

# **Human Rights for whom? Sexual Refugee Applications in the 'Gay Capital' of Africa**

**André Prado Fernandes**

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**Supervisor: Prof Jane Bennett**

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## **COMPULSORY DECLARATION**

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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## **Abstract**

This research paper aims at analysing the evidentiary hurdles of sexuality-based refugee applications in Cape Town, the so-called gay capital of Africa. Amidst authorities' fear of bogus applicants, asylum-seekers fleeing homophobic persecution in their country of origin have to navigate the burden of proving to the South African state that they are 'truly' gay, despite sexuality's arguably elusive and intangible nature. Drawing from a literature review from fields as diverse as international human rights, queer and critical race theory, postcolonial feminism, and migration studies I start from a macro perspective by analysing the evolution of refugee studies and the emergence of the 'sexual refugee' within the human rights system, going on to explore the implications of such emergence for sexual minorities from the Global South. The study then brings its focus to the regional/local in order to look at the relationship between South Africa and the rest of the continent in terms of LGBT and refugee protection, at which point I trace the directions and encounters of my brief empirical research, dwell on issues of research reflexivity and positionality, and present the data collected through semi-structured interviews with three gay men from Uganda and Zimbabwe who sought asylum in Cape Town.

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## Introduction

If one were to reenact Bruno Latour's fashion of flipping through the newspaper to come up with a cartography of contemporary news, one would likely have to dwell on the 'refugee crisis', possibly one of the most talked-about topics of our time. Images of the European refugee crisis recently won a 2016 Pulitzer Prize for breaking news photography. In January 2017, the newly-elected president of the United States issued an executive order calling for an immediate four-month ban to refugee admission on the country, raising questions about state sovereignty, international cooperation and, indeed, whether the refugee protection system is living on borrowed time.

One of Europe's most prominent newspapers, *The Guardian* has a section dedicated to refugees only, and a quick count shows an average of over 100 entries per month related to the topic. Particularly where Europe is concerned, the Mediterranean Sea has become a site of death and surveillance as overcrowded boats trying to reach Europe's shores capsize, leaving the waters full of faceless and unnamed drifting corpses.

According to the United Nations High Commissioner for Refugees (UNHCR), over 5 000 people drowned in the Mediterranean in 2016, a number potentially much higher since it does not include the bodies that went lost in the sea. The UNHCR estimates that the global refugee total had as of mid-2015 passed the 20 million threshold for the first time since 1992.

An impression that one might have from reading mainstream international media is that the global flow of refugees entails a movement of people fleeing the 'Rest' towards the 'West', a phenomenon thus concerning mostly the rich and developed world. However, this perspective is misleading and simplistic in that by rendering it solely as a Western issue, it fails to take into account the importance of discussing the specificities and dynamics of this phenomenon in the Global South.

Reports show that the six wealthiest countries in the world—accounting for almost 60% of the global economy—host less than 9% of the world's refugees, but “in contrast, more than half of the world's refugees—almost 12 million people—live in Jordan, Turkey, Palestine, Pakistan, Lebanon and South Africa, despite the fact these places make up less than 2% of the world's economy” (Lyons 2016: np). As a matter of fact, in June 2016 the UNHCR published its 2015 report stating that South Africa had a backlog of over one million pending asylum claims—the highest number in the world (UNHCR 2016).

Even though these numbers have been contested by some (Stupart 2016) as a result of South Africa's Department of Home Affairs poorly-recorded statistics as well as a slow and ineffective processing system, the fact remains that South Africa figures as one of the main asylum seeker receiving nations in the world and destinations for asylum seekers in and from Africa.

In order to be recognised by the state and the law as a refugee in South Africa, an asylum seeker must subsume under the 1998 Refugees Act's definition of 'refugee' as a person who has fled their place of origin "owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group", as well as "owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order...".

Amidst the diversity and complexity of factors impelling people to cross African borders to find 'safety', one is of particular interest to this research: persecution based on one's deviance to the heteronorm. Research published by the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA) in June 2016 shows that there are currently 74 countries in which homosexuality is a criminal offence—about half of which are in Africa, a continent where

homosexuality is illegal in 38 of the 54 African countries, and four countries enforce the death penalty for persons who identify as homosexual or transgender. African LGBTI people in extreme danger in their home country flee to South Africa to find refuge, as their constitution is the most progressive in the region. However, the lived reality after arrival is far from desirable (Hanekom 2016).

A recurrent discourse in the continent is that homosexuality is unnatural, unlawful and un-African, being often depicted as a Western import, a legacy of colonialism that has no space in the postcolonial society. Hence, 'purging' society of its colonial remains in order to advance a 'pure' African sexuality is conflated with persecuting homosexuals. In this context, South Africa is generally regarded as the most 'gay-friendly' in the continent: in 1996 it became the first country in the world to outlaw discrimination based on sexual orientation; ten years later it became the first African nation to legalise same-sex marriage. By means of the 1998 Refugees Act, South Africa has also committed to providing asylum and protection to foreigners fleeing homophobic regimes.

Sexual orientation first emerged within refugee/migration studies by means of the decision rendered in 1994 by the Supreme Court of Canada in *Ward*, considered the landmark in international jurisprudence which extended the

interpretation of the 1951 UN Refugee Convention's definition of refugee to include sexual orientation under "membership of a particular social group". Since *Ward*, we have witnessed a scenario where sexuality-based refugee claims

constitute an expanding area of legal practice and scholarship. This expansion in the field of refugee law mirrors international efforts to address homophobia in various sites around the globe, and in legal terms, this has predominantly taken the form of rights-based protections, such as decriminalising same-sex sexual acts as a matter of civil and political rights (Bruce-Jones 2015: 101).

It is therefore possible, for instance, for someone from Zimbabwe—notorious for its homophobic regime—to seek protection in its neighbour South Africa if they are forced to flee home because they fail to comply with the heteronorm. As B Camminga observes in their thesis about African 'gender refugees' in South Africa,

For gender [and sexual] refugees there is always prior knowledge of South Africa gleaned from radio, television, the Internet and other cultural influences such as music...—'everyone knows about South Africa'—the country that has rights, a Constitution, is 'gay friendly'... Even assailants inform their targets 'we will kill you: go overseas or go to South Africa'" (Camminga 2016: 21).

What at first might seem a straightforward legal protection begins to become complicated when one looks at *how* these requirements should be met. On the one hand, the applicant is faced with the burden of proof—in order to prove to the state that they are being persecuted because of they are gay or lesbians, they must first provide evidence of their sexual identity.

On the other hand, such evidence needs to be interpreted and judged by the state so as to assess the credibility of the application. Because in some countries sexuality-based refugee applications are processed with more celerity, they are known as 'golden cases' (Shakhsari 2014: 1001) and supposedly more vulnerable to bogus applicants willing to play the 'gay card' (Gevisser 2016: np). In this scenario, the interpretation and judgment of the evidence should, in theory, assist the state to tell apart the 'bogus' applicant from the 'truthful' one.

Due to sexuality's refusal to be objectively materialised, authorities often have to deal with anxieties around fake applicants pretending to be gay or lesbian, leading to a scenario where applicants get treated with suspicion and derision, even being told by state officials that they are not really gay or not gay enough (Morgan 2006). How does one provide evidence of one's 'true' sexuality, though, proving to the state that one is not pretending to be gay? Which benchmarks are



(or should be) used to assess the credibility of the claim? What does it mean for the state and the law to (fail to) interpellate someone as a legible, legitimate sexual refugee?

These questions engage a very wide global range of contexts and legal frameworks and processes. In this particular research project, I am concerned with how people from other African countries, who have fled homophobic violence and sought asylum in South Africa, experienced the formal process of presenting as counter-heteronormative in the application process. To do so, I turn to the works of scholars in diverse fields such as international human rights law, critical race and gender studies, queer legal theory and post/decolonial studies.

To ask these questions from and about South Africa means to, from a theoretical point of view, bring to the South a topic that is often times written from and for the West. The complexity of researching experiences hidden from the public eye, lived by people vulnerable to fear, xenophobia, and gross destabilization (Martin 2012; Camminga 2016) challenged me to imagine the representation of 'lives' as something easily undertaken, especially in light of the critique by some Southern thinkers (Grosfoguel 2008) that researching people's experiences involves simply a respectful listening followed by a purportedly neutral report.

To explore these questions, I draw both from theorizations of the macro, as in international human rights and global sexual politics, as well as the regional/local, such as the particularities and challenges of homosexuality in Africa vis-à-vis South Africa's legal instruments offering protection to the LGBT and refugee community.

While the literature review deals mostly with challenges facing gay and applicants in countries like Canada, Australia, the United Kingdom and South Africa, due to the nature and scope of this research (as well as reflections about my own positionality) I have chosen to focus the empirical research solely on the experiences of male gay applicants in Cape Town. Transgender identity is often included under the umbrella LGBT, but because in terms of refugee status their case would be based on gender identity rather than sexual orientation, the paper does not include the particularities and complexities of transgender asylum seekers/refugees.

Without disregarding Foucault's assertion that homosexuality is a contingent category of identity, with no universal and ahistorical signified behind the signifier (especially not in a cross-cultural context), I chose to use the terms 'gay' and 'lesbian' to refer to the category required by the law/decision maker officers

and to the way participants might self-identity. The term 'homosexuality' is used to refer to a same-sex conduct rather than a sexual identity. Finally, the words 'queer' and 'sexual minorities' are used in a bid to address the diversity of desires and practices in cross-cultural settings that do not necessarily translate into a conventional identity category, therefore not represented in the terms gay, lesbian or bisexual, even though I am aware that the words 'queer' and 'sexual minorities' also cannot (and arguably should not) encompass a universal spectrum of sexual behaviours and identities.

In addition, the use of 'refugee studies' in this paper should be understood *lato sensu*, given that part of the literature that I look at falls under diverse categories such as anthropology, sociology, queer migration studies, and gender and sexuality studies. It is often the case that an article or book might not explicitly describe itself as part of 'refugee studies', even though they still deal with the subject from different angles. Also, there hasn't been a general consent over whether or not 'refugee studies' in a stricter sense has managed to consolidate itself as a distinct academic discipline with clear boundaries.

Finally, the terms 'refugee' and 'asylum seeker' are not interchangeable: the former refers to a person who has been successfully granted a permit after going through the refugee determination process, while the latter refers to a person whose application is still ongoing. In other words, an asylum seeker is a person seeking recognition as a refugee. Both definitions entail the crossing of national borders. A person who is forced to flee home but remains inside their country of origin is generally regarded as an 'internally displaced person', but this phenomenon is not taken into account in this dissertation due to methodological and scope constraints.

Chapter One will start with a brief analysis of the emergence of refugee studies in the post-war period and a significant shift in the paradigm of the discipline fuelled by the end of the Cold War, moving on to analyse the conditions that enabled sexual orientation to emerge within the discipline in the mid-1990s. The chapter will offer a literature review on the topic, dwelling on issues of evidence and credibility assessment as well as the ways in which non-Western people of colour affect and are affected by a purported global gay identity that in conjunction with the language of rights serves as a platform for transnational equality and (legal) protection. In this context, I am particularly interested in theorisations of the dynamics before sexual human rights interpellating and classifying raced and sexed bodies as unintelligible.

Chapter Two will trace the directions of my research exploration beyond books

and articles. It will begin with an examination of research reflexivity, my own positionality and ethical concerns, moving on to reflect on the difficulties and successes in my reaching out to organisations and activists in Cape Town, and finally presenting and analysing data that I gathered from semi-structured interviews with three participants, namely African gay men who sought asylum in Cape Town. The chapter explores my own anxieties as a foreign researcher and theorises the decisions I made about the most fertile routes of creating material to look at the question of how gay asylum-seekers in South Africa navigate the evidentiary hurdles to prove their sexuality to the Department of Home Affairs (DHA).

# Chapter One

## I. Outline of Refugee Studies

Contrary to the popular belief that the massive influx of people within and across borders and continents is a contemporary and unprecedented phenomenon in history, one of the greatest peaks of global migration can actually be located towards the end of the 19<sup>th</sup> century, when millions of Europeans crossed the Atlantic, followed by the great numbers of displaced people during the Great Wars of the 20<sup>th</sup> century. However, it wasn't until the 1951 UN Convention on Refugees and the subsequent decades that the discipline of 'refugee studies' emerged and started to consolidate itself within academic, activist, and policymaking circles.

The birth of a discipline is not an ahistorical process and is often linked to external forces. In the case of refugee studies, "despite its status as an academic field of study, the development [of the discipline] has always been intimately connected with policy developments" (Black 2001: 58). It emerged at the onset of the Cold War, when geopolitics revolving around an east-west axis divided the world into First, Second, and Third World, so "the concentration on the international refugee regime in this period, as we all know, also reflected western interests" (Chimni 2009: 17). In this sense, the figure of the refugee in this period acquired an ideological, geopolitical value, with defectors from the socialist regimes serving as a litmus test for the historical and moral supremacy of capitalism.

The 1951 Convention currently has 144 signatory states and provides the definition of a refugee, as well as his or her rights and the legal obligations of the receiving state to protect them. In accordance with Article 1A(2) of the Convention, a refugee is a person who, *ipsis litteris*,

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

As a post-war instrument, the 1951 Convention was originally limited in scope to persons fleeing events taking place before the 1<sup>st</sup> of January, 1951 within Europe. However,

The regime's legitimacy was of such great significance that it compelled the removal of the chronological and geographical limitations of the 1951 Convention by the adoption of the 1967 Protocol relating to the Status of Refugees; this expansion was arrived at against a background of attempts to adopt a regional convention in Africa (Holborn 1975: 185-86, cited in Chimni 1998: 351).

The 1951 Convention and the 1967 Protocol Relating to the Status of Refugees remain to this day the main international instruments through which signatory states are bound to offer protection to those seeking asylum. The regional African convention that Holborn mentions took the form of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, originally signed by 41 member states of the Organisation of African Unity, currently known as the African Union. It incorporated the 1951 UN Convention and extended its application and validation to the new signatory member states, but its most celebrated feature was an expanded definition of refugee. Besides the one outlined in the article 1A(2) of the 1951 Convention, the article 1.2 of the OAU Convention stated that

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

This Cold War phase of refugee studies was marked by an exilic bias and a depoliticised, positivist approach to international refugee law, keeping in place a separation of the legal and the political. Evidence of this is found in the establishment of the UN High Commissioner for Refugees (UNHCR), whose original goal was

the impartial, independent, and neutral provision of relief to those in immediate danger of harm—[which] emerged in opposition to a particular meaning of politics and helped to depoliticize relief-oriented activities [...] ][and] thus served to depoliticize humanitarian action and create a "humanitarian" space insulated from politics (Barnett 2005: 724).

However, one might suggest that the very attempt to set humanitarianism and politics apart is in itself a political act, especially in a historical moment where what was at stake were two competing global orders. Relief was then supposed to alleviate suffering and improve the life conditions of individuals but not alter the conditions that displaced them in the first place—that should be the role of politics.

The second phase of refugee studies came about in the 1980s, regarded as a moment of rapid growth for the discipline given that it coincided with the 'increased' arrival of Third World refugees in the West. Important academic centres and journals were established in this period, such as Oxford's Refugee Studies Programme in 1983 and the Journal of Refugee Studies in 1988. This phase is also marked by an interdisciplinary approach to the study of the refugee phenomenon, attracting scholars from fields such as, *inter alia*, political science, anthropology, sociology, law, and history (Black 2001).

Renowned Indian legal scholar B. S. Chimni, who is part of the intellectual and political movement *Third World Approaches to International Law* (TWAAIL), suggests in his article "The Geopolitics of Refugee Studies: A View from the South" that the end of the Cold War and the world's turn from an east-west to a north-south divide paved the way for a significant shift in the paradigm of refugee studies. A new subject was created: the 'new' refugee, whose emergence was linked to the 'myth of difference', whereby

the nature and character of refugee flows in the Third World were represented as being radically different from refugee flows in Europe since the end of the First World War. Thereby, an image of a 'normal' refugee was constructed—white, male, anti-communist—which clashed sharply with individuals fleeing the Third World (Chimni 1998: 351).

In order to legitimise such myths refugee studies relied on an internalist approach, which consisted of looking at the internal borders of a nation state to find the conditions causing the displacement of people. This approach, instead of also taking into account the responsibility of external actors, lays the blame for the refugee phenomenon on the economic failure of postcolonial societies. Hence, the former figure of the refugee fleeing Europe for political reasons was replaced by the 'new refugee', who aspired to move to the affluent North for economic reasons. The alleged difference in nature between the two types of refugees brought into discourse questions about the validity of the application of the 1951 Convention to this 'new' moment. Advocates of the non-entrée (i.e. preventive) regime in the West claimed that the fact that the OAU expanded the definition of the refugee in the 1969 Convention showed that, in fact, Third World refugees of the late 1960s onwards differed in nature from the refugee of the 1940s and 1950s.

Besides, the 1967 Protocol's geographical and chronological expansion paved the way for Western states to adopt a paternalistic, humanitarian stance towards the ailing postcolonial states, legitimizing a range of interventions in the South in

order to purportedly improve their economic status and, therefore, diminish the supposedly dangerous and excessive flows of refugees heading towards the North. In this scenario,

A new approach, couched in the language of human rights, was articulated. It called for providing assistance and protection to refugees in the region of origin, and contended that the appropriate solution to refugee flows from the Third World was voluntary repatriation, inaugurating the repatriation turn in refugee studies (Chimni 1998: 352).

Such a paradigm shift has produced a dual, paradoxical figure of the refugee—on one hand, they represent subjects to be contained, the feared and threatening ‘Other’; but on the other hand, “liberal and humanitarian discourses of citizenship portray... [them] as invariably *human beings* in need to be cared for” (Zembylas 2010: 31). The contemporary scenario is thus marked by a politics of confinement, an internalist approach to understanding the roots of refugeehood and a humanitarian approach expressed in the language of human rights.

Chimni suggests that the production of knowledge on the figure of the refugee has been of a dual use: on the one hand, the study of a subject is crucial to its regulation, and at times the knowledge produced by refugee studies was linked to the foreign policy of Northern states. On the other hand, significant developments have been achieved thanks to the work and dedication of those involved in the refugee knowledge production, which takes places not only in academia but also state organisations and NGOs. In this scenario, even subaltern or ‘well-meaning’ knowledge is always potentially subject to co-option. The relationship between power and knowledge production/dissemination in refugee studies can be seen in how the rapid growth of the discipline coincided with the historical and political moment when northern states were concerned with the ‘invasion’ of Third World refugees and how to contain them.

Such a paradigm shift in the discipline is also directly linked to the position humanitarianism came to occupy within global politics with the end of the Cold War. The former principles of neutrality, impartiality, and independence separated from politics

crumbled during the 1990s as humanitarianism’s agenda ventured beyond relief and into the political world, and agencies began working alongside, and with, states. During the 1990s humanitarian agencies began to accept the idea that they might try to eliminate the root causes of conflicts that place individuals at risk; this vision swept them up into a process of transformation and into the world of politics (Barnett 2005: 724).

The meaning of humanitarianism expanded and went from entailing impartial relief to include “human rights, access to medicine, economic development, democracy promotion, and even building responsible states” (Barnett 2005: 723). While humanitarian agents and individuals have indeed provided succour and alleviated the suffering of thousands of refugees, a closer look at humanitarianism sheds light on its connections with imperialism and colonialism. In this context, though, a critique of how the North has contrived a humanitarian discourse in accordance with neoliberalism and mobilised it to legitimise imperialist ventures does not intend to disregard the ‘good’ that it has done to those in need.

The two central values imbued in contemporary humanitarianism are arguably the ideas of reform and progress. The urge to reform and ‘better’ the causes of displacement has “led humanitarian agencies to accept the idea of reform from outside and thus muscular imperialism” (Chimni 2009: 22). Moreover, the focus on the internal causes of displacement—and given that the South is *par excellence* the source of displacement—is the perfect way to portray the North as the well-meaning distributor of remedies whilst simultaneously concealing how the North itself has historically contributed to the crisis in global displacement.

Zembylas writes about the limitations of humanitarian discourse insofar as “the failure to question the separation of humanitarian concerns from politics [...] signals a “secret solidarity” between humanitarianism and the powers it should fight” (2010: 36), pointing out as evidence the ‘neutrality’ of UNHCR and the International Committee of the Red Cross, and their refusal to comment on actions of political regimes. Zembylas (*ibidem*) proceeds:

This distinction [between humanitarianism from politics] is also seen in the general populace of many nation-states in which great compassion is demonstrated by donating millions of dollars to fund humanitarianism, while showing great hostility to those same suffering faces when they are more proximate strangers.

## **II. Sexuality Meets Refugee Studies**

To understand the conditions that allowed for sexuality to emerge within the refugee protection system in the mid-1990s, one must start by looking at the two preceding decades. The mid-1990s is precisely the moment in which the globalisation of gay civil rights movements, then present in virtually every continent (Phillips 2001), was met with the emergence and consolidation of ‘sexuality’ within human rights law (Morgan 2001, Stychin 2004).

Notwithstanding the particularities of contexts and local challenges, the majority of the movements emerging in different parts of the world share one common



aspect: the influence exerted by the American gay and lesbian civil rights movement.

### **a) Gay Human Rights Gone Global**

Following the 1969 Stonewall incident, the growing gay and lesbian movement in the United States turned to court to seek redress. In “Exporting Identity”, UC Berkeley legal scholar Sonia Katyal provides a detailed account of how the movement’s strategy shifted from an original (and unsuccessful) focus on privacy—the right to privately engage in any desired sexual conduct—to a focus on a public, ‘innate’, and allegedly universal ‘identity’. The latter strategy propelled the national growth of the American gay civil rights movement throughout the 1970s and 1980s and catalysed the prominent status that sexuality gained in the 1990s within the international human rights agenda—which had existed really for three decades but had until then kept “issues of sexuality firmly in the closet” (Morgan 2001: 209). Since the 1990s, though, the motto

‘Gay rights are human rights’ has become a common slogan. [...] Even Amnesty International, that most respectable of NGOs, finally decided to recognize sexuality as an issue of political imprisonment (but only after a long battle). Human rights conferences, like the 1993 Vienna Conference on Human Rights, have been forced to confront demands for the recognition of non-hetero desire. And ‘learned texts’ are now written on the subject (ibidem).

The 1990s were a pivotal decade of intense growth and conflict for the gay liberation struggle. On one hand, there was a worldwide proliferation of gay civil rights movements with growing international visibility (Stychin 2004); on the other, in some parts of the world such sprouting inadvertently resulted in a social and institutional backlash against gays and lesbians, especially in postcolonial states where these identities were seen as an export from the West/coloniser, to be thus removed from the postcolonial social body. As such,

rather than persecuting sodomy (or same-sex sexual conduct) specifically, antigay activists in the developing world often instead accuse gay and lesbian citizens of falling victim to Westernization and foreign influence [...] In this equation of “gay identity” with “Westernization”, gay civil rights then become a symbol of recolonisation” (Katyal 2002: 125-126).

The Zimbabwean 1995 Book Fair, headlined “Human Rights and Justice”, was the epitome of such conflict. Despite its title, “the fair gave rise to one of the most visible events of injustice against gays and lesbians, and marked the transnational creation of a global gay and lesbian rights movement” (Katyal

2002: 123). The Book Fair organisers withdrew the invitation for GALZ (Gays and Lesbians of Zimbabwe) to participate in the event after receiving a letter from the government. At the occasion, president Robert Mugabe declared that

If we accept homosexuality as a right... what moral fibre shall our society ever have to deny organised drug addicts, or even those given to bestiality, the rights they might claim and allege they possess under the rubrics of individual freedom and human rights, including the freedom of the press to write, publish and publicise their literature on them? (Dunton & Palmberg 1996; cited in Katyal 2002: 124).

The president's attacks received international attention from organisations and countries such as Amnesty International and the United States, New Zealand, Sweden, and Britain. In response to this international reaction, Mugabe contended: "Let the Americans keep their sodomy, bestiality, stupid and foolish ways to themselves, out of Zimbabwe... Let them be gay in the U.S., Europe and elsewhere. They shall be sad people here" (ibidem).

The Book Fair incident is an emblematic case for three reasons. Firstly, because Zimbabwe is just one of the 38 (out of 54) countries in Africa where homosexuality is currently illegal and at times punishable by life imprisonment or the death penalty. As the Book Fair incident shows, homosexuality is painted as a Western threat rather than a question of individual rights. Secondly, Mugabe's efforts to repress the 'spread' of the gay identity ended up actually producing it. As Phillips (2001: 31) argues, by publicising his homophobia, Mugabe "has given an identity to many who were previously ignorant of or uncaring about it". Katyal (2002: 128) goes on to add that

both neo-traditionalists like Mugabe, and gay rights activists both set out to manufacture their own versions of tradition and modernity. While Mugabe's cultural script actively excluded gays and lesbians from its purview, activists sought to demonstrate that gays and lesbians had been part of Zimbabwe's cultural fabric for generations by relabeling same-sex sexual behavior and conduct as authentically African (and potentially foundational evidence of a "gay" or "lesbian" identity).

On this note, the 1995 Book Fair is illustrative of how the Zimbabwean emerging gay civil rights movement resorted to what Katyal calls the substitutive model, which assumes that "one's public sexual identity and private sexual conduct are interchangeable; that is, individuals who engage in same-sex sexual conduct can be legally classified by a fixed and clearly demarcable gay, lesbian, or bisexual sexual identity" (2002: 101). The prevalent and globalised substitutive model conflates a doing (act) with a being (identity), which then itself serves as a platform through which one can fight for and access rights.

The substitutive model stands in opposition (although in many contexts it can coexist with) the transformative model and the additive one. The former conflates same-sex conduct with a gender transgression, with the resulting identity revolving around femininity rather than homosexuality. Katyal goes on to argue that the additive model—which will be further examined in Chapter Two—encompasses same-sex desires and behaviours that do not translate into a homosexual identity, but rather exist adjacent to it. Katyal points to the figure of the MSM (men who have sex with men) in the public health activist circles in India to illustrate how many MSM may identify as heterosexual and be married whilst engaging in same-sex activities.

## **b) The Sexual Refugee**

As the global gay movement began to take shape, in 1993 the Canadian Supreme Court rendered a decision in *Ward*—commonly regarded as sexuality's first foray into the field of international asylum law, since the decision extended the definition of refugee provided by article 1A(2) of the 1951 Convention to recognise “gender, linguistic background and *sexual orientation*’ as the paradigmatic examples of particular social groups” (Hathaway and Pobjoy, 2012: 323-324; emphasis in original). The decision happened at a moment where people were starting to self-identify as gay and lesbians all over the world—which in some cases motivated persecution and forced displacement.

In May 2002 the UNHCR, the main international agency in charge of protecting and assisting refugees, published a guideline for the interpretation of ‘membership of a particular social group’, stating that

A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights (UNHCR 2002: 3).

One should not assume that the sexual orientation asylum process arose out of benevolence, though. Writing about the immigration system in the United States, Morgan points out, for instance, that “until 1990, U.S. Immigration laws barred homosexuals as “sexual deviants,” using an outdated and abandoned psychological classification of homosexuality as a mental disorder” (2006: 138). With the consolidation of sexuality within a ‘particular social group’ towards the turn of the millennium, sexuality-based refugee claims have attracted increasing attention from legal practice and scholarship, as this development in international jurisprudence and practice was met with some challenges. For

instance,

In addition to the recognition of their applicability for asylum, lesbian and gay applicants are subsequently faced with (i) proving that they are lesbian, gay or bisexual; (ii) establishing that they face persecution because of their sexuality; and (iii) proving that the authorities in their country of origin are either the perpetrators of the persecution, or that they are unwilling or unable to protect them from persecution at the hands of non-state actors (Connely 2014: 5).

For this research I have chosen to focus on the first point: how one provides evidence that one is 'truly' an LGBT asylum-seeker, and what kind of evidence can or should be provided by the applicant, given that it is upon him/her that the burden of proof relies. Unlike the factual assessment in claims based on political opinion or nationality, for instance—which are more likely to have tangible, objective evidence—sexual orientation claims are more likely to depend mostly or solely on the personal narrative of the applicant. Sexuality is not a self-evident trait and hardly ever can be 'proved' by means of objective evidence, especially in countries where strict and violently enforced heteronormative values prevent queer people from disclosing their identities, behaviours, and desires even to their closest friends or family.

Sexuality-based claims, thus, rest largely on the credibility of one's testimony and self-presentation of one's identity, not uncommonly linked to past experiences of violence and trauma. Such conundrum in assessing the 'truth' of LGBT/queer refugee claims has led to a situation where decision-making authorities seem to become increasingly suspicious of such claims, in light of the allegedly high number of 'bogus' applicants pretending to be LGBT. Berg and Millbank (2009: 196) point out that

Issues of factual assessment, which have always been significant, now appear to be rising in prominence. Decision-makers in countries such as Australia and Canada appear increasingly likely to disbelieve that the applicant is actually gay, lesbian or bisexual on the basis that her or his claimed identity is not 'plausible'.

Such heightened scepticism possibly relies on the authorities' fear that some applicants might be taking advantage of the system, as the "UK and Australian cases repeatedly describe sexual orientation claims as 'easy to make and impossible to disprove'" (Millbank 2009: 4). Moreover, in some countries sexual orientation claims are processed faster than others, giving them the "golden case" reputation and making them more prone to fraud allegations (Shakhsari 2014). In any case, credibility assessment remains a major challenge facing refugee determinations, especially because

Unlike disbelief of other aspects of a claimant's narrative (such as past persecution, where future fear of persecution may still be made out), disbelief regarding actual group membership will almost always doom the claim the failure: thus it is chosen as a key issue to explore credibility assessment. (Millbank 2009: 4)

International expert on gender, sexuality and law, Jenni Millbank conducted a thorough analysis on the practise of credibility assessment in lower level tribunals by means of a case study of over 1 000 sexuality-based refugee applications in Australia, the United Kingdom, Canada, and New Zealand. The study found out that all of the jurisdictions made reference to the term 'ring of truth', usually in determinations that are disbelieved.

The term 'ring of truth' is a fascinating one because it posits the story *itself* as the active agent in the adjudication process and suggests that its truth is both self-contained and self-evident. It is the story that signals (or 'rings') its own truthfulness, rather than the decision-maker who is choosing (based on evidence, instinct, emotion, or a combination) to believe, or to disbelieve, in it or the person telling it (Millbank 2009: 5).

The 'ring of truth' comprises three primary tools which decision-makers arguably use to base their assessment: consistency, plausibility, and demeanour. Consistency can be either internal or external: internal consistency being the extent to which the applicant's series of statements contradict (or not) each other, while the external aspect of it refers to the extent to which the applicant's statements sit comfortably next to generally known facts about his or her country of origin. The latter blurs into the boundaries of plausibility, which refers to the probability of the applicant's story being real/likely, even though this category "may rest far more upon speculation than upon evidence" (Millbank 2009: 17).

Lastly, demeanour entails physical appearance and perception of manner, and even though these are generally accepted as unreliable parameters to base the officer's decision, it is clear that decision-makers continue to rely on them (Millbank 2009: 7). For instance, one aspect of demeanour which has served to reject claims is the applicant's 'vagueness' when questioned about his or her sexuality.

However, The UNHCR's 2013 handbook *Beyond Proof: Credibility Assessment in EU Asylum Systems* acknowledges a number of reasons why an applicant might struggle with disclosing their sexual orientation (such as feelings of shame and/or self-hatred), and goes on to emphasise the importance that

Credibility assessment contains no superficial understandings of the experiences of LGBTI individuals, or erroneous, culturally inappropriate, or stereotypical assumptions.

[...] It is therefore essential that decision-makers understand both the context of each refugee claim, as well as the individual narratives that map uneasily onto common, notably Western, experiences or labels (2013: 71).

In practice, however, demeanour and stereotypical assumptions remain central elements in the decision-making process. In most cases, to be truly gay means to be viewed as such by the officer: in other words, to meet their expectation of what being gay or lesbian looks like. Berg and Millbank go on to contend that “what is being looked for is heavily influenced by Western conceptions of the linear formation and ultimate fixity of sexual identity” (2009: 197).

Such difficulties in the credibility assessment process, particularly when it depends on such unreliable elements, have created a scenario where applicants are disbelieved and rejected unreasonably, whereas others, possibly bogus applicants, are granted asylum if they know how to play the system and choose the right card. Indeed,

The rationale for requiring extrinsic evidence to confirm the applicant’s own testimony lies in the belief that the sexual orientation asylum system is vulnerable to fraud and false claims. However, closer analysis reveals that the fact-finders’ own narrow understanding of sexual identity encourages the very fraudulent claims that the immigration authority fears (Morgan 2006: 154).

In this context, South African writer Mark Gevisser writes in his article for The Guardian “Love’s Runaways: The Gay Ugandans Forced into Exile” that

there were 500 LGBTI asylum seekers registered in Kenya, but the UNHCR and its service partners estimated that at least a hundred of these were fraudulent: the agency had been alerted that a busload of new applicants had been told by their traffickers to play the gay card (2016: np).

To ‘play the gay card’ suggests a certain level of fabrication of what and how one presents one’s claim in order to fit a hegemonic, universal ideal of being gay that will serve as a litmus test of the truthfulness of one’s claim. In other words, the value of an asylum seeker’s claim is allocated and distributed in accordance with the way it approximates (or not) a very specific paradigm of sexuality, arguably based on a Western, white, and male model. In this scenario, modifying one’s behaviour and mannerisms in order to look gay—playing the gay card—functions as a sort of cultural capital for non-Western refugees who wish to make their claims look more ‘coherent’, in lieu of local, less legible sexual identities and behaviours.

To ‘play the gay card’ is the corollary to the prevailing assumption that being gay

is a universal occurrence, a biological determination inherent to any human being regardless of their cultural background and time in history. The hundreds of millions of views that Lady Gaga's song *Born This Way* has received on Youtube attest to the global movement's successful efforts to paint homosexuality as a birth condition, in response to homophobic rant that it was a (wrong) choice of the person. This essentialist approach thus leads one to assume that homosexuality is therefore experienced and expressed equally in all parts of the world, as it supposedly belongs to the domain of biology exclusively and not culture. As a trans refugee support worker who served as one of the key informants for Notisha Massaquoi's "No Place Like Home" puts it,

They [decision makers] use stereotypes that are presented to them by the media and, you know, general media presentations like the TV shows and what they see in the mainstream, kind of gay culture and the gay village kind of thing so a gay guy has to be femme-y, have to wear colours that are femme-y or gay, you have to wear pink if you have some make-up if you are doing the hairdos, and I also saw and heard lawyers advising their clients to gay it up a little bit in the hearing, you know? (2013: 46).

To 'play the gay card', then, apart from modifying one's clothes and style in order to look femme-y, also entails modelling one's narrative around a model of linear formation and a fixed, timeless identity. Such model of linear formation is based on Australian psychologist's Vivienne Cass staged model of identity development. According to this model,

the individual initially recognizes [early in the childhood] some homosexual feelings or thoughts which lead him to inwardly question his own, and others', presumptions that he is heterosexual. [...] With a growing sense of a homosexual self-identity, the individual begins to experiment in same-sex encounters and may take contact with homosexual communities. [...] Only later does the individual reach a greater level of acceptance of his sexual orientation, selectively disclosing it to others and increasing contact with other homosexuals. Finally, the individual may achieve pride in, and a growing synthesis of, their identity with more positive self-regard... (Berg and Millbank 2009: 207).

Cass' theory is comprised of six discrete stages and narrates a 'natural' progression of sexual identity, going from self-hatred to one's coming out. However, critiques of the staged theory argue that

The majority of research on gay identity development has been conducted on white middle-class men in the United States with little consideration of non-Western expressions of minority sexuality. Expecting the sexual identities of people who live or grew in non-Western countries to comply with a stage model overlooks the extent to which culture and social context powerfully contribute to self-perception

and behaviour (ibidem).

This oblivion to the cultural ‘situatedness’ of sexuality will be explored more in depth in the following section, but it has led to situations where, as the literature shows, a Nigerian man was disbelieved to be gay because he had formerly been married to a woman (Berg and Millbank, 2009: 200); or the story of Ali, an Iranian applicant in Turkey who struggled with the interview questions around childhood memories and worried that his inability to remember if he always knew he was gay would doom him to rejection (Shaksari 2014: 1002). There is also the Ugandan applicant who had been living in Canada for four years and had his claim rejected because

I was told that I was not believed to be gay since I have six children. How can an African man of forty-six years not have children? My father had ten children by the time he was my age. A man with no children will not be taken seriously... It has nothing to do with being gay (Massaquoi 2013: 45-46).

Before we proceed, though, one should keep in mind that the use of ‘sexual refugee’ is at best a tentative category designed to somewhat simplify an analysis of the refugee phenomenon. It should be noted, however, that in reality this category is more unstable and elusive because it intersects with other social markers such as, *inter alia*, nationality, ethnicity, race, and class. Moreover, sexuality may not be the only or main primary force behind a sexuality-based refugee application, and asylum seekers might not necessarily perceive themselves as sexual refugees. In the event that a person is eventually granted refugee status, they are never simply a sexual refugee but also a racialised and ‘othered’ one.

This is particularly true in the South African context, where potential refugees often have to deal with a violent ‘othering’—which has found resonance even in the words of president Zuma (Zhangazha 2014)—such as the 2008 xenophobic attacks in the province of KwaZulu-Natal which left more than 60 people dead, mostly foreign nationals.

### **III. Queer/Decolonial Critique**

The subsequent paragraphs will present a collection of voices that are pushing for the queering and decolonisation of the current paradigm of global human/sexual rights and its implications for international refugee law. The unjust refusals of many non-Western applicants and the necessity to prove one’s identity in order to access a body of rights have offered fertile ground for critique from queer, feminist and race scholars as to, on a more practical side,



how to improve the credibility assessment; and on a more abstract perspective, what the implications of the current paradigm of global sexual (human) rights are for Southern queers of colour. The former point will be dealt with at the conclusion of the paper, so the focus, for now, remains on the latter.

It is important to emphasise that to unveil the neocolonial narratives around the sexual/human rights rhetoric that started to consolidate in the 1990s does not disregard the atrocities which Southern sexual minorities under homophobic regimes are exposed to on a daily basis. The point of such critique is to lay bare the ways in which the current sexual/human rights foundational paradigm arguably excludes the recognition of Southern queers of colour as 'human', as will be explained later.

One might start with the provocation that “arguably, current gay and lesbian global politics are committing very similar errors to those for which white hegemonic feminism has been criticized since the 1980s” (Sabsay 2013: 83)—i.e. the universality of the category of 'woman', a shared ontological entity. Subaltern feminism showed how being (or rather 'becoming') a woman was not pre-discursive, but rather that racial, cultural, and historical relations of power were implicated in the process of subjectivation (hooks 1981, Anzaldúa 1987, Crenshaw 1991).

That said, the current (substitutive) model of global sexual politics is arguably dangerous and exclusionary for many in the Global South (Katyál 2002) as it posits a notion of 'sexuality' as a universal, fixed and clearly defined trait, thus failing to consider the historically contingent and culturally performative nature of sexuality as well as how it intersects with other social markers (Butler 1990).

Proof of this is the definition of 'membership of a particular social group' provided by the 2002 UNHCR handbook, which brings sexual orientation into the refugee rights system as innate, unchangeable, and fundamental to identity. However, following the critique put forth by these feminists, if sexual orientation is a social construct rather than a biological fate, then one shall agree that sexuality will be constructed, interpreted and negotiated differently in cross-cultural settings.

Therefore, if one applies this de-essentialising critique to the body of human rights concerning sexuality—of which the 1951 Refugee Convention and the South African 1998 Refugee Act (which I will look at in item IV below) are just part of— one might start to analyse the mechanisms through which human rights concerning sexuality establish the type of 'human' eligible to protection: a

rational, Western individual subject (Simmons 2011) under a social contract whose relationship with desire and pleasure is constitutive of its personhood and social identity, justifying thus its liberal entitlement to individual sexual rights (Sabsay 2013). The gay card aforementioned illustrates the dynamics that interpellate and classify sexed and raced bodies as (in)intelligible—or even ‘human’ (Lugones 2012)—before human rights, measured against the Western benchmark of ‘gayness’.

In “Queering the Politics of Global Sexual Rights?”, Argentinian feminist and queer philosopher Leticia Sabsay contends that to debunk this universal humanist approach of global sexual rights might lead one to advocate for a multiculturalist framework that includes different ways of being a ‘sexual Other’ in different cultures, a perspective that brings into the legibility framework sexual dissidents from diverse cultures. She gives the example of the Spanish-speaking context, where

we may find, for instance, an extended political use of terms such as *tortilleras*, *bollos*, *maricas*, *locas*, etc. These terms represent an attempt to dispute the hegemony of those normative ways of being a sexual Other, which, not surprisingly, coincide with those of the global North (Sabsay 2013: 84)

However, Sabsay points to the limitations of this approach given that “what remains naturalized within this multiculturalist framework is the field within which all these identities—both Western and hegemonic as well as subordinate and local—might make sense” (2013: 85). Put another way, the pluralist framework fails to question the implications of sexual citizenship as well as the ontology of sexuality, since it fails to question the domain of the sexual “when conceived as an individual entitlement (and hence, as a liberal right)” (2013: 88).

In “From Being Sexual to Having Sexual Rights”, Sabsay explores the political and theoretical implications of “addressing the struggle for sexual freedom and justice in terms of sexual citizenship—a construct produced by the hegemonic frameworks defined by the European Union, the United Nations, and international human rights organisations” (2006: np). The text also outlines the difficulties that “cultural translation poses for thinking about the universalisation of sexual identities and the translation of sexuality into a specific set of rights”(ibidem).

In light of these predicaments, Sabsay points to the anti-identitarian potencies of queering global sexual politics by reminding the reader that “originally, a ‘queer’ position indicated a contestation of fundamental Western binaries and a call for alliances and coalitions based on common interests rather than on identity-

based demands” (2013: 86). In fact, this might be included in the list of lessons the mainstream gay movement could learn from counter-hegemonic feminism: the shortcomings of relying on identity to form a cohesive and discreet group to base their demands and to utter these demands in the form of rights. In this context, the words gay and rights have become almost ontologically inextricable, as if the language of rights was, of necessity, the only, or most proper, way for sexual activists to voice claims against the heteronorm.

Wendy Brown’s “Suffering Rights as Paradoxes” provokes the reader to think about the ontology of rights insofar as they reinscribe the oppressive designation as they seek to offer protection. While rights “certainly appear as that which we cannot not want” (Brown 2000: 231), they also lead to a crossroad where “rights function to articulate a need, a condition of lack or injury, that cannot be fully redressed or transformed by rights, yet can be signified in no other way within existing political discourse” (Brown 2000: 239).

Bringing these reflections back to international refugee law might enable one to see a split between a *devoir-être* (ought) and an *être* (is). The former envisions that when a state commits to offering protection to *any* foreigner fleeing homophobic persecution, it intends to redress that injury—but in reality, in order for the state to ascertain the ‘real identity’ of the applicant (elusive though it is), it not uncommonly deploys techniques of bodily inspection (aside from judging the consistency and plausibility of their narrative) which reinscribe upon the applicant’s body a colonial and sexual oppression.

In his 2015 article “Death Zones, Comfort Zones: Queering the Refugee Question”, legal scholar and member of the Board of Directors of the UK Lesbian and Gay Immigration Group Eddie Bruce-Jones describes how UK applicants routinely feel pressured to submit videos or photographs depicting sexual acts, or give a detailed account of such acts and encounters to the officer. In some extreme cases, evidence has been produced by means of plethysmography—the attachment of electrodes to the applicant’s genital to measure sexual arousal through visual stimuli. In this context, “[o]ne cannot help but to imagine these various forms of bodily inspection as a part of the economy of morality and sexual politics that shapes other aspects of the allocation of human rights” (2015: 115). Bruce-Jones goes on to analyse that

In reading the body for its sexual potentiality, its relationship to a legible narrative and to an imagined space, the body is positioned not only sexually but racially, culturally and politically. The act of reading and assessing the body, aside from reconstructing a colonial scene where resources and bodies are carefully balanced in an economy of labour, fear and desire, also constructs the world and power through the lens of empire.

In other words, the gaze of knowing cast upon the body is a colonial gaze, invested in policing the body as much as policing resources and geopolitical integrity (ibidem).

While the applicant's body seems to be the primary site from which 'truth' is excavated, his or her words are also scrutinised against a legibility standard that includes, as described above, a linear trajectory from childhood memories to the end point: the coming out story. In this context, "the paradigmatic asylum applicant is one who has proof that [...] he had lived an openly gay lifestyle and had been threatened based on his sexual orientation" (Morgan 2006: 154). To come out of the closet thus offers the most convincing link for the applicant to prove that he or she was persecuted back home.

Some immigration officers and tribunals have argued that if an applicant had not publicly revealed their identity in the country of origin prior to seeking asylum, then there would be no real danger of persecution if they were sent back. Hathaway and Pobjoy provide an analysis of both sides of this argument and present a powerful metaphor used by the Secretary of State before the UK Court of Appeal:

If Anne Frank escaped and claimed asylum, the question would be whether she faced a real risk of persecution on return. The real Anne Frank would have been a refugee because she obviously did and therefore her example may not be helpful. But if (improbably) it was found that on return to Holland she would successfully avoid detection by hiding in the attic, the answer to the first stage, the answer to the first stage of inquiry would be that she was not at real risk of persecution by the Nazis. But the second stage would be to ask whether permanent enforced confinement in the attic would itself amount to persecution (2012: 349)

Both the requirement that the applicant has come out prior to seeking asylum—and if not, then determine that they be sent back to their country of origin and live perpetually in the closet—evinces a Western fixation on the closet itself that leaves out "a critical examination of the related notions of coming out, visibility, and the closet. What kind of conceptual space is the closet, that confines people who seem neither highly politicized nor self-reflexively 'gay'?" (Manalansan IV 1995: 432).

Filipino anthropologist/queer theorist Martin F. Manalansan IV explores the implications for the Stonewall slogan "Out of the bars and into the streets" for Filipino gay men (and arguably applicable to other subaltern contexts), for whom the streets and the public space is not necessarily a site of pride but "potential arenas of shame and degradation" (1995: 435). In this sense, "the narratives of these diasporic Filipino gay men show how the closet is not a monolithic space and coming out is not a uniform process" (ibidem).

Malanansan's critique serves to destabilise and challenge the prevailing discourse which contends that to come out is to liberate oneself, to rid oneself of a burden—and as such, an act of liberation.

This prevailing discourse is arguably one that echoes the liberation *ethos* bolstering the hegemonic discourse around global sexual rights, which has created a cartography of sexual violence and salvation by means of positing the 'West' as the haven for LGBT/queer people while the South, and perhaps more intensely Africa, is depicted as the embodiment of barbaric primitivism. Put another way, sexual rights rhetoric has become a marker of Western moral, civic, cultural, and political superiority (Luibhéid 2005), bolstering a geographical distribution and organisation of sexual violence that echoes neocolonial narratives (Bruce-Jones 2005, Puar 2007).

However, this neocolonial rhetoric conceals two convenient facts. Firstly, by positing the West as the LGBT haven it overlooks the homophobic injuries and attacks that take place *within* it, especially against bodies at the 'lower' end of the scale which fail to approximate the hygienic standard of the white, rich, cis gay man who owns a fabulous loft in Manhattan's Upper East Side. This scenario is contested when one looks at, for instance, the database containing the high numbers of black transgender people murdered in the United States,<sup>1</sup> or the recent mass shooting at an Orlando's gay club Latino night.

Secondly, it seems to turn a blind eye to the fact that the bulk of the antisodomy laws currently in place in the South are in fact a colonial legacy, an import from the metropolis. A Human Rights Watch report shows that, out of the then 80 countries worldwide which had legal instruments criminalising homosexual conduct, more than half did so because such laws were introduced by the British Empire, who "believed laws could inculcate European morality into resistant masses" (Gupta 2008: 5). The subsequent year, the international media turned its attention to the 2014 Anti-Homosexuality Ugandan Bill, but such reports didn't seem to be equally interested in the fact that American religious fundamentalists were allegedly behind the passing of said Bill (Gettleman 2010).

Manalansan IV provides an elucidating example of such sexual rights rhetoric by analysing the then latest edition of ILGA's *The Pink Book*, "a kind of status report

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<sup>1</sup> For a database of transgender murders since 2010 in the USA, see <http://mic.com/unerased>

on the “global picture,” with in-depth essays detailing the positions of gay and lesbians in particular nations and abbreviated surveys of their positions in others”, which came to the conclusion that in terms of official, legal, and social attitudes to homosexuality, the conditions were “worst in Africa and best in Europe” (1995: 428)—the same conclusion as BBC3 2013 documentary *Homogenizing Wounds*.

#### **IV. Africa, the Rainbow Nation, and the Mother City**

“So in that church in Nairobi... we were praying for Cape Town, praying for Africa, praying for South Africa not to get this bad thing from the West and from white people—that’s how I got information (...) they said we must pray for Cape Town because it is becoming the cursed city of Africa... We had to pray for South Africa for the Constitution accepting gays and lesbians. I was sitting in the crowd, I was part of the worship team but for me it was like information. Oh my gosh South Africa accepts gays and lesbians!”<sup>2</sup>

In order to justify that Africa is the worst place to be gay in the world, one argument that is often brought to the fore is that only one country—South Africa—is regarded as ‘gay-friendly’ and its oldest city—Cape Town—as the gay capital of Africa. In this sense, South Africa is portrayed as the only country that meets the modern standard of human rights, whereas the others ‘lag behind’. This train of thinking might be confirmed by a sense of South African exceptionalism that would like to think of the continent’s economic powerhouse as being ahead, more modern (and arguably less African) than Africa.

The advancement of postcolonial societies throughout the continent from the 1950s onwards alongside the globalisation impacts on African cultures and identities have fostered some tensions between the traditional and the modern. There have been debates, for instance, as to whether the modern democratic state and traditional leadership systems can coexist with and learn from each other (UNECA 2007); or how globalisation has affected the identities of African youth, who may at times feel a sense of disconnect with the previous generations in terms of language, beliefs, customs (Gilbert 2006). It’s also been shown how a certain practice may be labelled as traditional by some but modern by others, with each side of the debate adamantly formulating their own versions of the pre/postcolonial (Simelane 2012).

From the late 1990s onwards, homosexuality has become a key element on the ideological battlefield over the roles of tradition and modernity in the postcolonial society. When president Mugabe attacked homosexuals at the 1995

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<sup>2</sup> A recollection of Eva, a participant from Central Africa (Camminga 2016: 22).

Book Fair, he “verbalized a strongly and widely held belief in sub-Saharan postcolonial Africa about the ‘true’ nature and origin of homosexuality (De Vos 2001: 196). Such belief, as seen in Section II.a above, refers to homosexuality as un-African, a colonial contamination incompatible with the postcolonial society. South Africa’s inclusion of ‘sexual orientation’ in its 1996 Constitution equality clause is “suspected by many to be the result of European influence and part of the settlement concessions to and reconciliation with ‘whites”” (Spruill 2001: 5).

The other side of the debate, however, asserts that what is a colonial contamination is in fact homophobia, since it was the colonisers who brought the concept of homosexuality as a crime and sin (Phillips 2001). To ground this claim, activists have resorted to strategies such as contending that gay people have been present throughout the history of Africa by locating same-sex activities that were common and accepted in pre-colonial societies. By drawing a historical continuum between homosexuality in the past and the present (albeit arguably an essentialist move), activists point out that

the corruption that has been ‘imported’ is not the homosexual act, but rather the growth of the bourgeois notion of sexuality as constitutive of social truths, and the concomitant need to declare and control these truths through such categorical mechanisms as hetero/homosexual dichotomy (Phillips 1997; cited in De Vos 2001: 198).

Spruill argues that post-apartheid South Africa envisions the law “in its capacity as an epistemological regime, as a primary site for the articulation of postcolonialism and sexuality”. In this sense, rather than liberating pre-constituted homosexuals or being in place simply to control the homosexual body, renowned South African constitutional law scholar Pierre de Vos (2001) argues that the 1996 South African Constitution actually turned citizens queer. He dwells on the ability of the law—as a technique and instrument of power—to *produce* a queer subject rather than simply disciplining a pre-constituted one.

Put differently, the constitutional protection against discrimination based on sexual orientation forms part of a complex web of power relations that, in effect, produces the ‘reality’ of identity and thus contributes to the perpetual (re)invention and negotiation of sexual identity by all of us. And this identity can operate either to discipline and subjugate those who take it on or to whom it might be assigned, or to provide a space within which emancipation becomes possible. This process can thus be both oppressive and emancipatory in nature (De Vos 2001: 200).

De Vos contends that the Constitution has attempted to produce the fiction of a stable, homogenising figure of the South African homosexual (arguably shaped by Western notions), a unifying force which would encompass all varieties of sexualities in the country. However, when (South) Africans self-identity or are

attached to the label 'gay', the taking up of such an identity category is not simply mimicking the West—to attribute the self-identification of Africans as gay solely to colonial imperialism condescendingly overlooks people's agency, when in fact these identities "are actively assumed and proclaimed from below, by those marginalised in these hegemonic formations" (Phillips 2001: 18). In this sense, it is

difficult, probably impossible, to talk of homosexual identity in South Africa as a monolithic, describable, stable concept. Most probably, different homosexual identities were and still are produced by a unique set of power relations and apparatuses in the context of colonialism, capitalist development and racial domination (De Vos 2001: 197).

De Vos goes on to contend that one of the main ways that the South African Constitution has contributed to the (re)production of South African sexualities was to open up a social and legal space which facilitates coming-out rituals, which are regarded as acts of freedom not in the sense that it liberates oneself from the constraints of the heteronorm, but rather an act of liberation in the sense of resistance and constant reinvention of the self. To come out, thus, does not constitute "an escape from the reaches of power; rather... puts into play a different set of power relations and alters the dynamics of personal and political struggle" (2001: 203).

It goes without saying that the existence of legal protection *per se* does not instantly translate into material safety to those in precarious situations. In fact, South Africa has one of the highest rates of rape in the world, and the practice of 'corrective rape'—intended to 'cure' lesbians (mostly black and poor)—is still very much common. It is worth asking the limits and potentials of this constitutional protection for the most precarious South African bodies and, as a matter of fact, for non-South Africans as well. Echoing the question behind Bennett and Reddy's paper,

What does it mean to live within a country whose Constitution protects people from discrimination on the basis of (at least) sexual orientation when those living non-heteronormative or gender-non-conforming lives experience gross violation both within the country and within neighbouring countries? (2015: 11).

South African writers Jane Bennett and Vasu Reddy explore the positions through which South Africa negotiates continental questions of LGBTI justice and rights by looking at how South Africa is implicated in discourses of decriminalisation and hostility across the continent. It is argued, for instance, that rather than being a reaction to an American or European pro-LGBT move, the 2006 Nigerian Anti-Homosexuality Bill may be more directly linked to South



Africa's 2006 Civil Union Act (Bennett & Reddy 2015: 14).

Furthermore, adding to the critique of the sexual rights rhetoric aforementioned, Bennett and Reddy go on to refute the idea of Africa being the world's worst place to be gay given that to portray *lgbti* lives and bodies across the whole continent as helpless victims of homophobia "distorts the herculean battles publicly fought towards *lgbti* justice" (2015: 15). In this context, "the broad discourse of *homophobic Africa* ignores not merely the kaleidoscope of material and psycho-social experiences of 'being' and 'living' *lgbti*, but of course the fact that 'Africa' involves 53 states, and to begin to count the 'contexts' would be ludicrous" (2015: 17).

The authors look at the work of artists, activists and NGOs that have been pushing forward a decolonial pan-African agenda for *lgbti* rights and social justice in liaison with HIV and gender justice networks of activism. On this note, Bennett and Reddy envision three strategic trajectories for South African activists to engage with continental questions. The first step would be to strengthen the collective knowledge about fellow *lgbti* Africans. One should note, though, that

knowledge of criminalisation, stigmatisation, and violence is not enough: what of political histories, languages, performance artists, popular songs, favourite sporting stars; what of the way another context may sound, smell, or feel? How can we contribute, as South Africans, not simply to dialogue with 'fellow *lgbti*' across the country [and continent], but to the decolonisation of knowledges about 'Africa' herself? (2015: 20).

The second trajectory stems from the first: through an in-depth learning of the multiplicity of contexts within and beyond South Africa, one may start to queer the notion of South African leadership which claims that the country should be the role model for the future of the continent. The authors contend that such pretence to leadership has caused mistrust and potential allies, such as Nigeria, and stands in direct counterpoint to Mandela and Mbeki's envisioning of South Africa as a "newcomer to continental democracy-building... seeking friendship rather than "leadership"" (2015: 19).

Thirdly, drawing from a pan-African perspective, "if South Africa's Constitution does offer *lgbti* people living here a different context from that faced in Ethiopia, or Zambia, or Cameroon, we need to work much more intensively with those who enter 'our' space in the hope of some form of protection" (2015: 21). Despite the continuous and important work of NGOs and activists to improve the scenario, South Africa's Department of Home Affairs and the police remain under-resourced and overloaded, and "it is no surprise that South Africa's

approach to those with refugee status, of any kind, is replete with mismanagement at best, and blatant cruelty at worst” (ibidem).

A growing body of work has emerged in recent years to look at the realities of sexual refugees in South Africa and how they (re)negotiate feelings of safety and community amidst institutional abuse, loneliness, and homophobic/xenophobic intolerance (Martin 2012, Camminga 2017). South Africa first started offering protection to Mozambican refugees fleeing civil war in September 1993, after signing a Basic Agreement with the UNHCR (which had gained a legal mandate to operate in the country in 1991, setting its first branch in Pretoria), but it wasn't until 1998 that South Africa formulated its Refugee Act. With the end of apartheid, South Africa became publicly committed to regional cooperation, tolerance, and human rights. 'I am an African'—Thabo Mbeki's celebratory speech of the 1996 Constitution—vowed a pan-African perspective promoting equality regardless of race, gender or historical origin, going on to add that South Africa belongs to all who live in it.

It was at this point that in 1996 the South African government acceded to the 1951 and 1967 UN Conventions as well as the 1969 OAU Convention, paving the way for the 1998 Refugees Act, whose definition of 'refugee' largely followed the UN and OAU Conventions. Its form and content were first drafted by the UNHCR, followed by an internal draft by the Department of Home Affairs which was made available for comments from civil society individuals and organisations. Klaaren, Handmaker and De la Hunt (2008) provide a summary of the legislative history and efforts behind the 1998 Refugees Act, which had a major contribution from non-state actors, including NGOs and representatives from the refugee community.

In May 1997 a provisional version of the Act was published in the Government Gazette whose focus on human rights and constitutional protection "was demonstrated by the unanimous support for the proposal that persecution on grounds of gender and sexual orientation, disability and caste be incorporated into the definition" (Klaaren, Handmaker & De la Hunt 2008: 50). One of the main issues raised by these non-state actors concerned its implementation, as "one set of responses reflected widespread concern that the refugee status determination body be assured of its independence from the Department of Home Affairs and that it be free from 'political interference'" (2008: 53). In May 1998, a team was appointed to conclude the final draft and publication of the act, which included a high proportion of civil society personnel, such as members from the National Consortium for Refugee Affairs, Lawyers for Human Rights, UCT's Legal Aid Clinic, and the Commission on Gender Equality.

Following the formulation phase, the implementation of the Refugees Act was and has been a major challenge as foreseen, given that the principles behind its creation have not always, for a number of reasons, been translated into practice. Landau remarks that despite such lofty goals, the implementation of the 1998 Refugees Act still echoes much of the restrictive and control ethos of its predecessor, the 1991 Aliens Control Act. In practice the general hostility to non-nationals, both from civil society and state officials, has helped "generate a privatised realm of law enforcement dedicated exclusively to detaining and deporting foreigners" (Landau 2008: 40), with Lindela Repatriation Centre—a private-run facility known for cases of sexual abuse, violence, and bribery—at the centre of this dominion. Klaaren and Sprigman note that "while the formal law may change with the stroke of the President's pen giving a date of commencement to the Act, the informal law as administered by the Department of Home Affairs was unlikely to and did not change with such speed" (2008: 63).

De la Hunt and Kerfoot (2008) provide an overview of the problems that have continued to exist well into the post-implementation phase. For instance, praxis has shown issues regarding access to the asylum process, the political independence and impartiality of the determination process (which is carried out by state officials from Home Affairs), and also the undue use of the principle of the safe third country.

Even though the provisions of the Act precludes the DHA to do the following, it's been common practice for the department to refuse "status on the basis that the asylum seeker has travelled through one or more safe countries en route to South Africa, and could have sought asylum elsewhere: the so-called 'safe third country policy'" (2008: 97).

In this sense, my own research—presented in the subsequent chapter—sought to explore how those applying for refugee status in South Africa experienced the encounter with the DHA as well as how they presented/performed their 'homosexuality' and how it was evaluated by decision-making officers. I am particularly interested in thinking about applicants' 'homosexual performance' in light of the literature above, which suggests that a monolithic conceptualization of the Western homosexual seems to have pervaded international human rights and refugee law, becoming the benchmark for officers' policing and evaluation.

## Chapter Two

### I. Research Reflexivity and Positionality

In order to explore some of the experiences of those who have direct experience of either appearing before an immigration official in search of refugee status or the experience of those working as NGO-based advocates for ‘sexual refugees,’ it is critical that I take my own writer/researcher location as a core zone of theorization.

The most honest, although possibly naïve, way to begin this chapter is by reflecting on the positionality from which I speak. Starting with the very pronoun ‘I’—which is often regarded as a stain of digression and subjectivity on an academic work. However, “why call the personal a digression? Why is it that the personal so often enters writing as if we are being led astray from a proper course?” (Ahmed 2006: 22).

Bringing the ‘I’ to the forefront is not a neglect of objectivity nor rigour as much as it is an engagement with a critique of knowledge production put forth by feminist and decolonial thinkers (Ahmed 2006, Quijano 2007, Grosfoguel 2008), whereby the omission of the locus of enunciation bolsters an assertion that purports itself as non-situated and universal and leads to a point of view that

hides and conceals itself as being beyond a particular point of view, that is, the point of view that represents itself as being without a point of view. It is this “god-eye view” that always hides its local and particular perspective under an abstract universalism (Grosfoguel 2008: 4).

Inaugurated by Descartes’ ‘*cogito, ergo sum*’, the fundamental presupposition of this ‘god-eye view’ is that knowledge is a product of a subject-object relation in which an isolated individual constituted in and for itself looks from afar/above at an object that is different and external to the former. Quijano attributes the falseness of such premise to its denial of “intersubjectivity and social totality as the production sites of all knowledge” (2007: 172), going on to add that

[t]he differentiated individual subjectivity is real, but it is not an entity, so it doesn’t exist only *vis-a-vis* itself or by itself. It exists as a differentiated part, but not separated, of an intersubjectivity or intersubjective dimension of social relationship. Every individual discourse, or reflection, remits to a structure of intersubjectivity. The former is constituted in and *vis a vis* the latter (173).

In this context, rather than approaching the research from a god-eye, detached

gaze, my position of enunciation is that of a young middle-class Brazilian lawyer born and raised in São Paulo, a queer person of colour (although white-passing, depending on the context), a foreign researcher, and a student activist. I often found that presenting myself as a 'researcher' to people created more of a distance and a certain suspicion than 'lawyer' or 'activist'. In fact, 'researcher' was the role I felt most uncomfortable in, given the historical and ethical tensions between the one who researches and the one who is researched, especially in a country like South Africa with so many histories of racism and colonialism.

Not only was I a researcher but a foreigner, which turned out to be an ambiguous space. My 'foreignness', however, was of a particular kind: I went to Cape Town to be a postgraduate student at one of the most prestigious institutions in the continent. All my papers were sorted out before I even set foot in the country: student visa, work permission, health insurance. Throughout my two-year sojourn in Cape Town, the Brazilian currency remained considerably stronger than the South African rand, meaning that at least in economic terms I leant towards incarnating the desired type of foreigner. On very rare instances I felt like I was an undesired foreigner. The same is probably not true for most asylum seekers in this country. Sam, for instance—whose story will appear further on—has been trying to sort out his papers for seven years, without success.

The overvalue of my home currency and the cheaper cost of life in Cape Town (in comparison to my hometown, São Paulo) resulted in an uplifting of my class position, which then affected the (often contradictory) spaces I occupied in terms of race. My race identity in Cape Town was informed by a borderland zone, a clash between my coming from a miscegenated family (and society indeed) and moving into a society where interracial marriages were once banned by apartheid. I clearly did not neatly fit any of the racial categories that emerged during apartheid and still permeate the social imaginary: I was not white enough to be 'white', nor black enough to be 'black'. Despite being brown skinned, my demeanour and social signs prevented me from passing (or being read) as 'coloured' or 'Indian'.

I occupied, therefore, none and all of these racial categories at the same time. It was a lonely space to inhabit, especially in a country like South Africa where most people seem to unequivocally belong to a racial group. I was sometimes read as white European (Spanish, Portuguese, French, Italian), but I was often read as coloured, Persian, Arab, Latino or black. More than once I found myself in a social setting where, to the amusement of the group, one of the people read me as white and another as black—or as they called it: 'Biko black', likely in

reference to Biko's famous response to Judge Boshof. When asked by Judge Boshof in his 1976 trial why he called himself black, rather than brown, Biko explains that

historically, we have been defined as black people, and when we reject the term non-white and take upon ourselves the right to call ourselves what we think we are, we have got available in front of us a whole number of alternatives, starting from natives to Africans to Kaffirs to Bantu to Non-whites and so on, and we choose this one precisely because we feel it is the most accommodating (Biko 1987: 104).

This borderland zone made academia a particularly difficult place to be in. UCT and other South African universities are currently going through a very political and polarised moment where activists are fighting for free and decolonised education, and the discussions around this topic have brought to the forefront issues of positionality, place of utterance and lived experience—resulting in a scenario within academia where one's race (intersected with other social markers) has some relation to what one arguably should/should not (or perhaps can/cannot) say. Because I wanted to learn to navigate this borderland as well as understand which elements or circumstances would tend to place me on which side of the racial spectrum, for over a year I asked people I encountered and befriended how they perceived me in terms of race. The following paragraphs will expose some reflections from this process, and then I will proceed to analyse the importance of such reflections for the current research.

I would dare to assert that I tended towards whiteness or brownness depending on two main factors: place and companion. At UCT, for instance, because it was a space that people were more likely to be exposed to academic and political discussions around race and (de)coloniality, I was almost always perceived as a person of colour. I believe this was particularly due to my being Brazilian, as some people told me that they wouldn't necessarily consider me a person of colour if I were this exact shade of brown but came from Spain or Italy.

Spaces outside UCT, however, were a lot more ambiguous and I found that the composition of the people around me was pivotal to how the common eye would perceive me. Being in the company of a friend of colour steered me away from whiteness, and in contrast, being in the company of a white friend would at times grant me an 'honorary' whiteness. This particular reflection stemmed from comparing the treatment I received over two years when I went to the same areas and establishments with several arrangements of people.

However, the most ambiguous and also most frequent moments were when I was unaccompanied. Outside the academic and political environment, I found

that, as a rule of thumb, people of colour tended to read me as white, and white people tended to read me as a person of colour. In these contexts, class dynamics were somewhat pivotal: I was more likely to 'feel' brown when I was on my own in wealthier, whiter areas; whereas when I took the public transport or walked around downtown, curious vendors would routinely ask me whereabouts in Europe I was from.

This meant that I constantly had to try to negotiate the ways people perceive me as well as the ways I wanted to be perceived. One 'role' I felt I could never escape, or conceal, was that I came from elsewhere. Even before hearing my accent, people seemed somehow able to tell I was a foreigner. 'Where are you from?' was possibly the question I got asked the most in Cape Town, and at instances my being a foreigner was met with reservation, given that I was an immigrant from 'there' coming to study and work 'here'.

However, as soon as I revealed that I am Brazilian, it would instantly serve as an icebreaker and create some trust and empathy, a sense of sharedness. Football was by far the most common means of bonding, and the passion with which people ranted on who their favourite Brazilian player was would shy me away from revealing that I personally loathe the sport. More interesting, however, was that the terms people used to describe Brazil, the traits the country had in people's imaginary often revolved around the idea of an extended family, as though Brazil and South Africa were distant cousins or siblings. In this sense, I felt that my being Brazilian disrupted the initial barrier between 'them' and 'us', bringing me somewhat closer to the latter.

An illustrative vignette happened at a dinner party that I was throwing in my flat for a couple I had recently befriended. They were in a long-term relationship and participated actively in academic and political circles. At one stage during the night, I shared some reflections on how ambiguously my mixed origins translated in a space like Cape Town, at which point one of them (a white Anglo-South African) confidently asserted that she unambiguously perceived me as white (once again the Spaniard reference). To her astonishment, her girlfriend (a black Xhosa-speaking South African) instantly protested—"What are you talking about? He's obviously not white!"—, proceeding to explain that even though she didn't see Latinos as being *exactly* like Africans, she alluded to a sense of solidarity by recalling being a child and watching Western cartoons on the TV and empathetically rooting for the 'brown people' to prevail over the cowboys.

The importance of dwelling on issues of positionality and reflexivity for the current research, rather than indulging in personal outpouring, is that I was not

an invisible figure impartially capturing and analysing data. This is especially true for this research on gay asylum seekers in Cape Town, given that it entails my being an international student researching African subjects that may be considered 'at risk'. In a context like this,

Conducting international fieldwork involves being attentive to histories of colonialism, development, globalization and local realities, to avoid exploitative research or perpetuation of relations of domination and control (Sultana 2007: 375).

I was particularly concerned with two points. First, I did not want to inadvertently conduct 'parachute research', which "leaves no local benefits, or strengthening of local institutional capacity" (London & Macdonald 2015: 99), whereby, as the authors describe it, a foreign student "swans into a country to conduct a study and disappears after getting local informants to agree to share data that no-one else can provide to the researcher" (2015: 101). Second—and this is where the aforementioned reflections on my racial borderland in South Africa comes in—I was wary of how I would relate to and build trust with the people I encountered throughout my research, given that some scholars have "explored the ways in which the intersection of the 'race'/gender positions of the interviewers and interviewees can have an impact on the interview itself and on respondents' reactions to it" (Phoenix 2001: 214).

With regard to the first point, volunteering for the Advocacy Coordinator of Gender Dynamix (GDX), a local NGO, from May to October 2016 was the way I found, at my supervisor's suggestion, to conduct fieldwork and contribute to an activist organisation. At GDX I had the chance to briefly join local activists on the ground and use my legal and multilingual background to research and compile international legislation on gender recognition as well as translate into English recent legislation from Chile, Ecuador, Bolivia, and Colombia. It was also through GDX that I found and contacted the participants for my interview.

As for the second point, the reflections on my positionality shaped the participants selection criteria: I would interview only self-identified gay men who had sought asylum in Cape Town based on their sexuality. The choice of focusing on gay men rather than on people from all letters of the LGBTI umbrella was informed by the belief that the constraints of space—this being a minor dissertation—and time would curb a proper analysis of asylum seekers from the whole umbrella. Moreover, as a result of conversations I had with my supervisor and other postgraduate colleagues, from an ethical perspective I decided to interview those who, like myself, self-identified as gay men. On one hand, I was cautious to conduct fieldwork in South Africa and inadvertently, perhaps inevitably, encounter ethical dilemmas. As Sultana (2007: 375) points out,



a key concern in pursuing international fieldwork that has plagued critical/feminist scholars is the issue of representation, where over-concerns about positionality and reflexivity appear to have paralyzed some scholars into avoiding fieldwork and engaging more in textual analysis.

On the other hand, however, I wanted to explore Simmons' (2011) assertion that one of the causes behind human rights's fundamental failure in achieving its *raison d'être*— effective and material protection to the most vulnerable—is the disconnection, as it were, between human rights advocates, scholars, and policy makers and those whom it seeks to protect. On this note, I turned to Sultana's assertion that

such fears and 'impasse' can be overcome by understanding that fieldwork can be productive and liberating, as long as researchers keep in mind the critiques and undertake research that is more politically engaged, materially grounded, and institutionally sensitive (Nagar 2002, cited in Sultana 2011: 375).

## **II. Tracing Directions and Encounters**

By extension of the above, the fieldwork I conducted between February and October 2016 in Cape Town did not aim at collecting data that, once analysed, were to provide generalisable answers that were representative of gay asylum seekers in Cape Town. This perspective resonates with Abu-Lughod's advancement of a form of writing in the social sciences that counters generalisation as well as "the effects of homogeneity, coherence, and timelessness it tends to produce" (2005: 475).

Informed by an exploratory method, this chapter provides an assemblage of material such as informal conversations with activists and friends, formal interviews with 'sexual asylum seekers' in Cape Town, as well as reflections from my volunteer work at a local NGO and engagement with the 'gay scene' in Cape Town. Rather than having a predetermined route *towards* a 'mature' knowledge, I follow Halberstam's words on the "utility of getting lost over finding our way, and so we should conjure a Benjaminian stroll or a situationist *derivé*, an ambulatory journey through the unplanned, the unexpected, the improvised, and the surprising" (2011: 15-16), leading to a "more undisciplined knowledge, more questions and fewer answers" (10).

This chapter aims at tracing the encounters and the directions taken throughout the months of research, having the questions from Chapter One work as a provocative beacon as well as a gateway to further questions; ultimately

reflecting on what was possible/not possible to unpack in spite of, or precisely because of, the obstacles along the way.

### **III. Failing**

One of the most empowering (and relieving) experiences I had over the course of the research, mainly the empirical one, was to read Halberstam's *The Queer Art of Failure*, because for the most part of it I felt like I was failing. Failing to 'progress' at a reasonable pace, failing to overcome the obstacles with acumen. At times it felt as though I was gasping and trying to run really fast, except I had somehow been lifted a few inches above the ground and was not actually moving at all.

Halberstam's book ushered in a shift in perception whereby I went from resenting the 'obstacles' as external to the research and thwarting its 'planned' progress, to realising that they were precisely integral to and part of the research landscape. Asking how the obstacles shape the landscape and how they relate to other elements in it might prove to be more meaningful and provocative than indulging in a secretly pleasant sense of self-pity that one encountered obstacles in the first place.

For the past three years I had been fairly active in the queer movement back in São Paulo, but coming to Cape Town made me feel disconnected from the community, as I was 'no one'. Due to my desire to join local activists fighting for social justice on the ground as well as to find ways of avoiding 'parachute research', I contacted two local NGOs in early January 2016 hoping they would be looking for volunteer work.

My supervisor had told me that this first stage of contacting and trying to join an NGO would likely require patience and tact. Indeed, after countless emails and phone calls, weeks of waiting and some drop-ins, almost three months had gone by until my actual first day at Gender DynamiX (GDX).

Thanks to GDX I had the opportunity to be a small part and witness to the transgender community mobilisation in Cape Town, and it was also with their help that I set out searching for potential participants for my research, namely, gay African men who have sought asylum in South Africa and were presently based in Cape Town. Even though GDX works mostly with the transgender community, they have established connections with several persons and organisations across the other letters of the umbrella and beyond.

It was at this point that a key contradiction concerning the city of Cape Town emerged, pointing to the first major obstacle encountered throughout the course of the research. Because the “Mother City” is considered the gay capital of Africa, it led me to assume at the outset that it would be where, if not the majority then at least a good part of, gay refugees would be based. After all, what better place to go to than somewhere with a pretty well-established gay community that could welcome and integrate them?

However, it did not take me long to realise the fault in this assumption. Keen to see what the ‘gay scene’ was like in Cape Town, I went to restaurants, bars, beaches and clubs after some online research and word of mouth. One outstanding impression was that Cape Town’s gay-friendliness seemed to be allocated to a very specific type of ‘gay’: white, rich, American and European with their ‘healthy’ muscled bodies, to be found in what is generally regarded as the ‘gay area’ (De Waterkant and Green Point) or the ‘gay beach’, Clifton 3<sup>rd</sup> and Camps Bay (Rink 2013). Such geographical organisation of the urban space and ranking of ‘friendliness’ point out to the arguably classist and racist bias producing the hegemonic type of gay men who are welcomed in Cape Town and, by extension, those who are not.

In fairness, however, it would be inaccurate to characterise the whole of the ‘gay scene’ in Cape Town as white, rich and European. As I integrated myself into the community over the course of months, I encountered spaces, events, gatherings and talks which were far from the De Waterkant stereotype and in fact sought to destabilise it by reclaiming the gay scene in Cape Town as black and African. However, these were spaces and moments that I gained access to mainly because of and through the university and the people I befriended at UCT. In a sense, they seemed to remain ‘below the radar’ and out of easy reach. This flux between hegemonic and counterhegemonic versions of Cape Town’s gay scene foregrounds the centrality of homosexuality in exposing some tensions in post-apartheid/postcolonial South Africa and its ambiguous sense of alignment to Africa and/or the West, as seen in the previous chapter.

As an example, the DHA director-general Mkuseli Apleni made a decision that as of June 2012 the Cape Town Refugee Reception Office (CTRRO) would no longer accept new applications. In August that year, the Cape Town High Court ruled the closure as unreasonable and irrational (Washaya 2012), but after a number of challenges and appeals, in June 2016 the High Court upheld a decision to keep the CTRRO closed. The constitutional rights of asylum seekers in Cape Town were overruled by DHA claims that “it is too difficult to procure sustainable space for the CTRRO”, given that “in all of its three former locations,

neighbouring residents and businesses have complained that the high numbers of refugees make the office a *public nuisance*" (Molander 2016: np; my emphasis).

The 1998 Refugees Act sets forth that an asylum seeker must lodge an application at a Reception Office once entering the country, and must return there every two to six months to renew their documents. The only operating RROs are currently in Pretoria, Durban and Musina, all of them hundreds of miles away from Cape Town. The years that the CTRRO has been shut, as well as Cape Town's arguably racist and classist bias, seem to engender not only what kind of gay men but also what type of foreign people are welcomed or undesired.

Despite my reaching out to several other people and organisations beyond GDX, I was generally told that the bulk of gay asylum seekers and refugees were in Pretoria. Given that Cape Town had not processed applications in years, I was more likely to find old applicants, but the difficulty then became tracing them, as their personal details were usually outdated or lost. Moreover, for those who were in Cape Town and perhaps willing to take part in this research there was the risk of, on one level, outing oneself and potentially adding to the level of precarity one was already faced with.

#### **IV. Conversing**

I met Sam on my second day of work at GDX when I was invited to join "Trans 101", a meeting with about ten other GDX workers, some of whom had just recently joined the organisation. The purpose of the meeting was to provide us with the 'basics' concerning the transgender community, such as health issues, legal documentation and personal treatment. The ambiance was relaxed and welcoming, so much so that at the end of almost three hours of meeting I no longer felt like the shy and socially anxious newcomer. We were sitting on a big round table having breakfast when Sam, who was sitting right next to me, struck up a conversation after asking if he could pass me something to drink or eat.

Sam and I kept having friendly albeit brief encounters over the following weeks, until one afternoon when we found both of ourselves sitting at the reception's couch waiting for the pouring winter rain to stop. At some stage during this first prolonged encounter, he was asking me questions about my research at UCT when, to my surprise, he suggested that I interview him. As it turned out, Sam was from Uganda and came to Cape Town in 2009, seeking asylum based on his sexual orientation. Sam also suggested that I interview his friend Lloyd, an activist from Zimbabwe who had applied for asylum in South Africa back in

2006.

Both countries gained international notoriety in the past years by virtue of their homophobic regimes. Uganda caused a stir with its Anti-Homosexuality Bill of 2009, which threatened to hang homosexuals, as well as the death of “the country’s leading gay rights crusader”, David Kato, beaten to death with a hammer in his own home in January 2011, just three months after “a Ugandan newspaper published a diatribe against homosexuals with Mr. Kato’s picture, and another, on the front page under the words: Hang Them” (Gettleman 2011: np).

Lloyd was not the only participant from Zimbabwe—there was also Prince, a very stylish and cheerful 24-year-old Zimbabwean, who I met through the organisation PASSOP (People Against Suffering Oppression and Poverty). On the evening of 23 July 2016, PASSOP hosted a community-building and awareness event titled “Colours of Cape Town: Solidarity with LGBTI Refugees”. The event was a collection of voices and stories shared by activists, community leaders and asylum seekers themselves, most of whom did not have their papers sorted out due to financial and transportation issues. As the organisation put it, the event’s goal was “to promote understanding and tolerance, as well as further the integration of LGBTI refugees into the larger LGBTI community here in Cape Town” (Hanekom 2016: np).

At the event I spoke to Sylva, PASSOP’s Legal Advisor, and to South African writer Mark Gevisser, who both pointed me towards Victor Chikalogue, the LGBT Advocacy Coordinator of the organisation. I got in touch with Victor, who said he knew two or three potential participants for my research and agreed to contact them. Eventually, Prince agreed to meet me—he and I met on a midday on a Friday at PASSOP’s office, and we went to a public square nearby where the interview took place.

The following section will include a thematic analysis of the semi-structured interview that I conducted with each of the three participants and will include vignettes to illustrate or challenge points raised in Chapter One. The questionnaire used in the interview was structured around the main goal of finding out details about the encounter with the Department of Home Affairs and how evidence (the ‘homosexual performance’) was produced and interpreted. Since the interviews were semi-structured, other incidental (albeit not less important or interesting) points emerged.

The data presented below are grouped into three categories: I will first look at

the point in their lives prior to the refugee application when they first realised they were possibly 'different' from most boys around them, and how this process came about. This categorisation is based on the idea of a 'narrative of difference' (Connely 2014; Morgan 2009), which posits that feelings of difference and shame are typical cross-cultural experiences of sexual minorities. The second thematic group will focus on an incidental topic that emerged on notions of sexuality as a public identity versus private act, finally followed by the applicant's memories of their encounter with the Department of Home Affairs and the decision-making interview.

Rather than approaching participants myself, I decided to only search for and contact them through NGOs, not only because of the already established relationship of safety and trust between the organisations and the participants, but because I felt this would give them more space to decide whether to take part in the research as well as reassure them about what the research entailed. The interviews were accompanied by a consent form, signed at the end of each interview, in which the participants acknowledged that they could refuse to answer any question. Furthermore, they could choose to withdraw their consent at any stage and for whatever reason as well as whether they wanted to use a pseudonym. To this end, the recordings remain confidential, and parts of the transcripts will be used below.

### **a) Realisations**

The participants' narratives all pointed to a similar moment in their early to mid teen years where they seemed to come to a full realisation of who or what they 'were', and what consequences this deviance might cause in homophobic places like Uganda and Zimbabwe. In these contexts, words like 'gay' and 'homosexual' carry the stigma of being un-natural (shrouded in religious dogma) and un-African, a threatening export from the West. Lloyd and Prince's stories on such realisation are illustrative of two interesting points: the mid to late 1990s emergence of the homosexual figure in Zimbabwean society and popular discourse as well as the country's relationship with its neighbour, South Africa.

Lloyd was born in the early 1980s and recalls being called 'boy-girl' from a very early age, as he would usually be the only boy playing with a group of girls. As puberty kicked in, he started 'playing' with other boys from his school and neighbourhood:

L: It's like boys playing they put their thing between my legs and they used to treat me like a girl, everyone wanted to put his dick between my legs because I was like a girl

[laughs]... and I used to like it, become a real woman, and I felt, oh my goodness, like a woman. It was a nice feeling. [...] They used to call me 'my girlfriend', 'my wife', and I used to like it a lot.

This nice feeling that Lloyd mentions turned into a conflict due to an incident that happened when he was about to finish high school: "There was our former president of Zimbabwe, he was being accused of being gay and of sleeping with boys and there had been boys actually coming out in public and talking about sleeping with him and everything". The person Lloyd is talking about is Canaan Banana, the first president of Zimbabwe following the prolonged war of independence that toppled Ian Smith's Rhodesia. Banana was in office from 1980 to 1987, when his Prime Minister and current president, Robert Mugabe, took over.

In 1996, Canaan Banana—held by some as the main threat to Mugabe's autocratic ambitions—was accused of sodomy in the course of the murder trial of his bodyguard, in court for shooting an officer who had taunted him about being "Banana's homosexual wife". In January 1999, Banana was defrocked and sentenced to ten years in jail. In the mid to late 1990s homosexuality became a topic of close inspection and repression in the Zimbabwean society—in a bid to repress homosexuality, however, this vigilant power also 'created' homosexuals. As Lloyd recollects,

That's when the word gay appeared into my world, people were talking about it everyday, defining the word and the doings of the person who is being called 'gay'. So that's when I found out, 'ok, so I'm like this man who's being accused of sleeping with men, so this is how I actually am. [...] I started stopping guys in my community to call me 'girlfriend', 'wife', when I realised that I'm gay and I'm now scared and coming from a background where I'm being groomed as a Christian...

Part of the literature reviewed in Chapter One points to the mid-1990s as the period when the gay identity, alongside the gay civil rights movement, went global and became present in virtually all continents. It also investigated some of the peculiarities in the relationship between South Africa and the rest of the continent, particularly in terms of LGBTI justice and rights. South Africa was the pioneering country in Africa with its 1996 Constitution in advancing legal protection against discrimination based on sexual orientation, which in its turn 'made' South Africans queer. (De Vos 2001). It might be said that in a way South Africa also 'made' Prince queer. It was around the 2010 World Cup, and 19-year-old Prince's moment of realisation, as he puts it,

Happens like, when I was now at home, reading a magazine from South Africa, SA magazine, that's when I first know like when... You know there's this other page of

finding people? When a person is like a gay man, 'I'm looking for a gay partner' or whatwhatwhat... And then it came to my mind like 'ok... now I know there are other people who are actually like me out there. There are other people who feel like this! There are other people who sleep with other men! That's how it came, it was through that magazine when I saw it.

Prince went to an internet cafe to reply to this ad, and the person actually turned out to be his first boyfriend. He recalls this realisation going from an initial moment of excitement and curiosity to hatred and desperation, particularly once his family found out that he was gay.

P: I thought it was a phase, where you are up for it at that moment and then it goes away, and then when I got into deeper reading about it, and I realise 'ok, that's how I am for the rest of my life'. And I don't want to lie, I go to church, I go to *sangomas* looking for cure, I thought there is a cure and I prayed for it, ja...

Sam's childhood years in Uganda were also marked by him only playing with girls, and he recalls being called 'boy-girl' throughout primary school. Sam says he realised he was different from the other boys, that he was acting like a 'girl', when he was around 12. Sam and Lloyd's memories point to the centrality of 'playing' and how it shapes the body of the child in order to (re)produce the heteronorm—to the point where Lloyd's mother would beat him to go and play with other boys, and even the girls he played with would sometimes push him to do so. Sam's parents were the opposite—they would not let him play with other kids in his community at all. However,

S: I went to boarding school, so at school then I would play with girls of course. I think I played with boys in physical education but most of the time I would be with girls. They used to call me boy-girl and when you are still a child... you don't sit down to analyse what's going on, how being different is bad to other people, so you live your life until adolescence, until it kicks in, then you started to understand 'ops, I act like a girl, oh flip, I must start acting like a boy.

Sam endured what one might call a compulsory performance of heterosexuality for quite a while, and he recalls his efforts to look like and act like a man: he grew a beard, adjusted his voice, and had two girlfriends. "Then I went to finish high school, went to university, finished my diploma, then I got a job. I worked for three months then I was like 'no, fuck, I can't continue pretending here that I am straight forever'". Within a month without much forethought and planning, Sam told his parents he had got a (made-up) job in Cape Town, packed up, and left.

## **b) 'After 9' and the 'Closet'**



Another common topic that arose in the interviews revolved around the figure of the 'after 9'. Prince first talks about this figure when referring to how he is treated by the Zimbabwean community in Cape Town. He says that "one thing I've realised with Zimbabweans, most of them are actually 'after 9', and most of them are also married people". His own definition of the term refers to

married men... [who] actually only want a gay person in the middle of the night, like from 9 upwards. So they actually do it there at that instance there, there is no relationship, only sex and then they go. So they actually do it just... because it's in their blood, remember...they have to do it, one way or other you can hide from other people but you feel it, so they actually look for other guys in the middle, like from evening... But during the day they're even gonna mock at you, some of them are even gonna beat you up... *but they're gay as well.* (My emphasis)

These words echo a commonplace assumption that homophobia stems from the oppressor's self-denial of themselves being gay. While this is quite a controversial assertion, and not the object of interest for the time being, it is worth looking at it from a perspective that unveils a slippage, a split between one's sexual acts and one's sexual identity.

Such split is also alluded to in Lloyd's teenage memories, which point to a divisive moment when he went from enjoying what he did to being scared of what he was, once the word gay appeared into his world. The verbs are important because they touch on major philosophical and biological debates on whether sexuality is something you 'do' and perform or something that you 'are', an inner formative trait of individual subjectivity. In other words, whether sexuality belongs to the realm of 'doing' or 'being'.

It might seem paradoxical that a man who engages in same-sex activities would feel hierarchically superior to and attack other men who do the same activities. Except such activities are not always exactly the same insofar as they don't carry the same social and symbolic meaning. The figure of the 'after 9' brings the focus not to a public identity ('be'), but to the encounter of two or more desiring bodies ('do'). As Katyal (2002: 129) puts it,

Contrary to the prevailing assumption that individuals who have sexual relations with members of the same gender are identified as "homosexuals" or "bisexuals", there are numerous individuals... who would never conceive of identifying as such and yet who routinely engage in same-sex activity.

The figure of the 'after 9' points to another usual term used commonly by public health/HIV activists: "men who have sex with men" (MSM), who Katyal (2002) argues fall under the additive model. Another possible angle to understand why

an 'after 9' would feel 'entitled' to bully a gay person is that, as mentioned in the previous chapter, in many postcolonial societies what is being attacked is not necessarily (or mainly) the same-sex act but rather the supposedly imperialist identity, leading to a scenario where "many families tolerate their lesbian and gay children until these children use the words 'gay' and 'lesbian' to describe themselves" (Spruill 2001: 14).

The figures of the 'after 9' and MSM bring to the forefront controversies around the 'closet' and the 'coming out' process. Under contemporary gay and lesbian mainstream activism, same-sex behaviours

That do not take on explicitly "gay" or "lesbian" labels are dismissed as "unliberated", largely because they fail to develop into individual political subjects. Instead, they are cast as "prepolitical", and "closeted", in stark contrast to the "liberated", "out", politicised, "modern" gay identity (Katyál 2002: 130).

In a way, then, the MSM is portrayed to be perpetually in the closet, failing to comply with the (Western) staged model of identity development discussed in Chapter One: a linear trajectory from confusion or denial to the final process of coming out. However, to outright dismiss MSM as closeted gay men who don't have the courage to come out is a simplistic move because it fails to take into account more nuanced aspects, such as—drawing on Chapter One—what (in)significance and meaning the act of coming out might have in a subaltern setting (Manalansan IV 1995), as well as how the prevailing substitutive model can coexist and class with the additive and/or transformative models. In this context,

The self-referential character of the substitutive model of sexual identity thus lends itself to the perception (shared by many gay rights activists) that a presumed equation between public sexual identity and private sexual behaviour is the only "proper" way to conceive of the relationship between the two (Katyál 2002: 130).

The critique of how MSM and/or the 'after 9' might be labeled 'unliberated' does not equate with turning a blind eye to the (often severe) bullying and oppression that they might eventually perpetrate against gay (in the sense of a public identity) men, nor does not it mean to undermine the political importance that 'coming out' can have (at least from a perspective of collective mobilisation). It also does not aim at consenting with the position which posits that if an asylum seeker can evade persecution back home by butchering up and remaining in the closet, then there is no real persecution. Instead, such critique aims at offering a provocation that

The difference in targeting identity over conduct for moral and legal opprobrium represents one of the most striking challenges faced by sexual minorities in the non-Western world. Such differences carry enormous legal implications for transnational gay civil rights, because they suggest that preferencing identity-based rights in the absence of privacy-based rights—a key function of the substitutive model in the United States—may ultimately backfire in other contexts (Katyal 2002: 132).

The act of coming out is a central trope in the refugee application process because, as some of the literature shows, even in non-Western contexts the decision-making interview is structured and conducted around the linear model which culminates in one's coming out, but also because the very act of encountering and convincing the Department of Home Affairs requires that one credibly comes out, so that one is believed to be an 'authentic' gay asylum seeker.

### **c) Encounter with Home Affairs**

The encounter with the decision-making officer is possibly one of the most interesting and vexed moments of the asylum-seeking process. From a theoretical point of view, the questionnaire bears some Foucauldian resemblance to the process of confession whereby the officer attempts to excavate from the applicant's story the truth which will decide the applicant's fate. From a practical point of view, the procedure is also usually fraught with long delays, corruption, and mismanagement.

Lloyd recalls wanting to seek asylum in England instead, as Zimbabweans were able to enter the country without a visa up until November 2002, which served as a route to political asylum. However, the British government's introduction of visa requirements for Zimbabweans has caused the number of Zimbabweans refugees to decrease in England and increase in South Africa (Cooley & Rutter 2007: 179). After having his UK visa denied twice, he decided to come to Cape Town to join some of his friends who convinced him that life was booming in the Mother City. Sam, on the other hand,

S: Didn't want to go to Canada or UK or USA because that's where my siblings are. Because then I would have to act [straight] because they are there. So I decided to go to SA because only my sister [was here], she was almost done with her Masters at UCT so I was like 'she's going to go back home' so I can go.

Sam and Lloyd's first Home Affairs recollections are coincidental in that they bring to the foreground memories on the physical unpleasantness of the space and the feeling of perpetual waiting. They recall the coldness of the metallic seats against their skins, the frustration, hunger, boredom, and exhaustion of countless hours of uncertain awaiting. Next to this dull waiting there's the sense of

agitation as soon as, in a similar fashion to Althusser's hailing/interpellation, the person who waits becomes the person who is addressed by Home Affairs. As Lloyd puts it, "things start moving when you meet the immigration officer, once they've called your name that's when everything starts".

Both Sam and Lloyd resorted to help from their friends who were already in Cape Town to file their application. Sam went to Home Affairs in Nyanga, Cape Town over five times to try to arrange his decision-making interview, only to fail each time. The friend who was helping him with the process called Home Affairs in Pretoria, who then informed that Sam should go back to Nyanga the following day for his interview. As soon as Sam arrived for his interview, he realised that "*Yoh*, that was the worst mistake! Because now it was as if we had peeped to their superiors. So then, *yoh*, they were so pissed with me, the way they were handling me but then they gave me the interview there and then".

Sam recalls feeling very unprepared as no one from Home Affairs was assisting him in the process, and all he knew about it was what his friends had told him. After filling in a form detailing his story of persecution back in his home country, the decision-making officer began by asking him general questions such as what his parents' names were, where he grew up, and proceeded to ask him "why are you here?" and "why are you applying for asylum?". As soon as Sam revealed that he was seeking asylum based on his sexuality, the officer asked what life was like for gay people in Uganda, and if other people knew about Sam's sexuality. Eventually the officer turned down Sam's application on a two-fold rationale. Firstly, because Sam used Kenya Airways to come to Cape Town,

S: And you know planes first go to their capital before they take you elsewhere. So it went from Uganda to Kenya, then from Kenya to South Africa. So the interviewer interpreted me going to Kenya that I go to [seek] protection in Kenya. But Kenya doesn't even allow gay people. So that's the reason he used to deny me. He said 'you got protection in Kenya'.

The officer seems to have applied article 4 (1d) of the 1998 Refugees Act, which sets forth the criteria for exclusion from refugee status, namely if the applicant "enjoys the protection of any other country in which he or she has taken residence". Levelling a quick aeroplane layover with 'residence' in Kenya must have required unusual interpreting skills from the Home Affairs officer, especially considering that Kenya is notoriously not a very friendly country for gay people.

Secondly, the decision-making officer did not believe that Sam was gay because he didn't look or speak like a gay person, and therefore could not have suffered

persecution. Sam's case was quite startling because, of all participants, he was the only one who actually produced objective, tangible evidence to ground his claim. Sam recalls being fired from his job in Uganda because he was gay, at which point he started volunteering for an LGBT organisation back home.

S: Before I applied [for asylum], I e-mailed my boss back home and told him I want a letter to say that I was [gay]... I lost my job because I'm gay, I was terminated because I was gay. And my boss actually gave me the letter and I had it and I produced it but still... Did not help.

Prince also recalls experiencing hostile treatment during his brief encounter with Home Affairs. His decision-making interview was conducted by a male and female Xhosa-speaking Home Affairs officers, whose first questions were "why are you here in South Africa?" and "do you have any qualifications to work?". Prince points out to the DHA's apparent suspicion that asylum seekers' main motivation to come to South Africa is economic and not political. He adds that there was a bit of a language barrier as at times the officers would speak among themselves in Xhosa, and although Prince doesn't speak the language fluently, he picked up that

P: there are some words they were speaking, they could see that I'm a foreigner, so there are some words now that I know like, ok, that means kind of like *stabane*,<sup>3</sup> which means more for a gay person, it's a mocking word called *stabane*. So like 'look at this *stabane*'. (...) And after that, I mean, they actually take it as a joke, that's the thing. After they found out it was a gay thing, like I'm gay, then they started mocking me, like everything was a joke from there.

This feeling of being treated like a joke by state officials who are in charge of implementing human rights instruments resonates with Sam's impressions that "some immigration officers are very homophobic, even the way they look at you". The duo that interviewed Prince were convinced that he was straight and said they were not going to believe him until he got them something tangible, at which point he "even asked them like 'do you want me to come with a video whilst I'm sleeping with a man?' And the guys started laughing and mocking at me, so that's when I actually left".

Sam and Lloyd stated that they don't believe Home Affairs are giving the status permit *anymore*, making reference to a previous period when arguably

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<sup>3</sup> 'Stabane' is used in vernacular isiZulu to refer to an intersex person, someone who was born with both a penis and vagina. However, people who are labelled *stabane* are rarely intersex: instead, the word is pejoratively used to describe gays and lesbians. While the archeology of the word is unclear, for an investigation of 'stabane' as a discourse informed by colonialism, apartheid, and indigenous practices, see Swarr 2009.

applications were more likely to be successful. The turning point seems to be the 2010 World Cup, when, according to Sam, “many people came to South Africa for economic reasons, so now everyone was categorised like that, so they all put us in the same boat”.

Indeed, Lloyd was the first of the participants to seek asylum in South Africa as well as the only participant whose application was successful and earned him a refugee status. He is also the only person who states that, despite having applied as a sexual refugee, the choice of leaving Zimbabwe and coming to Cape Town in 2006 was not motivated primarily by his sexuality:

L: I decided to come... There were lots of things happening in Zimbabwe though. Economic-wise, we are failing to survive actually, no one makes enough and everyone I know is leaving the country. It was not because of my sexuality. It was about the cost of living in Zimbabwe, it was just... no one was managing to.

Apart from having applied in the early stages of the process, the outcome of Lloyd’s application might be attributed to his performance of Linda to the Home Affairs officers, which from the interview I gathered was his sort of provisional alter ego in resonance with his childhood memories of enjoying feeling like/being called a woman. Because he didn’t want to be the centre of attention, Lloyd recalls that during his encounters with Home Affairs he was originally trying to hide in the corner and act like a man, but “they [DHA] made me come out actually”. He explains:

L: When you are sitting at the immigration office you are not sitting like you’re sitting here. You are sitting like in a big wall where there is... everyone is sitting there, where you don’t want to be seen or to be a drama. So actually you go and they call your name then you start chatting with them, maybe in the corner of the office...

However, the conversation that Lloyd was hoping would happen in the corner of the office, so as not to be seen, ended up receiving the attention from several Home Affairs officers who were in the surroundings, at which point Lloyd started channelling Linda, and

L: Because I did open ‘actually I’m gay’... I found it comfortable that I started featuring Beyonce (...) [mumbles in a femme voice] Yes, oh, you know... I was just acting like a woman. I was trying to say... I have the features, which I do and feel comfortable, especially they come out if I’m with my other gay friends. You know our drama as gay men? That’s how I started doing with those immigration officers, so they easily picked it up...

It is interesting to look at Lloyd’s case in light of the ‘gay card’ play that was

discussed in Chapter One. Sam, for instance, had tangible proof (his boss' letter) yet was told that he couldn't possibly be gay because he had a beard and his voice wasn't feminine enough. Lloyd had but his testimony (and his performance) and that sufficed to convince the state. When asked what Home Affairs officers might believe a 'true' gay person looks like, the participants unanimously made reference to one word: femme.

Given that Sam and I had already known each other for a while, I felt comfortable to point out to him that, despite my 'gaydar' being tuned into the Brazilian/Latino codes, I could still pick up that he was quite femme, to which he replied: "You see, but *now!* Because now I made peace with myself, so I just do as I... back then I was more macho". Sam and Lloyd make reference to the expression 'plus plus', which refers to a gay man who is very feminine and according to Lloyd carries a "handbag, make up foundation, everything, lipstick... so these immigration officers... they only want to see you coming in with your handbag, screaming, and playing Beyoncé like a queen".

However, a point that was highlighted is that one *becomes* 'plus plus', especially in a city so independent and free as Cape Town—as Sam and Lloyd describe it. However, at the early stages of filing one's application and going for the interview, recently after leaving one's country, Sam questions how anyone can "expect someone from Uganda to go to Home Affairs and say 'I am gay'? You grow up, your community says it's a crime, your church says it's a crime. It's hard!"

In order to make life a bit more 'livable', it's not uncommon that a person from countries like Zimbabwe and Uganda might resort to repeatedly acting and looking straight in their country of origin prior to seeking asylum, from which one might infer that, at the moment of their interviews, Sam and Prince were possibly still somewhat engaged in this 'man up' code, a feasible explanation to why the decision-making officers read them as not gay (enough). Moreover, there is the fact that, as Sam pointed out, an applicant might struggle to talk about their sexuality given how much of a taboo it is back home, especially in a setting like that of a Home Affairs interview. Not surprisingly both Sam and Prince reported homophobic and derisive treatment from officers once they disclosed their identity.

## **V. Final Reflections**

Adrift was a word that accompanied me throughout my exploration beyond

books and articles, whose directions were outlined above. Several attempts at reaching out to other people were, out of suspicion or simply busyness, cut short. However, I also encountered many people along the way who were interested in this research, and who helped and encouraged me to move on. My supervisor, Jane, and the people from Gender DynamiX, especially Estian and Sam, provided me with motivation and guidance.

The questionnaire I used in the interviews was structured in layers and they were designed to last between forty-five minutes and one hour—even though, as I learnt later, the DHA interviews themselves did not last much at all. Lloyd's interview, for instance, happened almost a decade ago. How much could be said in one hour about an interview that was so brief and happened so long ago? How do memories of fear and hope shape what one vocalises?

The setting of the interviews and my position as a researcher were two prominent aspects in the process. Sam and Lloyd's interview, for instance, took place at my flat in Cape Town on a Friday evening, as I had offered to cook them my favourite meal. We had spaghetti bolognese, conducted the interviews and finished the night chatting and laughing over a bottle of cabernet sauvignon. The interview was not at the centre of the evening, as we also talked about many other things during dinner and drinks afterwards. Even though I was in two positions of power—researcher and host—the ambiance was very relaxed, and I believe this is due to the friendly and trustworthy relationship I was building with Sam, and that he already had with Lloyd.

Victor from PASSOP, who arranged for Prince and I to meet, had told me in advance that Prince might need financial help to cover his costs of coming to town to participate in the interview. My supervisor had already warned me of the possibility of facing a situation during the research where money might be involved. Originally confused about the 'ethics' of paying someone to interview them, I came to the conclusion that it would be only fair that someone's time should be compensated, so Prince and I agreed that R100 would suffice.

My interview with Prince happened on a midday Friday at a public square in the middle of town. We were surrounded by business-looking people distracted in their frenetic pace, and in a way my encounter with Prince was marked by this sense of hurry. Not that he was acting aloof or reserved—on the contrary, he was forthcoming and shared stories that I am not sure I would share with a stranger. Given that he was dressed up, I started to worry that I might be taking up too much of his (work) time, so I asked him that he should let me know whenever he needed to leave. He replied that he was not in a hurry, and since he was looking



for a job he was going to an internet cafe after our interview to send out his resume—if only he had his papers sorted out, it would probably be easier to find work.

Prince was hoping he would find a job soon so he could make some money to go to Pretoria and file his appeal: that was the only way to hopefully get his papers sorted out. Sam's appeal—part of a mass case led by the Refugee Rights Unit at UCT—took place in October 2015, six years after Home Affairs first turned him down. He had not had any follow up on his appeal since then, and his six-month permit was about to expire once again. He was in his seventh year of waiting and the state still hadn't made a decision whether or not to offer him protection. In the meantime Sam had built an entire life in Cape Town: he had a nice job, was doing his postgraduate studies, and had even been married for a while. His future, though, is still somewhat contingent on what the appeal board will say.

## Conclusion

The fact that Cape Town's Refugee Reception Office has been and remains closed because it was considered a public nuisance (Molander 2016) is one of the most symbolic and shocking pieces of information I have encountered throughout the research. In methodological terms it meant that—being geographically limited to Cape Town due to financial reasons—I could get in touch with fewer asylum seekers and refugees than I had first assumed, and that those who I managed to reach were more likely to be 'old' applicants.

In theoretical terms it meant that it has been possible to initiate a research process which I argue can reveal some of the textures of what it means to seek 'asylum' in South Africa within a context of myriad forms of violence. However, a dominant conclusion for me is the need for more, sustained, and critical engagement with South African Home Affairs' meanings of living as 'homosexual' and/or 'transgendered' as a political form of human rights abuse.

The asylum seekers who choose to stay in Cape Town—because it's assumed to be more 'gay-friendly', perhaps—generally have to commute to Pretoria with some frequency to sort out or renew their papers. Commuting to Pretoria is not cheap and can be a considerable financial hurdle, especially to those without papers who oftentimes have to resort to underpaid, exploitative jobs to make do.

In spite of issues concerning, *inter alia*, lack of resources, corruption, and legislation implementation, activists and NGOs (such as PASSOP) fighting for the rights of the LGBT population and asylum seekers have built up a network through which they can offer support to those in need, create a space of collective empowerment, and question whether it is only on paper that South Africa, more than two decades after the end of apartheid, will welcome its queer, black neighbours.

The intellectual background in questions of refugee status and immigration law which I brought to this research, alongside my knowledge of South Africa as a country whose constitution prevents discrimination on the base of gender, sex, and sexual orientation, led me to imagine a research process through which an outsider would be able to explore queer African refugees' experiences with particular moments within the official immigration proceedings.

The first and maybe most straightforward conclusion I can draw from my work over the past year is that the question of queer refugees' experiences of accessing their rights on paper seem to be radically underexplored in the South

African context. There is no extensive body of work which documents and analyses the experiences and challenges of sexual refugees, nor any discernible body of work which reflects upon and theorises the ethical and political complexities of undertaking such research.

From the literature review of Chapter One and the conversations and encounters of Chapter Two, it might be concluded that scholars, policymakers, and activists alike are currently tasked with both an administrative and philosophical challenge. The former deals with the 'present' and aims at improving the existing model of asylum protection, making the granting or rejection of applications more predictable, clear, and just. The latter entails thinking about futurities, utopias perhaps, even if its paths are not exactly clear within our current existing legal and political language.

With regard to the first challenge of how to improve the current system, it has been suggested that a refugee application questionnaire informed by a 'narrative of difference', rather than one focused on interrogating sexual acts or a gay 'lifestyle', would be more just and less prone to perpetuating a Western, exclusive bias (Berg and Millbank 2009). The logic behind this narrative of difference is that the one potentially cross-cultural, shared experience of LGBTI people around the world is one's realisation of some sort of deviance to the heteronorm, being different to most kids around them, and as a result having to deal with a fear of social rejection (Berg and Millbank 2009: 206). However, the authors emphasise the importance of preventing such narrative of difference from being co-opted by a hegemonic expectation of how such difference should be narrated (ibidem).

The credibility assessment of refugee applications could arguably be improved by means of a "stricter control of discretion and improving the calibre of decision-makers" (Millbank 2009: 22), which would make granting or rejecting an application more predictable and less prone to arbitrary decisions. Millbank believes this could be implemented through legislative or administrative guidelines and standards as well as by

Improving the quality of lower-level decision-makers... through enhanced requirements for professional or educational qualifications prior to appointment, more transparent or merit-based appointment processes, greater independence of decision-making bodies from government, and the provision of initial and on-going training (ibidem).

This echoes the answers that Sam, Lloyd, and Prince gave when asked what, in their opinion, could be improved in their application process: that DHA officers be more educated and better trained in relation to the fair treatment and rights

of LGBT foreigners. In this sense, administrative or legislative guidelines could outline improper behaviour, limit arbitrary interpretations, and encourage periodic training sessions and workshops. Besides, from the texts I read and conversations I had with activists and the participants during the course of this research, I believe it is not implausible to say that DHA could become more impartial and independent of the political sways of the government.

With regard to the second (theoretical) challenge, one might start with thinking about ways to provide protection for asylum seekers fleeing homophobic regimes on an international scale without resorting to a global, homogenising identity. How can we find alternatives to building coalitions and mobilising political activists across the globe who may not necessarily identify in the same terms? The multiple ways in which sexual identities, desires, and behaviours are developed and experienced in conjunction with other social markers, as well as the ways in which it is more or less central to the constitution of one's selfhood, should not be invalidated and invisibilised by a homogenising model of human rights.

In this sense, the language of human rights remains full of paradoxes and possibilities. The purported idea that every human being, regardless of any qualification, is born with a set of inviolable rights is contradicted by human rights' mechanisms of bodily inspection and assessment. In this day and age, the language of human rights somehow presents itself as the only or most effective way for the marginalised to present our claims and sorrows despite its innate inability unable to resolve injuries (Brown 2000) or secure material protection and safety. It also appears to be simultaneously the 'solution' and the 'trouble', and is desired and fought for by the subaltern (Madhok 2016).

A possible, albeit maybe apocalyptic, conclusion one might take from these paradoxes is that human rights are more of a trouble than a solution, and therefore ought to be ignored and rejected. However, it might be argued that within the current neoliberal model of citizenship and rights which we find ourselves in, the language of human rights remains a key element for engendering political mobilisations and imaginaries (Madhok 2016)

In this scenario, Madhok suggests that we are yet to know how the language of rights informs and activates demands for expanded entitlements, i.e., how they are constituted and articulated by marginal subjects. By asking these questions, we can maybe start to unpack, as Sabsay (2013: 89) suggests, the "terms that condition the ways in which we become recognizable as sexual or political subjects, or even subjects at all".

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