the movement through a top-down management style. Since NCLGE became the authority on the LGBT movement in 1994 other groups were silenced and a particular, passive, style of lobbying highly focused on the inclusion of sexual orientation clause into the constitution made did not necessarily challenge the heteronormative state. Second, the campaign did not intend to change homophobic attitudes at the grassroots⁶ and provided an overly sanitized and ahistorical image of sexual minorities. That is to say, because the campaign

⁶ In this regard, the NCLGE was actually similar to the CHA in that it portrayed gays and lesbians as ‘normal’ people

was elite driven it discounted the lived experience of racialized gays and lesbians and continued the discourse of homosexuality being linked to whiteness in South Africa. Homosexuality was not seen as a public issue for black South Africans and was thus, cast as a sexual practice of white men in particular space removed from their own realities. The movement to include sexual orientation into the constitution did not aim to change this view or include awareness of race and sexuality in their campaign.

Finally, as de Vos also argues, the NCGLE chose to deploy a strategy of persuasion as opposed to confrontation in order to restrict a grassroots movement. In fact, the NCGLE made direct political action, civil disobedience, picketing, demonstrations and protest type actions to be inappropriate within their organisation (Vos 2007). I argue that the majority of the racialized population in South Africa was too focused in the post-apartheid project of nation-building that constitutional rights for sexual minorities was slipped into the legal prescriptions without much attention. Although this may be a victory for LGBT Civil Society Organisations who were very strategic in their wording and their ability to generate legal privileges. South Africa remains a dangerous place in spaces where homosexuality is less than tolerated despite constitutional privileges.

As Andrew Tucker suggests, Cape Town has been a city of queer consumption for decades even during the apartheid era. Even though amendments to the Immorality Act in 1957 (Tucker 2009). Gay tourism has also risen over the 2000s as Cape Town also offers a Pink Route for tourists. The Pink route, according to a South African travel website, “Is a collection of gay-owned, gay-friendly and exclusively gay South African lodgers, hotels, and guest houses...” (SouthAfrica.Info 2014). More specifically, the De Waterkant district—Cape Town’s pseudo gay village—caters to gay males with self-proclaimed gay bars predominantly geared to upper-

middle class clientele (most of whom are white). As Jill Williams argues, being gay in Cape Town is often correlated with whiteness and thus, the De Waterkant district—a historically white-gay male space—remains a space for white male consumption today (J. R. Williams 2008). LGBT rights in South Africa are historically underpinned by white gay males, and thus, the tying up of gay rights with whiteness allows for sexual minorities to be cast as western influenced. The fact that the LGBT ‘movement’ was tied with white-males has also resulted in severe violence in township areas to non-whites who are allegedly demonized due to their sexual practice vis-à-vis influence by white “culture”.

According to a Gallup survey considering public opinion on whether certain countries were safe for sexual minorities, South Africa represented an outlier on the African continent where 51 percent of survey participants said that their area was a safe place. As table 2 suggests, unlike countries such as Senegal (98 % say “unsafe”) or Uganda (95 %) South Africa appears to be safer for LGBT individuals (Gallup 2014). Similarly, according to a Pew research poll in the data presented in table 1, South Africa continues to be an outlier in Africa where 61 percent of participants believe that homosexuality is unacceptable while this percentage jumps to 96 and 98 percent in Uganda and Nigeria (Pew Research Centre 2013). Although South Africa is more tolerant than other countries within its region which, at least partly, explains LGBT positive regulation within the country these numbers mask spatial discrimination. That is to say, violence towards sexual minorities is more prominent in township areas resting on apartheid dynamics of class and space. When comparing South Africa to other countries which have enacted LGBT positive rhetoric such as the Netherlands and Canada (80 percent acceptance respectively), South Africa’s percentage of LGBT acceptance is significantly lower. As I have argued, LGBT rights-inclusion in the post-1994 constitution did not take place through deep grassroots engagement

and thus, unlike South Africa’s pro-LGBT “western” counterparts, resistance towards sexual minorities—especially in ghettoized spaces—continues to exist. The Pew and Gallup studies reflect the migratory patterns of LGBT asylum seekers. Indeed, the countries that these individuals are fleeing from are homophobic and violent; however, this violence does not disappear upon entering the South African state.

“SHOULD SOCIETY ACCEPT HOMOSEXUALITY?” (AFRICAN COUNTRIES)	PERCENTAGE FINDING HOMOSEXUALITY UNACCEPTABLE (%)
SOUTH AFRICA	61
KENYA	90
UGANDA	96
GHANA	96
SENEGAL	96
NIGERIA	98

Table 1: Should Society Accept Homosexuality? Adapted from the PEW Research Centre Global Divide on Homosexuality Study

LEAST HOSPITABLE COUNTRIES FOR GAY PEOPLE TO LIVE (ACCORDING TO CITIZENS) PERCENTAGE FINDING SOCIETY UNSAFE (%)

SOUTH AFRICA	49
SENGAL	98
UGANDA	95
MALAWI	96

Table 2: Least hospitable countries for gay people to live according to citizens. Adapted from the Gallup International Poll study 3 in 10 worldwide see their areas as good for gays.

An important study conducted by Amanda Lock-Swarr on lesbian violence in the townships of South Africa points to the ways in which lesbianism poses a challenge to heteropatriarchal norms and aims to explain why female sexual minorities are targeted more than males. Theorizing corrective rape, Lock-Swarr suggests that this form of violence—often conducted in gangs—views lesbians as challenging the reproductive role of women. Moreover, the violence associated with rape suggests discomfort with the concept of a woman choosing to be with another woman as opposed to a man and rape being used as justification in order to ‘show the woman what she is missing’ (Lock-Swarr 2012). Similarly, a 93-page report by the Human Rights Watch (HRW) based on 120 interviews conducted in six of South Africa’s provinces found that lesbians and transgendered individuals faced extensive discrimination from both government and in private. As the report states “many of the 121 people we interviewed...told us that rigid social and cultural norms for appropriate feminine and masculine behaviour resulted in them living a life of fear and self-policing, sometimes impeding their

ability to finish school or get and keep a job, and exposing them to rejection and ridicule in public spaces and at home.” (Human Rights Watch 2011). Importantly, the report conveys that legal rights, although important and having the potential to be empowering, are meaningless in the realities of violence in the face of rigid hetero-gender-normativity (Human Rights Watch 2011).

In contrast, a study by Xavier Livermon suggests a different level of discrimination for individuals in male-male same-sex relationships. *Moffies* or effeminate gays are often targets of heartbreak and violence in township areas. However, not all gay-male relationships are viewed with as much vehemence as lesbian relationships (Livermon 2012). That is to say, the ability to reproduce allows some same-sex desiring males to lead a double life. Lock-Swarr’s piece illustrates this as she observes a group of men making fun of another man for being gay and being picked up by his boyfriend to leave the city every weekend. This same man responds by saying that he has a child and is therefore more of a man than any of them (Lock-Swarr 2012). In this case, the allegedly gay male is absolved of too much mockery as he was able to prove his manhood by impregnating a woman. Importantly, the way identity is de-coded by people in townships poses certain individuals at risk more than others. Beyond the notion of violence, ‘*moffies*’ in same-sex relationships often face financial and emotional instability as their partners cannot openly discuss their sexuality and often have a family.

Contrasting the ritzy glamour of De Waterkant in Cape Town, the correlation between gay rights and whiteness has not entirely disappeared.⁷ Organisations such as NCGLE continued a

⁷ Although the influence of Western notions of sexuality propagate a framework for LGBT rights in South Africa, the face of activism within the country has certainly become more nuanced since 1994. An example of this is Pride marches in Khayelitsha (P. Sefali 2015) and various—although still underground—bars which accept sexual minorities outside of the De Waterkant district in wider Cape Town. However, borrowing from Ryan Richard

legacy of gay organisation that prevented grassroots participation. The legacy of South Africa's LGBT movement is predominantly elite driven and structured by powerful actors which these organisations chose to align with. South Africa's LGBT movement remained top-down and this strategy continues to prevent the realisation of gay rights for many of the nation's citizens. In many ways, the top-down strategies of incorporating LGBT rights into the constitution have been rhetorical and show a clear disconnect with practice. On the other hand, these organisations may also be portrayed as making the best strategic decisions they could. These operations took place within the context of heteropatriarchy and certainly these constitutional privileges have generated widespread discussion of LGBT rights all over the country. The purpose of this thesis is to examine the disparity in rhetoric and practice and thus, shows how the passivity of the state continues violence towards sexual minorities who seek refuge within the South African state.

A Brief Review of Refugee Rights in South Africa

According to the UNHCR, South Africa received 61,500 asylum applications in 2012—the third largest amount following the U.S and Germany (UNHCR Data Sets 2013; Africa Check 2013; The Guardian 2013). Currently there are 112,192 refugees living in South Africa and 463,

Thoreson, it is important to complicate the scope of LGBT activism in developing countries. According to a report by the International Gay and Lesbian Human Rights Commission (IGLHRC) on the propensity for sexual minorities to be extorted and blackmailed in Sub-Saharan Africa, involving LGBT rights in the universalized human rights framework of the UN offers little in terms of concrete solutions towards extortion or blackmail. However, the human rights framework can be useful in pinpointing the ways in which the legality surrounding LGBT rights is flawed and how the dignity, privacy, and autonomy of these individuals is constantly violated within the region (IGLHRC 2011). The face of LGBT activism within South Africa and the Sub-Saharan African region has changed. These countries are not monolithic places of LGBT hate and the activist work conducted within them is useful, important, and presents a challenge to the landscapes of homophobia within these countries. It is important to keep a nuanced approach when examining LGBT rights discourse within Africa and South Africa in particular. Although South Africa's history of LGBT activism operates within a framework of white-male dominated sexual regulation there is a shift in attentions towards LGBT rights in township areas. More, although LGBT activism is globally engaged by the UN and spearheaded by Western-dominated organisations these categories for sexual minorities are adopted and adapted within each country's particular context.

940 asylum seekers with a total population of concern equalling 576,133 (UNHCR 2015).

According to the UNHCR, South Africa's national legislation continues to incorporate the basic principles of refugee protection⁸. However, South Africa's current socio-economic environment with high-unemployment and inadequate service delivery creates uneven access to resources for asylum seekers. More, the asylum system faces severe backlog affecting the quality of refugee status determination (UNHCR 2015). The UNHCR mentions increased efforts to relocate survivors of sexual and gender-based violence from countries such as Somalia, the DRC, or Zimbabwe; however, entirely missing in the UNHCR review is the mention of sexual orientation-based asylum claims. This gap in both policy and academic literature, of course, forms the launching point of analysis for this thesis and will be expanded upon in the literature review. But, it is worth mentioning here that sexual minorities seeking asylum navigate a system which excludes them within international discourse. The remainder of this section aims to provide an overview of South Africa's refugee system and contextualizes LGBT refugees who face the dual discrimination of afro-and homophobia.

The most important legal instrument used to determine status and access to refuge in South Africa is the *Refugee Act* of 1998. This act was born out of the Government of the Republic of South Africa's alignment with the Basic Agreement with the UNHCR in 1993 where the state vowed to abide by these international standards as part of the new constitution. The *Refugee Act* defines an asylum seeker as an individual who has fled one's country of origin and has pending status with the Department of Home Affairs (DHA)—a negative decision on this

⁸ Freedom of movement, the right to work, basic social services access.

application for asylum results in the applicant's voluntary return or deportation to the country of origin.

Since 1994, South Africa's stance towards forced migrants has changed through the embracing of liberal freedoms and democratic ideals⁹; however, afro-phobia remains present in the press with headlines such as "Africa floods to Cape Town" and "6 Million heading our way" (Danso and McDonald 2000). The Refugee Act of 1998 was preceded by the Aliens Control Act enacted by the apartheid government with its latest iteration as late as 1991. The first reform regarding migration policy came in 1995 where the Aliens Control Act was amended which removed detention of an individual for more than 30 days; however, clearly more reforms were needed. Policies drawn from the Green Paper on International Migration (1997), The Refugees Act (1998), the White Paper on International Migration (1999) and the Regulations to the Refugees Act (2000) worked to condemn racism and xenophobia. Simultaneously, the government also made clear that the asylum process would remain focused on state security and follow a strategy hinged on punishment rather than sensitivity towards asylum seekers (Klaaren 1998; Handmaker and Parsley 2001). It is important to realise that South Africa continues to be a nation in the process of constructing its national identity and consolidating violence from the past across cultural and spatial realities remains difficult. More, the South African state must balance international obligations with the responsibilities it has towards its electorate. This is partly responsible for the mis-match between the rhetoric produced by the state and the practices within the DHA.

⁹ Vis-à-vis the pursuing of neoliberal economic policies aimed at capital accumulation through the unhinged movement of trade and capital.

It is important to examine the current literature on barriers to access for asylum seekers in general. As I mentioned earlier, the literature on regulation for LGBT asylum seekers is scarce and a detailed understanding of limited citizenship access remains crucial in building the case for LGBT asylum seekers as well. Although the current literature points to barriers of access within the DHA, notions of state hetero-normativity are entirely missing, thus, examining citizenship access for LGBT asylum seekers is necessary in illuminating the lack of acceptance for queer rights on the domestic level. South Africa's refugee status determination system, as prescribed by the aforementioned *Refugee Act* of 1998¹⁰ is, as Darshan Vigneswaran argues, a 'global north' bureaucratic system in the 'global south'. The contraction highlighted by Vigneswaran regarding the Global North and South refers to a system of "efficiency" which simply does not work in the South African case. Home Affairs can simply not cope with the backlog, staff are poorly trained, and cross-cultural barriers prevent appropriate adjudication of claims. The DHA status determination officer is responsible for the following: facilitation of access, ensuring free, transparent, and accurate completion of forms, interviews and appeal mechanisms to ensure a fair adjudication of claims, and documentation to protect against *refoulement* (Vigneswaran 2008).

As Vigneswaran suggests, these duties, although emphasised by legislation, do not translate appropriately in practice especially in regards to asylum seekers. Vigneswaran finds that 53 percent of applicants do not enter the country with any identifying documentation. The applicants, who do have the appropriate documentation, once at the office, wait an average of 22 days before their first meeting often having to return to the office more than three times (Vigneswaran 2008). His study, focusing on Zimbabwean migrants, points to the often

¹⁰ And its amendment in 2000, which is when the Act become common-practice

xenophobic treatment of asylum applicants and the ad-hoc barriers imposed by the state.

Although the *Refugee Act* is designed for the benefit of refugees, the structural barriers of mobility and documentation limit the scope of this act. Many potential applicants are simply re-routed back to their countries of origin before they can file any claims—in clear contrast to principles of non-refoulement.

Roni Amit's study of approximately 300 asylum-rejection letters is another important work in the examination of asylum seeker's rights in South Africa. Amit's work suggests that none of the letters reviewed by his study fulfilled Vigneswaran's aforementioned standards for proper status determination. Instead, Amit argues that the documents could be classified as having many errors in legal discrimination, poor reasons for rejection and an overwhelming failure in applying sound reasoning for rejection decisions. Her overall argument—that state-imposed efficiency measures are reducing the rights of a fair trial—(Amit 2011) is pertinent in my case as it highlights the inherent contradictions of a 'modernising' state's inability to match practice with rhetoric. Amit's findings suggest that even if asylum seekers are able to navigate the structural barriers of documentation, mobility, long queues, and ad-hoc barriers imposed by low-tier bureaucrats of the state in order to land an interview. The interview often results in a rushed conversation where a fair appraisal of the claim is forsaken for the purposes of increased efficiency in decision-making.

Chapter 2: Literature Review

This chapter aims to contextualize this thesis by providing an overview of LGBT refugee policy on a global scale. The main purpose of this chapter is to allow for a synthesis of my conceptual frameworks— heteronormativity and afro-homophobia—by discussing the lineage of literature(s) which inform them. First, I discuss the context of a heteronormative state and how this has influenced the refugee determination system in various countries. Second, I examine the combined forces of afro- and homo- phobias in the South African context. The third section of this chapter forms my conceptual framework which is followed by a section on the methodology used to carry out this study.

Heteronormativity in Global Context

Heteronormativity is the ‘common-sense’ view that gender identity, biological sex, and sexual orientation are innately aligned (Warner 1991). In this light, even if societies are accepting of homosexuality they continue to operate under the normalcy of heterosexual and gender conforming individuals and the deviance of those who do not conform. According to Judith Butler, gender norms and sexuality are performative (Butler 1993) and heteronormative society treats these identities as static and natural. heteronormativity (Luibheid 2008) assumes that state policies and services cater to heterosexual gender conforming people. In the context of sexual minority rights and refugee adjudication, sexual minorities must navigate a system which actively alienates them. This is illustrated by the U.N’s overemphasis on women’s rights and thus, sexual minorities get packaged into the broader debate on women’s rights.

It is important to note that very little work has been conducted on LGBT asylum seekers in the South African or ‘developing nations’ context. However, I will draw on examples from the

U.K, Canada, and the U.S, all of which have emerging best practices in regards to LGBT asylum claims. One major debate in the literature occurs where scholars (Dunton 2012; Gray and McDowall 2013; Bieka 2011; Portman and Weyl 2013) examine best practices stemming from the UNHCR note on SOGI. Others (Fobear 2014; Buscher 2011; Murray 2014; A.G. Murray 2009) employ a post-colonial critique which implies that the heteronormative state limits the agency of asylum seekers. That is to say, systemic barriers, such as the interview process, which requires an individual to prove that they are authentically ‘gay’ or ‘lesbian’ affects adequate claims’ adjudication as many sexual minorities are sent back to their countries of origin if they seem ‘straight’. Thus, pre-conceived notions of what it means to be ‘gay’ ‘lesbian’ ‘bi’ or ‘transgendered’ factor into decision-making of state officials (D. A. Murray 2011).

To start, Dale Buscher suggests that although all U.N departments have LGBT rights mandated into their programs. These programs, in fact, do not match these mandates in practice. That is to say, LGBT rights—incorporated as part and parcel of gender equality—are, in fact, not adopted seriously and LGBT persons deal with a system which alienates them. Therefore, on the international scale, LGBT individuals are left out of gender and gender equality conversations. This is particularly problematic for LGBT asylum seekers because sexual orientation may be the primary reason for them to flee their countries of origin; however, many countries do not recognise this as valid grounds for protection despite the UNHCR note on SOGI (Buscher 2011)

As European legal scholar Laurynas Bieka argues, many EU countries, although agreeing with the UNHCR note on SOGI adopt these principles with varying rigidity and seriousness. She suggests that many EU countries do not consider the criminalisation of same-sex sexual acts between consenting adults grounds for persecution. This is problematic as the rhetoric of internal flight—the means for an individual to flee their particular community or city for another in the

country—is used to reject LGBT claimants (Bieka 2011). Amanda Gray and Alexandra McDowall suggest that these laws are being altered. In the U.K. until 2010, many claimants had to return home on the grounds that concealing their identity would eliminate the prospect of persecution. New policy and training since 2012 now deals with issues of late disclosure, difficulty of re-location (especially in countries where homosexuality is explicitly banned), and recognition of the U.K. government that the asylum process can silence narratives of sexual orientation due to environmental factors and the ways in which insensitive questioning can affect the asylum process (Gray and McDowall 2013). Although the laws in Europe are changing it is important to recall that the asylum process for LGBT migrants is fraught with prejudice and a lack of sensitivity from adjudicators.

As Elise Dunton, a legal scholar working on same sex partnership rights in the U.S., suggests, U.S immigration law since 1917 has explicitly discriminated against gays and lesbians. Although the U.S. has become a safe haven for LGBT migrants recently, successful LGBT migrants are still unable to bring their partners from their countries of origin (Dunton 2012). Currently, the Uniting American Families Act (UAFSA) represents the closest proposed legislation for granting full rights to LGBT immigrants. However, as Dunton argues, the U.S. government maintains an allegiance to an out-dated notion of what constitutes a family and this view has overlayed the asylum granting process. On the other hand, a report by Scott Portman and Daniel Weyl suggests that the U.S has made some headway in creating an international best practice by training LGBT newcomer support groups who are crucial in providing a support system for recently accepted refugees. Furthermore, the authors argue that the U.S. refugee board has worked hard in developing a safer environment through staff training and as many self-

identifying LGBT individuals do not share their status and reason for fleeing with the state (Portman and Weyl 2013).

As Dunton suggests, many scholars look to the Canadian Immigration and Refugee Protection Act (IRPA) as a best practice upon which the U.S should model its laws on. IRPA stands out as a best practice due to the law allowing immigration rights to same sex partners of refugees. Thus, in Canada, in line with gay marriage laws, the legal definition of a family is expanded and LGBT migrants need only prove their relationship for one year in order to receive conjugal partner benefits (Dunton 2012).

Although Canada does have a progressive system of dealing with sexual orientation based asylum cases, many scholars continue to point to the systemic heteronormativity of the immigration system. As David A.B. Murray argues, “refugees must navigate a system predicated upon highly malleable, historically and socio-politically gendered, classed, and raced interests, and thus, place LGBT refugees from non-North American societies in a particularly vulnerable position (D. A. Murray 2014). An important point raised from this quotation is that even an internationally recognized immigration system such as Canada’s operates within systemic constraints of heteronormativity. The same article by Murray goes on to mention that the decision-making process is fraught with the pre-conceived notions of Refugee Board members, lawyers, legislators and journalists. These groups construct asylum seekers as either worthy or unworthy claimants based on their own understanding of what it means to be a sexual minority. Evidence cited by Murray’s work suggests that board members reject claims because an applicant seems too ‘straight’.

Moreover, Katherine Fobear, taking a post-colonial approach, examines the immigration process in Canada. She argues that, the asylum process is informed by nationalistic ways of thinking and framing about who belongs in the nation-state. That is to say, LGBT migrants must work in a system that was not designed for them and the implied heteronormativity of the system produces ‘authentic’ refugees and others that are bogus (Fobear 2014). Authentic refugees, according to Fobear, are those that can be integrated within the nation-state. Authenticity is thus, related to individuals being able-bodied and economically remunerative members in their country of re-location. More, the appropriate refugee is also implicitly heterosexual. The link between refugee status and the nationalistic imagery of the state is pertinent to the South African case as well because, LGBT migrants occupy two categories that are undesirable—racial ‘African’ other and non-normative sexual deviant. As this section has shown, even “western” or “first-world” countries operate under the normative basis of heteronormativity. Importantly, the presence of LGBT-accommodating policies within a certain state does not mean that the heteronormative state has disappeared. The heteronormative state can be accommodating of sexual minorities; however, these legal changes are not seamlessly adopted within the refugee adjudication system. The legal instruments offer the desired protection of sexual minorities but, refugee board interviews—as empirical chapters will show—continue to be spaces where disclosing one’s sexuality is confusing and uncomfortable.

It is important to complicate the rhetoric of “progress” via hierarchizing “First”, “Second” and “Third” world LGBT refugee systems ala modernisation theory. For example, Senegal is not “behind” South Africa and South Africa is not necessarily enroute to becoming Canada through the adoption of LGBT policies. Rather, there are varying complexities involving heteronormativity attached with socioeconomic, political, and historical-cultural particularities.

These have altered LGBT rights adoption within countries world-over and have created circumstances in which LGBT rights have been weaved-in, challenged and rejected all in accordance with the heteronormative state. The South African state continues to operate under unchallenged notions of heteronormativity in congruence with more than half of its citizenry finding homosexuality to be unacceptable. The boundaries between state and society are porous and blurred and although homophobic mindsets change with time the legality, at least currently, does not match practice within the South African state.

Combining Tensions – Afro-Homophobia

The purpose of this section is to discuss xenophobic and homophobic tensions which are both relevant when studying the experiences of sexual minorities who seek asylum in South Africa. It is important to understand the prevalence of homophobia on the African continent and I argue that this continent wide homophobia—although particular to specific countries and cultural contexts—is hinged on the ‘western’ understanding, that is to say, universalisation of LGBT rights.¹¹ The universalisation of ‘LGBT’ as categories which describe sexual minorities has indeed been politically useful. However, this term is viewed by scholars and politicians as a western invasion on ‘African’ heteronormative sexual practice as it identifies categories for people who were not perceived to exist in the past. For example, although non-normative sexual practice has existed throughout Uganda’s history the terms ‘Gay’ or ‘Lesbian’ are seen as politically motivated Western impositions since they do not describe normative or ‘common sense’ sexual practice in Uganda (Xie 2010). Similarly, homophobic attitudes in South Africa

¹¹ A political economy of aid and its effect on domestic policy in regards to LGBT rights in countries like Uganda is beyond the scope of this thesis but the severity of anti-homosexuality legality is hinged on aid flows emanating from Western nations such as the U.S. A classical political economy lens ala Susan Strange suggests that U.S domestic policy is inherently linked with international policy and the case of LGBT illegality is similarly linked.

often reflect pan-African homophobic tendencies as well. Common discourse such as sexual minorities being ‘un-African’ are reflected in the discourse within Home Affairs as empirical chapters in this research will show. Thus, it is important to examine the academic debate of the universalization of LGBT rights both as an acronym and for its political influence.

In terms of backlash, anti-gay legislation is proliferating in sub-Saharan Africa due to the often cited arguments of cultural heritage, tradition, and sovereignty (Monroe 2014; News24 2014; BBC 2014). Leaders such as Nigerian President Goodluck Jonathan defends anti-gay legislation by arguing that LGBT rights are a foreign imposition and incongruent with the cultural identity of Nigerian people (Monroe 2014, Council 2011). Similarly, Ugandan President Yoweri Museveni wants to re-draft the anti-gay law in order to keep Western donors happy while continuing to “protect” Ugandans from the moral threat of homosexuality (Huffington Post 2014). These types of laws are also gaining political ascension in Kenya, Tanzania, Zimbabwe, Senegal, DRC, and Swaziland, to name but some. More according to the Pew research centre’s statistics regarding the acceptance of homosexuality countries such as Uganda (96 %), Kenya (90 %), and Nigeria (98%) have populations where most people find homosexuality unacceptable (2013). In Uganda, only 2 percent of the population believe that their area is a safe space for homosexuals indicating the dire situation for sexual minorities (Gallup 2014).

In South Africa, President Jacob Zuma has gone on record to say that he respects Uganda’s anti-homosexuality law despite the fact that the country signed the UNHRC resolution on LGBT rights in 2011. He said, “South Africa respects the sovereign rights of countries to adopt their own legislation...” (Times Live 2014). Zuma’s comments, seemingly contradictory to South Africa’s international claims, can be explained in two main ways. First, South Africa inhabits a tricky geopolitical situation whereby it aims to portray itself as a ‘modern’ and

developmentally advanced nation (Vale 2002) while attempting to maintain economic ties with its regional neighbours without alienating them.

Sexual minorities in cities such as Kampala, Nairobi, or Uganda simply have no space to feel safe or “come-out” to. Even Grindr, a mobile application designed (mostly) for gay men¹² is risky and unsafe to use in these countries as GPS location services make it easy for authorities to track individuals (Goodin 2015). Applications such as Grindr highlight an important tension along the “western” versus “traditional” debate concerning surveillance. Sexual minorities risk criminal behaviour even in virtual space. The universalisation of LGBT rights has thus, resulted in an increased criminality of same-sex practice; however, sexual minorities in these countries have finally gained attention in the international community and LGBT rights are becoming tied with broader issues of political economy and aid.

Joseph Massad argues that international gay rights organisations such as the International Gay and Lesbian Human Rights Commission (IGLHRC) actually cause an increase in the persecution of non-elite same-sex desiring individuals, who, before interference by the IGLHRC, did not self-identify with the ‘western’ categorization of ‘gay’ or ‘homosexual’. Massad further suggests that the urban working-class male finds himself in a ‘double-bind’ due to international attention, where his sexual desires remain unfulfilled and he finds himself in a higher degree of police and legal persecution as his private life has become a topic of social denigration and receives increased political attention (Massad 2002; 2007) Massad’s view is an important critique of international NGOs and the effect that universalizing sexual desire has on societies which have little historical congruence with these identities. However, I argue that international

¹² Although transgendered users do use the application and a section for “trans” as a “type” exists on the application

organisations and so-called ‘Western’ states where LGBT rights flourish play a necessary role in reducing the vulnerability of non-heterosexual individuals particularly in the sexual minority asylum seeking process.

Ryan R. Thoreson responds to Massad by arguing that it is in fact international activists who pick and choose what and who qualifies for protection. As Thoreson suggests, global networks of solidarity have sometimes become unhelpful and counterproductive and thus, a perspective which links domestic and international politics vis-à-vis human rights and aid is useful. The nation-state, indeed, holds the power to regulate sexuality through legal mechanisms and programmes. In Thoreson’s comparative study of Uganda, Senegal, Kenya, and Malawi he suggests that activists and scholars must not conflate various homophobias in order to avoid overgeneralizations about various transnational campaigns. Certain tropes such as “anti-masculinity”, “unAfricanness”, “unnatural-ness”, “immorality”, or “embarrassment” are commonly used by transnational activists to describe anti-queer sentiments across Africa; however, a political economy perspective places domestic politics and each state’s particular history towards queerness at the centre of analysis (Thoreson, *Trouble the waters of a ‘wave of homophobia’: Political Economies of anti-queer animus in sub-Saharan Africa* 2014). Thoreson’s view goes beyond Massad’s critique of the Gay International by calling for closer attention to the particularities within a state—one homophobic incident in a particular African country does not causally link to another in a different country. Since activists have the power to pick and choose which issues gain traction and funding on the international scale, I argue that the focus of research and activist work should engage actively with the “Gay international” while place the nation-state and its particular legalities at the centre of analysis. This bridges the gap between academic critique of the universalisation of gay rights and practice and also manages to strike a

balance between the often useful mainstreaming of LGBT categories by involving domestic politics.

The universalisation and prevalence of LGBT rights has resulted in important and necessary domestic policies regarding LGBT migrants in South Africa. However, these rights have not translated unequivocally across the DHA and the norm has not been internalised. State officials' views of sexual minorities remain unsophisticated. Thus I have suggested that although the global prevalence of "LGBT" as an acronym has been useful in encouraging generally positive policy—sexual minority rights continue to be underdeveloped in practice. This lack of internalisation and understanding of non-normative sexualities results in discriminatory practices within South Africa.

The second aspect of discrimination which is relevant to the case of sexual minorities in South Africa is the state's xenophobic disposition towards non-South African (particularly black) Africans. According to David Matsinhe, Afrophobia (as opposed to xenophobia) rests on apartheid ideology and the history of colonial group relations which cast South Africa as "we" and the rest of Africa as "them". Thus, the term is loaded and, according to Matsinhe, more insidious than xenophobia. As Matsinhe argues, the established group portray themselves with positive physical attributes as a sign of their superiority—the outsider groups are made inferior. Apartheid's role in social stratification has psychologically imposed whiteness as the one true virtue resulting in the disconnect of Black South African identity with the "rest" of Africa (Matsinhe 2011). I argue that Afrophobia is a more useful term than xenophobia because it captures the psychological and historical overlays of apartheid and intra-group warfare which preceded it. More than fear of other races or ethnicities as xenophobia implies, Afrophobia suggests a power asymmetry between South Africans and the rest of the continent. Not only is

this present in the state's policies towards immigration, but is clearly a mentality present in the adjudication of asylum claims.

Xenophobic violence in South Africa erupted in 2008 at a large scale in Soweto and Khayelitsha¹³. Scholars have pointed to a variety of causes including the economic constraints determined by the post-apartheid state. As Vromans et al. argue the focus on combatting xenophobic violence rests in the divisions within South African society which, ultimately, rests on apartheid's legacy of dehumanisation and the tiered level of racial dominance by certain groups over others (Vromans, et al. 2011). More, the state must be implicated in the resurgence of violence in 2008 towards immigrants. The South African state is fraught with tension—on one hand expressing itself as “African” first and foremost and, on the other hand, having a predominantly closed-door immigration policy. A study by Christina Steenkamp suggests that the state's closed-door immigration policies and mis-treatment of African foreigners has aided in the construction of the “African” other. More, low levels of trust exist between Black South Africans. In the aftermath of 2008 violence, the bridging of social capital between various nationalities is particularly low and this mistrust is expanded between Black Africans and the South African state (Steenkamp 2009).

The following piece I will discuss, by Yellavarne Moodley, is the only work I have found that directly relates to LGBT asylum seekers. Asylum-claims hinge on the prospect of ‘fear’ and the ability of the asylum seeker to ground their fear in objective reality. As Moodley suggests, the prospect of fear in LGBT asylum cases is seen as unfounded by interview officers at the DHA. Of the twenty-five individuals studied by Moodley, eleven chose not to reveal their sexual

¹³ Large black-dominated township areas in Johannesburg and Cape Town

identity in the interview process. There are two processes at work: individuals are not aware that LGBT membership is a valid claim to asylum in the legal realm. Second, even if sexual identity is revealed as a cause for fleeing the officer does not treat this as a valid claim—contradicting alleged legal provisions.

Furthermore, psychological justifications for fleeing, that is to say, death threats, shaming, ‘outing’ etc. are not considered to be grounded in ‘objective reality’ by the interview officers.⁶⁹ percent of the LGBT asylum seekers said that the length of their interviews lasted less than twenty minutes while 37 percent said their interviews lasted less than ten. When LGBT membership was admitted as a reason to flee the country-of-origin the interview officer often dismissed the claim. In one case the interview officer suggested the individual change sexual orientation (Moodley 2012). Although the RSA has accepted the UNHCR recommendations note on LGBT refugee claims in 2008, rigid jurisprudence for decision-making on these claims continues to remain ambiguous and *unstructured*. Lack of legal structure surrounding LGBT rights—in conjunction with structural barriers to citizenship access—leads to ad-hoc decision-making by interview officers based on hetero-patriarchal norms representing a departure from South Africa’s international alignments particularly with the UNHCR. In short, state officials do not have the training or sensitivity to LGBT asylum claims. Importantly, my research focuses on ‘queer’ asylum seekers themselves, rather I argue that it is more important to examine state rhetoric and practice surrounding LGBT asylum seekers instead. This examination hinges on the lack of legal structures surrounding LGBT legal claimants. Again, the state response to LGBT asylum claims allows for the examination of citizenship access as a heteronormative exercise since sexual identity is often hidden my research aims to illuminate this silence in the asylum

seeking process in South Africa and observe, to what extent, heteronormativity affects the adjudication process for asylum claims.

Finally, a LGBTI Refugee Support and Advocacy Project conducted by PASSOP studied the lives of asylum seekers after they received their six-month permits. 90 percent of LGBTI refugees were unemployed, respondents felt unsafe in their homes, and many of the participants reported that they were mistreated by DHA officials, security personnel and interpreters when they went to apply or renew their permit (PASSOP 2012). Using these preliminary studies I conducted in-depth interviews with experts and LGBT asylum seekers in order to discover the ways in which discrimination and violence persists and the limits of citizenship of South Africa's post-apartheid constitution.

Afro-homophobia—a term which encapsulates both notions of discrimination. It is important to account for both forms of discrimination, simultaneously, because sexual minority asylum seekers occupy both dimensions in South Africa. Choosing to hide one's sexuality, too, is structured by societal heteronormativity—where non-heterosexuals and their practices must be named or they are considered “straight”. Meanwhile, homophobia operates on the basis of perception regardless of whether sexual identities have been disclosed. Thus, the perceived sexuality of asylum seekers also generates discrimination, and often violence. I have argued that LGBT asylum seekers face an added layer of discrimination due to their sexuality (perceived or otherwise) and the experts interviewed in this thesis affirm this claim. It is important to note that sexual minority immigrants operate in an arena where ethnicity, class, gender identity, and sexual orientation are evaluated. For these individuals, their sexual orientation and/or gender identity forced them to flee their country of origin and these prejudices follow them in their

interactions with the South African state. Violence to affect their lives post-relocation in Cape Town vis-à-vis violent forms of discrimination in various spaces every day.

Conceptual Frameworks

My dual argument regarding dysfunction within the DHA and the cyclical violence which persists in the lives of LGBT asylum seekers (upon relocation in Cape Town) rests on the two aforementioned concepts: Heteronormativity and afro-homophobia. The analytical purpose of the heteronormativity critique used in this thesis is to examine the ways unnamed and implied heteronormativity within the DHA affects the asylum process. In short, I argue that South Africa's brand of heteronormativity perpetuates discrimination within the refugee determination system.

The use of afro-homophobia is also central to my analysis as it is useful in tracing various forms of violence faced by sexual minorities as they escape their country of origin, enter the South African state, and attempt to survive in Cape Town. Afro-homophobia challenges the notion that Cape Town is a safe haven and expands on the known fact that the majority of South Africa's population holds homophobic views. This concept bridges both national and regional frictions surrounding same-sex desire and adds complexity to well-documented issues of xenophobia within South Africa (Steenkamp 2009). I suggest afro- instead of xeno- phobia because all the participants interviewed in this study were Black Africans. Thus, this concept allows me to build on the argument that non-South African Blacks are undesired bodies within the nation (Matsinhe 2011). Building upon this argument, I add that violence towards foreign sexual minorities is unexplored in the current literature. As subsequent chapters will show, LGBT asylum seekers face intangible, multi-scalar, and constant levels of violence upon relocation to Cape Town. Afro-homophobia allows me to hinge my analysis on something

concrete as it aims to capture these various forms of discrimination which have dominant race and class based undertones.

Methodology

This section will briefly outline the ways in which the research was undertaken. The research took place from November 15 2014 – April 2015. I aim to strike a balance between interpretive and positivist political science lenses derived through in-depth interviews as suggested by Dingwall (1997); Soss (2006); and Fujii (2009). The interpretive approach lends to a broader understanding of data and allows for an appraisal of the complicated histories and trajectories of my participants. Positivist approaches through the analysis of various themes from the interviews conducted illustrate the causal mechanism between heteronormativity and the increased discrimination faced by LGBT asylum seekers (Lin 1998). A balance between these two approaches allows for a more nuanced methodology to this topic which has received little academic or policy attention in South Africa. Moreover, since ‘hard’ data is scarce on LGBT asylum seekers—there is no evidence that the DHA collects this type of information—the qualitative and inquiry based approach to this topic is particularly useful in unearthing the various nuances within the asylum process and the lives of asylum seekers themselves.

Data was collected, primarily, from semi-structured interviews with the two aforementioned groups: NGOs/Experts and Asylum seekers. The two groups were selected in order to gain a thorough understanding of the asylum process for sexual minorities thereby increasing rigor in this research design. Primary documents published by the province of the Western Cape and the DHA were also collected. Snowball sampling from a pool of NGO contacts such as the Human Sciences Research Council (HSRC), PASSOP, and SCALABRINI necessitated that these organisations be interviewed first. The snowball sample was the most

effective method in selecting participants due to time constraints and lack of familiarity and clout in the research arena. NGOs and experts provided both information about LGBT asylum seekers and the overall landscape of the refugee board determination system in South Africa. Interviews with asylum seekers/refugees allowed for a thorough understanding of the asylum seeking process. Understanding the individual life-histories of these participants added more complexity to the data collected and, when matched with the practices of the state, revealed a fuller picture of the refugee determination process in South Africa.

This methodology initially included the state and several attempts were made to access the state as elaborated in Chapter 7. My position as a non-South African young researcher was difficult to navigate as both NGOs and the DHA did not want to fit me into their busy schedules. Thus, ease of access to participants was limited and necessitated the backing of a respected organisation such as the HSRC to provide introductions to key members of NGOs. Even with this backing, certain state officials rescheduled meetings endlessly and many emails were ignored. Part of this was due to the sensitive nature of this thesis topic; however, lack of clout in the research environment limited access to certain participants.

Another limit in the research design has to do with lack of communication with NGOs in the African region beyond South Africa. After interviewing asylum seekers from various African countries it would have been useful to interview—sometimes underground—LGBT organisations that may have liaised with organisations in South Africa. Again, these organisations would have been difficult to contact and any preliminary internet searches and contact were received with silence.

Finally, I chose to only disclose my sexuality to certain participant groups. Sharing my identity as 'queer' with asylum seekers/refugees was important in maintaining rapport and allowing the participants to be open with their stories. Choosing not to disclose this part of my identity to NGOs was important as I wanted to appear neutral and curious rather than as an activist with a pre-conceived agenda. This too, was meant to put participants at ease and attempt to understand how issues surrounding sexuality were dealt with by officials or NGOs. Thus, this affected the tone of interviews. Interviews with asylum seekers were conducted in a more casual atmosphere at a public location of their choosing, while interviews with NGOs/experts required a more professional stance in regards to choice of language, attention to time, and overall demeanour. Interviews with asylum seekers followed a loose structure to incorporate richer detail in terms of life history, and interviews with the two remaining groups followed a semi-structured and more rigid questioning style. To conclude, the research design and style was adapted to include the various needs and desires of the participants and required more flexibility from the researcher as previously planned.

The data gathered from in-depth semi-structured interviews and various primary source material will be presented along the divides of the two participant groups i.e. NGOs/Experts, and Asylum seekers/refugees. These categories will be further divided along thematic lines that cross-cut the various interviews. Although I will point out important divergences where the participants' information varies, the thematic groups allow for increased generalizability in this study. The interviews were transcribed from audio recording and then compared with field notes. This 'raw data' was initially coded through the use of key words that were pertinent to this study. A key word correlated to a verbatim quotation. For example, the term RRO (Refugee Reception Office) appears in 3 'expert interviews' and correlates to similar information from different

participants. A group of key words then formulated a theme, for example, the words ‘RRO’, ‘Long-wait times’ ‘backlogs’ ‘chaos’ form the theme ‘disorganised bureaucracy’ [at Home Affairs]. Since these key words—or at least variations of these words—appear in the majority of the information collected, they are elaborated upon in this findings section. According to Burnard et al., using this method of coding allows for findings to be presented in a consistent and logical way as the researcher must ‘clean-up’ the raw data in order to make sense of the information collected (2008). This type of coding was also chosen because it does not negate the rich detail gathered by the interviews and seeks to cluster the information and make references to verbatim quotations when necessary. The section will first discuss the data gathered from NGOs/experts as this group provides the foundation for the study—the interviews and source materials were designed to be informative as opposed to exploratory. As a caveat, it is important to maintain a critical lens when analysing information from NGOs and not to treat all information as unequivocal fact.

Chapter 3: Asylum Seekers' Origin Stories

Pan-African homophobia has gained global media attention especially in countries such as Uganda, Zimbabwe, and the DRC. The launching point of this thesis was the persecution of LGBT identifying individuals and thus, it is important to gain a deeply personal understanding of why sexual minorities are forced to flee their country of origin. All the participants interviewed are Black African¹⁴ who live in township areas and, are at present, unemployed.

“Katanga”

The first participant, a 32 year old male who identified as gay, was born in the DRC and arrived in Cape Town in April of 2009. The following excerpt describes “Katanga’s” life before being forced to flee:

“There is homophobia in the DRC...I was born this way. My father was a partner for international forests multinational corporation my family is catholic... Since sixteen I have had feeling for men...my first sexual experience was with my cousin when we went on holiday... I had my first relationship when I was twenty years old...we were very scared E____’s father was a member of police...A friend told E____’s parents and he thought he was going to be prosecuted...being gay is illegal in the DRC...my boyfriend killed himself.”

As this excerpt suggests Katanga has felt queer since at least sixteen and grew up in a heteronormative context. Although there was some experimentation with his own cousin there is no ‘scene’ in the DRC for gay males to ‘come out’ to. Even though there is some societal

¹⁴ I use this classification in accordance with race categories used by the South African state

denialism of same-sex activity Katanga's first relationship indicates that same-sex relationships—however hidden—are part of Congolese society. After Katanga's boyfriend ended his life Katanga feared that he, too, would be prosecuted (Katanga Interview 2014). His boyfriend's parents blamed Katanga for the death of their son and he had to flee his parents' house. As Katanga says, "My life was in danger and I moved to another city...after making a fake passport and ID I left Congo for Cape Town two months after E___ died." As the other country of origin stories will show, the catalyst for fleeing one's country is often torment at a young age—private relationships become public and the same-sex acts seem to transcend societal boundaries. Katanga due to his Catholic upbringing faced intense familial backlash after the discovery of his sexuality. In this case, Katanga lost his main support systems such as his family and close friends which reifies homophobic attitudes in the DRC. Another aspect entirely missing when discussing LGBT asylum seekers is that, often, these individuals have no family to return to and very little support from NGOs or other groups in the DRC if South Africa chooses to deport them. More, psychological trauma is part and parcel of the asylum seekers experience—Katanga lost the man he loved and the support of his family and friends. The refugee determination apparatus in South Africa pays little heed to this type of trauma; instead, asylum seekers are viewed with suspicion due to their non-South African origins.

"Chuk"

My second interview was also with another self-identifying gay male from Nairobi, Kenya. Chuk's story, similar to Katanga's, involved living in the closet during adolescence up until college. Chuk a student at Technical University of Mombasa, at the time, worked as a librarian and even graduated college. Chuk made the following statement in regards to coming out in the Kenyan context:

“Chuk - I got my first boyfriend in 2008 and felt very very scared to tell my family. I come from a home with nine brothers and sisters...I got the courage to tell my youngest brother.

Ali – What was his reponse?

Chuk—Go for it for love

Ali – Did you eventually tell your parents?

Chuk—Yes my mother said that there was nothing she can do...My father was furious He did not speak to me for a month.”

Chuk goes on to suggest that his parents and the rest of his family eventually accepted his sexuality and his new relationship. Things were momentarily peaceful until Chuk and his boyfriend decided to take their relationship to the next level. In Chuk’s own words, “my life turned into a nightmare”. The following excerpt describes the violence Chuk faced before fleeing Kenya for South Africa.

“Ali – could you describe the violence you and D__ faced in your home?

Chuk—We decided to take our relationship to the next level and invited a few friends to our engagement ceremony. Our so-called friends came with a mob they made homophobic slurs...started throwing stones...someone threw a glass bottle that caught on fire

Ali—A Molotov cocktail??

Chuk—Yes yes, our house caught on fire and we ran for our lives...someone stopped the fire and we went back in the house to sleep that night. The next day, I went to my job and as I was leaving the library, around half past-five someone said to me ‘your boyfriend is in the hospital’. They attacked him you see.

Ali—Where? Do you know who?

Chuk—Yes the same people who came to our house, they attacked him in the market you see. When I saw him he had stab wounds D___ was badly hurt

Ali—Were you ‘out’ (air quotes) to everybody? How could your friends do this?

Chuk—Yes I told few people, I thought we were friends they did not say anything homophobic...when they attacked the house it was very sudden. I could not trust anybody after this

After this incident, D___’s brother suggested that Chuk move to Cape Town. For Chuk, getting a South African visa was relatively easier due to having relatives in the Cape. I asked Chuk what drew him to Cape Town, he said, “Cape Town is the safest city for black gay people”. He also mentioned that he had connections to South Africa to get a visa quickly. He left within two weeks of D___’s stabbing incident as his mother was getting threatened. In this case, Chuk’s sexual orientation was threatening his family as the community grew intolerant of Chuk and his partner’s relationship. Chuk’s partner had relocated to Tanzania and they were separated. In 2010, Chuk received a phone call suggesting that D___ had passed away.

Chuk’s story reveals the trend of homophobia and violence leading him to flee his country of origin. South Africa and particularly Cape Town being viewed as the safe haven for black gay men is an important revelation of a mindset even in Kenya. South Africa’s international reputation in relation to sexual minorities is clearly positive—for Chuk, the convenience of having connections in Cape Town also made the decision to seek refuge in South Africa easier. Chuk’s case, too, reveals the crumbling of support systems—moving to South Africa meant losing his spouse and becoming estranged from his close family. More, revealing one’s sexuality and engaging in a same-sex relationship places not only Chuk in harm’s way but his family too. Homophobia operates in a way which makes private relationships public and

makes it difficult for LGBT individuals to lead a life without public humiliation and constant threats of violence and death. An important caveat to remember in this interview is that Chuk, due to having connections and some level of class-based affluence, was able to flee to South Africa easily. The stories of other ostracised LGBT individuals are, of course, out of the scope of this thesis; however, homophobic violence remains an under-examined issue on the African continent.

“Junior”

My third interview was with Junior Mayema, a non-gender conforming individual, from the DRC. Similar to Katanga, Junior Mayema affirmed the intense homosexuality present in the DRC. Junior says, “people cannot be gay in the DRC... to them I am a demon...these negative attitudes towards LGBTI members includes physical and verbal abuse, attacks, and rejection from their families.” Junior’s entire interview was particularly revealing due to his training as a lawyer in the DRC and his current work with legal advocacy at PASSOP with Koko. The following excerpt describes Junior’s life in the DRC before fleeing:

“Ali – Could you describe your childhood and adolescence, struggling with your sexuality as you were growing up?”

Junior—I went through lots of bullying in school—they called me the equivalent of ‘fag’ I suffered physical abuse as well at the age of 14-15. My family wanted to see that he [I] was not gay, but I had a small network of gay friends.

Ali – What led you to flee the DRC?

Junior—My mother grew increasingly suspicious she is a pastor. One day I told her

Ali—What was her response?

Junior—She said I was a disgrace for the family and I could no longer live there.

Some days she was fine she wanted to keep it a secret but one day she tried to kill me. For her I was better off dead...That was the last straw I had to leave."

Junior described homosexuality as a taboo issue in the DRC. His own mother casted him as a "demon"—his father was not told of Junior's decision to leave the DRC. Junior internalized the homophobia from his mother from a young age.

"My sexuality placed my mother's reputation as a pastor on the line...in every country they have LGBTIs and leaders knew. My mother at a young age said 'they [sexual minorities] must be killed'. Changes must come from the church but the church condones the attacks they say 'it's wrong they are doing an abomination. We must realise that acceptance in Africa existed! Homophobia is a product of Western Imperialism it is a return to colonization!"

Unsurprisingly, Junior's conception of sexuality is critical and shows much understanding of how heteronormativity, colonization, and homophobia operates on the continent. Again, the pattern of intense violence and the crumbling of social support networks before fleeing repeats itself. When asked about why Junior fled to South Africa and specifically Cape Town he said, "South Africa is the only affordable option on the continent. I received a tourist visa for one month and then knew the guideline by UNHCR. I want to go Toronto or San Francisco." Junior, unlike many others, due to education and class-based affluence was aware of the international regulations surrounding LGBTs. Moreover, his legal training, as I will show in proceeding subsections, allowed him to navigate the DHA with some ease. Importantly, LGBT asylum seekers come from diverse backgrounds—although a product of political circumstances and cultural attitudes—LGBT claims represent the ostracisation of same-sex desire where the personal becomes public.

“Anele”

My fourth interview was with Anele¹⁵ a transgender-identifying, HIV positive sex worker who lived in the Delphat township. Anele echoed, Junior’s statements of being demonized—quite literally—for being a sexual minority in Zimbabwe. In reference to her struggle as a child, “In Zimbabwe there is an idea that you are a demon. I grew up loving God but had the idea of feeling different. They took me to a witch doctor to heal me and I prayed everyday but I was still the same.” Anele met her first non-heterosexual companion in high-school, although the relationship was not romantic the snowball effect of this friendship resulted in Anele’s decision to flee Harare.

“Ali – Could you describe what led you to flee Zim?”

Anele—Me and my friend went to a costume party, you see, we were dressed as girls it was just for fun. Then as we are going home late, around 12, the police stopped us. They said ‘are you being moffies¹⁶?’

Ali—what did you say?

Anele—I did not want to say anything but my friend said ‘yes we are moffies so?’

Anele and her friend were arrested and faced intense physical abuse such as waterboarding and other elements of torture. Anele was crying profusely during the interview. Eventually, due to inquiries from both Anele and her friend’s families the police released them. Their final statement to Anele was, “Don’t be moffies again”.

¹⁵ I chose the name Anele as it is a name given to boys or girls in keeping with the participants actual name

¹⁶ Maffies is a derogatory slang term referring to men who have sex with men in Southern Africa (similar to the word Fag)

This part of Anele's story reveals the violence pursued by the state. Although President Mugabe has made claims that there are no gays in Zimbabwe, the police is clearly aware of non-normative sexualities. As discussed in the literature review, notions of masculinity result in violence especially to individuals who display sexual difference and gender non-conformity. Clearly, there is some awareness (albeit loaded with extremely negative connotations) of LGBT persons in Zimbabwe; however, the actions of the police show the desire of the state to "stamp out" LGBT identities.

"JP"

My next interview was with a self-identifying gay male from the DRC who refused to be audio recorded due to fearing for his safety in the country. JP also received legal training in Kinshasa and his story varies from the violence and homophobia faced by the other participants. Although JP fled the DRC he has still not revealed his sexuality to his family. When asked why he fled to Cape Town, his answer was straightforward: "I am here because I am gay." JP indicated that Cape Town was the only place in Africa where a gay man could be free and practice his sexuality without homophobia or violence. When asked about his situation in the DRC, he said that he faced no homophobic attacks and, although he had a small group of gay friends, hid his identity well. JP indicated that having wealth in DRC perhaps protected him from homophobic attacks, more, his demeanour does not "out" him publically. It is important to note that this interview was difficult to conduct. JP was not very open about personal details and did

not elaborate on the exact circumstances which led him to flee the DRC. From the information gathered, JP seemed to have, at least some, privilege as he was able to fly out of his country without financial burden. As JP indicated, homosexuality remains a taboo subject in the DRC and thus, instances of homophobic violence vary by family and micro-community. JP further suggests that homosexuality is very taboo in the DRC. In order for homophobic attacks to take place people need to be engaging with the issue. The issue receives no attention in the DRC.

According to JP, the “scene” is very underground—people are simply not open about their non-hetero-sexuality. JP’s story diverges from the other participants, he did not flee his country due to a threat of violence—although this would be possible if he disclosed his sexuality to his family—he left because he wanted to be free. This “freedom to choose” rests on some class and economic privileges. Moreover, because JP did not disclose his sexuality, his family is still unaware about why he chose to move to Cape Town. Hence, JP still has familial linkages to the DRC and his support systems exist. As proceeding sub-sections will show, JP’s connections vis-à-vis class privileges also aid in navigating the DHA’s asylum apparatus.

“Jeffrey”

My sixth interview took place with another self-identifying gay male from Kenya who fled his country of origin due to his political affiliations with the Gay and Lesbian of Coalition of Kenya. Jeffrey’s story has particular importance towards the state of LGBT claims in South Africa. He says, “there have been no, none, zero asylum claims passed for LGBTIs at a

RRO...the only way for LGBTIs to gain asylum is to enter the country first. Jeffery did not elaborate on the conditions which led him to flee Kenya and simply said “I ruffled the wrong political feathers”; however, he was cognizant of his own privilege. Being an educated activist and knowing the law surrounding LGBT refugee claims in South Africa allowed Jeffrey to build his claim and provide a detailed account of his story. Jeffery’s origin story differs from others because, unlike the preceding cases, he was not fleeing Kenya due to fear of persecution by his family but rather political members of the state itself. He felt that if he were to return to Kenya his life would be in severe danger directly linked to his sexuality and his work at GLC where he advocated for same-sex rights and gender identity recognition in Kenya.

This section has examined the stories of six Black African asylum seekers who have fled their countries of origin to seek asylum in South Africa. In all the cases Cape Town has represented the most convenient and affordable place for re-location. Cape Town also has a regional and international reputation for being a safe haven for LGBT identities and symbolizes freedom for the participants I have interviewed. Four out of five participants experienced intense violence and breakdown of their support systems since disclosing their sexuality sometimes during their first same-sex relationship. LGBT asylum seekers must paired with possible psychological trauma as a result of violence, distrust towards state officials due to violence in the country of origin, and discomfort with sexual identity because of intensely homophobic attitudes. Understanding what led these individuals to flee their country of origins is particularly important for the purposes of this thesis because these origin stories are under-examined and under-weighted in the review process by the DHA. More, as subsequent subsections will show, the DHA does not consider the complex nature of LGBT cases and nuanced ideas of psychological trauma and overall discomfort with the refugee determination apparatus is unrecognised. As

these interviews show, the DHA remains insensitive and hyper- focused on timely decisions in the context of bureaucratic disorganisation and backlog.

Chapter 4: Locating Heteronormativity in the State – Bureaucratic

Discrimination

This second empirical chapter focuses on the discriminatory ways the heteronormative state operates in minimizing access to the state based on afro-homophobic leanings. The interviews conducted with both NGOs/experts and LGBT asylum seekers reveals the difficulties in navigating a bureaucratic system where LGBT rights have not yet been fully realised. As I have argued, the purpose of this two-part thesis is to show the ways in which a disconnect exists between South Africa's rhetoric on LGBT refugees and the mismatch with actual practice during the evaluation of this claims. Chapter 4 has a heavier focus on violence upon relocation to Cape Town and tests the 'common sense' notion that Cape Town is a safe haven for sexual minorities; however, it is important to keep in mind that the discrimination faced by sexual minorities within Home Affairs reflects a mindset within larger South African society. Afro-homophobia is thus, used as a concept to capture these varying degrees of discrimination and violence throughout these empirical chapters.

I draw primarily from four interviews with NGOs/Experts and six from asylum seekers: Mandy Marinikwa from Lawyers for Human Rights from the Refugee and Migrants Rights Programme, Kira Leigh Kuhnert from the SCALABRINI Centre of Cape Town, Guillain Koko from PASSOP, and Dali Weyers from Social Justice Coalition/ Safety Lab.^{17 18} Chapter 4 provides

¹⁷ All participants gave their consent for their names and organisations to be used

¹⁸ The following organisations—Human Sciences Research Council, The Triangle Project, Pride Shelter Cape Town, UNHCR Cape Town, and the University of Cape Town Refugee Law Clinic—although not formally interviewed, provided valuable information such as brochures, documentary films, and helped with the overall snowball sampling via email. It is important to note that many LGBT organisations forwarded my request to Mr. Koko at PASSOP and thus, this organisation was particularly useful to this study.¹⁸

more detail regarding the cyclical forms of violence faced by the six individuals mentioned in this chapter from their country of origin to life in Cape Town; however, this chapter focuses on their experiences with the DHA.

UNHCR and SOGI

The UNHCR note on Sexual Orientation and Gender Identity (SOGI) is useful in structuring these findings as South Africa's discordance despite accepting this note was the launching point for this thesis. According to Ms. Marinikwa, South Africa (along with Brazil and Norway) led a resolution on Human Rights Sexual Orientation and Gender Identity in 2011. This resolution was adopted in a 25 to 14 vote with 7 abstentions (United Nations General Assembly - Human Rights Council 2011) To Ms. Marnikwa, "South Africa's actions in Geneva are contradictory to the understanding of SOGI in South Africa". When asked about this contradiction she said, "South Africa is bound by international obligations and precedence set by countries. In the U.K, recently, if you cannot openly live as a homosexual that can be grounds for persecution [for asylum seekers]". This type of precedence is 'officially' accepted by Home Affairs but is not met in practice unless there is "international media coverage by CNN, Amnesty International etc." according to Ms. Marinikwa.

According to both the Human Rights Council report and the interview with Ms. Marinikwa, South Africa has become the only country in Africa where activists and NGOs can look to for any type of rights for sexual minorities. However, as Ms. Marinikwa suggests, "South Africa occupies an interesting geopolitical position attempting to keep both regional African partners and non-African international countries happy". Kira from SCALABRINI further suggests, "that a definite gap between South Africa's international reputation on SOGI and practice on the local and regional level exists". Clearly, there is some evidence from NGOs and

experts working with these issues that South Africa's rhetoric on the international scale has geopolitical motivations behind promoting LGBT rights.

More, as my interview with Mr. Koko suggests, NGOs such as PASSOP use South Africa's acceptance of the SOGI note to argue for their clients in cases where the asylum claims are rejected due to negative perceptions of sexual minorities by the Department of Home Affairs. Similar to Ms. Marinikwa, Mr. Koko used an example of a high-profile asylum case covered by Amnesty International involving an individual from Malawi. Mr. Koko suggested that "although [asylum seeker's] case was initially rejected, media coverage by Amnesty forced Home Affairs to change their decision and it no longer became a 'gay' case" (Amnesty International 2014). This is an important caveat worth highlighting, although both Ms. Marinikwa and Mr. Koko are aware of South Africa's contradictory rhetoric the SOGI note has received attention from activists and NGOs in order to place pressure on the refugee determination system in South Africa. As I have suggested the rhetoric is contradictory from the state itself, as evidence of sexual minority rights for asylum seekers have not been formally instilled in the refugee determination process. However, because this international obligation exists certain individuals, regardless of the homophobic or xenophobic mindsets of Home Affairs, do receive asylum permits. Furthermore, the high-profile nature of certain cases transforms them from being solely 'gay' refugee cases into something that Home Affairs takes more seriously due to international pressure. In this regard, SOGI is followed, to some extent, when the state is in danger of losing face with non-African international nations.

The Asylum Process and Bureaucratic Chaos

An outdated version of the asylum process can be found at the DHA website which I will briefly outline here; however, it is important to unpack and problematize the overly simplified

and seemingly fair process outlined by the DHA. Starting at the port of entry, an asylum seeker is issued with a non-renewable asylum transit permit which according to the DHA “is valid for a period of 14 days (now 5) only and authorizes the person to report to the nearest Refugee Reception Office in order to apply for asylum in terms of section 21 of the refugee act.” The asylum seeker is required to provide the initial permit, identification and a travel document in order to attend the first interview. If the interview is successful an asylum permit—valid for 6 months—is issued. Importantly, the holder of this permit has the right to work and study in South Africa and is protected against deportation. A second interview is conducted by a Refugee Status Determination Officer (RSDO) who provides reasons for the decision of the claim. When granted asylum the refugee is generally issued a section 24 permit which allows the individual to remain in South Africa for two years. Rejected claims can be appealed at the Refugee Appeal Board (RAB) within 30 days where the RAB will conduct an appeal hearing (Department of Home Affairs 2013). It is important to note that sexual orientation based claims are missing on the website and SOGI is not mentioned by this document.

Initially, asylum seekers attempting entry into South Africa, and more specifically Cape Town, were meant to visit a Refugee Reception Office (RRO). Kira from SCALARBINI indicates that refugee reception officers receive no sensitivity training in regards to LGBT rights and maintain homophobic stances by making comments such as, “how can you be gay? That is not African.” Kira also suggests that, “there is evidence that RROs have actually accepted most claims.” Despite homophobic attitudes RROs served as a filter for “authentic” versus “bogus” refugees. Although the RRO officials did not receive training in regards to sexual orientation based claims, the function of the RRO is to evaluate basic claims and let the DHA office conduct a thorough appraisal of the claim. Without the RROs asylum seekers have a much more difficult

time entering the country legally. All four of my interviewees confirmed that the RRO near Cape Town is no longer functioning. Mr. Weyers and Kira suggested that the RRO was no longer able to take any new cases due to backlogs, while Mr. Koko and Ms. Marinikwa suggested that the RRO was closed for all intents and purposes and the DHA was phasing them out country-wide. An official Home Affairs document regarding the closure of the Cape Town's RRO was released on January 31 2014 addressed to Asylum Seekers and Refugees and stakeholders. The closure of Cape Town's RRO is significant because asylum seekers who desire to live in Cape Town must now receive their permits from the Durban or Johannesburg offices (Department of Home Affairs 2014). More,

The RROs (nation-wide) are being phased out and some are being placed at the borders. The closure and relocation of some RROs aims to re-route asylum seekers to their country of origin before entering South Africa. Ms. Marinikwa said, "you are no longer allowed at entry...you must complete a form which is immediately followed by an interview at which point three things can happen: the claim is accepted, the claim is deemed unfounded—there is no fear of future persecution—and [if the claim is rejected] the asylum seeker has the right to appeal with a lawyer." Mr. Koko adds, that "the day they [asylum seekers] lodge the application the DHA has 180 days maximum to schedule a second interview but this mostly takes longer. They [asylum seekers] cannot afford to live in a nice area and must live in townships where they get attacked." The asylum process, as Vigneswaran and Amit point to, has the appearance of being a streamlined system; however bureaucratic-structural issues impede access to justice for asylum seekers due to disorganisation and backlog.

Ms. Marinikwa, suggested South Africa's new direction of pursuing Australia's means of refugee determination resulting in the merger of responsibilities of RROs and the DHA.

According to Ms. Kuhnert, the RRO in Cape Town has a backlog of 80 000 cases which is, in her words, “illegal”. “Refugees now only have 5 days to land an interview...they visit Cape Town but must go back to Pretoria [RRO] by which time their permit has expired.” Ms. Kuhnert’s statement reveals the circular nature of migration for asylum seekers in South Africa. Cape Town, for LGBT asylum seekers, is not only a beacon of economic opportunity but is also—as subsequent sections will show—a perceived safe haven for sexual minorities. Thus, LGBT asylum seekers, regardless of their port of entry, move towards Cape Town due to this perceived view. Since Cape Town’s RRO is closed, new asylum seekers seeking a life in Cape Town must enter from a different port of entry and bear the economic and time costs of making the journey to Cape Town. Moreover, asylum seekers granted a 6 month permit, under section 23, must return to the appropriate office where their status determining interview was conducted in order to renew their permit. This, apart from being an expensive and time-consuming journey, reveals a lack of bureaucratic cooperation within the DHA as the offices operate independently with no virtual records.

As Ms. Marinikwa suggests, the 5 day temporary asylum transit permit is difficult to navigate especially for asylum seekers who seek to live in Cape Town entering from other ports. This compounded with “long wait-times, backlogs, and missing files” places structural barriers for all asylum seekers entering the country. Moreover, since the DHA’s virtual capabilities are minimal the issues of ‘missing files’ is problematic as records of interviews and arrival dates amongst other information adds intangible difficulties to receiving or renewing asylum permits. Another structural barrier appears during the first oral interview—the purpose of the first interview is to screen the asylum seeker in order to grant the 6 month renewable permit under section 23. Since a legal representative cannot be present at the first interview the initial

statement form, according to Ms. Marinikwa, is full of errors and misses information. Moreover, due to the push for efficiency in Home Affairs, many asylum cases involving sexual minorities are deemed manifestly unfounded—that is to say the officer finds the claim fraudulent. Although this may be due to the poor understanding of South Africa’s legal system by asylum seekers, asylum officers are not sensitive to cultural barriers and the revisiting of emotional trauma.

According to Ms. Marinikwa, in cases of initial rejection, the DHA allows an automatic review which cannot be conducted in person. This appeal is a written statement, and although she helps her clients formulate the wording, the grounds for rejection by the RRO are unclear. That is to say, claims that are deemed ‘manifestly unfounded’ can, indeed, range from fraudulent attempts at asylum. However, in LGBT cases this could imply that the officer simply did not deem sexual orientation as adequate grounds for fear of persecution for the asylum seeker.

Ms. Marinikwa’s suggestion that the DHA often finds LGBT claims manifestly unfounded due to missing information and cross-cultural misunderstandings can be paired with instances of afro-homophobia in the asylum process as well. It is also important to recall Katherin Fobear’s claim that LGBT asylum seekers navigate a system that is not defined for them (Fobear 2014). Although UNHCR’s SOGI note is a tool used by NGOs working for LGBT asylum seekers and refugees, the note has not been ingrained for refugee board adjudicators. That is to say, although the note exists and is a useful launch pad or policy it has not received appropriate attention within government. For example, sexual orientation has not been mentioned on the DHA website as a category for seeking asylum. LGBT issues have not penetrated as deeply into the policy realm as women’s rights and thus, many asylum seekers—who happen to be sexual minorities—are unaware that they can claim asylum on these grounds. In regards to missing information, Ms. Marinikwa recalled a story about one client from Somalia

during the oral interview following the written appeal, the interview board officer claimed, “why didn’t they say they were homosexual?” The client’s omission of their sexuality resulted in a rejected claim as the appeals board found that the nature of the claim changed upon rejection. Recalling that even in ‘progressive’ South Africa, being gay is considered un-African, sexual minorities may not feel entirely comfortable disclosing their sexuality to a state official.

Ms. Marinikwa also examines the reasons provided by refugee determination officers for rejection. First, the DHA operates in a limited understanding of the definition of persecution. As Ms. Marinikwa says, “persecution can be from non-state actors too.” The DHA believes that if the government from the particular country of origin is not actively pursuing the asylum seekers due to their sexuality then the asylum seeker can simply move to a different part of the country. Ms. Marinikwa refers to this excuse as internal flight and further suggests that, “they [asylum seekers] have no obligation to try one or two cities first before fleeing.” The DHA, according to Ms. Marinikwa, is misinterpreting the law. Although internal flight may be a valid alternative to fleeing the country, for example, due to an individual or family’s political allegiance within a local municipality—it certainly is not a valid reason in LGBT cases. “In Uganda, it is a law of general application in every little corner of the country” Ms. Marinikwa says, in reference to the anti-homosexuality bill which was signed into law in 2014. According to the UNHCR, the Internal Flight Alternative (IFA) must be considered in the holistic assessment of the claim of refugee status. The analysis required by adjudicators involves the analysis of whether the area of relocation is practically, safely, and legally accessible to the individual. More, the agent of persecution cannot be the state (UNHCR 2003). The LGBT asylum seeker, due to state-wide law, is placed in a precarious situation. Indeed, it is possible that the individual may be fleeing the country only due to fear of grievous harm from their family, neighbours, and/or

community—and not the state. However, the individual is unable to turn to the police as homosexuality warrants the death penalty in Uganda. Even if the individual were to re-locate to a different part of the country, their sexuality could be “re-discovered” and they would fear for their lives once more. The law is misinterpreted because of a misunderstanding of sexuality. If the asylum seeker did not disclose their sexual or gender identity they would be able to safely and legally access the new area of location within their country—this is unreasonable as expressing one’s sexual orientation and gender identity is upheld by the South African constitution.

More, the DHA—using the excuse of internal flight—invalidates the individuals’ ability to practice their sexuality. Using this logic, the DHA suggests that non-normative sexual practices need to be covered up especially if the trade-off is death. That is to say, instead of allowing the person entry into South Africa the officers suggest “don’t be gay” or, in the least, “don’t get caught”. These solutions are ad-hoc and do not effectively respond to structural issues i.e. why is sexual desire regulated by the state and why should certain individuals live without disclosing their sexuality?

Ms. Marinikwa’s investigation of rejection letters also reveals other comments by DHA officials such as “no one cares that you are a gay” “you do not need to fear persecution because you are a gay” and “Do you know that it is wrong to be a gay in the bible?”¹⁹ For Ms. Marinikwa, “Home affairs has no training, they must not represent their own personal views and they are not trained on status determination...they have a gap in understanding terminology none of these officials have legal training”. Officers at the DHA struggle with an alternative mindset

¹⁹ Although I was unable to access these letters myself and thus, this is third-hand reporting. However, this is not inconsistent with the accounts of other LGBT asylum seekers in this research.

where personal views affect clear judgement of asylum claims. The lack of legal precedence in regards to LGBT claims is so shallow that the bible is used as a vehicle for determination. This reveals that officers do not have a specific set of guidelines for sexual minorities and also have a weak understanding of alternative sexualities and practices. Moral judgements involving reference to the bible places the blame on the asylum claimant and, in fact, justifies the persecution. This reveals the lack of training and guidelines within the DHA. Overall, the DHA does not prioritise SOGI in their consideration of asylum claims illustrating the mismatch between rhetoric and practice. Bridging this mismatch requires an active pursuit of solid guidelines and sensitivity training within the department. The lack of training of DHA officials is also a reflection of the heteronormative state. Heteronormativity works in a way which makes sexual minorities invisible and the lack of awareness of South Africa's stance on LGBT refugees within the department indicates both societal homophobic tendencies on the part of officials and the inability of the state to firmly entrench LGBT issues in policy.

The DHA's need for efficiency, in the face of backlogs, may result in the speedier adjudication of some cases; however, there seems to be a lack of sound reasoning, sensitivity, and understanding of socio-political and cultural contexts in many asylum cases. The review process can also be entirely avoided, if the claim is adjudicated effectively at the onset. Since asylum claims are already facing a backlog at various offices across the country, the review of rejected cases makes the status of asylum seekers more precarious, increases costs, and in some instances increases chances of *refoulement* due to improper adjudication. As the proceeding subsection will show, the adjudication for LGBT asylum cases is fraught with the tensions of both fear of the 'African other' i.e. 'Afrophobia' and a lack of understanding of LGBT identities as well.

Seeking Asylum within Bureaucratic Chaos

This sub-section will focus on the asylum seekers and refugees' interaction with RROs and DHA departments around the country. As the interviews with experts reveals, the intense backlog and disorganisation within the DHA has resulted in lost files and poor record-keeping of certain asylum claims. More, the asylum process is structurally flawed. Individuals must keep returning to their port of entry in order to renew their claims. There is no synergy within the department, each office is heavily burdened, interviews are rushed, and there is no sensitivity training or guidelines in regards to LGBT claims. Although South Africa must legally accept any LGBT claims at the port of entry, discordance exists between law and practice. In general, Home Affairs is regarded by the media as amongst the most poorly run departments in the country (Sowetan 2011; Mukuthu 2010) and LGBT issues, in particular, receive little attention. This section will examine each participant's interactions with Home Affairs officials and offers valuable insights into the refugee adjudication process in South Africa.

Katanga—an asylum seeker from the DRC who migrated to Cape Town in 2009--revealed that he had to flee due to the intense fear of being prosecuted by his first boyfriend's family. Revealing his sexuality to his family led to intense death threats not only from his immediate family but also from his neighbouring community. His journey to South Africa was arduous he took a bus from Kinshasa to Zambia before finally arriving in Johannesburg. Although Katanga did not mention the following in the interview I gather that he did not stop off at the RRO upon arrival²⁰. As my interviews with experts have suggested, it is nearly impossible

²⁰ This is because as other asylum seekers suggest it is next to impossible to gain a permit at a RRO. Most asylum seekers are "smuggled in" as the bus driver is paid a sum to cross the border from neighbouring southern African countries. The bus driver then bribes the border patrol in order for migrants to enter the country.

to claim asylum at an RRO especially for LGBT individuals, thus, asylum seekers similar to Katanga enter the country via bus which often involves bribing the bus driver in order to pass the border without intense scrutiny. The following excerpt describes how Katanga managed to secure his initial permit:

Katanga—“I found a guy at the train station I don’t have place to stay in Cape Town so the guy found a place for me for a night. He told me they [employers] ask for a permit for asylum seeker and he said okay ‘you give me R1500 and I will get you your paper’. I gave them the money a guy from Langa came to pick me up at 6 in the morning the next day.”

Ali – “Did he know the person in Home Affairs? It was like a bribe?”

Katanga—“Yes, Home Affairs called my full name and age; he wrote my name in file; he finger printed me...”

Ali – “No questions?”

Katanga—“In twenty-five to forty-five minutes I received my asylum status permit”

Ali – “Wow.”

Katanga—“They issued another permit in 2013 and now I have a permit till 2017”

Ali—“Did you disclose your sexuality to Home Affairs?”

Katanga—“No there was no reason to. I have always been hiding my sexuality”

Katanga had little difficulty securing a permit in contrast to other participants in this. Two key factors eased the process of Katanga receiving his permit without much scrutiny. First, Katanga was lucky enough to find someone that was able to bribe the Home Affairs official and second, Katanga did not need to disclose his sexuality to the state official nor the people who were letting him stay at his house. The latter is an important caveat especially in relation to other asylum seekers who were interviewed for this thesis. The ability to pass as straight allows some

queer individuals to access heteronormative space with more privilege than others. As Jessa Lingel theorizes, sexual fluidity or “passing” allows certain individuals to hide or change their sexual practice depending on the context (Lingel 2009). Katanga’s demeanour certainly allows him to “pass” as straight and thus, navigate homophobic/heteronormative space without being forced into disclosing his sexuality. This privilege protected him from initial violence in Cape Town; however, the following sub-section will show Katanga’s interaction with the violent state and the nature of homophobia which follows refugees from their country of origin to Cape Town.

Similar to Katanga’s story, JP’s asylum claim involved the privilege of certain LGBT individuals to “pass” as straight. JP, another asylum seeker from the DRC, did not disclose his sexuality to Home Affairs, and also bribed a middle-man in order to speed up his asylum claim. JP, who did not speak much English in 2011, did not understand the conversation between his bribed translator and the Home Affairs official. His main claim to seeking asylum was a war in the DRC; however, this violence did not directly affect JP. JP, although aware of South Africa’s international obligation to accept LGBT claims, did not claim asylum on the basis of his sexuality because he was aware of homophobia within the DHA. Bribing the translator further allowed JP to smoothly receive his permit without too many inquiries into how violence had affected JP’s life thus far. Although JP indicated that his experience with Home Affairs was pleasant and did not involve any homophobic threats, he still felt that Home Affairs was poorly run and inefficient. For example, he has to spend around R2000 each time he has to renew his permit in Johannesburg. As mentioned in the literature review, Home Affairs policies do not adequately account for in-migration within the country. Asylum seekers must return to their port of entry in order to receive a renewal of their permit. For individuals like JP, this return to

Johannesburg every six months is unaffordable. More, the DHA only serves asylum seekers from the DRC on Mondays and Tuesdays so if JP were to miss his initial permit renewal interview, he would have to stay the week in Johannesburg and thus, miss a week of work and risk losing his job in Cape Town.²¹

Unlike Katanga or JP, Anele's experience with Home Affairs was representative of the ways in which afro-homophobia often outplays in violent ways. More, Anele's account indicates the way being able to "pass as straight" is a privilege when dealing with uncritical and heteronormative views from officials within the DHA. Anele's "country of origin story" involved intense physical violence in the form of torture and rape at the hands of the Zimbabwean state and her own family members, it is important to note the lack of sensitivity of the DHA when adjudicating this claim. Anele—who often identifies as female—first encountered the heteronormative state when she was standing in a queue at Home Affairs. She says, "I was standing in one line, then an officer said to me 'this is not the line for the gays'." Apart from the fact that no actual line "for the gays" exists, the guard's ignorance and discomfort with non-normative gender identities/sexuality is clear. The guard's statement represents the poor treatment of sexual minorities in even mundane interactions with Home Affairs—that is to say, there is no cohesive training for lower-level employees especially in regards to sexual minorities. Anele was not made to feel safe and was picked out of a crowd of asylum seekers on the basis of difference. Furthermore, the guard's statement reflects the attitudes of other asylum seekers—the presence of sexual minorities (who do not pass as straight) make other asylum

²¹ Home Affairs rules do not seem to be consistent across the offices. In JP's case he was allowed to reschedule his appointment. For Chuk, even though he had tuberculosis, he was not able to reschedule his interview. Granted, these are at two different Home Affairs offices (one in Johannesburg and the other in Cape Town; however, the lack of consistency is indicative of poor training or the inability for staff to follow guidelines.

seekers uncomfortable. There is a double-discrimination, not only from the state but from other foreigners too.

Anele's first attempt at an asylum permit at Home Affairs also involved a brief interview with a Home Affairs official. Anele was forthcoming about her sexuality and explained her story to the official. The official responded with the following: "There are no gays in Zimbabwe because Mugabe doesn't allow gays." Anele was denied a permit and had to return to Zimbabwe in order to receive a permit from her country of origin putting her life in further danger. Similar to other participants in this research, Anele's story reflects the tautological justification given for the rejection of LGBT asylum claims. That is to say, because Mugabe has outlawed same-sex sexual activity sexual minorities simply do not exist. This also implies that LGBT individuals only exist in South Africa because of its progressive constitution indicating a lack of understanding of same-sex desire by Home Affairs officials in general. Furthermore, the official's comments indicate a reverence for countries like Zimbabwe (and leaders such as Mugabe) who are intolerant of LGBT individuals. An interesting contradiction exists within Home Affairs, on one hand, these interviews suggest evidence of afrophobia, on the other, officials regards the inclusion of same-sex rights in South Africa's constitution as "un-African" and therefore, non-representative of their own moral stances. Anele's story is downplayed or made to seem false. The prevailing attitude seems to be that LGBT claims are consuming valuable time and are considered a non-issue due to prevailing homophobic attitudes with state officials in the DHA.

Chuk's account with Home Affairs further reveals the arbitrary nature of adjudication and lack of systematic appraisal of claims. Chuk, who fled from Kenya, revealed that his family grew supportive of his same-sex relationship; however, the community he lived in became violent and

Chuk eventually lost his partner due to homophobic violence. Chuk fled Kenya not only due to fearing for his own life but also because his family was in danger. Chuk fled to South Africa in August of 2008, he says, “In 2008 August it was easy to get the asylum permit we just had to renew after three to six months...I had no problems until early last year when I was diagnosed with a chest infection and my asylum permit expired”. The following excerpt describes Chuk’s experience with Home Affairs:

Ali—“Please describe your treatment at Home Affairs after your chest infection”

Chuk—“Because of my chest infection I could not make the interview you see, so I went back when I was healthy and the lady asked me for a doctor’s note. I went back to the doctor and he wrote the note for Home Affairs but then they suddenly decided not to renew and they said ‘you must pay a fine’. How am I supposed to keep my job if the permit is not accepted? They said go from here and repeatedly called me Makwerekwere. They speak the !Xhosa you see and they click click click I don’t understand anything. It is the same thing in my home they said all Makwerekwere must move out of Delft.”

Ali—“Did they find out you were gay?”

Chuk—“The doctor’s note was from health4men so they asked me why would I become a gay? The lady brought 4 people to look at the form and they started laughing and saying I was gay and because of that I must pay R2500 fine...”

Chuk’s story represents the arbitrary nature of decision-making within the DHA. The handling of Chuk’s case was entirely arbitrary, one official suggested that a doctor’s note would suffice in order to renew the permit; however, this message was not filed appropriately and Chuk’s doctor’s note was suddenly invalid. The guidelines and rules seemed to change depending on which official he encountered. The derogatory term *mkwerekwere* was used by

officials who, instead of addressing Chuk directly, mocked him amongst themselves. The term *mkwerekwere* is used to alienate and expose foreign Black African threats to predominantly Black South African livelihoods.

More, Health4Men²² is predominantly a gay men's health organisation which focuses on sexual and psychological health services. The logo, deemed problematic by Home Affairs officials, also served to "out" Chuk as a gay male. Chuk's sexuality clearly became another reason for Home Affairs officials to deny his renewal. Chuk's case indicates the dual prevalence of afro-homophobia. Before officials discovered Chuk's sexuality he was told to leave by being deemed a *mkwerekwere*—once his sexuality was discovered he was ridiculed in a public way by the officials who breached confidentiality and conducted themselves in a highly unprofessional manner. The actions of the DHA officials indicate a lack of sensitivity training and little guidelines in terms of LGBT claims adjudication. More, the officials showed a lack of understanding of alternative sexualities by asking "why did you become a gay?" This attitude places blame on an individual for choosing to be gay and reveals a lack of even basic understanding of sexual diversity. Afro-homophobia manifests itself in the DHA office—all foreigners are viewed with suspicion and the sexual minorities face even more scrutiny and shame if their sexuality is revealed.

Katanga, JP, Anele, and Chuk's accounts display the arbitrary manifestations of heteronormativity within the DHA. The ability to "pass as straight" should not be a deciding factor of whether an individual should receive an asylum permit or not. More, Anele's demeanour is not something she can (nor should she be asked to) entirely control. Interestingly,

²² http://www.health4men.co.za/about/meet_our_team/green_point_clinic/

both Katanga and JP who hid their true reasons for seeking asylum South Africa were able to easily receive their permits. Anele told the truth and described the trauma of her fleeing Zimbabwe however this was not enough to secure a claim because the state official found the claim to be bogus. Importantly, Chuk only encountered homophobia and discrimination when his sexuality was revealed to Home Affairs. This shows that it was indeed sexuality and not the “African-ness” of Anele and Chuk’s claim that proved to be a problem in receiving a permit. Contrasting these four cases reveals the way in which heteronormative ideals continue to impact and operate within the DHA due to the officials’ homophobic attitudes. The following two cases show the ways in which the afro-homophobic DHA can be maneuvered. Importantly, Junior and Jeffery’s cases indicate the privilege of education and training which aided them in receiving their permits.

Junior Mayema²³—an asylum seeker from the DRC—has an account which represents the skillful maneuvering of the refugee adjudication system; however, his story also shows the limitations of South Africa’s refugee determination system and the particular lack of attention paid to sexual minorities. Junior opened the interview by saying, “if the law is being forced it is not going to have an impact...the majority of this country is against LGBTI...even in the US people are homophobic and in South Africa there is no public support”.²⁴

²³ Junior has now received refugee status in San Francisco, California

²⁴ Junior’s claim can be verified by the academic literature on the inclusion of LGBT rights into South Africa’s constitution. LGBT rights in the post-1994 constitution were included because of a strategic alliance between the Organisation of Lesbians and Gay Activists (OLGA) and the ANC. OLGA’s involvement, as Pierre de Vos suggests, allowed LGBT rights to be “snuck-in” to the constitution without much public discourse. Although the ANC had a heavy religious base, LGBT rights were included in the constitution under the packaging of anti-discrimination (Vos 2007).

Junior's training as a lawyer in the DRC allowed him to be more strategic in receiving his asylum permit. As mentioned in the previous section, it is very difficult for anyone to claim asylum directly at the RRO especially on the grounds for sexual minority rights. Thus, Junior entered South Africa on a one month tourist visa and claimed asylum once inside the state. When asked about his experience at the RRO Junior said the following: "I told the lady I fled the country [DRC] because I am gay, her response was 'there are no gay people in the Congo'...she said it was abnormal and blamed the [South African] constitution...she says 'in other countries it cannot happen'..." Junior, did receive a temporary asylum permit at the RRO despite the homophobia displayed by the official; however, he had to spend his own money to renew the permit continuously without any specific time for adjudication. He moved from shelter-to-shelter until a gay couple in Toronto started sponsoring him in 2011. Due to Junior's alliance with PASSOP and other INGOs such as ORAM he was eventually able to gain a refugee board interview. ORAM, in partnership with the UNHCR sponsored 5 refugees in receiving pro-bono aid in order to gain refugee status. Thus, Junior became a UNHCR protected person and received an interview with the DHA after international involvement. When asked about his experience with the DHA after receiving UNHCR support Junior said the following: "Home Affairs said I was strange, they were being homophobic they even said 'no go back to your country' and said I had 'no grounds' for asylum, but, because of international pressure they accepted the claim...the fear of difference still exists in this country it is a regional issue of African racism and homophobia...violence is a daily existence I face verbal abuse and sometimes physical attack".

The elements of Afro-homophobia are clearly present in this case as the RRO official displays an ignorant and ill-informed attitude towards sexual minorities by tautologically suggesting that because Congo's constitution does not allow for LGBT individuals there simply

cannot be any sexual minorities in the Congo. The official then goes on to blame the South African constitution for allowing LGBT rights and then calling Junior “abnormal” clearly ignoring South Africa’s international obligations and also illustrating the lack of sensitivity training and guidelines missing in the DHA. More, even when Junior receives international support the DHA resists his claim and tells him to return to his own country. It is important to note that Junior receiving an asylum interview with Home Affairs in a timely manner would have been impossible without pressure from international organisations such as ORAM and its linkage with the UNHCR. In fact, the state was pressured into accepting Junior’s claim; however, this privilege is not offered to other less-educated and less-informed asylum seekers who receive far worse treatment than Junior did from the DHA. Finally, although Junior’s case was eventually successful, it did not set a precedence for LGBT asylum seekers in terms of a regulatory framework in dealing with these types of cases. In similar fashion to the inclusion of LGBT rights into the constitution, Junior’s case did not work to actively challenge the heteronormative state. Instead of using Junior’s example to actively include sexual minorities into the refugee determination apparatus his case was quickly dealt with in order to prevent international backlash.

Jeffrey, a political activist in Kenya, provided insight into his interactions with the heteronormative state. Jeffrey, due to his activist work was aware of South Africa’s legal obligations in regards to sexual minorities and claimed asylum based on his sexual orientation. I asked about his experiences with the RRO at a port of entry, he said the following: “I only applied for a permit once I was in the country. I know the laws, I had all the documentation. If you claim that you are seeking asylum due to your sexual orientation at a port of entry they will immediately deny you, there is no chance...only if you are maybe a victim of war then maybe

you can enter most people enter South Africa on a tourist visa and then claim asylum from within". Jeffery tried to file his claim from the Cape Town office but the officials routed him to Durban. The following excerpt describes Jeffery's experience at Home Affairs in Durban:

Jeffrey—"Durban is more racist and homophobic than Cape Town. Even in the queue fellow refugees make comments and complain to the guards. They do not want to be beside a gay person"

Ali—"How have your interactions with officials been thus far?"

Jeffrey—"They simply do not understand. Some of them do not know the laws so they say 'it is wrong to be gay' one lady even pulled out the bible and said 'don't know you it is wrong to be gay in the bible' they are very homophobic."

Ali—" But you have a permit now?"

Jeffrey—"Yes, they gave me a 6 months permit but I can only renew it in Durban so I must keep going back there at my own cost"

Jeffrey's story is similar to the other participants in this research. Again, it seems like refugee adjudication is arbitrarily moved to offices in major cities. A significant impediment to adequate adjudication is clearly the intense amounts of backlog faced by Home Affairs. According to Jeffrey, the Durban office is understaffed and overstuffed because they, allegedly, have to deal with all new asylum claims in the country. This backlog leads to ineffective adjudication because officials are overworked and simply do not have the time nor the diligence to hear the claims fully. Jeffrey also indicated that the DHA accepted his claim because he was able to provide appropriate documentation; however, Home Affairs lost his documents and he had to re-apply. More, as Jeffrey's case reveals, Home Affairs' officials are homophobic or at least have simplistic understandings of sexual variance. Referencing the bible as a point of

reference or indication of morality reflects the lack of guidelines and specific attention paid to LGBT rights in South Africa. Due to the lack of training received by Home Affairs officials, adjudication decisions are influenced by moral decisions. Although Jeffrey did receive an asylum permit his positionality as an educated and socially aware activist—a point of privilege-- allows him to navigate the refugee apparatus with less difficulty than other asylum seekers.

This section has examined the limits of South Africa's refugee adjudication system vis-à-vis the afrophobic and homophobic leanings of Home Affairs officials. The evidence gathered from all of the participants suggests that the refugee adjudication process is structurally flawed and places extralegal impediments to justice. The DHA is notorious for being poorly managed (Khalo et al. 2010; Hoag 2014) having little cohesion within the various offices and facing severe backlogs of applications. This includes arbitrary and non-transparent rules which seem to differ depending on the Home Affairs office. In some cases, the rules for renewal of asylum permits are eased via a bribe, in others the rules change—without warning or justification—depending on the moral beliefs of the officers. In regards to sexual minorities the DHA is quite clearly inept in implementing guidelines or training officials to approach these claim with sensitivity outside moral stances or religious beliefs. The concept of South Africa's general acceptance of LGBT rights was also put into question in this section, that is to say, LGBT issues do not receive political prevalence and are mostly ignored by the DHA. This leads to LGBT asylum seekers facing a double discrimination based on their “African” origins and their sexual preferences. The concept of “passing as straight” was also discussed in this section as this ability allowed certain individuals to gain an asylum permit with ease. On the other hand, as was the case with Chuk, the discovering of one's sexuality led to ridicule and a denial of permit renewal. Furthermore, 5/6 cases have yet to receive a refugee determination interview for permanent

status. Only Junior, who received international attention, received refugee status which is indicative of the lack of priority given to these types of claims. LGBT asylum seekers face everyday discrimination, as evidenced by the participants' treatments from Home Affairs guards, due to perceived sexuality and is coupled by a lack of acceptance from fellow refugees within their new micro-communities.

Chapter 5 – From Violence to Violence – Life in Cape Town

This sub-section challenges “common-sense” notions across the African continent that Cape Town is a safe haven for LGBT members. South African scholarship has focused on the elements of violence especially towards lesbians and has critically discussed the concept of masculinity that shapes attitudes towards sexual minorities (Livermon 2012; Lock-Swar 2012). Furthermore, the scholarship has examined the particularities of neoliberal space, that is to say, market-driven associations (Oswin 2007) with gay consumerism that have shaped gay life in the Cape Town city bowl—particularly for white gay males. The rhetoric of liberation intersects with gay consumer power and thus, Cape Town for white gay men is safe and accessible. The distribution of violence for sexual minorities is not only based on race and class but space as well (Tucker 2009). I argue that LGBT asylum seekers face a double discrimination where their “African” foreigner identity problematically intersects with their perceived sexual orientation and/or gender identity resulting in violence from members of their new communities and, in some instances, the police. Structural violence does not disappear once the asylum seekers have navigated through the DHA’s problematic determination system, in fact, violence especially in relations with the police continue to make life difficult and limit citizenship to sexual minorities. In this sub-section my analysis will be divided between “everyday” structural dimensions of violence and police violence. Importantly, many of these discriminations occur across various landscapes of Cape Town. The literature in South Africa has rightfully focused on township spaces; however, it is important to move beyond the binary of city bowl versus township in recognizing a dynamic post-apartheid Cape Town. The boundaries between township and city are porous—people commute and work within the city and often live in townships. Importantly, discrimination, too, follows sexual minorities wherever they go on both micro and macro scales.

Discrimination and Violence in Housing and Employment

Structural dimensions of everyday violence include employment and housing discrimination faced by sexual minorities. The scale of violence varies from financial manipulation by fellow refugees and landlords to extreme forms of physical abuse and even death of loved ones.

Examining discrimination in terms of employment is complex as often asylum seekers are able to find employment as their permits have a six month expiry and, often, these individuals are able to work for less than minimum wage and thus, drive-down the cost of labour for many establishments. However, since the DHA faces intense backlog and asylum seekers are often routed to their port of entry—where they face even more delays—their position at work becomes precarious and they risk losing their jobs. Although this is a structural factor faced by asylum seekers in general, sexual minorities face an additional layer of discrimination. For example, once Katanga received his asylum permit he found employment in Century City—an overly commercialised white suburb of Cape Town. His manager eventually discovered his sexuality and asked him out on a date. Katanga did not appreciate the sexual advances and refused to go on a date with his boss—he was fired the next day. Moreover, Katanga often volunteers as an LGBT rights activist for PASSOP. Since PASSOP deals with all asylum seekers and refugees, a fellow refugee, upon discovering Katanga's sexuality, physically abused him. As Katanga says, "Sometimes I feel as though I am not safe anywhere I go." Because Katanga is an asylum seeker his job was never secure and labour for foreign Africans is often flexible. More, Katanga was in no position to file a discrimination lawsuit or a harassment case against his superior. At PASSOP, a place where Katanga should feel safe, he was violently abused. This

case represents the precarious position of asylum seekers due to their Black-African origins and non-conforming sexualities.

In similar fashion Junior was discriminated at PASSOP too. He said, “Sometimes the receptionist ladies are rude although we are all refugees they do not believe LGBTIs deserve the same rights.” Discrimination can often be at the micro level for example, when I asked Junior if he felt alienated by fellow volunteers and staff at PASSOP he said, “When Koko is not around the lady will tell me to do the cleaning, the dishes...” To clarify, when I met Junior he was working on a project for LGBT advocacy so being asked to clean-up can be quite humiliating. Even more insidious is that Junior is gender non-conforming and gender roles and biases are entrenched in many aspects of South African society. As Jeffery—who also volunteered at PASSOP suggested—there is a misconception that women do household-like chores such as cleaning and men do more important office work. The discrimination Junior faced may also be due to the receptionists own, uninformed, views about gender identity and expression and the suggestion that Junior also do the cleaning is an assertion of hierarchy based on race and perceived gender identity even within a progressive left-leaning organisation such as PASSOP.

Asylum seekers can only, legally, receive employment if their permits are up-to-date and the inability of obtaining this permit, in fact, puts these individuals in further harm. Anele’s story reflects how structural factors such as unemployment contribute to significant physical violence with psychological and health repercussions. This was Anele’s response when asked about how she earns a living and her experiences in Delft—a township area at the outskirts of Cape Town.

Anele—“When I came here I have no friends and no support because I am from Zimbabwe they don’t want to hire me. Cape Town is beautiful city but I

do miss my home still but I cannot go back. When I came I found a job working in the garden for a German man. I was looking for any job so I said I would clean for him."

Ali—"How long did you work there for?"

Anele—"I worked there for one month but he didn't pay me any money.

Ali—"He didn't pay you??"

Anele—"No he said I did not do a good job and he dismissed me. I asked him for at least some money but he did not want to give me he threatened he would call the police if I did not go from there"

Ali—"What do you do now?"

Anele—"I worked some jobs like cleaning; gardening but it was not enough to survive so I am doing sex-work now. It is not a good job but for me it is the only way I can make enough money to survive. In Delft even here they are very homophobic. When I take the minibus one guy said I do not want to sit beside the moffie they said you are a moffie we do not want moffies in the bus. Then the same man comes to my house at 12 midnight and says oh baby I am sorry I am sorry and he demands sex...My boyfriend also attacked me (pointing to his a deep gash under his shin) he tried to slash my throat."

Ali—"I'm sorry to hear that we can stop the interview if you would like"²⁵

Anele—"No it's fine this is important"

Ali—"Why did he attack you? Was he aware that you are a sex worker?"

Anele—"No I am no longer a sex-worker I am HIV positive so I stopped I

²⁵ In response to Anele's crying

cannot do that to other people I cannot give the disease to other people I just want to be happy I want to live a full life"

Ali—"Do you still talk to your boyfriend? Why did he attack you?"

Anele—"No he left me he tried to kill me because he discovered I am a foreigner [Zimbabwean]"

Anele's story reveals many difficulties faced by some asylum seekers in their integration into life in Cape Town. Although Anele received a work permit from Zimbabwe in 2011 it seemed that his non-South African origins proved to be a barrier for employment unlike Katanga's case. The inability to find meaningful and sustainable employment led Anele to sex-work—the inability to negotiate safe sex led to Anele contracting HIV. There are clear health implications of sex work especially in township areas where men who have sex with men (MSM) are not open and often have families and children. Anele's story also reveals the flexibility of masculinity, according to her the same men who were ferociously homophobic on the minibus also knocked on her door at night and demanded sex. Finally, Anele's boyfriend sliced her throat because of discovering her "African" origins. I have mentioned the dual impact of afro-homophobia throughout this thesis; however, Anele's case exemplifies the hatred towards foreigners and the questionable societal position of sexual minorities in townships. Importantly, the state does not play a role in the re-integration of asylum seekers and refugees. Since 5/6 of my participants are awaiting their refugee board interviews the state leaves individuals to fend for themselves. There are no measures to ensure the safety of asylum seekers or refugees—there is no attempt to integrate them or provide them with resources in order for them to be successful in South Africa. These individuals have no support systems once they arrive and township spaces

are fraught with tensions along afro-phobic lines. The lack of recognition of sexual minorities further alienates them because they are unable to fully find solace within their refugee enclaves.

Housing is also an issue highlighted by some of the interviews. Although Junior, JP, and Jeffery were able to accumulate both social capital and steady incomes to move out of their respective townships into the suburbs of Cape Town, the other participants have not been so lucky. As Chuk says, “Cape Town is safe for some people but I am a black, gay, foreigner it is not safe for me”. Chuk resides in Delft and his rent is R300 a month an amount he cannot pay without employment. Chuk finds himself constantly living in fear as he says, “Black South Africans never accepted me...in Delft they say every kwerekwere must move out”. Chuk has been attacked repeatedly, his landlady has requested his eviction many times due to his inability to find work and thus, pay rent. Chuk rents a garage which has no door, although he has a roof over his head he faces a constant threat of violence from his neighbours who have discovered his “foreign” identity. His relationship with his landlady is complicated—at first Chuk was able to afford to live inside the house; however, due to his inability to pay rent, he was moved to the insecure garage. Since Chuk is unable to pay the rent his landlady complained against him to the taxi drivers that have local political clout and—like vigilantes—often take matters of crime into their own hands. Thus, Chuk was physically abused by these taxi drivers and all his possessions were placed in the hands of his landlady until he was able to pay the rent. Unfortunately, Chuk’s asylum permit has also—at the time of this writing—been confiscated by his landlady. Thus, without the permit Chuk cannot legally procure employment. By default, Chuk was made homeless, and although his landlady did not discover his sexuality, his foreignness coupled with the inability to pay the rent made him an undesirable tenant—the state provides no safety nets in

this case and asylum seekers such as Chuk are placed in violent-prone situations without the basic requirements of food, shelter, and sanitation.

Similar to Chuk, Katanga also revealed a similar situation of violence in regards to housing. Being of Congolese origin Katanga was able to secure housing with a distant Congolese relative. At first the relationship was amicable; however C___ discovered Katanga's sexuality and extorted him for more money. C___ threatened that she would reveal Katanga's sexuality to all his Congolese friends and expose his relationship with a white man. In 2012, C___ revealed Katanga's sexuality to his cousin in Cape Town—his cousin later called Katanga's immediate family in the DRC and Katanga was cut-off from any remaining funds that his father was sending him without the knowledge of his mother. Since, C___ revealed Katanga's sexuality Katanga has faced repeated assaults from members of his own community and his former friends. Katanga's story is indicative of the ways in which cycles of violence fueled by homophobia repeat themselves from the country of origin to the asylum seeker's lives in Cape Town. Although Katanga fled his homophobic homeland, the Congolese micro-community which Katanga was able to find solace abandoned him due to his sexuality. Importantly, intolerant views do not disappear. Again, landlord-tenant power relations are uneven. Katanga trusted C___ with his sexual identity and she was able to use this for her own benefit threatening not only social ruin but also eviction if Katanga did not pay her for her silence. Although C___ clearly faces economic constraints of her own the fact that homosexuality remains a social taboo continues to endanger the livelihoods of sexual minorities in South Africa.

Junior faced housing discrimination too. He had found a home with a lesbian couple near the township of Gugulethu through his Canadian sponsors. Junior said, "Even though they were lesbians they are xenophobic they told me 'you are from the Congo go home'". As I have

argued, Afrophobia is engrained in the psyche of many South Africans especially in poor areas with high economic constraints and the power relations instilled by apartheid. In this case even the solidarity of being sexual minorities is overtaken by afrophobic leanings which aims to “other” non-South African Africans and places them at a lower position of social strata. Junior eventually faced physical assault from his landladies and was forced to leave Gugulethu and find a place in Woodstock.

Chuk and Katanga’s situations describe two variants of afro and homophobia in Cape Town. The former did not find an enclave of fellow countrymen and constantly faces threats from his neighbours in Delft for being a *makwerekwere*. The latter finds his distant relatives and is able to gather some social capital until his micro-community discover his sexuality and then he too faces discrimination and violence. LGBT asylum seekers clearly face a dual discrimination that is often out of their control and Cape Town is exposed as a myth of being a safe-haven for sexual minorities because some my participants are forced to remain in the closet as they navigate various spaces. The main purpose of this sub-section has been to illustrate the ways in which sexual minorities are violence-prone beyond the binary of city bowl versus township space.

Police Violence

This sub-section will briefly provide some evidence that Cape Town police also display homophobic and afrophobic attitudes. As I have argued, the South African state despite some progressive LGBT-friendly leanings remains deeply entrenched in systemic heteronormativity and the police represent another branch of the state which often perpetuates violence.

As I mentioned in the previous sub-section, Katanga had issues with his landlady who exposed his sexuality to the micro-Congolese community enticing physical abuse towards Katanga. At the time Katanga was dating a Congolese man and the following excerpt describes intense violence faced by Katanga and his partner and the inaction of the police:

Katanga—"I was dating a man from the Congo at the time..."

Ali—"Was this recently?"

Katanga—"Yes only a few months ago. After C___ had told all my friends and my cousin that I was gay I had nothing to hide in some ways I was free but they keep on harassing and making comments..."

Ali—"But it got better? They got used to it?"

Katanga—"Yes after a few months they left us alone. One day me and my boyfriend we walked into a store near Sea Point he wanted to buy cigarettes so we went in. The man at the store was also Congolese and he said we cannot sell to you because you are gays...why are you being gays? My boyfriend got very angry and he said yes so what we are gay what are you going to do I am still buying from your store. Then they started arguing it became loud and then other Congolese men were also there... The owner said 'we must teach you a lesson' and they were chasing us down the street... I ran to the police and they said 'you cannot involve us in foreigner's problems' meanwhile one man ran at my boyfriend and struck him very hard in the back of the head. I called an ambulance...my boyfriend had died."

Ali—"Did you go to the police again?"

Katanga—"Yes I went to the station but the police kept on saying

xenophobic things they say mkwerekwere mkwerekwere but I filed a report the police doesn't say anything. I had to pay R25000 for the funeral everything is gone other Congolese people came to his house to threaten me that they will kill me to and they steal... everything is gone."

Ali—"That is a lot of money why did you have to pay so much?"

Katanga—"I had to send the body to DRC"

Katanga's story is harrowing on two fronts: the escalation of violence by the intensely homophobic Congolese men and the complete inaction of the police. The violence enacted by the Congolese men reflects engrained attitudes that homosexuality is "un-African". Using Lock-Swarr and Livermon's work on varying masculinities, I suggest that same-sex desire challenge common-sense conceptions of what it means to be a Black African male (Livermon 2012; Lock-Swarr 2012). Likely, the Congolese store owners would not attack white gay males who wish to purchase something from there store—Sea Point is by no means a township and is close to commercial gay spaces. However, the fact that this level of violence occurred in an area which is considered cosmopolitan and multicultural further indicates that violence is not solely a "township" problem.

The police completely ignored Katanga's plea for help as he knew his boyfriend was being assaulted. The police did not want to be disturbed by the issues of foreigners establishing a distance between South Africans and other Africans. In other words, the foreigners must deal with their issues amongst themselves and the police did not want to interfere in issues they found beneath them. More, when Katanga went to file a police report it seems as though the police continued to make derogatory statements towards Katanga's "foreign" origins—despite filing a case where someone died, the police have not made an effort to arrest the perpetrators thus far.

Junior's interaction with the police reveals both afro- and homophobic tendencies. When Junior was assaulted and evicted from his house in Gugulethu he attempted to file a report at the police station. When the police discovered that Junior was gay and from the Congo one particular officer physically assaulted him and said, "We do not want you here go back to the Congo you moffie". When I asked Jeffrey about his interactions with the police in face of the assault he faced he said "There is no point in going to the police they do not want to help us". Chuk was the only participant who expressed a positive sentiment towards the police. The police were able to negotiate for Chuk to stay an extra month in his landlady's garage in Delft; however, they were ultimately unsuccessful in protecting him against violence. Junior's experience particularly reveals a vitriolic attitude towards foreigners and sexual minorities it seems as though the officer senselessly attacked Junior outside of any jurisdiction and knew that he would get away with it because Junior's social status was so low and he would have nowhere to turn to. Junior could not provide any reasons for the abuse and was baffled at the treatment he received.

The aim of this sub-section has been to outline the ways in which the police have perpetuated violence towards foreign sexual minorities. As Jeffrey suggests, some people view the police as ineffective. I argue that the police, at least in certain areas of the city, display afro-homophobic tendencies in ways which impedes justice. City of Cape Town police, according to their mandate, aim to "Protect and Serve" (City of Cape Town 2014) and for Katanga and Junior they were unable to do either. Although this section has been brief as this research was not focused specifically on examining Cape Town Police, further research could discover the intricacies surrounding the regulation of asylum seekers in general and sexual minorities in particular. As I have argued, the state and its various departments operate under and intangible

and implied framework of heteronormativity. Junior's violent interaction with the police is certainly illegal; however, power asymmetries between asylum seeker—in many ways a non-citizen—and the police prevent these actions to have legal impact on the officers in question.

Chapter Conclusion

This primary aim of this chapter was to show the ways in which the South African state places barriers on LGBT asylum seekers through the intangible and ingrained ideas of afro-homophobia. LGBT asylum seekers navigate an asylum apparatus that is not designed for them and encounter ill-informed, afrophobic, and homophobic state officials during their claims' process. More, Home Affairs is bogged down with various claims and there is no cohesion or synergy between the various offices nationwide. In regards to LGBT issues the state offers no guidelines or training to any of its officials illustrating the lack of priority given to sexual minorities or follow-through on South Africa's international obligations. The state also makes no effort to integrate asylum seekers in South African society especially because refugee status interviews far exceed the legal six month maximum. Thus, these individuals face horrible living situations fraught with asymmetric landlord-tenant dynamics. LGBT asylum seekers escape violence from their respective countries of origin only to face both homophobia and afrophobia in Cape Town. As I have argued, the violence does not end and the participants in this research face harsh discrimination on a daily basis. Finally, the police is selective and ineffective in their aim to "protect and serve" further de-prioritising the needs of African foreigners. Heteronormativity and afro-homophobia are intertwined—heteronormativity although constantly challenged has the power to gloss over sexual minorities as irrelevant while afro-homophobia allows us to understand the ways in which violence occurs and how and why it is different in regards to sexual minorities seeking asylum within the country.

Chapter 6: Conclusions

I have argued that LGBT asylum seekers and refugees face unyielding and multiple levels of discrimination based on their “African” origins and their sexual orientation and/or gender identity. I have used the term afro-homophobia to encapsulate this phenomenon. This thesis has challenged two “common sense” notions: One being that the South African state is progressive in its treatment of sexual minorities, the other being that Cape Town is indeed a “safe haven” for LGBT individuals. Using interviews by experts along with secondary source material provided by NGOs, I have illustrated that the South African state is implicitly heteronormative. South Africa’s constitution is regarded as amongst the most progressive in the world (Mangcu 2012; Narrain 2014); however, this is not met in practice in regards to LGBT asylum claims. Despite progress within constitutional law the majority of South Africa’s citizenry finds homosexuality to still be unacceptable. This view has impeded justice within the DHA and is a major reason for violence towards sexual minorities in Cape Town. This thesis has shown that an obvious disconnect exists between LGBT positive rhetoric and practice within the DHA. More, I have also challenged the notion that Cape Town is a safe haven for sexual minorities by examining the life histories of the asylum seeker participants from country of origin to life after re-location.

The origin stories for most of the asylum seekers interviewed reveal drastic situations involving betrayal and the cutting of familial ties upon discovery of one’s sexual orientation/gender identity. The catalyst for fleeing one’s country of origin, undoubtedly, results in at least the threat of violence and the inability for an individual to reconcile their sexuality or gender identity with cultural mores. In many African countries being gay is considered a product of the West and although the (ever-growing) LGBT+ acronym does, in fact, trade historical

nuance and significance of sexual practices across time and space in favour of mainstream appeal, it is also useful in generating mainstream discourse for the universalization of sexual minority rights globally. The lack of LGBT rights proliferation across the African region means that sexual minorities have very little space in their respective countries of origin to “come out” in. Revealing one’s sexual orientation for some of the participants has resulted in the blurring of private and public life. Violence ranging from property damage to the death of loved ones were some of the scenarios which led to individuals fleeing their homes. Fleeing must be considered as a serious decision, one that involves potential estrangement from loved ones and the complete abandonment of the livelihood. Although the state views asylum seekers with suspicion the act of fleeing one’s country must be emphasised as one out of necessity as opposed to whim.

More, the majority of South Africa’s population holds homophobic views and the inclusion of sexual minority rights into the constitution without in-depth civil society consultation has resulted in this disconnect between legal prescriptions and mindsets. Afro-homophobia is resulted in illegal adjudication of some LGBT asylum claims which often blames the applicant for “choosing” their sexual orientation or gender identity. Training within the DHA especially with adjudicating officers is currently sub-par. Legal justifications such as internal relocation of LGBT asylum seekers at their country of origin are inappropriate for sexual minority based claims. However, as this thesis has shown, the DHA does not view sexual minority asylum cases with a high degree of validity. More, SOGI issues are entirely missing in policy documents or the DHA website. Another major issue exposed by this research is the flawed nature of permit renewals for asylum seekers awaiting refugee board interviews. Asylum seekers living in Cape Town had to continually return to their port of entry in order to renew their permits resulting in financial and time costs.

The DHA clearly needs some overhauls which need to address the unprofessional conduct of officers, the intense backlog of cases, and bureaucratic chaos in terms of lost files. DHA officers need to be trained in-line with South Africa's law and international obligations. Indeed, this will not change the homophobic mindsets of adjudicating officers; however, this top-down measure will at least raise some awareness that sexual minorities can indeed claim asylum in South Africa on the basis of sexual orientation. The DHA website also needs to be updated for the same reason.

Another important aspect of this thesis is the way in which asylum seekers are treated upon entry into Cape Town. This thesis showed the ways in which violence remains a part of the daily lives of sexual minorities while living in Cape Town. One possible measure to ease the transition for LGBT asylum seekers is outreach conducted by NGOs and aided by the state. A best practice surprisingly emerges from Nairobi despite the Kenyan's state lack of recognition for LGBT rights. As Duncan Breen and Yiftach Milo suggest, trained NGO refugee counsellors conduct outreach in local refugee communities resulting in a significant increase of LGBT refugees seeking assistance. The offices operate in an open-door environment—LGBT refugees do not need to book an appointment before-hand and wait in line with other refugees. Kenya also provides safe housing for certain high risk LGBT refugees and asylum seekers instead of accommodating individuals in a single safe house where they may encounter further violence. Finally, psychosocial support is also offered to LGBT refugees especially because sexual minorities do not have a social support system if they reveal their orientation or gender identity. Although Kenya's constitution is less progressive than South Africa's the state has engaged with key NGOs in order to aid the process of relocation for LGBT migrants (Breen and Mollo 2013).

The most important contribution of this thesis is that very little academic work in regards to LGBT asylum seekers and refugees has been conducted in South Africa. Apart from an open paper by Yellavarne Moodley from the UCT refugee law clinic no published materials in South Africa regarding this topic exist; however, interest surrounding this issue is growing due to the spread of anti-homosexuality legislation in Sub-Saharan Africa.

First, this thesis has used the concept of heteronormativity which has structured the asylum claims process in South Africa. As authors such as Fobear have argued, sexual minorities navigate a system which does not explicitly include them. LGBT rights are simply cast as unimportant or packaged under the broader rhetoric of gender equality (2013). For me, this is the insidious nature of heteronormativity—a force which is often unnamed and intangible but present in characterizing who belongs in the state and who does not. Importantly, the boundaries between state and society are porous. Heteronormativity has been a useful concept in analysing the disparity between South Africa's LGBT positive rhetoric and lack of practice. Although South Africa often offers tokenistic support to sexual minorities these issues have simply not gained traction in regards to policy within the DHA. The data gathered in this interview indeed places some blame for the ineffective adjudication of LGBT asylum claims on the state; but, an issue of homophobic mindsets within the majority of South Africa's population continues to impede justice. Heteronormativity in South Africa operates in a way where sexual minorities are made invisible and histories of sexual variance within South African cultures are erased or forgotten. This mindset within civil society cannot be entirely ignored and employees of the DHA are undoubtedly influenced by the normativities that structure South African society.

Second, the concept of afro-homophobia goes beyond the South African literature on xenophobia within the post-apartheid state by adding the often invisible dimension of

homophobia especially in regards to LGBT asylum seekers. Afro-homophobia is a useful concept in examining discrimination especially towards racialized bodies. Furthermore, this concept is useful in analysing the intangible, simultaneous and contradictory ways xenophobic and homophobic tendencies operate within South Africa. I have used afro-homophobia as a means to analyse the identity category occupied by sexual minorities seeking asylum in South Africa. On one hand, sexual minorities are considered an ‘un-African’ abomination which is often used as a justification for violence towards them. On the other hand, “African” refugees are constantly attacked due to their ‘un-South African’ identity. As I have argued, LGBT refugees are simultaneously un-African and too African to live in South Africa.

Both heteronormativity and afro-homophobia are useful for scholars studying queer migration on the African continent—a field which is currently underdeveloped in academic literature. Further research on forced queer migration in Africa would also involve other countries where LGBT migrants are forced to flee.

Further research on this topic would also involve access to both higher and lower-level state employees. A survey instrument which captures the mindsets of state officials in regard to LGBT claims would also be useful. More, this study is missing analysis of lesbians which continues to be a gap in the literature regarding forced migration. Although the acronym LGBT²⁶ is used in line with the literature; there is certainly a bias towards gay men and, to a lesser degree, transgendered individuals in this study. This research could also be linked internationally through a multi-country study which examines the multiple routes taken by LGBT migrants. Linkages with NGOs from the African region who focus on LGBT issues would also be an

²⁶ I argue that “LGBT” engages in a particular discourse due to mainstreaming that it is starting to function like a word which described sexual minorities rather than the individual word which make up its acronym. This might yet be problematic as it serves to amalgamate sexual variance.

interesting avenue to pursue. The NGOs I engaged with in South Africa do not have African linkages and these linkages could form important support systems for future LGBT asylum seekers.

Addendum

I write this conclusion in Cape Town after participating in an anti-xenophobia march in Khayelitsha in light of “afro-xenophobia” resulting in violence in both KZN and Gauteng provinces which, I hope, speaks to the relevance of this research. President Zuma’s latest national address called for more than tolerance in regards to foreigners who are an important part of South Africa’s economy and the importance of South Africans to consider themselves “African” first and foremost. However, in the same breadth, Zuma suggested that illegal migration is an issue in South Africa while simultaneously criticizing the widespread violence. He also mentioned acceptance of sexual minority rights—a step in the right direction (Zuma; National address; 2015). Commentary from news24 has pointed to the lack of emotion in his speech (News24 2015); however, the speech reflects widespread afrophobia in South Africa that is persistent and ingrained in many mindsets especially in informal spaces where economic constraints continue to pose extreme challenges to livelihoods. This thesis has attempted to shed light on an under-examined minority group that faces intangible levels of discrimination based on perceived “African” origins and SOGI. These participants are embedded in a structure whose rhetoric is progressive and matches international standards; but, is ultimately ineffective in practice. Cape Town, a city with stunning natural beauty—a tourist’s dream, is also unforgivingly violent for some and certainly not the safe haven it is imagined to be.

Appendix 1– “Dorotea”’s Account

I removed this account from the thesis as it is a third-hand account. However, the asylum seeker represented here is an important case worth including.

Ms. Kuhnert, in re-telling a story of one transgendered asylum seeker, suggests that the initial contact for Dorotea²⁷ at the refugee reception office was detrimental, recalling that the officer claimed, “how can you be gay? That is not African” (2014). Although the request for the asylum transit permit was accepted—since it is not the job of the refugee reception officer to conduct a thorough interview—the homophobic comments paired with the rhetoric of pan-African solidarity on the issue of sexuality are certainly disparaging towards the applicant. The officer’s comment is not outwardly xenophobic, but it does reflect a lack of understanding towards non-normative sexualities. Being ‘gay’, for this officer, is an out-of-Africa phenomenon that does not exist, allegedly, on the entire continent. When the officer question Dorotea’s sexuality he simultaneously questions her ‘African-ness’. Moreover, the asylum claim itself is viewed with more-than-necessary suspicion. When being a sexual minority is equated to being ‘un-African’, that is to say, a phenomenon that simply does not occur in Africa Dorotea’s claim becomes less valid. In this light, Dorotea’s sexuality is something she discovered or ‘caught’ due to Western influence and is thus, something she can choose not to express. Dorotea’s claim could also be seen as an absurd fabrication, since being ‘gay’ is viewed as not being indigenous to Africa, Dorotea’s claim becomes an impossibility making her claim for asylum invalid. Statements by officials such as this particular refugee reception officer reveals the lack of sensitivity training in respect to LGBT issues from the DHA. This gap in training is related to both the lack of accounting for the number of LGBT asylum cases in the country and more, the lack of

²⁷ Pseudonym

importance and commitment to SOGI issues. Again, it becomes clear that the South African state only plays lip service to the non-African international arena as UNHCR commitments are not reflected in practice.

Dorotea's experience in South Africa becomes worse. Ms. Kuhnert suggests that after receiving her 6 month asylum permit Dorotea faced violence from her landlord who physically and verbally abused her. More, when she complained to the police about the landlord they also reacted with physical violence. It is unclear from Ms. Kuhnert's retelling of an asylum seeker's experience of why the police was abusive to her as well. However, violence from landlords as well as the police seems to be a common thread as the following chapter on asylum seekers will illustrate. It is important to note here, that the police, along with officers from the DHA, reflect the state and its practices. Thus, Dorotea's case reflects the lack of sensitivity training and awareness of LGBT issues state-wide and, in the case of police violence, might reflect homophobic attitudes as well. Although the police were not directly interviewed in regards to this claim a clear power asymmetry exists. Dorotea a trans-identifying foreigner does not have the social capital nor clout as a South African-born landlord. Issues of class, 'African-ness' and sexuality seem to overlay in Dorotea's case of discrimination and violence.

Appendix 2 – A Brief Note Regarding the State

Interviewing and accessing the state particularly lower level employees of the DHA proved an incredibly difficult task. The first attempt involved setting up an interview with the office manager of the Western Cape Department of Home Affairs. The attempt was unsuccessful. I tried multiple times over the phone and then in-person where I encountered an official who worked within the department. Before describing consent I was asked by an employee at the office what the nature of my questions would be if I was able to interview the Department Head. I explained my research objectives and my curiosity for the asylum process in regards to sexual minorities. I was repeatedly told to refer to the website. When I suggested that the website did not provide any information on LGBT asylum seekers or refugees the DHA official said the following: “What does that tell you then? If it does not appear on the website then we are not allowed to share this information with you.” I pressed on and asked if the department head would be able to speak with me in regards to this topic. The employee responded by saying that if it does not appear on the website then Home Affairs cannot discuss the matters publically.

A second attempt was made through a contact list provided by the HSRC in regards to a recent project in conjunction with Home Affairs. Through this list I was able to make contact with a high positioned state official whose department (broadly) ²⁸ focused on asylum seekers and refugees. One meeting was arranged over the phone and a telephonic interview was promised. After this I had sent consent information via email. I called again to follow-up; however, the official did no longer want to discuss LGBT issues and claimed to be very busy.

²⁸ The specifics of this officials’ department are purposefully hidden in order to keep identity confidential

The final attempt (still awaiting response) has been through parliamentary channels. I had an informal meeting with the former shadow minister (Democratic Alliance) to the minister of Home Affairs. Through the help of former and current DA MPs I was able to pose the following questions to the DHA Minister on Feb 26:

- 1) (a) What were the number of asylum claims in South Africa for each of the last five completed yearly reporting periods up to the current date for which the latest information is available and (b) of these numbers for each year, how many of these claims were by people claiming asylum due to reasons of sexual orientation;*
- 2) Whether there are guidelines that govern the procedures for the processing of LGBT asylum claims, if so, what are the relevant details, if not, why not;*
- 3) Whether home affairs officers who process the above claims receiving specific training, including sensitivity training, if so, what are the relevant details, if not, why not?*

The minister has not yet responded; however, I am assured that the Minister is obliged to respond to any parliamentary questions. Although none of these attempts resulted in formal interviews there seems to be some discomfort surrounding the topic of sexual minority rights. My own positionality as a foreign and young researcher might have allowed these officials to deprioritise my questions. More, the nature of the topic itself might have been viewed as unimportant in light of more pressing issues such as poverty, unemployment and violence.

Finally, the Department of Justice and Constitutional Development (DoJ & CD) held a conference on November 30 2014 in regards to Fast Tracking pending and reported LGBTI related cases in the Criminal Justice System. According to the terms of reference (DoJ & CD

2014) published for the conference the National Intervention Unit includes a number of government departments including the South African Police Service; the Commission of Human Rights; and NGOs such as the Triangle Project. The ultimate focus of the conference was to provide justice for violence towards sexual minorities in township areas. Rapid response involved “an urgent action in response to acts of violence against LGBTI persons in order to ensure effective service of justice. It applies from reporting the crime to the police until conviction or other outcome. Such a response involves victim support, efficient police work and identifying and addressing delays in the criminal justice system” (DOJ & CD 2014). Although this response from the state is a step in the right direction in regard to the treatment of sexual minorities the DHA is not present in the composition of the national intervention unit. The focus on violence and justice is important, and has been an important element of this thesis, however; the treatment of LGBT asylum seekers/refugees was not mentioned.

I argue that the DOJ & CD is missing a structural element when considering violence; the mistreatment of sexual minorities is underpinned by inequality and is closely linked with nationwide afrophobia. Moreover, the conference underemphasized violence—although the focus was on the criminal justice system inefficiencies within the state were downplayed. Sexual minorities do indeed face greater challenges in township areas especially in Cape Town; however, this type of violence cannot be treated as a single-focus issue. On one hand, it is important for the state to explicitly name LGBT issues as a challenge; however, not including sexual minorities in the discourse surrounding the political economy of township areas especially in regards to resource constraints continues to box LGBT issues outside the “primary” goals of the state. That is to say, LGBT issues continue to be treated in addendum to a host of other issues instead of being discussed in conjunction with the host of other issues across the country. In

short, although LGBT issues were dealt with explicitly as part of this conference; they are still mostly ignored in other policy documents—especially within the DHA.

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