Economic Injustice: Employment and Housing Discrimination Against LGBTI Refugees and Asylum Seekers in South Africa
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EMPLOYMENT AND HOUSING DISCRIMINATION AGAINST LGBTI REFUGEES AND ASYLUM SEEKERS IN SOUTH AFRICA

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This report is the product of collaboration between People Against Suffering, Oppression and Poverty (PASSOP) and law students and faculty from the Walter Leitner International Human Rights Clinic (Leitner Clinic) at Fordham University School of Law in New York City.

PASSOP is a not-for-profit organisation located in Cape Town, South Africa devoted to securing the rights of asylum seekers, refugees, and immigrants in South Africa. Through PASSOP’s LGBTI Refugee Advocacy programme, PASSOP advocates for the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) asylum seekers and refugees, providing a support network and a wide range of social and paralegal services. PASSOP extends its deepest gratitude to OSF-SA for their support of the LGBTI project.

At PASSOP’s request, the Leitner Clinic conducted research and fieldwork in Cape Town, South Africa to assist PASSOP in documenting housing and employment discrimination against LGBTI asylum seekers and refugees in South Africa.

This report was written by Lily Asquith, Jeannie Cho, Jessica Feghali, and Frances Martel, legal researchers in the Leitner Clinic. It was supervised and edited by Professor Chi Adanna Mgbako, Director of the Leitner Clinic, and Laura Garr, Esq., Pro Bono Clinical Supervisor. Fieldwork in Cape Town, South Africa was organised by Guillain Koko, Project Coordinator of PASSOP’s LGBTI Refugee Advocacy programme, and conducted by Lily Asquith, Jeannie Cho, Jessica Feghali, and Laura Garr in March 2013. While in Cape Town, the Leitner Clinic conducted extensive interviews with the LGBTI refugee community, including 33 interviews with LGBTI refugees and asylum seekers, and two LGBTI South African nationals.

PASSOP and the Leitner Clinic are extremely grateful to all the interviewees who shared their personal stories with us. We remain inspired by their continued courage in the ongoing struggle for equality.

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This report seeks to raise awareness of the discrimination that LGBTI refugees and asylum seekers face in the South African employment and housing markets. Discriminatory practices against the LGBTI community and foreigners, coupled with the lack of enforcement of existing anti-discrimination laws, create barriers to employment and housing for LGBTI refugees and asylum seekers. The South African asylum process further hinders LGBTI asylum seekers’ access to stable and secure housing and employment.

Unique among African nations, South Africa has an established legal framework protecting all individuals from unfair treatment due to their sexual orientation. South Africa was the first country in the world to provide its LGBTI community constitutional protection from discrimination based on sexual orientation, and is Africa’s only nation to legalise same-sex marriage. Today, it is just one of two countries in Africa to offer some form of legislative protection for sexual minorities.

In contrast, 38 of 54 countries in Africa have criminalised same-sex activity in some form, with penalties ranging from fines and imprisonments to death. These nations permit, and often encourage, both public and private sectors to discriminate against the LGBTI community. LGBTI individuals within many of these countries often endure perpetual threats of criminal prosecution, hate crimes, and dangerous abuse meted out by their families and neighbours. Fearing for their personal safety, some LGBTI individuals flee their homes to seek refuge elsewhere, most commonly in South Africa.

In the late 1990s, South Africa collaborated with non-governmental organisations (NGOs) to enact migrant-friendly immigration and asylum laws. Such laws specify that persecution or fear of persecution based on gender or sexual orientation qualify as...
grounds for asylum in South Africa. The laws also mandate individualised refugee status determination procedures, intended to create institutional safeguards for applicants against arbitrary prejudice. The Refugees Act mandates that refugee status determination be made within 180 days. Fleeing the systemic and societal persecution in their home countries suffered because of their sexual orientation or gender identity, some LGBTI individuals seek refuge under South Africa's progressive legal framework.

Despite South Africa's liberal anti-discrimination and immigration laws with regards to LGBTI persons, such laws are not always respected or enforced. Often, LGBTI asylum seekers and refugees continue to experience harassment, violence, and overall mistreatment caused by the very homophbic sentiments from which they fled. LGBTI individuals in South Africa have reported experiencing unfair treatment and verbal and physical abuse, including by law enforcement and other state officials.

Discrimination is also often prevalent among employers, employees, landlords, and neighbours, creating barriers to steady employment and safe housing. Often, gay men, lesbians, and transgender and gender non-conforming individuals are targets of sexual violence.

Xenophobia in South Africa also exacerbates the struggles of LGBTI refugees and asylum seekers in finding stable employment and housing. In part due to high unemployment rates and pervasive poverty, some South Africans view foreigners as competition to the country’s limited housing, jobs, and health care. As a result, some South African citizens oppose the influx of new migrants.

Though some LGBTI refugees and asylum seekers arrive with professional degrees and years of experience and expertise obtained in their home countries, many are denied opportunities to gain meaningful employment. Often, employers will not hire applicants if they hear a foreign accent on the phone or learn through a curriculum vitae (CV) that the applicant is a foreign national.

Some employers also refuse to hire asylum seekers while their legal status is pending and are often

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12 See Refugees Act 130 of 1998 §§ (1)(xxi), (2) (S. Afr.).
13 South Africa’s refugee reception system is a four-part process whereby an asylum seeker who has entered the nation will: (1) register at a refugee reception office (RRO) their intention to apply for refugee status; (2) submit an application for refugee status; (3) obtain a formal hearing for refugee status determination; and (4) receive documentation, or a temporary permit, providing the asylum seeker the right to be inside the country while awaiting their refugee status determination. See Vigneswaran, supra note 11, at 44. With regards to the fourth step, a Department of Home Affairs (DHA) official at the RRO is required to accept the asylum seeker’s claim and provide the permit evincing the asylum seeker’s lawful presence in South Africa. See id. Refugees Act 130 of 1998 §§ 21(2)(a)–(b), 22 (S. Afr.). In theory, the individualised refugee status determination procedures safeguard asylum seekers in South Africa from automatic repatriation and provide all foreign nationals seeking refuge an opportunity to apply for the State’s protection. See Vigneswaran, supra note 11, at 42–43; see also Human Rights Watch, Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa, (1998) 115 (noting that, prior to South Africa’s new refugee laws, South Africa employed “blanket denial of refugee status” to certain foreign nationals and that such practices were “inconsistent with international law and the UNHCR Basic Agreement, which require[d] an individual determination of refugee status”).
14 Regulations to the Refugees Act 130 of 1998 § 3(1), (3).
15 See Mnisi, supra note 10.
18 See id. at 1-3.
19 See Human Rights Watch, “We’ll Show You You’re a Woman”: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa (2011) 2–3 [hereinafter We’ll Show You You’re a Woman]; South Africa: Discrimination of LGBTI, supra note 17, at 1–2, 7–8.
21 As of May 2013, South Africa’s unemployment rate is 25.2 per cent. See Statistics South Africa, ‘Quarterly Labour Force Survey: Quarter 1 2013’. (May 6, 2013) v. The South African government’s official statistics provide that the labour force increased by 144,000 people in the first quarter of 2013 (January to March 2013) from the fourth quarter of 2012 (October to December 2012). See id. The first quarter of 2013 saw 0.3 per cent increase in unemployment over the previous quarter. See id. Since 2008, when the unemployment rate was 21.9 per cent, the rate has steadily been rising. See id., at xii; Statistics South Africa, ‘Quarterly Labour Force Survey: Quarter 4 2010’, (Feb. 9, 2010) vi.
23 See id.
24 See id. at 5; PASSOP, supra note 1, at 7.
ignorant of the fact that the permits issued to asylum seekers authorise the individuals to work in South Africa. Though the Refugee Act requires that status determinations be made within 180 days, many asylum seekers spend years waiting for a determination and thus find it difficult to secure stable employment throughout the full waiting period. Of those LGBTI asylum seekers or refugees who secure an interview, some are denied employment based on their appearance alone if their nationality, sexual orientation, or gender identity is apparent or assumed. Several LGBTI asylum seekers and refugees interviewed reported being verbally harassed by their potential employer on interviews. As a result, many LGBTI asylum seekers and refugees pursue informal jobs that do not guarantee stable work or income. Those who are able to secure employment often face discrimination at the hands of their bosses, coworkers, and customers. LGBTI refugees and asylum seekers report being skipped over for promotions, paid a lower salary, and fired due to discriminatory attitudes in the workplace.

The struggle to find stable employment as a result of discrimination is inextricably tied up with the ability to afford safe and adequate housing. When LGBTI refugees and asylum seekers are under- or unemployed or are paid lower than market wages, it is difficult to maintain a stable income adequate to pay for housing. Upon arrival to South Africa, many LGBTI refugees and asylum seekers end up living in homeless shelters or on the streets. Some will find themselves in and out of homeless shelters for many years. Unfortunately, LGBTI refugees and asylum seekers report that shelters are often unsafe for them and that they face discrimination from shelter residents and sometimes shelter administrators.

A large numbers of LGBTI refugees and asylum seekers with limited resources also live in townships, where homophobic, xenophobic, and racist attitudes are prevalent and violent attacks against LGBTI refugees and asylum seekers are common. LGBTI individuals report heterosexual refugees and asylum seekers from their own countries of origin perpetrate many such attacks.

Even LGBTI asylum seekers and refugees with sufficient income face obstacles to housing. Landlords often discriminate against such individuals by refusing to rent to them or asking for higher rent than other tenants are asked to pay. Even inside their home, many landlords and roommates subject these individuals to violence and harassment as a result of their nationality and/or sexual orientation.

South Africa’s law enforcement also employs discriminatory practices against LGBTI individuals and foreign nationals. Without protection from the police, LGBTI refugees and asylum seekers are left

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25 Regulations to the Refugees Act 130 of 1998 § 3(1), (3).
vulnerable on the streets of South Africa and in their
neighbourhoods and homes. Police officers often
ignore cases involving foreigners and mock LGBTI
persons when they report a crime. At times, law
enforcement officials physically and sexually assault
LGBTI refugees and asylum seekers. Similarly, legal
remedies for employment and housing discrimination
have been reported as ineffective.

To address these barriers to housing and
employment, advocacy is needed to: (i) amend
the asylum seeker permit renewal process; (ii)
create LGBTI-focused training programmes for
law enforcement, Department of Home Affairs
officials, Commission for Conciliation, Mediation,
and Arbitration officials and other government
officials; (iii) develop awareness campaigns related
to the employment and housing rights of LGBTI
asylum seekers for LGBTI asylum seekers, employers,
landlords and immigrants; (iv) create employment
opportunities for LGBTI asylum seekers and refugees;
(v) develop safe shelters and housing options for
LGBTI foreign nationals; (vi) enable support groups
and empowerment campaigns within the LGBTI and
asylum seeker/refugee community and collaboration
among existing organisations and community
programmes; and (vii) generally improve education
about, compliance with, and enforcement of existing
anti-discrimination laws and available remedies.
I. SOUTH AFRICA'S LEGAL PROTECTIONS FOR LGBTI REFUGEES AND ASYLUM SEEKERS

This section provides a brief background on relevant South African laws that prohibit unjust treatment of LGBTI persons and foreign nationals. It then analyses the applicable employment and housing laws barring employers and landlords from discriminatory practices against such individuals. In addition, this section discusses South Africa's asylum law and the procedures related to refugee status determinations. The section concludes by examining international laws to which South Africa is a signatory, through which the nation has signaled its commitment to promote a universal right for LGBTI individuals to be free from discrimination.

A. National Law

South Africa’s legal framework promotes equality among all persons and safeguards LGBTI refugees and asylum seekers from discrimination based on gender, sexual orientation, ethnicity, or national origin. The South African Constitution prohibits the state or any person from “unfairly discriminating directly or indirectly against anyone” due to the individual's race, gender, sex, ethnic or social origin, or sexual orientation. Sections 23 and 26 of the Constitution afford all persons in South Africa the right to fair employment practices and the right to be free from housing evictions without court orders. In addition, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) forbids the State and any person from discriminating against or harassing individuals on the basis of the enumerated prohibited grounds, including gender, sexual orientation, and ethnic or social origin. PEPUDA further prohibits unfair treatment of LGBTI persons and foreign nationals by employers and arbitrary evictions of these individuals by landlords.

1. Employment and Housing Laws

South Africa has enacted various domestic laws to insulate individuals from unfair employment and housing practices on the basis of their LGBTI status, ethnic origin, or nationality. With regards to workplace conduct, the Employment Equity Act of 1998 prohibits all persons from harassing or discriminating “directly or indirectly, against an employee, in any employment policy or practice” for reasons of race, gender, sex, marital status, ethnic or social origin, sexual orientation, or language. The 1995 Labour Relations Act (LRA) regulates employer-employee labour dispute procedures, by which it created the Labour Court and established the Commission for Conciliation, Mediation, and Arbitration (CCMA), an independent governing body that resolves workplace conflicts through alternative dispute resolution methods. Section 187 of the LRA also presumes that employee terminations are

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28 Id. §§ 23, 26(1).
29 Id. §§ 23, 26(1).
30 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (S. Afr.) [hereinafter PEPUDA] §§ 1(xiii), (xvii), (xxii), 6, 10, 11, 29(1), (4) (specifying that the term “nationality,” which is defined as ethnic and national origin, as well as xenophobic practices, are given “special consideration” due to the “overwhelming evidence of the importance, impact on society and link to systematic disadvantage and discrimination”).
31 Id. §§ 29(1), (4).
33 Employment Equity Act of 1998 §§ 1, 6(1), (3).
“automatically unfair” if the individual was discharged on the basis of race, gender, sex, ethnic or social origin, sexual orientation, language, or marital status, thereby furnishing employees the right to legally challenge such dismissals. Moreover, the 1997 Basic Conditions Employment Act (BCEA) promulgates the minimum level of workplace protections owed to all employees by employers, such as the right to refuse to accept certain provisions in their employment contract, obtain fair notice of termination, and receive severance pay following termination of employment under specified circumstances.

In terms of housing, the Rental Housing Act of 1999 (RHA) states that while advertising or negotiating for a lease agreement, or after one has been entered into, “a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant’s household or the bona fide visitors of such tenant” on the basis of race, gender, marital status, sexual orientation, ethnic or social origin, or language. It grants all residents the right to privacy, to not have their homes or possessions searched or seized, and to not have their leases terminated based on discriminatory grounds. In addition to tenants’ constitutional protection from eviction without a court order, the RHA prohibits landlords from terminating leases in the absence of the violation of terms detailed in the agreement and without prior written notice to the lessee.

2. Asylum Law

South Africa’s asylum laws explicitly contemplate the arrival of LGBTI foreign nationals seeking the nation’s protection. Specifically, the Refugees Act of 1998 grants asylum to persons who qualify as “refugees.” Under the Refugees Act, a “refugee” is an individual who, “by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group…is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country.” “Social group” includes gender and sexual orientation. The Refugees Act provides that, “no person may be refused entry…, expelled, extradited or returned to any other country” if the individual might face persecution based on gender and sexual orientation. The Refugees Act further establishes that “refugees” procure legal residency in South Africa, full protection under the State’s laws, and the

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36 When a dismissal is deemed “unfair” under the Labour Relations Act (LRA), but not “automatically unfair,” after the employee first “establish[es] existence of the dismissal,” the burden of proof shifts to the employer to demonstrate that the reason for dismissal was “related to the employee’s conduct or capacity, or is based on the operational requirements of the business.” Id. § 192; Code of Good Practice: Dismissal for Conduct and Incapacity, Schedule 8 to Labour Relations Act 66 of 1995 § 2(4) (S. Afr.). However, if a dismissal is found “automatically unfair,” once the employee establishes the dismissal, the Labour Court may remedy the employee as it finds necessary. Id. § 193(3); Sonia Bendix, Industrial Relations in South Africa, 4th ed. (2007) 562.

37 Labour Relations Act of 1995 § 187(1); see Erasmus, supra note 34, at 683.

38 Under the Basic Conditions of Employment Act (BCEA), the required notice of termination to employees by employers varies between one and four weeks depending on total duration of employment. Basic Conditions of Employment Act of 1997 § 37.

39 Employees entitled to severance pay are those who are "dismissed for reasons based on the employer’s operational requirements," such as “economic, technological, structural or similar needs of an employer.” See id. §§ 2, 41(1)—(2); see also Erasmus, supra note 34, at 683. The BCEA does not apply to employees who work less than twenty-four hours a month for an employer. Id. § 6(c). The BCEA also requires employers to display such rights where employees will read them. Id. § 30.

40 See Rental Housing Act of 1999 § 4(1) (S. Afr.).

41 The Rental Housing Act of 1999 (RHA) requires a landlord seeking to seize a tenant’s possessions to first obtain a court order. Id. § 4(3)(c).

42 Under the RHA, the right to not have their property searched or seized extends to tenants’ bona fide visitors, as well. Id. § 4(3)—(4), (5)(c).


44 See, e.g., Refugees Act 130 of 1998 § 1(xvi), (xii), 2–3 (S. Afr.) (including fear of persecution for reasons of gender or sexual orientation as grounds for asylum and refugee status); see also Human Rights Watch, Together, Apart: Organizing Around Sexual Orientation and Gender Identity Worldwide (2009) 10 (explaining that “[s] tate-sponsored homophobia has become a political staple in many African countries “ and that “in the 1990s, leaders began discovering the political advantages of promoting homophobia”); Jonathan Kaaren, ‘Southern Africa: As Seen Through Sexuality, Mobility and Citizenship’, African Sociological Review 9 (2005) 168, 170–71 (“[T]he explicit protection afforded by the definitional provision of the South African statute is greater than the implicit protection given elsewhere.”)

45 Refugees Act 130 of 1998 § 1(xv), (xii), 2–3, 27.

46 Id. § 3(a).

47 Id. § 1(xvi) (confirming that the term “social group” includes gender and sexual orientation).

48 Id. § 1(xxi), 2(a).
right to employment, healthcare, and education.\textsuperscript{49}

The Refugees Act also details the application procedures for foreign nationals seeking refugee status in South Africa.\textsuperscript{50} Envisaging a four-step process, the law requires asylum seekers to register their intent to apply for refugee status in person at a Refugee Reception Office (RRO), complete and submit the application within fourteen days of arrival,\textsuperscript{51} obtain a formal hearing for status determination by a Department Home Affairs (DHA) official, and receive documentation indicating their legal right to be in South Africa.\textsuperscript{52} The Refugees Act mandates DHA officers to provide applicants awaiting their refugee status determinations with temporary permits, also known as Section 22 permits,\textsuperscript{53} which evince their pending application for refugee status and their lawful presence inside the country.\textsuperscript{54} This temporary permit usually is valid for one to three months at a time.\textsuperscript{55} Thus, Section 22 permit holders, commonly referred to as asylum seekers,\textsuperscript{56} must continuously renew their permits until their application is approved.\textsuperscript{57} They are assigned a single day on which to renew their permits and those who fail to comply with renewing their permit on the specified date are subject to fines, imprisonment, or both.\textsuperscript{58}

Moreover, the Refugees Act requires the DHA to adjudicate refugee status determinations within 180 days of application.\textsuperscript{59} In the event that officials fail to reach a conclusion on such matters within the prescribed 180 days, the asylum seeker may request from a government body work or study authorisation or other forms of relief.\textsuperscript{60} However, if the DHA approves the refugee status request, the applicant will receive a Section 24 permit.\textsuperscript{61} The Section 24 permit, which the holder must renew every two years, also authorises the refugee to apply for refugee identity and travel documents.\textsuperscript{62}

**B. International Law**

In addition to domestic laws, South Africa is a signatory to the UN Convention and Protocol Relating to the Status of Refugees (Refugee Convention), which governs the rights of refugees at the international level.\textsuperscript{63} Although gender and sexual orientation are not among the enumerated grounds for asylum under the Refugee Convention,\textsuperscript{64} the UNHCR Handbook and Guidelines for Determining Refugee Status under the Refugee Convention acknowledges that an individual asserting fear of persecution due to his or her LGBTI status “could establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against the harm.”\textsuperscript{65} The Refugee Convention also obligates member nations to afford refugees equal treatment

\textsuperscript{49} Id. § 27.

\textsuperscript{50} See id. § 21.

\textsuperscript{51} Immigration Act 13 of 2002 § 23(1) (S. Afr.) (validating up to 14 days for individuals to apply for Section 22 permits); see also Refugees Act 130 of 1998 § 21, 22; Vigneswaran, supra note 11, at 44.

\textsuperscript{52} See id. §§ 21, 22, 27, 30; Vigneswaran, supra note 11, at 44.


\textsuperscript{54} See id. §§ 22; Vigneswaran, supra note 11, at 44.

\textsuperscript{55} See DHA, ‘Refugee Status’, supra note 53.


\textsuperscript{57} See DHA, ‘Refugee Status’, supra note 53.


\textsuperscript{59} Regulations to the Refugees Act 130 of 1998 § 3(1), (3).

\textsuperscript{60} Id. § 3(3).


\textsuperscript{63} See generally UN Refugee Convention, supra note 63, art. 1(A)(2) (defining a “refugee” as one who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country”).

as the nations’ citizens with regards to employment wages and regulations as well as housing practices. 

Additionally, South Africa is a signatory to the Yogyakarta Principles. Although it is non-binding, as a signatory to the document South Africa affirms the values set forth therein and concedes that such rules should be standards of law. Chiefly, the Yogyakarta Principles declare a universal prohibition on discrimination for reasons of sexual orientation or gender identity.

II. EMPLOYMENT DISCRIMINATION

LGBTI refugees and asylum seekers arrive in South Africa every year attracted by the sanctuary of the nation’s constitutional safeguards, anticipating freedom from persecution due to their sexual orientation. Often arriving with little to no resources of their own, the first challenge these individuals face in South Africa is applying for refugee status at the DHA. There, they often face not only long lines but discrimination and corruption from DHA officials themselves. After obtaining Section 22 permits pending a determination on their status, LGBTI individuals are legally permitted to work in South Africa.

This section details the many challenges LGBTI refugees and asylum seekers face in obtaining and maintaining stable employment in South Africa owing to ineffective asylum procedures and existing discriminatory practices based on sexual orientation, gender identity, national origin, and on their legal status in the country. First, this section details the obstacles LGBTI asylum seekers and refugees face in their search of employment. Second, it highlights how the inability to secure employment leads many LGBTI asylum seekers and refugees to unstable, informal work. Next, it discusses discrimination faced by those who are able to obtain employment. Finally, it reviews the experiences of some LGBTI asylum seekers and refugees who attempt to obtain legal redress for employment discrimination.

A. Discrimination While Seeking Employment

LGBTI refugees and asylum seekers face several challenges in their search for steady employment. Routine problems with the DHA, including the difficulty of acquiring and renewing Section 22 permits, have a profound effect on obtaining employment. Many potential employers assume that LGBTI refugee and asylum seekers can be deported at any time, regardless of what kind of permit they have. Interviewees cited this apprehension, as well as xenophobia generally, as a major issue with potential

66 See UN Refugee Convention, supra note 63, art. 17, 21, 24.
69 Most interviewees in this report were aware of the protections in South Africa’s Constitution, and the minority that were not came to the country following rumors of tolerance in the nation’s communities; see also Dan Littauer, ‘Unsafe Haven: Gay Refugees in South Africa’, Gay Star News May 30, 2012, http://www.gaystarnews.com/article/unsafe-haven-gay-refugees-south-africa300512.
70 Only four of the members of PASSOP have refugee status; the rest are still pending a determination on their status. Of the four members with refugee status, the 2 interviewees with refugee status that we spoke with reported obtaining a refugee determination on the first day they applied by bribing DHA officials (R1 000 and R2 500, respectively). Several reported being asked for money while they waited in line at the DHA.
71 DHA, ‘Refugee Status’, supra note 53.
72 See generally Interview with Cleopatria, in Johannesburg, South Africa (Mar. 21, 2013); Interview with Mari, in Cape Town, South Africa (Mar. 21, 2013); Interview with Masani (pseudonym), in Cape Town, South Africa (Mar. 21, 2013).
73 “Employers either don’t know that the status allows them to work or they don’t want to hire refugees with this status, because they think it will be temporary.” Interview with Guillain Koko, in Cape Town, South Africa (Mar. 21, 2013).
employers. In addition, fifteen interviewees reported feeling discriminated against during job interviews because of their LGBTI status, race, ethnicity, or all of the above.

Employers often discriminate against applicants based on their national origin prior to discovering the applicant's sexual orientation or gender identity. A name on a resume or an accent heard on the telephone can expose the applicant as a foreigner. One interviewee explained that some employers demand fluency in Afrikaans, although not needed for the job, to keep from hiring foreigners and black South Africans.

Some employers will discriminate against applicants if they suspect the individual is LGBTI based solely on appearance. Several female interviewees reported being rejected almost instantly for having an insufficiently feminine appearance. Lesbian asylum seeker Mari has an educational background in finance management and worked as an accountant in her home country of Angola. She reports that she had two interviews where, after having a positive reception on the phone, the potential employer would not even ask for her CV or paperwork after meeting her in person and assuming her sexual orientation. Another interviewee, Cleopatria of Zimbabwe, reported being asked several times if she was a man by potential employers, to the point that she has given up searching for a job entirely, because it is “useless to keep pushing.” She has not been able to secure stable work in South Africa in the five years she has been in the country.

Competition with South African nationals for jobs in a difficult economy additionally inspires negative reactions to applicants who are recognisably foreign (for instance, having a foreign accent) or LGBTI. As one LGBTI asylum seeker remarked, “refugees are seen as trying to steal South African jobs.” Discrimination against foreigners is further exacerbated by South Africa’s policy favouring domestic applicants over foreigners in the job application process.

Despite the looming shadow of xenophobia over the job application process, Rodney, an LGBTI South African, stated that LGBTI citizens suffer employment discrimination on the basis of sexual orientation and gender identity as well. Rodney noted that he “feels like a foreigner” in his own country, adding “I am no different [than LGBTI asylum seekers or refugees struggling to find stable employment].” Conversely, of those who report not experiencing discrimination, a number noted that they are either “straight-looking” or have remained in the closet.

B. Informal Work

For many LGBTI refugees and asylum seekers, informal forms of work are one of the few sources of income available. Cleopatria, a lesbian from

74 See, e.g., Interview with Cleopatra, supra note 72.
75 See Interview with Marc, in Cape Town South Africa (Mar. 18, 2013); Interview with Junior Miteo, in Cape Town, South Africa (Mar. 19, 2013); Interview with Elton, in Cape Town, South Africa (Mar. 19, 2013); Interview with Chance (pseudonym), in Cape Town, South Africa (Mar. 20, 2013); Interview with Roy, in Cape Town, South Africa (Mar. 20, 2013); Interview with Cheyenne, in Cape Town, South Africa (Mar. 21, 2013); Interview with Masani (pseudonym), supra note 72.
76 Id.
77 Afrikaans is a language with Dutch origins native to South Africa and spoken by 13.5 per cent of the population, according to the 2001 census. See South African Government Information, ‘South Africa’s People’, http://www.info.gov.za/aboutsa/people.htm (last accessed July 16, 2013)
78 Interview with Uche, Belleville, March 21, 2013.
79 Interview with Mari, supra note 72; Interview with Masani (pseudonym), supra note 72; Interview with Cleopatra, supra note 72.
80 Id.
81 Id.
82 Id.
83 Id.
84 Interview with Junior Mayema, in Cape Town, South Africa (Mar. 18, 2013).
85 Interview with Guillain Koko, supra note 73.
86 Interview with Rodney, in Cape Town, South Africa (Mar. 22, 2013).
87 Interview with Rodney, supra note 86.
88 Interview with Tino, in Johannesburg, South Africa (Mar. 2013).
89 Id.
90 Interview with Elton, supra note 75; Interview with Mussa, in Cape Town, South Africa (Mar. 20, 2013).
Zimbabwe, has never held steady employment, and sells CDs on the street instead.  

She attributes this to being undocumented, noting that many small businesses “hire illegals because they can discriminate and treat them unfairly, because they cannot go to the police.”  

Two interviewees noted that they often found work at car washes.  

Another remarked that many of the LGBTI refugees and asylum seekers he knew were pigeonholed into informal security jobs regardless of education level.  

Five interviewees noted that they had engaged in sex work to supplement or obtain income; three of the five reported preferring other work but being unable to find any at this time.  

In addition to informal work, many unemployed LGBTI refugees and asylum seekers volunteer at their local churches and LGBTI organisations where they may receive a small stipend.  

C. On-the-Job Discrimination

Discrimination based on sexual orientation, gender identity, and national origin persists for those who are employed.  

LGBTI refugees and asylum seekers report being fired from their jobs when their sexual orientation is discovered or revealed.  

Most of the individuals interviewed said they faced discrimination by employers, coworkers, or customers.  

They cited many varieties of homophobic and xenophobic behaviour from their bosses, coworkers, and clients or patients, respectively.  

Many have to endure inappropriate comments or insults on the job and are often paid less than their South African coworkers.  

Many even report facing discrimination from other LGBTI individuals while at work.  

Interviewees also reported many instances of improper payment from employers.  

Mussa, a gay asylum seeker from the Democratic Republic of Congo, works as a cashier in a fast food restaurant.  

He noted that his coworkers are also all refugees, and paid below the market value of their jobs.  

Jean Claude, a gay asylum seeker from Democratic Republic of Congo, reports having had his annual leave shortened for arbitrary reasons.  

He constantly fears losing his job at a department store and has been forced to apologise to customers who have asked him, “What are you doing here? You look like a female.”  

Interviewee David was chased out of a music studio he had used to record music by fellow Congolese refugees.  

His experience generally with re-establishing a life in South Africa has forced him back into the closet; he says, “I can only be gay from the inside. I have to hide it from the public now and be a ‘real man’ otherwise, there will be no opportunities for me. South Africa has made me regret being gay.”  

Abraham used to own a tuck shop that his Somali neighbours in South Africa set on fire while he was sleeping inside because he is gay.
Having an LGBTI employer has also not proven to prevent discrimination. Two female interviewees reported being discriminated against by an LGBTI employer.\textsuperscript{106} One was fired by a stridently anti-lesbian LGBTI South African boss, and one transgender female was fired by a Tanzanian bisexual hair salon owner explicitly for her gender identity.\textsuperscript{107} Both interviewees, it should be noted, also cited xenophobia as a contributing factor to the discrimination.\textsuperscript{108}

D. Filing for Employment Relief

The CCMA, responsible for labour dispute resolution in South Africa, is designed to provide relief to those whose rights are violated.\textsuperscript{109} Many of the discriminatory practices against LGBTI asylum seekers and refugees violate South Africa’s labour provisions.\textsuperscript{110} Unfortunately, LGBTI refugees and asylum seekers have often found the CCMA process ineffective, due to a general distrust of state officials and the lack of enforcement of Commission rulings.\textsuperscript{111} In addition, such rulings often fail to address the full range of issues raised before the Commission.

Reports of the CCMA mispending their resources or failing to follow through on rulings are common. Tafadzwa, an LGBTI asylum seeker from Zimbabwe, noted that officials often improperly research foreigners’ pasts in an attempt to impugn their story.\textsuperscript{112} Saafi, an LGBTI asylum seeker from Somalia, initially went to labour authorities after his employer refused to pay him two month’s salary.\textsuperscript{113} The employer agreed to pay him the money if he dropped the case, and CCMA officials agreed to have the case closed.\textsuperscript{114} Once the CCMA formally closed the case, Saafi never received his money.\textsuperscript{115}

One respondent, Boniface of Kenya, went to the CCMA after working for an employer for four years without receiving vacation leave and for subsequently being fired without sufficient notice or cause.\textsuperscript{116} He had discovered he was being paid less than his South African colleagues and confronted his boss about the discrepancy in pay.\textsuperscript{117} The manager argued that his DHA paperwork was insufficient and, since he was not South African, he could not pay Boniface more. Boniface pursued a remedy with the CCMA despite his employer’s warning that he had “connections” at the CCMA.\textsuperscript{118} At the CCMA hearing, the employer argued he fired Boniface because he wanted “to change the face of the employees of the business.”\textsuperscript{119} The CCMA ruled in the employer’s favour with respect to the firing, but granted relief for the lack of vacation leave during his time at the job, which amounted to less than one month’s salary.\textsuperscript{120} Neither the lack of notice upon termination nor discriminatory payment practices were addressed.\textsuperscript{121} Boniface suspects that, as threatened, his former boss knew someone at the court who helped him, and he did not appeal the decision.\textsuperscript{122}

\begin{footnotesize}
\begin{itemize}
\item[106] Interview with Cheyenne, \textit{supra} note 75; Interview with Beyonce, \textit{supra} note 95.
\item[107] Id.
\item[108] Id.
\item[110] See e.g., Interview with Saafi, \textit{supra} note 96.
\item[111] Id.
\item[112] Interview with Tafadzwa, in Cape Town, South Africa (Mar. 19, 2013).
\item[113] Interview with Saafi, \textit{supra} note 96.
\item[114] Id.
\item[115] Id.
\item[116] Interview with Boniface, in Cape Town, South Africa (Mar. 19, 2013).
\item[117] Id.
\item[118] Id.
\item[119] Id.
\item[120] Id.
\item[121] Id.
\item[122] Id.
\end{itemize}
\end{footnotesize}
III. HOUSING DISCRIMINATION

The inability to secure stable employment is inextricably tied to the struggle faced by LGBTI asylum seekers and refugees in obtaining safe housing. When employers refuse to hire LGBTI refugees and asylum seekers or offer lower wages than those paid to heterosexual persons or South African citizens, LGBTI asylum seekers and refugees are unable to maintain a stable income adequate to pay rent. Yet even with sufficient resources, homophobic and xenophobic attitudes impede LGBTI refugees and asylum seekers’ ability to obtain safe and stable accommodation.

This section documents the challenges faced by LGBTI asylum seekers and refugees related to housing in South Africa. First, this section explores the experiences of LGBTI asylum seekers and refugees in South African homeless shelters. Next, this section discusses discrimination in townships on the outskirts of large cities where rent is cheap and violence against LGBTI individuals and foreigners is prevalent. This section also recounts the discrimination and violence endured by LGBTI refugees and asylum seekers both inside and outside of their homes, from landlords, roommates, and neighbours. Lastly, this section details the interaction between LGBTI asylum seekers and refugees and South African law enforcement.

A. Homelessness

Many LGBTI refugees and asylum seekers are forced to flee from their home countries very abruptly to escape persecution. Consequently, they arrive in South Africa with no available resources to pay for accommodation. Several interviewees reported that they had relatives or friends in South Africa to stay with upon their arrival. For these refugees and asylum seekers, however, the accommodation was temporary. Many reported being ousted from the homes of their friends or relatives once their sexual orientation or gender identity was disclosed or discovered. Consequently, many LGBTI asylum seekers and refugees find themselves in and out of homeless shelters for many years after their initial arrival in South Africa.

1. Stability Upon Arrival to South Africa

Two gay interviewees revealed similar experiences of being taken in by family members in South Africa, only to be kicked out of the home immediately when their relatives discovered their sexual orientation. Most LGBTI refugees and asylum seekers interviewed, however, arrived without any friends or family to rely on for temporary accommodation. Mari, who recently escaped from Angola with her girlfriend, explained that she and her girlfriend had to sell all of their possessions and combine their savings to purchase plane tickets to flee to South Africa. Since arriving in Cape Town, they have been unable to find work and therefore are unable to afford housing. At the time of the interview, Mari and her girlfriend had been staying in a shelter since their arrival, almost five months. With no source of income, Mari reported that they have no other option but to remain in the shelter until they are able to find stable employment.

\[123\] See supra notes 1–4 and accompanying text.
\[124\] See, e.g., Interview with Saafi, supra note 96; Interview with Mari, supra note 72; Interview with Cheyenne, supra note 75; Interview with Abraham, supra note 105.
\[125\] See, e.g., Interview with Saafi, supra note 96; Interview with Mussa, supra note 90; Interview with Roy, supra note 75; Interview with Flavirina, supra note 91.
\[126\] Id.
\[127\] Id. See, e.g., Interview with Saafi, supra note 96; Interview with Mussa, supra note 90.
\[128\] Interview with Saafi, supra note 96; Interview with Mussa, supra note 90.
\[129\] See, e.g., Interview with Mari, supra note 72; Interview with Cheyenne, supra note 75.
\[130\] Interview with Mari, supra note 72.
\[131\] Id. Mari explains that despite their efforts to find employment, they are extremely limited because they cannot seek asylum seeker status and obtain legal documentation since the Cape Town DHA office has stopped accepting new arrival applicants. Id.
\[132\] Id.
\[133\] Id.
2. Experiences in Shelters and on the Streets

As a result of discrimination, LGBTI refugees and asylum seekers face very high barriers to safe and adequate accommodation. Of the 33 LGBTI refugees and asylum seekers interviewed, 14 have at some point found themselves homeless in South Africa.

Numerous refugees reported that without jobs to pay for rent or friends who will temporarily take them in, they end up on the streets. One interviewee, Flavirina of Burundi, recalls arriving in South Africa and having to travel between Johannesburg and Cape Town, staying with friends who could offer her a place to stay for weeks or sometimes months at a time. After many months of moving from place to place and staying with friends, Flavirina lived on the streets, hiding her clothes and belongings in bushes and gardens. She started working as a sex worker, though she still was not making enough to afford accommodation. Flavirina described the fear and uncertainty of being homeless saying, “When I have to struggle to find a place to sleep and food to eat, I can’t know my future for tomorrow.”

Another interviewee, David, had been homeless for eleven months at the time of the interview, after he lost his job and was evicted from his apartment because he could no longer pay rent. David now sleeps in cars parked in a garage, where his friend works as a security guard and lets him in each night.

Many LGBTI refugees and asylum seekers stay in shelters when they find themselves without safe accommodation. Eleven of the 33 LGBTI refugees and asylum seekers interviewed reported that they have had to stay in a shelter at some point since fleeing to South Africa. While shelters are often the only option for homeless LGBTI refugees and asylum seekers, an overwhelming majority of interviewees explained that shelters are not always a safe place for them owing to the discrimination they face, from both shelter personnel and other residents.

One major obstacle for LGBTI refugees and asylum seekers is the lack of shelters dedicated to addressing the specific needs of LGBTI refugees and asylum seekers, who face a combination of xenophobia, homophobia, and racism. In homeless shelters where refugees and asylum seekers reside, the LGBTI refugees and asylum seekers face homophobia from fellow foreigners and shelter employers. But, in the LGBTI shelters in Cape Town, where most of the other residents are white South African LGBTI individuals, refugees and asylum seekers face discrimination due to xenophobia and racism.

Jean Claude, from the Democratic Republic of Congo, reported regular instances of discrimination.

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134 See PASSOP, supra note 1, at 12.
135 See, e.g., Interview with Junior Mayema, supra note 84; Interview with Cleopatra, supra note 72; Interview with Beyonce, supra note 95.
136 Id.
137 Interview with Flavirina, supra note 91. Flavirina arrived in Cape Town from Burundi as a guest for an LGBTI/transgender conference. When people in her hometown heard why she had left the country, an official from Burundi contacted her and warned her to stay out of the country or she would likely be imprisoned or attacked upon her return. She applied for refugee status in South Africa and is still pending a determination. Since living in South Africa, she has lived in various shelters, on the streets and is currently living in a township. At one point, Flavirina found refuge at a Christian shelter, where she had to hide both her Muslim religion and her gender identity. The shelter separated the living quarters by gender, forcing her to share showers, dressing rooms, and other living quarters with men. As the shelter did not allow new members to leave the premises for the first three months of their stay, Flavirina was trapped in this environment, having to dress and act male. After coming out to the pastor in charge of the shelter, he told her he could no longer guarantee her safety. After living in the shelter for seven months, she moved to a township outside of Cape Town.
138 Id.
139 Id.
140 Id.
141 Interview with David, supra note 103.
142 Id.
143 See, e.g., Interview with Albert, supra note 96; Interview with Mari, supra note 72; Interview with Junior Mayema, supra note 84; Interview with Cheyenne, supra note 75; Interview with Jean Claude, supra note 101.
144 Id.
145 Id.
146 See generally Interview with Guilain Koko, supra note 73; Interview with Jean Claude, supra note 101; Interview with Albert, supra note 96.
147 See e.g., Interview with Flavirina, supra note 91; Interview with Jean Claude supra note 101; Interview with Albert, supra note 96.
while he stayed in a Cape Town LGBTI shelter because he was a foreigner. He noted that the employees of the shelter would often go through his belongings, eat his food, and refuse to provide him with a key to his room.\textsuperscript{149} One lesbian immigrant reported feeling unsafe while staying in another LGBTI shelter in Cape Town because South African residents threatened to go to the police and report her lack of legal documentation.\textsuperscript{150} Numerous refugees and asylum seekers even reported that a shelter administrator at this LGBTI shelter openly discriminated against black shelter residents.\textsuperscript{151} They recalled stories of this administrator making black residents clean in the shelter and perform other tasks for their meals, while other white residents were not asked to do so.\textsuperscript{152} Additionally, the location of shelters proves problematic for homeless LGBTI refugees and asylum seekers. The shelters are often located in unsafe areas or townships where they are particularly susceptible to discriminatory violence.\textsuperscript{153} Tiwonge, a refugee from Malawi, was twice attacked in unrelated events while walking back at night to a transgender safe house in a township outside of Cape Town.\textsuperscript{154} During the second assault, she was stabbed by two men who screamed, “You destroyed our country of Malawi,” referencing the publicity her gender identity attracted to her home country when she was arrested and convicted of sodomy and indecency, sparking international condemnation.\textsuperscript{155}

### B. Safety in Housing

Over 80 per cent of the interviewed refugee and asylum seekers have experienced discrimination by neighbours, landlords, and roommates because of their sexual orientation or nationality.\textsuperscript{156} The six interviewees who had not suffered such mistreatment explained that they either were in the closet, were “not apparently gay,” lived in expensive suburbs, or resided in gay-friendly homes or neighbourhoods.\textsuperscript{157} While more affluent neighbourhoods and inner-city suburbs are relatively safer, most refugees and asylum seekers reside in the lower income and less secure townships in and around the city.\textsuperscript{158}

#### 1. Discrimination in the Townships

Over half of the refugee and asylum seeker interviewees have lived in townships since moving to South Africa, namely the townships of Khayelitsha, Mitchell's Plain, Delfi, Joe Slovo, Mandalay, Nyanga, Manenberg, and Gugulethu.\textsuperscript{159} High crime rates and vicious xenophobic attacks are commonplace in such townships and numerous LGBTI refugees and

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\textsuperscript{149} Interview with Jean Claude, \textit{supra} note 101.
\textsuperscript{150} Interview with Mari, \textit{supra} note 72.
\textsuperscript{151} See e.g., Interviews with Beyonce, \textit{supra} note 95; Interview with Albert, \textit{supra} note 96.
\textsuperscript{152} Id.
\textsuperscript{153} See generally Interview with Tiwonge, in Cape Town, South Africa (Mar. 18, 2013); Interview with Junior Mayema, \textit{supra} note 84.
\textsuperscript{154} Interview with Tiwonge, \textit{supra} note 153.
\textsuperscript{155} Id. Tiwonge and her boyfriend were the first “same-sex” couple to seek to be married in Malawi. The couple were engaged and made a public commitment to marriage in a ceremony in Malawi. They were arrested and sentenced to serve 14 years in jail. Following outcry from the international human rights community, they were pardoned by the president of Malawi. Amy Fallon, ‘Malawi frees jailed gay couple’, The Guardian May 29, 2010, \url{http://www.guardian.co.uk/world/2010/may/29/malawi-frees-jailed-gay-couple}.
\textsuperscript{156} Twenty-eight of the 34 refugee and asylum seeker interviewees revealed experiencing mistreatment by neighbours, landlords, or housemates. See, e.g., Interview with Cleopatra, \textit{supra} note 72; Interview with Masani (pseudonym), \textit{supra} note 72; Interview with Boniface, \textit{supra} note 116.
\textsuperscript{157} See Interview with Stanley, in Cape Town, South Africa (Mar. 20, 2013); Interview with Dube, in Johannesburg, South Africa (Mar. 20, 2013); Interview with Elton, \textit{supra} note 75; Interview with Roy, \textit{supra} note 75; Interview with Tafadzwa, \textit{supra} note 112; Interview with Tino, \textit{supra} note 88.
\textsuperscript{159} See, e.g., Interview with Prince, in Cape Town, South Africa (Mar. 19, 2013); Interview with Flavirina, \textit{supra} note 91; Interview with Mussa, \textit{supra} note 90; Interview with David, \textit{supra} note 103; Interview with Jean Claude, \textit{supra} note 101; Interview with Junior Mitee, \textit{supra} note 75; Interview with Masani (pseudonym), \textit{supra} note 72; Interview with Tiwonge, \textit{supra} note 153.
asylum seekers are victims of gender-based violence, including sexual assaults targeting LGBTI individuals commonly referred to as “corrective-rapes,” and other homophobic assaults. Many interviewees stated that they feared for their personal safety when living in or passing through these townships. For example, one Congolese interviewee disclosed that five men raped him in Mitchell’s Plain. The victim noted that Mitchell’s Plain is extremely unsafe because attackers will readily kill their targets. Such reported violence is not limited to Cape Town. Somali asylum seeker Abraham was kidnapped after witnessing a murder in Pretoria. The attackers subsequently beat and raped him, causing him to contract HIV.

Despite describing his home in Delft as “unsafe, a desperate situation, a shack,” and “like a chicken coop,” asylum seeker Boniface stated that the township was his only option because he could not afford housing elsewhere. Similarly for countless other LGBTI refugees and asylum seekers, many have no choice but to reside within these townships owing to the low cost of housing and their inability to secure meaningful employment.

The townships in South Africa are described as “very xenophobic.” Townships like Khayelitsha are known to be particularly dangerous for LGBTI foreign nationals. Anthoni, a Zimbabwean asylum seeker, observed that some South Africans believed that “foreigners brought gay to South Africa.” As a result, some locals repeatedly instigate fights with LGBTI foreigners. Junior Miteo, a Congolese citizen, stated “I came to South Africa because it is not allowed in my country to be gay. Now that I am here, it’s not free.” He also noted, “Xenophobia is everywhere in South Africa. They don’t want you.”

Interviewees stated that South Africans in townships purposely target foreigners to steal money and their phones, often while threatening to murder the individual. Masani, a Ugandan lesbian who has lived in Khayelitsha, Mitchell’s Plain, and Mandalay, revealed that she was robbed on multiple occasions. The perpetrators, who are usually South African, would threaten to kill her if she refused to hand over her cell phone or other possessions. Chance,
a native Burundian, specified that he was robbed and verbally harassed because he was a foreigner. The interviewees also expressed concerns over repeated home burglaries by their neighbours. Without refugee or other identity documents in South Africa, asylum seekers often are unable to open bank accounts and are thus forced to keep cash on hand. Stanley, a Zimbabwean asylum seeker explained, “Asylum seekers cannot get a bank account without refugee status. So, asylum seekers keep money at their home. This makes them targets for attacks and robberies.” These thefts occur even when the interviewees step out for only a few minutes. Boniface once left his home for less than five minutes and returned to find that someone had taken his DVD player. Interviewees reported that if they left for longer than a couple of hours, they would return home to broken locks and missing items such as television sets, computers, passports, and wallets. The victims, however, do not feel they can report such crimes to the police for fear of further mistreatment by neighbours and law enforcement officials.

The refugee and asylum seekers’ experiences also illustrate that, beyond the prevailing homophobic and xenophobic attitudes, they struggle due to language barriers. Boniface mentioned, “South Africans call you names. They speak their own language even though they speak English; so, if you don’t answer back in the local language, they know you are foreign.” He recalled, “When I was in a shop in Delft, I asked the shopkeeper for bread in English and she would not serve me. When I asked why she would do that to me, she told me to learn the local language.” The shopkeeper, however, spoke English to the white customers who entered the shop. A taxi driver once explained to Boniface that as long as he is in South Africa, he must learn Zulu, one of the South African languages. Zimbabwean interviewee Tafadzwa was able to avoid some societal abuse stemming from his nationality because he speaks several South African languages. He noted, “There is a lot of discrimination against foreigners in Cape Town. But, people don’t necessarily know that I am a foreigner; this only becomes clear when I speak English.”

Even some within other marginalised groups in South Africa attempt to marginalise LGBTI refugees and asylum seekers. Despite most interviewees having fled to Cape Town to escape state-sponsored and societal persecution of LGBTI persons, several refugees and asylum seekers indicated that others from their home countries mistreat them because of their sexual orientation or gender identity. David, a Congolese citizen, explained that many refugees and asylum seekers from the Democratic Republic

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178 Interview with Chance (pseudonym), supra note 75.
179 See interview with Masani (pseudonym), supra note 72; Interview with Flavirina, supra note 91; Interview with Boniface, supra note 116.
181 See, e.g., Interview with Masani (pseudonym), supra note 72; Interview with Stanley, supra note 157; Interview with Pukkie, supra note 95; see also ‘Police Target Foreign Traders’, supra note 180.
182 Interview with Stanley, supra note 157.
183 See Interview with Flavirina, supra note 91.
184 Interview with Boniface, supra note 116.
185 See id.; Interview with Mussa, supra note 90.
186 See, e.g., Interview with David, supra note 103; Interview with Cleopatria, supra note 72; Interview with Albert, supra note 96; Interview with Abraham, supra note 105.
187 See Interview with Abraham, supra note 105.
188 Interview with Boniface, supra note 116.
189 Id.
190 Id.; see also Bronwyn Harris, ‘Xenophobia: A New Pathology for a New South Africa?’, in Derek Hook et al (eds), Psychopathology and Social Prejudice (2002) 170, 173; see also SouthAfrica.info, ‘The Languages of South Africa’, http://www.southafrica.info/about/people/language.htm##Yfa2iv5khf for a list of South Africa’s official languages.
191 Interview with Tafadzwa, supra note 112.
192 Id.
193 See, e.g., Interview with Albert, supra note 96; Interview with David, supra note 103; Interview with Cleopatria, supra note 72.
194 See PASSOP, supra note 1; State-sponsored Homophobia, supra note 1; see, e.g., Interview with Masani (pseudonym), supra note 72; Interview with Roy, supra note 75; Interview with Anthoni, supra note 171; Interview with Chance (pseudonym), supra note 75; Interview with David, supra note 103.
195 See Interview with Albert, supra note 96; Interview with Chance, supra note 75; Interview with David, supra note 103.
of Congo are “extremely homophobic.”

When he was living in a predominantly Congolese area of Khayelitsha, he recalled community members who would throw stones at him and beat him because he was gay. Albert also admitted that he is too afraid to enter into certain townships due to the severity of homophobic sentiments felt within the Congolese population in South Africa.

Moreover, several interviewees stated that some South African LGBTI individuals in their neighbourhoods reject them due to xenophobia. They revealed that some South African LGBTI individuals will manipulate or exploit LGBTI foreigners. Two asylum seekers asserted that there are some South African sexual minorities who will solicit LGBTI refugees and asylum seekers for sex work under false promises of compensation by money, food, or employment. Four interviewees also encountered several LGBTI South Africans who refused to associate with them, stole from them, or jeered at them for reasons of national origin.

2. Violence in or Near the Home

Countless lesbian and transgender refugees and asylum seekers in South Africa become victims of gender-based hate crimes and sexual violence against sexual minorities in or around where they live. However, those responsible for these crimes are rarely prosecuted. It has been reported that law enforcement officials have reacted with indifference toward reports of rape of LGBTI persons and often do not pursue the attackers to resolve the cases. Furthermore, the South African government currently does not classify crimes against sexual minorities as a “hate crime” warranting heightened sentencing.

On occasion, the perpetrators are even praised as heroes.

Some interviewees emphasised the frequency with which lesbians in South Africa become victims of sexual violence. They stated that several of their lesbian refugees and asylum seeker friends had been targets. In early 2012, one lesbian interviewee was raped due to her sexual orientation. As she was walking back to her home, six men sexually assaulted...
her, declaring, “We want to show you that you’re a lady, not a man.”211 When she subsequently contacted law enforcement about the incident, the authorities mocked and ridiculed her for her LGBTI status.212 She explained, “It is very bad in South Africa. It is dangerous to be a lesbian and many are being killed. Lesbians are being raped a lot and the police don’t take ‘corrective rape’ cases seriously. People are dying in silence.”213

Lesbian asylum seeker Cleopatria twice suffered violent assaults in South Africa.214 One night, as Cleopatria and her friends left a township bar to return home, two men attacked them.215 The men yelled, “You’re stealing our women, we’ll show you how to be a real woman.”216 In another incident, four men beat and raped Cleopatria.217 She recalled, “The men dumped my body and left me to die.”218 Although Cleopatria informed the police of the attack, the officials did not investigate further into the case.219 Her perpetrators were never prosecuted.220

Masani disclosed that others living within her community frequently verbally and physically abuse her due to her gender and sexual orientation.221 While living in Khayelitsha, Masani was walking inside the township with her partner when four men attacked her, shouting at her, “Why you playing with our girlfriends.”222 Though the incident occurred during broad daylight with onlookers nearby, no one intervened. It is reported that bystanders generally do not involve themselves in confrontations roused by xenophobia or homophobia.223 Like Cleopatria, Masani’s reports to the police were met with indifference.224

3. Discrimination at Home

Several interviewees report discrimination in their search for housing and threats to their personal safety once inside their homes.225 Some South African landlords are unwilling to rent to LGBTI refugees and asylum seekers.226 Interviewee Jean Claude explained, “When landlords see I am gay, they would change their tone as they open the door. They pretend the room is not available.”227 David stated that more than five landlords have denied him housing because he is gay.228 Congolese asylum seeker Teddy admitted feeling compelled to bring home a fake girlfriend to prevent his landlord and neighbours from suspecting that he is gay.229

In the instances homeowners rent to LGBTI refugees and asylum seekers, they will often charge higher rent, deny the renter privacy, or even verbally or physically harass the LGBTI foreign national.230 One Somali interviewee’s Nigerian housemates constantly harass him because he is gay.231 He stated that they will slap him and mock him by calling him a woman.232 In a recent event, Albert went to the hospital after suffering a homophobic and violent attack in his own home by his landlord’s son-in-law.233 Similarly, asylum seeker Marc reports that his South African landlady’s
Gay asylum seeker Saafl's former landlord, upon discovery of Saafl's LGBTI status, demanded that he either “immediately move out or pay higher rent.” Junior Mayema revealed that his landlord has beaten him three times, frequently threatens to evict him, and has barged into his home without permission on multiple occasions. Cleopatra’s landlord also shouts out homophobic slurs at her and her LGBTI roommates. Anthoni stated that in some townships, landlords will charge South Africans R500 and foreigners R1500 for the same room. Masani also revealed that a former landlady increased her rental rate because she was a foreigner. Additionally, she has had past landlords that would enter into her home without permission and rummage through and take her possessions.

Moreover, interviewees stated that homeowners would not allow them to have guests over due to their LGBTI status. Suspecting that he was gay, one landlord completely barred Albert from having company. Likewise, Cleopatra was evicted from a home for having LGBTI visitors over. The proprietor of Junior Mayema’s current home, cognizant of his sexual orientation, only allows female guests and prohibits all male visitors. Ethiopian asylum seeker Robel’s landlord not only refuses him the right to have guests, but also institutes an 8:00 PM curfew and will deny him entry into his home if he returns at a later time. Some interviewees were forced to sneak in guests because neighbours would complain to the landlords, thus further motivating landlords to forbid their LGBTI tenants from inviting friends to their homes.

C. Interactions with Police

Despite legal protection in South Africa protecting LGBTI refugees and asylum seekers from discrimination, interviewees stated that police rarely enforce these anti-discrimination laws. Discrimination and lack of interest on behalf of law enforcement leave LGBTI refugees and asylum seekers vulnerable in their homes and neighbourhoods, especially when they are forced to live in dangerous townships and neighbourhoods where violent discrimination is prevalent. Often when LGBTI refugees and asylum seekers report crimes to the police they are met with inaction. Multiple interviewees explained that often when they

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234 See, e.g., Interview with Marc, supra note 75; interview with Cleopatra, supra note 72; Interview with Robel, in Cape Town, South Africa (Mar. 21, 2013); Interview with Tiwonge, supra note 153.
235 Interview with Saafl, supra note 96.
236 Interview with Junior Mayema, supra note 84.
237 Interview with Cleopatria, supra note 72.
238 Interview with Anthoni, supra note 171.
239 Interview with Masani (pseudonym), supra note 72.
240 Id.
241 See, e.g., Interview with Robel, supra note 238; Interview with Masani (pseudonym), supra note 72; Interview with Tino, supra note 88; Interview with Cleopatria, supra note 72.
242 Interview with Albert, supra note 96.
243 Interview with Cleopatria, supra note 72.
244 Interview with Junior Mayema, supra note 84.
245 Interview with Robel, supra note 238.
246 See Interview with Albert, supra note 96; Interview with Cleopatria, supra note 72; Interview with Mussa, supra note 90.
247 See e.g., Interview with Cleopatria, supra note 72; Interview with Abraham, supra note 105; Interview with David, supra note 103; Interview with Albert, supra note 98; see also South African: Discrimination of LGBTI, supra note 17; We’ll Show You You’re a Woman, supra note 19, at 44.
248 See South African: Discrimination of LGBTI, supra note 17; We’ll Show You You’re a Woman, supra note 19.
249 See Interview with Albert, supra note 98; Interview with Masani (pseudonym), supra note 72; Interview with Junior Miteo, supra note 75.
call the police to report a crime, the police take hours to arrive to investigate.\textsuperscript{250}

Pukkie, from Zimbabwe, claims that when police officers hear his accent on the phone, they lose interest in his case.\textsuperscript{251} Pukkie once reported to police that four burglars robbed his home and slashed his throat.\textsuperscript{252} The officers informed Pukkie via text message just one day later that his case was closed.\textsuperscript{253} When he went to the police station to press his case further the officers refused to reopen his case and told him, “We know you moffies\textsuperscript{254} lie too much.”\textsuperscript{255} As one interviewee states, “There is no point in reporting things to the police because they commit the same type of discrimination as other South Africans. They may take the report as a formality, but they do not follow through.”\textsuperscript{256}

Lack of interest by the police in pursuing sexual violence claims is a problem for both male and female LGBTI refugees and asylum seekers.\textsuperscript{257} Lesbian refugees and asylum seekers are particularly vulnerable as they are often victims of sexual assault.\textsuperscript{258} As a result of discriminatory attitudes, police officers do not take reports of sexual assaults targeting the LGBTI community seriously.\textsuperscript{259} One lesbian refugee explains that police often respond with additional harassment when speaking with victims, asking questions such as, “How can you enjoy sex with ladies?”\textsuperscript{260} Male LGBTI refugees who are sexually assaulted face similar reactions from law enforcement.\textsuperscript{261} When asylum seeker, Prince, who was raped by five men, sought help from law enforcement, the response from the officer was, “Why are you gay?”\textsuperscript{262} There was no investigation into the attack.\textsuperscript{263}

Often, police officers themselves are the perpetrators of violence.\textsuperscript{264} Uche, a native Nigerian, stated that refugees and asylum seekers face harassment from police officers on the street.\textsuperscript{265} He believes that for refugees and asylum seekers, “If you see police people, you just have to run.”\textsuperscript{266} Another interviewee echoed Uche’s concerns, explaining that police have attacked him in bars and restaurants as well.\textsuperscript{267} In one incident at a gay bar, an officer attempted to rape him in the bathroom.\textsuperscript{268} Moreover, some LGBTI refugees and asylum seekers do not feel safe from police in their own home.\textsuperscript{269} Junior recalls an incident where about twenty police officers broke into his home and beat him, leaving him with severe injuries.\textsuperscript{270} The officers searched for drugs in the house where Junior lived, although he is not a drug user, was completely unconnected to the supposed drug activity, and was never charged with any crime.\textsuperscript{271}

Additionally, police officers sometimes unfairly profile and target LGBTI refugees and asylum seekers by stopping such individuals on the street and demanding to see legal documentation.\textsuperscript{272} David was once stopped while out walking with his refugee and asylum seeker friends, and while no one in the group had their legal documentation with them, David was
the only one who was arrested. David explains that since he was dressed very femininely, it was clear to the officers that he was gay. During the arrest the officers mocked and insulted him, telling him, “You’re gay, go back to your country.”

Conclusion

South Africa’s legal system mandates equal treatment of all individuals residing within its borders, regardless of race, sex, gender, sexual orientation, ethnicity or national origin. Unfortunately, the legal safeguards alone are insufficient as societal attitudes are often incongruent with the nation’s anti-discrimination laws. Thus, advocacy is needed to increase awareness of the obstacles facing the LGBTI refugee and asylum seeker community, with the goal of aligning the nation’s anti-discrimination laws with its practices. Specifically, advocacy is needed to ensure compliance by DHA officials, employers, landlords, and law enforcement officers with their legal duty to abstain from discriminating against individuals on the basis of gender, sexual orientation, and nationality.

RECOMMENDATIONS

TO THE NATIONAL IMMIGRATION BRANCH AND THE DEPARTMENT OF HOME AFFAIRS AND REFUGEE RECEPTION OFFICE:

- Provide RRO and DHA officers with LGBTI-specific education and training.
- Train Security Officers on South African general anti-discrimination laws, including the relevant provisions under PEPUDA.
- Educate RRO and DHA officers on the validity of “sexual orientation” as grounds for refugee and asylum status applications.
- Hold RRO and DHA employees more accountable, by requiring applicants to fill out evaluations on the quality of service from Officers and Security Personnel in the DHA.
- Enforce penalties for incidents of bribery and corruption by DHA Officers.
- Lessen the burdens resulting from the Section 22 permit renewal process. Specifically:
  - Extend the length of all Section 22 permits beyond a 1 or 3-month period.
  - Extend the permitted renewal date from one day to a period of one week.

TO THE COMMISSION FOR CONCILIATION, MEDIATION, AND ARBITRATION, AND THE LABOUR COURT OF SOUTH AFRICA:

- Enforce the Labour Court and CCMA rulings that declare that the Section 22 permit provides a legal right to work.
- Oversee bookkeeping of financials and resources spent by the Labour Court.
- Organise a system to oversee the implementation of CCMA and Labour Court decisions, to ensure enforcement of orders.

TO ORGANISATIONS SEEKING TO HELP REFUGEES:

- Assist LGBTI refugees to obtain proper asylum documentation.
- Provide education programmes regarding the renewal dates for Section 22 or Section 24 permits in order to avoid the R2 500 fine the DHA charges for expired permits.
- Assist LGBTI refugees in accessing resources for housing, labour, and education programmes.

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273 Interview with David, supra note 103.
274 Id.
275 Id.
• Provide mental health services, including individual and group counselling sessions.
• Provide employment assistance, including job search tactics, CV development, interview training, and access to online sources.
• Provide education and training programmes on tenant rights under the RHA and assist tenants in obtaining legal representation in housing courts and tribunals.
• Implement advocacy programmes to educate landlords on housing laws, specifically RHA's prohibition of unfair practices in negotiating or terminating leases276 and the rights of tenants to privacy and visitors.277
• Provide education and training programmes on employee rights and assist tenants in obtaining legal representation in Labour Court and under the CCMA.
• Increase employer awareness of the safeguards established in South Africa’s asylum laws for LGBTI individuals and asylum seekers with work permits.
• Increase collaboration among LGBTI organisations and refugee organisations and among NGOs and local shelters.
• Implement stricter policies in shelters to protect LGBTI refugees and asylum seekers who face homophobia, xenophobia, and racism from shelter residents and administrators.
• Offer training for shelter personnel regarding the laws in place prohibiting discrimination against LGBTI residents.
• Establish a new shelter exclusively for LGBTI asylum seekers and refugee residents.
• Develop an LGBTI and refugee network to provide housing and employment support, including notification of employment or housing opportunities that are safe and available, or problematic employers or landlords.
• Help fund small business ventures by LGBTI refugees and asylum seekers.
• Establish outreach to and advise individuals abroad interested in offering independent donations to help LGBTI refugees relocate to South Africa.

276 See Rental Housing Act 50 of 1999 § 3 (1) (S. Afr.).
277 See id. §§ 3 (2)-(4).
PASSOP
37 Church Street, Wynberg
South Africa
Tel: 021.762.0322
office@passop.co.za
passop.co.za

Leitner Center
for International Law and Justice
Fordham Law School
33 West 60th Street
Second Floor
New York, NY 10023
USA
+ 1.212.636.6862
leitnercenter@law.fordham.edu
www.leitnercenter.org