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(Un)-African: Queering

South Africa's Approach to SOGI Rights

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List of Acronyms

ACDP	African Christian Democratic Party
AHA	Anti-Homosexuality Act, 2014, Uganda
AHB	Anti-Homosexuality Bill, 2009, Uganda
ANC	African National Congress
ANC Alliance	A tripartite alliance of COSATU, the ANC and the SACP
ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
BRICS	Brazil, Russia, India, China and South Africa
CAL	Coalition of African Lesbians
CODESA	Convention for a Democratic South Africa.
CONTRALESA	Congress of Traditional Leaders of South Africa
COSATU	Congress of South African Trade Unions
DA	Democratic Alliance
DIRCO	Department for International Relations and Co-operation
DFA	Department of Foreign Affairs
DHA	Department of Home Affairs
DP	Democratic Party
FCB	Film Classification Board of South African
GNU	Government of National Unity
GLOW	Gay and Lesbian Organisation of Witwatersrand
GRULAC	Group of Latin America and the Caribbean
IBSA	India, Brazil and South Africa
IE SOGI	Independent Expert on Sexual Orientation and Gender Identity
IFP	Inkatha Freedom Party
INGO	International Non-Governmental Organisation
LAC	Latin American Countries
LGBT	Lesbian, Gay, Bisexual and Trans*
LGBTI	Lesbian, Gay, Bisexual, Trans* and Intersex
LGBTQ	Lesbian, Gay, Bisexual, Trans*, and Queer
LGBTIQ	Lesbian, Gay, Bisexual, Trans*, Intersex and Queer
LGBTQIA	Lesbian, Gay, Bisexual, Trans* (including transgender/transsexual/non-binary), Queer/Questioning, Intersex and Asexual

LGBTQI+	Lesbian, Gay, Bisexual, Trans*, Queer, Intersex and Others
MBFSA	Man and Boy Foundation of South Africa
MSM	Men who have sex with men
NAM	Non-Aligned Movement
NCGLE	National Coalition for Gay and Lesbian Equality
NCOP	National Council of Provinces
NEC	National Executive Committee
NEPAD	New Partnership for African Development
NGO	Non-Governmental Organisation
NHTL	National House of Traditional Leaders
NTT	National Task Team on Gender and Sexual Orientation-Based Violence perpetrated against Lesbian, Gay, Bi-sexual, Transgender and Inter-sex persons
OAU	Organisation of African Unity (forerunner to the AU)
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organisation of Islamic Co-operation
PMG	Parliamentary Monitoring Group
SACP	South African Communist Party
SADF	South African Defence Force
SAIIA	South African Institute of International Affairs
SOGI	Sexual Orientation and Gender Identity
SOGIE	Sexual Orientation, Gender Identity and Expression
SSMPA	Same-Sex Marriage Prohibition Act (201%), Nigeria
TRC	Truth and Reconciliation Commission
UNCHR	United Nations Commission on Human Rights (1946-2006)
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHCHR	United Nation High Commissioner for Human Rights
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council

Clarification on English Language Usage

British spelling is employed throughout the body of this thesis, except when quoting directly from sources produced in American English.

Formatting

Quotation marks are used to identify direct quotations.

Abstract

This study uses Queer Theory to explore the inconsistencies in South Africa's approach to the international protection of people of non-normative sexual orientations and gender identities (SOGI). It seeks to understand why South Africa's support for SOGI rights in the international system has been inconsistent, by answering the following question: How can we understand South Africa's inconsistent approach to sexual orientation and gender identity (SOGI) rights in the United Nations using Queer Theory?

Using queer critical discourse analysis and Weber's queer logics of statecraft (Weber, 2016a; 2016b), SOGI rights discourses were studied at three levels. Firstly, the genesis of SOGI rights adoption within the post-apartheid South African policy and legislative frameworks. Secondly, providing contextual background, across the African continent since 1994. Thirdly, within dedicated SOGI debates at the UN General Assembly and UN Human Rights Council since 2011, focussing on South African and African Group contributions.

This analysis determined that SOGI rights have been challenged by claims of cultural, historical and religious traditions, which on the African continent have been framed as un-African and a rejection of neocolonialism from the global North. Despite the fallacy of this un-African claim, it has impacted on South Africa as it sought to re-establish its Africanness and anti-neocolonial credentials whilst also promoting its moral leadership on human rights. It has further been established that the South African approach to SOGI rights was informed by the demands of local rather than international SOGI rights NGOs. This approach has disappointed those who anticipate the Western model of SOGI rights promotion, which South Africa has critiqued for its coercive and counter-productive punitive measures. By using Queer Theory, this study concluded that South Africa's identity can be understood beyond monolithic binaries, that South Africa's support for SOGI rights in the UN has endeavoured to find a balance between the competing aims of SOGI rights and African solidarity by presenting itself as an African and/or un-African state.

This study contributes to the emerging Queer Theory literature within International Relations and to literature on queer African sexualities and genders, human rights, and foreign policy.

Keywords: human rights; Queer Theory; queer African studies; postcolonial studies; foreign policy; sexual orientation; gender identity; norms; discourse analysis.

1 Introduction

1.1 Background and Problem Statement

On 30 June 2016, to the dismay of activists, South Africa abstained from voting on resolution A/HRC/RES/32/2 (32/2) to create a United Nations special mandate holder, the Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI), within the United Nations Human Rights Council (UNHRC) (United Nations Human Rights Council (UNHRC), 2016). This abstention contradicted the leading role South Africa had taken in sponsorship of the historically unprecedented 2011 resolution, A/HRC/RES/17/19 (17/19), on sexual orientation and gender identity (SOGI) rights (UNHRC, 2011b). South Africa's obvious inconsistencies on SOGI rights within the United Nations (UN) have confounded academics, journalists and activists, leading a South African foreign policy expert to adroitly conclude that South Africa was "batting for both sides"¹ (Jordaan, 2017a). Meanwhile, as of March 2019, of the 70 states worldwide that criminalise homosexuality 32² of them were located on the African continent (Mendos, 2019:8 and 15). In light of this, the rights and freedoms of LGBTIQ people across the African continent have received particular attention prompting the dubious epithet of "homophobic Africa" (Williams, 2017:1; Thoreson, 2014; Coly, 2013; Awondo, Geschiere and Reid, 2012; Macharia, 2011). These states form South Africa's neighbours and partners within the African Union (AU) and the African Group in the UN (hereafter the African Group)³. Within the broader context of contradictory South African human rights foreign policy and practice, trying to understand this inconsistent approach to SOGI rights by a country embedded within this reportedly homophobic continent and yet with one of the most progressive constitutions in the world has been an on-going concern.

After the peaceful transition to full democracy in 1994, South Africa had perhaps seemed a promising state partner to support SOGI rights. Indeed, South Africans have been involved since the earliest days of international gay and lesbian activism. In 1993, South African activist Simon Nkoli and others managed to ensure South Africa included sexual orientation as a category for protection in the post-apartheid interim Constitution (Hoad, Martin and Reid, 2005). Subsequently in 1995, renowned South African rights activist, Bev Ditsie, was one of the earliest speakers to address gay

¹ *Batting for both sides* is a euphemism for someone who enjoys sexual relations with both men and women.

² Algeria, Burundi, Cameroon, Chad, Comoros, Eritrea, Eswatini, Ethiopia, Gambia, Gabon, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe (Mendos, 2019:48-50).

³ The Group of African States (African Group) at the UN comprises 54 members: Algeria; Angola; Benin; Botswana; Burkina Faso; Burundi; Cape Verde; Cameroon; Central African Republic; Chad; Comoros; Congo; Côte D'Ivoire; Democratic Republic of Congo; Djibouti; Egypt; Equatorial Guinea; Eritrea; Ethiopia; Eswatini; Gabon; Gambia (Republic of The); Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Libya; Madagascar; Malawi; Mali; Mauritania; Mauritius; Morocco; Mozambique; Namibia; Niger; Nigeria; Rwanda; São Tomé and Príncipe; Senegal; Seychelles; Sierra Leone; Somalia; South Africa; South Sudan; Sudan; Togo; Tunisia; Uganda; United Republic of Tanzania; Zambia; and Zimbabwe.

and lesbian rights in the UN at the Beijing UN Development Programme (UNDP) Conference on Women; an event considered to be a watershed moment for LGBT politics at the organisation (Ditsie, 1995; McGill, 2014:13; Vance et al, 2018:226).

Sixteen years later, in 2011, South Africa pioneered another global milestone, when its delegation tabled the first successful, dedicated SOGI rights resolution, (17/19), at the UNHRC⁴ (UNHRC, 2011b). The subsequent elections of Africa's first openly gay minister of cabinet, Lynne Brown, and first openly gay, black MP, Zakhele Mbhele, have allowed South Africa to be lauded as one of the most progressive states on the continent and worldwide (Vale and Taylor, 1999; Smith, 2014b; Head, 2019). Indeed, in 1993 Mandela had declared the importance of South Africa's commitment to human rights as part of its international identity, stating that "[h]uman rights will be the light that guides our foreign affairs" (Mandela, 1993:88). However, as will be evidenced in the literature review in Chapter Two, South Africa's approach to foreign policy has been found to be "paradoxical" (Borer and Mills, 2011:76; Landsberg, 2012a:1), "inconsistent" (Black and Hornsby, 2016:159), "unpredictable and erratic" (Landsberg, 2011:72) and "at best incoherent" (Melber, 2014:132), while also reflecting an "unsettled identity and unclear interests" (Borer and Mills, 2011) or even "multiple identities" (Smith, 2016a:130). While the literature detailing South Africa's approach to sexual orientation and gender identity rights is less abundant, the conclusions have been similar proving it has been "ambivalent" (Williams, 2017) and "contradictory" (Jordaan, 2017a:222).

For although South Africa has sometimes led on SOGI rights domestically and within the UNHRC, multilateral alignments with the African Group and known opponents of SOGI rights, such as Russia and Pakistan, have often opposed their promulgation to the understandable dismay of many SOGI rights NGOs, diplomats and scholars (Jordaan, 2017a:206). Jordaan (2017a:212-213) has highlighted clear inconsistencies in South African votes on the inclusion of sexual orientation in the regular UNGA, UNCHR and UNHRC resolutions on extrajudicial, summary, or arbitrary executions. A highlight of this inconsistency was South Africa voting to remove executions on the basis of sexual orientation in November 2010 then voting to reinstate them in December 2010, albeit in response to a hostile reception to its earlier vote and in a "grudging" manner (Jordaan, 2017a:213). Whilst South Africa subsequently continued to support the inclusion of sexual orientation in 2012 and 2014 resolutions, the inconsistency was further compounded when South Africa backed a 2014 Egyptian draft resolution on protection of the family, that defined families heteronormatively by omitting a previously used inclusive definition, then subsequently supported expanding the definition of families the following year (Jordaan, 2017a:221-222). Furthermore, Jordaan (2017a; 2020) evidenced the concerns of international NGOs and diplomats that in failing to support SOGI rights South Africa often attacked supporter states in the West and endangered the lives of sexual and gender minorities. Despite leading on 17/19, in votes on subsequent SOGI specific resolutions South Africa

⁴ Resolution 17/19 Human rights, sexual orientation and gender identity was approved on 14 July 2011 "[e]xpressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity" and called for the completion of a global study on SOGI discriminatory laws by December 2011 (17/19, 2011).

has also been inconsistent and often aligned with the African Group or the Organisation of Islamic Co-operation (OIC)⁵ in opposition.

DIRCO has categorically asserted that “Africa is at the centre of South Africa’s foreign policy” (DIRCO, 2011a:10), but as noted South Africa’s continental neighbours have been prominent opposition to the international advancement of SOGI rights, not only as the African Group but also as the largest regional group in the OIC and through domestic legislation. Subsequently, the continent has been paraded as the poster child for homophobic attitudes under headlines such as “Homophobia sweeping Africa like a disease” (DeCapua, 2010), “An African epidemic of homophobia” (Zimmermann, 2013), “Why is Africa the most homophobic continent” (Smith, 2014a) and “Why Africa’s turning anti-gay” (Michaelson, 2017). Many African leaders have declared SOGI rights and the people that demand them “un-African”, arguing they are being imposed by neocolonialists from the global North and are anathema to African culture and tradition (Reddy, 2002; Epprecht, 2005; 2008a; 2008b; Hoad, 2007; Currier, 2012b:121-123). These claims by other African leaders suggest a tension between the pan-African and pro-SOGI priorities of South African foreign policy.

Despite considerable efforts by activists, transnational NGOs, some governments, and UN commissioners to promote and establish a rights framework for the protection of LGBTQIA⁶ people from discrimination and persecution, a universal consensus on the importance of SOGI rights has not yet been realised. Efforts to promote SOGI rights have met significant opposition, based on ideas that these rights are not universal and conflict with cultural and religious values, have not been adequately defined and are a Western imperialist imposition. This has led to a near stalemate in close voting patterns on the issue within both the UNGA and the UNHRC, between states opposing and supporting SOGI rights. This is contrary to the expectations of some International Relations (IR) scholars, albeit not universal⁷, working in the field of norm diffusion, who have theorised that a norm should potentially reach a critical mass of supporting states, the tipping point, when acceptance of the norm will cascade throughout the international system (Finnemore and Sikkink,

⁵ This name was adopted in 2011, the group was formerly known as the Organisation of the Islamic Conference. The OIC comprises the following 57 states, 27 of which are African. Membership by region: Africa: Algeria; Benin; Burkina Faso; Cameroon; Chad; Comoros; Côte D’Ivoire; Djibouti; Egypt; Gabon; Gambia; Guinea; Guinea-Bissau; Libya; Mali; Mauritania; Morocco; Mozambique; Niger; Nigeria; Senegal; Sierra Leone; Somalia; Sudan; Togo; Tunisia; Uganda. Asia: Afghanistan; Azerbaijan; Bahrain; Bangladesh; Brunei; Indonesia; Iran; Iraq; Jordan; Kazakhstan; Kuwait; Kyrgyzstan; Lebanon; Malaysia; Maldives; Oman; Pakistan; Palestine; Qatar; Saudi Arabia; Syria (currently suspended); Tajikistan; Turkey; Turkmenistan; United Arab Emirates; Uzbekistan; Yemen. Europe: Albania. South America: Guyana; Suriname.

⁶ Lesbian; Gay; Bisexual; Transsexual/transgender; Queer/questioning; Intersex; and Asexual.

⁷ This norm diffusion framework has been contested by further research into whose and which norms or ideas matter sufficiently to spread and become internalised. This includes the work of Acharya, who explored which norms matter in the international system, identifying “good” and “bad” norms and how “*local agents reconstruct foreign norms*” to ensure that the norms fit with the “*agents’ cognitive priors and identities*” (2004:239). Acharya also produced a norm subsidiarity framework, which enabled scholars to understand “*whereby local actors create rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors*” (2011:95). Further norm scholarship included McKeown’s work on the norm death series, which explored the regression of norms and how they may eventually adapt or be changed to the extent that they effectively expire or are transformed into a different norm that may be unrecognisable to the original intention (2009). Contestation of norms in international institution based on application or procedural objections has also been analysed by Welsh (2010), Deitelhoff and Zimmermann (2013) and Lantis (2017). Zimmermann, Deitelhoff and Lesch (2017) explored the impact of local agency on norm contestation and translation. Whilst Symons and Altman (2015) have explored international norm polarisation, to understand how competing norms are differentiated and which might be adopted.

1998:895). Finding states to support and promote these rights is therefore paramount if progress is to be achieved. In this context South Africa's inconsistency on the issue has been alarming.

As evidenced by Jordaan "South Africa's plan after resolution 17/19 to reduce polarisation and opposition to SOGI made little headway. The result for South Africa was paralysis, isolation and eventual retreat from leadership" (2017a:223). This thesis aims to complement this existing analysis of South Africa's problematic and inconsistent approach to SOGI rights by engaging in a detailed analysis of the discourses and actions during SOGI rights specific debates in the UN. By applying Queer Theory to a focused study of South African contributions to the UN debates on SOGI rights, this thesis seeks to gain an understanding of the country's inconsistent SOGI interventions and argues that the state has attempted to present two simultaneous and contradictory identities that are socially constructed as African and un-African.

1.2 Rationale

The key focus for this thesis is the search for an understanding of South Africa's inconsistent and contradictory approach to SOGI rights. The IR literature on South Africa's role on SOGI rights at the international and regional level has been sparse (Jordaan, 2017a:206). Whilst South African SOGI rights activists have been at the forefront of some campaigning within the UN, and South African domestic legislation remains a beacon of hope for many queer Africans (Camminga, 2019), a recent book by the South African Institute of International Affairs (SAIIA) titled *Values, Interests and Power: South African Foreign Policy in Uncertain Times* makes no mention of SOGI rights despite extensive references to the importance of human rights (Bradlow and Sidiropoulos, 2020). This absence of research is regrettable since SOGI rights have remained a globally contested issue and governments, such as Nigeria and Uganda, have continued to enact legislation against sexual and gender minorities (Mendos, 2019; Williams, 2017:1).

Whilst South Africa has presented itself as a pioneer of SOGI rights, it has also been inconsistent on their international promulgation. Williams characterised South Africa's response to SOGI issues internationally as "ambivalent", noting that despite the strength of South Africa's Constitution, the importance of human rights as part of South Africa's post-apartheid identity and the clear support for these by domestically oriented government departments, such as the Departments for Justice and Social Development, DIRCO has been more hesitant, seemingly out of concern its relationships with other African states (Williams, 2017:14). A plethora of regional and domestic influences seem to have prevented the state from fully committing to the cause as other European and Latin American states have. Williams particularly singled out the Zuma administration for seeming to be a "reluctant champion of SOGI rights in Africa" (Williams, 2017:1).

Jordaan (2017b) concluded that continual South African vacillations on SOGI rights at the UN suggested "an absence of a foreign policy" due to an inability to draft relevant policy within DIRCO and its forerunner, the DFA (2017b:91). Both Jordaan (2017a:209) and Smith (2016b:20-21) have

noted the importance of reaffirming South Africa's African identity and the potential this might have in influencing South African support for SOGI rights. However, Jordaan (2017a:209;211-213) has also demonstrated that African states have not always acted monolithically on human rights and indeed some states have adopted more pro-SOGI positions than South Africa, in particular during voting on UNGA resolutions on extrajudicial, summary or arbitrary executions. Indeed, it has been noted that contradictory foreign policy practice is neither limited to SOGI rights, nor to South Africa alone. Parallels have been drawn between policies in states such as Brazil and India and on issues such as disability rights and for people with albinism (Barber, 2005; Puar, 2007; Borer and Mills, 2011; Smith, 2012; Voss, 2017; Jordaan, 2019:190; van der Westhuizen, 2019).

As will be detailed in the literature review in Chapter Two, whilst there are studies that have looked at the question of inconsistency in South African foreign policy, few have focused on SOGI rights. In addition, although these studies have highlighted the competing priorities that gave rise to South African inconsistency, their explanations have been limited to the state having somehow incompatible, uncertain, unsettled, split, dual or even multiple identities.

Without understanding why there has been such a dramatic failure to consistently apply pro-SOGI rights policy by South Africa, it will not be possible to ensure that the worthy aims expected of this lauded moral actor can be sustained. It is also difficult, without this understanding, to determine how policy and practice might need to change in future to ensure consistency and the possibility of South Africa contributing positively to a better Africa for all queer people. Given the size of the challenge to both protect and enable queer Africans to thrive, understanding the approach of South Africa could be an important contribution to the furtherance of SOGI rights on the continent and globally. Revealing the challenges that South Africa faces in the region, where it could be argued it has unrivalled access to influence, should help advocates for change to better understand the barriers that are being faced by some of the most oppressed and endangered sexual and gender minorities in the world. In addition, understanding why South Africa has been antagonistic towards SOGI rights supporting states in the global North could provide guidance for the way forward.

1.3 Research Aims

The aim of this research is to understand why South Africa's support for SOGI rights in the international system has been inconsistent. It will do this by applying Queer Theory, as a queer lens may overcome existing theoretical understandings of identity in IR, such as constructivism, by allowing for more fluid or simultaneously contradictory identities. This thesis will add to the relatively small, but growing, body of literature exploring the South African approach to SOGI rights internationally and contribute to the foreign policy literature by exploring an alternative lens, Queer Theory to answer the following question:

- **How can we understand South Africa's inconsistent approach to sexual orientation and gender identity (SOGI) rights in the United Nations using Queer Theory?**

As will be explained in more detail in Chapter Three, Queer Theory, which was conceived as a post-structural approach to gender and sexuality, is an anti-normative approach that uses a critical discourse analysis, through a queer lens, to discover dominant narratives and the power that those narratives impose on actors engaged in the issue studied. The queer critical discourse analysis used for this thesis is carried out at three levels – the domestic, continental and international contexts. These adapt Landsberg's (2014:155) concentric circles of South African foreign policy, with a focus on South African participation in global governance. These circles present South Africa's foreign policy arenas.

1.4 Definitions

The terminology used to discuss sexual and gender minorities is often contentious and contested, especially when applied to binary gender non-conforming people or those practicing non-heterosexual sexual relationships on the African continent (Matebeni and Msibi, 2015; Waites, 2009; Waites, 2018:59-60). The term sexual orientation and gender identity (SOGI) as adopted by the international community within the UN is purposefully broad in scope and meaning and less prescriptive than the more common acronyms such as LGBTI (Waites, 2009). SOGI covers a broad range of dissident identities, sexualities and genders as well as the communities and people facing discrimination and oppression. It encompasses potential sexual orientations, which include but are not limited to gay, lesbian, bisexual, pansexual, asexual, MSM (men who have sex with men), as well as many types of possible gender identities, including but not restricted to male, female, intersex, trans* (transgender/transsexual), non-binary and gender-queer. Critics have noted that it can be argued that SOGI conflates both sexual behaviours and gender, which for many people may not be wholly applicable, that it gives too great an emphasis on identity assertion rather than, for example, gender expression and that some people, notably trans* and intersex people, may be marginalised within this focus on sexuality (Waites, 2009; McGill, 2014).

In addition, there is considerable literature on the use of taxonomies originating from Western states and NGOs to describe binary gender non-conforming populations or alternative sexual orientations in other territories. Such use is considered problematic, firstly, because using these terms ignores the indigenous expressions that already exist, some of which have no direct translation and so their meaning and hence identities could be lost, and secondly their use facilitates the argument that these identities and ideas are imported from the West (Stychin, 2004). Indeed, some academics and queer activists view the imposition of Western identities as a form of neo-imperialism (Massad, 2002; Hoad, 2007). However, Coly noted that many African rights activists have had to adopt Western gender and sexual taxonomies to make their own non-conforming identities intelligible to funders and international advocacy networks (Coly, 2013:24). This has no

doubt led to the distinction highlighted by Reid between “workshopped gays” and those “who don’t want to be workshopped” (Reid, 2013:188) and for Nyanzi (2014) to request⁸:

“Thinking beyond the loaded Westernised frame of the LGBTI acronym, queer Africa must necessarily explore and articulate local nuances of being non-heteronormative and non-gender conforming. Language and language-ing beyond the English medium into diverse African languages and tongues is important towards queering Africa” (Nyanzi, 2014, 67).

Considering all these concerns and reflecting on the context within which this thesis is written, which includes the discourses at the international level and the variety of communities and cultures across the African continent included within the analysis, the term sexual orientation and gender identity (SOGI) is mainly used herein. This is the term used within the UN resolutions and therefore both makes referencing discussions on the international stage clear, but also is broad in its scope. However, SOGI refers to the terms sexual orientation and gender identity alone and this thesis is a discussion about the rights of minorities to be protected from discrimination and violence that is inflicted upon them because of their actual or perceived sexual orientation, gender identity or gender expression. Whilst many of the UN delegations will variously refer to gay men, lesbians, LGBT communities and many other acronyms, for clarity this study uses the following terms, as these meet the need to be more inclusive:

‘SOGI rights’ – this includes the array of actual and potential human rights that are necessary to protect those who are at risk of discrimination and violence due to their sexual orientation or gender identity or expression.

‘Sexual and gender minorities’ – this includes all those people, citizens and subjects who due to their sexual orientation, gender identity or expression may be at risk of discrimination or violence.

Many of the organisations and individuals covered in this thesis use their own acronyms and therefore, these will be included as appropriate. This includes references to gay rights, queer rights, LGBT, LGBTI, LGBTIQ, LGBTQIA⁹ and further combinations of acronyms. In addition, this study occasionally adopts ‘queer’ as an adjective to describe people and communities that may not conform to societal norms of binary gender identity and expression, heterosexual sexual orientation and binary biological sex. This is done in recognition of the concerns that this ought not be understood as an identity itself (Cohen, 1997:438-439), but as an answer to the need to include the myriad ways in which people may self-identify (Nyanzi, 2014:67; Marnell, Oliveira and Khan, 2020:2). Many of these ways may only be known and understood locally. In this way it allows generalisation without essentialising or universalising.

⁸ For further critical discussions on the transmission and translation of Western, particularly Anglophone, terminologies throughout the world see also Cottet and Picq (2019) as well as Chitando and Mateveke (2017:125-130) and Msibi (2011).

⁹ Lesbian; Gay; Bisexual; Transexual/transgender; Queer/questioning; Intersex; and Asexual.

1.5 Chapter Outline

This section sets out the structure and content of the dissertation by chapter. In the second chapter, the existing literature on inconsistencies in South African foreign policy in relation to international human rights issues is presented. The third chapter introduces Queer Theory, presenting the theoretical foundations, methodologies, and the concepts to be explored. It also provides a summary of Queer Theory in IR and details the innovative queer methodology that will be used to answer the research question.

The fourth chapter presents the genesis of South Africa's commitment to SOGI rights, the development of domestic pro-SOGI policy and how SOGI rights feature in foreign policy and practice. It details some of the debates that have occurred among the political classes that reflect the contestation over the acceptance of SOGI rights as an intrinsic element of the South African identity. This analysis determines how South Africa sees itself and its foreign policy priorities. The fifth chapter then presents various SOGI debates across the wider African continent. This focuses on some of South Africa's most important partners within the UN who are also some of the most vocal opposers of the promulgation of SOGI rights. It provides contextual background to the African delegations' rejection of SOGI rights within the UN and of the idea that South Africa is an outlier on the continent.

The sixth chapter analyses South Africa's actions and voting on SOGI dedicated resolutions and reports within the UN particularly focussing on the UNHRC and UNGA between 2011 and 2020. Focussing on South African and other African contributions, this chapter presents and critiques the discourses around the support or rejection of SOGI rights to determine how they are framed and the power that framing exerts. Next, the seventh chapter brings together the analyses at all three chapters to assess South Africa's performance within the UN within the framework of Weber's queer logic of statecraft to answer the research question and determine how Queer Theory helps us understand the South African state identity in relation to SOGI rights. The final chapter provides a conclusion to the dissertation.

2 Literature Review: Inconsistency in South Africa's Foreign Policy

2.1 Introduction: Unpredictable, Erratic and Contradictory

Throughout the apartheid years (1948 – 1990) the South African government's racial discrimination and violent oppression of anti-apartheid protestors ensured that its human rights abuses were frequently on the UN agenda. These abuses were in direct violation of several articles in the 1945 UN Charter and the Declaration of Human Rights and subsequently South Africa experienced political isolation as international condemnation grew and countries distanced themselves from the "pariah state" (Alden and Le Pere, 2004:283). This isolation included several resolutions (including economic sanctions), and in 1974 resulted in suspension from the UN. This international condemnation also raised the profile of South Africa above its standing as a mid-sized nation in the global South. This interest continued as the end of apartheid approached and accounts for the euphoria that greeted the release of ANC leader, Nelson Mandela, in 1990. The 1994 negotiated government transition also placed high expectations on the state to uphold international human rights norms. Although economically and demographically, with a 1994 population of around 40 million, a relatively small state, South Africa's 80-year struggle for freedom had captured hearts and minds around the world. As the most popular leader of that struggle much was expected of Mandela as the incoming president of the transitional Government of National Unity. As Black and Hornsby summarised, South Africa emerged as a moral actor that was "the product of the greatest human rights campaign of the post-colonial era, led by one of the world's great moral icons" (2016:152).

However, scholarship on post-apartheid South African foreign policy has highlighted inconsistencies between policies and practices. Whilst these inconsistencies are evident across a broad range of political themes, this chapter reviews the literature on these inconsistencies related to human rights norms.

South African foreign policy has been recognised as "paradoxical" (Borer and Mills, 2011:76; Landsberg, 2012a:1), "contradictory" (Black and Hornsby, 2016:153), "unpredictable and erratic" (Landsberg, 2011:72) and "at best incoherent" (Melber, 2014:132), while also being demonstrating "ambiguities" (Bischoff, 2003; Black and Wilson, 2004; Serrão and Bischoff, 2009), "inconsistencies" (Nathan, 2005), an "unsettled identity and unclear interests" (Borer and Mills, 2011) and even "multiple identities" (Smith, 2016a:130). Indeed, South Africa's voting within international institutions was described in *The Economist* as "a mishmash of unpredictable responses to apparently similar situations" (quoted in Landsberg, 2011:75). South Africa's behaviours in the international arena have confounded political scientists. This confusion is more surprising given the

clear messages that were given about the foreign policy drivers in 1993, when President Mandela outlined the six guiding principles to define South Africa and its approach to the rest of the world (Mandela, 1993). It is particularly noteworthy that such ambiguities have been noted within the UN, given the importance of the international community in opposing the apartheid regime, as summed up in the following analysis:

*“South Africa’s puzzling UN behaviour constitutes one of the most **clear-cut paradoxes of its foreign policy**: The United Nations, as the institutional home of the global antiapartheid movement, played no small part in the bringing down of the apartheid system. However, when given the opportunity to support bringing similar UN pressure to bear on other human-rights-abusing regimes, South Africa has refused to do so” (emphasis added, Borer and Mills, 2011:84-85).*

The six pillars upon which the new South Africa’s foreign policy were based were human rights; democracy; justice and international law; peace; Africa; and economic development (Mandela, 1993; DFA, 1996). These represent a not uncommon mix of ideational and material aims and given the importance of the rest of Africa to the South African economy and the prevailing understanding of the role that democratisation, peace and the protection of human rights play in the potential for economic development, were entirely pragmatic. As mentioned, the international community greeted these principles with considerable expectation, due in part to the historic liberation movement and the anticipated peaceful, negotiated transition of power despite a vicious and bloody state history and the wider continental experience of violent independence struggles (Barber 2005:1095; Bischoff, 2003:184).

Given these heightened expectations, South Africa was placed under considerable scrutiny, yet by 1999 Vale and Taylor had already noted with some concern that the state “reflect[ed] a dual image – a Ying and Yang as it were – between being both ‘something special’, and ‘just another country’” (1999:630). By “something special”, Vale and Taylor were referring to the hubris surrounding Mandela’s leadership and human rights credentials, which they described as “based around the ‘Madiba magic’ rhetoric – a tangible if unquantifiable mystique surrounding the figure of Nelson Mandela” (1999:632), and cited Mandela’s call for peacekeeping missions around the world as evidence of this. As “just another country” they noted the recurrent disagreements between South Africa and Zimbabwe as evidence that the state was succumbing to the realpolitik of economic development through free market liberalisation, foreign investment and globalisation faced by all nations (Vale and Taylor, 1999:630-631). Tensions were developing between South Africa’s ideational aims and its economic goals.

These tensions manifested in a variety of inconsistent actions within the UN, which only occasionally South Africa could explain on procedural grounds. For example, Smith (2016a:132) noted that contradictory voting at the UN against sanctioning states of the global South who had abused human rights, notably Sudan and Zimbabwe, had been justified by South Africa on bureaucratic principle arguing that the US and some EU allies had ignored agreed international protocols. Meanwhile Bischoff (2009:106-107) established that South Africa’s inconsistent approach to human rights,

whilst a non-permanent member of the UNSC in 2007-2008, was based on the state arguing that it was not the right forum for many human rights resolutions. However, these justifications by South African delegations are insufficient considering the conclusions of the scholars above, and further evidence of ambiguous and unpredictable actions.

Analysing a broad range of foreign policy themes, including human rights and multi- and bilateral relations, Landsberg (2012a) found it noteworthy that the South African foreign policy contradictions and paradoxes occurred concurrently rather than sequentially, as might be expected in response to a changing environment or leadership. He concluded that in the transition from the Mbeki presidency (1999-2008), through the Motlanthe caretaker presidency¹⁰ (2009) and into the Zuma presidency (from 2009), South African policy never changed, but the practice of foreign policy became “diffused” in that it did not adhere to those published policies. This suggested that leadership had no impact on the policy prescriptions (Landsberg, 2012a:11-12). In reviewing various human rights issues, Jordaan (2017a:208) similarly established that such variations were indistinguishable between presidencies.

Indeed, Jordaan has studied South Africa’s international human rights work extensively and evidenced many examples of South African inconsistencies within the UNHRC (2012, 2014a, 2014b, 2014c, 2016, 2017a, 2017b, 2019, 2020). He established that South Africa has been a leader in UN antiracism initiatives, including hosting the World Conference Against Racism in 2001, sponsoring antiracism resolutions and highlighting race and racism in resolutions for which these may not have been a focus, however this support for combatting racism and xenophobia was again marred by inconsistencies, which clearly demonstrated “double standards and antagonism towards the West” (Jordaan, 2020:127). One obvious inconsistency was that South Africa always demanded that racism was tackled, but had been ambivalent about other human rights abuses, particularly those perpetrated in non-Western states. Even on some issues of state-led xenophobia and racism, South Africa has refrained from condemnation, such as against Myanmar’s treatment of the Rohingya, whilst calling out Western powers for the rise of populism and neo-Nazis and a lack of political will to tackle them (Jordaan, 2020:130).

On the issue of women’s rights, South Africa has remained mostly committed to its constitutional protections and supported many initiatives to advance the causes of women’s equality and protection against violence but recoiled at a strongly worded description of various types of domestic violence in a 2015 resolution (Jordaan, 2020:131-133). However, on SOGI rights, Jordaan clearly demonstrated that from a peak in 1995, South African support for SOGI rights fell away until 2011, when championing UNHRC resolution 17/19, from which the state commitment fell again (2017a:207). In fact, South Africa maintained a strained relationships with Western states on these core rights, often castigating the West openly on issues that South African ambassadors and diplomats ignored in African and other developing countries (Jordaan 2020:142). This included criticising states that threatened to tie aid to SOGI rights and not speaking out against African anti-

¹⁰ Following the National Executive Committee (NEC) of the ANC recall of President Mbeki and his resultant resignation, the Deputy President of the ANC, Kgalema Motlanthe, took over the state presidency until a new president was voted in. Upon his inauguration he advised that he would not change existing foreign policy.

LGBT legislation. In conclusion, Jordaan demonstrated that South Africa often favoured anti-imperialism above aligning with the liberal democracies of the West (2020:143).

Before proceeding to explanations of these inconsistencies put forward in the literature, it is noted that such fluctuations in foreign policy and practice are not unique to South Africa. Small and medium sized states generally have little control over their external environments and therefore changes in policy and practice can be expected as they adjust to emerging issues and concerns (Barber, 2005:1095). As Borer and Mills (2011:80) noted the community of states to which they belong and with which they interact may hold wildly different and often competing norms and values, to which a state may feel obliged to conform, but may more often misunderstand or fail to uphold. Likewise, Landsberg (2012a:1) recalled that although states prefer stability, South Africa was not necessarily unique given that all foreign policy was a “story essentially of both continuity and change” due to dynamic institutional, environmental and personnel factors. Smith (2012), Jordaan (2019) and van der Westhuizen (2019) evidenced similar inconsistencies in the foreign policy implementation, and resulting ambiguous identities, of India, Brazil and the USA. Nevertheless, Barber (2005:1095) suggested that although inconsistent approaches to issues in the international realm can be witnessed in the practices of many states, the expectations of South Africa were such that these have gained more prominence and exposure.

The next section explores the literature that evidences these inconsistencies in foreign policy.

2.2 Conflicting Identities and Interests

The most frequently cited explanations for South Africa’s inconsistent foreign policy have centred on state identities and resultant interests. Typically, a constructivist conceptual framework is used for determining these. Constructivism is useful in three ways; firstly, it focuses on the power of ideas, including norms, rules and values; secondly, it holds that state interests are a product of its identity; and thirdly each state’s identity and interests are influenced by the social contexts in which they exist and this impacts on them and their behaviour (Van Wyk, 2004:105). Constructivists believe that state interests are informed by other states expectations and how these reflect on their own state identity (Wendt, 1999:232). As argued by Jepperson, Wendt and Katzenstein “cultural environments affect not only the incentives for different kinds of state behavior but also the basic character of states” (1996:33). This character, or identity, as well as states’ interests and policies are all subject to change in response the international environment (Jepperson, Wendt and Katzenstein, 1996:34 and 43; Wendt, 1999).

Critical to Van Wyk’s analysis of South Africa was an understanding that “[a] state’s identity ensures predictable patterns of behaviour, actions and interactions” (2004:107), and that although foreign policy underwent some changes over the ten years since the transition to fully representative democracy, one clear driver had been the importance of ideas and identity in defining foreign policy priorities (2004:129). However, whilst Van Wyk (2004:107) determined that this predictability was

apparent in its behaviours as an emerging middle power, supporting multilateralism and leading on several global initiatives under the specific principled support for human rights, this predictability has been lacking. This view was supported by Alden and Schoeman, who referred to “the contradictions which have featured in the historical processes of South African identity formation” (2016:1).

Trying to determine how South Africa envisioned itself has meant understanding how it came to terms with, challenged and overcame its historical legacy (Seegers, 2020). Landsberg highlighted the emphasis that Mbeki put on his two nations thesis, which suggested that South Africa’s legacy was a country divided into a white and prosperous state that existed alongside a larger, black and poor state (2012a:3). To both reflect and level out this bifurcated state, six broad domestic and foreign policy goals (bringing about a better Africa; bringing about a better world; building the capacity of the state; creating jobs and reducing unemployment; eradicating poverty; and fighting crime) were devised (2012a:3). This suggested that although Mbeki may have been known as the “foreign policy president” (Nathan, 2005:362), his interests were also firmly rooted in domestic issues. However, Mbeki was clear to re-define South Africa as an African state, as Landsberg noted:

“Whereas white apartheid governments had seen South Africa as an extension of Europe, Mbeki set out to assert the country’s position in Africa, with Africa and as part of Africa, and with other forces in Africa favouring peace, democracy and reconstruction and development on the continent” (Landsberg, 2011:65).

Jordaan (2019:174) also evidenced that South Africa’s inconsistencies on civil and political rights within the UNHRC were based on a dual identity highlighting anti-imperialism, which regularly appears as anti-Western, and human rights advocacy as opposing identities. Although he opined that the anti-imperialist tendencies were to be found among some foreign policy officials, rather than a firm principle of the state identity, Jordaan (2019:171) concluded that a constructivist analysis of the South African state identity was confused by this apparent split nature.

Beyond the explanation of dual identities, Smith described South Africa as a state with “multiple identities” (2016:130). South Africa identified as an African state, focussed on continental priorities such a poverty alleviation and anti-imperialism, a liberal democracy, promoting Western values of universal human rights and democracy, and an emerging power, aligned with other emerging powers of the global South including Brazil, China and India through forums such as BRICS and IBSA (Smith, 2016a:131-132; Alden and Wu, 2016). This conclusion reflected that of Serrão and Bischoff, who stated, “South Africa can be seen to wrestle with multiple identities” (2009:363). Added to these could also be South Africa’s close relationship with Iran, a state not known for its adoption and adherence to human rights norms (Onderco, 2016). Finally, Nathan (2005) observed that these multiple identities were inherently contradictory.

According to Serrão and Bischoff (2009:363), while the state sought to lead on behalf of the continent in the international arenas and sought solidarity with other emerging powers across the global South, the legacy of apartheid and the vision for the new state were also integral to the state

identity formation. Thus, South Africa shared a complex liberal democratic identity with its Western partners and a more realist, state-centred radical, developmental identity with its Southern partners. At the same time though, South Africa's commitment to development and for more socio-economic equality globally suggested a pluralist rather than realist approach in the foreign policy (Serrão and Bischoff, 2009:365-366). Serrão and Bischoff concluded that South Africa's post-apartheid foreign policy could not be explained by traditional IR theory alone. Firstly, they argued that rationalist and mainstream theories were "insufficient" to account for South African ambiguities because they overlooked the complexity of the environment and assumed a given identity for the state. Secondly, the constructivist focus on identity helped, but was still insufficient to account for the multiple identities. They concluded that, "to fully appreciate both the nature and effects of South Africa's foreign policy, a mixed focus, incorporating insights from both constructivist and materialist-based theories of IR, is necessary" (Serrão and Bischoff, 2009:363).

In subtle contrast, Black and Wilson (2004:27) argued that rather than multiple identities, "South Africa's foreign policy approaches are significantly influenced by an unstable national identity" (2004:30). Describing a clash between "an ethics of African solidarity and one of human rights advocacy" (Black and Wilson, 2004:27), they located the foundations of contradictions between the history of anti-colonialism, the variations in support and framing of human rights of all kinds (cultural, civil and political and social) within different South African communities as well as the post-apartheid need to belong in the region whilst still being integral to the international community that is dominated by Western powers (Black and Wilson, 2004:30). They were able to distil this complex web of interconnected ideational factors into significant tensions between:

"civil and political rights or economic, social and cultural rights and the corresponding state identities of market-oriented restructuring versus social welfarism; and African solidarity versus full integration into the prevailing, Western-dominated global order, and related tensions, again, between social justice advocacy and neoliberal development planning" (Black and Wilson, 2004:33).

Thereby identifying the inconsistencies and outlining possible causes as various tensions between the demands of the global North and the global South and market driven or social welfare policies. Whilst they found some correlation between African solidarity and the demand for economic, social and cultural rights, there was also a suggestion that not all leaders on the continent accepted the universalism of human rights that was assumed within many of the international organisations (Black and Wilson, 2004:34). As will be explored later, this has been a particular issue in relation to SOGI rights. Furthermore, Black and Wilson (2004:36) determined that South Africa often didn't position itself as an African state in forums related to economic policy and on issues of economic and social rights, but as an African state in statements and debates opposing exploitation and the legacies of colonialism and on issues civil and political rights.

Other scholars who have argued that South Africa's "paradoxical foreign policy" is based on an "unsettled identity" were Borer and Mills (2011:76). Beginning their analysis by determining that rationalist scholars would not anticipate any major change in state identity or interests, they

suggested that in 1994 South Africa's identity was intended to represent its historical struggle, the continued struggles of other states and the emerging international human rights norms (Borer and Mills, 2011:82). However, despite this they highlighted the following as evidence of the lack of commitment to human rights: support for President Mugabe despite evidence of the humanitarian crisis in Zimbabwe; the extensive refoulement of African refugees; and blocking UN efforts to tackle human rights violations in Myanmar, Tibet, and East Timor.

Indeed, Borer and Mills (2011:77) identified three clear influencing factors on South African foreign policy; the competing ideologies of the commitment to the African Renaissance (namely anti-imperialism, promotion of democracy and pan-Africanism); South Africa's regional strength and African unity; and South Africa's global ambitions, including the need to conform to the regimes of the international political economy. Measuring South Africa's policy and practice against four logics of foreign policy¹¹ determined that South Africa exercised all these logics and thereby responded in "confusing and paradoxical" ways to situations in which competing external or internal expectations were in conflict, which ultimately inadequately explained South Africa's approach to and exercise of foreign policy (Borer and Mills, 2011:81;94-95). South Africa's struggle appeared to be not one between either ideas or interests, but between competing ideas, including the aims in Mbeki's African Renaissance (Borer and Mills, 2011:95). The main concern was the tension between the commitment to human rights and democratic values versus solidarity with African neighbours and their anti-imperialism.

Clearly some states, including South Africa, might choose to follow "two or more (sometimes apparently contradictory) strategies simultaneously" (Smith, 2016a:147). This is due to the complexity of the international environment and the variety of stakeholders with which each state must positively engage. Smith concluded that for any state with an undetermined identity or changing national interests, this policy ambiguity could enable a much needed, more flexible approach (Smith, 2016a:147).

The studies above all demonstrated that defining a particular identity for South Africa has proved challenging. Although the policy principles largely remained static and aligned with the Constitution, the inconsistent implementation of these principles demonstrated conflicting interests and unpredictable identity formations. Despite the enduring commitment to ethical principles of democracy and human rights, conceptualising South Africa as a moral actor has been challenging, given the incidences when material interests appeared to undermine the protection of human rights. Constructivists acknowledge that state identities are neither fixed nor predetermined; that they not only change through social interaction with states and other external actors, but that they are also guided by domestic cultural transformation and changing actors (Jepperson, Wendt and Katzenstein, 1996). However as Black and Wilson argued "[t]he presumption is, however, that

¹¹ Logic of appropriateness - foreign policy reflected stated state interests; logic of consequences - foreign policy reflected responses to external expectations; logic of concurrence - foreign policy reflected a struggle between state interests and external expectations; and logic of arguing - foreign policy reflected unsettled state interests, for which consensus must continually be sought rather than adhering to fixed preferences.

identity fuses continuity to changing landscapes of interest” (Black and Wilson, 2004:33). Yet, it is note-worthy that the analyses above referred to unpredictability (Van Wyk, 2004), “two nations” (Landsberg, 2012a), “multiple identities” (Smith, 2016a:130), “unsettled identity” (Borer and Mills, 2011:76) and an “uncertain identity” (Jordaan, 2019:189) all of which make the possibility of a constructivist identity prediction redundant.

Some literature has focussed on the competing priorities of various policies and principles that underline South African foreign policy. These analyses sought to situate the inconsistencies within these competing priorities. For example, in identifying three key principles for the Mbeki administration as “democratic; Africanist; and anti-imperialist” (Nathan, 2005:363), Nathan concluded that when any of these values, which might also be understood as integral to the South African state identity, came into conflict, pan-Africanism and anti-imperialism always trumped democratic rights, such as in the decision to not publicly address human rights abuses in Zimbabwe in the early 2000s (Nathan, 2005:363 and 367; Barber, 2005:1091-1092). Alden and Le Pere (2004:290) supported the view that continental tensions determined the ambiguities; the solidarity required to sustain the pan-African institutions, both to demonstrate unity to the wider global audience but also to avoid continental isolation (such as experienced when South Africa called out Nigeria), prevented South Africa from being more vocal about human rights abuses. However, Alden and Wu (2016:203) have since also suggested that the shift from the human rights values of its Western influenced policies to more “developmental pragmatism” reflected influences from the authoritarian regimes within its BRICS group.

In contrast, Fritz (2018:127) contended that rather than being a “deviant” state the inconsistencies in South African support for human rights arose when officials were confronted with the necessity to make compromises for one of two alternative priorities. The first was whenever South Africa needed to agree with its continental neighbours, despite any contradiction with its own convictions and the second was on issues in which it could increase representation and equity for Southern states in the global institutions (Fritz, 2018:112-113). However, to Fritz’s second point, although Landsberg (2004:185) determined that the Mbeki administration supported the idea of a “rules-based global order” as it sought to position South Africa as a “bridge-builder” between countries of the global South and between the North and South and that much of this activity focussed on global economic imbalances, the members of the international rules-based system were also increasingly establishing norms on human rights, including through the African Commission on Human and Peoples’ Rights (ACHPR), and the concomitant responsibilities on states, thereby bringing into doubt the idea that these principles might be mutually exclusive.

Other analysis exploring South Africa’s inconsistent actions have focused on how the idealism of the leading political party in government, the ANC, has come into conflict with pragmatic policymaking. Both Barber (2004:92-93) and Smith (2016a) have suggested the inconsistencies in South Africa’s foreign policy stemmed from this party idealism, which included varying commitments to ideas of democracy, human rights, international institutions and global economic parity and the neo-realist concerns of the foreign civil service officials, including the changing international environment after the end of the Cold War and external threats to peace and security. This view was also supported by

Landsberg, who determined this image and Mandela's zeal for a principled foreign policy based on ethical norms and values, with special focus on human rights, international law and democratisation "often clashed with realpolitik in practice" causing Mandela to often change his position on foreign policy (Landsberg, 2004:159).

Potentially the first blow to South Africa's reputation as a global leader in promoting human rights and as a regional leader in Africa came in 1996 when President Mandela's calls for an international boycott and condemnation of the Nigerian government for the 1995 execution of Ogoni protestors were ignored by the international community and criticised by other African leaders through the Organisation of African Unity (OAU)¹² (Barber, 2005:1083-1084). Landsberg argued that this was a key turning point in South Africa's approach to foreign policy on the continent and the adoption of "quiet diplomacy" (2004:177). Subsequently, quiet diplomacy really came to the fore during the Mbeki presidency and in relation to concerns about the political and economic crisis that hit Zimbabwe between 1998 and 2002, when internationally there were considerable concerns about human rights abuses, failing economic policy and the political violence. The Mbeki administration chose not to "talk tough" to Zimbabwean President Robert Mugabe, arguing that non-confrontational diplomatic relations would be more persuasive (Landsberg, 2004:172). Landsberg (2004:173) demonstrated that in the Zimbabwean case quiet diplomacy was actively implemented through several multilateral and bilateral meetings to try and contain the crisis.

However, some Western states, including the US and the UK, disagreed with this approach and were supported within South Africa by the official parliamentary opposition, the Democratic Alliance (DA). One concern with quiet diplomacy was that South Africa claimed to be a human rights defender, but "oppose[d] "naming and shaming" countries" (Jordaan, 2019:171). Whereas *The Economist* suggested that it was an attempt to "affirm its African credentials while playing down any hegemonic ambitions" ("The see-no-evil foreign...", 2008). Meanwhile Landsberg determined that South Africa appeared to be trying to enact "nice foreign policy amid the diffusion and blurriness, keeping everybody happy and trying to please all states all of the time" (Landsberg, 2011:75). However, for critics, quiet diplomacy, given its undisclosed nature, could be an excuse for doing nothing. Melber also warned that when viewed in relation to cases like Zimbabwe "quiet diplomacy holds the risk of compliance with perpetrators" (Melber, 2014:137). In other words, as *The Economist* noted, quiet diplomacy could be a cover for a "see-no-evil foreign policy" ("The see-no-evil foreign...", 2008). This then damaged South Africa's credentials as a champion of human rights. However, there are two critical issues with using quiet diplomacy as a justification for the appearance of contradictions in policy and practice. Firstly, it is difficult to evidence conversations and negotiations that take place behind closed doors and secondly, as the following analyses demonstrate, the inconsistencies are observable across a range of activities, not just in selected bilateral relations.

Analysing the focus on Africa and African security dimensions during the first five years of the Mbeki presidency (1999-2005), Nathan (2005) noted that although South Africa demonstrated fairly

¹² Which became the African Union in 2002.

consistent foreign policy, it was in the practice and implementation that inconsistencies were apparent. Citing the Zimbabwean political and economic crisis from 2000, a failed 1998 joint military intervention with Botswana to calm tensions around an alleged coup attempt in Lesotho, international arms sales and Pretoria's failure to tackle domestic, anti-African xenophobia (and indeed its immigration policy, which appeared was more favourable to job seekers from the global North than for those from across Africa) Nathan (2005) attributed these inconsistencies to a lack of clear understanding for developing interventions that match the broad ambitions of the foreign policy. Nathan (2005:363) noted that these inconsistencies were particularly acute when stated interests in promoting democracy and African multilateralism coincided, in which cases South Africa usually preferred the Africanist position to the promotion of democratic ideals.

Whilst inefficiencies and inexperience in government departments responsible for foreign policy drafting and implementation had been noted in the preliminary years of the post-apartheid regime (Barber, 2004:95), Nathan was writing after 10 years of full democracy during which time some institutional capacity would have been developed including through the drafting of the 1996 Department of Foreign Affairs Green Paper on Foreign Policy (DFA, 1996). Yet subsequent analysis has continued to highlight inconsistencies. Landsberg also believed that the problems in foreign policy commitment stemmed from a lack of skills and the inherent, historic "schizophrenic nature" of the domestic environment, which is the foundation for foreign policy (Landsberg, 2018:64-65).

Landsberg (2012a:14) also singled out the Zuma administration for criticism noting that during his 2012 State of the Nation address, arguably a key declaration of the nation's identity and interests, President Zuma didn't even mention foreign policy, which he suggested may indicate that foreign policy was an afterthought and therein lay the "haphazard nature" of its implementation. However, Zuma's speech was delivered after the drafting of the 2011 DIRCO White Paper on foreign policy, suggesting not that there was no policy, but that the President chose not to focus on it. This also contrasted with the development of increasingly progressive domestic legislation since 1994 (Jordaan, 2017a:208), which suggested that there has been a continued development of institutional capabilities in other departments of government.

Finally, assessing South Africa's identity as a middle power and the impact this might have on policy and practice has been another approach in the literature, often reflecting Jordaan's (2003) distinction between the traditional and emerging middle powers and South Africa's identity as the latter. A key difference between the two is the importance of the role emerging middle powers play within their region, where traditional middle powers rarely excel (Jordaan, 2003:172). Emerging middle powers typically rely on their regional dominance, particularly leading on economic and security issues, and pursuing multilateral and compromise solutions in international forums, which for South Africa has meant leading among its immediate Southern African neighbours, but also, at times, across the continent and even the global South (Smith, 2016a:126-127). Borer and Mills (2011:83) cited South Africa's consensus seeking practice as reflective of this emerging middle power approach. However, given the continent's history with South Africa, it has been incumbent upon the state to tread carefully when dealing with its continental neighbours, particularly as it sought to avoid being seen as a regional hegemon (Alden and Schoeman, 2016).

In a similar vein, for Black and Hornsby (2016:154) the contradictions arose from South Africa's complex settler-colonial, anti-colonial and post-colonial history as well as the impact the struggle for freedom had on attempts to implement the norms of human rights, anti-imperialism and counter hegemony. Essentially South Africa supported more traditional interests of middle power states in its relations with traditional powers such as Japan and the UK, for example human rights, but more South-South solidarity, anti-imperialist policies in its relations with states, such as Brazil, China or African neighbours, that characterise emerging middle powers (Black and Hornsby, 2016:154). In turn this principled promotion of human rights conflicted directly with the pragmatic need to engage with human rights violating continental economic allies (Landsberg, 2004: 183). This was echoed in Jordaan's (2019:141-142) later analysis of South Africa's performance on various human rights issues within the UN, in which South Africa largely co-sponsored positive human rights resolutions with Western powers and yet saved all their condemnation for Western states who transgressed human rights norms, while ignoring the contraventions of fellow African Group members or other states of the global South. These contradictions therefore become most apparent within multilateral institutions when engaging with partners from across the global South.

Establishing South-South co-operation, strengthening ties with the global North while acting as an advocate for the global South, increasing strategic alliances with other African states and advocating for the whole continent internationally have been core to post-1994 foreign policy. In essence "South Africa saw itself as a "good world citizen" and a leading member of the global "South" that would critically engage the industrialised "North"" (Landsberg, 2004:189). South Africa's strategic approach appeared to "allow[ing] the Republic to punch above its weight" as a middle power of the global South and this newfound influence was used to allow the state to act more like the traditional powers and as a bridge between North and South (Landsberg, 2004:185).

Indeed, under Mbeki foreign policy not only sought to establish this communication between North and South, but South Africa appeared to be acting as a "spokesperson" for Africa, for example by branding South Africa's 2010 Soccer World Cup bid as "an African bid" (Landsberg, 2004:186). Citing this as an effort to affirm South Africa's identity as an African growing middle power, Landsberg concluded that the first five years of the Mbeki administration South Africa tried to assert its international independence, forcing it, at times irreconcilably, to "demonstrate its ability to criticise Western powers when its interests clashed with theirs, and to simultaneously cultivate ties with them in search of its economic interests, while also reaching out to Africa and the "South"" (2004:218).

Landsberg (2004), reflecting the conclusion of Alden and Schoeman (2016), also determined that at the same time as seeking to speak for Africa and implementing some assertive regional economic policy, South Africa sought to avoid appearing hegemonic in its continental ambitions. The deputy Minister of Foreign Affairs, Aziz Pahad, noted in 1994 that other African leaders had already suggested "if South Africa continues to hide behind the rhetoric of not wanting to play a leadership role, Africa would indeed suspect a hidden agenda" (cited in Landsberg, 2004:187). Those economic ambitions might have been seen as contrary to pan-African solidarity, but South Africa has argued that its relative economic wealth is both beneficial for the whole continent and that its own interests

can only be met through shared growth (DIRCO, 2020a). Additionally, to mitigate this hegemonic image, the South African Department for Foreign Affairs (DFA) made managing external perceptions of the state a priority, in particular through soft power (Smith, 2016a:138).

Certainly, attempts by South Africa to demonstrate leadership for the continent whilst balancing relationships with powerful states in the West and continental partners has necessitated commitments to both principled and pragmatic policies, which have produced clear inconsistencies. Whilst some of these seem to relate to avoiding the perception of South Africa as a regional hegemon, these primarily appeared when demands for African or Southern solidarity conflicted with the promotion of Western¹³ liberal ideas. However, as will be evidenced later, in the protection of SOGI rights, several Southern states from Latin America, which have led on UN SOGI rights initiatives, have complicated this North/South split.

2.3 Conclusion

As detailed above, there has been considerable evidence of inconsistencies in South African support for a broad range of human rights. Somewhere between the definition of policies and their implementation, inconsistencies and contradictions have arisen. The above analyses clearly evidence these and provide several explanations for their occurrence. Many of these analyses have been approached from constructivist perspectives. Constructivist theories allow state identities and interests to change over time, indeed states are expected to simultaneously maintain multiple identities, but these are expected to be implemented hierarchically based on salience and commitment (Jepperson, Wendt and Katzenstein, 1996; Wendt, 1999:230-231). Likewise, interests are subject to change as different identities are exercised, this might also occur as governments or leadership changes, or during planning cycles within state departments. However, such changes might normally occur at the margins of policy, some bilateral arrangements might change, or economic interests might diverge, but certain fundamental principles, such as alignment with key UN blocs, within foreign policy will remain relatively static. As observed by Jordaan “a constructivist identity-based approach will frequently run into cases that undercut its predictive power” (2019:190).

Whilst these studies have put forward suggestions for the competing priorities that lead to these inconsistencies, many concluded that the contradictory actions reflect a split, uncertain or unsettled identity or even dual or multiple identities. Furthermore, they determined that these sometimes occur simultaneously. Such identities are not explained by dominant IR theories. In their review of accounts of ambiguities of South African foreign policy Serrão and Bischoff (2009:363) concluded that although a constructivist approach could highlight particular and successive identities, it was insufficient to account for multiple simultaneous identities identified in some of the analysis. They

¹³ Although human rights are enshrined within the UN as universal, the drive to have them protected within international law is generally considered to have come from Western states. Their assumed universalism has not been taken for granted by some African leaders (Black and Wilson, 2004:34).

also determined that any rationalist explanations didn't take sufficient account of the complexity of the South African foreign policy environment and concluded that traditional IR theory may not be sufficient to fully explain post-apartheid foreign policy (Serrão and Bischoff, 2009:363). Likewise, Jordaan concluded that for South Africa "a bifurcated national identity therefore diminishes the predictive power of a constructivist national identity approach" (2019:171).

In view of these conclusions, this thesis agrees that the inconsistencies between policy and implementation may reflect an identity crisis or that there are external influences on South African actions that unsettle the state identity. Therefore, in response to the request of Vale and Taylor to "look at the country's foreign policy through new eyes in order to foster alternative interpretations of 'reality' that will be of use to any formulation of new policies" (1999:633), this thesis offers a different approach to review these inconsistencies, using a theory that allows for less settled or inconsistent identities. The next chapter provides the theoretical foundation for the study and rationale for using a queer perspective to the clear try and understand the contradictions in South African support for SOGI rights.

3 Theory and Method

3.1 Queer Theory

As presented in the literature review, although the obvious contradictions in South African foreign policy have been subject to many studies, these have not fully accounted for the simultaneous multiple and conflicting identities that they highlight. This chapter outlines the theoretical approach, Queer Theory, to be used for the study and the development of the methodology for the analysis.

Queer Theory is a post-structural approach to sexuality and gender (Plummer, 2007), that was developed in queer and feminist studies fields by academics such as Butler (1990, 1993), Sedgwick (1990), Jagose (1996) and Halberstam (2005), who were influenced by themes and ideas in Foucault's 1976 three volume monograph, *The History of Sexuality*. Although often used in social situations as an identity, queer is perhaps better understood as behaviour or actions that are out of sync or deviant to what might be socially constructed as normal. Epprecht (2008:15) describes queer research as an approach that identifies and values diverse gender identities and sexual orientations. However, in the same way that feminism not only explores issues of the differences between the genders, but also enables other political and social themes to be explored through a feminist lens, likewise Queer Theory enables insight beyond both the gender binaries and heterosexual assumptions that have become intrinsic to our understanding of social and sexual relations. In International Relations (IR), feminism has allowed states to be interrogated through a lens that identifies masculine and feminine traits and behaviours of state identities. To determine the similar potential for Queer Theory in IR, a history of its development and its implementations to date is set out in the following sections.

Queer Theory and its methodological approaches have often been considered difficult to define. For example, Spargo suggested "Queer theory is not a singular or systematic conceptual or methodological framework, but a collection of intellectual engagements with the relations between sex, gender and sexual desire" (2000:9). Indeed, Queer Theory was founded on complexity in so far as it "employs a number of ideas from poststructuralist theory, including Jacques Lacan's psychoanalytic models of decentred, unstable identity, Jacques Derrida's deconstruction of binary conceptual and linguistic structures, and, of course, Foucault's model of discourse, knowledge and power" (Spargo, 2000:40-41). However, Spargo noted that there has been a focus in queer theoretical research on how relationships between identities and actions have enabled challenges to "oppressive knowledges and practices" by groups and individuals (Spargo, 2000:66).

These challenges, otherwise known as queer critiques, confront societal norms, such as patriarchy, heteronormativity and cis-normativity, and can expose how people might be rejected by societies through such structural power, be that based on class, race, sexuality or any of the countless ways

humans are considered non-normative, i.e. do not conform to social norms. In this regard, Queer Theory applies a queer lens to uncover the production and re-production of societal power relations that define outsiders who might be considered deviant or marginal (Smith and Lee, 2015:55).

3.1.1 Queer Theory in International Relations

Studies in Queer Theory focus on non-normative subjects at the margins, which Amoureux (2019) argued, is a position neglected by much IR scholarship, because it lacks the theories and approaches to study marginality. Reflecting on the perceived deviance and marginalisation a queer lens could expose within an IR study, Amoureux (2019) suggested that new ways of understanding “subjects, sentiments, temporalities, spaces and ethics of politics” could be demonstrated. In other words, this focus on human subjects in the margins, might offer insights into marginal or antinormative state identities too. Wiegman and Wilson highlighted Queer Theory’s antinormative potential, determining that “[w]hile its focus and theoretical inheritances vary, antinormativity reflects a broad understanding that the critical force of queer inquiry lies in its capacity to undermine norms, challenge normativity, and interrupt the processes of normalization” (2015:4). In other words, Queer Theory determines that whenever claims are made for that which should be considered normal, there is an immediate presumption of the abnormal, the deviant or the perverse to anything that lies outside the framing of that norm (Peterson, 2014:604). This has clear applications for the norms that inform state behaviours in the International Institutions that are a critical feature of IR research.

Indeed, Queer lenses have not just been used to explore the ways that people define their sexual and gender identities, but also to critique the impacts of capitalism, neoliberalism and the Western foundations of definitions of sexualities and genders (Tamale, 2014; Cruz and Manalansan, 2002; Gaudio, 1998; Kendall, 1998; Grewal and Kaplan, 2001; Pellegrini, 2002; Bond, 2016; Thiel, 2015; McEwen, 2016). Consequently, in recent years, Queer Theory has been adapting and expanding into global analysis by scholars working in the fields of Area Studies and Global Queer Studies (Weber, 2015). From such analysis, some Queer theorists have argued that IR, as inescapably part of the social world, is suffused with a barely acknowledged, implicit heteronormativity, which fails to entertain the possibility that states might be queer or have any type of sexual identity (Puar, 2007; Weber, 1999; 2016a).

Therefore, it is claimed that Queer Theory has the potential to challenge IR both epistemologically and ontologically by providing a different lens for discovering knowledge, challenging what constitutes valid knowledge within the discipline, and thereby discovering new explanations for state behaviours, particularly for those states that appear to exist at the margins of contemporary approaches to international behaviour. Consequently, in the same way the Queer Theory has been used in sociology and anthropology to expose various non-normative sexual and gender identities, or to consider the social constructs that define normal and perverse behaviours, in IR it has the potential to be used to understand state behaviours and identities that do not conform to expected norms. The next section explores this potential through a summary of the history of Queer Theory in IR, which highlights previous applications and discoveries as well as potential uses.

Explorations of the potential of Queer Theory in IR emerged in 1999 when Peterson, feminist theorist, hypothesised the sexual foundations of the nation state through heteropatriarchal households for continued procreation. As Peterson clarified at the 2013 International Feminist Journal of Politics Conference:

“States/nations are historical assemblages that constitute heteropatriarchal families/households as foundational units and regulate sexual activities to ensure intergenerational continuity (and attendant inequalities), especially via birthright transmission of property and citizenship claims. Yet decades of feminist/queer politics and neoliberal globalizing dynamics destabilize these household and state-centric arrangements, rendering feminist/queer theory a uniquely productive lens for analyzing past, present and potentially future asymmetries – and assemblages – of power.” (Peterson, 2013b).

This highlights the assemblages of power that states, as guardians of heteropatriarchal relationships, use to present any other relationships as deviant or abnormal. A queer perspective interrogates and exposes the power relations behind those assumptions of normalcy and the impact they can have on those considered deviant to the norms. On this basis, Peterson has argued that feminist and queer theories could offer unique lenses to also explore the changing nature of the state and power relations within IR (1999; 2013a; 2013b; 2014). Furthermore, this is not just restricted to social values and moral judgement of communities, but state promoted and politically motivated norms (Peterson, 2014). Therefore, Queer Theory could uncover the power relations beyond the narrow IR confines of the relations between states and intergovernmental organisations but also include social and cultural power relations (Smith and Lee, 2015:49). However, despite the growth of some social science theories in the IR, studies of sexuality and gender and queer perspectives had received little attention in the discipline (Smith and Lee, 2015:50; Picq and Thiel, 2015; Langlois, 2015, 2016), leading Weber to ask in 2015, “Why is there no Queer International Theory?”

This lack of Queer IR is surprising since the first monograph to use Queer Theory in IR was published in the same year as Peterson’s intervention above. Weber’s *Faking it: US hegemony in a post-phallic era* (1999), which explored the sex behind US foreign policy toward Latin America between 1959 and 1994, received a mixed reception particularly within the IR field. It wasn’t until 2007 that this was joined by another Queer IR book, Puar’s *Terrorist Assemblages: Homonationalism in Queer Times*. Taking an assemblage approach to explore linkages between ideas of perversion, homosexuality and terrorism in the USA, Puar (2007) argued that configurations of sexuality, race, gender, nation, class and ethnicity were being realigned in relation to contemporary concepts of state security, counterterrorism and nationalism and through this introduced the concept of homonationalism. This determined that the state adoption of LGBT rights had created good gays who marry, have children, and join the US army and the bad gays who don’t.

Weber (2016a) further explored the potential of Queer IR in *Queer International Relations: Sovereignty, Sexuality and the Will to Knowledge* in 2016. Weber used the bearded drag queen Eurovision winner, Conchita Wurst, to present how states reinforced various figurations of the

perverse homosexual/unwanted immigrant and terrorist as opposed to the normal homosexual/gay rights holder and gay patriot. From this Weber hypothesised how queer bodies challenged the figuration of sovereign man and, thereby, confronted the statecraft inherent in the embodiment of the sovereign man, as well as exploring several methodological options for the queer study of IR (Weber, 2016b).

Weber suggested a queer lens allows academics to critique presumptively reasonable binary logics in IR, through queer logics of statecraft, which suggest “[s]overeign states and international orders appear to be singular, coherent, and privileged. In this respect, they can be akin to sexual organising principles like heternormativities and homonormativities” (Weber, 2016b:19). Puri (2016) built on this concept and reflected Peterson’s (2013) description of assemblage states above in *Sexual States: Governance and the Struggle over the Anti-sodomy Law in India*. Puri applied the ontological framework of assemblage to demonstrate that state representatives occasionally display irrational behaviour in contradiction of policies and actions of other state officials. To this assemblage understanding of the state Puri (2016) also took a biopolitical approach, using sexuality as a lens, to define the “sexual states” that use sexualities to control populations. This in turn reflected the earlier work of Haritaworn, Kuntsman and Posocco (2014), *Queer Necropolitics*, which built upon Mbembé’s (2003) concept of necropolitics and Foucauldian biopolitics to explore state sanctioned death, both real and figurative, of sexual and gender minorities.

The most recent book exploring Queer Theory in IR is *Out of Time: The Queer Politics of Postcoloniality* by Rahul Rao (2020). Drawing on Postcolonial and Queer Theories, this is an exploration of a theme relevant to the issues covered in this thesis, namely the dilemma of SOGI rights in post-colonial states. It presents a critical historical account of the passing of the Ugandan Anti-Homosexuality Act 2014, the debates around the anti-sodomy laws in India, and the British parliament’s confrontation with its colonial past. Within this Rao challenges constructions of African homophobia, and explores homonationalism and the impact of homocapitalism, which is described as “the prospect of a rosy future redolent with growth and productivity should a state embrace LGBT rights” (Rao, 2020:12).

In addition to these key texts, Richter-Montpetit suggested that Queer IR has uncovered insights into the way sexual norms shape international political and economic power relations, thereby defining a range of conceptual critiques including “homonormativity, homonationalism, pink-washing and homocolonialism” (Richter-Montpetit, 2017:3-8). Thiel suggested that in IR Queer Theory could critique assumptions of development linearity, particularly in relation to norms as “it embraces ambiguity, failure and conflict as a counterpoint to a dominant progressive thinking evident in many foreign or development policies” (2017:99). In this way it ought to counter the narrow claims made of current IR thinking and upend some “powerful myths and narratives” (Thiel, 2017:103). Wilcox (2014:612-613) maintained that it was important to recognise that the process of “queering IR” should not be restricted to studies of sexual identity, nor should it be assumed that IR needs to be queered, as Queer Theory would simply uncover the existing mechanism which regulate sexualities, such as the heteronormative assumptions that might allow some actors in IR to be read as queer. To illustrate, Wilcox determined that “queer theorists have demonstrated how fundamental concepts

and institutions in IR such as the state and identity are based on assumptions of heterosexual, reproductive sex” and that “[i]n keeping with queer theory’s critique of sexuality as a stable identity, these works emphasize identifications rather than identities as shifting, fluid, and sometimes contradictory” (2014:612-613).

Further studies that have explored the possibilities for Queer Theory in IR included Thoreson (2011) arguing that human rights frame ideas in ways that can exclude queerness; Picq and Thiel’s (2015) edited volume of empirical essays, *Sexualities in World Politics*, which covered topics ranging from human rights, the (dis)United Nations, LGBT politics under neoliberalism, Muslim homophobia and homosexualities, LGBT politics in the Amazon, LGBT recognition in Turkey to queering security studies in Northern Ireland; and Altman and Symons’ *Queer Wars* (2016), which explored the polarization of states around the issue of LGBT rights. Recently, Lotter (2018b) used Weber’s queer logics of statecraft to conceptualise ‘homopopulism’ as an analytic factor in the rise of queer support for populist politics in the West, which has since been applied to the queer-on-queer violence by Europeans supporting anti-immigration policies that provide escape for queer Africans (Lotter and Fourie, 2020).

As these examples demonstrate “[q]ueer scholarship in IR is not confined to sexualities or sexual rights but functions to question established power relations more generally” (Thiel, 2014). Richter-Montpetit further claimed that the inclusion of LGBT people in markets, states and rights regimes is the “most prominent issue in contemporary debates in Queer Theory” (2017:1), which is evidenced in several the recent publications listed above. Further studies of Queer Theory applied to international relations can also be evidenced in Puar and Rai, 2002; Lind and Keating, 2013; Weis and Bosia, 2013; Agathangelou, 2013; Rao, 2014b; Sjoberg, 2014; and Wilkinson and Langlois, 2014.

The future potential for Queer IR has also been considered. Weber suggested Queer Theory could rearticulate classic IR themes such as territorial peace and human rights regimes (Weber, 2014:599). Thies (2016) saw applications in role theory for foreign policy analysis stating, “What Weber’s queer method tells us is that role’s that might initially seem incompatible may in fact be incompatible, yet simultaneously performed”, whilst Lind (2014) identified the potential to understand when states perform dual or conflicting roles on SOGI issues and how these shape regional and international state identities. As Lind suggested:

“While advances in LGBTI rights are important steps, the political messiness of queer visibility offers IR scholars an opportunity to think more critically about how state practices contribute to and indeed powerfully shape the (hetero)normative landscape in which we conceptualize our work.” (Lind, 2014:604).

Specifically, on the issue of queer analysis of human rights regimes, Weber argued,

“understandings of human rights that equate “the norm” and “the normal” with “the good” and “the beneficial” (Finnemore and Sikkink, 1998) are complicated by Queer IR analyses of “homonormative” foreign policies ... For these analyses expose

the (potential) violence of not just excluding plural subjects, but also including plural subjects as singular subjects” (2016b:22)

The power of a queer lens is that whenever claims are made for what should be considered normal, there is an immediate presumption of abnormality or deviance to anything that lies outside that framework (Peterson, 2014:604). A queer perspective interrogates and exposes the power relations behind those assumptions and the impact they can have on those considered deviant. This means that Queer Theory can be a powerful critical approach to many different subjects and concepts in IR, not just sexual and gender minorities but also people living with albinism, dwarfism and disabilities (Puar, 2017). Sjoberg (2012) hoped it could tackle the gender blindness of IR, while Spurlin suggested a queer lens could answer the following questions about sexuality and the emerging South African state identity post 1994; “[H]ow are the politics of sexuality inscribed within emergent discourses of nationalism in the “New” South Africa? What is the role of the politics of sexual difference in South Africa’s transition from apartheid to democracy?” (2006:78/9)¹⁴. Further suggested applications of Queer Theory in relation to South Africa, Africa and queer Africans are elaborated in the Further Research section of Chapter 8.

Finally, Thiel summarised much of this analysis, in determining the necessity of drawing upon other social science disciplines to overcome the narrow focus of disciplinary IR and realise the breadth of queer potential in IR, including beyond genders and sexualities, stating, “Queer theory-inspired research is a collaborative yet, at the same, time dialectical effort. Stemming from various fields that transcend a myopic view of IR, such research combines an inter-disciplinary epistemology to advance new critical perspectives on sexualities and beyond” (2014). However, a queer lens has not yet been used to explore the inconsistencies in South Africa’s approach to international SOGI rights.

3.1.2 Queer Theory and State Identity

As mentioned, Queer Theory has focused on the study of human sexualities and challenged the social constructs behind the production of discrete binaries such as straight/gay, male/female, and man/woman. In such a social context a human body can be identified as queer if it adheres to neither male nor female characteristics, likewise a person can be considered queer if their sexual interests are considered not normatively heterosexual.

Given the importance of state identity and interests in foreign policy creation, the question is whether and which insights Queer Theory can offer in the formulation and implementation of such identities and interests. In *Faking It*, Weber (1999) argued that sexual identity as much as gender shape state identities and that sexual self-perception influences patterns of interstate interaction. Ayoub even suggested that a state identity could be queer:

“Coming out has heretofore been considered an individual experience, but Alexander Wendt’s (1999) formative argument – that states have malleable identities of their

¹⁴ Further examples proposing the possibilities of Queer IR include, Nayak, 2014; Sjoberg, 2014; Langlois, 2015, 2016.

own – suggests that they too can come out by recognizing certain groups as part of their rights frameworks...The act illustrates that LGBT politics can merge with state identities, whether real or imagined, and play a role in contemporary world politics.” (Ayoub, 2016:5).

Could a queer lens explain the discovery of state identities that are non-normative and contradictory as suggested by Lind (2014) and Thies (2016)? Indeed, can a queer lens overcome the concerns with constructivist approaches to relatively static or consecutive identities and interests as critiqued in Chapter 2, by allowing for more fluid or simultaneously contradictory identities?

As noted, South Africa’s inconsistent voting suggests both pro- and contra-SOGI rights interest and a “bifurcated national identity” (Jordaan, 2019:171). If Queer Theory challenges social constructs that produce discrete binaries to expose and explain non-binary or otherwise non-normative people, can it also challenge political binaries that define a state must be either supportive or an opponent of certain rights, rules or regimes?

A queer perspective can explain actors who behave outside socially recognised norms. Through a queer lens, in the field of foreign policy analysis, when academics describe South African foreign policy as “schizophrenic” (Landsberg, 2018:65), we can understand this as othering in that it identifies the policy as non-normative. As mentioned previously, a core claim of Weber (2016a) is that a queer lens allows critiques of presumptively reasonable binary logics in IR. Weber (2016a:3; 2016b) further suggested that Queer Theory can present “**and/or**” as opposed to “**either/or**” state identities, which is indicative of a state that was perceived as both normal and perverse. In agreement with this, Thies (2016), building on his research into Role Theory in foreign policy¹⁵, suggested Queer Theory could describe how a state might appear to play simultaneous yet contradictory roles in the exercise of its foreign policy.

Applying this to understand the hegemonic discourse of sexualities and genders in Africa may enable a better understanding of the inconsistent role South Africa plays in the international arena as both defender and opponent of SOGI rights. Thies further suggested that perhaps “rising powers are likely candidates for **and/or** roles as they change internally and in their external orientation to the world” (2016). The **and/or** behaviour is perhaps indicative of the slow emergence and changed status on the world stage. For South Africa, identified by many as an emerging middle power, could this apparent contradiction be grounded in a desire to not appear hegemonic, or perhaps based on a longer-term view and recognition of the causes of resistance to SOGI rights within the neighbouring states on the continent?

In summary, queer analysis seeks to understand the hierarchies of power that dictate the norm environments in societies. The hegemonic power of heterosexual patriarchy defines anything that is not straight as deviant. The articulation of this distrust and distaste for non-normative gender expression and sexualities is made through homophobic and transphobic discourses. Whilst homophobia is often misunderstood as universal and monolithic, a queer lens can facilitate greater

¹⁵ See Thies, 2010 and Thies and Breuning, 2012.

understanding of the power behind where and when it originates, how it is manifest and the impact it can have. This dissertation aims to build upon this new but growing literature exploring how Queer Theory can be used to answer these enduring questions about the South Africa's inconsistent approach to SOGI rights.

The next section will explore and develop the methodological framework and methodology used in this thesis and will set out the foci and limits of the study.

3.2 Queer Methodology

There are few existing Queer Theory methodologies to draw from for use in IR, but as will be explained below, in addition to undertaking a queer critical discourse analysis, this research will adopt a recently developed queer framework, Weber's queer logics of statecraft (2016a), designed to explain states whose identities cannot seem to be defined monolithically, such as those states declared as having paradoxical, inconsistent or dual identities. Its foundations and method of implementation are explained in the remaining section of this chapter, which also details the implementation of a queer critical discourse analysis and the scope and materials to be studied.

Queer Theory has been described as "a mode of theoretical or conceptual engagement", which is fundamentally a study of discourses (Browne and Nash, 2016:2). As Giffney stated "[i]t takes very seriously the significance of words and the power of language" (Giffney, 2009: 7). Whilst words have dictionary definitions, it is recognised that their meanings are socially constructed and context dependent. Beyond the lexical components of language, the stories people share are equally socially constructed and context contingent. Language essentially plays two functions: it is transactional (sharing information content) and interactional (expressing social relations), therefore words have social meaning beyond their dictionary definitions (Brown and Yule, 1983:1). Discovering the underlying meanings within language can expose the inherent beliefs and prejudices of the communities that use the words. As Hall asserted,

"Reality exists outside language, but it is constantly mediated by and through language: and what we can know and say has to be produced in and through discourse. Discursive "knowledge" is the product not of the transparent representation of the "real" in language but of the articulation of language on real relations and conditions. Thus, there is no intelligible discourse without the operation of a code." (2005:121).

In the same way that a feminist lens is used to interrogate and understand how words and actions may be gendered or used to suggest gendered meaning on a subject, a queer lens exposes an additional layer of complexity to words that are expressed and what they may imply, thereby uncovering Hall's "code" (Hall, 2005:121).

Discourse analysis is a method that enables researchers to discover how various actors within a political or social context debate an issue and how they construct their arguments to create shared beliefs. Through such analysis, academics “can demonstrate with confidence what kind of statements actors try to establish as self-evident and true” (Schneider, 2013). Therefore, what researchers seek to understand from a discourse analysis is how specific actors construct an argument, and how this argument fits into and dictates wider social meanings and practices. Discourse analysis can show how the rhetoric actors have chosen to communicate their beliefs in ways they thought would be effective, plausible, or seem natural.

Queer Theory demands that researchers challenge those perceived normative assumptions and therefore a queer discourse analysis must be critical. Queer Theory uses critical discourse analysis to identify how discourses both reveal and hide assumptions and prejudices as well as exercise structural power over those considered marginal, deviant or queer to the dominant norms in each society. With its foundations in Foucault (1988), queer discourse analysis explores the power relations related to genders and sexualities. Foucault established that words have productive power and critical queer analysis is a study of the background and usage of words and the resultant discursive constructions of meanings that assert that power. In short, critical queer discourse analysis seeks to uncover that which is considered to be deviant and non-normative. For some IR scholars discourse analysis, as a method, has itself been considered as “deviant and marginal” (Milliken, 1999:227). However, many scholars recognise the power these discourses exert within international debates, such as Weldes, who stated that “[f]rom such representations, in turn, we can generate a portrait of globalization discourse that illuminates a well-rehearsed set of narratives and tropes.” (2006:181).

For this study, this means understanding how SOGI issues and the states that support them are discussed; how these discussions shape ideas about who and what they are; and how those ideas exert power to support **and/or** suppress sexual and gender minorities and the states that support them. This social discourse informs and is informed by the South African sense of state identity and will also impact on the state interests pursued through foreign policy and how these are expressed. In short, the language used by actors on SOGI issues reinforces norms that guide how actors respond to each other. The starting point therefore to implement Queer Theory is by looking at discourses differently, through a queer lens, thereby discovering different meanings these discourses imply and analysing how they impact on beliefs, understanding and behaviours of states and thereby taking the field of research beyond traditional IR knowledge. Therefore, a unique queer treatment will be used to explore the discourses that have been used in the UN, across Africa and in the South African context to describe sexual and gender minorities, SOGI rights and the states that support them. From these, conclusions will be drawn about how they impact upon state behaviour.

In his foundational text for Queer Theory, *The History of Sexuality*, Foucault determined the ways in which sex was “put into discourse” in Western Europe looking beyond the words used to understand the power behind them (Foucault, 1988:11). His research into medical, religious and cultural discourses demonstrated the emergence of the language used to define and oppress non-normative genders, sexes and sexualities across every aspect of society, particularly in European and North

American states. Within IR, Weber explained the potential for this Foucauldian approach by highlighting the ways political discourses relating to sexualities produce, often oppressively, alternative sexualities to the perceived heterosexual norm and the people who practice them (Weber, 2016a:25).

As was evidenced above, although Queer Theory has been applied to various IR themes, there had been little explicit development of a queer methodology for IR until the 2016 publication of Weber's *Queer International Relations: Sovereignty, Sexuality and the Will to Knowledge* (2016a). Weber demonstrated how a critical queer discourse analysis might be applied within IR, including analysing states, and set out a potential queer IR methodology called queer logics of statecraft (2016a; 2016b). Weber began this exploration of the possibilities of queer methods in IR by asking three questions; "What is "homosexuality"?"; "Who is "the homosexual"?"; and "How might theoretical and methodological frameworks draw out the relevance of these questions for International Relations?" (Weber, 2016b:11). Weber clarified that her focus was "on how political delusions about sex, gender and sexuality are combined with political delusions about things like race, religion and ability to make impossible sovereignties and the impossible figurations of 'sovereign subjectivities' that ground them appear to be possible" (Weber, 2016f).

Weber demonstrated that a queer lens brings into sight various figurations of the homosexual and homosexuality that exist within IR research, rendering it "(im)possible for Western "experts" to categorize people and geopolitical spaces as normal or pathological" (Weber, 2016b:12). From this analysis Weber (2016a) theorised further, identifying other, similarly contested identities and themes in international politics, including the colonised, the underdeveloped and the unwanted (im)migrant. This methodology reflected the earlier analysis by Puar (2007) into the identification of terrorists and others deemed a threat to the state. Both Weber (2016a) and Puar (2007) have demonstrated how policymakers used such figurations to bring a semblance of order to the anarchic world system.

A queer lens reflects the incongruity many queer people experience, when what society claims about sex, gender and sexuality does not reflect their lived reality. A queer lens, therefore, means to look at things from a different perspective and with critical suspicion. For researchers, a queer lens requires thinking deeply about what is said and done, looking behind the decisions and actions to identify the social drivers of the behaviour. The queer lens, however, does not just ask for a different perspective, but to consider how the power behind ideas might also seek to suppress behaviours considered deviant. Through understanding when and where decisions are made under pressure to conform, hegemonic power is revealed. A queer lens can therefore be used in the political realm to better understand and interpret the ways in which sexual and gender minorities' issues are discussed in the social and political arena. As stated above, this entails searching for signals in the discourses, which might indicate prejudices and regimes of power that will impact on state interests and behaviours. This analysis explores how these discourses exert power to drive and define certain social and political responses. A **queer lens** allows researchers to **uncover** the way that discourses define **the normal** and **the perverse** in any situation (Weber, 2016a:27).

This thesis will implement a queer lens through a critical discourse analysis to explore the South African state's inconsistent support for SOGI rights internationally. Whilst the grand theory of Queer Theory serves as a foundation, the analysis will use the middle range theory of Weber's queer logics of statecraft (Mogashoa, 2014:111). The next section explains the critical discourse analysis methodology that will be used and then the implementation of queer logics of statecraft for analysing and interpreting the discourses.

3.2.1 Queer Critical Discourse Analysis

A qualitative critical analysis must investigate how the language used reflects certain beliefs or brings them into existence and to aid understanding of dynamic and complex debates. Therefore, rather than seeking specific linguistic terms a critical approach focuses on the problem at hand and the wider social context in which it is expressed to discover the latent intent and meanings invoked throughout the discourses studied. A critical analysis therefore needs to be interpretive and deductive, identifying clusters of words that insinuate particular meanings. These meanings may not always be expressed in the same terms, but connections between meaningful clusters can also indicate particular interpretations (Rose, 2001:158).

This contrasts greatly with a rigid system of reading and coding research material associated with linguistic discourse analyses, as there are significant weaknesses in this approach for critical analysis. Such quantitative methods are too prescriptive. "Pre-existing categories" and most commonly used words or phrases may not be the most powerful in influencing beliefs and behaviours, or they simply fail to acknowledge the power behind those words at all, rendering them unsuitable to a critical approach (Rose, 2001:150). In addition, they may miss the dynamic way that ideas might be expressed differently over time and across different social contexts.

The goal of a queer critical discourse analysis is to specifically uncover assertions of **the normal** and **the perverse** within the material studied and understand how these influence beliefs, comprehension and ultimately decisions and actions. Therefore, whilst patterns of words and phrases will be sought, it is more important to critically attribute them to emergent themes and understand the relevance that they have to the discussants. That relevance, according to Foucault (1988), includes how the words used shape what we believe to be true, how power relations shape those meanings as truths, how they spread through social networks, and how they sustain certain institutions. Therefore, the analysis identifies phrases and idioms used to describe SOGI rights, sexual and gender minorities and the states that support them as deviant or other. These are captured, analysed for consistencies and clusters, and categorised into dominant themes (Rose, 2001:150-151).

Additionally recognising that the debates in the UN do not occur in a vacuum, it is necessary to explore the intertextuality of discourses. This is achieved by researching beyond the specific material being analysed to gain an understanding of the broader social and political context in which the discourse analysed takes place and how ideas and beliefs are transmitted and maintained within those associated contexts (Rose, 2001:143). This contextual background is provided in Chapters 4

and 5. The themes from the contextual background are compared with the clusters of ideas identified in the UN discourses to better establish the meaning and intent of the themes.

The queer critical discourse analysis follows Weber's (2016a:25-27) summary of the four stages required for Foucault's analysis of discourse and productive power:

1. Analysing how sex is included in the discourse. This means reviewing the discourses around sexual and gender minorities to determine how non-normative sexes, genders and sexualities are described and the types of subjects those discourses produce.
2. Analysing how productive power functions and its effects. At this stage, the researcher should analyse how the discursive formulations discovered above are controlled through biopolitical power and the normalising regimes this power produces.
3. Analysing how the networks of power/knowledge/pleasure utilise productive power. Here the researcher must study the networks in which this productive power is utilised to identify and categorise the deviant figure and thereby those figures who can be considered normal.
4. Analysing the current understandings of the normal and the perverse. In this final stage of analysis, the discoveries of the first three analyses can be used to determine who or what might be considered as either normal or perverse at any given time, in the knowledge that these may never be fixed or permanent.

This thesis will forensically examine the UN debates, to identify the rhetoric used and the way that this rhetoric aims to make some ideas seem self-evident in relation to sexual and gender minorities and their rights and thereby identify the normal and the perverse in these debates.

SOGI rights appear in a variety of debates and resolutions throughout various UN portfolios including conflict and war, access to health and education and in combatting racism. As evidenced in Chapter 2, South Africa's actions across these different debates have been inconsistent, including within dedicated sessions on SOGI rights. As noted previously, this study is not seeking to evidence whether South Africa has voted inconsistently, but to explore whether Queer Theory can provide a perspective to understand why South Africa has acted inconsistently.

To identify every UN discussion on SOGI rights would require analysis of a significant volume of UN archives. For example, since their introduction in 2006 the UN's Universal Periodic Reviews¹⁶ contain 1,300 references to SOGI (UNGA, 2016f). Providing a clear definition of the scope of a study will enable others to test or replicate it. Moreover, the research is dependent on accessing original audio, video, verbatim transcriptions or officially submitted statements, as what is said and how it is said are essential for the critical queer discourse analysis. Consequently, to ensure focus and to compliment rather than replicate the existing analysis undertaken by Jordaan (2017a; 2017b; 2020)

¹⁶ The Universal Periodic Review (UPR) was introduced by the UNHRC in 2006 and assesses the human rights record of 48 states per year in cycles so that all 193 states are reviewed periodically.

and Williams (2017), the defined scope of analysis comprises debates dedicated to SOGI rights and does not include debates focused on other issues that may have included some debate on SOGI issues.

This provides a discrete, significant and long-term study of the discourses on SOGI rights at the UN, including significant incidents of South African inconsistencies on the issue. It comprises 15 UNGA and UNHRC sessions between 2011 and 2020 on SOGI specific resolutions, panel discussions, reports and interactive dialogues. These sessions are detailed on page 100 and include over 60 hours of meeting footage across 30 meetings for discussions and voting on four successful resolutions, nine reports, seven interactive dialogues with the Independent Expert on SOGI, and 28 proposed amendments to resolutions, as well as hard copy transcripts and submitted written statements.

The data analysed can be accessed through the UN extranet. The UN archive includes audio and video recordings of UNGA and UNHRC meetings, two types of meetings report for the UNGA (but not the UNHRC), Verbatim Records and Summary Records¹⁷, as well as schedules of meetings, meeting agendas, reports presented, decisions, draft and agreed resolutions, amendments to resolutions and hard copy submissions of oral statements. Audio and video recordings form the primary source of this discourse analysis. However, audio and video recordings of UNHRC meetings prior to September 2011 are no longer available, which limits the time period and types of meetings available for review (see detailed explanation in 3.3). For a discourse analysis Verbatim Records but not Summary Records can replace audio and video recordings as the latter are subject to précis and interpretation.

Additionally, as argued above, state identities and interests are formed not just through domestic concerns, but also through the influence of peers in the international system. A queer analysis requires contextual understanding and so this research adapted Landsberg's (2014) concentric circle approach to understanding the environments in which South African foreign policy is defined and implemented, namely the domestic, regional and continental, and international. This approach recognises the importance of South Africa's continental partners, who have at times been vocal opponents of SOGI rights. This is the purpose of the domestic and continental analysis chapters (4 and 5). They provide the contextual background to the debates at the UN and reflect the importance of domestic policies and practices on foreign policy and action.

The data for Chapters 4 and 5 includes primary sources in the form of Hansards; published government policies and media statements; published speeches by government representatives; tweets from official government accounts; court judgements; parliamentary acts, green and white papers; published media statements, reports and resolutions from regional, continental and international organisations; and online and print news media. These can be accessed through the University of Cape Town (UCT) libraries, proprietary websites and via online searches. Secondary sources are predominately academic analysis of primary and secondary data, including papers

¹⁷ Meeting records are not published for all UN subsidiaries and meetings main UN bodies and subsidiaries will have either a Verbatim Record or a Summary Record, not both. The UNHRC does not publish either Summary or Verbatim Records. The UNCHR published Summary Records, not Verbatim Records.

researched through interviews and surveys, as well as reports by NGOs and INGOs. This academic material can be accessed through the UCT libraries and online databases, while much of the civil society material can be accessed through proprietary websites. The prevalence of analysis of sexual orientation and gender issues dictated which African countries could be included within Chapter 4.

Finally, whilst Queer Theory and Weber's queer logics of statecraft provide the substantive approach to this study, by centring the voices and experiences of queer Africans and how they experience IR this study also takes a queer African studies perspective. This approach not only challenges the prevailing Afro-pessimism narrative that paints Africa as universally homophobic, but by focussing on the rights and challenges faced by queer Africans, it critiques the global governments and activists that universalise western queer experiences and propose solutions for African queers without sufficient engagement with the very communities they are seeking to assist (Nyeck, 2019; Currier, 2019:239). This international imbalance in power marginalises local activists, so by highlighting this concern this thesis intends to amplify queer African perspectives (Hawley, 2001:9 and 14).

Additionally, despite initial concerns about the incommensurability of post-colonial and queer theories, this research is informed by the post-colonial approaches of Ghandi (1998), Mbembé (2001) and Hawley (2001). Queer Theory and postcolonial studies both seek to identify and challenge difference and hierarchies of power. While Queer Theory interrogates the world order dominated by binary genders and heterosexuality, postcolonialism challenges the continued supremacy of the global North over formerly colonised states. This necessitates critical interrogation of the enduring impact of how colonialism has informed the debate around sexual and gender minorities within the African continent. It has also informed the analysis of the approaches taken by global actors as they have sought to address this colonial legacy and the resistance this fostered within some African states. This thesis therefore approaches the critical discourse analysis blending the perspectives of post-colonial and queer African studies to critique the hegemonic cultural transmissions of rigid western definitions of sex, gender and sexuality and recognises indigenous sexual and gender identities.

The analysis will take an adductive approach, moving between the theory and the data continuously; analysing the written and spoken arguments to determine the political position from the rhetoric used. To achieve this the following process will be undertaken, drawing on the methodologies for discourse analysis for political and visual communications explained by Mogashoa (2014), Schneider (2013) and Rose (2001) as well as insights from Foucault (1988):

- **Analysing** – the material for each of the three arenas will be closely heard and read taking into account the contextual background, Foucault's four stages and through a queer lens to start ascertaining framings of normal and perverse.
- **Identifying dominant themes** – dominant and recurring themes, based on careful reading and contextual knowledge, will be drawn out for closer interpretation.

- **Interpreting** – using a critical analysis of these themes through a queer lens, within the contextual understanding, the meanings of these dominant themes will be interpreted to understand the power they are intended to wield.

Augmenting the discourse analysis method set out above, the interpretation of the results will be completed through the implementation of Weber's queer logics of statecraft to determine how South Africa identifies in response to the framings of normal and perverse on the SOGI issue.

3.2.2 Queer Logics of Statecraft

Weber determined that Foucault's analysis of discourse and productive power could be used as the basis for a queer IR methodology. However, Weber believed it was necessary to augment this Foucauldian analysis, which was considered too broad and European centric (2016a:27-28). To that aim, Weber combined this with Donna Haraway's concept of figurations, which built upon Judith Butler's idea of gender and sexual performativity, Richard Ashley's Derridean inspired statecraft as mancraft and Roland Barthes rule of the **and/or** (2016a; 2016b). The foundations of this methodology were covered in both Weber (2016a) and (2016b). The explanation below is a synthesis from these publications, Weber's Groningen Lecture on Modes of Reasoning (2016e) as well as evaluations by Leigh (2017) and Lotter (2018b:70-84).

Weber firstly augmented Foucauldian analysis through consideration of Haraway's figurations. Figurations are "the act of employing semiotic tropes that combine knowledges, practices, and power to shape how we map our worlds and understand actual things in those worlds" (Weber, 2016a:28). Weber concluded that combining the Foucauldian discourse and productive power analysis with Haraway's figurations provided a more detailed understanding of the "the homosexual" (Weber, 2016a:34), but also the otherwise sexed or gendered other. Weber next applied these figurations to Ashley's statecraft as mancraft, to more fully understand how states then utilise fixed understandings of the deviant other when implementing their international relations (2016a:34). This builds on Ashley's argument that since the ending of the divine right of Kings, authority in democratic states lies in the popular vote of sovereign (modern) man (Weber, 2016a:35). This modern man is given form and meaning, which is projected into the international arena, whereby states use the figure of him to determine foreign policy (Weber, 2016a:35). As an example of this, Weber demonstrated that by expanding the idea of the modern US man to include married same-sex couples, the US state was able to cast itself as progressive and liberal through its foreign policy and simultaneously cast as deviant those states that do not recognise same-sex marriage rights (Weber, 2016a:36).

However, Weber remained dissatisfied with this preliminary methodological approach, particularly concerned that Ashley's logocentric Derridean practice "tries to impose singular meaning" when in fact "plural logoi" were required (Weber, 2016a:39). In other words, in thinking through the queer subjectivities of sexes, genders and sexualities, Weber contended that a true understanding of the identity of a person may necessarily comprise accepting simultaneous and perhaps seemingly contradictory meanings that may previously have been misunderstood as exclusively binary. As an

example, Weber stated that in a binary formulation, a person might only be understood as either a boy or a girl, constituting an either/or logic when in fact something more complex is occurring. Weber illustrated this complexity thus:

“For example, a person might be both a boy and a girl while simultaneously being either a boy or a girl. This might be because a person is read as either a boy or a girl while also being read as in between sexes (intersexed), in between sexes and genders (a castrato), or combining sexes, genders, and sexualities in ways that do not correspond to one side of the boy/girl dichotomy or the other (a person who identifies as a ‘girl’ in terms of sex, as a ‘boy’ in terms of gender, and as a ‘girlboy’ or ‘boygirl’ in terms of sexuality)” (Weber, 2016a:40).

Applying this to the US example, the USA can be understood as a state that is both liberal, accepting of married homosexual families, but at the same time discriminates against other queer citizens, such as trans* sex workers. Given the aforementioned reflection on personal identities and considering how they may be similarly reflected in state identities, Weber turned to Barthes rule of the **and/or** and maintained that this **and/or** logic can also be applied to foreign policy, as follows:

“Queer logics of statecraft are evident in those moments in domestic and international relations when actors or orders rely upon a queerly conceptualized Barthesian and/or—an and that is at the same time an or in relation to sexes, genders, and sexualities—to performatively figure sovereign man, the sovereign state, or some combined version of the order/anarchy and normal/perverse binaries as normal and/or perverse” (Weber, 2016a:43).

Weber therefore contended that queer logics of statecraft enable the concepts of sovereign man and sovereign state to be understood within Kosofsky Sedgwick’s definition of queer as “the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning when the constituent elements of anyone’s gender, of anyone’s sexuality aren’t made (or can’t be made) to signify monolithically” (1993:7). As such, this methodology doesn’t only reveal those states that occasionally and expediently appear to behave as normal or perverse, but also those who are seemingly normal **and/or** perverse and might confound and adhere to expectations of normative behaviour (Weber, 2016a:44).

Weber further argued that these logics shed light on myriad queer international figurations, which in turn can form international hierarchical regimes of power. On gender and sexuality, Weber refers to Duggan’s (2003) and Puar’s (2007) formulations of heteronormativity, homonormativity and homonationalism as examples of such structural power. Weber ended the methodological explanation with the following guidance for future queer research in IR:

“Unlike heteronormativities and homonormativities, though, we cannot name in advance what these institutions, structures of understanding, and practical (dis)/(re)orientations will be. We cannot know if they will be politicizing or

depoliticizing. To determine this, it is necessary to both identify the precise plural each particular queer logic of statecraft employs to figure some particular 'sovereign man', 'sovereign state', and international order, always asking, 'For what constituency or constituencies does this plural operate?'" (Weber, 2016a:44).

Consequently, Weber's methodological approach to Queer IR, queer logics of statecraft, achieves two primary aims.

Firstly, it exposes how the homosexual is understood within state practice and policies and how this figuration constructs state identities and the conceptual boundaries of their sovereignty. This identifies who can be included or excluded within the idea of the population of sovereign men (Weber, 2015; 2016a; 2016b; Leigh, 2017:348).

Secondly, through circumventing the prevailing desire within the discipline of IR to categorise people and states within existing neat binaries (such as realist/liberalist; feminine/masculine; developed/less developed; etc.), the methodology reveals plural identities that might exist simultaneously. In other words, the queer logics of statecraft uncover multiple and contested identities revealing plural logics of both normal **and/or** perverse identities (Weber, 2016a; 2016b; 2016e).

This methodology is designed to uncover structures of power that both demand and maintain these logics. Queer logics of statecraft therefore expose how concepts and actors debated in the international system may be configured as normal or perverse, how such concepts and actors may be perceived as both normal **and/or** perverse and how such configurations may shed light on regimes of structural power that both create and enforce these configurations. In this way, queer logics of statecraft enable the interrogation of regimes of discursive power that might account for a seemingly conflicted state identity.

Thus, a queer critical discourse analysis of the debates within the UN, across Africa and in South Africa will determine the discursive tropes invoked and enforced in relation to SOGI rights and uncover how these may have impacted on the South Africa's identity and interests. Consequently, these tropes will be deciphered through Weber's queer logics of statecraft to attempt to determine why South Africa's identity has been inconsistent, contradictory, paradoxical, unpredictable, erratic and incoherent and how they inform its actions within the UN.

3.3 Study Limitations

Every approach, regardless of theory used, has limitations. None can claim to seek an essential truth, but they offer informative perspectives. These are several theoretical and practical limitations recognised for this study. First the theoretical limitations are addressed.

A primary limitation of any identity-based study is that it favours ideational over material concerns. Ignoring the material aspects of the emerging South Africa's relationship with the rest of the continent could risk the omission of factors related to hegemonic, economic and military power. As will be seen in Chapter 4, South African leadership has taken domestic and continental economic prosperity seriously. Nonetheless, international human rights debates are inherently driven by ideas rather than material concerns, but it is important to acknowledge that striving for moral leadership, for example, may also be a means to foster material gains, such as through favourable access to markets. Nonetheless, within the SOGI dedicated debates it is important to pay particular attention to material concerns that may arise, such as the threats to aid funds, to mitigate this risk.

A concern with identity-based analysis is the structure and agency debate (Wendt, 1987). This highlights the tension between a state expressing its own identity and the power of the international structure of states to define it. Constructivists recognise both agency and structure as mutually influencing on identities and interests, as is the case in Queer Theory. Despite Queer Theory emerging as an identity focussed discipline, it recognises the power that the social structure has to define or reject agents' identities. Indeed, as a critical approach, Queer Theory takes very seriously the power of the structure over the agency of states to define and control the image they project. This tension is a defining feature of this study, which therefore seeks to balance understanding the image South Africa attempts to project and how the discursive power within the international structure seek to define states that support SOGI rights.

As evidenced in the existing constructivist analysis in Chapter 2 as well as the problems associated with assemblage states noted by Puri (2016) and Weber (2016a), identity-base approaches can be difficult. Far from being rational, cohesive entities, states are assemblages of actors who may not always adhere to policy and may contradict colleagues. This can make interpretation of particular state interests or identities challenging. Whilst this study acknowledges the agency of individual representatives, there is an expectation of policy coherence in the public, recorded statements on behalf of the states within the UN and in respect to the seniority of the delegates within government. Such responses are carefully designed and framed to appropriately reflect the values, interests and identity that officers of the state have been mandated to project. What cannot be determined or assessed through this discourse analysis approach is how these actors behave within informal, off-the-record meetings. These are anticipated limitations of the study, which necessarily only focuses on recorded contributions (audio, video, verbatim transcript and written statements) of delegates.

Queer Theory and its methods have also not been extensively tested in IR. That is one of the purposes of this study. However, this presents two key problems. Firstly, as noted earlier in this chapter, even within its founding sociological disciplines this theory is subject to many, often loose, interpretations. Secondly, Queer Theory has been criticised as too ill disciplined for the discipline of IR (Spargo, 2000:9; Thiel, 2014). To overcome these concerns, this study has chosen a focused approach that builds on the defined theoretical foundations and methodology of Weber's queer logics of statecraft (2016a; 2016b; 2016e). In doing so, it attempts to avoid the messiness and vague

application of queer discourse analysis that can be a weakness of studies in Queer Theory and queer discourse analysis.

As an extension of the above concerns, Queer Theory and the '**and/or**' construct for state identity of queer logics of statecraft challenge the binary thinking in much IR scholarship (Thiel, 2014; Weber, 2016a; 2016b). However, it reflects a profoundly queer perspective experienced by many queer people when asked to identify on expected binaries of gender and sex, to which they may not adhere, as illustrated in Weber's anecdote above (2016a:40). This **and/or** construct is a defining feature of the queer methodology applied in this study and is used to explain the inconsistencies in the South African state identity in relation to SOGI rights.

Finally, attempting to determine intention of state actors is always a risk. Whilst some indications of intent may be assumed from what actors say and do, these assumptions will be dependent on subjective interpretation. In a public policy environment it can be difficult, even through interviews, to establish the intentions of state agents, or, as noted above, whether they are even rationally thought through. In addition, interpretation through queer discourse analysis is subjective and therefore open to contestation. In this regard, the conclusions of this study must be understood as one perspective on the issue and will be open to challenge from other perspectives. The aim is not to identify the truth, but to suggest an alternative perspective that will encourage critical thinking and debate.

Practically, the research methodology chosen presents few barriers since the reliance on UN records means that the material analysed is systematically documented and stored and openly accessibly. There were, however, three limitations to this particular archive.

Firstly, the UN organs are multilingual and so not all the speeches are delivered in English, some are presented in Arabic, French, Mandarin, Russian and Spanish. The video recordings are available in the original language and simultaneous English translation. This means that some speeches are subject to interpretation and error by the interpreters, who, nevertheless, are highly experienced. It should be noted that the majority of the African delegations, who spoke or submitted written statements, did so in English, including key protagonists, South Africa, Nigeria, Namibia and Botswana. Furthermore, discussions within the UN organisations follow a relatively strict discursive pattern and certain phrases and expressions are repeatedly used as the analysis in Chapter Six demonstrates. This perhaps restricts the freedom delegations might want to fully express their opinions.

Secondly, despite months of contacting numerous UN departments, UNHRC recordings of sessions preceding the 18th Regular Session (September 2011) are no longer publicly available and no one within the UN was able to provide access. This includes audio and video of the debates on 16/L.27 and 17/19. This also applied to the debates on the 2003 Brazilian draft SOGI resolution, and statements on LGBT/SOGI rights submitted in 2005, 2006 and 2008, which were therefore not included within the scope of the discourse analysis. Where available, hard copy records, including filed versions of oral statements, and secondary sources including ARC International (2006), Girard

(2007), Human Rights Watch (2008), ISHR (2011), McGill (2014) and Jordaan (2017a; 2017b; 2020), were used to complete the contextual analysis. However, only verbatim quotes in these could be used for discourse analysis purposes.

The third and final limitation relates to the scope of the research and the breadth of UN debates that include issues encompassed with the definition of SOGI. Activists and academics have recognised the inclusion of sexual orientation with a variety of rights debates including but not limited to sexual rights, rights to health (particularly in relation to HIV/AIDS), family rights, freedom from torture and extrajudicial killings (Long, 2005; Jordaan, 2017a; 2017b; 2020). Within various organs of the UN there have been hours of debate, negotiation and compromise on the inclusion of sexual orientation and gender identity in a variety of presentations, resolutions and statements. Attempting to study them all and identifying the role that South Africa played within them would be both a considerable volume of work, but also, given the wider remit of these resolutions, challenging to disaggregate sentiment exclusively focused on SOGI issues during discussions in which a variety of other issues may also be covered. Including other debates in the analysis would require an equally robust analysis of all meetings across the same timeframe, much of which would not necessarily relate to the SOGI specific clauses. For the integrity of the research process, it was important to clearly define the scope of the archive material studied. The SOGI specific agenda has been tabled for most years (see page 100 for the timetable of initiatives) since the passing of the first dedicated resolution in 2011 until 2020 and the subject of debate has always, unequivocally been SOGI related. Although this is not the complete record of SOGI related debate, it offers a significant, focused and lengthy archive from which to analyse the discourse in which South African interventions have been inconsistent.

4 The Domestic Context: SOGI rights in Domestic and Foreign Policy

To provide context to the inconsistencies in South African support for SOGI rights within the UN, the focus of this chapter is the first level of analysis, the state. It explores the history of the adoption of SOGI rights in domestic and foreign policy of South Africa. In doing so it also reflects on the tensions identified within the literature review, including those between potentially competing priorities of African solidarity and the support for liberal human rights. In covering this history, the domestic political and social perceptions of SOGI rights and the tensions that adopting these rights uncovered within the political leadership are revealed. Reflecting the fact that foreign policy is an extension of domestic policy, the second section explores the foreign policy priorities for South Africa and the place that SOGI rights have within them. This is essential to better understand the state identity South Africa wants to project into the World and to expose the competing priorities that face South Africa in executing policy to determine whether therein lies the causes of any inconsistencies in approach.

4.1 *The Adoption of SOGI rights*

Since 1994 South Africa and South Africans have often been significant in the international promotion and protection of rights for people on the basis of their real or perceived sexual orientation and gender identity, leading Seely to suggest that South Africa has even led many states in the global North in the implementation of liberal democratic values for the prohibition of discrimination on these grounds (Seely, 2020:1230). However, in South Africa some sexual dissidents and gender non-conforming people had faced a challenging history.

Under the Apartheid¹⁸, South African private lives were heavily policed, with a strong focus on Christian, heteronormative family values and moral panics about potential child abuse. Before the transition to full democracy in 1994 South African sexual and gender minorities faced an oppressive political, legal and social environment. From laws prohibiting free movement and miscegenation¹⁹ to the implementation of violent homosexual aversion therapy on conscripts in the South African Defence Force (SADF), under the apartheid regime South African private lives were intrusively monitored and regulated and gay and lesbian material was censored (Retief, 2012). Gay and lesbian

¹⁸ The colonial history of South Africa was marked by persistent racial segregation, but in 1948, after the National Party took power, this was enshrined within an ambiguous apartheid policy framework, founded on four strict racial classifications; so-called black, coloured, Indian and white. From the 1960s this was further intensified and expanded through social and economic engineering, including more brutal geographical segregation, separate development and social control. This period ended between 1990 – 1994 through the negotiated transition to full democracy (Butler, 2009:14-23:35; Terreblanche and Nattrass, 1990:9).

¹⁹ Miscegenation was criminalised by the Prohibition of Mixed Marriage Act (No. 55 of 1949) and the Immortality Amendment Act (No. 57 of 1969) until its repeal in 1985.

South Africans conducted a lot of self-policing to avoid detection by the police (Gevisser, 2012b:24). Lesbian and gay organising in this period was dominated by white middle class gay men, who had been the sexual minority group most targeted by the government through the ban on gay male sex through the Immorality Act. Lesbian sex was only subjected to legislation in 1988, when dildos were banned and lesbians caught engaged in consensual same-sex sex could be charged with assault (Gevisser, 2012b:17; Epprecht, 2013a:332 and 337). Therefore, the 1994 transition offered potential for emancipation, as noted by Gevisser and Cameron:

“Apartheid legislated who we were, what work we could do, where we could live [...] and the kind of sex we could have. Asserting a lesbian or gay identity in South Africa is thus more than a necessary act of self-expression. It is a defiance of the fixed identities - of race, ethnicity, class, gender and sexuality - that the apartheid system attempted to impose on us” (Gevisser and Cameron, 2012:5).

South Africans demonstrated that defiance by staging the continent’s first LGBT Pride event in 1988 organised by Ditsie and ANC activist and former political prisoner Simon Nkoli. As the ANC’s efforts to liberate the state from apartheid began to succeed more opportunities for sexual and gender minorities were brought within reach. Although, there remained a legacy of apartheid era anti-homosexual legislation to be overturned (Epprecht, 2013a:338-339).

Given the suppression of the rights of many South Africans prior to 1994, it is unsurprising that “universally accepted human rights” were a core part of the transition discussions and were included in the Declaration of Intent at the initial CODESA (Convention for a Democratic South Africa) negotiations in 1991 (Seegers, 2020:58). Furthermore, “expectation abounded that [South Africa] would be the beacon of light for oppressed peoples around the world ... that South Africa’s past would be predictive of its future” (Borer and Mills, 2011: 76-77). In fact, the edict that “All Shall Enjoy Equal Human Rights!” had already been enshrined in the 1955 Freedom Charter, adopted by the ANC at the Congress of the People following extensive consultations on what a future, free South Africa should offer citizens (Freedom Charter, 1955).

Despite these early commitments to human rights, SOGI rights were adopted by the ANC late in the struggle. Founded in 1912, the ANC is one of the oldest African liberation movements, which since the transition has been the majority party in the South African parliament and was anticipated to be a strong proponent of human rights after such a prolonged struggle for the rights of the majority of the South African population. Ambassador Matjila referred to this struggle in 2016 in his defence of the South African support for the IE SOGI at the UN (UNGA, 2016e). Interviews with ANC activists Ruth Mompoti and Solly Smith in 1987, by Australian-British rights activist Peter Tatchell, uncovered homophobic attitudes within the ANC leadership and confirmed that the ANC had no initial commitment to gay and lesbian rights and no inclination to consider them in policy, even though there were several active gay and lesbian identified ANC members (Tatchell, 2005). Indeed, Mompoti reflected the common misconception of homosexuality as un-African:

"I cannot even begin to understand what people want lesbian and gay rights. The gays have no problems. They have nice houses and plenty to eat. I don't see them suffering. No one is persecuting them. We haven't heard about this problem in South Africa until recently. It seems to be fashionable in the West" (Tatchell, 2005:142).

Given the concurrent racial economic disparity in South Africa, it is clear that in suggesting gay people "have nice houses and plenty to eat" Mompoti perceived only white South Africans as homosexual, a point reinforced by her assertion that it might be a Western fashion. In 2015, Davis reported on the backlash she received to her Mompoti obituary, in which she had quoted Mompoti's hope that people would be able to live normal lives post-apartheid, but that lesbian and gay lives were not normal. Davis noted that much of the response reiterated the idea that homosexuality was only a "white" issue (Davis, 2015). Whilst Mompoti's own views may have changed in the intervening 28 years²⁰, this demonstrated that her original misunderstanding remained relevant in South African society. Indeed, it had habitually been reflected in the Congress of Traditional Leaders of South Africa (CONTRALESA²¹) opinion that SOGI rights were a European issue (Seely, 2020:1241). Shortly after the 1987 interviews, Tatchell received confirmation from Thabo Mbeki, then the exiled ANC Director of Information, that the ANC were committed to ending all forms of discrimination and oppression, which he hoped would include LGBT South Africans (Tatchell, 2005:145).

Reflecting these prejudices, the push for acceptance of LGBT rights within South Africa was led principally by white, middle-class activists, including Edwin Cameron who in 1994 Mandela appointed as the first openly gay High Court Judge on the continent, but with some notable black exceptions, including Nkoli and Ditsie (Cock, 2003:36-37; Oswin, 2007b:660; de Vos, 2007:453; Tucker, 2020:95). As noted, Ditsie was instrumental in getting sexual orientation onto the global agenda at the 1995 UNDP conference in Beijing. For his part in the broader anti-apartheid struggle Nkoli had been imprisoned following the 1985 Delmas Trial. In 1988, after his release, Nkoli founded the first South African black gay rights organisation, the Gay and Lesbian Organisation of the Witwatersrand (GLOW), which Gevisser argued "counter[ed] the notion, prevalent in Africa, that homosexuality is not only un-Christian, but 'un-African', a white contamination of black society" (Gevisser, 2000:119).

During his incarceration Nkoli had managed to persuade his group of co-accused of the need to support SOGI rights. This included Patrick Lekota, who was the ANC National Chairman and became South Africa's Minister of Defence, who confirmed that Nkoli was instrumental in changing attitudes toward LGBT issues within the ANC leadership (Gevisser, 2000:119). It has also been suggested that sexual orientation rights were adopted due to the exposure of ANC leadership in exile to Western social democratic values, including former president Mbeki, former education minister Kader Asmal, former Constitutional Court judge Albie Sachs and former Speaker of Parliament Frene Ginwala (Gevisser, 2000:118; Seegers, 2020:59-60). The campaigning group, Organisation for Lesbian and

²⁰ Mompoti acknowledged her "old school" attitudes in the foreword to *Sex & Politics in South Africa* (Hoad, Martin and Reid, 2005:7).

²¹ The Congress of Traditional Leaders of South Africa (CONTRALESA) is a nongovernmental advocacy group that aims to preserve the rights of traditional leaders in South Africa.

Gay Activists (OLGA) are also credited with getting 'sexual orientation' in the ANC's 1990 draft Bill of Rights and for lobbying other political parties on the issue (Fine and Nichol, 2012:272-273). In 1992, the ANC agreed to include sexual orientation in their manifesto for the forthcoming constitution. At around the same time, the outgoing National Party also adopted SOGI rights as a constitutional pledge, in contrast to their previous anti-SOGI legislations, which Epprecht determined was to ensure that minority rights, especially for the minority white South Africans, would be more broadly adopted (Fine and Nichol, 2012:269; Epprecht, 2013a:337).

Consequently, in his inaugural address as the first post-apartheid president of the Government of National Unity, Mandela was explicit about both gender and sexual orientation rights:

"In 1980s the African National Congress was still setting the pace, being the first major political formation in South Africa to commit itself firmly to a Bill of Rights, which we published in November 1990. These milestones give concrete expression to what South Africa can become. They speak of a constitutional, democratic, political order in which, regardless of colour, gender, religion, political opinion or sexual orientation, the law will provide for the equal protection of all citizens." (Mandela, 1994:4).

Mandela thereby officially acknowledged the commitment of the leading political party in South Africa to protect and support the rights of citizens regardless of gender or sexuality.

The following year, drafting of the new Constitution that was to be the foundation for the new South Africa began. Although the inclusion of human rights was anticipated, advocacy for the specific inclusion of sexual orientation was spearheaded by the National Coalition for Gay and Lesbian Equality (NCGLE), which had formed in 1994 to fight for the decriminalisation of homosexuality and its acceptance "as inherent and immutable as race" (Gevisser, 2000:119). Whilst SOGI rights movements in the global North focussed on securing minority rights, South Africa's history of oppression under a minority community meant a strategy focussed on fundamental and intrinsic human rights would be more successful and so the movement sought to equate sexual liberation with the broader struggle for racial liberation (Gevisser, 2000:119; de Vos, 2007:436).

Under apartheid queer, black South Africans were subject to both racial segregation and pass laws as well as those banning sodomy and the infamous 1957 "Men at a party" regulation, which criminalised sexual contact between men if more than two people were present, making them particularly aware of the connection between racial and sexual freedom (Vincent & Howell, 2014:473). As Nkoli announced to the 1990 Johannesburg gay pride crowd "I am black, and I am gay. I cannot separate the two parts of me into secondary or primary struggle. They will be all one struggle" (Ditsie and Newman, 2016). In particular this equating of racial and sexual rights by the NCGLE was intended to resonate with those more traditionalist anti-apartheid activists among the general membership, who may have harboured the homophobic views prevalent within South African society (de Vos, 2007:436-437). As acknowledged during the Human Rights Day launch of the NCGLE in 1995 by the then Deputy Secretary of the ANC, Cheryl Carolus, ANC members often

harboured misinformed prejudices that didn't always align with the aims of the ANC leadership (Dunton and Palmberg, 1996:47). The fear was, given the majority held by the ANC in parliament, that this might impede the adoption of sexual orientation into the draft constitution despite the earlier promises.

Indeed, during the assembly to establish this new constitution, although inclusion of sexual orientation was eventually supported by several parties, including the ANC and the Democratic Party (DP)²², there was opposition from the African Christian Democratic Party (ACDP)²³ (Constitutional Assembly, 1995:3-4; Dunton and Palmberg, 1996:47; Oswin, 2007a:98). The ACDP leader, an evangelical pastor, argued that "[a]s an African, I wouldn't like to see European liberals imposing their lifestyles on the African masses" and that "[n]ation-building cannot be possible while we try to legally destroy family values and the moral fibre of our society with clauses in the Constitution that promote a lifestyle that is an embarrassment even to our ancestors" (Oswin, 2007a:98).

The ACDP clearly identified African traditional families as heteronormative and in opposition to more liberal European understandings of sexuality and family. As well as reflecting some of the contemporaneous homophobic claims of other African leaders, such as Mugabe and Nujoma, the ACDP's appeals to Christian, heteronormative morality and their rejection of liberal European values ironically also echoed the Christian foundations of the former apartheid regime's racist ideology and rejection of Western liberal equalities. This sentiment ran counter to two key aims of the new parliament, which were to overcome the oppressions of the past and reintegration of South Africa into the rest of the world. Additionally, the ACDP's appeals to ancestral traditions might have reminded parliamentarians of African leaders they believed were post-colonial despots who invoked the same, albeit erroneous, heteronormative traditions (Oswin, 2007a:99). Indeed, the ACDP's objections led to an assertion by a member of the DP that Mugabe's homophobia would not be accepted in South Africa (Oswin, 2007a:101). Ultimately parliamentarians established that the ACDP's criticisms of SOGI rights reflected both the apartheid past and a potential authoritarian future that South Africa needed to reject (Constitutional Assembly, 1995:3-4).

Sexual orientation was subsequently included within the Bill of Rights, which formed Section 9 of Chapter 2 of the 1996 South African Constitution (The Constitution, 1996:6). Thereby, making South Africa the first nation in the world to explicitly protect citizen's rights on the basis of gender and sexual orientation in a written constitution (Mutua, 1997). Thus, while many states excluded queer subjects from citizenship, within heteronormative laws that supposed binary gendered and heterosexual relations, South Africa embraced full democratisation by enshrining the right to diverse sexual orientations within this nation-building process (Spurlin, 2006; Tamale, 2013:40). Furthermore, Tamale has suggested that in dismantling apartheid and reconnecting with the African philosophy of ubuntu enabled South Africa to enshrine SOGI rights within the Constitution. Tamale described ubuntu as "a notion derived from the more than four hundred ethnic groupings that belong to the Bantu language family but whose values are shared by many African ethnic groups.

²² The forerunner to the contemporary Democratic Alliance (DA).

²³ Founded in 1993 by evangelical Christians who felt that Christian values were not being reflected in the post-apartheid political dispensation (Oswin, 2007a).

The closest English equivalent of this hard-to-translate concept is “humaneness” (Tamale, 2013:40). Figuratively, ubuntu has been translated as I am because of others and implies a shared sense of acceptance and solidarity with all people, which Tamale suggested was a continental philosophy.

As will be seen in the next section, ubuntu was also to eventually become a key reference for South African foreign policy in 2011, wherein it was defined as “humanity” (DIRCO, 2011a). Whilst Tamale’s assertion can be seen to give traditional and cultural salience to SOGI rights nationally, and continentally, the domestic experiences of queer South Africans suggest that homophobic attitudes remain deeply ingrained within society leaving many sexual and gender minorities outside the solidarity of ubuntu.

Indeed, despite the inclusion of SOGI rights within the Constitution, the ANC National Executive Committee (NEC) continued to remain divided over the issue, leading to a lengthy debate in 1998 intended to pass a resolution for the ANC to actively fight discrimination and support same-sex marriage and adoption. This discussion featured many homophobic sentiments including the claim that homosexuality was un-African (Gevisser, 2000:120). Only one black ANC NEC member, Pallo Jordan, spoke in favour of the resolution, while others, such as future president Mbeki, despite his 1987 response to Tatchell, remained silent and the resolution was not adopted (Gevisser, 2000:120). Gevisser determined this demonstrated that these rights were still only supported by a liberal elite within the ANC, concluding “if there is going to be full equality for gays and lesbians in South Africa, it will come from the judicial system, in its application of the constitution, and not from the ANC lawmakers in parliament” (Gevisser, 2000:121).

In fact, including sexual orientation in the Constitution enabled civil society to push for several legislative protections. In 1998 anti-sodomy legislation and the homosexual ban on military service were struck down by the High Court (Vincent and Howell, 2014:473). SOGI rights have subsequently appeared in various forms of legislation and government guidance, such as the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000, the Alteration of Sex Description and Sex Status Act, 49 of 2003, the extension of marriage rights to same-sex couples through the Civil Union Act, 17 of 2006 and the adoption of a comprehensive sexuality education plan by the Department of Basic Education in 2018. Some of this policy and legislation was necessary to tackle persistent homophobic discrimination in society and within parliament and other organs of the state.

Osogo Ambani (2017:39), concurring with Gevisser, noted that the protections gained in South Africa were achieved through the courts and Constitution, rather than parliamentary debate due to the persistence of widespread homophobic sentiment among the population and parliamentarians. For example, when the Constitutional Court ordered the legislature to amend the marriage act to recognise same-sex marriage through civil unions, the ANC had to be whipped to avoid MPs voting according to their religious or cultural objections (Davis, 2015). It has also been necessary to tackle homophobia within state institutions. In October 2020, the Civil Union Amendment Act, 8 of 2020, removed an unconstitutional clause that allowed DHA marriage officers to refuse to solemnise same-sex unions on the grounds of religion, belief or conscience. Although it passed with broad

cross-party support, the amendment was tabled due to the high number of marriage officers opting out; in 2017 nearly 40% (421 of 1130) of DHA marriage officers had registered exemptions resulting in some provinces having no officiates for same-sex couples (Makgatho, 2020).

However, the South African Parliament has achieved several other SOGI firsts on the continent. In 2014 Zakhele Mbhele of the DA became the continent's first ever out black MP and President Zuma appointed openly lesbian Lynne Brown as the continent's first ever out, gay Cabinet Minister (DeBarros, 2014c; Smith, 2014b). This cabinet appointment had significance given Zuma's previous homophobic comments, including in 2006, while Deputy President, suggesting that when he was young, he would have punched any homosexuals he met, for which he subsequently apologised (Seale, 2006; Daniels, 2006), and as President suggesting that "same-sex marriage is a disgrace to the nation and to god" (Ratele, 2013:142). In an interview in 2012 he confirmed that politically he supported same-sex marriage and that his personal opinions were not relevant politically²⁴ (Smith D, 2012). Despite this, unlike colleagues leading other African countries, Zuma hasn't made a sustained practice of political homophobia. Although Zuma has been the most vocally anti-SOGI rights South African president, it was also during his tenure that the South African delegation led on resolution 17/19 at the UNHRC.

In 2018 Zuma was replaced as president by Cyril Ramaphosa, who has been much more supportive of SOGI rights. Six months after taking office he made the following speech at the 8th Desmond Tutu International Peace Lecture:

*"It is fundamental to our vision of a society in which all have equal rights and an equal expectation of being able to exercise them. It is for this reason too that we cannot tolerate discrimination against any person on the basis of their **sexual orientation or gender identity**. The violation of the rights and equal worth of **lesbian, gay, bisexual, transgender or intersex** people demeans our common humanity ... It is not possible to build a just and equal society in such circumstances. It is our responsibility to dedicate every moment to eradicating all forms of racism, **sexism**, tribalism, **homophobia** and other intolerances"* (emphasis added, Ramaphosa, 2018).

He argued that discrimination based on SOGI is not only inherently unconstitutional but has broader negative impacts on both sexual and gender minorities and wider society. It was probably the clearest message of support since the Mandela presidency. In a state in which violence and discrimination remain an everyday part of life for sexual and gender minorities, it suggested a president who might be more engaged on the issue than his predecessors. Ramaphosa's tweeted support for the 2019 Mr Gay World competition evidenced this further:

"As we celebrate the freedoms afforded to all people in South Africa and affirm the democratic values of human dignity, equality & freedom enshrined in our

²⁴ Incidentally, Zuma practices Zulu polygamy, a form of marriage that to many Western and Christian observers would be considered non-normative.

Constitution, I wish Mr Gay World delegates well and I hope you enjoy your visit to the most beautiful places in the world” (Ramaphosa, 2019c).

His welcome echoed the claims by the tourism authorities that promote Cape Town as a gay tourist destination and “the gay capital of Africa” (Tucker, 2020:94).

However, South Africa has not been a safe place for many queer South Africans, where the disparities between their lived experiences and the promise of the Constitution are stark (Collison, 2019; Judge, 2017; Reygan, 2016). Intolerance, denial, silencing and violence have persisted as evidenced by the horrific caseload of trans- and homophobic attacks across the nation. Rape and murder have been a constant threat for many people of non-normative gender identities, gender expressions or sexualities, even those who haven’t identified as LGBTI (Judge, 2011; 2017; Matebeni, 2013; 2014; Macharia, 2015).

Even the hard-fought legal protections have often failed when sexual and gender minorities have sought support from the authorities. When Lunga Voko, a Xhosa man from Cape Town who was shot and beaten by a local group of men for being gay in 2013, tried to report his attack the local police station initially refused to open a case, while the trial for the homophobic murder of Zoliswa Nkonyana took six years and was postponed 50 times (Mtyala, 2013). Following the 2011 homophobic murder of South African women’s soccer player Eudy Simelane, the South Africa Department of Justice and Constitutional Development (DJCD) responded to an international petition to create the National Task Team on Gender and Sexual Orientation-Based Violence perpetrated against Lesbian, Gay, Bi-sexual, Transgender and Inter-sex persons (NTT). Under the leadership of the Deputy Minister of the Department for Justice and Constitutional Development, John Jeffery, in the year 2018/19 the NTT recorded a success rate of 73% for LGBTI cases, which compared favourably with the overall 24% murder detection rate (Kganyago, 2019).

As in other African states, and despite Ambassador Matjila’s claim that broad human rights protections had effectively been recognised since the public drafting of the Freedom Charter of 1955, this social prejudice against sexual and gender minorities has a long history in South Africa and has been equally resilient to change. In 1991, the defence lawyer for Winnie Madikizela Mandela, former wife of Mandela, in the kidnapping and assault trial of James Seipei claimed that she was trying to save him from white, homosexual corruption (Hoad, 1999:563). Fifteen years later, in a study of the media discourses used in response to the passing of the South African Civil Union Act (No. 17, 2006), the three most prevalent accusations to vilify sexual and gender minorities were unnatural, un-African and ungodly (Vincent and Howell, 2014). Ungodly and unnatural have been commonly used global themes that mark queer sexualities as deviant to the expected heterosexuality particularly in Abrahamic religious communities. Un-African, however, has reflected a particular continental claim and has been prevalent among members of CONTRALESA. Within some black South African communities, Ditsie observed that:

“the accepted notion from our black families and communities was (and still is) that we are un-African and trying to adopt some mindless, pointless Western existence —

or even worse, an existence that intends to destroy Africa and Africanism.” (Ditsie, 2019)

As noted by Hoad “the idea of homosexuality as un-African and nationally other in the South African national context has considerable currency” (Hoad, 2007:72). Yet conversely, as Couper determined, the evidence from South Africa and across the African continent suggested that:

“The supposed arbiters and protectors of African culture are actually, out of ignorance of their own African culture, rehegemonizing an archaic white and Western culture when much of postmodern white Western culture perceives that same homophobic culture as passé and the victimizing of gays and lesbians as uncivilized. The ironies are piled high. When the question “Who is an African?” is asked, it is accurate to affirm that LGBTIQs are” (Couper, 2018: 185).

Matabane observed that these protectors of African culture against South African sexual and gender minorities have been concerned with maintaining heterosexual African masculinities, based on a rigid binary between male and female roles (Matabane, 2019:31). The desire to project and sustain male heterosexuality has been witnessed through the violent policing and punishing of women suspected of engaging in lesbian sex through rape and murder. These violent attacks within South African communities have reflected the political homophobia witnessed around the continent that has focussed on the threat sexual and gender minorities allegedly pose to traditional families.

Despite the circulation of these narratives in South African society, most state officials have avoided making overtly homophobic comments. However, collectively and individually members of CONTRALESA have been less constrained. In previous years CONTRALESA had called for the removal of constitutional protections of SOGI rights and were against the Civil Union Act (No. 17, 2006) unsuccessfully requesting all joint CONTRALESA and ANC members of parliament be allowed to abstain in the vote to enact it (Ratele, 2013:141; Vincent and Howell, 2014:474). In 2007 as incumbent president of CONTRALESA²⁵, Chief Patekile Holomisa who was also an ANC MP and since 2019 the Deputy Minister of Justice and Correctional Services, was accused of homophobia after comparing same-sex marriage to sex with animals and incest (CONTRALESAs chief is homophobic, 2007). In 2011 the National House of Traditional Leaders (NHTL)²⁶, whose members are also predominantly members of CONTRALESA, submitted a rejected proposal to the Constitutional Review Committee, chaired by Holomisa, to have the references to sexual orientation removed from section 9 (3) of the Constitution on the grounds that it violated the rights of children to reject adoption by same-sex parents, a motion from which the ANC distanced itself (Rousseau, 2012). Whilst CONTRALESA was founded to protect and preserve the rights and traditions of various South

²⁵ Chief Holomisa was CONTRALESA President from 1990 – 2013 (<https://www.gov.za/about-government/contact-directory/nkosi-patekile-holomisa-mr>). He has also reportedly been the Chairman of the Southern African Development Community Council of Traditional Leaders (SADC-CTL) since 2002.

²⁶ Overseen by the South African Department of Traditional Affairs, the National House of Traditional Leaders is a body composed of traditional leaders who are delegates from the Provincial Houses of Traditional Leaders of South Africa, representing the Provincial Houses at national level.

African traditional communities their views on issues of sexual orientation and gender identity have often been contradictory to the lived experiences of members of those communities, conflicted with the protections enshrined in the Constitution and reflected the fallacy heard across the continent that these issues and citizens are un-African.

Foreign policy is recognised as an extension of domestic policy, in so far that it is intended to support the delivery of the domestic agenda and is also an extension of the identity of the state. Indeed, as Jackie Selebi noted, when Director General of the DFA, “foreign policy is nothing other than the pursuit of domestic policies and priorities internationally” (1999:211). All the post-apartheid presidents and deputy presidents have played key roles in both defining foreign policy principles and priorities and participating in the implementation of foreign policy initiatives, including making public statements, private interventions and leading peace negotiations. The DFA and DIRCO have obviously played a central role, but so too have departments responsible for home affairs (immigration), trade and industry (foreign investment and promotion), tourism, agriculture, intelligence, water affairs, forestry and health and their respective portfolio committees in parliament (Van Wyk, 2004:123). As Van Wyk (2004) noted several South African government institutions have been responsible for implementing foreign policy since 1994. Having set out the domestic situation and support for SOGI rights, the next section reviews how they have featured, by extension, in the foreign policy of South Africa.

4.2 SOGI Rights within South African Foreign Policy

During apartheid, South Africa conducted foreign policy according to its own realist approach to the anarchic world system, amid fears of the encroaching independence of states across the African continent. The state’s identity was primarily focussed on security both of its borders and for the white minority that led the country (Serrão and Bischoff, 2009:364). This included military interventions within some of the frontline states directly neighbouring South Africa, both to thwart independence movements and to target supporters of exiled South African liberation groups, in clear violation of international sovereignty and human rights (Oswin, 2007a:103; Rousseau, 2014; Esterhuyse, 2009). As a consequence of the Apartheid policies and violence against the liberation movements, South Africa was ejected from the UN in 1974 and did not return until 1994. During that time, as noted above, in domestic policy sexual and gender minorities were subject to severe penalties for engaging in same-sex conduct, forced aversion therapy in the military and gay and lesbian material was censored. As a consequence of international isolation, a focus on state security and the silencing of sexual and gender minorities domestically, there is no evidence that SOGI rights were a feature of foreign policy throughout the apartheid years.

However, the period between 1990, when the political party of South Africa’s largest national liberation movement, the African National Congress (ANC), was unbanned, and 1994, when the first universally democratic elections were held, was a turning point for the state and generated a new approach to its international relations. As evidenced above, the adoption of SOGI rights into the

constitutional and legal frameworks of post-apartheid South Africa were a hard won and on-going project. Evidence also emerged of their importance during the drafting of the Constitution within the overall aim of escaping the state identity of oppression and pariah status internationally.

This section continues that scrutiny by exploring the development of South African foreign policy, both as an extension of domestic policy into the international arena and as a key determinant of state identity, and the importance of SOGI rights within it. This begins by setting out some global expectations and then highlights important debates and discussions that evidence what South African foreign policy was intended to project and how SOGI rights have been treated within that. It introduces the domestic debates and draws upon some of the evidence already presented within the UN, as a key site of foreign policy. This section thereby contextualises the way the South Africa has approached SOGI rights within the UNGA and UNHRC.

A key aim of the incoming Government of National Unity (GNU) at the end of apartheid was to successfully shed the pariah status and re-enter the international community of states in a way that would enable South Africa to once again fully participate in the global economy and peace and security architecture. Landsberg also noted that given South Africa's comparatively small size, similar to the middle power states typified by the Nordic countries, the Department of Foreign Affairs considered its image as a champion of human rights as its only international comparative advantage and a tool to help it shed its pariah status and come out "as a good and progressive world citizen" (Landsberg, 2004:159-162). This image was aided by the international perception of new President, Mandela, who was viewed as "a Messianic figure, a prophet and a respected statesman" (Landsberg, 2004:159). Indeed, Mandela's global status as a struggle hero and "one of the world's great moral icons" had meant that he had been expected to show leadership on human rights (Black and Hornsby, 2016:152). Equal expectations were held of the state, as Borer and Mills asserted, "the world expected South Africa to make human rights a priority in foreign policy precisely because South Africa told the world that it would" (Borer and Mills, 2011:78).

As already established, it was imperative for the new leaders to implement a post-apartheid foreign policy that established a new identity for the state far removed from the oppressions of its apartheid past (Serrão and Bischoff, 2009:370; Oswin, 2007a:102). Consequently, Mandela declared the importance of South Africa's commitment to human rights stating "[h]uman rights will be the light that guides our foreign affairs" and listing them alongside democracy; justice and international law; peace; Africa; and economic development, as the six pillars of South African foreign policy (Mandela, 1993:87 and 88). Although Mandela originally framed human rights solely in terms of "race, color, creed, religion or sex" and "the right to life, liberty and the pursuit of happiness" (Mandela, 1993:86), they have since been expanded through the inclusion of age, belief, conscience, disability, ethnic or social origin, gender, language, marital status, sexual orientation and others in the Bill of Rights (The Constitution, 1996:6).

Since defined in 1993, Mandela's six pillars have been have remained broadly consistent throughout the near 30 years after the transition and through the administrations of all five presidents²⁷. They have been reflected in the 1996 DFA Green Paper (DFA, 1996), as well as in the Department of International Relations and Cooperation 2011 White Paper on South Africa's Foreign Policy (Building a Better World: The Diplomacy of Ubuntu) and indeed all the DIRCO Strategic Plans published for 2004-2025 (DIRCO, 2011a; 2020a). In addition, the Constitution has always been touted as the reference point for foreign policy decisions (DIRCO, 2020a). Indeed, this continuity led Landsberg to conclude that fundamentally foreign policy changed little over time, albeit with some diffusion in how the policies were practised between the presidencies (Landsberg, 2012a:11).

During the Mandela presidency despite the 1994 South African intervention at the Beijing Women's conference and the states international veneration as a positive example of the advancement of fundamental and inclusive human rights, the administration made no attempts to pursue the promulgation of SOGI right internationally and they weren't mentioned in the 1996 DFA Green Paper (DFA, 1996). Foreign policy at the time followed the Mandela's pillars, but tensions between these ideals were becoming apparent. In 1998 Deputy President Mbeki had lamented that domestic inequality persisted in South Africa, describing a bifurcated state, his two nations thesis, in which one part was populated by prosperous, white South Africans who coexisted alongside a much larger and poorer black population (Mbeki, 1998b). Landsberg noted that in fact these two nations resonated with the international divide between the global North and the global South (Landsberg, 2012a:3). This perspective also reflected the cultural and economic position South Africa found itself between the African continent and the global North and led Landsberg to further suggest that South African foreign policy "ha[d] typically tried to influence what it perceived to be a divided world: the developing "South", and the developed "North" (Landsberg, 2004:185). *The Economist* determined that this had caused "South Africa's ambivalent sense of identity, with one foot in the rich world, where its main economic interests continue to lie, and the other in the poor one, with which many of its people identify" ("The see-no-evil foreign...", 2008).

Mbeki, who took over the presidency in 1999 and had been described as Mandela's right-hand man on foreign policy, was more pragmatic and although he maintained similar policy principles, they have been described as "democratic; Africanist; and anti-imperialist" with human rights linked to the spread of democracy across the continent (Nathan, 2005:363; Barber, 2005:1087). This suggested an increased focus on Africanism and anti-imperialism, which were intended both to reinforce South Africa's African credentials and to support Mbeki's desire to provide leadership for the continent as it continued to emerge out of colonialism and as part of his belief in the African Renaissance (Beresford, Schneider and Semper, 2007:221). This also appeared to reflect his domestic concern represented by his two nations thesis. The importance of Africa, and its renaissance, in the international relations of South Africa were enshrined within the strategic vision and mission for DIRCO, which stated:

²⁷ Nelson Mandela (1994-1999); Thabo Mbeki (1999-2008); Kgalema Motlanthe (2008-2009); Jacob Zuma (2009-2018); Cyril Ramaphosa (2018-to date).

***“Vision:** The Department of International Relations and Cooperation’s (DIRCO) vision is championing an African continent, which is prosperous, peaceful, democratic, non-racial, non-sexist and united and which aspires to a world that is just and equitable.*

***Mission:** DIRCO’s mission is to formulate, coordinate, implement and manage South Africa’s foreign policy and international relations programmes, promote South Africa’s national interest and values and the African Renaissance (and create a better world for all)” (DIRCO, 2020b).*

The African Renaissance vision included the embedding of democracy, so that countries could break free from external control and govern themselves; the adoption of the African (Banjul) Charter of Human and People's Rights, to develop the rights norms by which each state may measure the other; and emancipation from both colonial past and the contemporary threat of neo-imperialism (Mbeki, 1998a). While Alden and Schoeman (2016:1) determined that this Africanist orientation was predicated on the need to be relevant to and engaged in global summitry, as a state in its own right and as a representative of the African continent, it also demanded that South Africa must be seen to be both African and supportive of global concerns and norms. As part of this project, South Africa opened diplomatic missions in many African states, volunteered peacekeepers, fully engaged with the AU and supported the New Partnership for African Development (NEPAD) (van der Westhuizen, 2008:49). It also included submitting a national bid to host the 2010 Soccer World Cup, which Mbeki called “an African Cup hosted in partnership with all African nations” (Mbeki quoted in Landsberg, 2004:186). However, it soon became apparent that some of these African Renaissance aims have been inherently contradictory. For example, Mbeki’s support for Mugabe’s land reforms, which were anti-imperialist but also undemocratic and lead to many human rights abuses and a severe economic decline (Borer and Mills, 2011:87).

Mbeki’s presidency coincided with a period in which SOGI rights were still emerging on the international agenda, yet despite the rise of homophobic rhetoric from a few leaders on the continent and its focus on human rights, SOGI rights were not a visible part of his African Renaissance. However, it is noteworthy that during this presidency the South African Refugees Act, No. 130 of 1998 was introduced. Based on the Constitutional protections of the Bill of Rights, this ensured that Africans from across the continent fleeing violence and discrimination based on their gender identity or sexual orientation could seek asylum in South Africa (Camminga, 2019:20). Although it has been noted by many researchers that the lived experiences of these queer African migrants once in South Africa have not necessarily reflected the utopian ideal that they had anticipated, it provided them with a continental destination during a period of increasing homophobic rhetoric in some countries (Kheswa, 2014; Bhagat, 2018a; 2018b; Camminga, 2017a; 2017b; 2018a; 2018b; 2019). This legislation could be seen as meeting both the human rights and pan-Africanist aims of the Mbeki policy, whilst allowing the state to remain silent on neighbouring discrimination and still exercise its progressive SOGI credentials.

The focus on Africa continued through the Zuma presidency that began in 2009 (Coly, 2013:25). However, it was also the period in which the South African UNHRC delegation took the lead on SOGI

rights, but not until after the controversial 2010 appointment of “self-confessed homophobe” and supporter of Mugabe’s stance on homosexuality Jon Qwelane as the new Ambassador to Uganda (Thamm, 2014; Chabalala, 2020). As detailed in Chapter Six, in March the following year, the South African UNHRC delegation tabled the immediately aborted draft resolution 16/L.27, which concerned international SOGI rights activists and western diplomats for its destructiveness (Jordaan, 2017a:215). Then in June successfully led on the adoption of 17/19. At the same time as this was being passed, Kenneth Mubu MP, DA, asked DIRCO Minister, Maite Nkoana-Mashabane, whether the government intended to respond to the development of homophobic legislation and the perceived increase in homophobia on the African continent through tabling a resolution at the AU. The Minister replied that although the government regretted the rise in homophobic sentiments, there were no plans to submit any AU resolutions, but that they remained committed to the promotion of human rights for all (DIRCO, 2011b). The following August, an Equality Court ruling was made against Ambassador Qwelane for homophobic journalism in 2008, in response to which Mubu again questioned Nkoana-Mashabane, asking whether Qwelane would be recalled or disciplined for his homophobia. She replied that his misdemeanour had occurred prior to his appointment, that he would be accountable to the provisions of the Bill of Rights in his current role and that additionally the ruling was under appeal²⁸ (Thamm, 2014; DIRCO, 2011c).

This period coincided with the finalisation of South Africa’s first post-apartheid Foreign Policy White Paper (hereafter the White Paper). Initiated in 2010 by the Minister of DIRCO, it was the first review of policy since the 1996 Department for Foreign Affairs Green Paper (Parliamentary Monitoring Group (PMG), 2014:1). In May 2011 the draft White Paper firmly identified continental development and emancipation through the principle of ubuntu as key drivers. Titled Building a Better World: The Diplomacy of Ubuntu it stated:

“Since the birth of democratic South Africa in 1994, the country has prioritised an Afro-centric foreign policy rooted in national liberation, the quest for African renewal, and efforts to negate the legacy of colonialism as well as neo-colonialism” (DIRCO, 2011a:7)

“Our struggle for a better life in South Africa is intertwined with our pursuit of a better Africa in a better world. ... Consequently, Africa is at the centre of South Africa’s foreign policy.” (DIRCO, 2011a:10).

“...the infusion of Ubuntu into the South African identity, shapes our foreign policy.” (DIRCO, 2011a:4)

Alden and Wu suggested that the use of ubuntu allowed issues like human rights to be understood in a more collectivist African way that “consciously [drew] on African values” (2016:222). This use resonated with Tamale’s assessment of the importance of ubuntu for the adoption of sexual orientation within the Constitution (Tamale, 2013:40). The departmental presentation of the White

²⁸ The 2011 Equality Court decision was referred to the High Court and upheld in 2017 before being overturned by the Supreme Court of Appeal in 2019 (Chabalala, 2020).

Paper to Parliament declared that South Africa adopted a soft approach to foreign relations, in opposition to the hard approaches of states like the USA, which could be counterproductive (PMG, 2014:2). As will be evidenced in Chapter Six, this reflected much of the criticisms witnessed against states of the global North during SOGI rights debates at the UN. Although the White Paper did not mention SOGI rights, Fadl Nacerodien, the DIRCO Acting Deputy Director General for Policy Research and Analysis clarified that a policy with a life span of five to ten years could not be too specific on operational issues as it needed to allow for change (PMG, 2014:2).

The strategic plans for the department, however, have a shorter lifespan and are more detailed. Even though SOGI issues have never appeared in any of the available published strategic plans for DIRCO²⁹, during his 2012 presentation of the DIRCO 2012-2017 Strategic Plan to the Portfolio Committee for International Relations, Matjila, the erstwhile Director General of DIRCO, stressed the importance of global debate on violence based on gender identity and sexual orientation (DIRCO, 2020a; PMG, 2012:3). The absence of SOGI rights in any written foreign policy is an obvious weakness in establishing any firm commitment to their promulgation internationally, although the primacy of the Constitution, and the protection of SOGI rights therein, has been referred to during national and international debates.

Concurrent to the development of the White Paper and despite the success of the South African delegation with resolution 17/19, the Ugandan and Nigerian parliaments had continued to debate increased penalties for homosexual activity in their own countries. Meanwhile, in the September of 2011 at the UNHRC, Ambassador Matjila had noted that South Africa's sponsorship of resolution 17/19 based on the commitment to LGBT rights within the Constitution had already "ruffled the feathers" of delegations from other African states (Fabricius, 2011). Additionally, Matjila had been particularly disparaging of the claim that homosexuality was considered culturally un-African since criminalisation had been imposed by colonisers (Fabricius, 2011).

The imminent Nigerian and Ugandan legislations subsequently motivated further questions to Nkoana-Mashabane in 2012 by the Shadow Minister of International Relations and Cooperation, Ian Davidson. He challenged the department to issue a position statement on the development of such legislations and probed whether there would be lobbying of the UNHRC on this matter given South Africa's leadership on resolution 17/19. The Minister responded that although aware of the legislation the department would adhere to the principles of non-interference and state sovereignty but would continue to advocate internationally for the ending of discrimination on the basis of sexual orientation whenever discussed (DIRCO, 2012:1). In addition, she determined that the South African delegation would continue to engage with stakeholders on the issue but would adhere to the "principles of non-confrontation, consensual, cooperation and constructive dialogue" and thereby avoid the "naming and shaming" applied by other states (DIRCO, 2012:2). This response resonates strongly with the policy of quiet diplomacy preferred by South Africa and the assertion of a soft foreign policy within the White Paper.

²⁹ Strategic plans from 2004 are available online at http://www.dirco.gov.za/departments/strategic_plan/index.htm.

Consequently, in the three years since leading resolution 17/19, South Africa had continued to refrain from speaking out against discriminatory legislation on the continent, even at the high profile passing of the Nigerian Same-Sex Marriage (Prohibition) Act 2013 and Ugandan AHA (2014), maintaining the argument that to do so would infringe upon the states sovereign right to define their own laws (“South Africa respects...”, 2014). In addition, the administration had not delivered a follow-up resolution, nor the African regional conference promised in partnership with Norway. Nkoana-Mashabane faced further criticism in March 2014 when her UNHRC statement on South Africa’s commitment to human rights failed to include SOGI rights (South Africa, 2014). DIRCO Spokesperson, Clayson Monyela, later confirmed that the following line, which had been in the prepared speech, was removed due to time constraints:

“South Africa is committed to host the African regional seminar focusing on the plight of the LGBTI during the first half of this year, mindful that this challenge is a global challenge that is widespread far beyond South Africa and the African continent.” (DeBarros, 2014b).

On 25 February 2014, DA MP Santosh Kaylan raised a motion in Parliament to discuss homophobia on the continent and the Ugandan and Nigerian legislations, which “was blocked by both the ANC and the ACDP” (Parliament National Assembly (South Africa), 2014:150). Subsequently on the same day, however, the Executive issued a short statement, titled Developments regarding the status of LGBTI persons worldwide, which did not name any state, but noted:

“The South African Government will, through existing diplomatic channels, be seeking clarification on these developments from many capitals around the world. South Africa views the respect for the promotion, protection and fulfilment of human rights and fundamental freedoms as a critical pillar of our domestic and foreign policies; hence they are enshrined in our Constitution” (DIRCO, 2014).

Despite this vague response, six South African civil society groups³⁰ endorsed the DIRCO statement, jointly announcing that “further public pressure from the South African Government might have the negative effect of further polarisation and hardening of attitudes,” adding that “at this point, a more constructive approach might lie within further relationship building to address homophobia within Africa on the longer-term” (DeBarros, 2014a).

In 2016 South Africa finally delivered on its promise to stage the African regional SOGI conference, although the Minister for Justice and Correctional Services, Tshililo Masutha, hosted it rather than DIRCO (Masutha, 2016). During the conference Masutha reiterated the South African commitment to advancing human rights even if they conflicted with cultural or traditional beliefs, upholding the ACHPR resolution 275 and continuing to strive for legislative and policy change in partnership with networks across the globe (Masutha, 2016). Despite this positive start to the year, as is detailed in Chapter Six, in June at the 32nd sessions of the UNHRC, Ambassador Mxakato-Diseko abstained in the

³⁰ The Durban Lesbian and Gay Community and Health Centre; Forum for the Empowerment of Women; Gay and Lesbian Memory in Action; OUT; Pietermaritzburg Gay and Lesbian Network; and the Triangle Project.

vote to create the IE SOGI, citing unnecessary divisiveness on behalf of some state sponsors. Jordaan acknowledged that in the years prior to the debate for the 2016 32/2 resolution divisions had also appeared between international SOGI rights NGOs and African NGOs on this issue, in particular the South African based Coalition of African Lesbians (CAL), noting:

“ARC International, an important LGBT voice in Geneva, had assumed that civil society organizations wanted the creation of a special procedures mandate on SOGI (special procedures are independent human rights experts mandated to report and advise on thematic or country-specific human rights issues). However, some organizations from Africa—the Coalition of African Lesbians (CAL) most notably—spoke from a post-colonial perspective and, in light of the fact that an African regional workshop had not taken place, insisted that Africa’s voice should first be heard)” (Jordaan, 2016:304)

Jordaan further noted that CAL considered that such a mandate might spark a backlash against sexual and gender minorities in countries held to account for discrimination and therefore preferred the incremental approach advocated by the South African government, which would support guidance to improve attitudes towards queer Africans (Jordaan, 2016:304). Indeed, as early as 2007 a coalition of African LGBTI Human Rights Defenders had warned UK Outrage! and its leader Peter Tatchell against continuing the “neocolonialism” in their campaigns against the developing Nigerian and Ugandan politicised homophobia (“African LGBTI Human...”, 2007).

It was becoming increasingly apparent that there were strategic divisions forming between the international NGOs, perceived as dominated by white, Western men, and national NGOs from states of the global South, which had become particularly concerned that local issues are not being tabled (Karsay, 2014:27; Jordaan, 2016:304-305). Later in 2016, the South African Department of Home Affairs responded to local civil society concerns and banned an American pastor, who had described gay people as paedophiles, from entering the country under the Immigration Act of 2002 (Section 29 (1) (d)), which allowed the department to prevent foreigners from entering the country who may engage in hate speech or promote social violence (Gigaba, 2016). A week later the pastor was deported from Botswana, under direct order from Botswana President Ian Khama, after declaring on a radio show that homosexual people are paedophiles and should be killed (Collison, 2016).

However, one year later DIRCO initiated a panel to review foreign policy, which seemed to critique the quiet diplomacy approach. Although the review made no mention of South Africa’s earlier leadership on SOGI rights it acknowledged the important role played by South Africa in the global promotion of the rights of women, but also found that “South Africa must reposition itself as a consistent moral compass”³¹ (DIRCO, 2019:2 and 10). Meanwhile in Parliament later that year, the Deputy President, David Mabuza, faced another question from MPs on South Africa’s constitutional commitment to protect marginalised people and communities. In response, Mabuza argued that

³¹ The final report does not appear to have been published.

South Africa couldn't publicly condemn the revival of the Uganda AHA³² act once again due to international norms of sovereignty and non-interference (Parliament National Council of Provinces (NCOP), 2019:57-62). This Hansard features a long discussion in which Mabuza also referred to the belief systems of other states and the role that South Africa could play, although his statement that "we must be decent enough to keep our mouth shut" (NCOP, 2019:59), would seem to suggest something markedly less engaged than quiet diplomacy.

Alongside these frequent domestic parliamentary discussions about how South Africa should respond to continued state and political homophobia on the continent, the DJCD has remained engaged with local SOGI rights NGOs through the activities of the NTT and the development of the prospective Prevention and Combating of Hate Crimes and Hate Speech Bill, which it has been consulting on since 2016. Meanwhile, the South African delegations at the UN in Geneva and New York have remained vocally engaged with and supportive of the work of the IE SOGI. Most recently, during the 2020 44th UNHRC, the South African ambassador asked the IE SOGI, Madrigal-Borloz, to advise on possible measures to legislate against gay conversion therapies. At the same time, the African continent has remained a core strategic partner and driver of foreign policy, as evidenced by Ramaphosa's chairing of the AU since February 2020.

4.3 Conclusion

This chapter explored SOGI rights within South Africa through an historical account of the South African policy landscape since the 1994 transition to full democracy. This chapter presented the genesis of the constitutional freedoms for which South Africa is famed and determined that the inclusion of sexual orientation and gender within them were purposeful and committed. It established that the post 1994 South African identity needed to set it apart from its formerly heteronormative, apartheid pariah status and re-establish itself within both the global North and the global South; two parts of the world that Mbeki had identified continued to be in conflict even within the state.

The emergent state identity in 1994 was not only founded on the constitutional freedoms, but also provided the legislative infrastructure for future development and opportunity. Where Parliament sometimes failed to fully embrace SOGI rights, the judiciary has been instrumental in realising them through progressive legislation. Indeed, enshrining these progressive rights into the Constitution and legislative framework ensured that in post-apartheid South Africa both South African sexual and gender minorities and potentially African sexual and gender minority refugees and asylum seekers have been included within the citizenry of the nation. Therefore, in the context of statecraft as mancraft, the South African sovereign man must be understood to include queer Africans. This

³² Although the AHA was passed in 2014, it was struck down by the Ugandan Constitutional Court as Parliament had not been quorate at its passing (Bompani and Valois, 2017:53).

inclusive legislative framework therefore also determined that domestic and foreign statecraft must also be inclusive of Africanness and SOGI rights.

Indeed, those constitutional freedoms were fundamental to South African foreign policy since 1994, especially the six core principles that included a commitment to a broad range of human rights that encompassed SOGI rights, and an equal commitment to close relationships with its African continental neighbours through pan-Africanism. These principles have ensured continued efforts, both domestic and international, in realising and promoting SOGI rights and promoting South Africa's African Renaissance project. Both aims have been enshrined within various foreign policy papers, albeit that the specificities of the human rights commitment have not been detailed. The development of the South African adoption of SOGI rights has been ascribed to number of drivers, including the African philosophy of ubuntu, the equation of racial and sexual emancipation as all part of a singular anti-colonial struggle and the embracing of neoliberal values of human rights. At the same time South Africa has adopted and implemented foreign policy with clear aims of African Renaissance, which has likewise been attributed to ubuntu and a continuation of the anti-colonial struggle for freedom and autonomous development across the continent. Therefore, the South African state identity as projected through domestic and, by extension, foreign policy must be understood as founded on the human rights principles in the Constitution, including SOGI rights, and Africanness. The next chapter explores how some of the SOGI discourses on the continent challenge the compatibility of these two identities.

5 “Un-African”: The Continental Context

This chapter continues to address the importance of contextual background knowledge to a queer critical discourse analysis. It shines a spotlight on South Africa’s continental neighbours and partners in the African Group at the UN, which is important given the priority afforded to pan-African relations in South African foreign policy and the commitment to SOGI rights as key elements of the state identity. The African Group has not only attempted to thwart the progress of these rights within the UNGA and UNHRC, but African nations form the largest regional cohort of the OIC, another active bloc opposing SOGI rights. As was also outlined in the literature review, pan-African solidarity is a key pillar of South African foreign policy. Within the UNGA and the UNHRC, South Africa acts unilaterally, but is also represented in statements made by the African Group.

This contextual analysis explores the SOGI rights discourses on the continent and highlights several scenarios in which these rights are debated. It begins by presenting the few continental SOGI rights initiatives and a regional overview of SOGI legislation. This chapter provides essential clues to the foundations of the language used and ideas promulgated within the African continent to name, describe and police SOGI rights and citizens. Following the queer critical discourse method set out in Chapter Three, this analysis exposes how SOGI rights and people have been put into the discourse and asks questions about what that discourse does in terms of creating the normal and perverse and what power underlies those identifications to influence other states’ behaviours, interests and identities.

In other words, this chapter identifies how SOGI rights and citizens are discussed across the continent, evidencing a few key states that have generated significant publicity and academic analysis. From this analysis dominant tropes will be identified and explained, before they are interpreted to draw out how they frame the opposition to SOGI rights and the structures of discursive power they impose. This ensures that the analysis in the final chapter necessarily takes notice of African voices within the debates and recognises the IR imperative to acknowledge the importance of near neighbours and peers in the social construction of normative understandings of emerging issues (Wendt, 1999:141-142; Van Wyk, 2004:105).

5.1 *Homophobic Africa?*

The adoption of pro-SOGI rights legislation in South Africa coincided with the emergence of counter narratives within political and social discourses of its continental neighbours. These discourses have been reflected in Western media as the emergence of homophobic Africa or a particular form of African homophobia under headlines such as “An African epidemic of homophobia”, “Why is Africa the most homophobic continent” and “Why Africa’s turning anti-gay” (DeCapua, 2010; Zimmermann, 2013; Smith, 2014a; Michaelson, 2017). Presenting this as a monolithic wave, observers warned that “[h]omophobia seems to be spreading like a contagion from country to

country in Africa” and lamented that “African leaders stated that homosexuality did not exist in their countries” with little recognition of national differences (DeCapua, 2010). More nuanced views acknowledged the long history of non-normative sexualities across the continent, the variances in national proscriptive legislations, yet also noted the claims to cultures and traditions that were at odds with the Western vice of homosexuality (Zimmermann, 2013; Michaelson, 2017). Even a Western narrative that alleged to understand the “complex roots” of homophobia in Africa argued “it is very hard to generalise about 500 million (sic) people”, failed to avoid typifying the continent as an unruly monolith by adding that this was reported from “a chaotic, noisy restaurant in Africa” (Bunting, 2010). Urbanisation, religion (and the lucrative returns of proselytising), the “emasculatation of African men” and the enduring importance of fertility and masculine virility were uncritically pitched as the sources of this rise in homophobia within the social fabric of African states (Bunting, 2010).

However, Africa is a continent of 55 countries and over 1 billion people. It is a landmass large enough to accommodate the whole of China, Eastern Europe, India, the USA and most of the EU within its borders. Throughout time, this continent has encompassed countless different ethnicities, nationalities, language groups, religious and spiritual beliefs and communities. These different communities have represented countless ways to understand, identify and discuss sexuality and gender. Observers have rightly been criticised for universalising perceptions of African attitudes towards SOGI issues as an exceptional form of African homophobia (Awondo, Geschiere and Reid, 2012). Nevertheless, as is evidenced in the next chapter, Africa has often spoken in one voice as the African Group in the UN. Despite the variances, academics undertaking continental reviews have also noted some common claims, such as the un-African trope and appeals to culture and traditions (Reddy, 2002; Epprecht, 2005; 2008a; 2008b; Hoad, 2007; Currier, 2012b:121-123). To understand the context within which these tropes have formed, it is important to understand the arguments made against SOGI rights across the continent.

Historically, many anti-sodomy laws across Africa, which are primarily used to proscribe male homosexual activity, were enacted by the colonial powers. The British originated such laws in Kenya, Nigeria, Tanzania and Uganda by imposing the heteronormative Victorian values and English common law through reception clauses to existing customary law and for this reason the laws of each colony featured similar language³³ (Osogo Ambani, 2017:25 and 28; Rao, 2020:8). This is evidenced by the “carnal knowledge against the order of nature” clause in the current laws of the former British colonies of Kenya, Malawi, Nigeria, Tanzania, Uganda and Zambia (Mendos, 2019:48). However, this assumption is not universal, Ethiopia and Liberia outlaw same-sex sex but were not colonised, while the Napoleonic Code meant that although former French colonies didn’t have anti-sodomy laws imposed initially a few states did adopt them post-independence (Bertolt, 2019:656; Altman and Symons, 2016:20). Bertolt aptly described this legislative environment “The Invention of Homophobia in Africa” (Bertolt, 2019).

³³ For a regional summary of the imposition of laws by the British during the colonial period, including the origins of subtly different terminology see (Osogo Ambani, 2017:24-34).

Nevertheless, the legacy of British Victorian sensibilities continues through the Commonwealth of Nations, the voluntary membership³⁴ of which includes many states that retained these laws at independence, including Botswana, Cameroon, Ghana, Nigeria, Uganda and Zimbabwe. Responding to this in 2011, the UK Prime Minister threatened to stop some UK donor aid to countries enacting new laws or refusing to repeal historic laws, which was met with indignation from several African leaders, including in Uganda and Ghana (“Uganda fury at...”, 2011; “Ghana refuses to...”, 2011). African and international human rights NGOs also objected, issuing a joint statement objecting to the coercive nature of aid cuts and registering their concern that this would bolster claims that homosexuality was a Western imposition as well as putting sexual and gender minority Africans in harm of scapegoating for aid cuts (“Statement on British aid...”, 2011). Laying the blame entirely on heteronormative colonial legislation is clearly an oversimplification of a complex issue. This legislative environment, however, has highlighted the variances across the continent and demonstrated that they did not all start from an equal base. Likewise, they are not all the same now; the monolithic homophobic Africa does not exist.

In Europe, the European Union has been influential in removing homophobic legislation in member states. For African nations the African Union³⁵ forms the largest regional organisation on the continent with 55 member states. However, the African Union has not set up a body with the scope to challenge national laws like the EU’s European Court of Justice. For members of the African Union the defining continental human rights document is the African (Banjul) Charter on Human and Peoples’ Rights, Article 2 of which refers to the protection of rights and freedoms of every individual regardless of status but makes no mention of SOGI rights (African (Banjul) Charter, 1981). However, in 2014 African Commission on Human and Peoples’ Rights (ACHPR)³⁶, which was formed out of the Banjul Charter, adopted Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (ACHPR/275(LV)2014). Enshrined during the April-May session of the ACHPR, ACHPR/275(LV)2014 “[s]pecifically condemns the situation of systematic attacks by state and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity” (African Commission on Human and Peoples Rights [ACHPR], 2014). Critics have argued that this resolution, although progressive and ground-breaking, only tackled discrimination, which had been included in previous general resolutions on the rights to freedom and life and did not call for the

³⁴ There are 54 member countries; Antigua and Barbuda, Australia, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Republic of Cyprus, Rwanda, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, Swaziland, The Bahamas, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, Zambia and Zimbabwe.

³⁵ In 2020 the 55 state members include: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, the Democratic Republic of Congo, Cote d’Ivoire, Djibouti, Equatorial Guinea, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, the Kingdom of Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Kingdom of Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

³⁶ The ACHPR comprises 11 members who are elected by the assembly of the African Union and serve for six-year terms (re-election is allowed). Although nominated by states, elected members do not represent their country, but serve in a personal capacity. Gender and geographical representation are observed (<https://www.achpr.org/structure>).

decriminalisation of sexual minorities and their activities (Murray and Viljoen, 2007; Ibrahim, 2015:277).

Although ACHPR members must act in their personal capacity to ensure the independence of the body, this independence has been questioned following the removal of observer status to the ACHPR of the Coalition of African Lesbians (CAL). Granted in 2015, at the time the African Union Executive Council (AUEC) called for it to be rescinded. It wasn't and in 2018 the AUEC reiterated its directive, stating:

“REQUESTS the ACHPR to take into account the fundamental African values, identity and good traditions, and to withdraw the observer status granted to NGOs who may attempt to impose values contrary to the African values; in this regard, REQUESTS the ACHPR to review its criteria for granting Observer Status to NGOs and to withdraw the observer status granted to the Organization called CAL, in line with those African Values;” AU directive (Decision EX.CL/887/XXVII, 2018).

The removal of CAL's observer status, framed in language that declared the group un-African, was an obvious setback for one of the most marginalised sexual minority communities on the continent and suggested that the ACHPR had little power in relation to member states of the AU.

Despite this understandable concern, the number of African states that have not only repealed discriminatory laws against sexual and gender minorities but have also begun to introduce legal protections for sexual minorities has increased. This includes those that have outlawed general discrimination on the basis of sexual orientation and gender identity, including South Africa in 2000, Mauritius in 2008 and Angola in 2019, those that have banned discrimination in employment, including South Africa in 1996 and 1998, Seychelles in 2006, Mozambique in 2007, Cape Verde and Mauritius in 2008, Botswana in 2010 and Angola in 2019, and those that have included sexual orientation as motivation for a hate crimes, including São Tomé and Príncipe in 2012, Cape Verde in 2015 and Angola in 2019 (Mendos, 2019:90 and 114).

In positive wins for SOGI activists and local NGOs, by 2018 the Angolan, Kenyan and Botswana courts had ordered the recognition and registration of LGBTQ organisations³⁷ (Tsandzana, 2018; Gitari, 2015; Esterhuizen, 2016). The OHCHR report, 19/41, noted São Tomé and Príncipe and Seychelles had decriminalised homosexuality following recommendation of a UN Universal Periodic Review (UNHRC, 2011c:14). Additionally, since the adoption of 17/19 in 2011, Lesotho (in 2012), Mozambique (in 2014), and Angola and Botswana (in 2019), have decriminalised same-sex sexual activity while others have never criminalised it at all, including Benin, Burkina Faso, Madagascar and Mali (Mendos, 2019:30-32). The following countries have statutes that define the age of consent for same-sex sexual activity, Benin since 1947, Côte d'Ivoire since 1960, Rwanda since 1980, Madagascar since 1999, Niger since 2003 and Congo since 2006 (Mendos, 2019:30-32). Whilst some of these may have been inherited unchallenged upon independence, they have yet to be disputed and are an

³⁷ Iris Angola in 2018; the National Gay and Lesbian Human Rights Commission (NGLHRC) in Kenya in 2015; and Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) in 2016.

implied acceptance of same-sex acts in law. Furthermore, the Central African Republic, Côte d'Ivoire and Niger notably removed laws against same-sex sexual acts upon gaining post-colonial independence (Mendos, 2019:30-32). By 2019, in 21 African states consensual same-sex activities are legal (Mendos, 2019:29).

The next sections present a summary of the analyses of the discourses used in several prominent African states to provide contemporaneous context to the unfolding debates in the UN. Despite a popularly satirised belief³⁸, Africa is not a country, and this section aims to expose the different approaches and drivers for some of the frequently cited homophobic sentiment on the continent. It is not possible to cover all 54 African countries and so it focuses on nine states that have been selected due to the prominence and intensity of the homophobic rhetoric and actions against sexual and gender minorities. This is therefore not a comprehensive review of continental attitudes and is not a representative sample as it does not include any states with more moderate attitudes. However, in the context of a study exploring the foundations and narratives around the concept of homophobic Africa, the states selected have been identified by and associated strongly with this idea.

The cases presented, Cameroon, Gambia, Liberia, Malawi, Namibia, Nigeria, Senegal, Uganda and Zimbabwe, include states in Eastern, Western and Southern Africa, two border-states with South Africa and five members of the OIC. Additionally, the case histories are presented in detail to highlight the diversity of experiences across the continent; this level of detail is important to emphasise the fallacy of the concept of an African homophobia. Each case begins with a representative anecdote and then draws from the academic analysis to provide the national context in which these debates arise. Some are more detailed than others, which is a result of their relative prominence in the international media and academia. Whilst each case study ends with a summary analysis, the subsequent sections of this chapter present the analysis and interpretation of the dominant themes based on these case studies.

5.1.1 Zimbabwe

In 1995, as South Africa was drafting its inclusive Constitution, Zimbabwe's President Mugabe railed against the organisers of the Zimbabwe International Book Fair (ZIBF) at which Gays and Lesbians of Zimbabwe (GALZ), a national LGBTI association, were to exhibit (Dunton and Palmberg, 1996:12) by saying:

"I find it extremely outrageous and repugnant to my human conscience that such immoral and repulsive organisations, like those of homosexuals who offend both against the law of nature and the morals of religious beliefs espoused by our society, should have any advocates in our midst and even elsewhere in the world. If we accept homosexuality as a right, as is being argued by the association of sodomists and sexual perverts, what moral fibre shall our society ever have to deny organised

³⁸ See for example www.africasacountry.com.

drug addicts, or even those given to bestiality, the rights they might claim and allege they possess under the rubrics of individual freedom of the Press to write, publish and publicise their literature on them?” (Dunton and Palmberg, 1996:14).

The government had already contacted the organisers and cautioned them to remove GALZ from the fair, stating they would not accept the display of homosexual material that would “force the values of gays and lesbians onto the Zimbabwean culture” (Letter, dated 24 July 1995, from the Zimbabwean Director of Information quoted in Dunton and Palmberg, 1996:13). The country had retained discriminatory colonial era laws and the new 2013 constitution defined marriage as a heteronormative union reserved for between a man and a woman (Igual, 2018). In the intervening years, former President Mugabe had been a particularly vocal advocate of the idea that homosexuals have no place in Africa, during his presentation at the UNGA 70th Session in 2015, when he stated, “We are not gays!” (UNGA, 2015).

Whilst Mugabe’s comments have made the headlines and sexual and gender minorities have faced violence and oppression, it is important to understand the motivation for what the Director of GALZ, Chester Samba, described as “scapegoating a largely invisible and unpopular minority, creating moral panic, which at times easily escalated into a witch hunt” (Igual, 2018). Gevisser suggested that 15 years after independence, Mugabe’s Zimbabwe was suffering from corruption, increasing international isolation and economic decline and so he invoked homophobic rhetoric to deflect public attention away from his failings and towards these pernicious liberal Western values (Gevisser, 2000:116). Youde (2017:73) agreed, also citing the rise of political challengers both internal to ZANU-PF³⁹ and from opposition parties as well as weakening microeconomic conditions, which continued throughout the 2010s. Rumours that SOGI rights might be included in a new constitution were complicated by threats from the UK to link SOGI rights to aid conditionalities and support for the move from the leader of the main opposition party in 2011, Morgan Tsvangirai of the MDC⁴⁰ (“Tsvangirai in a...”, 2011; Youde, 2017:73).

It has further been claimed that Mugabe and his party have used homophobia to reimagine Zimbabwe’s history and the role they played in its liberation, thereby mocking the opposition and maintaining their hold on power (GALZ, 1995; Youde, 2017:63). This government promoted image of contemporary Zimbabwe and its history has been instrumentalised to appear to protect Zimbabwean traditions from Western imperialism, including queer Zimbabweans who Mugabe argues have been influenced by ideas from the West (Youde, 2017:65 and 75). Stychin agreed that Mugabe was using homophobia to appear anti-colonial, suggesting that in Mugabe’s version of history, the white colonisers used homosexuality to contaminate and thereby exploit Zimbabweans. Reimagining homosexuality as a Western imposition enabled it to be used as the antithesis of the supposedly strong, masculine Zimbabwean state. Stychin further argued that the metaphorical “expulsion” of gay people from the state became a proxy for the ejection of the coloniser, which suggested that:

³⁹ Zimbabwe African National Union – Patriotic Front.

⁴⁰ Movement for Democratic Change.

“[c]ondemnations of sexual perversion thus are made in the name of an Afrocentric and specifically Zimbabwean national tradition. In this trope, the defence of heterosexuality becomes essential to securing the group right of self-determination of a people protecting its cultural heritage, precolonial way of life, and very survival” (Stychin, 2004:957).

Thus, whilst Mugabe had expressed moral and religious concerns, analysis indicated the alleged threat from the small group of organised sexual minorities has been a facade to deflect public attention from blaming the dire state of the economy on a weakening, inept and corrupt government onto the neocolonial threat of liberal Western same-sex proclivities. In 2017 Mugabe was replaced as President and leader of ZANU-PF by his former vice-president, Emmerson Mnangagwa. Whilst SOGI rights activists were initially hopeful and Mnangagwa’s human rights record after two years in office has shown some progress it has also been marred by violence, detentions, torture and arbitrary arrests of human rights activists and journalists (Igual, 2018; Mavhinga, 2020).

5.1.2 Uganda

If homophobia in Zimbabwe has been characterised by Mugabe’s infamous outbursts, Uganda might be best known for the homophobic sermons of Pastor “Eat Da Poo-Poo” Ssempe and MP David Bahati’s introduction of the “Kill the gays” bill in 2009 (Unitarian Universalist UN Office, 2010; Kaoma, 2013:75). At independence in 1962 Uganda retained the British colonial laws prohibiting “carnal knowledge against the laws of nature”, yet there was little evidence of prosecutions (Tamale, 2013:37). Nevertheless, in 2005 the constitution was amended to confirm that marriage was between persons of the opposite sex despite no demands for same-sex unions. However, it was the introduction of Bahati’s Anti-Homosexuality Bill (AHB) in 2009, which initially sought to impose the death penalty, that caught international attention (Altman and Symons, 2016:15).

These additional, discriminatory laws were preceded by broader attempts to reinforce moral behaviour, including the establishment in 1999 of the Ministry of Ethics and Integrity to police the private lives of Ugandans (Tamale, 2011). As in Zimbabwe, Tamale (2011) suggested this surveillance was to divert public attention towards moral deviants in minority communities and away from corruption and malfeasance in public offices including the Presidency. Indeed, in Uganda, even the Equal Opportunities Commission Act, 2007, (EOCA 2007) introduced expressly to protect the rights of minorities, prevents investigations into:

*“(d) any matter involving behaviour which is considered to be—
(i) immoral and socially harmful, or
(ii) unacceptable, by the majority of the cultural and social communities in Uganda”
(Section 15(6)d in Equal Opportunities Commission Act [Uganda], 2007).*

This legislation effectively defeated key tenets of democracy and equalities. If there was any doubt this clause was specifically included to maintain hegemonic heteronormativity the following

argument by the Minister of Gender, Labour and Social Development, Syda Bbumba, from the parliamentary debate on the amendments to the bill, was clear “[i]t is very important that we include that clause. This is because the homosexuals and the like have managed to forge their way into other countries by identifying with minorities” (Parliament National Assembly (Uganda), 2006:20). The timing of this legislation coincided with the passing of the Civil Union Act (2006) in South Africa. Further analysis of the debate demonstrated they also sought to define sex as “the natural state of being male or female” on the grounds that South Africans had recently allowed same-sex marriage (Parliament National Assembly (Uganda), 2006:4).

International responses to the tabling of the AHB in 2009 included the UK threatening to withhold development aid (Osogo Ambani, 2017:44). In a private cabinet meeting, President Museveni, faced with this international backlash and perhaps remembering the international outrage for homophobic comments he made in 1999, ordered the bill dropped declaring it “a sensitive foreign policy issue”; a quote so widely published that it had to be deliberate to placate the international donors (Ssebagala, 2011:106; Nuñez-Mietz and García Iommi, 2016). The AHB subsequently stalled for a while, but public homophobic discourse continued. Thoreson noted that in Uganda this social discourse became a particularly vociferous “militaristic rhetoric of combat and warfare” against the immoral homosexuals who were a threat to both Ugandan independence and the safety of children they were alleged to recruit (2014:29-30).

Indeed, in 2019 the Ugandan security minister General Elly Tumwine suggested the LGBT movement was part of a terrorist organisation intent on fostering global anarchy (Kivumbi, 2019). Meanwhile, Pastor Ssempe, the self-appointed chairman of the National Task Force against homosexuality in Uganda, would terrify his congregants by playing gay pornographic videos and graphically⁴¹ describing his understanding of gay male sex during sermons (“Uganda cleric shows gay porn film...”, 2010; Unitarian Universalist UN Office, 2010; Thomas, 2014). In 2010 the front cover of a short-lived local tabloid, *Rolling Stone*, under the headline “Hang them”, outed 100 alleged LGBT Ugandans (Kintu, 2017:134; “Uganda's President Yoweri...”, 2012). In response, Ugandan LGBTI activists became more prominent and challenged the claim that they were un-African by denouncing the role of American evangelical religious organisations in promoting the AHB (Nyanzi, 2013a; Kaoma, 2018; Rao, 2020:3).

The AHB, reduced to a maximum prison term of 14 years, eventually returned to parliament in 2014 and shortly before signing it into new law, Museveni, who in 2012 had admitted that homosexuality was part of Uganda's history in reference to the suspected homosexuality of the last pre-colonial King of Buganda, Kabaka Mwanga, asked the Ministry of Health to convene a panel of experts to report on whether homosexuality was natural, healthy and unalterable (“Uganda's President Yoweri...”, 2012; Rao, 2015). The completed report confirmed this and additionally advised that “[h]omosexuality existed in Africa way before the coming of the white man” (Uganda: Scientific statement from the Ministry of Health on homosexuality, 2014). The report was then allegedly

⁴¹ Ssempe's sermons, given their graphic nature, would now breach the AHA 2014 (Thomas, 2014).

falsified to allow Museveni to sign the bill into law (De Waal, 2014). During the press conference for the presidential signing of the AHA 2014, Museveni stated:

“It seems the topic of homosexuals was provoked by the arrogant and careless Western groups that are fond of coming into our schools and recruiting young children in homosexuality and lesbianism...no study has shown that you can be homosexual purely by nature” (Kuchu Times, 2020).

Ugandan academic, Stella Nyanzi, has been especially critical of the AHA, noting that it had intended to “protect the traditional family”, yet it left out a range of traditional Ugandan families, which include polygamy and polyandry among others⁴² (2013b:953). Nyanzi concluded that the justification for the AHA “lay in myopic imaginings of a homogenous African-ness” (2013b:952). Others have challenged the Ugandan claim that sexual and gender minorities were un-African and an import from the West and suggested instead that the “flaunting” of sexuality was the un-African problem (Ssebagala, 2011:106; Namwase, Jjuuko and Nyarango, 2017:5); the disgusted responses to Pastor Ssempea’s sermons might have suggested this has some merit although they were particularly graphic (Unitarian Universalist UN Office, 2010). In response to the promulgation of the AHA, the World Bank, Norway, Denmark and Sweden individually announced the suspension of over \$100 million in aid and loans for Ugandan development, a move that Ugandan LGBTI activists mainly supported (Rao, 2020:136).

Analysis of the reasons for this rise in homophobia in Uganda has explored several themes. Kaoma (2018) focused on the prominent role of American evangelical churches in promoting both homophobia and the AHB and the wider impacts of globalisation on a developing country. Thoreson noted this too, but also the rise in protests against weakening economic conditions that intensified around the 2011 national election (2014:29-30). This point concurred with Uganda legal academic, Oloka-Onyango (2014), who posited that the act, viewed within the context of several contemporaneous new acts⁴³, was intended to consolidate Museveni’s autocratic dictatorship in the face of growing opposition to his leadership within his own party. Nuñez-Mietz and García Iommi (2016) determined that the backlash to SOGI rights was most likely precipitated by international SOGI advocacy. For although they acknowledged that moves against SOGI rights were spearheaded by religious figures with extensive assistance from US religious organisations, Museveni’s initial desire to bury the AHB, following the international backlash, was suddenly abandoned in favour of anti-neo imperialist rhetoric, which sought to legitimise Museveni’s power through his defence of Ugandan values and culture (Nuñez-Mietz and García Iommi, 2016:205-206).

Rao agreed arguing that the homophobic rhetoric tapped into a history of elite collaboration with colonial powers, which during colonisation changed the way people thought about non-normative sexualities. These heteronormative ideas had subsequently been adopted as a valuable expression of Ugandan agency and decolonisation (Rao, 2014a:175). He further suggested that in attempting to

⁴² Nyanzi listed “polygamy, polygyny polyandry, monogamy, bigamy, cohabitation, sororate, levirate, widow-inheritance, exogamous, endogamous, virilocal and matrilocal marriage types” (Nyanzi, 2013b:953).

⁴³ Including The Public Order and Management Act and The Anti-Pornography Act (Oloka-Onyango, 2014).

understand and combat the discrimination, scholars and activists oversimplified the historic and current realities of Ugandan society and, in agreement with Nuñez-Mietz and García Iommi, the Western obsession with African homophobia may have been a driver behind the AHB as an anti neocolonial show of strength by a beleaguered President demonstrably protecting Ugandan cultural values (Rao, 2020). This point was supported by an anecdote from Tamale highlighting the uncertainty of declaring Museveni's government homophobic; "I was recently asked to assist the Ministry of Health in integrating issues of same-sex sexuality into the national HIV/AIDS policy" (Tamale, 2013:43).

5.1.3 Nigeria

Upon independence, Nigeria retained the British laws that rendered homosexual acts illegal and in some northern states the application of Sharia Law introduced the possibility of the death penalty for homosexuals (Mendos, 2019:170; Arimoro, 2019:257). In the South, where Christian communities predominate, the prevailing view has been that homosexuality was un-African and these oppressive beliefs meant that many LGBT Nigerians led closeted lifestyles (Green-Simms and Azuah, 2012:37). Despite the visual scarcity of the sexual and gender minority population, in 2006, coinciding with the adoption of the South African Civil Union Act, the Nigerian parliament, led by President Obasanjo, introduced a draft bill to ban same-sex marriage. Although it took seven years to pass, the eventual heteronormative Same-Sex Marriage (Prohibition) Act 2013 (SSMPA) imposed much broader restrictions than prohibiting same-sex civil unions⁴⁴ and included banning the "registration", "sustenance, processions and meetings" of "gay clubs, societies and organisations" as well as prohibiting "[t]he public show of same sex amorous relationship directly or indirectly" (Nigeria: Same-Sex Marriage (Prohibition) Act 2013).

In the intervening years and subsequently, reports of arrests, detentions and charges for sodomy have been reported throughout Nigeria, such as the expulsion and alleged anal examination of 15 army cadets in 2006 and the 2007 arrest of 18 men at a party on suspicion of engaging in sodomy and a same-sex wedding (Pierce, 2016:3; Ayeni, 2017:206). More recent examples include the 2016 beating to death of a man by a mob in Ondo state and the 2017 arrest of 40 men at a party in Hotel in Lagos (Arimoro, 2018:229-231). In 2016 the Ministry of Foreign Affairs even threatened to investigate and arrest the same-sex life partner of the Swiss Ambassador (West, 2016). Violent and discriminatory attacks on people suspected of being homosexual are routinely carried out in Nigeria by state authorities, religious communities and the general public and with few legal protections, for many the only options are hiding their queerness or seeking asylum in another country (Pierce, 2016:3; Arimoro, 2018:229; Arimoro, 2019:264).

Although the SSMPA effectively criminalised any pro-SOGI organising, activists have tried to challenge it. However, the attempt was struck down because the lead applicant did not identify as

⁴⁴ In the act civil unions include sex partners who live together as "adult independent relationships; caring relationships; civil partnerships; civil solidarity pacts; domestic partnerships; reciprocal beneficiary relationships; registered partnerships; significant partnerships; and stable unions." (Nigeria Same-Sex Marriage (Prohibition) Act 2013).

gay, in a state where to do so might be met with a jail sentence. The judge declared he therefore could not advocate on behalf of a “gay community”, which the judge also noted did not exist in Nigeria:

“The applicant has no locus standi to bring this action on behalf of “Gay Community in Nigeria” in any case there is nobody or organisation in Nigerian [sic] called lesbian, gay, bisexual and transgender (LGBTI) community. Even the Applicant himself did not describe himself as a gay. (Teriah Joseph Ebah v Nigeria 2014)” (Sogunro, 2018:633).

Sogunro noted the irony of the law being passed, seemingly against a community that the courts did not believe existed (2018:633). In the absence of gay Nigerians, who were the courts supposed to prosecute? Given this belief that there was no LGBTI community, the rationale for the law seems to lie elsewhere. Indeed, by October 2020, despite the tales of mass arrests and brutality, the SSMPA had apparently not led to any successful convictions, often due to a lack of evidence and in the case of 47 men arrested at a party in 2018 the failure of the prosecution to attend court (Rights Africa, 2020).

Pierce (2016:4) noted that such widespread discrimination of LGBTI people was a relatively new phenomenon, virtually unheard of prior to 2006. Awondo, Geschiere and Reid (2012:157) argued that the timing of the tabling of the original SSMPA bill, so soon after the South Africa Civil Union Act (2006), suggested a continuation of the continental rivalry for hegemonic status that has existed between Nigeria and South Africa. They argued that Nigeria used this act as an attempt to demonstrate that Nigeria was the true African moral leader, while South Africa was framed as an un-African state allowing deviant Western values to infiltrate the continent (Awondo, Geschiere and Reid, 2012:157). In a similar vein, Arimoro (2019:257) suggested that despite the colonial legacy of Nigeria’s anti-homosexual laws and the more recent escalation of political homophobia was a reactionary response to international pressure, both from Western states and the rising LGBTIQ transnational activism.

What seems clear in the Nigerian analysis is that the emergence of homophobic attitudes among lawmakers does not appear to have been in response to the almost invisible local sexual and gender minorities, but as a pre-emptive move to reject emerging international norms that conflict with both major religions in the state and public attitudes, which research in 2013 determined 98% of Nigerians believed homosexuality was socially unacceptable (Pew Research Centre, 2013:3). It seems to have begun in reaction to South Africa’s liberal acceptance of same-sex unions in 2006 and later a response to the advancing international acceptance of SOGI rights.

5.1.4 Senegal

In Western Africa there are two neighbouring states that have also made headlines for extreme homophobic violence and as will be seen in the next two profiles the political initiatives seem to share a common foundation. In Senegal the capital, Dakar, had a gay-friendly international reputation in the mid-twentieth century, leading a 1978 American gay travel magazine, *Ciao!*, to

suggest in lascivious terms that the Senegalese were “tolerant about almost everything” (in Hilderbrand, 2013:397). Senegalese communities have also had their own pre-colonial history of sexual and gender minorities, such as those known as Goor-Jigeeen (meaning man-woman), and social and state attitudes were relatively ambivalent to sexual and gender diversity until 2008 (Bertolt and Massé, 2019:24).

Coudou Bop, a Senegalese journalist and sociologist, concurring with the historic liberal attitudes to non-normative sexualities and gender expressions, noted that the media attention in 2008 to an alleged same-sex wedding, which had supposedly occurred in 2006, served both political and religious homophobic narratives (2008:5). Bop determined that despite Senegal’s secular political systems, economic malaise since a crisis in the 1980s and subsequent structural adjustment programmes had prompted people to “seek refuge in religion” and in turn conservative Muslim authorities (Bop noted that Catholic leaders did not participate in the vilification of homosexuals) were using moral panics to gain political support prior to elections (2008:4-7). M’Baye agreed with this analysis noting the complicity of the media in state’s political and religious driven attempts to regulate and control the existence of sexual and gender minorities, particularly after the alleged gay wedding in 2008, and the creation of narratives of queer Senegalese as “deviant, mad and abnormal” (2020:1), or associating gay men “with clandestineness, foreignness and savageness”, while lesbians were characterised as produced by “naivety or greed” (2020:11).

By late 2009 Senegalese police began actively arresting people suspected of homosexuality. In Senegal, Thoreson (2014:32) noted far less rhetoric coming from government, who had to temper more homophobic statements from religious leaders, and whilst the police continued their investigations and arrests, civil society was increasingly policing and targeting sexual and gender minorities for abuse. However, as the 2012 presidential election drew near, Senegalese political figures began adopting allegations of homosexuality against opposition candidates, most notably against the Minister of State, and President Wade’s son, Karim Wade (Bertolt and Massé, 2019:32).

Bertolt and Massé concluded that homophobia in the Senegalese context was utilised by politicians in three main ways. Firstly, it was used to reinforce Senegalese sovereignty in the face of moral and political pressure from the West, particularly France the former coloniser, secondly it was used to silence political opponents, such as when members of the opposition suggested that President Sall would decriminalise homosexuality in 2016, Sall refuted this and thereby entrenched the idea that homosexuality was not about to be accepted, and thirdly it was used to consolidate political support from religious leaders and groups, to whom citizens disaffected by continued corruption and economic collapse had turned, through the reaffirmation of religious morality (Bertolt and Massé, 2019:32-33). Essentially, they determined that homophobia served two purposes, “that of a national power struggle across social groups, and that of a fight against former colonial powers” (Bertolt and Massé, 2019:33).

5.1.5 Gambia

The Gambia is a semi-enclave of Senegal and in 2008, following the public outcry against the reported same-sex wedding in Senegal, several queer Senegalese citizens allegedly fled across the border seeking refuge from the ensuing queerphobic discrimination and violence (“Gambia gay death...”, 2008). Thereafter, during a political rally, President Jammeh promised to impose stricter laws to eradicate homosexuality than Iran and gave both local and foreign homosexuals 24 hours to leave the country or, allegedly⁴⁵, risk being beheaded (“Gambia gay death...”, 2008). According to Human Rights Watch, two Senegalese men, suspected of being homosexual, were arrested in the Gambia the day after Jammeh’s speech (“Mob violence and...”, 2008).

In 2013 Jammeh reinforced his position on SOGI rights to an international audience at the 68th UNGA. Criticising SOGI supporting delegations, he stated that homosexuality, greed for excessive material wealth and nuclear, biological and chemical weapons were all ungodly threats to humanity. He warned that “Muslims and Africans will fight against” this threat to procreation, which he claimed was reaching epidemic proportions and was “an agenda that clearly calls for human extinction” (UNGA, 2013:2). Then, in 2014, without any irony, he threatened to kill Senegalese who sought asylum in Europe based on persecution for being gay, said that LGBT stood for “leprosy, gonorrhoea, bacteria and tuberculosis” and in a speech at the 49th anniversary of independence from the UK he called homosexuals “vermin” (Stone, 2015).

Analysing the Presidents rhetoric against sexual and gender minorities, Nyanzi determined that his speeches were predicated on reaffirming his defence of imagined Gambian social, cultural and religious values against the encroachment of international SOGI rights as part of his campaign for re-election within a distinctly undemocratic regime (Nyanzi, 2013c:87).

5.1.6 Malawi

Malawi is another state whose homophobic discrimination made the international headlines and again an alleged same-sex wedding inspired it. In 2009 Tiwonge Chimbalanga, who identified as a woman, and Stephen Monjeza celebrated their traditional Malawian engagement ceremony and were ridiculed in the press and subsequently arrested and sentenced to 14 years in prison under the colonial era law of engaging in “carnal knowledge against orders of nature” (Macharia, 2010; Thoreson, 2014). Public responses to the couple were largely sympathetic; supporters took pity on them while detractors considered them merely tragic and foolish. Initially the government did not get involved, however police action against sexual and gender minorities increased and the media stirred up public sentiment and international sympathy (Thoreson, 2014:32). Following reports that donor countries were questioning their aid commitments to the country and after a meeting with UN Secretary General, Ban Ki Moon, President Mutharika pardoned the couple, commuted their sentence, but warned “These boys committed a crime against our culture, religion and our laws” (Banda, 2010a; 2010b).

⁴⁵ According to reports, Jammeh either retracted the decapitation threat or denied he made it (Mob violence and, 2008).

However, this incident functioned as a turning point for Mutharika, who continued to instrumentalise homophobia in speeches from 2011. This coincided with growing anti-government demonstrations as the country entered a severe economic crisis, including fuel and food shortages. Mutharika responded by increasing restrictions on protesting and other democratic freedoms, as well as accusing foreign donors of instigating NGOs to overthrow his government and turn Malawians gay. In response to the restrictions on civil liberties, some conditional aid was indeed halted (Biruk, 2014:449-450). Although local NGOs argued that the donors had stopped aid due to governance issues and the restrictions on civil liberties, they observed that some political and religious leaders had chosen to claim it was entirely due to SOGI rights (Biruk, 2014:468).

Since public attitudes in Malawi did not seem to be fervently against SOGI rights, as evidenced by media coverage reflecting pity, embarrassment or humour rather than outright hostility, it was likely that the state was not fomenting homophobia qua homophobia (Currier, 2019; Thoreson, 2014:32). In addition, there seems to be no analysis or evidence of extensive local or foreign religious involvement. In fact, in 2005 the diocese of Lake Malawi had angered the Anglican Church of Central Africa by electing a pro-LGBT Bishop, suggesting that Christian religious attitudes may be more liberal in some Malawian dioceses ("Malawi rejects 'pro-gay'...", 2005).

Therefore, Currier (2019:118-119) suggested that Mutharika's invocation of homophobic rhetoric served to discredit and divide the civil society demonstrations, particularly through attempting to delegitimise some NGOs by claiming they were advocating for SOGI rights. Additionally, Biruk (2014) considered it also served to restore the president's own legitimacy in the face of such protests, by deflecting blame onto the donor countries that had cut their aid programmes. Indeed, aid dependency in many areas of social support provision meant that the Malawian population were particularly susceptible to aid conditionalities and therefore the government more sensitive to donor demands (Currier, 2019). However, the debates around SOGI rights and INGOs subsequently brought attention to the funding local LGBT NGOs had been receiving from the global North, which, allied with the fact that previously LGBT Malawians predominantly remained in the closet, stimulated the emergence of the narrative for some that homosexuality was an un-African practice adopted from Western cultures (Currier, 2019:31).

5.1.7 Namibia

In 1990 the Namibian liberation movement SWAPO, the South West African People's Organisation, won independence for the country from South Africa. After five years in power the SWAPO led government, under President Nujoma, began a campaign of political homophobia (Currier, 2010:110). Lorway suggested that the Zimbabwean GALZ book affair was the precursor to this homophobic rhetoric by the Namibian government, following a fairly liberal post-independence period, in which same-sex couples, including interracial partners, could walk hand in hand in public (Lorway, 2008:79-80). In response, in 1996 the Swedish Federation of Gay and Lesbian Rights lobbied the Swedish Ministry of Foreign Affairs to withhold aid pending investigations into state-sponsored homophobia (Lorway, 2008:80). Threats to aid packages from other European donors led

SWAPO to announce their concern that European support for foreign homosexuality, based on assumed superiority and enlightenment, was threatening to destroy Namibian culture and hard-won democracy (Lorway, 2008:81). Nujoma's targets were both queer Namibians and political opponents and by 2001, included threats to deport gay and lesbian Namibians (Currier, 2010:117).

Although Namibia's diverse population and different cultural communities⁴⁶ historically had varied attitudes to non-normative sexualities and gender expressions, after Nujoma's deportation call queer Namibians began experiencing social homophobia entering their private relationships including from their families (Lorway, 2008:83-85). In 2004, Nujoma even claimed that Ben Ulenga, the leader of the Congress of Democrats opposition party, had engaged in homosexual activity with white British men while on state business in the UK. The intention was to weaken Ulenga's authority, reputation and ability to claim national pride (Currier, 2010:121).

Currier determined that SWAPO's political homophobia served three purposes. Firstly, it was used to silence critics of the government, particularly to delegitimise opponents seen as being too close to Western powers. Secondly, it formed part of a supposed cultural decolonisation of the nation, which sought to establish homosexuality as un-African (Currier, 2010:120). Lastly it was used to embellish the liberation history of the members of the movement, so that they appeared more masculine and heterosexual. In this regard the efforts of queer Namibian independence fighters were ignored and erased in this new liberation narrative, which contrasted greatly with the eventual acceptance of SOGI rights by the ANC in South Africa (Currier, 2010:110 and 123). Lorway noted that it "reified the overlapping binary oppositions such as modern/traditional, European/African, white/black, wealthy/poor, innocent/corrupt" and, as in some other states on the continent, embedded notions of sexuality within nationalism (2008:81).

5.1.8 Liberia

In 2012 Liberia was still emerging from a long period of civil wars, between 1989 and 2003, and rebuilding the economy and repairing social ties (Currier and Cruz, 2020:83). Despite the absence of any political debates on homosexuality prior to 2012, locally an anti-SOGI rights movement, the New Citizens Movement (NCM), emerged following US President Barak Obama's support for SOGI rights in 2011. Local Christian and Muslim civil society formed the NCM prompted by an awareness of both international and continental moves to secure SOGI rights and to oppose the threat of potential SOGI rights in the country (Currier and Cruz, 2020:83). Whilst rumours began to circulate suggesting that the government was intending to liberalise homophobic legislation, the media reported that parliament wanted to increase penalties for same-sex activity (Currier and Cruz, 2020:83). The NCM argued that the fragile Liberian peace was threatened by the potential imposition of these Western rights, however in contrast to anti-homophobic rhetoric and actions elsewhere the NCM, due to their religious principles and a desire to maintain social stability, strongly condemned antigay protesting and violence towards sexual and gender minorities (Currier and Cruz, 2020:84).

⁴⁶ Including the Ovambo, Herero, Damara>Nama and Afrikaans communities (Lorway, 2008:83-85).

This was important considering the civil war history in which male on male rape as well as extra-judicial killings of Liberians suspected of homosexuality featured (Currier and Cruz, 2020:87). Despite the NCM's claims that homosexuality was a Western threat, Liberians generally understood that homosexuality had a long history in the country, however discrimination and violent attacks against sexual and gender minorities did rise (Currier and Cruz, 2020:88 and 91; Corey-Boulet, 2012). This might have been because the NCM framed homosexuality within the common themes of recruitment and potential abuse of children as well as the supposed financial inducements offered to support homosexuality in return for donor aid (Currier and Cruz, 2020:89-90).

Currier and Cruz's in-depth study, which included extensive interviews with organisers of the NCM, demonstrated that the development of a movement against SOGI rights was pre-emptive and not in response to any government action on SOGI rights nor to the appearance of national SOGI rights organising⁴⁷. It was organised along religious principles and cognisant of a dark history of sexual violence against citizens during the civil wars. Within government there appeared to be a lukewarm sympathy with the NCM, such that whilst a new law banning same-sex marriage was introduced, President Johnson Sirleaf chose to abstain on all votes related to LGBT laws, either pro or contra, and refrained from the inflammatory rhetoric of some of her peers on the continent (Currier and Cruz, 2020; Corey-Boulet, 2012).

5.1.9 Cameroon

Cameroonian academic, Basile Ndjio, traced the historic and recent political framing of homosexuals in the state and determined that they have been envisaged as alien or "uprooted Africans who flout African traditions and values, or who claim a globalized identity over their Africanity" (Ndjio, 2016:116). Although in 1972, when the former English and French colonies were merged, President Ahidjo implemented several laws rendering a variety of non-heterosexual activities illegal these largely dormant legislations were not actively implemented⁴⁸, police even refused to arrest two men dragged to the police station by outraged neighbours in 1999 (Ndjio, 2016:118 and 121). However, the situation changed dramatically in 2006 when President Biya, 23 years into his presidency, began vocally demonising gay Cameroonians. His lead was followed by people every in sector of society, including the police, who went to extremes, such as anal exams, to check for homosexual activity (Ndjio, 2016:122-123).

To be gay in Cameroon was no longer just criminal, but it might lead to charges of witchcraft, stigmatisation and violence (Ndjio, 2016:124). Since then, extreme discrimination in all spheres, including education, housing and employment, violence and arbitrary detention have become widespread and routine for sexual and gender minorities, meted out by the state and civilians, including neighbours and family members (Ndjio, 2016:127-129). The escape by some LGBT

⁴⁷ There were SOGI rights activists working within public health, but they kept themselves under the radar of the public (Currier and Cruz, 2020:83).

⁴⁸ Homosexual activity was largely ignored, if it was carried out in private, and subsequently few cases were tried (Ndjio, 2016:119-120).

Cameroonians to seek asylum in Europe has further fuelled claims that the global North has been increasingly pressuring the state to legalise gay rights (Ndjio, 2016:132).

Ndjio suggested that this virulent demonisation of homosexuals had political roots. As the poverty gap widened, Biya's regime was increasingly caricatured as infested with sodomites and those who would succumb to their demands to gain wealth and power. Public protests, led by opposition and church leaders demanded that government be rid of these deviants (Ndjio, 2016:125). Therefore, to regain legitimacy, Biya order the state to crack down on homosexuals and thereby demonstrate his defence of real African values against what had become stereotyped as an immoral, Western vice (Ndjio, 2016:126). Nyeck (2013:169) agreed, stating that Biya was fostering a heterosexual nationalism that would root out corruption by targeting those political elites who had been corrupted by this West immorality.

This section presented several vignettes from across the continent to add context to and evidence the emergence and use of homophobic discourses by African political actors. As evidenced, whilst each history is different, some discourses had similar and overlapping foundations and there are several common themes emerging. As mentioned, it would be impossible to cover all African states, but homophobic attitudes are not limited to those listed above. For example, in Zambia the state fostered a form of Zambian nationalism with close associations to conservative Christian churches that is anti-homosexuality on religious grounds (van Klinken, 2014). While Ndlovu identified that within some religious and political communities in Kenya, homosexuality was considered "unnatural, un-African and un-Islamic" (Ndlovu, 2016:78). The next section draws on these varied histories to identify common themes in the discourses and their implications.

5.2 Identifying and Interpreting Dominant Themes

This section analyses the common discursive themes that have been used to debate SOGI rights across the continent. The case studies above have clearly established that the idea of a monolithic African homophobia is unfounded. Although this point has been argued previously, see for example Awondo, Geschiere and Reid (2012), Coly (2013), Ireland (2013), Thoreson (2014) and Rao (2014a), analysis of different states has emphasised this by demonstrating the broad variances in timings, intensity and application. Therefore, this section does not argue for a universal construction of African homophobia, but instead seeks to highlight commonalities of rhetoric used. The state reviews have also demonstrated that in some countries the homophobic rhetoric has been motivated by society and in others by the government.

What has also become apparent is that from a political perspective to call it homophobia is in some cases a misnomer. As Rao argued, using the terms homophobia or transphobia are inadequate or reductive to the debate. Phobia, as a fear, fails to fully express the range of emotions that might be behind animosity towards sexual and gender minorities in society and indeed the motivations of those in government (Rao, 2020:34). Some researchers prefer to call these discourses

antihomosexual, as it more accurately describes the intent to vilify homosexuals and same-sex activity rather than reflecting a fear or loathing of them (McKay and Angotti, 2016:415). As the vignettes have demonstrated this is perhaps a more suitable definition, albeit with the caveat mentioned previously that the discourses often conflate many other antagonisms towards sexual or gender non-conformity, such as transsexual, transgendered and lesbian people. However, given the prevalence of the use of homophobia to describe the narratives and sentiments in both the media and academic research, this is the term that will predominately be used in this analysis.

To illustrate the previous point, among the political elite studied apart from a few lower members of parliament, such as those in Uganda, and perhaps a couple of the more vociferous leaders, in particular Mugabe, Museveni and Jammeh, it would be difficult to argue that there has appeared to be a political commitment to homophobia as a fear or loathing of sexual and gender minorities. Or, as Currier stated although the narratives might express distaste of homosexuals and their proclivities, “this disgust might not focus explicitly on same-sex sex” (Currier, 2019:29). Certain leaders, including Johnson-Sirleaf and Mutharika, seem ambivalent on whether SOGI rights and the people protected by them would cause harm. Undoubtedly in some societies there have been civil and religious groups who promote particularly virulently homophobic messages that include fears of child recruitment and abuse, but while these messages were sometimes instrumentalised by state leaders these did not necessarily seem to be state led.

In the absence of a firm commitment to a universal African homophobia driving political decisions across the continent, the rationale for the vilification of sexual and gender minorities needs more explanation. As Tamale determined, homosexuals have become “red herrings” and homophobic discourses “a political tool” to be used for political gain (Tamale, 2013:33-34). Indeed, the homophobia in most of the cases above can be recognised as what Currier called political homophobia (2010) and later politicised homophobia (2019), which was recognised in earlier analyses by Long (2005), Long, Brown and Cooper (2003) and Conway (2008). The analysis that follows will refer extensively to both concepts of political and politicised homophobia and so the next section defines what these mean and the subtle, but important difference between them.

5.2.1 Political/Politicised homophobia

Studying the use of homophobic rhetoric by Nujoma’s administration in Namibia, Currier identified that it had not been exclusively used to control sexualities and gender identities, but to vilify and silence opposition and thereby strengthen the control of the state (Currier, 2010:122). Furthermore, Currier, who has extensively researched contemporary political homophobia and SOGI rights organising in South Africa, Namibia, Liberia and Malawi (Currier, 2010; 2011; 2012a; 2012b; 2019; Currier and Cruz, 2014; 2020), determined that in other states political homophobia had been used strategically to silence dissenters, for example through smear campaigns such as was witnessed in Cameroon, to deflect attention from other problems, including increasingly autocratic rule or economic decline as suggested in Zimbabwe, and lastly to reimage the liberation history of post-colonial societies to instil the leadership with more masculine, patriarchal authority, as argued for

Nujoma in Namibia (Currier, 2010:115-116; Nyeck, 2013:169; Gevisser, 2000:116). In this regard, politicised homophobia differs from state homophobia, which is the existence of legislation that discriminates or criminalises homosexual activities and people, and social homophobia, which describes the attitudes and actions of people and communities that discriminate, marginalise or inflict violence on homosexuals or other gender non-conforming people (Bertolt and Massé, 2019:22).

In Weiss and Bosia's (2013) edited collection, *Global Homophobia*, they noted that globally state leaders have used political homophobia to construct sexual and gender minorities as outsiders. Sexual and gender minorities might, for example, have been characterised as entangled in or controlled by foreigners or they might have been characterised as outsiders to redefine insiders under a monolithically cis-gendered and heteronormative national identity (Weiss and Bosia, 2013). Weiss and Bosia have defined this political homophobia as the implementation of strategies grounded in homophobic narratives, which have been "embedded in the scapegoating of an 'other' that drives processes of state building and retrenchment; as the product of transnational influence-peddling and alliances; and as integrated into questions of collective identity and the complicated legacies of colonialisms" (2013:12).

Currier later refined this concept as politicised homophobia, to emphasise that it was motivated by political aspirations rather than triggered as a response to homosexuality (2019:12). For example, as has been seen from the cases outlined above, politicised homophobia has not always been a response to the rise of sexual and gender minorities seeking SOGI rights. Currier suggested that politicised homophobia:

"can serve as an expedient strategy for political elites seeking to punish gender and sexual dissidents, to bolster their moral and political authority, to weaken political opponents, to buttress narratives of national sovereignty, and/or to deflect attention from sociopolitical controversies" (Currier, 2019:20).

Furthermore, Currier (2019) determined that politicised homophobia could be used by political elites pre-emptively to prevent SOGI rights groups forming, as was demonstrated in Liberia, reactively when under pressure on other issues, such as social or economic protests, and proactively to maintain and strengthen political power.

However, as well as these broader political aims, politicised homophobia served to both oppress sexual and gender minorities and to marginalise those implicated in the SOGI debate, including political opposition, NGOs and rights activists (Currier, 2019:29). This was demonstrated in Uganda as part of a wider moral crusade (Tamale, 2011). In these circumstances politicised homophobia specifically challenged the hegemony of Western activism observed through the supposed promotion of, in Nujoma's words, "alien" rights, which subsequently served to legitimise the post-colonial leadership by reaffirming their ability to expel invaders, such as in Zimbabwe (Rukweza, 2006; Stychin, 2004:957). This strategic implementation reinforced the post-colonial nationalist

narrative, by rejecting the criticisms from the global North of a lack of progress on human rights protections.

Another reason suggested for the implementation of politicised homophobia has been the desire to deflect public attention away from domestic social, economic and democratic decline such as inflation, low wages, high taxes, high unemployment, poor state healthcare and other issues of socio-political concern (Tamale, 2011). Not least since this rhetoric often surfaced during periods when states have been tackling corruption, unemployment, repression and “increased hopelessness among the African populace” (Tamale, 2014:167). In Zimbabwe, Mugabe and ZANU-PF have used sexual and gender minorities as scapegoats by focussing on the threat they have posed as a distraction from their own failure to maintain economic, social and political stability (Youde, 2017:64). As noted previously, similar moral panics have also been used in Cameroon, Malawi, Senegal and Uganda, where the oppression of queer people coincided with increased civil society activism to a range of unrelated social issues.

Even in cases where the initial homophobic rhetoric was seemingly a reaction to SOGI organising, politicised homophobia became a tool for further aims. Youde argued that in Zimbabwe, Mugabe first reacted to the appearance of GALZ at the book fair, and then discovered the patriotic utility of politicised homophobia, using it to reaffirm his credentials as a liberator and defender of Zimbabwean culture and people (Youde, 2017). Increasing public dissatisfaction with his regime and management of the economy had emboldened political challengers both within his party and in 1999 from the rise of the MDC in opposition (Youde, 2017).

In claiming homosexuality as un-African, Mugabe invoked the historic colonial domination as a contemporary force threatening the sexual productiveness of Zimbabweans and at the same time reminding citizens of his success at overthrowing the colonisers and reaffirming his position as guardian of the nation (Stychin, 2004:957). Later Mugabe also used SOGI rights to delegitimise the leader of the opposition by criticising his support for them (Youde, 2017:73). Indeed, Zimbabwe presented a case in which politicised homophobia has been used to address multiple issues simultaneously. Tamale added that in more religious societies where homophobic attitudes have moral currency, the “rhetoric serves to strengthen the standing of its proponents in mainstream thought and maintains their social relevance” (2013:34). Such aims have been observed in Gambia and Senegal. It has also been evident that this rhetoric ensured international media coverage, particularly for leaders in Nigeria, Uganda and Zimbabwe. Whilst much of this coverage has been negative, it has also enhanced the anti-colonial image of these leaders.

Finally, McKay and Angotti (2016:400) have highlighted that although considered a local issue some of the themes of politicised homophobic discourses have become globalised suggesting a level of cross border idea sharing. This reflects Tamale’s (2014) understanding of a toolbox of ideas, which leaders draw upon to achieve their national aims. Tamale noted:

“Among African dictatorships, non-conforming sexualities have become a metaphor for immorality and form an effective instrument in the politics of distraction. Instead

of blaming political mismanagement and corruption for high unemployment, the high cost of living and poor health facilities, the red herrings will crystallise, inter alia, in the form of 'the vice of homosexuality' or 'the evil of prostitution'. And the red herrings are usually fished out of the sea of morality when political accountability is looming" (Tamale, 2014:167-8)

This globalisation of discourses means that although the contexts have been different in each state, we can observe some commonalities in the narratives. As Currier noted politicised homophobia has not been continental in form, there have been various manifestations in different states and it has not been as pervasive as claims of African homophobia have suggested (Currier, 2019:256-257). In summary, it has become apparent that politicised homophobia has been utilised to meet a variety of aims that may not necessarily have direct relevance to the promotion of SOGI rights on the continent. Sexual and gender minorities have served as scapegoats in strategic programmes to increase legitimacy for autocratic or corrupt regimes, to delegitimise civil or political opposition, to deflect attention from economic or social dysfunction and to re-establish the struggle credentials of failing leaders. Given this tenuous connection with SOGI issues, it is important to understand why sexual and gender minorities have been the focus of such ire in several states on the continent and why members of the African Group within the UN have been such an active opposition to the international promotion of protection of sexual and gender minorities.

The final section of this chapter presents the queer critical discourse analysis of the continental narratives used to frame SOGI issues. This analysis seeks to identify in which ways sexual and gender minorities and rights have been othered or rendered deviant and how this othering has been manifested through the political narratives. Once again, to refer to the methodology section, this analysis takes how SOGI rights and people have been put into the discourse and, using a queer lens, asks questions about what that discourse does in terms of creating the normal and perverse and what power underlies those identifications to influence other states.

This analysis identified two dominant narratives that have been used in the implementation of a variety of politicised homophobic strategies across the continent. These interlinked narratives have attempted to claim firstly that SOGI rights and therefore sexual and gender minorities are un-African and secondly that rejecting these rights has been an essential tool in resisting neocolonialism that threatens African traditions, cultures and beliefs. Furthermore, together these narratives have made claims to particular forms of African nationalisms (not a singular, monolithic African nationalism) to which SOGI rights have been deemed counterproductive. This thesis does not claim that these have been apparent in all states, but that they have been observed in different forms across the continent and have seemingly achieved a continental consensus indicative of McKay and Angotti's cross bordering of political homophobia (2016:400).

5.2.2 Un-African

An argument made by many African leaders across the continent against SOGI rights and sexual and gender minority citizens is that homosexuality is un-African (Reddy, 2002; Epprecht, 2005; 2008a;

2008b; Hoad, 2007; Currier and Cruz, 2020). Academics have highlighted this trope in a variety of states, including Kenya (Ndzovu, 2016), Nigeria (Green-Simms and Azuah, 2012:37), Botswana (McAllister, 2013), Zimbabwe (Rukweza, 2006), South Africa and Namibia (Currier, 2012b:121-123). Examples of this rhetoric have included Mugabe and Museveni describing gay people as unnatural and un-African; while Nujoma advised a press conference in 2003 that homosexuality was “alien” to African culture (Rukweza, 2006; Nyanzi, 2013a). This idea of un-Africanness has also been reflected in other claims, such as in 1994 when Mugabe warned of efforts to “force the values of gays and lesbians onto the Zimbabwean culture” (Dunton and Palmberg, 1996:13) and declaring at the UN “We are not gays!” (UNGA, 2015).

Similar sentiments were made in the Ugandan parliament, where homosexuals were characterised as foreign invading forces that “have managed to forge their way into other countries” (Parliament National Assembly (Uganda), 2006:20). Meanwhile, as mentioned previously, even the courts in Nigeria, while defending the anti-SOGI SSMPA, declared “there is nobody or organisation in Nigerian [sic] called lesbian, gay, bisexual and transgender (LGBTI) community” (Sogunro, 2018:633). While in Senegal gay men have been associated with “foreignness” (M’Baye, 2020:11), and in Cameroon they have been imagined as “uprooted Africans ... claim[ing] a globalized identity over their Africanity” (Ndjio, 2016:116). In various ways these claims seek to reify the notion that queer Africans are inherently or by adoption un-African; these claims are effectively a denial of sexual and gender minority Africans.

In Malawi, Currier determined that since many Malawians had historically remained closeted, the SOGI debates had created the impression that homosexuality, as exposed through emerging communities of LGBT NGO activism, was a newly imported, and therefore un-African, phenomenon (Currier, 2019:31). This connects with another use of the un-African trope that highlights complicity with actors from outside the state. In Zimbabwe and Uganda, sexual and gender minorities and rights activists have been perceived to be complicit with outside actors, including foreign governments and NGOs, whose imperative has been framed as desiring to change local cultures, destroy local traditions and ultimately weaken the state. Hoad even argued that these African rejections of SOGI rights were in response to South Africa’s pioneering constitution; thereby suggesting South Africa itself was un-African (Hoad, 2007:xiii). These narratives use un-African to define sexual and gender minorities as outsiders and collaborators (Youde, 2017:63-64). This argument strongly coalesces with the second dominant trope, SOGI rights as neocolonial project, which is explored further in the subsequent section.

In theory the un-African claim should be easy to discredit, however it seems to hold significant cultural purchase. The first argument against it is that there is no evidence that human conditions, such as sexuality or gender variance, can be constrained by geographical or temporal borders (McKaiser, 2012; Ratele, 2013:152). As Namwase, Jjuuko and Nyarango determined “sexuality is a human and not geographical condition, one cannot purport to say that homosexuality is ‘un-African’ without the absurd implication that there were no human beings in pre-colonial Africa” (2017:9). The historical, traditional and cultural diversities on such a large and populous continent cannot be

overlooked and to understand such a vast array of different societies as one monolithic body is the same as engaging with the fallacy of homophobic Africa.

Secondly, the historical record on sexual and gender variance across the continent is extensive. Various cultures have historically used their own terminology to identify or describe same-sex intimacies or gendered identities that do not conform to the predominant male/female binary, such as ngochani, maotoana, masu harka, yan kefi, yan daudu and dan kashill from Zimbabwe, South Africa, Lesotho and Nigeria, to recall a few (Dunton and Palmberg, 1996; Hoad, 1999:567; Epprecht, 2008a; 2008b; 2013a; Pierce, 2016). The literature on the history of sexual and gender minorities throughout the pre-colonial, colonial and independence periods is extensive, including monographs such as *Male Daughters, Female Husband: Gender and Sex in an African Society* (Amadiume, 1987), *Boy Wives and Female Husbands: studies in African homosexualities* (Murray and Roscoe, 1998), *Tommy Boys, lesbian men and ancestral wives: female same-sex practices in Africa* (Morgan and Wieringa, 2005), *Hungochani: the history of dissident sexuality in Southern Africa* (Epprecht, 2013a) and *The Sexual History of the Global South* (Wieringa and Sivori, 2013).

There have also been wide-ranging academic papers exploring national, regional and continental experiences, such as Amory (1997), Hoad (2000), Epprecht (2005; 2008a; 2008b), Spurlin (2013) and Ngubane's study of traditional Zulu diviners 10% of which did not conform to normative gender expressions (Ngubane, 1977:142). This literature also includes studies that have demonstrated how colonisers impacted on language through highlighting the lack of historic adherence to heteronormative gender binaries that can be found in some African languages, for example the Igbo of Nigerian only adopted gendered language after the imposition of English (Morrell in Li, 2009:173), while Scott noted that isiXhosa has no gendered third person pronouns, so that amaXhosa will use she/he and her/him interchangeably when speaking in English (2019:33).

What is clear from these records is that historically many African cultures have successfully incorporated and tolerated same-sex relationships and non-binary gender identities within their traditional regimes of familial relationships, which were therefore not the heteronormative structures claimed by some leaders. In some accounts, sexual and gender minorities have even occupied revered positions within traditional cultures, with abilities to embody ancestral spirits (Epprecht, 2005:137).

However, as Rao (2020) warned, it is neither necessary nor helpful to continue to seek justification for contemporary African queers by proving their existence in the past. The fact that they exist now should be sufficient to ensure their protection. Additionally, even those who claim sexual and gender minorities are un-African surreptitiously recognise their deceit. Museveni acknowledge that sexual and gender minorities have been part of the Ugandan citizenry ("Uganda's President Yoweri ...", 2012). While in Zimbabwe, following Mugabe's outbursts in 1995, sexual and gender minorities were encouraged to return to their homes and undergo traditional cures; if such traditional cures exist, then sexual and gender minorities have always also existed (Hoad, 1999:567). At the level of the political elite, it is difficult to imagine that any of them have a firm belief that sexual and gender minorities are un-African.

There are, of course, numerous contemporary examples and accounts of non-normative African genders and sexualities, including interviews with queer Ugandans (Nyanzi, 2013b), Zimbabwean's who have asserted they discovered their sexuality without any recognised influence from the West (Rukweza, 2006), queer African asylum seekers in South Africa (Camminga, 2017a; 2017b; 2018b; 2019; Bhagat, 2018a; 2018b), gay men in rural South Africa (Msibi, 2011), the special African issue of the *Journal of Lesbian Studies*, introduced by Currier and Migraine-George (2017) and the homosexuals in Botswana who call each other kgarejwana, mmemme and mosetsanyana and celebrate in their tswanarisation of global gay cultures (McAllister, 2013:95-96). The 2018 report of the UN IE SOGI identified several genders that are understood within specific countries, including on the African continent, such as okule and agule from the Democratic Republic of the Congo and Uganda (UNGA, 2018a).

However, contemporary sexual and gender minorities across the continent have increasingly been adopting identities more traditionally associated with former colonisers and activist from the global North including gay, lesbian, bisexual, trans*, non-binary and queer. These northern taxonomies for sexual and gender minorities have generated another critique of the un-African claim; some have assumed that these are new identities. As De Vos summarised, the claim that homosexuality is un-African stems from the alien nature of the terms, stating:

“as members of sexual minorities become more visible and as individuals who experience same-sex desire and engage in same-sex sexual acts increasingly become associated with the notion of ‘homosexuality’ (as an identity) – as a fixed, universally applicable Western creation – same-sex desire is increasingly being characterised – especially by politicians and African elites – as being ‘un-African’, a Western imposition, something that did not exist on the continent before the colonial (or neo-colonial) encounter” (De Vos, 2007:39).

The globalisation of queer identities from the global North has been seen as an imposition that has undermined and subsumed local sexual and gender dissidence in the global South and it has also given fuel to the neocolonial claims. The styles of LGBT identities adopted by local sexual and gender dissidents confront and disrupt visions of traditional society. Additionally, as Epprecht noted, at a social level same-sex sexuality has not been associated with procreation and so sexual and gender minority family members can upset the progeny expectations of elders (Epprecht, 2001:1100).

Finally, it is important to note that the un-African trope can be falsified by its lack of universal political or legislative applicability across the continent. Evidence of this can be found in the statute books of the African countries which have a defined age of consent for same-sex sexual activity, in the protections offered in the Constitution of South Africa and within the protections against discriminations based on sexual orientation for various civil rights, including employment, education and service provision, variously found in Angola, Botswana, Cape Verde, Mauritius, Mozambique, Seychelles and South Africa. African SOGI rights and the right to collectively represent queer Africans have additionally been evidenced within the ACHPR, through both the initial granting of observer status to CAL and the passing of Resolution 275, as well as the recognition of LGBTQ NGOs in Angola,

Botswana and Kenya. Even those states that have recently outlawed hate crimes against sexual and gender minorities or have removed laws prohibiting same-sex sexual activity must be understood as at least accepting that there are at risk sexual and gender minorities within their African citizenry. Ultimately, of course, un-African cannot exist, because there is no singular concept of African to act as a counterpoint (Ngwena, 2018).

In summary, the un-African claim levelled at African sexual and gender minorities and their rights from members of the African political elites hold no basis in fact. Whilst this trope demonstrated significant purchase within social homophobia across the continent, within political homophobia the rationale for such a claim lies within the power it wields. This power will be explored in the final chapter and in light of the similar claims made by members of the African Group within the UN.

5.2.3 Resisting neocolonialism

Framing homosexuality, sexual and gender minorities, and SOGI rights as un-African, describes them as a Western imposition and, as noted above, this allows the rejection of them to be framed as anti-colonialism. Historically, this framing has been strategically used to strengthen the independence struggle credentials of autocratic and weak leaderships, such as in Namibia. However, as has been seen from the national overview, un-African has often been used to counter more contemporary forms of neocolonialism. These claims, which also support heteronormative nationalism, form a second key argument used against the acceptance and adoption of SOGI rights. Gevisser (2000), Stychin (2004) and Youde (2017) all determined that Mugabe's administration framed homophobic rhetoric in anti-Western terms of neocolonialism, as revealed in the concern that GALZ literature would "force the values of gays and lesbians onto the Zimbabwean culture" (Letter, dated 24 July 1995, from the Zimbabwean Director of Information quoted in Dunton and Palmberg, 1996:13).

In Uganda, the encroaching threat of global acceptance of same-sex marriage was cited as necessary to define sex as a male or female binary exclusively in the Equal Opportunities Commission Act and Museveni's resurgent support for the erstwhile abandoned AHB was particularly framed in anti neocolonial rhetoric, claiming to defend Ugandan heterosexual traditions and culture in the face of international SOGI activism (Nuñez-Mietz and García Iommi, 2016; Rao, 2014a; 2020). Indeed, later as Museveni signed the 2014 AHA into law, he denounced Western organisations allegedly recruiting Ugandan youth into homosexuality.

Meanwhile, Jammeh of Gambia asserted at the 2013 UNGA that Africans would not accept the encroachment of SOGI rights pushed by the global North and during later independence celebrations from the British Empire he again renounced LGBT people, thereby directly linking the rejection of domination by Western powers and the denial of SOGI rights. In Namibia, shortly after gaining independence from South Africa, SWAPO denounced the perceived superiority of the Europeans who supported the local LGBT populations (Lorway, 2008:81). While in Nigeria, given the lack of local activism, the rise of animosity toward sexual and gender minorities by the state can only be understood as a pre-emptive response to wider global LGBT activism and progress, including the concurrent Civil Union Bill in South Africa. Even in Senegal, a previously liberal state, politicised

homophobia has been levelled against Western pressure, particularly from France, to reign in growing homophobic sentiment (Bertolt and Massé, 2019).

These claims have been exacerbated by threats from international organisations, Western governments and INGOs to restrict or halt donor aid programmes in response to political and state homophobia. As early as 1996 the Namibian government expressed concern that Sweden and other European nations were violating sovereign rights to determine their own cultural values by threatening to withhold aid unless the politicisation of homophobia ceased. This was also seen in Ugandan in 2009 and 2014 when the UK threatened to withhold aid to Uganda if the AHB passed and the suspension of Scandinavian and World Bank aid when it did. It was also apparent in Mugabe's response to similar UK threats in reaction to Zimbabwe's 2011 constitutional debate. Meanwhile, in Malawi, whilst donor country threats to remove aid and an intervention by the Secretary General of the UN initially encouraged leniency towards sexual and gender minorities from Mutharika's administration, in the longer term he too began criticising the encroachment of international LGBT rights NGOs and, allegedly, falsely accused aid donors from withholding aid in support of SOGI rights. Even without threats of aid withdrawal, we could see Mutharika responded to international concern.

From this analysis, it is apparent that colonialism and decolonisation have been foundational to the African political discourse on SOGI rights. From the historical perspective decolonisation claims have taken two contradictory forms, firstly that the colonisers introduced homosexuality and secondly that colonial administrations and Christian missionaries introduced homophobia. As argued, in more contemporary debates both those opposing SOGI rights and those advocating for them invoke decolonisation and rejection of neocolonialism as an aim; political homophobia against the imposition of gay lifestyles historically by colonisers and more recently from the global North, and social movements seeking the repeal of colonial era anti-gay legislations and fighting the rhetoric of modern religious movements (Currier, 2011:18, Kaoma, 2018). On this basis African leaders have argued that rejecting LGBT issues would be a return to allegedly heteronormative indigenous sexual and gender norms and therefore a decolonisation of the homosexuality brought by the colonialists, while African LGBT activist claim that repealing the anti-gay laws and returning to pre-colonial norms of sexualities and genders would be the true decolonisation.

Observers have noted that by calling the external threat of SOGI rights neocolonial, some African leaders have invoked forms of nationalism that have drawn on imagined heteronormative conservative histories. In this way politicised homophobia has become a "struggle between national identity and the colonial legacy" (Hoad, 2007:77). In some states of Southern Africa, including Namibia, Swaziland, Zambia and Zimbabwe, sexual and gender minority citizens seeking to assert their own existence "have met with hostility strongly express in nationalist terms...as corruptors of the state, enemies of the people impediments to national progress, un-African, and victims of a white man's disease" (Hoad, 1999:563). Hoad's account was supported by the summaries of other national experiences in Dunton and Palmberg (1996). Furthermore, these arguments have suggested postcolonial anxieties of being aid-dependent and fears of a lack of respect for African sovereignty. These have been linked to claims that sexual and gender minority Africans have declared themselves

gay to access foreign money, both via aid and wealthy tourists, as well as demanded greater importance than more widespread issues of food security and economic development (Currier, 2019:29).

5.3 Conclusion

This chapter presented a contextual analysis, albeit limited in scope by the sheer size of the continent and diversity of its people, cultures traditions and beliefs, as background to the debates within the UN. Through presenting and analysing a selection of continental case studies in which political actors have instrumentalised homophobic rhetoric, this contextual analysis debunked the idea of a monolithic African homophobia. In doing so, the tools and aims of politicised homophobia have been exposed and explained. It can, therefore, be seen that across Africa state rejection of SOGI rights has been attributed to the influence of transnational actors, including religious organisations, while others locate the backlash within local politics, where vilification of gay people distracts the wider citizenry from issues of lack of development, corruption and government failure.

As was seen in the country studies African leaders have often invoked homophobic narratives in relation to imagined heteronormative nationalisms, anti-colonialism and occasionally with Abrahamic religions in efforts to maintain tighter control of the state and its population. Meanwhile, South Africa's re-emergence and adoption of domestic SOGI rights legislations seems, in some parts of the continent, to have started a chain of reactive politicised homophobia, in which elites activated homophobic discourses in response to this external threat to the nation, as witnessed in Zimbabwe, Uganda and Nigeria. Other states responded to the emerging threat of same-sex marriage on supposed heteronormative traditional family values. Whilst initially responding to perceived external threats, politicised homophobia was subsequently turned inwards and used to suppress social and political opposition in several states across the continent: homosexuality became a stick to beat the opposition.

The strategic application of this has then been utilised to combat internal threats including economic, social or political unrest has been evidenced in Malawi and Uganda, where queer activists were scapegoated as threatening the nations access to aid funding, which was causing economic hardship. Some leaderships have also responded to internal or external political opposition by capitalising on social homophobic sentiment through implementing politicised homophobia whilst also re-inscribe heterosexual virility to the nations image of itself (Currier, 2019:22). In this way some African leaders have used politicised homophobia across the continent to achieve two objectives. Firstly, politicised homophobia has been used in several states to legitimise the leadership and delegitimised opposition forces. Secondly leaders have attempted to divert blame and attention from increasingly apparent negative consequences of their leadership, including corruption, economic mismanagement and rising inequality.

This thesis argues that these objectives have been achieved by instrumentalising two interlinked narratives, which make the following claims. Firstly, that sexual and gender minorities and their rights are un-African; they are an affront to supposedly heteronormative African religions, traditions, cultures and beliefs. Secondly that rejecting SOGI rights is an anti neocolonial act, which rejects coercive moral imposition from actors in the global North and preserves an imagined African heteronormative nationalism to which SOGI rights have been deemed counterproductive. The first objective constructs the post-colonial state as binary gendered and heterosexual based on ahistorical cultural conceits, while the second determines a masculine, patriarchal state protector of moral authority and traditional beliefs, culture and religions.

This analysis also enabled us to interrogate the veracity of these claims. This determined that the un-African claim is a fiction which draws heavily on conservative desires of the political elite and falsely universalises notions of heterosexuality and binary gender identities on a realistically much more diverse population. In this way, it demonstrated that un-African makes false claims to homogenised heteronormative traditions, cultures and religious beliefs whose real purpose is to challenge the advance of liberal, progressive rights-based regimes from the global North. This claim is closely linked to a more accurate challenge, the encroachment of neoliberal, rights-based norms that are characterised as neocolonial. This charge of neocolonialism revealed political anxieties that included the need to overcome the colonial legacy of oppression by external actors as well as fostering a cohesive nationalism in states that are marked by considerable social, political and sometimes religious difference. These concerns have also been challenged by fears of losing agency, sovereignty and self-determination in the face of powerful international pressure from INGOs, donor states and international institutions.

6 Batting for both sides⁴⁹: South Africa and SOGI rights at the UN

Ambassador Matjila stated in the UNGA in 2016 on the issue of SOGI rights “we always disagree with most of our colleagues in the continent” (UNGA, 2016e). This chapter reviews his conclusion through a queer critical discourse analysis of the debates on SOGI rights within the UNHRC and the UNGA between 2011, when South Africa successfully introduced the first dedicated SOGI resolution (17/19), and 2020, when the UN IE SOGI presented his latest report (44/53). The analysis will seek to identify how support and rejection of SOGI rights initiatives have been discussed within the UNHRC and UNGA with particular emphasis on South African interventions and those of states and blocs presenting objections, thereby focussing on understanding the two sides South Africa bats for; those states from the global North and Latin America that promote SOGI rights and those from across the African continent and membership of the OIC that oppose their promulgation. As noted in Chapter Three a queer discourse analysis is an iterative process that is dependent upon a wider contextual understanding of the issue analysed. This contextual analysis was set out at two levels, the African continental and South African national, in the preceding chapters. This chapter’s review of the UN and those contextual analyses are undertaken simultaneously and are informed by each other; they instruct and provide interpretative meaning to each other throughout the research process.

This chapter presents and analyses the debates that took place within the UNHRC and UNGA on SOGI rights between 2011 and 2020. It begins with a description of the organs of the UN, with particular emphasis on the remit, procedures and relationships of and between the UNGA and UNHRC, as well as South Africa’s role within these organisations. This is followed by a timeline of SOGI dedicated interventions within the UN. The development of these resolutions is then detailed in chronological order so that a trajectory of narratives and potential change over time can be understood. To refer to the methodology section, this analysis takes how SOGI rights and sexual and gender minorities have been put into the discourse and, using a queer lens, asks questions about what that discourse does in terms of creating the normal and perverse and what power underlies those identifications to influence other states’ behaviours, interests and identities.

Therefore, in this analysis section the language used to determine pro and contra arguments for the rights of sexual and gender minorities within the UN is studied and emergent patterns noted. This provides evidence of the narratives used to describe and frame the issues. The analysis draws out key narrative foundations that South Africa uses to support its position on SOGI rights within each debate and in voting on resolutions. This includes drawing upon South Africa’s long history of freedom struggle and the rights enshrined within the Constitution. It also presents the notable objections to SOGI rights, exploring the arguments and confrontations within which South Africa must defend its policy position. There is a particular focus on African contributions to these debates as the African Group has led on some objections and forms the largest continental cohort of the OIC.

⁴⁹ Jordaen, 2017a.

As Onapajo and Isike determined, “Africa provides the largest concentration of states opposed to [SOGI rights]” (Onapajo and Isike, 2016:21). As will be evidenced the key oppositional narratives include the claim that SOGI rights are not universal, they conflict with, largely undefined, traditional, cultural and religious values and beliefs, and they are being enforced through coercive, neocolonial methods.

6.1 The UN, South Africa and SOGI rights

The UN was established in 1945 and its General Assembly (UNGA) currently comprises 193⁵⁰ sovereign state members, which meet annually, from September, at the headquarters in New York, USA. The UNHRC, which meets three times per year in its Geneva, Switzerland headquarters, was created in 2006 out of the UN Commission on Human Rights (UNCHR). The UNHRC’s mandate is defined within the 2006 UNGA resolution A/RES/60/251 Human Rights Council, of which operational paragraph two specifically notes the responsibility for “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without discrimination of any kind and in a fair and equal manner” (UNGA, 2006:para2). This makes the UNHRC the primary UN institution with responsibility for protection, investigation and policy recommendations on human rights globally, although these may also be considered within other UN organs as required. For example, the UN Security Council (UNSC) will consider human rights abuses during conflicts. The remit and scope of the UNHRC is broad, encompassing cultural, economic, social, political and civil rights and special attention is paid to minorities or communities at risk of exclusion, oppression or violence in restriction of their rights, such as women, children, indigenous peoples, ethnic and racial groups, minority religious societies and rural communities. The UNHRC comprises 47 member states, which are elected, by secret ballot, for three-year terms (restricted to a maximum of two consecutive terms) by the UNGA membership. Seats are allocated on a fixed geographical division⁵¹ to ensure a diversity of perspectives from across all continents.

Decisions on actions to be taken within the UNGA and UNHRC are generally made through the tabling of resolutions. Within the UNGA all member states can present resolutions for discussion. Whilst the UNHRC only comprises 47 states, all member states of the UNGA are also able to table and sponsor draft resolutions for the UNHRC to consider. Resolutions in both organs may be passed by consensus, which occurs when no delegation requests a vote after the draft is presented, or by vote of the 193 UNGA members in the UNGA or 47 UNHRC members within the UNHRC. The geographical split on the UNHRC necessitates substantial cross regional support for a resolution to succeed through a vote. Often support for resolutions, demonstrated by co-sponsorship, is garnered

⁵⁰ There are currently two additional observer states (the Holy See and Palestine), which attend meetings but have no voting rights.

⁵¹ Africa: 13 seats; Asia-Pacific: 13 seats; Latin American and Caribbean: 8 seats; Eastern European: 6 seats; Western European and Others: 7 seats.

through leveraging regional groupings, of which there are five⁵², or other blocs, which include associations such as the OIC and the Equal Rights Coalition on Sexual Orientation and Gender Identity (ERCSOGI), which is a group of 42 states⁵³ and over 120 civil society organisations from all regions. When resolutions are tabled, state delegates can give general statements in support or opposition to the resolution and call for a vote if they want to test its popularity. When voting delegates may explain the rationale for their vote before or after voting takes place. It is within these statements that state positions on issues can be understood. It is rare for all delegates to speak; many delegates refrain from explaining the rationale behind their vote. However, the drafted resolutions can be assessed and the sponsors and signees of these should be understood to support their message at the point of drafting.

States may vote for or against a resolution, abstain or not vote at all. Abstentions may occur when states are perhaps supportive conceptually of a resolution, but object on procedural or operational grounds or may be concerned about the implications of the resolution should it pass. There are however many other potential reasons for abstaining on a vote. For this reason, representative explanations of abstentions can provide nuanced analysis of the wider context of an issue being debated. Indeed, for a discourse analysis the act of abstaining on a voting is, by itself, near impossible to interpret and therefore for this study such actions will only rely on the above listed statements (general statements in support or opposition to the resolution and statements on voting rationale given before or after a vote) as available in audio, video, verbatim transcripts or submitted written statements for interpretation of intent.

By tradition, at the end of each year the African Group within the UNGA tables a resolution presenting the annual report of the UNHRC, including all resolutions adopted, to the Third Committee⁵⁴ of the UNGA. This is a contentious procedure, since many states believe that the UNHRC should report directly to the UNGA plenary meeting and not via the Third Committee. Contentious procedural issues such as these can obfuscate intentions behind delegation votes at times, as will be explored in the analysis of the 2016 attempts by the African Group to amend this report and postpone the appointment of the IE SOGI.

⁵² The African Group (54 states); the Asia-Pacific Group (54); the Eastern European Group (23); the Latin American and Caribbean Group (33) and the Western European and Other Group (28).

⁵³ Albania, Argentina, Australia, Austria, Belgium, Cabo Verde, Canada, Chile, Costa Rica, Cyprus, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Iceland, Honduras, Ireland, Israel, Italy, Lithuania, Luxembourg, Malta, Mexico, Montenegro, the Netherlands, New Zealand, North Macedonia, Norway, Portugal, Serbia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay (see <https://www.gov.uk/government/collections/equal-rights-coalition> for more details).

⁵⁴ The UN has six main committees. The mandate of the Third Committee is Social, Humanitarian and Cultural. The other committees are; First Committee (Disarmament & International Security); Second Committee (Economic & Financial); Fourth Committee (Special Political & Decolonisation); Fifth Committee (Administrative & Budgetary); and Sixth Committee (Legal).

6.1.1 South Africa at the United Nations Human Rights Council

Although South Africa, as a founder member of the United Nations, had played an active role in securing the recognition of human rights within the UN at its establishment⁵⁵, the state's suspension from the UN's activities in 1974 meant that it was not a member of the UNGA until 1994 and the UNCHR until 1997. Indeed, South Africa, served, and had voting rights, on the UNHRC, for the following terms, 2006-2007; 2007-2010; 2014-2016; and 2017-2019. Outside these terms the South African UN delegation was still able to sponsor and support resolutions, but they had no voting rights. As will be noted later, South Africa's ground-breaking 2011 resolution on sexual orientation and gender identity was tabled when South Africa was not a member of the UNHRC.

6.1.2 Evolution of SOGI Rights within the UN

Not only was South African Bev Ditsie one of the first activists to raise the issue of the violence and discrimination against lesbians at the UN, during the 1995 Beijing conference, but at the same conference the erstwhile South African Health Minister, Nkosazana Dlamini-Zuma, appealed for all forms of discrimination to end (Girard, 2007:341). Despite these early interventions, persecution based on sexual orientation had mostly only parenthetically appeared in UN special procedure mandate reports, including those on detention, disappearance, execution, freedom, housing, health, education, torture and violence against women, until 2003 when Brazil tabled resolution E/CN.4/2003/L.92, titled Human rights and sexual orientation, for debate at the UNCHR (Inman and Jernow, 2010; Jordaan, 2020:134; Brazil, 2003). This draft resolution, co-sponsored by 20 states⁵⁶ and titled Human rights and sexual orientation, urged all states to "promote and protect the human rights of all persons regardless of their sexual orientation", but faced opposition from the USA, Pakistan on behalf of the OIC and the Holy See as well as a hostile amendment (E/CN.4/2003/L.108) from Egypt seeking to remove all references to sexual orientation (Brazil, 2003; UNCHR, 2003; Girard, 2007:343; McGill, 2014:15; Jordaan, 2017a:214; Jordaan, 2020:134).

South Africa was not a sponsor of E/CN.4/2003/L.92 and when Pakistan proposed a vote of no motion⁵⁷ chose to side with neither supporters nor opposition and abstained. The resolution was debated, but Libya subsequently voted to postpone further discussion, which South Africa supported, this time against the supporters of the resolution (Jordaan, 2017:2014). The following day after another long debate, South Africa abstained on a vote, which the sponsors lost, to postpone voting on the resolution until 2004. Considered a contentious issue without universal applicability a Brazilian diplomat, who participated in the drafting and debate of the statement, reported, "one African diplomat told the Brazilian ambassador that there are no homosexuals in

⁵⁵ As one of the 51 founding charter members of the United Nations in 1945, which signed up to the human rights enshrined in the founding UN Charter (articles 1.3, 55c and 62.2), South Africa's then Prime Minister, Jan Smuts, also pushed for the inclusion of a commitment to fundamental human rights in its preamble, even though domestically he was pursuing racially discriminatory policies (Lloyd, 1990:132-133).

⁵⁶ Co-sponsored by Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland, Croatia, Cyprus, New Zealand, Poland, Serbia and Montenegro, Slovenia and Switzerland.

⁵⁷ A vote of no motion seeks to cancel all discussion or voting on a proposed resolution.

their countries; that this is something that came with the white man” (Girard, 2007:344). Given the extensive objections, when the UNCHR reconvened in 2004, Brazil, under pressure from the Holy See and the OIC, decided not to raise it again. Girard noted that although approached, South Africa also refused to table it, but did not record why (2007:347).

After this controversial debate, SOGI issues subsequently only appeared in a series of joint statements. These were presented at the UNCHR in 2005, by New Zealand on behalf of 33 states⁵⁸, in 2006 at the UNHRC, by Norway on behalf of 54 states⁵⁹, which asked for the UNHRC President to make time for a discussion on the issue in future, and in the first SOGI statement at the UNGA by Argentina in 2008 on behalf of 66 states⁶⁰ notably including African Group members Cape Verde, the Central African Republic, Gabon, Guinea-Bissau, Mauritius, and Sao Tome and Principe (UNCHR, 2005a; ARC International, 2006; Argentina, 2008; Human Rights Watch, 2008; O’Flaherty and Fisher, 2008:230; UNGA, 2008:31; McGill, 2014:16). This 2008 statement was opposed by Syria on behalf of 59 states⁶¹ alleging that it attempted to introduce new ideas, which they argued had no international legal agreement, covered personal choices with no genetic scientific basis and may include “the legitimization of many deplorable acts, including paedophilia” (UNGA, 2008:31-32). Furthermore, the Syrian statement rejected this intervention concerned that it would infringe on the principles of sovereignty and non-interference, be to the detriment of tackling global discrimination based on race, gender, colour and religion and instead requested a focus on “protect[ing] the family as the natural and fundamental group unit of society” (UNGA, 2008:31-32).

South Africa did not sign the 2005, 2006 or 2008 statements, was not a sponsor of the 2008 Syrian response, and, according to the official Summary and Verbatim Records⁶², did not speak when the 2005 and two 2008 statements were presented (UNCHR, 2005a; 2006b; UNGA, 2008:31-32). However, in January 2009 the South African Ambassador to the UN, Ambassador Dumisani Kumalo,

⁵⁸ Andorra, Argentina, Austria, Belgium, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Iceland, Ireland, Luxembourg, Mexico, New Zealand, Netherlands, Norway, Portugal, Republic of Korea, Romania, Slovenia, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela

⁵⁹ Albania, Andorra, Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montenegro, Netherlands, New Zealand, Panama, Peru, Poland, Portugal, the former Yugoslav republic of Macedonia, the Republic of Korea, the Republic of Moldova, Romania, Serbia, Spain, Slovakia, Slovenia, Sweden, Switzerland, Timor-Leste, Ukraine, the United Kingdom, the United States of America and Uruguay.

⁶⁰ Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, São Tomé and Príncipe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela

⁶¹ Afghanistan, Algeria, Bahrain, Bangladesh, Benin, Brunei Darussalam, Cameroon, Chad, Comoros, Côte d’Ivoire, Democratic People’s Republic of Korea, Djibouti, Egypt, Eritrea, Ethiopia, Fiji, Gambia, Guinea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mali, Mauritania, Morocco, Niger, Nigeria, Oman, Pakistan, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Saint Lucia, Solomon Islands, Somalia, Sudan, Swaziland, Syria, Tajikistan, Togo, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uzbekistan, Yemen and Zimbabwe.

⁶² There is no Summary or Verbatim Record or video or audio recording of the 2006 UNHRC session available.

issued a statement confirming that South Africa was in full support of the 2008 Argentinian statement in line with the values of the domestic Constitution (DIRCO, 2009). Subsequently, in 2010 the UN Secretary General, Ban Ki-moon, and UN High Commissioner for Human Rights, the South African Navi Pillay⁶³, as well as the Archbishop Emeritus of the Anglican Church of Southern Africa, Desmond Tutu⁶⁴, and several NGOs and civil society organisations and spokespeople⁶⁵ delivered an address to the UNGA⁶⁶ calling for the end to criminalisation, persecution and violence against LGBT people (UNHRC, 2010; ARC International, 2010).

Despite nearly 15 years of advocacy from international NGOs and escalating state support for each statement on sexual orientation and gender identity, by 2010 the UN had still not agreed a resolution on SOGI rights. Domestically, while several states had introduced legislation against SOGI discrimination in employment and the provision of services and some had introduced same-sex marriage, other states, including Russia, Nigeria and Uganda, had begun introducing more stringent domestic legislation criminalising homosexual activity, support and promotion (Msibi, 2014; Kaoma, 2018). Subsequently, between March 2011 and August 2020 SOGI dedicated resolutions, statements, mandates and reports were discussed in 15 separate annual sessions of the UNHRC and UNGA. Despite the successful passing of four SOGI resolutions within the UNHRC, the issues have met multiple hostile amendments, including a marathon UNGA session in 2016 (the 71st session) (UNGA, 2016a; 2016b; 2016c; 2016d; 2016e; 2016f; 2016g; 2016h). The discussions within these sessions form the focus of this study. The four approved resolutions (17/19; 27/32; 32/2 and 41/18), six SOGI reports and the panel discussions, interactive dialogues, statements, presentations and debates are detailed in Figure 1 (resolutions are highlighted in bold font).

⁶³ Navanethem 'Navi' Pillay, from South Africa, was UN High Commissioner for Human Rights 2008-2014.

⁶⁴ Also a South African.

⁶⁵ Including; David Clarke from SASOD, Guyana; Sunita Kujur from CREA, India; Alice Nkom, Cameroon; Sass Rogando Sasot, Philippines; Viktor Mukasa, Uganda; Syinat Sultanalieva, Kyrgyzstan.

⁶⁶ This event was co-sponsored by 13 states; Argentina, Brazil, Colombia, Finland, France, Ireland, Mexico, Norway, Romania, Slovenia, Timor-Leste, the USA and Uruguay.

Year	UN Body	Session	Title (Resolutions in bold)	Document No.
2011	UNHRC	16 th	<i>16/... The imperative need to respect the established procedures and practices of the General Assembly in the elaboration of new norms and standards and their subsequent integration into existing international human rights law</i> (Requested a working group to define SOGI)	A/HRC/16/L.27
	UNHRC	17 th	17/19 Human rights, sexual orientation and gender identity (Requested report for UNHCHR)	A/HRC/17/L.9/Rev.1 A/HRC/RES/17/19
2012	UNHRC	19 th	<i>Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity</i> (Panel Discussion on UNHCHR report)	A/HRC/19/41
2013	UNHRC	23 rd	<i>Norway Statement on SOGI during General Debate on VDPA</i>	
2014	UNHRC	27 th	27/32 Human rights, sexual orientation and gender identity (Requested update to report of UNHCHR)	A/HRC/27/L.27/Rev.1 A/HRC/RES/27/32
2015	UNHRC	29 th	<i>Discrimination and violence against individuals based on their sexual orientation and gender identity</i> (Presentation of updated UNHCHR report)	A/HRC/29/23
2016	UNHRC	32 nd	32/2 Protection against violence and discrimination based on sexual orientation and gender identity (Established the mandate for the IE SOGI)	A/HRC/32/L.2/Rev.1 A/HRC/RES/32/2
	UNGA	71 st	<i>Report of the Human Rights Council</i> (Reported on the establishment of the mandate of the IE SOGI)	A/C.3/71/L.46 A/71/479
2017	UNHRC	35 th	<i>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</i> (Presentation of the 1 st report of the 1 st IE SOGI)	A/HRC/35/36
	UNGA	72 nd	<i>Protection against violence and discrimination based on sexual orientation and gender identity - Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</i> (Presentation of the 1 st report of the 1 st IE SOGI)	A/72/172
2018	UNHRC	38 th	<i>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz</i> (Presentation of the 1 st report of the 2 nd IE SOGI)	A/HRC/38/43
	UNGA	73 rd	<i>Protection against violence and discrimination based on sexual orientation and gender identity - Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</i> (Presentation of the 1 st report of the 2 nd IE SOGI)	A/73/152
2019	UNHRC	41 st	41/18 Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Extended the mandate of the IE SOGI)	A/HRC/41/L.10/Rev.1 A/HRC/RES/41/18
			<i>Data collection and management as a means to create heightened awareness of violence and discrimination based on sexual orientation and gender identity</i> <i>Visit to Georgia (Add.1)</i> <i>Visit to Mozambique (Add.2)</i> (Presentation of the 2 nd report of the 2 nd IE SOGI)	A/HRC/41/45 A/HRC/41/45/Add.1 A/HRC/41/45/Add.2
	UNGA	74 th	<i>Protection against violence and discrimination based on sexual orientation and gender identity - Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</i> (Presentation of the 2 nd report of the 2 nd IE SOGI)	A/74/181
			<i>Report of the Human Rights Council</i> (Reported on the extension of the mandate of the IE SOGI)	A/C.3/74/L.56 A/74/394
2020	UNHRC	44 th	<i>Practices of so-called 'conversion therapy' – Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</i> (Presentation of 3 rd Report of the 2 nd IE SOGI)	A/HRC/44/53

Figure 1: A chronological list of SOGI specific debates within the UNGA and UNHRC (2011 – 2020).

This next section details, in chronological order, a summary of each of the UN dedicated SOGI rights initiatives presented, discussed and, where relevant, adopted between 2011 and 2020. Each initiative is introduced and explained, noting where relevant those states in support and in opposition, including UNHRC non-member sponsors. Particular attention is paid to South Africa's participation and that of its continental neighbours, reflecting the recognition of the substantial role played by the African Group in these debates and the importance of "socially shared knowledge" in the development, adoption and rejection of new norms in the international system (Wendt, 1999:141-142; Van Wyk, 2004:105). If any initiative within the UNGA or UNHRC resulted in a vote, South Africa's position and those of the African membership are highlighted.

6.2 Analysing South Africa's Contribution to UN SOGI Rights Debates

The following analysis contains extensive detail from the various debates covered. This is required to clearly highlight the claims made by South Africa and the African Group about SOGI rights and thereby provide evidence for the interpretation of these narratives. Drawing upon the guidelines for a queer Foucauldian analysis the narratives are presented in a way to build a picture of how SOGI rights are put into the discourse at the UN, then through a queer lens, understanding how these contribute to and utilise productive power to identify concepts held to be normal or perverse within the debates. In this way it uncovers who or what is "the homosexual" or otherwise identified as deviant.

6.2.1 South Africa the SOGI Rights Pioneer?

The March 2011 16th UNHRC session began positively for SOGI rights, Colombia presented a joint statement on behalf of 85 states from all regions (including the Central African Republic, Rwanda, Sierra Leone and South Africa from the African Group), recognising the contentious nature of these rights internationally, but calling upon the Office of the High Commissioner for Human Rights (OHCHR) and individual states to monitor and end oppression and discrimination (Colombia, 2011; ISHRGlobal, 2011). Nigeria responded, on behalf of the African Group, stressing that the notions of sexual orientation and gender identity were not defined in international law and that at the July 2010 meeting of the African Union:

"African leaders underlined their resolve not to accept nor integrate concepts which have not been universally defined and accepted in international human rights law. The African leaders thereby resent the obsession by other regions or groups to impose their own value systems on other regions, which are not shared by such regions. For their part the African political leaders remain sensitive and respectful of the cultures of other regions and do not harbour undue intentions to make their value systems the predominant values of the international system" (Nigeria, 2011).

Although the record is missing from the UN archive, the Geneva based International Service for Human Rights (ISHR), recorded that Nigeria further declared that the issue of sexual orientation was against “everything Africa stands for” as it impacted upon African priorities of women, children and, supposedly heteronormative, families and ignored the more pressing African issues of health and poverty (ISHR, 2011). The OIC, represented by Pakistan, agreed with the African Group concerns about the imposition of new ideas without legal recognition and further expressed concern that it “shift[ed] the focus from the real issues that constitute marginalisation and exclusion” (ISHR, 2011).

Whilst a signatory to the Colombian statement, South Africa also supported the African Group reiterating the cultural and religious sensitivities and highlighting procedural flaws in the process of drafting the Colombian statement, while lamenting a general lack of inclusivity and transparency in the drafting of SOGI related initiatives within the UN (South Africa, 2011c). South Africa subsequently tabled draft resolution A/HRC/16/L.27, entitled The imperative need to respect the established procedures and practices of the United Nations General Assembly in the elaboration of new norms and standards and their subsequent integrations into existing international human rights law (16/L.27), which aimed to establish a working group to define the “new concept” of sexual orientation within international human rights law (South Africa, 2011b). The draft recommended the group would be the “single modality and framework ... within which all the deliberations on sexual orientation including other initiatives and action shall be undertaken” and gave no deadline for completion (South Africa, 2011b). South Africa initially submitted its draft resolution “on behalf of the African Group”, but it was manually amended to just “South Africa” (South Africa, 2011a). Jordaan (2014c) demonstrated that members of the African Group withdrew their support.

The drafting of this resolution reflected the statement made by the South African delegation during the December 2010 UNGA discussion on the insertion of sexual orientation in the draft resolution on Extrajudicial, summary or arbitrary execution, which South Africa voted to insert, but with the following caveat:

“However, my delegation laments the fact that this matter remains divisive and highly contested, partly due to the manner in which delegations have raised it in connection with all the different agenda items related to human rights. The campaign by some delegations to insert this issue into different draft resolutions in spite of its sensitive nature does not help the cause at all. Since this issue is only recognized in national jurisdictions like ours, we call for an intergovernmental, open and inclusive process to discuss the matter with a view to agreeing on a definition that would make it part of the norms and standards of international human rights law” (UNGA, 2010:16).

A review of the Bulletins of informal meetings, in which public and private UNHRC briefing meetings take place, suggested, ironically, that South Africa had hosted no draft discussions. Drafting without open debate was considered “in bad faith”, additionally it was submitted at 12:57, just 3 minutes before the submission deadline (Jordaan, 2020:135; South Africa, 2011a). Whilst South Africa maintained that it was “not contradictory, nor [did] it seek to undermine any statement as it

addresse[d] the shortcomings and concerns that we have” (South Africa, 2011c), Jordaan accurately determined that given the lack of time frame and restrictions on debate, if passed 16/L.27 would effectively “strangle these rights at the UN” (Jordaan, 2019:175). In other words, SOGI rights could not have been discussed in any other UN forum (ARC International, 2011). Despite voting to reinsert sexual orientation in the 2010 draft resolution, South Africa remained concerned that states were adding the term to draft resolutions and 16/L.27 would have prevented this. However, it was rejected by states who didn’t want to discuss or include SOGI rights at all and by those who didn’t want discussion or inclusion of the issue restricted in this way. In the face of such opposition, South Africa deferred the draft until the June session (Jordaan, 2017a:216-217).

By the 17th session of the UNHRC in June 2011, South Africa had completely changed the content of its draft resolution. No longer seeking to define SOGI but asking the UN High Commissioner for Human Rights (UNHCHR) to produce a global report detailing discriminatory laws and violent acts in the basis of sexual orientation and gender identity and to convene a panel discussion at the 19th UNHRC session (South Africa, 2011e). Introducing the draft resolution, A/HRC/17/L.9/Rev.1 (17/L.9/Rev.1), with 30 co-sponsors⁶⁷, the South African Permanent Representative to the UNHRC, Ambassador Jerry M. Matjila, said:

“South Africa believes that no one should be subjected to discrimination or violence based on their sexual orientation or gender identity. No one should have to fear for their lives because of their sexual orientation or gender identity. No one should be denied services because of sexual orientation and gender identity. The resolution before us today does not seek to impose values on Member States but it seeks to initiate a dialogue which will contribute towards ending discrimination and violence based on sexual orientation or gender identity.” (South Africa, 2011d:1).

The African Group opposed the resolution and the Nigerian ambassador, who reportedly stated the South African action was “breaking in tradition of the African Group” and that the resolution had no domestic support among the South African public, was allegedly rebuked for his vehemently expressed opposition to it (Bejoy, 2016; Jordaan, 2020:135). Despite the cross regional co-sponsorship including Albania an OIC member, Pakistan called for a vote and voiced the objections of the OIC members against these “new rights” for “so-called” notions of sexual orientation and gender identity that have “no legal foundation” and are based on personal “sexual interests and behaviours”. They also warned that the failure to recognise “national and regional particularities and various historical, cultural and religious background” could “jeopardize the entire international human rights framework” (Pakistan, 2011).

Despite these objections there were no hostile amendments raised to postpone or amend the resolution. The resolution was adopted with 23 votes for, 19 against and 3 abstentions. The Africa Group was split in its opposition, with only Mauritius supporting, while Burkina Faso and Zambia

⁶⁷ Albania, Argentina, Australia, Austria, Belgium, Brazil, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Serbia, Slovenia, Sweden, Switzerland, Timor-Leste, United Kingdom, United States of America and Uruguay.

abstained. The remaining, sitting⁶⁸ African Group UNHRC members, Angola, Cameroon, Djibouti, Gabon, Ghana, Mauritania, Nigeria, Senegal and Uganda, all voted against it (UNHRC, 2011b).

6.2.2 The Walk Out

In accordance with the directions of 17/19, during the 19th session of the UNHRC in 2012 a panel discussion, moderated by Abdul Minty, the new Permanent Representative of the Republic of South Africa, was held to discuss the findings of the UNHCHR report, A/HRC/19/41 Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Following statements by the UN Secretary General, Ban Ki-moon, the UNHCHR, Navi Pillay, and by the panellists representing NGOs from Brazil and the USA as well as representatives from the Human Rights Commission of Pakistan and the Council of Europe, the discussion was opened to comments from delegations. According to the ISHR, many OIC members walked out at the beginning of the panel discussion, perhaps to avoid legitimising the issue through engagement, however some, such as Burkina Faso, remained (ISHR, 2012). Amnesty International reported that several delegations also returned when they were called to speak (Gray, 2012).

Pakistan, speaking for the OIC, and Mauritania, on behalf of the Arab Group, both highlighted concerns based on the need to respect different religious and cultural values, the assumed inapplicability of universal human rights on “licentious” personal behaviours and predilections, the importance of traditional families and the concern that other discriminations in the West were being overlooked (and purposively avoided), including racism, religious intolerance and migrants. They ended with both refusing to debate the issue further (UNHRC, 2012).

Senegal, on behalf of the “majority” of the African Group, invoked the 2007 African Charter commitment to democracy, elections and good governance and objected to the alleged imposition of rights for the behaviours of individuals and a perceived lack of respect for regional cultural and religious values (UNHRC, 2012). Nigeria reiterated the African Group statement by highlighting that their November 2011 bill banning same sex marriage was based on extensive public consultation and therefore the democratic will of the people and national interest of the country on SOGI issues (Nigeria, 2012; UNHRC, 2012). Namibia, in a strongly worded rejection of “lesbianism and being gay”, also invoked the African Charter and the need to not include private, individual conduct within the human rights framework (Namibia, 2012). While Russia raised concerns about the impact of sexual and gender minorities on families, South Africa was praised for this leadership by delegations from the Americas, Asia and Europe (UNHRC, 2012).

In a written statement, submitted after the panel time ran out, South Africa responded to the references made to democracy, elections and governance in the 2007 African Charter, highlighting the provisions within the charter that required all state parties to “eliminate all forms of discrimination” and to create a legal environment which would ensure the rights of “other marginalized and vulnerable social groups”, including respect for “cultural and religious diversity”

⁶⁸ Libya had been suspended on 01 March 2011 and was not readmitted until November 2011.

(South Africa, 2012a:1). Following the 2012 panel discussion South Africa issued a concept paper setting out a plan for five regional seminars (in Africa, Asia, Eastern Europe and South or Central America and the Caribbean) to be delivered in the first quarter of 2013 with, unnamed, “close friends of the initiative” (South Africa, 2012b:3-4). The aim would be to educate and raise awareness on SOGI issues to overcome concerns that were preventing consensus around their inclusion within human rights instruments at the UNHRC (South Africa, 2012b:3). The concept note acknowledged that although there appeared to be consensus in concern about violence and discrimination based on SOGI and that the perceived North-South divide on this issue had largely been overcome there persisted the idea that this was not a priority for the UNHRC and that it conflicted with “personal convictions about culture, religion and beliefs” (South Africa, 2012b:1). Furthermore, the note favoured a cross-regional approach, which would avoid singling out particular countries (South Africa, 2012b:1).

6.2.3 South Africa Prevaricates

By April 2013, South Africa and Norway had hosted regional seminars in Brasilia, Kathmandu and Paris and an international conference in Oslo (South Africa and Norway, 2013:3). Although the promised African seminar had not taken place, several African NGOs participated in the Oslo conference and contributed to the final report (South Africa and Norway, 2013:23-25). The report included statements from the UNHCHR, Navi Pillay, and the UN Assistant Secretary General for Human Rights, Ivan Šimonović, expressing a desire for further UN actions (South Africa and Norway, 2013:34-39). However, the co-chair’s statement, notwithstanding recognising the necessity to consider religious, cultural and tradition particularities, suggested only the “establishment of relevant mechanisms, at the appropriate time” to provide reports to the UNHRC that record, inform and recommend strategies as well as offering technical assistance (South Africa and Norway, 2013:5). Effectively it demanded no precise actions and no defined timeline.

During the general debate on the 20th anniversary of the adoption of the Vienna Declaration and Programme of Action⁶⁹ (VDPA) at the 23rd session of the UNHRC later in 2013, Norway delivered a statement on behalf of 33 signatories⁷⁰ reflecting the Oslo conference co-chairs call for continued dialogue and actions, but South Africa wasn’t a signatory (Norway, 2013). Jordaan confirmed that South Africa had been approached by Norway, alongside Brazil, to jointly draft the statement (Jordaan, 2017a:219). However, in the session the South African Ambassador expressed regret that they could not agree with Norway’s desire for immediate action and argued that “Africa’s views need to be heard” favouring “further interaction and co-operation” and committing to hosting the African regional conference to ensure progress. Ambassador Minty declared that South Africa preferred incremental action supporting sustained open dialogue both within and outside the

⁶⁹ Vienna Declaration and Programme of Action (A/CONF.157/23) was adopted by the UN General Assembly on 12 July 1993.

⁷⁰ Argentina, Australia, Austria, Belgium, Brazil, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Mexico, Montenegro, Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

UNHRC, focussing on domestic and regional trends and “discouraging any condemnatory or confrontational approach to this thematic issue” (South Africa, 2013).

This time there were no statements in opposition, although the Netherlands reminded delegates that within the wording of the VDMA “discrimination on the grounds of sexual orientation is implied as well as is discrimination based on albinism which gets explicit attention in this session” (The Netherlands, 2013; UNHRC, 2013a). This may have been a reference to the adoption by consensus of the African Group sponsored resolution on albinism (A/HRC/RES/23/13 Attacks and discrimination against persons with albinism) and previous concerns that SOGI rights resolutions detract from other discriminations, such as racism and gender-based violence (Gabon, 2013; 23/13, 2013). Albinism is an issue that, for some, has been equally mired in cultural bias and suspicion in parts of Africa (Voss, 2017:18).

6.2.4 Seven Hostile Amendments

The following year, at the 27th session of the UNHRC, the Brazilian delegation tabled resolution A/HRC/27/L.27/Rev.1 (27/L.27/Rev.1) on behalf of 44 sponsors⁷¹ from all regions except Africa. This resolution requested an update in time for the 2015 UNHRC 29th session to the UNHCHR’s 2012 SOGI report (A/HRC/19/41 Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity) with the inclusion of a best practice review for overcoming discrimination and violence. Although based on resolution 17/19, which had been approved by vote in 2011, Egypt presented seven amendments⁷² on behalf of ten states⁷³, eight of which were members of the OIC, and seven were African. Six of the amendments sought to replace all references to “sexual orientation and gender identity” including in the title of the resolution, with the broader “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, while 27/L.49 sought to add the following paragraph, “Reaffirming the sovereign right of each country, consistent with national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people, and in conformity with universally recognized international human rights” (UNHRC, 2014a; 2014b; 2014c; 2014d; 2014e; 2014f; 2014g).

Introducing these amendments, Egypt said that the sponsors were concerned that sexual orientation and gender identity were new notions enjoying no international consensus nor definition in international human rights law and as such would create “a new category of persons” with “special protection” based on “private sexual behaviour”. Additionally, they were deemed contrary to particular cultural, religious and ethical beliefs and portentously the delegate determined that if

⁷¹ Albania, Argentina, Australia, Austria, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

⁷² A/HRC/27/L.45 (27/L.45), A/HRC/27/L.46 (27/L.46), A/HRC/27/L.47 (27/L.47), A/HRC/27/L.48 (27/L.48), A/HRC/27/L.49 (27/L.49), A/HRC/27/L.50 (27/L.50) and A/HRC/27/L.51 (27/L.51).

⁷³ Bahrain, Congo, Djibouti, Egypt, Malaysia, Nigeria, South Sudan, Sudan, Uganda and United Arab Emirates

passed the resolution would have created “an inevitable division that can cast its gloomy shadows on the future of the human rights council and its capacity to assume its role as an international platform for international co-operation and dialogue” (UNHRC, 2014h).

In essence these reflected the same objections tabled by Pakistan on behalf of the OIC in 2011 and 2012 (Pakistan, 2011; UNHRC, 2012). Egypt lamented that certain parties were behaving divisively through coercive imposition of their value systems that infringed upon state sovereignty to devise national legal and development strategies and called out “threats” that included “political and economic punitive actions” even though the resolution made no specific demands on individual states (UNHRC, 2014h). The delegate concluded, “Many states remain solidly proud of representing their societies and peoples, reflecting their values, cultures and social backgrounds and realities and also remain firmly committed to upholding and respecting the universality of human rights that this draft resolution aims at liquidating and undermining” (UNHRC, 2014h). In support, Saudi Arabia suggested that if the draft resolution were passed in its current form, it would itself be a violation of human rights by imposing alien values and that religious and cultural specificities must be protected from such (UNHRC, 2014h). Pakistan spoke on behalf of the OIC members of the UNHRC urging that “the wider connotations of the term sexual orientation can be extremely detrimental and inimical to our Muslim societies in particular and to our youth as a whole” (UNHRC, 2014h).

Brazil, rejecting all the tabled revisions, called for a vote; while Ireland noted that by removing all references to SOGI the amendments would introduce “uncertainty” to the resolution (UNHRC, 2014h). Chile stressed that cultural specificities were already addressed, Italy emphasised that this was merely an extension of an already approved resolution and Montenegro noted that not only did this resolution not create any new rights, but states were also under no obligation to do anything as a result of its passing (UNHRC, 2014h). Austria even asked:

“Does anyone think there is no such thing as violence and discrimination based on sexual orientation and gender identity? Or, does anyone think that this particular form of discrimination does not merit consideration? With some reflection we should be able to conclude that this report is indeed warranted” (UNHRC, 2014h).

Subsequently, the USA stated:

“We appreciate that today’s vote is not an easy one for many states and that the issues we face today are the subject of controversy and also rapid change in many member states, including my own. But just as some, at some point in history had claimed, for cultural reasons justified slavery and discrimination and apartheid [sic], we stand firmly for the idea that human rights are universal. Cultural or regional differences simply cannot justify discrimination, it cannot excuse violence in any way or in any place or against any person” (UNHRC, 2014i).

Although not a sponsor, South Africa’s Ambassador Minty confirmed support for the resolution, in accordance with the South African Constitution and voted against all seven hostile amendments.

However, he deplored that “[t]he spirit of this resolution, is in stark contrast to the unhelpful and divisive use of development aid by some countries as a means to shift policies and laws in a select number of countries” (UNHRC, 2014i). Additionally, Jordaan noted that South Africa had been one of the states responsible for reducing the reporting requirement in the final proposed draft resolution from a report to the UNHRC every two years to a single update (Jordaan, 2017a:221-222). Therefore, although South Africa supported the resolution, they had already restricted its duration.

The only other African state to explain their vote, Botswana, indicated that although domestically violence and employment discrimination on the basis of sexual orientation have both been outlawed, as the state has adapted to social change and greater inclusivity, their vote against the resolution was not a reversal, but recognised the cultural and religious values that prevented SOGI rights from achieving national or universal recognition. Nevertheless, they remained “open to dialogue at national and international level” (UNHRC, 2014i).

A regular opponent of previous SOGI resolutions, China, abstained in the vote confirming that they were concerned for the protection of cultural and religious values but agreed that discrimination should not be tolerated (UNHRC, 2014i). Indeed, in the final vote, of the seven states sponsoring the amendments only two, Congo and United Arab Emirates, were UNHRC members, yet the delegation from Congo abstained on the final resolution, despite not containing any amendments (UNHRC, 2014j). In the end 27/32 was passed without any further amendments and Burkina Faso, Namibia and Sierra Leone all abstained rather than rejected the resolution (UNHRC, 2014j).

6.2.5 “We are not gays!”

In 2015, the A/HRC/29/23 report (29/23), which resulted from 27/32 of 2014, was discussed as part of the general debate on the follow-up to and implementation of the Vienna Declaration and Programme of Action (Under Agenda Item:8) during the UNHRC 29th session. Several states, including the USA and Colombia (on behalf of an international group of states), welcomed the report and the recommendations within it (UNHRC, 2015a). However, it was not mentioned by many states and although South Africa was a member of the UNHRC, they did not speak during this meeting. Although Algeria spoke on behalf of the African Group, the delegate did not mention the report, while Pakistan, on behalf of the OIC, reiterated early concerns that sexual orientation had no place in the UN and should not be imposed “without any regard for cultural or religious sensitivities and differences” (UNHRC, 2015b).

Although the UNHRC report, A/HRC/29/23, was included in the UNHRC Annual Report resolution in the UNGA 70th session, it passed without contest. However, the session was noteworthy for an outburst from Zimbabwean President Mugabe, who stated:

*“We [...] reject attempts to prescribe new rights that are contrary to our values, norms, tradition, and beliefs. **We are not gays!** Cooperation and respect for each other will advance the cause of human rights worldwide. Confrontation, vilification and double-standards will not” (emphasis added, UNGA, 2015).*

His speech included several negative remarks aimed at the USA and President Obama, who at the time was popular among some African publics, for pursuing the advancement of SOGI rights through US international relations and imposing sanctions against Zimbabwe for the suppression of democracy (UNGA, 2015).

6.2.6 Independent Expert Mandate

The year 2016 saw three interventions involving South Africa in the international promotion of SOGI rights. In March, South Africa finally hosted the belated African Regional conference on SOGI issues, at the 32nd Session of the UNHRC the following June delegations debated and approved the appointment of new mandate holder for SOGI rights, the Independent expert on the protection against violence and discrimination on the basis of sexual orientation and gender identity (IE SOGI) and the 71st Session of the UNGA in December saw four separate attempts, across 6 meetings, to stall the appointment of the IE SOGI for another year, despite the fact that he had already been engaged by consensus the previous September.

In March South Africa finally hosted the African regional conference, entitled Finding practical solutions to address violence and discrimination based on sexual orientation, gender identity, and expression, of the five conferences promised by the state and Norway in 2014. The aim was to gain regional input to inform and debate the issues, concerns and roadblocks to the wider promulgation of the protection of SOGI rights. Held in Gauteng, South Africa, the three-day conference was hosted by South African Minister of Justice and Correctional Services, Tshililo Masutha MP (Adv), who welcomed the “distinguished audience of Excellences’ and Representatives of Foreign Missions stationed here in South Africa, representatives of international organisations and most importantly the human rights defenders”, suggesting that there were no African heads of state or ministers attending (Masutha, 2016).

Opening the event, Masutha reminded participants of the 2014 adoption by the African Commission on Human and Peoples’ Rights (ACHPR) of resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (ACHPR, 2014) and, lamenting the long journey ahead for equality, hoped that AU member states could engage in dialogue “in a non-confrontational manner” (Masutha, 2016). He confirmed South Africa’s commitment to SOGIE (sexual orientation, gender identity and expression⁷⁴) issues, stating “Keeping SOGIE issues on the global agenda, means we must enhance efforts to raise awareness, build networks and strengthen collaborations and partnerships as well as endeavor to act as catalysts for positive policy and legislation” (Masutha, 2016).

The Minister also addressed the concerns expressed in previous UN meetings on whether support for SOGI rights infringed upon traditional, religious and cultural beliefs citing a previous statement by the UNHCHR, Navi Pillay, who had said “[t]he balance between tradition and culture, on the one

⁷⁴ This differs from SOGI used in the UN by the addition of ‘expression’, which includes those people whose manner of dress or behaviour might not comply with societal norms of binary gender and who may not identify in accordance with such expressions.

hand, and universal human rights, on the other, must be struck in favour of rights” (Pillay, 2012). Masutha concluded his address reiterating South Africa’s commitment to SOGI rights in Africa, as well as affirming his and South Africa’s Africanness:

“I stand before you, both as a leader and son of the African soil with main objective as African States, to ensure these proceedings and the outcome thereof, namely the Declaration, will be of full benefit to our continent, especially to the victims and survivors of these horrendous violations ... It is a message that we must spread all over Africa, we must build communities and a society in which persons are accepted and respected, irrespective of one’s sexual orientation, gender identity and expression, by all including their States” (Masutha, 2016).

The conference ended with the publication of that declaration, the Ekurhuleni Declaration On Finding Practical Solutions for Addressing Violence and Discrimination Against Persons Based on Sexual Orientation, Gender Identity and Expression (2016), which, in the form of a resolution, detailed concerns and practical actions to address a variety of issues related to the fulfilment of SOGI rights on the African continent. Whilst the conference can be seen to have highlighted South Africa’s commitment to furthering SOGI rights through dialogue and education on the continent, as the subsequent backlash at the UN meeting that followed demonstrated, it may have had little impact on governments throughout the continent.

While UNHRC resolution 17/19 of 2011 was considered ground-breaking the events at the UN in 2016 demonstrated that resistance to SOGI rights had not decreased. At the 32nd regular session of the UNHRC Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay (LAC7) tabled draft resolution A/HRC/32/L.2/Rev.1 Protection against violence and discrimination based on sexual orientation and gender identity (32/L.2/Rev.1), which was sponsored by 42 states from all regions including Angola as the sole African representative (Albania et al, 2016). This resolution called for the establishment of the first official mandate holder to continue the development of knowledge, engagement and reporting on SOGI rights. Opposition to the proposal came in the form of a motion of no action from Saudi Arabia, 11 amendments⁷⁵ tabled by Pakistan on behalf of the OIC excluding Albania and a request for votes on the retention of four separate sections of text (including the title of the resolution itself) from the Maldives and Qatar. Debating these requests and the 17 required votes took three and a half hours (UNHRC, 2016l).

After the draft resolution was introduced by three of the co-sponsors, Chile, Uruguay and Brazil, Saudi Arabia called for a no action motion to postpone the voting on the resolution. They were supported by Nigeria, speaking on behalf of the OIC except Albania, who raised concerns about the imposition of the “LGBT agenda” of Western ideals on diverse cultural, traditional and religious communities in a manner that would threaten sovereignty of those states and that neither “sexual orientation and gender identity” nor “discrimination” were undefined and could impact on other

⁷⁵ A/HRC/32/L.71 (32/L.71), A/HRC/32/L.72 (32/L.72), A/HRC/32/L.73 (32/L.73), A/HRC/32/L.74 (32/L.74), A/HRC/32/L.75 (32/L.75), A/HRC/32/L.76 (32/L.76), A/HRC/32/L.77 (32/L.77), A/HRC/32/L.78 (32/L.78), A/HRC/32/L.79 (32/L.79), A/HRC/32/L.80 (32/L.80), A/HRC/32/L.81 (32/L.81).

freedoms, including “freedom of expression, freedom of opinion and freedom of religion” (UNHRC, 2016l). They also argued that the “LGBT agenda as it has played out in Western nations will be advanced at the United Nations under the guise of impartiality and expertise, including on issues such same-sex marriage and same-same (sic) adoption rights, which go far beyond matters of gross mistreatment and violence...in fact the draft L.2 is intended to defy the cultures, traditions of the global majority regardless of the consequences” (UNHRC, 2016l).

Later Nigeria noted that domestically they had legislated against LGBT rights on cultural grounds (UNHRC, 2016l). The no action motion was voted down and Pakistan, on behalf of the OIC⁷⁶ except Albania, presented 11 separate amendments to the resolution, again invoking, as Nigeria earlier, concern for the respect of “cultural and religious particularities” (UNHRC, 2016l). The amendments sought to remove all references to SOGI and replace them with general text from the Universal Declaration on Human Rights and introduce sections to emphasise sovereign rights to different traditions and cultural and religious differences (UNHRC, 2016a; 2016b; 2016c; 2016d; 2016e; 2016f; 2016g; 2016h; 2016i; 2016j; 2016k). These amendments have been presented in full here to demonstrate the language used both for these amendments and successive challenges in subsequent years, in which they were largely replicated. They have been grouped by their aims:

Amendments 32/L.71, 32/L.72 and 32/L.80 attempted to remove references to previous SOGI resolutions and replace “sexual orientation and gender identity” with “any basis such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (UNHRC, 2016a; 2016b; 2016j). These were all rejected by vote thereby retaining the intended specificity of the resolution (UNHRC, 2016l).

Amendments 32/L.75, 32/L.76, 32/L.78 and 32/L.79 all invoked particularities of religious, cultural and traditional values. These were all voted in and therefore are in the final resolution (UNHRC, 2016l; UNHRC, 2016m):

- 32/L.75 *“Reiterating the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues” (UNHRC, 2016e).*
- 32/L.76 *“Underlining the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities” (UNHRC, 2016f).*
- 32/L.78 *“Concerned by any attempt to undermine the international human rights system by seeking to impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework, and taking into account that such attempts constitute an expression of disregard for the universality of human rights” (UNHRC, 2016h).*
- 32/L.79 *“Underlining that the present resolution should be implemented while ensuring respect for the sovereign right of each country as well as its national laws, development priorities, the various religious and ethical values and cultural backgrounds of its people, and*

⁷⁶ Half the membership of which are members of the African Group at the UN.

should also be in full conformity with universally recognized international human rights” (UNHRC, 2016i).

Amendments 32/L.74 and 32/L.81 were both based on the claim that a focus on SOGI rights would be detrimental to other forms of discrimination and effectively sought to remove any emphasis on SOGI rights. 32/L.74 passed the vote and was included in the final resolution (UNHRC, 2016m), but 32/L.81, which would have replaced the mandate holder with another UNHCHR report, was rejected by vote (UNHRC, 2016l):

- 32/L.74 *“Undertaking to support its broad and balanced agenda, and to strengthen the mechanisms addressing issues of importance, including fighting racism, racial discrimination, xenophobia and related intolerance in all their forms” (UNHRC, 2016d).*
- 32/L.81 *“Requests the High Commissioner for Human Rights to present a report to the Thirty fifth session on protection of all individuals against violence and discrimination committed against individuals because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with a focus on major challenges and best practices in this regard.” (UNHRC, 2016k).*

Finally, amendments 32/L.73 and 32/L.77 targeted perceived coercive methods used to impose SOGI rights and were both adopted into resolution 32/2 (UNHRC, 2016m):

- 32/L.73 *“Stressing the need to maintain joint ownership of the international human rights agenda and to consider human rights issues in an objective and non-confrontational manner” (UNHRC, 2016c).*
- 32/L.77 *“Deploing the use of external pressures and coercive measures against States, particularly developing countries, including through the use and threat of use of economic sanctions and/or application of conditionality on official development assistance, with the aim of influencing the relevant domestic debates and decision-making processes at the national level” (UNHRC, 2016g).*

Reporting on the debate, the SOGIESC and LGBTI⁷⁷ NGO ARC International observed that some of the amendments were aimed not just at diluting the focus on SOGI rights, but reframing them in opposition to other discriminations, particularly racism (which enjoys universal consensus) in 32/L.74, and ignored the impact multiple forms of oppression have had on marginalised citizens. This intersectional impact was already covered in operational paragraph 2 of 32/L.2/Rev.1 (ARC International, 2016:27). Their report also noted that 32/L.77 suggested concerns with the possibility of coercion, particularly economic, to force “developing countries” to adopt SOGI rights and noted that this conflicted with the developing nation status of the main sponsors of 32/L.2/Rev.1 (ARC International, 2016:27; UNHRC, 2016g). However, the broader context within which this resolution was raised did follow a period of threats of coercive measures by developed countries such as the US and the UK.

⁷⁷ SOGIESC (sexual orientation, gender identity/expression and sex characteristics) and LGBTI (lesbian, gay, bisexual, *trans and intersex) are both used by the organisation to describe its focus of activities (see <http://arc-international.net/about/>).

Of the 18 countries that voted against the final resolution, nine were members of the African Group, including Algeria, Burundi, Congo, Côte d'Ivoire, Ethiopia, Kenya, Morocco, Nigeria and Togo. This time Morocco raised the threat to the continuity of the UNHRC that the divisiveness of this proposed resolution would cause. Many of the states that spoke against the resolution declared they would not engage with the mandate holder (UNHRC, 2016I). As pointed out by ARC International, refusing to engage with a mandate holder created by majority vote was more likely to erode the work of the UNHRC (ARC International, 2016:72).

South Africa abstained in the no motion vote, which failed, voted for 32/L.73, 32/L.74 and 32/L.77, which all passed and were added to 32/2, and abstained on the rest, notably including all those related to recognising traditional, cultural and religious diversity but also all those that sought to remove references to sexual orientation and gender identity (UNHRC, 2016I). In abstaining in the final vote, South African Ambassador Mxakato-Diseko mentioned, in an explanation of vote before the vote, "unnecessary divisiveness" and called for greater unity, stating, "In conclusion, Mr President, there is an African proverb that if you want to walk fast, then walk alone and if you want to walk far, walk together and with others" (South Africa, 2016).

South Africa was not the only African state to abstain, Botswana, Ghana and Namibia all chose to do so too rather than vote down the resolution. Botswana noted that the issues were not adequately defined, but based on "historical, cultural, social and religious sensitivities" allowing dialogue was important (UNHRC, 2016I). Ghana abstained because although they were against the 2011 SOGI resolution, the passing of the pro-SOGI resolution ACHPR/Res.275 (LV), 2014 and the Orlando shooting⁷⁸ had altered their views on the issue (UNHRC, 2016I). The Ghanaian delegate cited the sensitive cultural concerns and the case of a Ghanaian man convicted of anal sex with an underage boy that had hardened national social attitudes to same-sex marriage and homosexuality, which meant that they could not support the resolution or any "propagation or commercialisation of [homosexuality]", but affirmed that the state supported those who are "naturally inclined or by nature have a particular gender identity" (UNHRC, 2016I). While Namibia highlighted the domestic commitment to the prohibition of all forms of discrimination in Namibia but argued that the lack of international human rights law on these issues to guide the IE SOGI's mandate remained a concern (UNHRC, 2016I).

It must be noted that the abstentions within the African Group represented significant movement for Botswana, who voted against 27/32 in 2014 and Ghana, who voted against 17/19 in 2011. Even the Namibian abstention suggested progress from their homophobic contributions to the 2012 panel debate (Namibia, 2012).

Following the successful, albeit close, passing of resolution 32/2, the IE SOGI position was filled in September 2016 by Vitit Muntarbhorn, a Thai national with extensive UN and SOGI experience, having been involved in the development of the Yogyakarta Principles. However, in the subsequent

⁷⁸ In June 2016 a gunman shot 49 people dead and injured another 53 people in a gay nightclub in Orlando, Florida, USA. The gunman was known to frequent the club and had made homophobic remarks to his family and so the shooting is understood to have been a homophobic hate crime (Orlando nightclub shooting ..., 2016).

71st UNGA Session in October, the routine annual report of the UNHRC was marred by an African Group attempt to revoke the appointment. This action necessitated six amendments and resolution votes in two UNGA committees and plenary sessions.

In the final session of the UNGA each year, the African Group tables a resolution for the UNHRC annual report to the Third Committee⁷⁹. At the 71st session this included the landmark resolution 32/2 to appoint the special IE SOGI mandate holder. However, the African Group, in an unusual move, inserted an oral amendment to Operative Paragraph 2 (OP2), that if passed would have deferred the appointment of the IE SOGI “for further consultations to determine the legal basis upon which the mandate of the special procedure established therein would be defined” (Botswana, 2016; UNGA, 2016a; UNGA, 2016b). In other words, a delay until the terms sexual orientation and gender identity were defined by international legal consensus.

Botswana, on behalf of the African Group, first presented the amendment to the UNHRC report on 04 and 05 November in the 41st UNGA Plenary meeting and issued a written draft resolution, A/C.3/71/L.46 (71/L.46), to the 45th Third Committee meeting, the debate for which continued in the 46th Third Committee meeting (UNGA, 2016a; UNGA, 2016b; UNGA, 2016c). The African Group expressed concern that some states were seeking to impose new concepts, based on individual “sexual interest and behaviours”, that enjoyed no international legal recognition within human rights instruments, which would ultimately undermine the human rights framework, national sovereignty and the principle of non-interference, as well as deflect from tackling other important work including the right to development and addressing other forms of discrimination such as racism (UNGA, 2016a; UNGA, 2016b). In light of this, Botswana advised that OP2 of their draft resolution would defer any action on the special mandate holder thereby effectively freezing the activities of the already appointed IE SOGI. Botswana advised that the amendment was required to allow time to agree terms that could heal substantial divisions (UNGA, 2016a; UNGA, 2016b).

Delegations supporting the amendment included Sudan, arguing for the preservation of sovereignty and more constructive co-operation, and Egypt, reiterating the alleged lack of international consensus as well as concern for the imposition of values that may be culturally or religiously incompatible (UNGA, 2016a). Representatives of the UK, Costa Rica, Brazil, Ireland, the EU and the USA expressed opposition to the amendment. Most expressed both concern for sexual and gender minorities globally and the threat this posed to the independence of the UNHRC (UNGA, 2016b). Notably, Ethiopia, although a member of the African Group, without mentioning 32/2 warned against reopening issues already voted upon at the UNHRC (UNGA, 2016a). Although this works in favour of the IE SOGI mandate, it may be seen as a commitment to the integrity and independence of the UNHRC, mirroring some of the voices of those states opposing OP2 and indicating that there was not necessarily consensus behind the African Group statement.

The South African representative Ambassador Mxakato-Diseko spoke three times, without mentioning the IE SOGI, but seeking guidance on whether the UNHRC should be primarily

⁷⁹ The UNGA committee for Social, Human and Cultural issues.

accountable to the UNGA Plenary or Third Committee, making a general commitment to the principles of constructive dialogue and advising that they would always be guided by the Constitutional protections against discrimination on all grounds, listing race, gender, sex, culture, religion, sexual orientation and age among others, and the principle of multilateralism (UNGA, 2016a; UNGA, 2016c).

Apparently in response to some of the opposition to the proposed amendment to the UNHRC report, two further African announcements were circulated. On 09 November the Permanent Observer Mission of the AU to the UN issued an explanatory note on 71/L.46, seeking support for the amendment by determining that it was presented in keeping with “the universally accepted principles of respect for the independence and sovereignty of member states” (Permanent Observer Mission of the African Union, 2016). Then on 15 November Botswana, again speaking on behalf of the African Group, qualified the amendment with a further oral amendment in the 49th Meeting stating that the deferment would only be until the 72nd UNGA Session, while explaining the amendment Botswana reconfirmed that they were not seeking to question the legitimacy of the UNHRC to create special mandates but to gain time to find a legal definition for the contested terms sexual orientation and gender identity (UNGA, 2016d).

The draft resolution from the African Group was formally presented in the Third Committee in the 53rd Meeting on 21 November. A group of eight Latin American countries⁸⁰ (LAC8) led by Argentina requested, via amendment A/C3/71/L.52, a vote to remove OP2. Although some African delegations spoke out in favour of the delay, including Burundi, Cameroon, the Congo and Nigeria, the South African Ambassador, Matjila, made an impassioned statement before the vote, which was later described by the delegation from the Netherlands as “impressive” (UNGA, 2016f) and is transcribed here in full:

*“Thank you, Madam Chairman for giving me the floor. Madam Chairperson, I was really not intending to speak, and this is the first time you hear my voice in this committee. I would like to explain how South Africa will vote for this resolution before us. And Madam Chairperson our position is not based on whether we are for or against, it is **a principled position because of our constitution**. It’s a constitutional prerogative that we have to vote either way, or this way. Madam Chairperson, this is a very difficult subject and it is a matter very close to our hearts in South Africa. It is a matter that many people have laid their lives, who have died and imprisoned, the question of discrimination. Discrimination teared [sic] South Africa apart for over 350 years. And our people, both black and white, straight and not straight, came together after many, many years of painful struggles, to bury discriminations once and for all. And that’s why the very first chapter of our constitution, the Bill of Rights, is very, very clear on the type of South Africa we fought for, were imprisoned for, were exiled for, is a South Africa without discrimination. We do not want to see discrimination to anyone under whatever circumstances whatsoever. We will fight*

⁸⁰ Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay.

*discrimination, Madam Chair, everywhere, every time. We cannot discriminate against people because of their own lifestyle or orientation. That we cannot do in South Africa. We cannot discriminate against people because they are LGBTI; we cannot do that Madam Chair. In South Africa we will not do that. **It is a position that sometimes we do not agree with most of our friends in the continent, but it is a position that we resolve we will always take.** It's not a question of majority states in the continent. It is a question of our values and our beliefs. It is something we have died for and we'll keep all the time. Even if we are alone on this one, Madam Chair, we remain standing and fighting it. Madam Chair, I say this thing with a heavy heart, because **with this one, we always disagree with most of our colleagues in the continent.** And it is no secret, it is well known. South Africa is still healing the wounds, deep wounds, caused by discrimination. Racial discrimination. We are not going to add fresh wounds to these wounds we are trying to heal in South Africa, Madam Chairperson. And I am sure all of you will understand this position. **I'm sure my colleagues from Africa, from developing countries, from the West, from the East, from the South, from the, you will understand this position.** We are not going to add more wounds when we are still healing wounds in South Africa, because of discrimination. Therefore, Madam Chair, we will vote based on our constitutional imperative" (emphasis added, UNGA, 2016e).*

This statement candidly acknowledged the South African position referencing the wounds that racial apartheid had inflicted, drawing a clear parallel between racial and SOGI discrimination and recognising that they are not always in agreement with their continental neighbours.

The Nigerian delegate followed and once again emphasised tradition, culture and religion and invoked their own national legislation on sexual orientation, while arguing that the resolution couldn't be accepted since there was no definition for sexual orientation or gender identity in international law. In addition, seemingly in response to the South Africa statement, the Nigerian delegate stated:

"the subject at this time is not about commitment to human rights or discrimination has been imputed by some members, even among us, but that through which a particular mandate should operate through a consensual arrangement. We strongly defend the stand of the African Group on this subject and want to place on record that when we talk about racial discrimination or other discrimination, Nigeria's credentials stand tall" (UNGA, 2016e).

Following these unusually impassioned declarations, the LAC8 amendment passed by a 7-vote margin, with notable support from Cape Verde, the Seychelles and South Africa, while Guinea-Bissau, Liberia and Rwanda abstained indicating that the African Group was not unified on the issue (UNGA, 2016e).

Despite this, speaking after the vote, Botswana stated that the African Group disassociated itself from the adopted amendment, a view that was vocally supported by Uganda, Libya, Mauritania, Sudan, Cameroon, Niger, Yemen and Tanzania. Likewise, Egypt, speaking on behalf of the OIC except Albania, disassociated the group from the mandate of the IE SOGI (UNGA, 2016e). Notwithstanding the outcome of the vote, Nigeria expressed concern that 32/2 “introduce[d] other obligations and commitments that go against our national outlook” adding:

“In view of the new interpretation given to the concept of sexual orientation and gender identity, it has become necessary to object to this concept and mechanism arising from it due to its negative implications given that it conflicts with the constitution of a vast majority of African countries, including in my own country, as well as the legislative, political system, religious beliefs, juridical tenants, and other fundamental principles.” (UNGA, 2016e).

Once again this can perhaps be seen as a rebuttal of the South African appeals to unity on the continent as well as asserting that Nigeria would not be alone in refusing to acknowledge the mandate of the IE SOGI despite the split in the African Group vote.

Despite losing this vote, the African Group attempted to reinsert their paragraph again at the 65th Plenary meeting on 19th December 2016. This time Burkina Faso spoke on behalf of the African Group presenting amendment A/71/L.45 to the UNHRC report deferring action on 32/2 until the 72nd Session of the UNGA (UNGA, 2016f). Acknowledging the amendment had been rejected in the previous vote, Burkina Faso suggested it had been intentionally misrepresented as an attempt to curtail the authority of the UNHRC. The representative also noted that the African Group were particularly troubled that the IE SOGI appeared to have defined his own mandate, as outlined in his priorities presented at the ILGA World Conference⁸¹, suggesting this was a violation of the mandate and reiterating that the rights he is working for are not legally recognised. Once again, the African Group called for the respect of state sovereignty and more time to reach definitional consensus on the notions of sexual orientation and gender identity (UNGA, 2016f).

Responding, Slovakia, on behalf of the EU and member states, acknowledged that while this might be a sensitive issue for some states the integrity of the UNHRC to determine its own mandates had to be protected. Netherlands aligned with the EU on protection of the integrity of the UNHRC and added that the lack of international consensus on the issue reflected similar historical and contemporary splits within Dutch society, but stressed the continued imprisonment, violent attacks and murder of sexual and gender minorities could no longer be tolerated anywhere (UNGA, 2016f). In addition, the Dutch delegate referenced Ambassador Matjila’s statement from the 45th Meeting, perhaps to highlight an African voice on the issue (UNGA, 2016f).

⁸¹ On the 30 November 2016, after the Third Committee meetings detailed above, Vitit Muntarbhorn was the keynote speaker at the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) World Conference in Bangkok, Thailand, during which he outlined his key objectives as IE SOGI, which included decriminalisation, depathologization, cultural inclusion and empathization.

Brazil, on behalf of the LAC8⁸² stated that the vote to strike down the same amendment in the Third Committee had garnered cross regional support and restated their opposition to reopening and thereby undermining the UNHRC (UNGA, 2016f); a sentiment echoed by France, Finland and Thailand, whose delegation pledged support to the IE SOGI, a Thai national (UNGA, 2016f). New Zealand, on behalf of Australia, Canada, Iceland, Liechtenstein, Norway and Switzerland (EFTA+) stated that the mandate was not ambiguous, and that one purpose of the role would be to find the international consensus the opponents demanded (UNGA, 2016f).

Ambassador Power speaking for the USA also refuted the African Group arguments as “unsubstantiated, unjustified and unprecedented” adding further:

“[i]n addition to setting this dangerous procedural precedent this amendment is deeply flawed on the merits. The proponents of the amendment argue in their explanatory note that their reason for seeking delay was that quote “there was no international agreement on the definition of the concept of sexual orientation or/and gender identity” end quote. That is patently false.” ... “It has been the focus of nearly 1,300 recommendations under the Universal Periodic Review leading to recommendations that have been accepted by more than 100 UN Member States including several of the countries that proposed this amendment. And it has been addressed repeatedly by various regional bodies including the Organization of American States, the European Court of Human Rights, and the African Commission on Human Rights and People’s Rights. In reality, this amendment has little to do with questions around the definition of sexual orientation and gender identity. Instead this amendment is rooted in a real disagreement over whether people of a certain sexual orientation and gender identity are in fact entitled to equal rights. And it is being driven by a group of Member States that believe it is acceptable to treat people differently because of who they are or who they love. For our part, the United States believes that discriminating against people on the basis of their sexual orientation and gender identity is no different from discriminating against people for the colour of their skin, for discriminating against them because of their sex, or because of their nationality. It is wrong” (UNGA, 2016f)

Although none of the African Group or OIC statements had referred to any North/South divide, she added “[t]his is not an issue of the North trying to impose its values on the South” although she appeared to suggest otherwise by stating that these rights are required in “[a] world today in which it is still considered acceptable in certain places to throw people off of the rooftops of buildings or to prevent them from forming a local organization or to deny them a seat in a classroom simply because of who they are or who they love”. However, whilst calling out these global abuses, Ambassador Power also noted that discrimination was still prevalent in the USA citing the legality of firing someone due to their sexuality, high suicide rates among trans* Americans and the Orlando shooting (UNGA, 2016f).

⁸² LAC8 and Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay.

Once again, the amendment was rejected, with Cape Verde and South Africa supporting its removal and Liberia and Rwanda abstaining, while Angola, the Central African Republic, the Gambia, Mozambique, São Tomé and Príncipe, the Seychelles and Tunisia didn't vote. After the vote three Eastern European states, Croatia, Hungary and Poland all stated that they could not support the undermining of the authority of the UNHRC in this manner, but nor did they agree with the establishment of a mandate without consensus, which they believed would lead to further division. Croatia and Hungary were particularly concerned that states should be free to determine who may marry (UNGA, 2016f). Paraguay abstained as they welcomed the need for more time, but also fully supported the work of the UNHRC and its resolutions (UNGA, 2016f). Burkina Faso once again concluded the discussion by disassociating the African Group with the mandate of the IE SOGI (UNGA, 2016f).

Despite two defeats, the African Group remained resolute in their efforts to restrict the work of the IE SOGI. On 23 December in the 23rd Fifth Committee meeting to confirm budgets arising out of 32nd UNHRC Session, their representative, Burkina Faso, introduced an oral amendment to include the following in the second operational paragraph:

“Decides not to allocate the budgetary resources for the implementation of Human Rights Council resolution 32/2, on protection against violence and discrimination based on sexual orientation and gender identity” (UNGA, 2016g).

Removing all funding for 32/2 would end the post and work of the mandate holder. Argentina on behalf of the LAC8 once again reiterating the failure to defer the mandate in both the Third Committee and the UNGA Plenary, with support from all 5 international regions, requested a recorded vote on the amendment and expressed concern that an administrative body of the UN was being used to override substantive human rights activities agreed within the mandate of the UNHRC (UNGA, 2016g). Norway, the USA, Slovakia on behalf of the EU and Switzerland, also on behalf of Liechtenstein, all objected to the use of an administrative body to make substantive decisions. Cameroon countered this asserting that the African Group amendment acknowledged, “that these amounts that have been requested do represent a waste of resources” (UNGA, 2016g).

The subsequent vote rejected the amendment, including by South Africa, while Liberia abstained, and 15 African states did not vote. Burkina Faso responded to this result thanking those who supported the proposed amendment who had “shown respect for international law” and yet again disassociated the African Group from the mandate of the IE SOGI (UNGA, 2016g).

Undeterred, on the 23 December in the 68th UNGA Plenary meeting, in which the report of the Fifth Committee was to be considered, the African Group, again represented by Burkina Faso, made one final attempt to remove the budget for the IE SOGI by reinserting the operational paragraph that had been rejected in the Fifth Committee (UNGA, 2016h). Once again, Argentina on behalf of the LAC8 reminded the hall of all the times this amendment had already failed within the 71st Session of the UNGA, reiterated the concerns that such an amendment would have on the independence and

functioning of the UNHRC and requested a vote. The amendment was voted down, including by South Africa, Liberia was the only African state to abstain, but 14 others did not vote (UNGA, 2016h).

Unlike the UNHRC with its 47 members, the UNGA includes all UN member states. During the 71st Session, it was possible to see a broad division of support and opposition to the IE SOGI mandate. However, the amendments proposed by the African Group faced opposition both from states in support of 32/2, but also those against the mandate but with strong objections to the re-opening at the UNGA of resolutions already decided within the UNHRC. Additionally, the votes were complicated by those states who had never supported the review of the UNHRC report by the Third Committee instead arguing, citing 65/281, that these should only be reviewed during the UNGA plenary, as typified by the explanation of the abstention on the vote for the UNHRC report by Liechtenstein on behalf of Australia, Canada, Iceland, New Zealand, Norway and Switzerland (UNGA, 2016e). However, opposition to the continuation of the appointment of the IE SOGI special mandate holder was primarily attributed to a perceived lack of international human rights law defining the terms sexual orientation and gender identity, while Nigeria, in a statement after the vote and therefore without intention to persuade the voting of others, also highlighted a particular conflict to respect the constitutions of “a vast majority of African countries” (UNGA, 2016e).

Despite this, the voting records show that there was no clear African consensus on this, with several states abstaining. Those supporting 32/2 included many Latin American states, such as Argentina, Brazil, Chile, Costa Rica and Mexico, the EU and its member states, the special grouping of Australia, Canada, Iceland, Liechtenstein, New Zealand, Norway and Switzerland and Northern American states. The opposition consisted primarily of members of the African Group, the OIC and the Caribbean members of the Latin American and Caribbean Group. The groups that were more divided in their position on the amendment included the Asian, Pacific and Eastern European Groups. Russia and some Baltic states spoke against 32/2, while those states in closer geographical proximity to the EU were more supportive.

6.2.7 Rejection of the IE SOGI Mandate

In 2017 the IE SOGI completed his first report and presented it as A/HRC/35/36 to the 35th session of the UNHRC on 6 June and A/72/172 to the Third Committee of the 72nd session of the UNGA on 27 October (UNHRC, 2017a; UNGA, 2017a). Although there were around 40 comments and questions from the participant delegations at the UNHRC joint clustered interactive dialogue with the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the IE SOGI, the only dissenting voice came from Pakistan, speaking on behalf of the OIC except Albania, strongly voicing their continued concern with the passing of 32/2 and advising “this statement must not be considered as any form of engagement with the Independent Expert on sexual orientation and gender identity ... the OIC group does not recognise the mandate of the Independent Expert” (UNHRC, 2017b; 2017c).

The Pakistani representative reiterated dissatisfaction with the introduction of divisive notions with no international consensus, the marginal vote in securing the 32/2 resolution and additionally warned the IE SOGI that extending or working beyond the given mandate would be against protocol

and the work should recognise particular traditional, cultural and religious sensitivities (UNHRC, 2017b). Although South Africa was a member of the UNHRC, the delegation only spoke in support of the work of the IE SOGI during the discussion at the UNGA; they were the only African delegation to speak (UNGA, 2017b).

6.2.8 South Africa Engages with the IE SOGI

Due to ill health Muntarbhorn resigned and a new IE SOGI, Victor Madrigal-Borloz, was appointed from 01 January 2018. Later that year, he presented the next IE SOGI report, A/HRC/38/43 in a joint dialogue with the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the 38th UNHRC session on 18 June and at the Third Committee of the UNGA on 25 October. During the UNHRC dialogue Togo spoke on behalf of the African Group but reserved their comments for the Special Rapporteur only (UNHRC, 2018b). However, Ambassador Mxakato-Diseko of South Africa thanked the IE SOGI and concurred with his assessment that “opposition to taking action against violence and discrimination based on sexual orientation and gender identity does indeed defy logic” and asked him:

*“A question we have for him that pertains to the commentary that he made that in this area 40 years ago there were formidable fears that stood in the way of advancement. What is it that has shifted in societies where there was this kind of situation, that might be drawn on to address traditional norms, prejudices, belief systems that continue to stand in the way of progress in this regard? What incentives might be given to governments to open up space for dialogue. **There is a point beyond which you can scream at governments and they don’t do anything, but you need to find a creative way in which you work with them to understand the necessity and the urgency of movement in this regard**” (emphasis added, UNHRC, 2018c).*

This response reflected the concerns of African SOGI activists and South Africa’s desire to avoid a confrontational approach, as introduced in Chapter Four. Later that year, at the 73rd UNGA session, the IE SOGI presented his report, A/73/152 to the Third Committee and once again, South Africa, as the only African state to comment in the debate, demonstrated their willingness to engage asking for further clarification on how states could overcome the challenge of measuring gender data using defined gender markers without being prescriptive (UNGA, 2018b).

6.2.9 Extension/Deferment of the IE SOGI Mandate

At the 41st UNHRC session the IE SOGI presented his latest report, A/HRC/41/45 Data collection and management as a means to create heightened awareness of violence and discrimination based on sexual orientation and gender identity, prior to the vote on the extension of his three-year mandate. The IE SOGI participated in a clustered interactive dialogue, alongside the Special Rapporteur on the Independence of Judges and Lawyers, to present the report, which included country visit reports to

Georgia, who voted in favour of 32/2 in 2016, and Mozambique, which has never been a member of the UNHRC and did not vote during the contentious debate of the African Group attempt to defer 32/2 in the 71st Session of the UNGA.

In response, Mozambique welcomed the visit of the IE SOGI and advised that its Parliament was reviewing legislation that the mandate holder had noted discriminated against some sexual minorities and concluded by stating their support for the forthcoming extension of the mandate (UNHRC, 2019a). The main report was an important intervention to catalogue the situation of sexual and gender minorities, but also to counter the oft-repeated argument that people with non-normative sexual orientations or gender identities do not exist in all cultures and societies. As Victor Madrigal-Borloz summarised:

“The reality is that negation is only a political discourse and I would warmly advise that anybody who is ready to say that LGBTI persons do not exist in a particular setting is actually devoid of any credible evidence base” (UNHRC, 2019b).

The UK delivered a joint statement with Argentina as co-chairs of the ERC SOGI supporting the extension of the mandate. Although Angola on behalf of the African Group, Burkina Faso, Tunisia, Algeria, Gambia and Morocco all spoke, only the Tunisian delegate acknowledged the presence of the IE SOGI, stating “we’d like to thank the Independent Expert and Special Rapporteur for their reports” (UNHRC, 2019a; UNHRC, 2019b).

Once again, Ambassador Mxakato-Diseko spoke in commendation of the IE SOGI and urged further action, especially to include the LGBTI communities in the digital economy framework being developed by the OHCHR, she further agreed with the report’s finding on the intersectional nature of SOGI discrimination with race and asserted, with a fairly inflammatory rebuke to many continental neighbours, that “[w]e agree with the view of the Independent Expert that self-serving interpretations of religion, tradition and culture constitute hate speech, thereby fanning the flames of violence and discrimination” (UNHRC, 2019b).

Following the interactive dialogue, seven of the original 32/2 sponsors (hereafter LAC7⁸³) tabled A/HRC/RES/41/L.10/Rev.1 (41/L10/Rev.1) to request the extension of the IE SOGI mandate for a further three years, with 52 co-sponsors⁸⁴ but only South Africa from the African Group (Albania et al, 2019). In contrast to the positive comments from delegations in all continents in the previous meeting, including from Mozambique and South Africa, and despite extensive consultations by the sponsor states in the informal meetings during the 41st Session, the draft was met with ten proposed

⁸³ Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay.

⁸⁴ Albania,* Argentina, Australia, Austria, Belgium,* Bolivia (Plurinational State of),* Brazil, Bulgaria, Canada,* Chile, Colombia,* Costa Rica,* Croatia, Cyprus,* Czechia, Denmark, Ecuador,* Estonia,* Fiji, Finland,* France,* Georgia,* Germany,* Greece,* Honduras,* Iceland, Ireland,* Israel,* Italy, Japan, Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Malta,* Mexico, Montenegro,* Netherlands,* New Zealand,* North Macedonia,* Norway,* Portugal,* Romania,* Slovakia, Slovenia,* South Africa, Spain, Sweden,* Switzerland,* Ukraine, United Kingdom of Great Britain and Northern Ireland and Uruguay (* not UNHRC member states).

amendments⁸⁵ tabled by Pakistan on behalf of the OIC, but now with the exceptions of Albania and Tunisia (UNHRC, 2019m).

These ten amendments were the same in content as the 11 put forward in 2016 (two were combined) against 32/2. They sought to:

- Remove all references to SOGI entirely;
- Replace the role of the mandate holder with a report from the OHCHR; and
- Highlight the potential political, financial or aid related coercion, particularly on developing nations, to accept ideas of development from other states (UNHRC, 2019c; 2019d; 2019e; 2019f; 2019g; 2019h; 2019i; 2019j; 2019k; 2019l)

When presenting the collection of amendments, Pakistan, on behalf of the OIC group with the exception of Albania and Tunisia, advised that they were adhering to the OIC's 46th Council of Foreign Ministers resolution on cultural, social and family affairs of in March 2019 and claimed that the proposed 41/L.10/Rev.1 resolution aimed "at using the issue of violence and discrimination to advance another cause" (Resolution no.4/46-CUL on Social and Family Issues, 2019; UNHRC, 2019m). A 2017 "study to examine the controversial subject of 'Sexual Orientation and Gender Identity (SOGI)'" commissioned by the Independent Permanent Human Rights Commission of the OIC (IPHRC) suggested that SOGI rights were an LGBT community campaign to introduce "genderless marriage" (IPHRC, 2017).

The four core concerns of the OIC with resolution 41/L.10/Rev.1 were that it was:

- Intended to subversively impose genderless marriage;
- Based on sexual preferences and private behaviours that have no universal definition nor place in international human rights legislation;
- Threatened the universality of human rights, by imposing new categories of identities that are not enjoyed by all; and
- Did not respect "religious, cultural, social, political and economic backgrounds and particularities" (UNHRC, 2019m)

Each amendment was presented by a different OIC State, including Bangladesh, Egypt, Saudi Arabia, Nigeria and Qatar and once again the OIC complained that this was an attempt to introduce new ideas and notions with no foundation in international human rights law, while also raising concerns about the probable undermining of sovereignty and principle of non-interference through potential coercive measures, such as economic sanctions or aid conditionalities, being used to change national positions, particularly of developing countries, on the issue (UNHRC, 2019m).

85 A/HRC/41/L.27 (UNHRC, 2019c), A/HRC/41/L.28 (UNHRC, 2019d), A/HRC/41/L.29 (UNHRC, 2019e), A/HRC/41/L.30 (UNHRC, 2019f), A/HRC/41/L.31 (UNHRC, 2019g), A/HRC/41/L.32 (UNHRC, 2019h), A/HRC/41/L.33 (UNHRC, 2019i), A/HRC/41/L.34 (UNHRC, 2019j), A/HRC/41/L.35 (UNHRC, 2019k) and A/HRC/41/L.36 (UNHRC, 2019l).

In rebuttal, those opposing the amendments focused on the procedural nature of the extension and the need, therefore, not to change from the original mandate, as this would effectively introduce a new mandate (UNHRC, 2019m). Ambassador Mxakato-Diseko spoke for South Africa and was even more outspoken in praise of the IE SOGI and in countering the claim that the mandate was divisive and a threat to state sovereignty, while once again reiterating the progressiveness of the Constitution:

“My delegation is of the view that the Independent Expert has admirably fulfilled his mandate of privileging dialogue with affected communities and opening channels of communication with States. He has done so with a great deal of sensitivity, avoiding the ‘naming and shaming’ of countries ... The Independent Expert could have taken a gun hold approach [sic], but he chose not to ... South Africa deplores the use of government data to conduct surveillance harass, entrap and persecute LGBTI people in numerous countries” (UNHRC, 2019m).

Later, in opposition to the amendment to remove SOGI from the title, South Africa spoke again. Despite abstaining in 2016 on the basis that the resolution caused “unnecessary divisiveness” (South Africa, 2016), this time Ambassador Mxakato-Diseko argued:

“Delegations will recall we had ample negotiations on the mandate in 2016. ... Then in 2016, keen to take into account sensitivities, the Council stopped short of creating a special rapporteur. While not denying the intersectionality of forms of discrimination, we are of the view that dedicated attention is urgently required on the case of LGBTI, to ensure that in accordance with the UDHR their inherent dignity equal and inalienable rights as human beings are protected and abuses prevented. Indeed, the current Independent Expert in his report highlights precisely how the living realities of the LGBTI, the intersectionality of race and gender compound the impact of violations of their human rights. While globally, the ideology of hatred is on the ascendant, to generalize the current mandate of the Independent Expert would dilute the resolution and in fact give license to the abuses of human rights. ... The mandate as it currently stands where it should be showing us a fuller picture of what is happening. It does not point fingers at any particular country, but it is intended to engage all of us to do more. Where politicians in countries, which claim to be beacons of democracy and human rights are emboldening hatred with courts eroding the gains made no more than 10 years ago. In these circumstances, the Council must be the ultimate defender of those most in need of protection and put in place measures that will not be blown away by the changing fortunes of political leaders and parties” (UNHRC, 2019m).

This time, however, South Africa was not alone on the continent in supporting the mandate. Tunisia, a member of both the African Group and the OIC, came out as a new convert to SOGI rights, supporting the resolution stating “[o]ur constitution provides for the protection of dignity of our

citizens and prevents aggressions against citizens or any discrimination on the basis of gender identity or sexual orientation” (UNHRC, 2019m).

In the end, none of the hostile amendments from the OIC were accepted and the extension of the mandate passed with a stronger majority than 32/2. The African Group made no official statement against the draft and in fact Angola, Burkina Faso and the Democratic Republic of Congo abstained on all votes; Senegal and Togo voted for most of the amendments, but abstained in the extension; Rwanda voted for one amendment (replacing the IE SOGI with a report), abstained or voted against the rest and voted for the extension; South Africa voted no to every amendment and yes to the extension and Tunisia did not vote on the majority of the amendments, but voted for three of them and for the extension (UNHRC, 2019m). Only Egypt, Eritrea, Nigeria and Somali voted consistently with the OIC (UNHRC, 2019m).

Unlike in 71st Session of UNGA in 2016, when the African Group attempted to defer the mandate of the IE SOGI within the draft resolution for the Report of the Human Rights council, the report for 2019 passed in the 74th Session without calls for amendment of the renewed mandate for the IE SOGI. In addition, the IE SOGI presented his latest report, A/74/181 on data collection and management during the 33rd Meeting of the Third Committee. Among all the usual plaudits from several WEOG (Western European and Others Group) and North American countries, the Angolan delegation, who had abstained on the extension of the mandate vote at the UNHRC, asked for guidance on addressing concerns raised by the IE SOGI and about working without data and the cross referencing of data noting specifically data on transwomen in Angola. The Chinese representative also spoke, repeating the importance of local traditions and cultural difference, but asking for continued dialogue on how to work around these (UNGA, 2019b). Both interventions suggest positive movement towards greater acceptance of SOGI rights.

6.2.10 Conversion Therapy

The IE SOGI presented his latest report, A/HRC/44/53 Practices of so-called “conversion therapy”, in an interactive dialogue at the 44th UNHRC session (UNHRC, 2020b). Many states had responded to his request for information in compiling the report, notably including a member of the OIC, the Republic of Iraq (Republic of Iraq, 2020). During the interactive dialogue many states responded positively to the report, including South Africa who supported his work and requested further information on potential legislative measures to provide better protection (UNHRC, 2020c). No other African states spoke, and Albania was the only OIC member to respond, while China was the only dissenting respondent lamenting the inaccuracy of the IR SOGI’s portrayal of the situation in China (UNHRC, 2020c).

6.3 Identifying and Interpreting Dominant Themes

This section explores how SOGI rights have been put into the discourse at the UN by South Africa and other African delegations (often through the contributions of the African Group and the OIC), during the debates detailed above, to identify and interpret the recurrent, dominant themes that frame the support and rejection of SOGI rights. As can be seen there is considerable repetition in the narratives rejecting SOGI rights. These have been framed in a consistent manner with opponents often tabling the same amendments to successive resolutions and with arguments for their rationale varying little across the debates year-on-year; these continuities will be drawn out below. Equally there have been several important consistencies within the resolutions and explanations from advocates of SOGI rights.

Within the resolutions studied there has been a careful attempt to remain true to several fixed principles. Firstly, consistent utilisation of the term *sexual orientation and gender identity* (SOGI) avoided the pitfalls of universalising Western defined concepts, such as lesbian, gay and bisexual, which are not necessarily understood or universally applicable in some parts of the World, notably Africa and the Middle East (Girard, 2007:350). SOGI is also inclusively universal, in that it embraces the right to any sexual orientation and/or gender identity, which may also include heterosexuality and the male/female binary genders, and thereby avoids some of the hazards of identity politics. Secondly, by focussing all resolutions on discrimination and violence against individuals, drafters have adopted forms of oppression that are already well defined and used within many UN human rights frameworks and were intentionally difficult to oppose.

However, this care and attention has not avoided challenge. Although the words used should not have been contentious the ideas behind them have prevented every successive resolution from passing by consensus. Therefore, it is important to understand how the resistance to the resolutions was articulated in relation to the broader contextual analyses, which was presented in the previous chapters, to interpret the potential stimuli that inspired the claims against SOGI rights. This interpretation through a queer lens seeks to determine the meaning of the claims and to assess the power that those claims imposed throughout the international community to challenge and stall the furtherance of protections for SOGI rights and citizens. By interpreting the objections to SOGI rights through the broader context of the debate on SOGI individuals within the national and international environment of members of the African Group, we can begin to understand the context in which the African Group was objecting to the proposed debates and resolutions and thereby understand the immediate social pressure on South Africa.

This analysis demonstrates three key themes consistently used by opponents to challenge the promulgation of SOGI rights. Firstly, contestation over the universal applicability of sexual orientation and gender identity; secondly appeals to cultural, traditional and religious values and beliefs; and thirdly rejection of coercive neocolonialism. These are inevitably interconnected and interdependent.

6.3.1 Contested Universality of SOGI

As mentioned, sexual orientation and gender identity have no geographical boundaries. Whilst the terminology used to describe variances in gender identity or sexuality may have changed across time and continents, countries and even communities within states, these differences to the binary gendered and heterosexual norms exist and have existed everywhere. As evidenced in the debates above, many states in support of the successive SOGI resolutions have emphasised this global geographical spread of both sexual and gender minorities and the discrimination and violence experienced by them. Attempts to emphasise the universality of the issue have recognised the domestic concerns even within the supporter states. In 2014, the US delegate lamented the global impact of such violence and discrimination throughout many states “including my own”, while in 2016 the representative of the UK stated “[t]his affects people in this room, people in my team” (UNHRC, 2014i; UNHRC, 2016l). Stressing the universality of the violence and discrimination in this way has perhaps been an attempt to avoid finger pointing; something that the South African delegation determined was necessary to achieve progress (UNHRC, 2019m).

Despite this a prevailing counter narrative to SOGI rights has been the rejection of the universality of sexual orientations and gender diversity. This claim has been presented in two ways, firstly that these terms have no universal definition in international legal systems and secondly that these are ideas particular to Western countries and are being imposed on countries in which sexual and gender minorities did not exist.

In 2011, Nigeria made this claim on behalf of the African Group in response to the Colombian led statement (Nigeria, 2011). South Africa’s abandoned 2011 resolution, 16/L.32, was based on the perceived necessity to define the “new concept” of sexual orientation and gender identity (South Africa, 2011b). Pakistan, on behalf of the OIC except Albania, has consistently claimed that the concept lacks definition in response to 17/32 in 2011, 32/2 in 2016 and 41/18 in 2019 (UNHRC, 2016a; 2016b; 2016j; 2019a; 2019b; 2019h; 2019i). Such claims were also supported in 2014 when Egypt warned that a “new category of persons” would be created (UNHRC, 2014h), as well as in 2016 by Egypt, the Permanent Observer Mission of the African Union and three times by Botswana on behalf of the African Group (UNHRC, 2016l; Permanent Observer Mission of the African Union, 2016; UNGA, 2016a; 2016b). These efforts to deny the existence of sexual and gender minorities have been manifested in repeated attempts to erase all references to sexual orientation and gender identity in successive resolutions in 2014 (27/32), 2016 (32/2) and 2019 (41/18) as well as refusals to engage on the topic, for example at the 2012 panel discussion walk out and the succession of assertions of state’s disassociating from the work of the IE SOGI.

Whilst there has not been a universally approved, standard definition for SOGI enshrined within any international instruments through the UN, this claim has consistently failed to acknowledge several key legislative frameworks that have recognised the rights of sexual and gender minorities. Firstly, the 2007 Yogyakarta Principles, drafted by 29 international human right activists including Vitit Muntarbhorn who a decade later was appointed the first UN IE SOGI, had already detailed the existing global legal frameworks applicable to the protection of sexual and gender minorities (Corrêa

and Muntarbhorn, 2007). These principles clearly identify the obligations incumbent upon all states to ensure the protection of sexual and gender minorities under existing human rights instruments (O’Flaherty and Fisher, 2008). These have since been augmented in 2017 with a further nine principles and 111 state obligations to protect against violations against citizens of diverse sexual orientations or gender identities (Cabral Grinspan et al, 2017).

Secondly, there exists a plethora of domestic laws that have included sufficient references to sexual orientation and gender identity with the legislative frameworks of many opposition countries. Notably, Nigeria clearly identified sexual orientation within the SSMPA of 2014, while Uganda relied on a definition of sexual orientation in the development of the AHA 2014, which predated resolution 17/19 of 2011 and it was argued in the Ugandan parliament that the earlier EOCA 2007 was required to define sex as “the natural state of being male or female” (Parliament National Assembly (Uganda), 2006:4). In addition, 68 UN member states have domestic laws that make same-sex sexual activity illegal including in 32 African legislatures (Mendos, 2019:47).

Whilst some of these laws may not be implemented, the number of states detailed in ILGA State Sponsored Homophobia report that continue to target citizens of diverse sexualities and gender identities and expressions, suggests that no international legal definition is required to target people for discrimination and violence on SOGI basis (Mendos, 2019). Indeed, a member of the Rwandan UN delegation noted in 2012:

*“Mr. President, whether the concept of ‘sexual orientation’ is defined or not, whether or not we support the claims of people with a different sexual orientation, whether or not we approve of their sexual practices, we must deal with the urgency of these matters and recognise that these women and men, these human beings, continue to be the target of murder in many of our societies and are even more at risk than many of the other groups listed. ... Believe me, Sir, that **a human group does not need to be legally defined to be the victim of execution or massacre, since those who target their members have previously defined them**” (official UN translation from French, emphasis added, UNGA, 2010:17-18).*

In addition, as noted by the US delegation during the 2016 UNGA debate to reject the African Group motion to suspend the mandate of the newly appointed IE SOGI, the UPR has included over 1,300 SOGI recommendations, some of which have been accepted by the opponents of the mandate, and in the ACHPR resolution 275(LV)2014 (UNGA, 2016f).

Regardless of any universally agreed international legal definitions, sexual and gender minorities have been targeted throughout the world for discrimination and violence. Additionally, it is not unusual for the UN to adopt resolutions on issues that have no legal definition. Indeed, as noted in 2016 by New Zealand, on behalf of the EFTA+, one purpose of the IE SOGI mandate would be to find the international consensus the opponents demanded, especially since 32/2 included the necessity for the mandate holder to develop knowledge on SOGI rights (UNGA, 2016f).

Since this claim has no firm foundation, it is necessary to interpret the intention of this narrative. To some extent the disagreement on this issue reflects the wider international debate on the universality of human rights. Despite decades of human rights discourse at the international and domestic state level (since the 1948 UDHR) the concept of universal human rights remains contested, especially when the proposed rights appear to conflict with traditional beliefs and attitudes (Hunter, 2010:8). By claiming these rights are not universal opponents have maintained that they have no sexual and gender minorities in their societies. This was evidenced in 2003 when the unnamed African delegate, responding to the Brazilian resolution (E/CN.4/2003/L.92), observed that homosexuality didn't exist in their country (Girard, 2007:344).

Whilst the aim of all the SOGI rights resolutions was to bring attention to marginalised communities and ensure that their suffering, through discrimination and violence, was no longer ignored, opponents to the resolutions have wanted to deny their existence within their own populations. The repeatedly tabled amendments of the African Group and the OIC (excluding Albania) sought to remove all references to SOGI and any references to previous resolutions on the matter; this was a literal and symbolic act of erasure of sexual and gender minorities. In their claims that these rights were not universal, often stating that they are a Western issue only, opponents have demonstrated a strong desire to silence or erase the subject and to erase the existence of sexual and gender minorities.

Indeed, these repeated claims to a lack of definition despite years of debate have highlighted the unwillingness of those states opposing these rights to engage in any efforts to define the contested terms. The disingenuity of this argument was apparent in the lack of African support for South Africa's aborted 2011 resolution (16/L.27), the walk out of African Group and OIC states from the 2012 debate and the lack of state level engagement in the African regional conference hosted by South Africa in 2016. The mandate holder of the IE SOGI has consistently mentioned the importance of open and constructive dialogue to the successful implementation of his mandate, such as in 2019 when he stated "it is fundamental for my mandate to actually ensure, to be available for, dialogue and this is what I intend to do as long as I have a mandate to do so" (UNHRC, 2019b), something for which the South African Ambassador to the UNHRC praised Madrigal-Borloz (UNHRC, 2019m). Yet hardly any members of the African Group have ever acknowledged or engaged with the IE SOGI during his interactive dialogues.

To counter the claim that these are Western rights, successive resolutions have been led by states of the global South. Initially by South Africa in 2011 and subsequently by various groups of Latin American countries, which have often stressed the cross-regional co-sponsorship of their resolutions. A prominent support narrative has been that SOGI rights are demanded not just for the global South, but for all regions. Within this argument, South Africa has been an important ally to ensure state representation from the African continent, although coalitions of African NGOs and activists have also been employed. However, this claim has been used to deny the existence of sexual and gender minorities and has served to silence any domestic claims of violence or discrimination.

6.3.2 Protecting Cultural, Traditional and Religious Beliefs

States have also objected to the notion of SOGI rights on the basis that they do not reflect cultural, traditional or religious particularities within individual and groups of states. Although the wording of these claims has varied, these have usually included requests for the protection of beliefs or values based on culture, tradition, history or religion. Here is a summary of some of these many claims; by Pakistan on behalf of the OIC except Albania against resolution 17/19 in 2011, by Mauritania on behalf of the Arab Group, Pakistan on behalf of the OIC except Albania and Senegal on behalf of the majority of the African Group during the 2012 SOGI panel discussion, by Egypt on behalf of ten states⁸⁶ and China in response to 27/32 in 2014, by Pakistan on behalf of the OIC except Albania in response to the subsequent OHCHR report (29/23) in 2015, by Pakistan on behalf of the OIC except Albania against the establishment of the IE SOGI (32/2) in 2016, and also in response to the 2019 resolution to extend the IE SOGI mandate (41/18) Pakistan on behalf of the OIC except Albania and Tunisia. These objections have occasionally referenced the need for the UN to recognise and protect cultural, traditional and religious differences in the application of rights as referenced in Article 5 of the Vienna Declaration and Programme of Action (UNGA, 1993:art5).

This argument of the relative hierarchy between human rights and cultural values has been a concern on a variety of different issues, such as the debates around FGM (female genital mutilation). In response to this contestation, in 2012 the UNHCHR, Navi Pillay, noted that human rights must always be more important than cultural, traditional and religious values (Pillay, 2012). Notably, Nigeria in its vehement opposition to all SOGI resolutions has expressed concern that notions of human rights must be cognisant of traditional, cultural and religious values, but in 2013 also affirmed the fundamental principle in the VDPA stating, “Nigeria agrees that despite the importance of various historical, cultural and religious backgrounds it is the duty of States to promote and protect all human rights and fundamental freedoms. In this regard, we see the promotion and protection of human rights as the first responsibility of governments” (Nigeria, 2013; UNHRC, 2013a).

Indeed, Article 5 of the VDPA states, “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” (UNGA, 1993:art5). There has, of course, been substantial international precedent of the relative importance of human rights protections against discrimination and violence over cultural traditions in the broad ratification of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the passing by consensus of resolution 23/13 prohibiting attacks and discrimination against people with albinism in 2013.

Anticipating these concerns, successive resolutions have included operative paragraphs with specific provisions for the recognition of traditions, cultural values and religious beliefs in the preparation of reports and within the work of the IE SOGI.

⁸⁶ Bahrain, Congo, Djibouti, Egypt, Malaysia, Nigeria, South Sudan, Sudan, Uganda and United Arab Emirates.

This claim has further been weakened by the lack of definition of the cultures, histories or traditions that SOGI rights are claimed to affront. They have rarely been explained in detail or with references to which particular histories, traditional or cultural values or religious beliefs are to be protected. Some delegations have at times made broad inferences to the cultural or religious communities to which they refer; notable here have been Pakistan's claim, on behalf of the OIC except Albania, to the concerns of Muslim communities (UNHRC, 2014h), or Nigeria's claim that the 2011 South African resolution (17/19) had no domestic civil support (Jordaan, 2020:135), and in 2012 asserting that their domestic Same-Sex Marriage (Prohibition) Act (SSMPA) was based on the democratic will of the Nigerian population (Nigeria, 2012).

More often, however, these are generalisations such as the Nigerian claim in 2016 that SOGI rights conflicted with "a vast majority of African countries" (UNGA, 2016e). We can also understand that this claim was behind Zimbabwe's President Mugabe's 2015 outburst of "We are not gays!" at the UNGA (UNGA, 2015) but without clarifying to whom "we" might refer and in the 2014 suggestion by Saudi Arabia that the imposition of these rights was a breach of human rights to states' own belief systems (UNHRC, 2014h). However, all these claims have lacked specificity and treated diverse communities as falsely monolithic.

Indeed, there has not even been any universal consensus among the 54 members of the African Group nor the 57 members of the OIC on any uniform understanding of such a culture or universal traditions, as demonstrated by the exclusion of Albania and recently Tunisia from OIC led statements and the inconsistent voting patterns among members of the African Group. The exceptions of Albania and Tunisia have called into question a universal understanding of religious objections for the OIC and the variances in voting patterns and opposition by African states have also suggested the lack of a uniform African culture or tradition in relation to SOGI issues.

In fact, the terms cultural, traditional, historical, religious, values and beliefs have seemingly been used interchangeably. Writing before the adoption of SOGI resolutions but after the groundbreaking interventions in Beijing, for which there were significant religious objections, and the 2003 Brazilian statement, Long observed that:

"One feature of fundamentalist discourses is the way their different terms collapse into one another. "Culture" loses its variety and becomes indistinguishable from "morality," and "morality" from "religion," which in turn is defined by and often defines "tradition." ... In all cases, however, fundamentalisms strip these terms of ambiguity or negotiability. They become, in the fundamentalist vision, not ideas to be debated or environments in which to live, but mandates enforced by law" (Long, 2005:6).

The obfuscation of claims to culture, tradition and religious beliefs has therefore become a means to define nations and groups of nations along universal moral values. They attempt to define what it has meant to be recognised as a citizen of countries such as Nigeria or Zimbabwe, but also an African or Islamic nation or national. These manufactured concepts of nationhood claimed by states have

been characterised as “imagined communities” (Anderson, 2006), which are often described in terms of race, gender and sexuality and “it is this imagining that provocatively has been deployed to resist claims for universal human rights through a reverse discourse that employs the language of difference, specificity, history, community, and ultimately, the language of rights itself” (Stychin, 2004:955).

Despite this dearth of explanation for these claims to tradition and culture, close analysis of the debates uncovered a pair of recurrent cultural themes against SOGI rights. Firstly, that SOGI rights have reflected individual lifestyle choices that are alien to indigenous cultures and secondly, that they have been claimed to endanger the foundations of traditional (heteronormative) marriage and families.

The first claim accused the promoters of SOGI rights of attempting to secure rights for deviant or immoral predilections or lifestyle choices. This accusation was made by Pakistan on behalf of the OIC except Albania in 2011 and 2012 (Pakistan, 2011; UNHRC, 2012), by Namibia in 2012 (Namibia, 2012), by Senegal on behalf of a majority of the African Group in 2012 (UNHRC, 2012), as well as within Egypt’s 2014 amendments (UNHRC, 2014h) and Botswana’s justifications for postponing the appointment of the IE SOGI in 2016 (UNGA, 2016a; 2016b; 2016c; 2016f). The suggestion has been that these lifestyles or individual choices are not universal and so can’t be enshrined as human rights and additionally are not relevant or acceptable to their collective historical, traditional, and cultural backgrounds. Indeed, sexual and gender minorities have been framed as individuals who are an affront to communitarian and collectivist societies, particularly of the global South, as Rao determined in a review of the battle for queer rights across the third world “most contemporary articulations of homophobia are voiced in a self-consciously communitarian idiom that claims to uphold local norms of social morality against an imported vice” (Rao, 2010:176)

In *Desiring Arabs*, Massad blamed Western NGOs, such as ILGA World⁸⁷ and IGLHRC⁸⁸, for changing the narrative around sexual orientation from behaviours to individual identities, which led to alienation of sexual and gender minorities in some non-Western cultures. In this regard, he warned that these identities have been seen among some Muslim communities as cultural imperialism and make sexual and gender minorities more visible, which has permitted state and social repression (Massad, 2008:163 and 174). In contrast, Rao critiqued this analysis for its lack of recognition of Arab agency and the ability of sexual and gender minorities within these territories to adapt and utilise these identities for their own local emancipation (Rao, 2010:176).

In addition, Stychin noted such claims were not particular to countries of the global South since culture and tradition have long been used to reject SOGI rights, determining in 2004 the universal nature of this claim:

⁸⁷ The International Lesbian, Gay, Bisexual, Trans and Intersex Association.

⁸⁸ The International Gay and Lesbian Human Rights Commission, which changed its name to OutRight Action International in 2015.

“Resistance to gay rights is grounded in communitarian claims to difference, specificity, cultural authenticity, and history, which are also, in turn, grounded in the language of rights of self-determination of a people. The question is then about which self, which group, and which right to protect” (Stychin, 2004:957).

Additionally, Stychin reminded us that historically local activists have successfully overcome these objections in many societies, which has been reflected in Rao’s contemporary argument for local agency and which once again challenges the idea that these societies have no indigenous sexual or gender diversity (Stychin, 2004:958; Rao, 2010). Indeed, this local activism forms just one argument against these cultural conceits. Likewise, every community, however imagined will necessarily include sexual and gender minorities since sexual and gender diversity are not geographically restricted (McKaiser, 2012). This argument, however, highlights the tension between universal human rights claim, individual identities and communitarian values.

The second claim has been predicated on concern that SOGI rights, through the imposition of same-sex marriage and adoption, would mean the destruction of traditional, heteronormative family units. This was an objection first raised by Nigeria in 2012, when their delegation referenced the emergent domestic SSMPA legislation during the SOGI panel discussion at the UNHRC (Nigeria, 2012). During the same discussion, Russia also raised unsubstantiated concerns about the future of families should SOGI rights gain widespread approval (UNHRC, 2012). Thus, the protection of a particular religious definition of monogamous, heteronormative marriage (one man and one woman) seems to have been a driving force for opposition from Nigeria and other members of the OIC, even though polygamy is practiced in some of these states.

In the 41st Session of the UNHRC in 2019 this concern was unvoiced, but reference was made by Pakistan, on behalf of the OIC except Albania and Tunisia, to OIC Council of Foreign Ministers resolution number 4/46-CUL on social and family values, which “[a]ffirm[ed] the need to accord utmost attention to preserving the marriage and family institution in Member States” (4.46-CUL, 2019). This resolution referred to both the UNHRC resolution on human rights, sexual orientation and gender identity⁸⁹ and the 2017 study from the OIC Independent Permanent Human Rights Commission (IPHRC) entitled Sexual Orientation and Gender Identity (SOGI) in the light of the Islamic interpretations and international human rights framework (IPHRC, 2017). The scope of the study, initiated in direct response to the passing of resolution 32/2, considered sexual orientation in relation to “marriage and family relations”, including a particular concern of the imposition of “genderless marriage” (IPHRC, 2017:2 and 5, OIC, 2016:20). However, none of the SOGI rights resolutions and reports created have ever advocated directly for same-sex marriage, which suggests that the focus on this issue indicates of wider concerns around protecting the status quo.

Ultimately, these concerns for the protection of heteronormative traditional families can also be recognised as having little basis in fact. Although in the debates within the UNHRC and UNGA there were few attempts made to explain or define the traditional family, it was always invoked in

⁸⁹ Resolution NO.4/46-CUL on Social and family issues does not specify which UNHRC resolutions were considered, but the title used reflected both 17/19 of 2011 and 27/32 of 2014.

opposition to supposed family forms emerging from diverse sexual orientations and gender identities. Contextually, as was evidenced in Chapter Five, it is also interesting to reflect on the number of African states that adopted politicised homophobia in response to same-sex marriage, including Malawi, Senegal and Gambia, but also those states responding to South Africa's Civil Union Act, including Uganda and Nigeria. In addition, Liberia and Nigeria both introduced bans on same-sex marriage, despite the absence of any calls for recognition of them. However, as also evidenced in Chapter Five, these appeals to traditional marriage and family formations do not even reflect the historical and current diversity of familial relationships across the African continent.

The supposed threat posed to families has also been expressed in other terms using familiar, unfounded claims that homosexuality has the potential for youth recruitment or is a gateway to bestiality and paedophilia, as was evidenced in Pakistan's fears for Muslim youth in 2014 (UNHRC, 2014h), but also in the domestic claims made across the African continent. This evidence demonstrates the weaknesses in the cultural and traditional foundations of claims to particular and singular forms of monogamous, heterosexual family units that have been portrayed through politicised homophobia as exclusively heteronormative. This was witnessed in the Nigerian 2012 claims of democratic national interest for banning same-sex marriage under the developing SSMPA 2014 and in 2016, speaking on behalf of the OIC except Albania, when the Nigerian delegate suggested the mandate would lead to "same-sex marriage and same-same [sic] adoption" (Nigeria, 2012; UNHRC, 2016l). However, these claims against same-sex marriage, do not just reflect heteronormative state formation, but have also been expressed as continental values through the African Group and in religious terms, notably through the OIC.

Religious objections to SOGI rights have a long global history and organised religious objections were observed during the earliest UN debates. In a review of the 1995 Beijing conference, Girard quoted a Swedish delegate, Gerd Johnsson-Latham, who stated, "I regret that we did not photograph the mullahs and the Vatican priests, in the UN corridors and the hotels, sitting and preparing their joint texts together" (Girard, 2007:337). As was outlined in Chapter Five, across Africa religious arguments have formed the basis of some politicised homophobia, although Long noted that organised religions, except some North American evangelical organisations, had been less influential than groups purporting to fight against these rights in the name of religious values (Long, 2005:8-9).

Within the debates at the UNGA and UNHRC, representatives of the OIC have often led religious arguments against SOGI rights. However, the basis for these has not exclusively been Islamic interpretations. Although the OIC's IPHRC 2017 Report claimed that Islam, "as a religion of nature", only recognised heterosexuality and that "[h]umans are not homosexuals by nature" (IPHRC, 2017:2-3), it extensively referenced American conservative Christian sources (IPHRC, 2017). Indeed, it drew from the religious texts and scholars of all three Abrahamic religions on marriage and homosexuality to dispute the "Western" notions and science on the naturalness of homosexuality (IPHRC, 2017:5), and warned of "a real danger that other groups, citing genetic predisposition claims, would also be encouraged to demand legalizing incest, bestiality and other such deviant sexual behaviors and

personal choices” (IPHRC, 2017:1)⁹⁰. This report appeared as if an extension of the collective work started by those Catholic and Muslim scholars in 1995.

As detailed, these universal claims to monolithic cultural, traditional and religious values and beliefs are clearly a myth given the lack of consensus in voting patterns and support for amendments, despite the apparent unity offered by bloc representation. For example, the voting on the 2016 IE SOGI mandate highlighted the fissures in the supposed African Group consensus on SOGI issues, reflecting the 2012 conclusion of Awondo, Geschiere and Reid that there existed “internal debate and disagreements among Africans on the subject of homosexuality” (Awondo, Geschiere and Reid, 2012:145).

Indeed, South African rejection of these claims intensified recently. In 2019 the South African Ambassador responded to the IE SOGI’s latest report much more fervently railing against, “self-serving interpretations of religion, tradition and culture constitute hate speech”, which “fanned the flames of violence and discrimination” (UNHRC, 2019b). Undeniably, within the African Group, South Africa was not the only exception. As evidenced, there have been states that have not participated in the debates, not voted for the hostile amendments and domestically have either never discriminated, have lifted discriminatory laws or have enacted protections.

It is also clear to observe from the contextual analysis that each state appears to support opposition to SOGI rights to different degrees or for different reasons. If opposition by African and OIC states has not been universal, it is therefore clear that there can be no consensus agreement on uniform historical, traditional, religious or cultural oppositions to which SOGI rights are objectionable. Indeed, in reading these claims to culture, we can understand two suggestions lay behind it. Firstly, it has primarily been made to suggest that there are no sexual and gender minorities in these countries. Secondly, it has been made to ensure the protection of the status quo in relation to the perceived universal heteronormative families and communal responsibilities over individual desires.

6.3.3 Rejecting Neocolonialism

The third dominant theme has been concern with coercive measures to ensure adoption of SOGI rights, particularly toward developing countries by donor countries of the global North, reflecting post-colonial sensitivities to external control. This began with concerns about imposition of foreign values, as lamented by Nigeria in response to the 2011 Colombian statement and by Senegal, speaking on behalf of the majority of the African Group, the following year while referencing their commitment to democratic values in determining the will of the citizenry (Nigeria, 2011; UNHRC, 2012). Subsequently in 2014, the Egyptian amendments to the Brazilian resolution for a new SOGI report were requested in criticism of Western threats of punitive economic action and the potential curtailment of state sovereignty such coercive aid conditionalities would have, a view supported at the time by South Africa (UNHRC, 2014h; 2014i). In 2016, in rejecting resolution 32/2, Nigeria, on

⁹⁰ Counter intuitively the IPHRC report references a case in which the European Court upheld a German Constitutional Court judgment that imprisoning a man for incest was NOT an infringement of his human rights as evidence that sexual activities such as incest would become legal (IPHRC, 2017:2).

behalf of the OIC except Albania, again complained about the imposition of the Western “LGBT agenda”, as did Pakistan, also on behalf of the OIC except Albania, reiterating the threat to state sovereignty the coercive methods used by advocates for SOGI rights inflicted, and so too did Botswana, on behalf of the African Group, later that year at the UNGA (UNHRC, 2016l; UNGA, 2016a; 2016b; 2016c).

Interestingly, these calls have been supported by the South African delegation, which criticised both Norway and Brazil for their divisiveness in the development of resolution 32/2 and for their “arrogant and confrontational approach” (South Africa, 2016). In addition, Ambassador Mxakato-Diseko demonstrated African solidarity in critiquing perceived coercive leadership by other states through invoking the African proverb, “if you want to walk fast, then walk alone and if you want to walk far, walk together and with others” (South Africa, 2016). In rebuttal, during the repeated attempts of the African Group within the 2016 UNGA session to postpone the appointment of the IE SOGI, the US delegation pointedly noted “[t]his is not an issue of the North trying to impose its values on the South” (UNGA, 2016f).

Finally, in 2019 Pakistan, on behalf of the OIC except Albania and Tunisia, while tabling amendments to the resolution to extend the mandate of the IE SOGI, again complained about the imposition of Western features of state development (UNHRC, 2019m). This time however, despite having increasingly sided with those states in opposition to SOGI rights in calling out the coercive behaviours of SOGI advocate states, whether from the global North or South, South Africa was much more supportive of both the resolution and the methods of its introduction (UNHRC, 2019m). Again, it is worth noting that none of the resolutions contained any coercive demands and therefore these claims must be understood as reflective of a broader international discourse around coercive neocolonialism in development programmes.

Whilst opponents of SOGI rights have proclaimed their opposition to violence and discrimination, at the same time they have demanded their right to determine whether they are obliged to legislate against it. As evidenced above, these demands for legislative freedom have been framed in claims that states of the global North have been using coercive methods to enforce the adoption of SOGI rights. As evidenced in Chapter Five several states and institutions, including the UK, the USA, some Scandinavian countries and the World Bank, have either threatened to or withdrawn aid in response to anti-SOGI measures in some African states. This reflected the desire of states of the global North to impose “moral transformation in which ‘good’ global norms prevail over the ‘bad’ local beliefs and practices” (Acharya, 2004:239).

Rejection of these external demands for change has been made in claims to the preservation of sovereignty, and as such underlined the tension between international standards and local customs and practices. Several academics have subsequently highlighted how this process has been instrumental in framing good states of the global North versus bad states of the global South (Currier, 2019:243; Bosia, 2015:39; Rao, 2014a; Rahman 2014). Perhaps in response to these tropes, during the debates, states have not only rejected SOGI rights by denouncing coercive measures, but also by highlighting adherence to democratic imperatives. For example, both Nigeria and Senegal

invoked democratic principles in opposing SOGI rights in 2012, albeit that they referenced democracy in terms of the will of the majority, rather than the equal aim of protecting minorities from majoritarian tyranny (Nigeria, 2012; Senegal, 2012).

Nevertheless, supporters of SOGI rights have endeavoured to counter the argument of the SOGI rights as a North versus South issue. The global South has led on SOGI statements and resolutions. Latin American states, and initially South Africa, have been instrumental in sponsoring, co-sponsoring and supporting the various resolutions, thereby rendering a North/South split on the issue an oversimplification, as Ambassador Power of the US delegation noted at the 2016 UNGA session (UNGA, 2016f).

A closer look at the earlier UNHRC vote on resolution 32/2 also demonstrated that those supporting the IE SOGI mandate included many Latin American states, such as Argentina, Brazil, Chile, Costa Rica and Mexico, as well as the EU and its member states, the special grouping of Australia, Canada, Iceland, Liechtenstein, New Zealand, Norway and Switzerland and Northern American states. The opposition consisted primarily of members of the African Group, the OIC and the Caribbean members of the Latin American and Caribbean Group. The groups that were more divided in their position on the amendment included the Asian, Pacific and Eastern European Groups. Russia and some Baltic states spoke against 32/2, while those states in closer geographical proximity to the EU were more supportive. Although the African Group and the OIC were both in opposition, this elides the exceptions of Albania from the OIC, and Cape Verde and South Africa, who both voted against the African Group proposals, as well as Liberia and Rwanda who mostly abstained on the various amendments (UNHRC, 2016l).

The South African and Latin America leadership on successive SOGI resolutions has clearly been intended to counter the idea that this is neocolonialism from the global North and even South African Ambassador Matjila noted that there is no consensus in opposition to SOGI rights on the African continent (UNHRC, 2016l).

6.4 Conclusion

This chapter summarised the debates at the UNGA and UNHRC on SOGI specific initiatives. These debates were analysed to identify recurrent themes in the discourses about SOGI rights and citizens and these themes were viewed through a queer lens to identify the prevailing discursive power used to suppress SOGI rights. Opponents to the successive resolutions have predominantly been organised through recognised groups of states. Within the UN, there are clear differences between blocs in the acceptance of these rights. Europe, North and South America, Australasia and many non-Islamic Asian countries have been supporters. While taking the lead in opposition have been the spokespeople for the African Group and the OIC, whose membership includes 27 African states.

Overtime, support within both the African Group and the OIC has weakened, firstly by opposition from Albania and recently joined by Tunisia, but also the increasing number of African nations engaging with the IE SOGI, including Mozambique and Angola, as well as those states that have voiced their own rethinking of the issues, such as Ghana, following the Orlando shooting, and Botswana and those that have never or rarely opposed SOGI rights, such as Cape Verde.

Analysis of the discussions and amendments tabled for successive SOGI resolutions have presented three dominant narratives used by opponents within the organs of the UN. These have been applied with near universal consistency, despite substantive opposition and, in some case repeated failure to gain support. In summary these dominant narratives have sought to claim the following:

- SOGI Rights are not universal;
 - Sexual orientation and gender identity are not defined in international human rights law; and
 - Notions of sexual orientation and gender identity do not exist in all societies, they are not universal and are not applicable to African states.
- SOGI Rights conflict with traditional, cultural or religious values and beliefs;
 - Foreign ideas of sexual orientation and gender identity challenge African communitarian values and societies and are a threat to children, heteronormative families, cultural and religious freedom, and democracy.
- SOGI rights are being enforced through coercive, neocolonial methods;
 - The imposition of SOGI rights by states of the global North is a threat to African national autonomy. To impose them, particularly on less developed states is a threat to sovereignty and national ability to dictate their own laws and development paths.

As noted these claims have been made despite several moves on behalf of SOGI rights proponents to placate concerns, including the insertion of clauses to acknowledge particularities of traditions, cultures and beliefs as well as not including any suggestions of the need to adopt same-sex marriage.

Given the contradictions between the aims of SOGI rights resolutions and the objections of SOGI rights opponents, these claims must be understood through analysing the broader context in which they are used and thereby interpreting the findings identified by applying a queer reading to the prevailing discourses. Since the African Group and the OIC have largely orchestrated opposition within the organs of the UN, it would be easy to assume that member states were responding to a universal rationale for support. However this close analysis indicated that this is not true. In the case of the OIC, both Albania and latterly Tunisia have excused themselves from opposition to SOGI resolutions, while the African group demonstrated considerable variations in support throughout the years.

Likewise, this analysis challenged the assumed universal nature of the three dominant claims made in opposing SOGI rights. It demonstrated that although not necessarily adhering to the dominant

identity nomenclature in international discourses, variances in sexual and gender identities are as prevalent in those states opposing SOGI rights as anywhere else globally.

This analysis determined that these claims of non-universality have been attempts to erase and deny the existence of sexual and gender minorities. Secondly the claims to universal historical, cultural, traditional and religious values and beliefs are not reflective of the true variances across the states in opposition. Indeed, communities within these states do not necessarily even conform to the idealised, heteronormative versions claimed as universal. Interpreting these claims demonstrated that opponents have redefined culture and tradition within narrowly defined values and selected religious beliefs. Again, these false claims to universal beliefs and values have served to erase and deny the existence of sexual and gender minorities.

Finally, the rejection of supposed neocolonialism from states of the global North inherent in the pursuit of international promulgation of SOGI rights has been challenged both by the obvious acceptance of these rights among states of the global South and a closer reading of supposed neocolonialist claims. Indeed, it is apparent that the rejection of SOGI rights is implicated within a broader rejection of Western claims of superiority on several social and moral issues, complicated by race, levels of development, measures of modernity and religion.

7 “We are proudly African and we are proudly LGBTI”⁹¹

This chapter concludes the analyses from the preceding chapters through the Foucauldian framework to answer Weber’s questions “What is “homosexuality”?” and “Who is “the homosexual”?” and identify the figuration of the homosexual in relation to the debates on SOGI rights within the UN (Weber, 2016b:11). Subsequently, Weber’s queer logics of statecraft will be applied to determine if Queer Theory can aid understanding of South Africa’s inconsistent approach to SOGI rights.

7.1 The Figuration of the Homosexual - SOGI rights as un-African

As noted in Chapter 3, to identify homosexuality and the homosexual, a Foucauldian queer critical discourse analysis functions through four deliberations. Firstly, how sex is included in the discourse. In the context of this paper, this means how SOGI rights, sexual and gender minorities and the states that support them are discussed across Africa and the UN and what type of identities are produced by these discourses. Secondly, how productive power functions and its effects. Specifically, how the identities discovered in relation to SOGI rights, sexual and gender minorities and the states that support them are controlled by normalising regimes of power. Thirdly, how networks of power, knowledge or pleasure utilise productive power. Particularly, how the states engaged in the debates utilise the productive power of these identities to identify those deemed normal or deviant and perverse. Fourthly, how understandings of who or what might be considered normal and perverse are defined at any given time. In this context, identifying how these discourses define the states that are considered normal and those considered perverse in relation to the acceptance or rejection of SOGI rights. Through these analyses the homosexuality, or deviance, can be determined and therefore uncover how the homosexual is identified as deviant.

This research analysis is thus summarised below, clarifying firstly how the SOGI rights have been discussed, then highlighting the queer regime of productive power that informs these debates and suggests binaries which impose normal and perverse identities on states. Subsequently, the normal and perverse uncovered in these debates are presented.

⁹¹ Taken from a statement by the Mantiqitna Network, PAN Africa ILGA and ARC International to the UNHRC in support of 32/2 in 2016 (ARC International, 2016:15).

7.1.1 SOGI Rights in the Discourse

The analysis presented in the previous chapters demonstrated that across the African continent two prevailing narratives have been used to reject African sexual and gender minorities and their rights. Firstly, that sexual and gender minorities and their rights are not universal and conflict with African religions, traditions, cultures and beliefs. African political homophobia framed homosexuality as un-African and thereby through these claims envisaged a particular heteronormative African cultural and traditional value system that has been used for political expediency to bolster domestic political support, engender communitarian nationalism and scapegoat an already othered community in political brinkmanship with both domestic and international rivals. Secondly, rejecting SOGI rights is an anti neocolonial act that rejects the coercive imposition of Western moral decadence and preserves African nationalisms to which SOGI rights have been deemed counterproductive. Since African states are not implicated in historic colonialism to promote these rights on the continent is therefore also deemed un-African.

Likewise, within the UN opposition to SOGI rights from members of the African Group have centred on concerns that they lack universality and conflict with supposedly heteronormative African cultures and traditions, and consequently their promulgation is perceived as neocolonialism. Thus, the proclamations by African UN delegations to particular African traditions, cultures and beliefs can be understood within the continental context as a replication of the idea that SOGI rights are un-African, a sentiment exemplified by Mugabe's outburst of "We are not gays!" (UNGA, 2015). Likewise, the claims to preserving developmental independence and adherence to protecting sovereignty and national self-determination in states that have not been implicated as colonisers, again renders the neocolonial coercive tactics as un-African.

Un-African thereby exerts productive power to reject external influences and reinforce anti-colonial credentials among African leaders. Homophobic leaders and politicians of African states use the un-African framing to define foreigners and queer Africans as a threat to the existence of African states and the continent (Weber, 2016f). The un-African subject therefore becomes a queer, gender non-conforming, black or white, European or North American. Likewise, in Rao's reading of the African Group objection to the establishment of the IE SOGI in the UN, which argued that "non-internationally agreed notions such as sexual orientation and gender identity [were being] given attention, to the detriment of issues of paramount importance such as the right to development and the racism agenda" suggested that "in the imaginary of the African Group the unmarked black subject of racism is straight" (UNGA, 2016a; Rao, 2020: 133).

Consequently, this framing of SOGI rights as un-African identifies states supporting SOGI rights as un-African. Whilst this is clearly accurate for those states of GRULAC and WEOG that lead on this issue, it presents a problem for South Africa, a state most recently implicated in colonial activity and continental hegemonic ambitions, which is explored later in this chapter.

7.1.2 Productive Power of Homonationalism

As noted by the anti neocolonial framing of claims against SOGI rights, a regime of productive power that informs this debate has been the idea of a binary between modern states that embrace queer populations and traditional states that don't. As an extension to this long-standing separation in IR between developed states of the global North and less developed states of the global South, homonationalism focuses particularly on support for SOGI rights.

Puar's (2007; 2013; 2015) queer theoretical concept of homonationalism highlighted how states from the global North were implicated in the framing of SOGI rights as a Western concept by juxtaposing their liberal, pro-gay values against the backward oppression found in predominantly Muslim states (Puar, 2007; 2013; 2015). Exemplified in the post 9/11 rise in islamophobic and pro-SOGI rights political discourses in the Netherlands that marked Muslim societies as homophobic and "backward" (Mepschen and Duyvendak, 2012:70), this concept has been reflected in the similar narrative of homophobic Africa. Homonationalism has been defined as,

"an analytic category deployed to understand and historicize how and why a nation's status as "gay-friendly" has become desirable in the first place. Like modernity, homonationalism can be resisted and re-signified, but not opted out of: we are all conditioned by it and through it" (Puar, 2013:336)

Often this sexual exceptionalism has been framed on an assumption of an always-existing SOGI rights attitude in states of the global North that were previously anti-LGBTI rights, which reflects an equal "historical amnesia" witnessed in African claims to heterosexual purity (Currier, 2019:246).

Homonationalism demonstrated how the embrace of more liberal approaches to certain sexual and gender minorities throughout the global North had served two political purposes. Firstly, in welcoming those who have adopted lifestyles that conformed to many aspects of heteronormativity, including marriage, child rearing and military service, while citizens with other, less conventional relationships and life pursuits continued to be ostracised as undesirable or unpatriotic. Secondly, it created a binary between those states, predominantly, of the global North deemed modern, progressive and inclusive and those, predominantly, of the global South with less liberal attitudes to SOGI rights as deviant, homophobic and regressive (Puar, 2007; 2013).

The first purpose defined homonationalism as a form of nationalist homonormativity, however its globalisation now functions to divide and identify likeminded groups of nations (Puar, 2007:36-40; 2013). Consequently, Currier concluded that "[c]ontemporary transnational imaginaries treat Africans as homophobes and Northern countries as beacons of social and political progress" (2019:238). This has been evidenced in international rankings such as Newsweek's 2014 "Top 12 Most Homophobic Nations" (Strasser, 2014). Whilst the Western framing of homophobic Africa "reduce[d] ethnic and cultural complexity on the continent to the singular assignation of "African" and consign[ed] citizens of African nations to the category of "homophobes", leaving little room for how age cohorts, ethnic groups, and religious groups vary in their attitudes toward sexual diversity" (Currier, 2019:239), un-African arguably reinforced this concept and achieved a similar outcome.

Homonationalism has had a particular impact on African states that have resisted the adoption of SOGI rights, which has been reflected in the continental desire to preserve idealised traditional families. Additionally, Rao noted, in his study of the development of the Ugandan AHA, homonationalism positioned Uganda both as inherently backward, but also the homophobic claims of Western evangelical churches denied agency to Ugandans for self-determination, thereby rendering Ugandans as victims of a “Western culture war” (Rao, 2020:33). This created two contradictory binaries in the media, which on the one hand characterised a progressive West in contrast to a prejudiced, backward Africa and on the other, fuelled by anti neocolonial African leaders, a morally deviant West against pious, ethically superior Africa. This provided a foundation for the rejection of the neocolonial imposition of SOGI rights.

Indeed, western states have historically constructed states of the third world as queer in many forms including economically, developmentally, socially and sexually. African economies have been perceived as underdeveloped, African societies as socially and politically backward, and their people as sexually perverse, even “effete and effeminate” (Kapoor, 2015: 1611). Even in their attempts to develop, the West has defined states of the global South as “emerging”, but never quite fully formed. Kapoor (2015:1611) further suggested that in the post-colonial period third world states have sought to reject the sexual queering, remarking that while they sought to adopt the Western neoliberal economic model, they rejected the neoliberal rights.

Objections to these global stereotypes have been apparent in the statements of the members of the African Group and the OIC. This western homonationalist rhetoric has been reframed by these objectors to redefine SOGI rights as a symbol of western perversions, as evidenced in Cameroon, where opponents have railed against corruptions of the West to protect African values from depravity (van Klinken, 2020:345; Ndjio, 2016; Awondo, 2010). African leaders have objected to the western characterisation of their states as less advanced in relation to these issues and to reassert their sovereignty, they have rejected pressure to conform, as witnessed in the UN statements on sovereignty and development. Rejecting pressure to conform to the demands of activists and states from the global North has reaffirmed national moral and political authority over the threat of perceived neocolonialism (Awondo, Geschiere and Reid, 2012:154).

Whilst the African Group has rejected imposition of un-African SOGI rights, South Africa has responded with calls to avoid coercion, continue dialogue and avoid singling out individual or groups of states for vilification. Both discursive practices can be recognised as responses to the homonationalist stereotyping. However, whilst the African Group vehemently reject the implicit accusations, South Africa, caught between the two sides of the debate, seeks to moderate the invective from the global North and mediate between the two opposing blocs to achieve progress, bringing the state into direct conflict with its neighbours and the concept of un-African.

7.1.3 The Normal and Perverse: (Un-)African

As noted above, in the UN debates the African group has sought to assert a particular framing of SOGI rights as un-African. Various African states have repeatedly rejected SOGI rights, both in

national and international debates, as an affront to traditional African values and beliefs, which thereby marks the epithet un-African as an indicator of 'the perverse'.

Defining SOGI rights as un-African ascribes a certain identity to African states. The post-colonial African state has been constructed as a binary gendered, heterosexual, masculine, patriarchal state protector of moral authority and traditional beliefs, culture and religions. However, this claim represents conservative desires of the political elite and falsely universalises notions of heterosexuality and binary gender identities on a realistically much more diverse population. In this way, it has been demonstrated that un-African makes false claims to homogenised traditions, cultures and religious beliefs whose real purpose is to challenge the advance of liberal, progressive rights-based regimes from the global North. Despite the falsehoods behind the claim, it continues to be used to reject SOGI rights and the states that support them as un-African.

In contrast, African has therefore become a challenge to the encroachment of neoliberal, rights-based norms, which have been framed as neocolonial. The charge of neocolonialism revealed African political anxieties that included the need to overcome the colonial past as well as fostering a cohesive nationalism in states that are marked by considerable social, political and sometimes religious difference. This challenge can also be understood as invoked by a fear of losing agency, sovereignty and self-determination in the face of powerful international pressure from INGOs, donor states and international institutions. In this way African has become defined as the traditional, moral, heterosexual, reproductive state that respects national determination, democracy (albeit narrowly defined as the support of majoritarian opinions on sexuality), sovereignty and anti neocolonial. Therefore, to be African is to be normal, while un-African is perverse.

Thus, un-African has become a figuration intended to exert power to establish continental conformity in opposition to SOGI rights. This figuration implicates all states that vocally support such rights within the UN. South Africa, with its liberal constitution and foreign policy commitments to advancing human rights and pan-Africanism is caught within this framing as both normal and perverse. This has led to inconsistent actions on SOGI rights within the UN and which have characterised South Africa as paradoxical, unpredictable and incoherent on this issue.

7.2 Queer Logics of Statecraft: African and/or Un-African

As explained in Chapter Three, Weber's queer logics of statecraft uncovers multiple and contested identities revealing plural logics of both normal **and/or** perverse identities (Weber, 2016a; 2016b; 2016e). Queer logics of statecraft can, through the queer analysis of the debates on SOGI issues in the UN, expose how states engaged in these discussions may be configured as normal or perverse, how such configurations may shed light on regimes of structural power that both create and enforce these configurations and how some states may be perceived as both normal and/or perverse when their actions confound the expectations of either figuration of normal or perverse. In this way, queer

logics of statecraft enable the interrogation of regimes of discursive power that can account for an inconsistent state identity.

This section employs queer logics of statecraft to consider South Africa's inconsistencies in the promotion of SOGI rights within the UN. In doing so, it reviews the dominant themes identified in the discourse analysis and explains the South African approach to SOGI rights. It begins by explaining how South Africa has become implicated in the figurations of normal (African) and perverse (un-African) identified above. This highlights the challenges that South Africa faced when it supported SOGI rights in the international system. One of these incriminates it in the claim that promulgating SOGI rights internationally is characterised as neocolonialism. It explores how South Africa seeks to challenge the neocolonial claim by avoiding the coercive tactics identified among other SOGI supporting states and through reflecting the wants and demands of African SOGI activists. It ends by presenting how Weber's queer logics of statecraft can enable the South African state to be identified beyond monolithic binaries and hold contradictory identities on SOGI rights in the UN.

A state's history of external relations has a profound impact on its identity and how it is perceived by other states. As the world became increasingly bipolar through the Cold War, South Africa also became crudely divided between an enfranchised (racially identified by the state as white) centre and disenfranchised (racially categorised by the state as black, coloured and Indian) periphery, as reflected in Mbeki's two nations thesis (Seegers, 2020; Mbeki, 1998b). Historically, the centre wanted to be seen as pro-West, while the periphery, adopting the rights enshrined in the 1945 UN Charter into the 1955 Freedom Charter, oriented itself toward the communist Soviet Union and other African governments on the continent for support.

From the 1960s many ANC exiles found sanctuary within anti-apartheid movements in the global North, while others were displaced throughout the African continent. After the end of apartheid, entrenchment of human rights within the new South African Constitution and foreign policy were largely driven by associations with Western governments and civil society organisations (Gevisser, 2000; Seegers, 2020). However, not only were ANC exiles in Europe influenced, so too were those in training in newly independent African states. This latter group have been credited with the development of sustained anti neocolonial rhetoric of the emerging South Africa and its membership of the non-aligned movement in the UN (Seegers, 2020:54).

In the early 1990s, human rights were desirable to both the centre, to protect their interests (especially economic) once they handed over control of the state, and the periphery, whose rights had been suppressed under apartheid (Mamdani, 2000; Mbeki, 1993). Indeed, the long history of the ANC battle for freedom and human rights (as enshrined in the 1955 Freedom Charter), as well as the ideological links and support gained from developing countries across the African continent and the wider global South, set the foundations for the focus on democracy, human rights, pan-Africanism and global South oriented foreign policy principles (Freedom Charter, 1955; Mandela, 1994:4; Smith, 2016a:134; Alden and Le Pere, 2004; DIRCO, 2011a; 2020a; 2020b). South Africa's African credentials were demonstrated through Mbeki's African Renaissance and a foreign policy founded on ubuntu (Mbeki, 1998a; DIRCO, 2011a; 2020b). Meanwhile, South Africa's moral

leadership was premised on Mandela's international status, a commitment to promoting democracy and the rights of women and the latterly declared support for SOGI rights at the UN (Landsberg, 2004:159; Black and Hornsby, 2016:152; Mandela, 1993; South Africa, 2011d; 2011e).

Adopting a pan-African and pro-human rights foreign policy was essential to reinventing the image of the pariah state on the international stage. Both features of this emerging state identity were developed in direct contrast to its apartheid past, during which South Africa was shunned by newly independent African neighbours and by Western neoliberal democracies that were increasingly embracing a broader range of human rights (Landsberg, 2004:159-162; Alden and Le Pere, 2004:283; Oswin, 2007a:102; Serrão and Bischoff, 2009:370). Apartheid South Africa had been distinctly un-African and undemocratic in oppressing the black population and its involvement in some counter revolutionary movements within neighbouring states⁹² as well as its history of extensive human rights abuses, including against sexual and gender minorities.

South Africa therefore re-emerged onto the international stage needing to reaffirm its African and human rights credentials, under great expectations that it would demonstrate moral leadership (Landsberg, 2004:159; Borer and Mills, 2011:78; Black and Hornsby, 2016:152). However, as *The Economist* noted "[e]ven after the end of white rule, some of South Africa's neighbours regard it as something of a Trojan horse for the West. Hence its desire constantly to affirm its African credentials while playing down any hegemonic ambitions" ("The see-no-evil foreign...", 2008). The state needed to show leadership, but without fuelling perceptions of hegemonic ambitions.

Acceptance of SOGI rights among the South African political elite and in the Constitution was influenced by two primary sources. Some influence is attributed to liberal democratic ideas adopted by the leadership in exile in the global North, while local black and white activists were lobbying for their adoption, including Ditsie, Nkoli, and the NCGLE (National Coalition for Gay and Lesbian Equality) (Gevisser, 2000; de Vos, 2007; Dunton and Palmberg, 1996; Oswin, 2007a). These activists managed to secure broad cross-party support, with notable exceptions of the ACDP (African Christian Democratic Party) and members of the NHTL (National House of Traditional Leaders) and CONTRALESA (Congress of Traditional Leaders of South Africa), who cited religious and cultural objections (Constitutional Assembly, 1995:3-4; Oswin, 2007a; Dunton and Palmberg, 1996). This adoption of SOGI rights can be understood partially as a desire to be seen as distancing the post-1994 state from the human rights abuses of the apartheid governments, but also to avoid association with some of the autocratic tendencies of other post-liberation governments on the continent (Constitutional Assembly, 1995:3-4; Oswin, 2007a).

However, whilst the political elite were largely in favour, parliament often had to be whipped to support pro-SOGI legislation and the judiciary has been an important site of progress and protection of sexual and gender minorities, through Constitutional Court challenges, demands for more legislation and within society through the National Task Team on Gender and Sexual Orientation-Based Violence perpetrated against Lesbian, Gay, Bi-sexual, Transgender and Inter-sex persons

⁹² See, for example, Rousseau (2014) and Esterhuyse (2009).

(Gevisser, 2000; Vincent and Howell, 2014; Kganyago, 2019). Successive constitutional challenges ensured great domestic protections for sexual and gender minorities and even made South Africa the first African country to allow same-sex civil partnerships.

Consequently, on the international stage, South African foreign policy sought to reflect these constitutional freedoms and present the state as moral leader on human rights, including SOGI rights, and a leader of the pan-African renaissance. Indeed, initially South Africa expected to be able to lead on SOGI rights on the continent. In 2012, the Chief of the Global Issues Section of the Office of the United Nations High Commissioner for Human Rights in New York, Charles Radcliffe, reported “[t]he South Africans are convinced that if anyone can broaden the circle of conversation on this issue, it’s them. They have gone to extraordinary lengths to engage other African countries, and to get dialogue going” (quoted in Gevisser, 2012a).

However, as evidenced within the literature review, far from leading the continent, analysis of the debates on SOGI rights at the UNHRC and UNGA have demonstrated that South African support for SOGI rights has been inconsistent. These debates were marked by strong opposition from African states, often through statements on behalf of the African Group. In these instances, South Africa was confronted with a choice between supporting African solidarity and promoting SOGI rights. Indeed, Ambassador Matjila noted these issues caused disagreement between the South Africa and members of the African Group (UNGA, 2016e).

Additionally, as argued earlier, African states have deemed SOGI rights support as un-African. This framing of SOGI rights support as un-African implicated South Africa such that “[w]hen South Africa sponsors [sexual and gender minorities] at the UN Human Rights Council ... it is seen as an imperial power on much of the continent” (Rao, 2012). This has presented a problem, “[b]ecause of the new South African elite’s extreme sensitivity to charges of Western alignment/complicity as it has attempted to establish its African bona fides and move beyond the country’s domineering past” (Black and Wilson, 2004:30).

This has resulted in inconsistencies in South Africa’s actions on SOGI rights. As well as inconsistent voting on the adoption of SOGI rights resolutions, South Africa has also slowed progress by demanding more time to build consensus on these resolutions or to define terms and failing to expeditiously organise the African regional conference. At times the South African delegation has also voted to reduce reporting periods and remove or weaken language in support of sexual and gender minorities in other resolutions such as those cited for extrajudicial killings and protecting the family.

Although these South African actions have clearly been detrimental to SOGI communities, the discourse analysis has demonstrated that the stated intentions during explanations of voting have expressed commitment to SOGI rights based on the provisions of the Constitution. However, that declared support has been predicated on reservations and objections to the coercive approaches, including the imposition of sanctions, of other SOGI rights supporting states and the lack of African voices in the development of these resolutions. Indicative of this approach was the use of an African

proverb to explain the decision to abstain on the IE SOGI vote in 2016, “if you want to walk fast, then walk alone and if you want to walk far, walk together and with others” (South Africa, 2016).

This discrepancy between inconsistent actions on SOGI rights and the stated support occurs within a context in which support for SOGI rights is framed as un-African. Therefore, when South Africa voiced support for SOGI rights, the state was implicated as un-African. This conflicted with the parallel aim of reasserting the state’s Africanness. Therefore, this dissertation argues that in those moments, South Africa also sought to reaffirm its African identity by resisting neocolonialism and amplifying queer Africa activist voices. The next section evidences this claim.

7.2.1 Challenging neocolonialism and amplifying queer African voices

African leaders have called out neocolonial coercive tactics of SOGI rights supporting states domestically and within the UN. Sanctions and aid conditionalities against African states have led to backlashes against queer Africans, reduced their support services and reinforced the idea that SOGI rights have been imposed by actors from the global North (Rao, 2012; Currier, 2019:239; Abbas, 2012; Nuñez-Mietz and García Iommi, 2016). Likewise, INGOs have been accused by southern NGOs of heavy-handed interference with little local engagement and their donations have reinforced the argument that SOGI rights were a foreign imposition and supported by locals for financial gain (Macharia, 2010; Rao, 2020:11). Additionally, Massad (2002), Epprecht (2008b) and Gaudio (2009), have all highlighted the way that INGOs from the global North have overstated African homophobia to validate funding and action, which has resulted in denying African agency and increasing the risk of local reprisals. While Currier (2019:248) noted that Tatchell, in particular, repeated spurious human rights violation claims in Malawi that were criticised by both the local police and rights activists.

Consequently, African SOGI activists have called for an end to these coercive methods, as evidenced in the 2011 statement from African social justice organisations against the threat of aid cuts by the UK that would make sexual and gender minorities scape goats for any ensuing hardships (Statement on British ..., 2013). Indeed in 2013, when the US based Human Rights Campaign announced it would increase its international SOGI rights advocacy work, Wanjia Muguongo, who founded UHAI EASHRI (the Nairobi based East African Sexual Health and Rights Initiative), reacted with "Oh no — as if we don't have enough trouble...We are not sitting down somewhere waiting for salvation to come from the North," adding "Don't come and 'help' us — come and work with us.... There are organizations that are working locally, and they have their own ideas about what the struggle means" (quoted in Feder, 2013).

This reflected the opinion of Robinson, a Caribbean sex and gender justice advocate, who in 2012 warned:

“If Global North advocates wish to be part of the movement to end ‘sexual apartheid’, they must resist the temptation to take the reins. They must engage in genuine North-South dialogue and international solidarity. They need to get behind

Global South initiatives and push in the directions carved out by Southern activists”
(Robinson, 2012:3)

Civil society has been an important influence on South Africa positions on SOGI rights within the UN, including prior to tabling 17/19 and before opposing the 2016 African Group attempt to remove the IE SOGI in the UNGA (Jordaan, 2017b:87). The South Africa abstention in the 2016 vote for the IE SOGI occurred immediately after South Africa hosted the African regional conference and published the Ekurhuleni Declaration. Indeed, Voss (2017:17) noted that even NGOs involved in the informal UN debates were divided over whether an IE SOGI was appropriate, given that they can often be seen to single out individual states. Although South Africa abstained on the vote, Ambassador Mxakato-Diseko noted that the role of independent expert was chosen in preference to a special rapporteur to address such concerns (UNHRC, 2019m).

Indeed, calls from South African delegations for African voices to be heard and for coercive methods to stop have reflected the opinions of several African SOGI rights NGOs (Bennett and Reddy, 2015:19-20). South Africa has advocated a dialogical approach to the issue and avoidance of naming and shaming. This approach has been endorsed by African NGOs, such as the coalition of South African NGOs in support of the government approach to the passing of the Ugandan legislation in 2014 (DeBarros, 2014a), and the statement issued by a coalition of Ugandan SOGI NGOs in response to the Uganda Sexual Offences Bill 2019⁹³, which requested that state and NGO opponents “[e]ngage in *quiet diplomacy* with the Ugandan government and its political leaders” (emphasis added, Kivumbi, 2021). However, not only has South Africa represented African SOGI activists, but it has done so in a manner that is purposefully a rejection of neocolonial coercive tactics of the global North and in this way reaffirmed its African credentials.

7.2.2 South Africa the (un)-African State

As detailed above the continental discourses defined two figurations in opposition to each other in relation to SOGI rights. The first defined sexual and gender minorities, their rights and the states that supported them as un-African. The second defined the anti-neocolonial states that rejected the coercive imposition of SOGI rights on other states as African. South Africa, with its dual policy priorities of promoting human rights and pan-Africanist rejection of neocolonialism found itself caught between these binary oppositions.

Additionally, in critiquing Altman and Symons’ 2016 book *Queer Wars*, which explored the increasing global polarisation of SOGI rights, Weber noted that they reflected the prevailing narrative that Western governments and NGO are leading on the definition and protection of these rights stating, “it takes Western liberal formulations of LGBT norms as wholly positive benchmarks against which other sovereign nation-states can and should be measured” (Weber, 2017:231). Against this clear binary, South Africa’s approach to SOGI rights has been understandably inconsistent. Looking beyond this binary, through a queer lens, allowed a nuanced view of the South African approach to

⁹³ Clause 11 of which would designate sexual and gender minorities as sexual offenders.

SOGI rights, which demonstrated that South Africa's inconsistent actions on SOGI rights in the UN were a result of trying to balance the need to promote the protections in the Constitution and the desire to be seen as an African state. This became conflicted in an environment in which African partners have perceived the support of SOGI rights as un-African.

By favouring a more dialogical and less confrontational approach, South Africa sought to avoid shaming and coercing states to comply and avoided the homonationalist urges that treat those who have yet to adopt the norm as lesser states, or "the 'Underdeveloped' and the 'Undevelopable'" (Weber, 2016a). Equally, South Africa also did not concede to the predominant African Group position that advances a myth of cultural relativism and refutes the Africanness of sexual and gender minorities and their rights. Instead, South Africa voiced a principled position on their protection. However, it also opposed the neocolonial actions of the global North in supporting SOGI rights, which aligned the state with its continental neighbours. In those moments, South Africa voiced support for SOGI rights, an un-African move, but simultaneously sought to reject the neocolonial practices of other pro-SOGI rights states, an African move.

Viewed through Weber's queer logics of statecraft, South Africa's inconsistent approach could not be understood through an either/or logic, as either normal (African) or perverse (un-African), because in those moments South Africa was not behaving monolithically. This means that in those moments South Africa's actions confounded the expectations of either figuration of normal or perverse, while at the same time reflecting both normal and perverse figurations. In other words, to some observers South Africa seemed to be neither outright supporting nor outright rejecting SOGI rights; South Africa could not be understood as either a SOGI rights proponent or opponent. To reflect on Weber's boy/girl example (2016a:40), South Africa stated support for SOGI rights (thus appearing pro-SOGI), yet doesn't consistently vote for them (thus appearing anti-SOGI), thereby appearing both for and against them at the same time. South Africa was simultaneously reflecting a voiced un-African support for SOGI rights and a voiced African rejection of neocolonial norm promulgation. South Africa's actions were perceived both as normal and perverse and normal or perverse. The Barthesian logic of *and/or* allows South Africa to be understood in those moments as both an African *and/or* an un-African state.

8 Conclusion

This dissertation used Queer Theory to understand the inconsistencies in South Africa's approach to the international protection of people of non-normative sexual orientations and gender identities. It aimed to add to IR scholarship in two ways since the subject matter ensured it was both an exercise in African queer scholarship as well as Queer Theory. The dissertation firstly uncovered where the queer Africans are in IR scholarship and in this regard echoed earlier calls to determine "[w]here are the women?" of feminist IR scholarship (Enloe, 2014; Leigh, 2017). This was achieved with special attention to where the African sexual and gender minorities are in relation to IR themes of international norms, activism, state identity and interest formation and foreign policy. IR scholarship in these areas, indeed international political practice, often assumes heterosexual and normatively gendered subjects. This dissertation refuted those assumptions. Secondly it sought to explore the usefulness that Queer Theory, by viewing these themes through a queer lens, could offer in understanding difference in world politics and IR.

This dissertation presented a critical discourse analysis through a queer lens within three political spheres, the local within South Africa, the regional within the African continent and the international within the UNGA and UNHRC. The first sphere presented the genesis of SOGI rights adoption within South African political and legislative frameworks. The regional sphere provided contextual analysis that allowed a much clearer understanding of why sexuality and gender have become so important in African political life and served two purposes. It provided context for understanding the rejection of SOGI rights by African states in the UN, but also it challenged the prevailing monolithic stereotype of homophobic Africa and thereby weakened the un-African claim. The third sphere presented the SOGI rights debates that have occurred within the UNGA and UNHRC and discourse analysis demonstrated a figuration of "the homosexual" in the context of African debates on SOGI rights as "un-African". Un-African was used to establish an African norm of opposition to SOGI rights.

Queer Theory and Weber's queer logics of statecraft subsequently uncovered the dual incompatible and conflicting goals of South African foreign policy, supporting SOGI rights and reaffirmation of the state's Africanness, that have caused the state to behave in inconsistent ways. The methodological framework of queer logics of statecraft exposed the way in which South Africa was perceived as un-African for supporting SOGI rights, whilst at the same time appearing African, by rejecting coercive practices in the promulgation of such rights. South Africa's inconsistent behaviour has been predicated on exercising these two roles simultaneously and so in those moments South Africa portrayed not an *either* African or un-African identity, but *both* an African *and/or* un-African identity.

8.1 Further Research

In completing this study, several other themes became apparent that could form the basis of further research into South Africa's position on SOGI rights. There are two possible Queer Theory studies.

The first would be to draw upon queer necropolitics⁹⁴ to analyse South Africa's progressive immigration policy that allegedly welcomes queer African asylum seekers. This could focus on issues of political citizenship and, naturally, the potential to re-Africanise those deemed as un-African in their home states. Secondly, other researchers have noted that for many queer Africans South Africa is perceived as a queer utopia (Camminga, 2018). Indeed, the gay scene of Cape Town is even promoted as a gay tourist destination (Tucker, 2020:94). Whilst this impression is often quickly dismissed once the realities of the everyday experiences of many queer people within South Africa are understood, this perception and the promise of the Constitution and progressive legal and judicial regime call out for an analysis of the promise/failure of South Africa as a queer African utopia in the context of a key monograph of the queer canon, José Esteban Muñoz's *Cruising Utopia: The Then and There of Queer Futurity*.

Within the UN it became apparent that South Africa and Nigeria were often at loggerheads on this issue and thus calls attention to a potential study of these two states, perhaps alongside Mugabe's Zimbabwe and Museveni's Uganda, as potential rivals for moral hegemonic leadership on the continent. Certainly, the political and economic battles between Nigeria and South Africa have been documented, but SOGI rights calls into question issues of cultural, religious and traditional leadership status. Nigeria has remained steadfastly opposed to SOGI rights and regularly speaks out to invoke the protection of traditions, cultures and religions from externally imposed beliefs and values that might confront these. In its statements made on behalf of the African Group in the UN, Nigeria appears to represent the traditionalist fiercely defending cultural and historical values against those it has termed as impositions from the West and South Africa represents more progressive, liberal and inclusive values on the other. What do these standpoints mean in terms of their relative positions and power on the continent? Who do these stances appeal to and what are the expected benefits?

Finally, the analysis of South Africa's actions within the UNGA and UNHRC presented some obvious support from particular individuals. Notably the impassioned speeches and voting patterns of Ambassador Matjila contrasted with the more reticent approach of Ambassador Minty. In addition, South Africa's historic first, resolution 17/19, coincided with occupation of the Office of UN High Commissioner for Human Rights by the South African Navi Pillay, who had also spoken out strongly on the importance of human rights above cultural concerns and traditions. Interviews with these key protagonists in the SOGI debates, could offer additional insights into the South African approach. These anecdotes suggest an avenue of queer study that could draw upon Puri's (2016) concept of the "sexual state" as an assemblage of free-thinking actors, who may choose to contradict state policy, whilst Puri's "sexual state" also offers scope for biopolitical and necropolitical studies of those states across Africa that are promulgating queerphobic legislation.

⁹⁴ See for example Haritaworn, Kuntsman and Posocco (2014).

8.2 An African Queer Futurity

South Africa has demonstrated that it is possible to overcome substantial popular opposition to SOGI rights, through a strong judiciary and constitutional foundation to implement progressive legislation. Despite the prevailing narrative of African homophobia, the gains achieved in South Africa are increasingly being witnessed across the continent in countries including Angola, Botswana and Kenya. These can be added to the already existing states that demonstrate it is possible to be both African and SOGI supporting, such as Cape Verde. That said there is still a long way to go before many queer African's can celebrate their Africanness and their queerness. Many African countries continue to consider implementing more draconian anti-SOGI legislation. However, as this study has shown, the future is not wholly pessimistic. Despite many misgivings about the South African approach to SOGI rights the winds of change appear to be favourable.

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