



# LGBTI REFUGEE SUPPORT AND ADVOCACY PROJECT

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## PASSOP REPORT

### **A DREAM DEFERRED:**

Is the Equality Clause in the South African  
Constitution's Bill of Rights (1996) just a far-off  
hope for LGBTI Asylum Seekers and Refugees?

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## TERMINOLOGY AND GLOSSARY<sup>1</sup>

**Bisexual\*:** A person who is attracted to two sexes or two genders, but not necessarily simultaneously or equally. This used to be defined as a person who is attracted to both genders or both sexes, but since there are not only two sexes (see intersex and transsexual) and there are not only two genders (see transgender), this definition is inaccurate.

**Come Out\*:** To recognize one's sexual orientation, gender identity, or sex identity, and to be open about it with oneself and with others.

**Drag\*:** The act of dressing in gendered clothing as part of a performance. Drag Queens perform in highly feminine attire. Drag Kings perform in highly masculine attire. Drag may be performed as a political comment on gender, as parody, or simply as entertainment. Drag performance does not indicate sexuality, gender identity, or sex identity.

**Gay\*:** Men attracted to men. Colloquially used as an umbrella term to include all LGBTIQ people.

**Gender identity\*:** The gender that a person sees themselves as. This can include refusing to label oneself with a gender. Gender identity is also often conflated with sexual orientation, but this is inaccurate. Gender identity does not cause sexual orientation. For example, a masculine woman is not necessarily a lesbian.

**Heterosexual\*:** Sexual, emotional, and/or romantic attraction to a sex other than your own. Commonly thought of as "attraction to the opposite sex" but since there are not only two sexes (see intersex and transsexual), this definition is inaccurate.

**Homophobia\*:** The irrational fear and intolerance of people who are homosexual or of homosexual feelings within one's self. This assumes that heterosexuality is superior.

**Homosexuality\*:** Sexual, emotional, and/or romantic attraction to the same sex.

**Intersex\*:** Intersexuality is a set of medical conditions that feature congenital anomaly of the reproductive and sexual system. That is, intersex people are born with "sex chromosomes," external genitalia, or internal reproductive systems that are not considered "standard" for either male or female. The existence of intersexuals shows that there are not just two sexes and that our ways of thinking about sex (trying to force everyone to fit into either the male box or the female box) is socially constructed.

**In the closet\*:** Keeping one's sexual orientation and/or gender or sex identity a secret.

**Lesbian\*:** A woman attracted to a woman

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<sup>1</sup> All definitions with an asterisk taken from the website of the Gender Equity Resource Center at UC Berkeley: [http://geneq.berkeley.edu/lgbt\\_resources\\_definiton\\_of\\_terms](http://geneq.berkeley.edu/lgbt_resources_definiton_of_terms)

**Moffie:** a South African slang term; offensive term for a man considered to be effeminate or homosexual

**Out (of the closet)\*:** Refers to varying degrees of being open about one's sexual orientation and/or sex identity or gender identity

**Queer\*:** i) An umbrella term to refer to all LGBTIQ people; ii) A political statement, as well as a sexual orientation, which advocates breaking binary thinking and seeing both sexual orientation and gender identity as potentially fluid; iii) A simple label to explain a complex set of sexual behaviors and desires. For example, a person who is attracted to multiple genders may identify as queer; iv) Many older LGBT people feel the word has been hatefully used against them for too long and are reluctant to embrace it

**Section 22 permit:** a Temporary permit, commonly called an Asylum seeker permit. It is the first permit granted to an asylum seeker once he lodges his application. This permit recognises the right of the applicant to work and study in South Africa, while his application is still pending a formal decision.

**Section 23<sup>2</sup> permit :** usually referred to as the Border Pass or Asylum transit permit; this pass is given to newcomers when they cross the South African border and is required to apply for the Section 22 temporary permit. Holders of the Section 23 border pass have 14 days to apply for a temporary permit at the nearest Refugee Reception Office near the place of their stay.

**Section 24 permit:** formal recognition of refugee status granted for periods of 2 years before, 4 years now, with the ability of renewal and entitles the holder the right to work and study in South Africa.

**Transgender\*:** An umbrella term for transsexuals, cross-dressers (transvestites), transgenderists, gender queers, and people who identify as neither female nor male and/or as neither a man or as a woman. Transgender is not a sexual orientation; transgender people may have any sexual orientation. It is important to acknowledge that while some people may fit under this definition of transgender, they may not identify as such

**FTM\*:** Female to Male Transsexual

**MTF\*:** Male to Female Transsexual

**Transphobia\*:** Fear or hatred of transgender people; transphobia is manifested in a number of ways, including violence, harassment and discrimination.

**Transsexual\*:** Transsexual refers to a person who experiences a mismatch of the sex they were born as and the sex they identify as. A transsexual sometimes undergoes medical treatment to

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<sup>2</sup> The Director-General may issue an asylum transit permit to a person who at a port of entry claims to be an asylum seeker, which permit shall be valid for a period of 14 days only. See: Immigration Amendment Act No. 19 of 2004 and Immigration Act 13 of 2002.

change his/her physical sex to match his/her sex identity through hormone treatments and/or surgically. Not all transsexuals can have or desire surgery

### **List of Acronyms**

**CCMA:** Commission for Conciliation, Mediation and Arbitration

**DHA:** Department of Home Affairs

**ILGA:** International Lesbians and Gays Association

**LGBTI:** Lesbian, Gay, Bisexual, Transgender and Intersex

**NGO:** Non Governmental Organisation

**RRC:** Refugee Reception Centre

**RRO:** Refugee Reception Office

**RSDO:** Refugee Status Determination Office

**SAPS:** South African Police Station

**UN:** United Nations

**UNHCR:** United Nations High Commission for Refugees

## **EXECUTIVE SUMMARY**

**“ Unless you call out, no one will answer”**

**- African Proverb.**

In many African countries, Lesbians, Gays, Bisexuals, Transgender and Intersex (LGBTI) people are persecuted because of their sexual orientation and gender identity. Studies have shown that homosexuality is illegal in 38 of the 54 African countries, with Nigeria, Liberia, Egypt and Botswana allowing for the death penalty. Homophobia, expressed by social attitudes and legal provision, has made this social group outcast, isolated from their family, community and society. As a result, many are fleeing their country of origin to South Africa where they hope to find greater safety, freedom and happiness. Upon arrival in South Africa, a nation characterised by the co-existence of progressive legislation upholding the rights of lesbians and gay men, LGBTI refugees and asylum seekers are faced with new challenges: discrimination in the work place, corrective rape, robbery, murder, stigma, homophobia, harassment etc. Thus, the gap between the reality and the regulation is huge. South Africa is at best an ambivalent case study in terms of the enforcement of LGBTI rights. The present report aims to describe different human rights violations faced by this vulnerable type of refugee and asylum seeker more often shunned and forgotten by the society.

PASSOP's LGBTI Refugee Advocacy and Support Project, conducted a survey in order to determine the kind of difficulties faced by LGBTI Refugees from across Africa.

Below is a summary of the findings from these surveys made in April 2012 gathered from 25 LGBTI refugees and asylum seekers from different countries of Africa, living in Cape Town, South Africa. The present report is based on the in-depth interviews with this selection of LGBTI asylum seekers and refugees living in South Africa, most of whom are from Uganda, DRC, Somalia, Burundi, Cameroon, Angola and Ethiopia.

Regarding accommodation and shelter, the report highlights the fact that many LGBTI Refugees and asylum seekers face discrimination from their landlords. Those who reported these discriminatory experiences to the police station felt disappointed at the lack of responsiveness. Often, the police never followed up on their case or it remained unsolved for years.

As confirmed by the survey, 90% of LGBTI Refugees are unemployed. Of the 10% surveyed who hold jobs, only 4% work full-time and 6% work part-time.

Most do not have access to the kind of employment that is suitable to their skill set or corresponds to their area of studies.

On one hand, the report indicates that one of the two main reasons for unemployment for many of LGBTI refugees is discrimination on the basis of their sexual orientation and gender identity. Further, 51% of unemployment is due to the lack of documentation, which is the second main reason. This statistic reveals that most still have issues with the Department of Home Affairs with regards to their expired documents, temporary permits and the mass delays by DHA officials in addressing their claim.

On the other hand, 10% of those surveyed continue to be unemployed due to lack of necessary skills or qualification. 6% succeed in gaining employment but report being fired as soon as colleagues, clients or boss find out about their sexual orientation or gender identity.

The report indicates that it remains difficult for LGBTI refugees to find jobs even among some gay-friendly businesses, such as clubs, restaurants, or hotels. While some of these businesses do not have vacant positions, other owners simply outright refuse to hire an employee who is black, a refugee and gay or transgender. The access to some gays clubs and restaurants where they could socialize themselves to other LGBTI South African citizen are exclusive and sometimes expensive because many LGBTI Refugees and asylum seekers cannot afford the access to these places.

The report reveals that within the city of Cape Town itself, respondents felt that townships were less safe than the suburbs and the city centre. In addition, it reveals that integration into broader society for LGBTI refugees and asylum seekers' remains elusive because of homophobic attitudes expressed more often by black South African and coloured people. Additionally, some migrants, refugees and asylum seekers also display homophobic attitudes towards LGBTI asylum seekers and refugees.

Finally, regarding the issue of documentation, many of the interviewees reported that there were mistreated by DHA officials, security personnel and interpreters when they went to apply or renew their permit. Of the 25 LGBTI persons interviewed, only two of them have received refugee status, while the remainder are still seeking asylum or hold a temporary permit.

The report includes a range of recommendations for various actors and stakeholders dealing with LGBTI issues in South Africa. It is our hope that through these findings and subsequent recommendations, every stakeholder will be better equipped to make every effort to curb human rights abuses and minimize the plight of this particularly vulnerable and oft-forgotten group.

## INTRODUCTION

In December 2011, Hilary Rodham Clinton declared to the world that gay rights and human rights are “one and the same.”<sup>3</sup> Evidenced by this much-publicized speech, lending American support to the promotion of LGBTI rights worldwide, it seems that the broader world powers have finally turned their attention to the plight faced by LGBTI people globally. The situation faced by people of varying sexual orientations and gender identities is particularly dire throughout the continent of Africa. Currently, homosexuality is criminalized in 38 of 54 African countries<sup>4</sup>, including Nigeria, Liberia, Egypt and Botswana, and most notably may be punishable by death penalty, as suggested the Anti gay bill in Uganda.<sup>5</sup>

Pundits speculate that the legacy of homophobia in Africa has diverse and complex roots ranging from the influences of Christian missionaries in the colonial period to strong anti-Western sentiments and rapid urbanization to changing family structures.<sup>6</sup> There is a widespread notion among homophobic forces in Africa that being gay is not natural to the African population and is a result of Western corruption and immorality, sullyng traditional African values and familial structures.<sup>7</sup> Other suggest that “The rapid growth of Islam and evangelical forms of Christianity, both espousing conservative views on family values and marriage, has also convinced many Africans that homosexuality should not be tolerated in their societies.”<sup>8</sup> Within this hostile environment, many African LGBTI persons face threats of physical persecution or violence, alongside feelings of isolation or lack of representation within their own culture.<sup>9</sup>

In recent years, homophobic sentiments, acts, and laws have noticeably increased. In late 2011, *salon.com* reported that “Within the last decade, rancorous anti-gay rhetoric has infiltrated public discourse in many African countries. Just last week, the Ugandan parliament revived a proposal to legalize capital punishment for people who engage in homosexual acts.”<sup>10</sup> The article goes on to emphasize the degree to which life for LGBTI Africans in most countries on the continent has become untenable.<sup>11</sup> *The New York Times* reports that “Gay Ugandans already describe a world of beatings, blackmail, death threats like ‘Die Sodomite!’ scrawled on their homes, constant harassment and even so-called correctional rape.”<sup>12</sup>

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<sup>3</sup> [http://www.nytimes.com/2011/12/07/world/united-states-to-use-aid-to-promote-gay-rights-abroad.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2011/12/07/world/united-states-to-use-aid-to-promote-gay-rights-abroad.html?_r=1&pagewanted=all)

<sup>4</sup> [http://www.salon.com/2011/10/29/gay\\_africans\\_flee\\_persecution/](http://www.salon.com/2011/10/29/gay_africans_flee_persecution/)

<sup>5</sup> <http://www.siecus.org/index.cfm?fuseaction=Feature.showFeature&featureid=2126&pageid=483&parentid=478>

<sup>6</sup> <http://www.guardian.co.uk/commentisfree/2010/may/21/complex-roots-africa-homophobia>

<sup>7</sup> <http://www.thewitness.org/agw/macaley121604.html>

<sup>8</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/11/AR2010121101527.html?hpid=topnews>

<sup>9</sup> Ibid. <http://www.thewitness.org/agw/macaley121604.html>

<sup>10</sup> [http://www.salon.com/2011/10/29/gay\\_africans\\_flee\\_persecution/](http://www.salon.com/2011/10/29/gay_africans_flee_persecution/)

<sup>11</sup> Ibid.

<sup>12</sup> <http://www.nytimes.com/2010/01/04/world/africa/04uganda.html>



Thus in a situation in which choices are constrained, money is tight, and daily life becomes increasingly difficult for LGBTI persons on the continent, many begin to pursue other options, namely moving locations. The executive director of a San Francisco-based LGBTI human rights organizations notes that this trend has led to another issue: the rising number of LGBTI African refugees.<sup>13</sup> And the natural choice for many, without the means to fly to Europe or North America where their life prospects look less bleak, is a turn toward the southernmost country on the continent, South Africa. Unlike the other countries in Africa, South Africa presents itself as a beacon of hope for persecuted LGBTI persons in Africa—“South Africa is an exception to the rule of African institutionalised homophobia, at least nominally, as the South African constitution protects the rights of homosexuals.”<sup>14</sup>

The official legal stance towards LGBTI persons in South Africa is one of the most progressive globally—“the equality clause in the South African Constitution’s Bill of Rights (1996) is the first to expressly prohibit discrimination on the grounds of sexual orientation”. A decade later, the signing of the Civil Union Act in November 2006 brought legal recognition of gay marriages, positioning the country as the first to do so in Africa and the fifth to do so internationally.”<sup>15</sup>

However despite these egalitarian forward-thinking measures of law, public sentiment does not always match up. The Human Sciences Research Council of South Africa reports that “As the incidences of hate crimes against black lesbians and gay-bashing attest, the victory of constitutional equality clearly has not guaranteed the end to social discrimination.”<sup>16</sup> The well-known organization Human Rights Watch, highlights this paradox: “South Africa, at the forefront of the fight for legal equality on LGBT issues internationally, is desperately failing lesbian and transgender people in their everyday lives at home....Legal rights are important and can be empowering, but they are meaningless in the face of the abuse, intimidation, and violence that people with unconventional gender and sexual expression face on a daily basis.”<sup>17</sup>

This report represents an initial attempt to document the experiences of LGBTI refugees and asylum seekers in South Africa, who have responded to the realities described above and have moved to South Africa seeking asylum on the basis of sexual orientation and gender identity. Importantly, this preliminary study highlights the difficulties faced by this demographic group and moreover, the inconsistencies in law and practice regarding equality on the basis of sexual orientation in South Africa.

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<sup>13</sup> *ibid.*

<sup>14</sup> <http://www.transcend.org/tms/2011/09/homophobia-in-africa/>

<sup>15</sup> [http://www.hsrc.ac.za/HSRC\\_Review\\_Article-121.phtml](http://www.hsrc.ac.za/HSRC_Review_Article-121.phtml)

<sup>16</sup> *ibid.*

<sup>17</sup> <http://www.hrw.org/news/2011/12/05/south-africa-lgbt-rights-name-only>

## I. EXPERIENCE IN COUNTRY OF ORIGIN.

Many of the LGBTI refugees and asylum seekers left their home country either because of a well-founded fear of persecution or past persecution due to their sexual orientation or gender identity. These fears reflect the multiplicity of forces which together make daily life for LGBTI persons in many African countries unliveable. The sites and forms of persecution are varied, ranging from general societal attitudes influenced by religion and traditional values to rejection by close friends and family. Moreover, legal and political institutions often reinforce these attitudes through apathy or active persecution, which often culminates in threats of physical violence, and sometimes experiences of physical assault.

Often in African countries where homophobia is particularly strong, fundamentalist religious values play a formidable role in shaping public beliefs. One of the gay asylum seekers interviewed from Uganda described the views propagated by Christian forces in Uganda which portray homosexuals as *“outcasts; our fate is similar to Sodom and Gomorrah in the Bible.”* He described how in his own life these pervasive attitudes led to violent action—*“My partner was killed and his house was burned. We lived together in the same house. If I had been there that day, there is no doubt that I would be killed also.”*

Beyond the hardships and near-fatalities which arise at a broader level, LGBTI persons also experience the unparalleled psychological pain of rejection and alienation by family and friends. The attitudes displayed by these close relations are often reflective of the broader societal stance. A MTF transsexual from Uganda noted the following in her interview: *“The family agrees with the community every time. According to them, the death of a family member who is a gay is much better than the shame of the family and all the community.”* Another asylum seeker from Uganda told us, *“family, friends and neighbours shun those who are gay to avoid divine punishment,”* revealing that religious mores of hate transcend interpersonal bonds. Often, difficulty arises when the desires to live one’s life as an LGBTI person comes into conflict with the family’s values. A MTF transgender refugee from Somalia relayed the following: *“I am a transgender and my father wanted me to marry my cousin, which I contested. He also wanted me to look for another lady to marry in Somalia. I refused, stole money, and came to South Africa.”* A gay asylum seeker from DRC recounted the following negative experience with his own family: *“My mother and my sisters took me to church for exorcism because they assumed that I was a man possessed by a supposed evil supernatural force that led me to debauchery. The pastor hit me pretending that he was chasing away the evil spirit from me. I was even forced to fast days and nights.”*

With regards to homophobia, there is a complex relationship between the pervasive attitudes of the public and the official institutional stance in the same country. For many interviewees, homosexuality is not illegal in their home country but in others, the trend towards criminalization is increasing. While there may not

be any formal law or regulation that forbids homosexuality, community attitudes and the churches' stance have led many LGBTI people to be arrested by the police. Some of those interviewed were harassed and others arrested because of their gender identity or sexual orientation in their home countries. A gay asylum seeker from the Democratic Republic of Congo (DRC) stated: *"Homosexuality is not illegal; there are no laws about it. But, they use 'public indecency' as an excuse to prosecute gay people. If you go to the police saying that you were harassed for being gay, they won't do anything about it because they claim they don't know anything about it."*

Not only do LGBTI Africans experience resistance from police in acknowledging their plight, but more importantly there is a dearth of NGOs addressing these issues. A gay migrant from Ethiopia confirmed the following: *"There are no human rights NGOs that protect LGBTI persons in my country, because it's forbidden in our constitution. Anyone who tries [to help] can be arrested and the NGO closed. Can you imagine that even the use of lubricant is not allowed in my country?"* Another gay man from DRC added: *"There was nowhere to go because in Congo if you go to the police you could be arrested or stoned. The police are not trained about it [homosexuality]. Being gay is taboo in Congo. I tried to contact the United Nations mission in Congo and sent them an e-mail explaining my situation to them, but being gay was not a big issue in the UN."*

Thus, LGBTI persons in Africa face discrimination from a wide variety of social forces: general societal attitudes fuelled by religion or tradition, rejection by families and friends, and apathy or active persecution by legal and political institutions. This satellite of oppressive forces serves to make an honest existence untenable and impels many to actively change their circumstances by fleeing their country of origin. For most, South Africa presents itself as the most realistic place to seek freedom from oppression. Many of those interviewed said that they came to South Africa because they were persecuted in their country and could not live the kind of life they wanted or dreamt of living. Only few of them fled their country by fear of future persecution.

## II. EXPERIENCE IN SOUTH AFRICA

The group of 25 interviewees all have unique stories and come from all across the African continent. In this section, we aim to understand the commonalities in their individual and collective experiences as refugees and asylum seekers here in South Africa, particularly in Cape Town, where we are based. We examined several areas of life in order to paint a fuller picture of the experience of LGBTI refugees in South Africa, ranging from housing to employment to general safety and integration. This section concludes with a central concern for this particular demographic: documentation and the struggles particular to this subset of refugees trying to gain access to the resources which should be available to them in South Africa. The underlying goal propelling this section of the report is to understand the quality of daily experiences, particularly for newcomers, which make life in South Africa as an LGBTI refugee or asylum seeker particularly hard.

### A. Accommodation or Shelter

Unlike the situation of refugees and asylum seekers in other countries such as the United Kingdom or Armenia, in South Africa the policy of non-encampment for asylum seekers waiting for official recognition of their status means that refugees and asylum seekers do not have access to free accommodation or refugee camps. Therefore, each person must find access to housing upon arrival in South Africa individually. Among the 25 interviewees, the length of stay in South Africa ranged from four months to ten years. The majority of LGBTI refugees and asylum seekers reported facing discrimination in the process of seeking housing. Most of them stated that they experienced difficulties with their landlord<sup>18</sup> and sometimes with their neighbours due to their sexual orientation or gender identity. As a result, many of those interviewed move frequently in the efforts of finding a safe place. A gay asylum seeker from Cameroon said: *“I used to move sometimes by my own will from one place to another when a place became unsafe, however it happens more often that the landlord evicts me without even a short notice when he found out that I am gay.”*

Although the Rental Housing Act<sup>19</sup> exists in South Africa to protect the rights of tenants and landlords, few of the LGBTI people report their grievances to the housing tribunal when they face instances of discrimination in renting. While the majority of those interviewed fear reporting such problems to the police station, others simply give up because they are not aware of their rights. Even those who did report these discriminatory experiences to the police station felt disappointed at the lack of responsiveness. Often, the police never followed up on their case or it remained unsolved for years.

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<sup>18</sup> Rental Housing Act (Act 50 of 1999),

<sup>19</sup> in terms of the Rental Housing Act (Act 50 of 1999), in South Africa, the Rental Housing Tribunal deals with all complaints lodged by tenants or Landlord.. Government Gazette.

## B. Employment

According to the 25 interviews we conducted, issues surrounding employment were regarded nearly unanimously as the most pressing concern for LGBTI refugees in South Africa. Employment difficulties and discrimination can be broken into two distinct categories: difficulty in gaining employment in the first place and workplace discrimination. Of those interviewed, most continue to encounter obstacles in acquiring gainful employment, and of those who have succeeded in finding a job, many have experienced discrimination in their workplaces due to both xenophobia and homophobia.

Nine people of those interviewed experienced a need to remain covert about their sexual or gender identity during job interviews in order to be considered for hiring. This experience was particularly prevalent in industries such as the food service and health sector, where appearances are closely scrutinized and are often part of the hiring process. One transgender recalled the following experience: *“I can remember last year, I applied for work and after sending my CV and motivation letter, I was called and selected for an interview. Then, during the interview, they warned me to stop making gestures and talking like a girl. Since then, they have never called me.”*

Beyond the initial hardships in getting a job, reported by nearly every single interviewee, LGBTI refugees’ struggles around employment are exacerbated by workplace harassment and discrimination, from bosses and managers, colleagues, and clients. Such behaviour often results in their termination from the jobs they so desperately need to find their way in South Africa. The few who did find employment reported being terminated<sup>20</sup> when their sexual orientation or gender identity is discovered. Gossiping and speculation about sexual or gender identity may lead to termination. One gay refugee from DRC told us the following: *“I faced difficulties in keeping my last job although I was called a hard worker by my boss. Some of my colleagues were gossiping about me and some customers refused to be served by me. I was fired, but I cannot report to CCMA or to the labour court because they will side with my boss.”*

Although some of those interviewed turn to Council for Conciliation, Mediation, and Arbitration (CCMA) or to the Labour Department to report such discrimination, they are sometimes denied or give up when they face endless bureaucratic red tape. A transgender MTF refugee from the Burundi reported: *“I was a victim of unfair dismissal. I reported the case to CCMA first and then to the Labour Office. People from my community and other refugees from my country told to my boss*

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<sup>20</sup>Notice of termination of employment, Section 37 states that a contract of employment may be terminated on notice of not less than one week, if the employee has been employed for six months or less; two weeks, if the employee has been employed for more than six months but not more than one year; see Basic conditions of Employment Act.1997

*to fire me because I would bring misfortune to his business. My boss fired me but the CCMA required him to pay me. He refused. Then I reported to this to the CCMA and my problem has remained unsolved for over than a year.”*

The difficult truth remains that over half of the interviewees confessed their failure to get any employment due to lack of appropriate documentation at all. Unfortunately, without a source of income and bills to be paid, five people of 25 said they had to trade sexual favours in exchange for money necessary to fund daily existence. A transgender asylum seeker revealed the following: *“I am unemployed. Sometimes I don’t have money to pay my rent or even to buy my food. What can I do if someone wants to have sex with me and he will give me money in exchange? Not every day, but sometimes if you are lucky, you can find a sugar daddy<sup>21</sup> who will give you enough money...”* Thus, based on the data we gathered, employment (or lack thereof) remains the most pressing issue for LGBTI refugees in South Africa.

### **C. Safety**

Although nearly all of those interviews fled their home countries to escape various forms of danger and persecution, they unanimously declared that they feel unsafe in South Africa because of their sexual orientation and/or gender identity. Despite a general feeling of insecurity, they described degrees of difference among different areas of the city as well as among different population and racial groups. Spatially, they described the townships as the most dangerous place for them, followed by some areas in the suburbs; most regarded the city centre as quite safe. A transgender refugee illustrates these general findings: *“The township is very dangerous for me; I cannot go there. It’s much better in the city centre or in the suburbs.”* Another interviewee, a lesbian who resides in Cape Town’s largest township reported the following: *“I stay in Khaelitshya. I am still there but now live in a different shack. Someone tried to rape me, so I moved to a new location in Khaelitshya. I have faced a lot of crime in Khaelitshya and I am constantly pointed out as a foreigner. They call me ‘Makwerekwere<sup>22</sup>.”*

Despite the racial integration of South Africa in a post-apartheid era, most of those interviewed noticed a discrepancy in homophobic attitudes among varying racial groups. A majority reported feeling that black South African citizens and coloured people are more homophobic. Most reported that they have not experienced any issues with regard to their LGBTI identity among white people in the community. A gay asylum seeker said: *“If you are walking and come across white people, they just pass. They don’t care who you are and they mind their own business. But many black or coloured people will swear at you, laugh and sometimes threaten you.”* So, in direct contrast to the dreams of safety and security that brought many LGBTI refugees brought to South Africa, many actually experienced a continued sense of threat and insecurity to their person because of their sexual orientation and gender identity.

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<sup>21</sup> The term “Sugar Daddy” may refer to a wealthy older man who offers money in exchange of for sex.

<sup>22</sup> *Makwerekwere* is a derogatory Xhosa word which means “foreigner” and is usually used to swear at a foreigners in South Africa.

## **D. Integration in South Africa and in the LGBTI Community**

Another issue facing refugees broadly and afflicting this demographic in particular is that of integration. In recent years, South Africa has regrettably been home to strong anti-foreigner sentiments, making integration into broader South African society especially hard for refugees. During our interviews, this sentiment was confirmed by experience and was deepened by a general lack of integration within Cape Town's LGBTI community as well. However, it is nearly impossible to disentangle feelings of rejection and alienation on account of nationality rather than sexual orientation or gender identity. At least half of those interviewed reported that they were not even aware of the existence of a gay community in Cape Town. A portion of those who were aware of Cape Town's gay community reported feeling welcomed by this subset of the South African population, while others felt excluded due to their nationality. Aside from the explicit exclusion they felt, others noted the indirect measures which prevent them from gaining access to Cape Town's gay community. A number of interviewees mentioned the restrictive cost of access into many of Cape Town's gay institutions such as bars or nightclubs, which led to feelings of exclusion as well.

With respect to general acceptance and societal attitudes in South Africa, a significant number of interviewees reported that they were verbally and physically attacked because of their sexual orientation or gender identity. In accordance with the racially-aligned tendencies noted in section C, the majority of those interviewed reported that coloured and black South African citizens were most often the perpetrators of such attacks. Additionally, among other groups of foreigners and refugees, those interviewed noted the prevalence of Zimbabwean and Congolese communities in homophobic verbal and physical attacks.

In order to deal with these instances of violence, about half of those interviewed reported such incidents to the South African police station, however this resort does little to resolve these issues. One gay asylum seeker reported the following: *"When I got beat up, I went to the police. They laughed at me but arrested the person who attacked me. The next day after I had gone to the hospital, they had already released the man that attacked me."* Many of those we interviewed noted that ever since they have found out about the work of PASSOP, they have increasingly begun to turn towards this organization to aid them in any difficulties ranging from labour issues to housing matters to general feelings of discrimination.

## **E. Documentation**

One indispensable issue for asylum seekers everywhere is that of documentation and the process of achieving legal documented status in a country. In nearly every case, documentation is paramount to many functions of daily life from opening a bank account to being remunerated for work. Aside from the problems of ingrained societal prejudices which cannot be directly addressed by the political and legal system, documentation often represents the sole technical obstacle to quality of life for refugees in a new country. One of our primary goals in conducting these

interviews and putting forth this report was to understand the particular difficulties faced by LGBTI African refugees with regard to documentation in South Africa. The LGBTI asylum seekers and refugees interviewed reported widely that they are still using the Section 22 temporary permit (see glossary). Only two of the 25 people interviewed have received a Section 24 permit, which formally recognises their refugee status.

While persecution on the grounds of sexual orientation or gender identity is a recognised basis for seeking asylum, this legal truth looks more like a real-life fiction. For the vast majority of our interviewees, the experience at Department of Home Affairs (DHA) was very negative. Many of them had to go apply for a permit at least three times before they got served and were intimidated by the security guards and mistreated by DHA officials or other people, while waiting on the queue. A gay asylum seeker said: *“Before I finally got served, I went there [DHA] four times. Yes, I was intimidated by a security guard who hit me the first time I went there.”* Another gay asylum seeker echoed his sentiments: *“I went there more than 10 times; they asked me for a border pass<sup>23</sup>. We were beaten up by an official constantly. The security guards got orders to mistreat people.”*

Despite their primary stated reason for fleeing to South Africa, in the asylum application process, almost half of those interviewed (eleven of 25) did not state sexual orientation or gender identity in their claims as a reason for applying for refugee status or asylum-seeking documents because they were not aware that sexual orientation was a valid reason for seeking refugee status. Additionally, a smaller fraction reported feeling ashamed or scared by DHA officials or interpreters.

The problems of not speaking English well and requiring an interpreter to move through the asylum application process intensified these feelings. For those unable to explain their claim in English, an interpreter was provided but was limited by the brief interview time slots. A transgender refugee stated the following: *“No, I didn’t [seek asylum on the grounds of sexual orientation] because I couldn’t speak English at the time and I was afraid of the Somalian interpreter. He could spread the news and hate me. I applied on the grounds of civil war. I was not aware that I could get refugee status because of my sexual orientation.”*

Only fourteen of the 25 people interviewed stated sexual orientation as the primary reason for applying for refugee status. Unfortunately, even in being honest about a potentially sensitive subject, DHA officials asked them to provide supporting evidence because of a lack of trust. Some of the others who “look gay” based on their appearance were ridiculed or asked inappropriate interview questions by DHA officials. One lesbian told us the following about her experience at DHA: *“Sometimes they laughed at me with the interpreter and tried to persuade me to cease being gay. They wanted to know more about how I felt being attracted to people of the same sex as me.”* Another gay asylum seeker from DRC said: *“they gave me a form to fill out. I said I left my country because I faced persecution in my country for being gay. The*

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<sup>23</sup> See glossary: Border pass or asylum transit.



woman questioned this; she was looking at me like, 'Why is this gay Congolese coming to South Africa?' She didn't give the papers to me, she threw them at me. Another girl was there told me that she wanted me to change because she likes me. I can't change." Based on these experiences, it seems reasonable to conclude that the level of professionalism among DHA officials was not always exemplary or conducive to an asylum interview revolving around deeply personal, sensitive matters of identity.

After the initial interview, only two cases of those we interviewed had been accepted. The rest are pending asylum seekers and continue to wait for a second interview. Often, the reason for rejection is written on the Refugee Status Determination Officer's (RSDO) Decision in this way: For most of them, the RSDO evoke the principle of relocation into another place in the country of origin before to move in another country, or they just say that persecution based on sexual orientation in his country still an isolated case, lack of persecution when sometime a partner was arrested, kidnapped and killed...

The majority of the refugees interviewed reported that after their failed interview, the official at Home Affairs explained the next step to them and they appealed, but they had difficulties identifying where and from whom to seek assistance in making an affidavit to appeal<sup>24</sup>. 20 of the 25 interviewees are still waiting for the second interview<sup>25</sup> and have been waiting anywhere from six months to two years.

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## CONCLUSION

As illustrated by Section I, all of those we interviewed sought refuge in South Africa because they were persecuted in their country and could not live the kind of life they wanted or dreamt of living. However, based on the data and experience gathered in Section II (detailing the experiences of LGBTI refugees in South Africa) there seems to be a lingering gap between the dreams and expectation that fuelled refugees' journeys to South Africa and the lived experiences that they have encountered here. They arrived with big hopes and dreams however, for many those dreams have not yet been fulfilled. They anticipated a better life in South Africa, free of homophobia and hate crimes, but that has not been the case. A gay asylum seeker from Cameroon recalled: *"I came to South Africa to get rid of the harassment and so that I would be free to live the lifestyle I wanted. But some people are homophobic here too."* Another gay man from Ethiopia described his experiences of being attacked in South Africa by other Ethiopian refugees and his failed efforts to get help from the South African police and lawyers. He concluded, *"I realised that human rights in South Africa are only written in legal texts and the constitution but are not practiced in real life. That's why I was so disappointed, upset and shocked by*

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<sup>24</sup> An affidavit to appeal is the one made on behalf of an applicant asylum seeker whose application was rejected as unfounded by the Refugee Status Determination office. The applicant must lodge the appeal to the Appeal Board within 30 days or leave the country in terms of Section 26 of the Refugee Act No. 130 of 1998.

<sup>25</sup> The second interview is the hearing before the Refugee Status Determination Officer in terms of Section 24 of the Act.

*what I experienced, then I swear that I can't apply asylum in such country which is unable to protect me."*

In light of these experiences, the fulfilment of the Equality Clause in South Africa's Constitution, hailed globally for its progressiveness, appears elusive if not outright false. It is because of human rights violations and discrimination in their home countries that African LGBTI persons come to South Africa, seeking freedom, yet even here they continue to face many of the difficulties they hoped to leave behind in their countries of origin. According to our data and as demonstrated by this report, LGBTI refugees in South Africa continue to face assault, discrimination and violations of their basic human rights across all sectors of society and at both the popular as well as official bureaucratic level.

### **III. RECOMMENDATIONS.**

In this final section, we aim to address the concerns and data from Sections I and II by putting forth a number of recommendations for action and further research for various actors and stakeholders dealing with LGBTI issues in South Africa. Each subsection is addressed towards a different actor or set of stakeholders.

#### **A. South African Government and the Department of Home Affairs**

As detailed in Section II, many of the difficulties refugees face originate with the Department of Home Affairs in impeding the asylum seeking process. Furthermore, when other abuses occur and claims are filed within official institutions, little is done at the governmental level to sufficiently address these grievances. It is the responsibility of a government to uphold its constitution and work to further the human rights of all. As such, the following are a list of recommendations addressed to the South African government broadly and in particular, to the Department of Home Affairs.

- Take affirmative measure to prevent, stop and prosecute acts of violence against LGBTI refugees
- Take seriously, and address, claims lodged or reported by LGBTI refugee and asylum seekers in order to decrease violence against them
- Make no distinction in applying the Equity Act to LGBTI persons residing in South Africa, whether they are citizens or refugees and asylum seekers.
- Outlaw discriminatory provisions forbidding refugees to access employment
- Treat LGBTI asylum seekers and refugees humanely and grant them refugee status in a timely manner order for them to avoid unemployment and the accompanying pitfalls
- Adjudicate properly and timely the asylum claims of persons according to the Refugee Act and the UNHCR convention
- Provide training to DHA officials about sensitivity and tolerance towards issues particular to LGBTI refugees and asylum seekers
- Provide training to security guards, police, prison officers, border guards, immigration officers and other law enforcement personnel, and support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools

- Ensure that no LGBTI asylum seeker or refugee is deported<sup>26</sup> or returned to a territory where his or her life or freedom would be threatened, and that asylum laws and policies recognize that persecution on account of one's sexual orientation or gender identity is fully implemented by the DHA officials as a valid basis for an asylum claim

## **B. NGO Sector**

While governments aim to provide for their people, there are often gaps between the real and ideal, between what the law states and what happens in practice. Most often, non-governmental organizations work to fill in these gaps and serve the needs of populations often overlooked or issues that remain unacknowledged or insufficiently addressed by governments. As such, there is a big role for NGOs to play in working to remedy many of the issues identified in this report. Here we suggest but a few starting points for various NGOs, dealing with refugee, human rights, or LGBTI issues including our own, to take on.

- Train and advise staff to avail their services to LGBTI refugees
- Create job opportunities for LGBTI refugees
- Involve the press media in advocating for LGBTI refugees' human rights
- Use the power of the press media to engage debate in society and raise awareness over the plight of LGBTI refugees
- Hold and organise workshops and conferences with churches, schools, parents and other community groups to educate people and change behaviour and attitudes towards LGBTI refugees
- Encourage the integration of LGBTI asylum seekers and refugees into places and organizations already concerned with LGBTI issues broadly

## **C. LGBTI Refugees and Asylum Seekers**

It is important that even in the face of difficulty, LGBTI refugees and asylum seekers take control over their own lives and advocate for their own rights. The following recommendations are ways for LGBTI refugees and asylum seekers themselves to change their own experiences of hardship and difficulty in South Africa.

- Make an effort to know their basic human rights as well as the asylum process
- Respect the timeline required to renew their permits at DHA

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<sup>26</sup> David Burgsdorff: A Discussion Note on the proposed changes in South African Immigration Policy, PASSOP, March 2012.

- Report any kind of abuse of their human right violation whenever it may happen

- Report to labour office when they are victims of unfair dismissal or any kind of discrimination in the work place and to follow up until the end of the procedure

- Build a support network in order to overcome loneliness by participating in other gay community or solidarity network for LGBTI persons

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## APPENDIX

### LGBTI Refugee Survey

#### Basic Information

Name (optional):

Age:

Country of Origin:

Highest qualifications achieved?

Are you currently employed?

Are you out of the closet?

When people see you on the street, do they realize that you are gay from your appearance/voice/the way you act?

#### Experience in Home Country

- 1) Why did you leave your home country?
  
- 2) Can you describe the social, cultural and religious environment towards homosexuality in your home country? For example, to what extent is it tolerated in your community (family, friends, neighbours, etc.)?
  
- 3) Is homosexuality illegal in your home country? Where you ever harassed or even arrested by police/authorities because of your sexual orientation or gender identity? Explain
  
- 4) Can you tell me a little more about your personal experience being gay in your home country?
  
- 5) When you were living in your home country, where did you go for help if you faced problems due to your sexual orientation? Did you go to the police? To human rights organizations? Anywhere else? Did you receive sufficient help? Do you think in your country enough is being done to help LGBTI?
  
- 6) Why did you come to South Africa? What were your hopes when you decided to come here?

## Experience in South Africa

7) How long have you been in South Africa? (Circle one)

Less than 6 months; 6 months-1 year; 1-2 years; 2-5 years; 5-10 years;  
10 years +

8) HOUSING: How many places have you lived in the last year? If more than 2, why did you move so often? Have you ever been discriminated against by a landlord because you are gay?

9) EMPLOYMENT: Have you ever faced difficulties finding or keeping a job due to your sexual orientation? Explain.

10) EMPLOYMENT: How do you manage to pay your bills here in South Africa? (Have you ever had to trade sexual favours in exchange for money?)

11) What are some other difficulties you have faced in South Africa on the basis of your sexual orientation?

12a) Do you feel safe in South Africa with regards to your sexual orientation? Yes No

b) With regards to your national origin? Yes No

If no, please explain:

13a) Do you feel accepted in South Africa with regards to your sexual orientation? Yes/No

b) With regards to your national origin? Yes No

If no, please explain:

14) Do you feel more or less accepted by a certain race/nationality/community of people?

15) Do you feel equally accepted or safe in townships, the city center, and the suburbs, or is there a difference in acceptance or safety depending on location?

16) Do you feel integrated into the South African gay community in Cape Town? Yes No



17) Have you ever felt excluded from the gay community in Cape Town due to your national origin? Yes No

18a) Have you ever been verbally attacked in South Africa because you were gay? Yes No

b) Physically attacked? Yes No

c) Were you verbally or physically attacked mainly by South Africans, immigrants, or both? Specify nationality of foreigners if possible.

19) How have you dealt with the difficulties you've faced on the basis of your sexual orientation? Where have you sought assistance? What strategies have you tried?

**Documentation Issues and Home Affairs**

20) What documentation status do you have? (circle one) Not documented Expired documents (22 permit) Valid Asylum Seeker (Sect. 22) Refugee Status (Sect. 24) Work Permit Study Permit Other

21) If you applied for asylum, what was your experience at the Refugee Reception Centre? How many times did you have to go before you got served? Were you intimidated by security guards, Home Affairs officials, or other people while waiting?

22a) If you applied for asylum, in your claim, did you state sexual orientation/gender identity as a reason for applying for refugee status or asylum seeking documents? Yes No

22b) If no, on what basis did you seek refugee status? Was there a reason you did not apply because of your sexual orientation/gender identity? Were you aware that that is a valid reason for seeking refuge?

23a) If yes, what types of questions were you asked during the 1<sup>st</sup> interview at Home Affairs?

23b) What was the environment like? Was the officer interviewing you professional?

23c) Did you feel comfortable talking to the about your sexual orientation or gender identity?

24a) Were you fluent in English at the time of your interview? Yes No  
b) If not, did you have an interpreter? Yes No

25) Do you feel you were able to explain what happened to you in enough detail?

26) What was the outcome of the first interview? Accepted / Rejected

27a) If rejected, do you know why you were rejected?  
b) Did you appeal?

28a) Have had your second interview? Yes No  
b) If no, how long have you been waiting?  
c) If yes, what was the outcome? Accepted / Rejected

29) Any other comments?

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