Africa

Spectrum

"Gender Refugees" in South Africa:
The "Common-Sense" Paradox

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Abstract: South Africa is the only country on the African continent that constitutionally protects transgender asylum seekers. In light of this, it has seen a marked rise in the emergence of this category of person within the asylum system. Drawing on research carried out between 2012 and 2015, I argue that transgender-identified refugees or "gender refugees" from Africa, living in South Africa, rather than accessing refuge continue to experience significant hindrances to their survival comparable with the persecution experienced in their countries of origin. I argue this is in part due to the nature of their asylum claim in relation to gender as a wider system of "common-sense" dichotomous administration, something which remains relatively constant across countries of origin and refugee-receiving countries. Rather than being protected gender refugees, because they are read as violating the rules of normative gender, they find themselves paradoxically with rights, but unable to access them.

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Introduction

In recent years we have seen a new phenomenon in Africa's long history of migration: the journeying of people fleeing persecution, violence, and discrimination on the grounds of their gender identity/expression. This paper terms the people who are eligible to claim refugee status and who have fled their countries of origin based on the persecution of their gender identity "gender refugees." "Gender refugees" are different from sexual refugees in that the formers' issues pertain to their gender identity and birth-assigned sex being perceived as incongruent. This incongruence often poses a threat to their lives and may force them to flee. The Constitution of the Republic of South Africa Act 108 of 1996 unequivocally "enshrines the rights of *all people in [the] country* and affirms the democratic values of human dignity, equality and freedom" (*Constitution of the Republic of South Africa*, chapter 2, Act no. 108 of 1996 at 7.1; emphasis added). Rights, then, do not belong exclusively to South African citizens, but to those standing within South African borders.[1] The Bill of Rights (1996) entrenches the right to freedom of movement, dignity, security of person, and the right of everyone in South Africa to access housing, healthcare, and education. South Africa is the only country on the African continent that not only recognises but also constitutionally protects transgender individuals; these are rights that acknowledge their very existence. South Africa also offers the possibility of asylum on the basis of persecution due to sexual orientation or gender identity, through the South African Refugees Act 130 of 1998 implemented by the Department of Home Affairs (DHA).

Drawing on research carried out between 2012 and 2015 with transgender-identified refugees from Africa living in South Africa, this paper argues that gender refugees, rather than accessing safety and refuge, continue to experience significant hindrances to their survival in South Africa comparable with the persecution experienced in their countries of origin. This is in part due to the nature of their asylum claim in relation to gender as a wider system of dichotomous administration, something that remains relatively constant across countries of origin and refugee-receiving countries. Gender in South Africa, as elsewhere, is part of the structural fabric of society; in essence, what awaits gender refugees in South Africa is not a gender-free egalitarian utopia but rather a society

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1   "Once it is accepted, as it must be, that persons within our territorial boundaries have the protection of our courts, there is no reason why 'everyone' in sections 12(2) and 35(2) should not be given its ordinary meaning. When the Constitution intends to confine rights to citizens it says so" (SAFLII 2004).

constructed in similar ways to the ones they have left – with concomitant gendered norms and expectations. The only difference is the presence of rights, gender-affirming healthcare, and perhaps a term of self-description in slightly wider circulation: "transgender."

Arguably in day-to-day life, in a country that practises a system of local integration, readings of sex/gender in interactions with communities and individuals continue to be based on "common sense"[2] – classification based on the assumption that gender is obvious, clear, and legible, and that it coheres to male/masculine/man and female/feminine/woman. In this system of classification beyond the doors of the Refugee Reception Office (RRO), transgender asylum seekers encounter

> a much less formal, more prototypical approach us[ing] an amalgam of appearance and acceptance – and on-the-spot visual judgement […] to perform the sorting process on the street. (Bowker and Star 2000: 201)

This "common-sense" reading, far from embracing gender refugees, or even transgender, reignites, as I will argue, the processes of exclusion experienced in countries of origin, ensuring that rather than being acknowledged and protected gender refugees, the people in question, because they are read as violating the rules of normative gender, find themselves paradoxically with rights, but unable to access traditional asylum support structures such as communal and familial networks, and are excluded from employment and shelter systems. Drawing on Hannah Arendt's understanding of the human in human rights, I argue that without community, without a home, a reliance on the fact that one is human and therefore entitled to human rights may not be enough to ensure or secure "liveability" or a liveable life.[3]

2   Geoffrey C. Bowker and Susan Leigh Star (2000) do not actually give a concise definition of common sense themselves, but draw on George Lakoff to give content to their use of "common sense": "My guess is that we have a folk theory of categorisation itself. It says that things come in well-defined kinds, that the kinds are characterised by shared properties, and that there is one right taxonomy of the kinds. It is easier to show what is wrong with a scientific theory than with a folk theory. A folk theory defines common sense itself. When the folk theory and the technical theory converge, it gets even tougher to see where that theory gets in the way, or even that it is a theory at all" (Lakoff 1987, cited in: Bowker and Star 2000: 33).

3   I use "liveability" here in the Butlerian sense of the term. A liveable life is affected by both socio-economic conditions – shelter, food, and employment – and conditions of intelligibility. As Butler states, "When we ask what makes a life liveable, we are asking about certain normative conditions that must be fulfilled for life to become life. And so there are at least two senses of life, the

Welcome to South Africa

Exiting an RRO, the most immediate need for newcomers to South Africa is shelter. South Africa does not practise encampment but rather a system of local integration, meaning that asylum seekers in the country experience freedom of movement. Rather than keeping refugees on the outskirts of societies in camps, often even cordoned off from the population of the camp itself, local integration presents the prospect of community acceptance and coexistence. It is unsurprising then, given this freedom of movement, that the majority of participants make their way to Cape Town – the Pink Capital[4] – believing they will find a place that offers integration, acknowledgement, and a visible community waiting to embrace them. Sasha expected Cape Town to be much like Thailand or Brazil, countries with highly visible transgender populations (Gay and Lesbian Memory in Action Archives of South Africa n.d). Although she did meet several other transgender people through a support group, it was far fewer than she expected.[5] Moreover, those she did encounter seemed to her to be in hiding rather than living a life of unbridled freedom. For Daniel, this perception that in Cape Town he would finally be free and see others like him was so all-encompassing that after running out of money in Zimbabwe he riskily hitched, with his bag of dresses, the length of South Africa – a country about which he knew little – to get to the city.

   Yet, without predetermined places to stay, family members and in-country community networks are the only means of shelter for those not being directly assisted by NGOs (which, though they provide support, do not generally provide shelter). These networks are crucial, but preju-

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one that refers to the minimum biological form of living, and another that intervenes at the start, which establishes minimum conditions for a liveable life with regard to human life. And this does not imply that we can disregard the merely living in favour of the liveable life, but that we must ask, as we asked about gender violence, what humans require in order to maintain and reproduce the conditions of their own liveability. And what are our politics such that we are, in whatever way is possible, both conceptualizing the possibility of the liveable life, and arranging for its institutional support?" (Butler 2004: 39).

4   Cape Town Tourism markets the city as the "Pink Capital": "for visitors who are out and proud, and looking for a city that embraces this freedom, Cape Town is where it's at for a weekend of 'fabulous'" (see: Cape Town Tourism n.d.).

5   The Triangle Project, an NGO based in Cape Town, runs the Triangle Transgender Support Group. Several participants in this project have been members of this group at various stages. Trans-specific health services such as support groups are limited in South Africa (see *Enca.com* 2014).

dices held by communities from countries of origin or family members, who may also be migrants, are not simply abandoned at the border. Moreover, participants are not the only subjects that travel within these networks – gossip inevitably follows. Along with this there is a heightened tension: on the one hand, the increased transgender and gay visibility that participants witness around them fuels their desire to immerse themselves in their new-found freedom by presenting their gender identity more fully; on the other hand, their communities and the places wherein they seek shelter maintain the same attitudes as before. It is in the process of seeking out these others, the immersion, that fissures begin to appear. Alex, from Central Africa,[6] on arriving in Cape Town, initially stayed with their[7] cousin:

> My mother called to tell him, "He left because there was something wrong, I think he's homosexual" […]. Then you know when I start researching where can I find LGBTI people in Cape Town […] I didn't know that my cousin was following me […]. He kicked me out and that's when I found myself homeless.[8]

Akraam, from the Horn of Africa, is an interesting case in this regard: for two years she lived with her aunt in Cape Town, within her country of origin's tight-knit community, presenting as a man and knowing virtually nothing about Cape Town. By chance she saw an advert for the "gay village":

> On Google […] I start searching for gay clubs. I didn't know there were gay clubs in the world! I didn't know that there were gay things – even though I lived here – because I was with my people.

Much like Alex, Akraam went in search of these newly discovered gay clubs:

> I saw people like me dancing […] everywhere […]. Then I said, "What's happening here? Where am I?" I was like, *Does this really exist?* I was so shocked I couldn't even express how I was. It makes you feel happy […]. I was in an isolated world.

However, this visibility and being able to enter social spaces is not commensurate with gaining access to a new form of community, accep-

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6   Pseudonyms along with only regional, instead of national, origins have been used to protect the identities of the participants who took part in this project.

7   Alex's preferred pronouns are they/them.

8   As a sign of respect to all participants as second-language speakers, the way in which they have expressed themselves has been transcribed verbatim.

tance, or support. Much like Alex, Akraam was eventually confronted by her aunt and her cousins:

> They didn't talk to me; they just started beating me up […]. They took my front tooth out [when Akraam was punched] […] and they told me never to come back to their neighbourhood.

Being ordered not to return to "their neighbourhood" is pivotal here because it is in fact an ousting from the greater country-of-origin community. At a loss after their rejection, both Akraam and Alex moved to Johannesburg fairly soon after being evicted. Having nowhere else to go, they both tried to integrate into the very same country-of-origin community that had rejected them in Cape Town. Both, in moving to a new city, removed any and all signs that could possibly suggest a deviation from "common-sense" readings of sex/gender.

The First Loss: Home

In *The Origins of Totalitarianism*, Hannah Arendt (1962) provides a critique of human rights, arguing that belonging to a community – either a state or an organised human community – is fundamental to rights access. Moreover, that

> a person loses the right to have rights when she can neither belong to the community into which she is born nor find a new community in which to live. (Parekh 2008: 40)

Arendt suggests that it is one of the perplexing features of the Declaration of the Rights of Man that although human rights have been defined as inalienable, and independent of all governments, in the moment that human beings lack their own governments and have to fall back upon their minimum rights qua being human, these rights become unenforceable (Parekh 2008: 34). Those seeking to access human rights, particularly asylum seekers, she argues, have, in increasing numbers, entered a state of what she describes as rightlessness where they "become *nothing but human*" (Parekh 2008: 25; emphasis in original). This is particularly true for people she calls "new refugees": "those persecuted not for what they had done, thought, or said, but because of what they unalterably were" – born into the "wrong race" or the "wrong nation" – and, I would add, the wrong kind of sex/gender (Parekh 2008: 28).

Arendt (1962: 297) argues that rather than the loss of rights, it is the slow loss or non-existence of community "willing and able to guarantee any rights whatsoever" that begins to enact a state of "rightlessness"

(Arendt 1962: 295). In coming to South Africa, gender refugees actually have rights as transgender-identified people for the first time. The state of "rightlessness," which is crucially linked to "common-sense" adjudications of gender, is not the same as being without rights, but rather entails two distinct deprivations that are pivotal to the experiences of being a gender refugee. The first is that of the loss of home, the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world. (Arendt 2000: 34)

For Arendt, what is unprecedented about this particular loss is not the loss of home itself but the "impossibility of finding a new one" (Arendt 2000: 34). The second loss, which I will address later, is that of protection or security – the loss of legal status, not just in countries of origin but in all countries.

Beyond the doors of the RRO in a country that practises local integration, home is necessitated by finding and accessing a community: other transgender people, or country-of-origin members, or family. As noted, all three of these sites present difficulties in terms of lack of visibility (as illustrated by Sasha), continued prejudice by country-of-origin members, and familial exclusion (as illustrated by Akraam and Alex). For Arendt, it is this seeming impossibility of establishing a new home, finding community, that is a key element to "rightlessness." As Alex highlights,

> I went to Johannesburg, and when I was there it was worse because I was staying with [people from country of origin …] there are so many people […] so it was like *Am I in my home country or what?* […]. One day I went to [country of origin …] church. I put on some make-up – it was just a little bit of powder to look more smart – and then the pastor he called me in front of people […]. The pastor say, "The whole church must pray for this guy because there is a problem with this guy. He has got the evil spirit. Can you see?" They just start praying [… and] when they finish I took my bag and left […]. I say I cannot stay anymore in Johannesburg and so I came back to Cape Town.

As with Alex, the reasons for Akraam's moving inevitably followed:

> Some of the people in Cape Town move to Joburg and they were related to the boss that I was working for. They told him, "This person that is working for you, do you know him?" He's like, "No I don't know him. I just like hired him as [same country of origin …] he seems to be a good person." They told him, "He is not good. He is gay. Everyone knows him in Cape Town."

Akraam was subsequently fired from her job and assaulted by a mob from the local community, who meant to kill her. A truck driver passing the scuffle intervened and took the unconscious Akraam to hospital. After being released, Akraam, who among all participants had been by far the most cloistered and isolated from others like her, almost incomprehensibly paid for a night at a hostel that specifically catered to people from her country of origin, situated within the self-same neighbourhood as her assailants. Unsurprisingly, they found her and confronted the owner of the hostel:

> "Do not let this evil person sleep in your house otherwise Allah will bring punishment on your building and it will burn." The lady says I have to go. I tried to tell her […] I don't have anywhere to go.

The assaults here experienced by Alex and Akraam, transgressive bodies, as evidenced by the pierced ears and the wearing of make-up, are "fundamentally concerned with policing gender presentation" (Namaste 2000: 316). The constant return to communities that present threats of violence suggests the clear lack of structural support; thus, patterns of exclusion, experienced initially in countries of origin, begin to repeat themselves. It should be noted here that Alex's and Akraam's narratives – explaining what it might mean to navigate an attempt at establishing community and, by extension, home – might seem extreme in their experience of consistent exclusion and violence. Indeed, both were beaten and stabbed, and for Alex this happened more than once. Given that the United Nations High Commissioner for Refugees (UNHCR) resettled[9] between 11,000 and 19,000 people from Africa annually from 2012 to 2014, it is significant that both Akraam's and Alex's cases were considered severe enough for them to be resettled from South Africa.

For Arendt, the world functions as an intricate web of treaties and international agreements, often mediated through passports and papers, allowing a person to take their legal status with them wherever they go. Whoever is no longer enclosed within this web "finds himself out of legality all together" (Arendt 2000: 35). Globally, within countries where they are considered citizens, transgender people are a key population who struggles with this particular form of legality (Byrne 2014). Kendall Thomas (2006: 317) notes that concerning this "intricate web," transgender people are read as "violating the rules of the (normative) gender

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9   The exact figures are: 11,342 in 2012, 14,858 in 2013, and 19,251 in 2014. Figures for 2015 and 2016 were unavailable at the time of writing (UNHCR 2015: 52).

contract" and can find themselves, in the words of Arendt (1962), "stateless" and by extension "rightless." As Thomas notes:

> We live in a world in which individual human identities are forged in and through constructs of gendered difference. […] the notion of human subjectivity […] has been erected on the fictional foundation of two fixed, unified, and coherent genders in one of which we are all inserted (by force if necessary) at birth. What I am underscoring here is an inarticulated ideological architecture in which normative gender identity and normative human identity are cross-buttressed: (normative) gendered embodiment is human embodiment and (normative) human being is gendered being. (Thomas 2006: 316)

It follows that being an asylum seeker can only compound this experience in the contemporary world. As I have argued elsewhere, these issues around legality and citizenship are one of the key influences, along with subsequent prejudice and a lack of recourse to protection, in an African gender refugee's decision to flee their country of origin (Camminga 2018). Home, for Arendt, is geographical, physical, and political. It facilitates ontological security in a world that can seem hostile and threatening. The ongoing denial of this humanness, the slow deprivation of rights is visible in the treatment of both Alex and Akraam. It is this loss of home as community, as "social distinction" facilitated through documents, as political acknowledgement, that is the first loss that gender refugees experience. Indeed, as Arendt (1994) argues in "We Refugees," reflecting some of the deep social problems that "common-sense" notions of gendered rightness infer,

> society has discovered discrimination as the greatest social weapon by which one may kill men without any bloodshed; […] passports or birth certificates, and sometimes even tax receipts, are no longer formal papers but matters of social distinction. It is true that most of us depend entirely on social standards; we lose confidence in ourselves if society does not approve of us; we are – and always were – ready to pay any price in order to be accepted by society. (Arendt 1994: 118–119)

For both Akraam and Alex, this price was denial of self in an effort to access community. For Akraam, in particular, this meant returning time and again to a space of near death, indicative of this readiness to "pay any price." Doing so is also a sign of a clear slippage for gender refugees, as a group of people who highlight the "social artifice of gender and humanity" – not just in their countries of origin, as theorists like Thomas

(2006: 317) have suggested, but, crucially, also in states that are not their own, where the right to rights, the "rights of man," are predicated on this artifice.

The Second Loss: Security or Protection

The generally violent ejection and loss of support from community in a foreign country for participants necessitates turning to NGOs for assistance. For Sasha and Daniel, both from East Africa, on arriving in South Africa the visibility of a viable transgender community in South Africa was slim to non-existent. For Arendt (1962: 296), once experiencing this first loss of community, life simply becomes something that is prolonged through charity, making the second loss – that of security – a near inevitability. There is one LGBT-dedicated shelter in South Africa – the Pride Shelter – situated in Cape Town, which provides residence for one month. Akraam and Alex, along with Kelly from East Africa, all of whom had already been sleeping on the street for a month prior, spent time in the Pride Shelter. Shelters in general, however, are often sponsored by religious institutions and cater neither for foreigners nor LGBT people. Certainly, the difficulties of accessing shelter are common to LGBT refugees and asylum seekers in South Africa, but for gender refugees, shelters often function as particularly problematic sites of "common-sense" gender reinforcement. Most shelters are divided into male-specific or female-specific facilities, and placement happens according to an assumed birth-assigned gender.[10]

Stella, from East Africa, distinctly remembers how cold and wet it was when she finally arrived in Cape Town. Knowing no one, and certain of community rejection, she immediately sought shelter. The first shelter she approached wanted ZAR 10/day rent. The second said it was full, and the third stated that they took in only South Africans, not foreigners. During this time, she slept mostly on the streets. The Scalabrini Centre,[11] a refugee organisation, eventually assisted Stella in finding placement at a shelter – a Christian shelter, predominantly for substance abusers. The shelter requires newcomers to remain within its walls for

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10   There are currently no policies addressing the placement of transgender people within the shelter system in South Africa, although there are several reports addressing this issue (see: PASSOP and the Leitner Center for International Law and Justice 2013; GDX 2013).

11   Established in 1994, the centre takes its name from Bishop of Piacenza, Giovanni Battista Scalabrini, who founded the order in 1887 to care for the welfare of migrants (see Scalabrini Centre n.d.).

three months (ostensibly this is done to try and assist people with breaking cycles of addiction), after which time they can seek employment. Stella explains that on arrival, although she lives and identifies as a woman, this was disregarded; she was sent to the male section of the shelter, where she would remain for three months – the only woman in the men's section:

> Being trans I was scared in the shelter […] it was painful […] but I didn't have a choice so I said "yes" […]. When I go to sleep I cry, *Why am I here?*

Finding a job proved to be an insurmountable hurdle.[12] Employment is a struggle for a number of South Africans, but more so for asylum seekers due to the volatile nature of their papers.[13] As Arthur, also from East Africa, a trans man living in "stealth,"[14] explains:

> Jobs are something else here because the first thing you get to be asked is what language do you speak? And where is your permit? And how long is your permit? So those are some of the obstacles that you meet.

Being visibly read as transgender often compounds the difficulties with regards to accessing gainful employment. Accessing legal employment is a particular hurdle for black trans women (Spade 2011), many of whom

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12   According to Koko Guillain, former Project Coordinator of the LGBTI Refugees Advocacy and Support Project at People Against Suffering Oppression and Poverty (PASSOP): "As […] asylum seekers it is still a little bit difficult for them to get jobs because they may go to the place […] where there is a vacancy of employment and some of the requirements of employment is the contract is for one year at least. So when someone is a temporary permit for two months or three months as is the case for most of them, cause asylum seeker is temporary permit it is not a refugee status, they are not qualified for jobs. So they are still unemployed. When they are unemployed they can't afford rent" (interview with Guillain, K., People Against Suffering Oppression and Poverty (PASSOP), Cape Town, 28 September 2013).

13   "Many potential employers are apprehensive regarding employing asylum seekers because they view their stay in the country as volatile [….] [D]ocuments issued to asylum seekers and refugees often hinder their ability to secure employment […] because of the short time frames for which the documents are issued before they must be renewed (1–3 months for asylum seekers), limited public information for employers on the renewability of these permits" (Consortium for Refugees and Migrants in South Africa 2008. For LGBT-specific experiences, see PASSOP and the Leitner Centre for International Law and Justice 2013).

14   Living in stealth refers to a transgender person who may not be known as transgender.

end up doing work that is considered criminal in South Africa – survival sex work. Several participants, all of whom are female or feminine-identified, are sex workers, but being involved in sex work can also hinder access to shelters – particularly religious shelters – should the shelter find out. Stella initially tried to find work as a cleaner with "Jesus Saves Clean" but she left due to discrimination about her right to use the public toilets that she was considered good enough to clean but not good enough to use:

> People look at me they say, "Are you a man? You can't come to work inside" […]. I was a cleaner [but …] they start discrimination. When I went to the toilet the boss said, "Are you a woman? Or are you a man? You look like woman." The boss said I can't go to the women's toilet because I said I am a woman but she says I am a man […]. I am forced to go to the man's toilet […] because she doesn't understand […]. I fight […,] I say, "It's a public toilet […] there's no different between you and me […] the sex makes no difference […,] you sit and I sit. When you finish you flush and me I flush."

Unable to find a job and income after being in South Africa for two years, which she ascribes to how she dresses – as a woman – being discontinuous with her documents, which state "male," Stella turned to sex work. On one occasion, one of the shelter residents saw her with a client and reported this to the pastor, the head of the shelter, who asked her to leave. Having exhausted all options for support, and having been denied "residence," gender refugees strike out on their own and make do with whatever means possible. The initial decision seems to be between living near the city centre or further out in an informal settlement. Living closer to a city centre often requires valid paperwork for rental purposes, sometimes a greater deposit, and sometimes surety signed by a third party because of the perceived volatility of asylum-seeker papers. Apartments and rooms are shared with other people, from either the same country or other countries – who are very rarely also gay or transgender – to ensure affordability. The overall appeal, though, is the access to policing services that are far more likely to respond – and react positively – when called upon, and not having to navigate public transport or poorly lit streets late at night. An informal settlement, on the other hand, is less expensive and requires little to no official documentation in order to find a room. Disadvantages include the distance from places of business, poor insulation in winter, lack of accessible amenities, poor police response, and higher transport expenses. These are the disadvantages for everyone living outside the metropole in South Africa.

Transgender asylum seekers also need to consider their exposure to others with whom they may live in close quarters and who may resent the presence of foreigners, especially foreigners who are perceived as gay. As Stella notes,

> It is a difficulty […] to stay in location (township) when you are transgender. It is very hard to because you get the discrimination […] people don't understand.

Eventually, Stella was able to find herself a room in Delft, an informal location about half an hour outside of Cape Town. She traded safety and visibility in order to live alone, in a makeshift room attached to a larger house. After finding a place to live, participants often have to contend with landlords who find out about their gender identity and/or sexuality. Alex has had several bad run-ins with landlords, including being beaten for having "gay" visitors.[15] Stella makes sure that she comes home late and leaves early to avoid being seen by anyone. She has never been entirely comfortable staying in the location but, as a sex worker, lacking steady income, she cannot afford to stay elsewhere. Referencing Arendt's second loss, she states,

> I can't say in my life I have got security because anytime they can kill me because you transgender […;] how I survive, I am still in the location but I don't stay in the location most of the time […]. It is very difficult […,] you don't have toilet, you don't have bathroom […]. The papers make it difficult to get a job […]. It's difficult to survive […]. I'd like to stay in town but it's very expensive it's why I live in the location but in the location I am not safe.

Living in suburban areas, however, presents its own difficulties, even if one is able to purchase some kind of security. During Ava's transition, after having moved out of her cousin's home, she moved into shared housing aimed at foreign students. She was mercilessly teased and outed publicly by those with whom she was living, who would often say, "He is trying to be a she." Fearing for her life, she eventually moved out with the assistance of a sponsor from her church, who provided surety for a new apartment. She was able to find slightly better accommodation, sharing with fewer people. Although she set out to live with South Africans, she ended up moving in with a Ugandan couple, to whom she explained her situation, because she had to show them her ID, which

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15   The beating of gay or transgender tenants is seemingly not uncommon (see Washinyira 2013).

states she is male. The block into which Ava moved was part of an enclosed compound requiring fingerprinting to enter. People from several African nations live within the compound, so although Ava had explained her situation to her new flatmates, she still had to deal with others living in close confines:

> There were Nigerians [...]. One day when I was coming from church late at night in skirt, one was in his car saying, "I will drive you over with my car [...,] come and stand here. I am going to kill you." Maybe he can do it and say "accident."

Arendt's second loss, illustrated here, is that of protection or security, in part due to the loss, or the precarious nature, of legal status – the disruptiveness to the "common sense." As Parekh notes, for Arendt, "these deprivations – of a place in the world, of a *recognisable identity* – are more fundamental than the loss of the rights to citizenship" (Parekh 2008: 28; emphasis added). For gender refugees in South Africa, this is indeed the outcome of the compounded experience of asylum, gender as a category of classification within the RRO, common-sense readings of sex/gender as a wider administrative classification, and the erosion of all vestiges of community (Arendt 1962: 294).

The System and Doing Corruption

As has been noted, gender refugees in South Africa, once having left the RRO, are faced with a host of societal issues that can be linked directly to the wider "common-sense" notion of sex/gender within society. It is clear that although rights exist, there are specific impediments to accessing and actualising these. The requirement that asylum seekers return regularly to the RRO at which they applied in order to renew their permit is one of the biggest impediments to building a life in South Africa for all asylum seekers, more so for those without community or support networks. For participants, the asylum system is "a time out of time" – one that seems to leave those with valid claims of individual persecution in constant limbo, repeating an endless pattern of waiting and renewals (Bowker and Star 2000: 209). As has been evidenced, this hinders survival, including the ability to find stable employment and housing. As Alex explains,

> I am just stuck and my paper is not really able [... to do anything], you know [...] even if you just have an asylum permit people are saying, no, you are illegal.

Daniel, who has been an asylum seeker for nearly five years, explains that this waiting and endless repetition means that they are not "real." In a system much like a production line, although asylum seekers have rights, this is seemingly contradicted by the way in which they are treated: the inability to ask questions and the seeming impossibility of being acknowledged/seen in relation to identity. For Ava there is a sense – here again referencing Arendt – that rather than gaining humanity and an acknowledgement of personhood, quite the opposite has happened:

> You can't even comment […;] she [the official] took the paper and I could see that it was not me, it was this other person, so I said that's not my paper. "Did I ask you anything?" [angry voice]. So I shut up and kept quiet […] like an animal, they don't treat you like someone deserving […;] you come there, you sit, keep quiet and do what they want you to do.

The asylum paper, *the paper*, is spoken about with reverence: paradoxically, for some participants, these papers do not actually reflect their correct names or genders – in some cases, even photos. At least two participants, Stella and Ava, carry subsidiary documents provided by state medical practitioners, subsidised by the South African state to mediate these inconsistencies. As Paisley Currah and Tara Mulqueen (2011: 561) note, "For transgender people, the immense number of state actors defining sex [and gender] ensnares them in a Kafkaesque web of official identity contradiction and chaos." Not to return for renewal, to allow documents to lapse, to miss a renewal deadline or to access documents in ways that the state would consider illegal is – to varying degrees – to go undocumented, exiting the official asylum system and becoming "an illegal." What sense of the word does this hold, though, when the option to be documented can be as precarious as to be undocumented? As Ava explains regarding her inconsistencies, this is not exceptional but rather part and parcel of the functioning of a system that can only see dichotomy:

> It's not a life. I am actually living like someone who is illegal in a country where I am using legal papers because everywhere you go they will tell you, "No, this is not you."

Ava in particular has become more and more frustrated with the system's inability to acknowledge her. Although her case is specifically about her gender, she is not alone in finding the lack of general acknowledgement of her claim to refugee status and the constant renewals of her asylum papers exhausting. Eithne Luibheid (2002: 144) notes in passing in the closing chapter of *Entry Denied* that fraud and the

subversion made possible through forged documents may be dismissed as lawless by the state but can also be usefully read "as a competing system of knowledge that is brought against the State." Ava believes the reason that her asylum claim is constantly renewed – which she sees as akin to denial – is because "they think you consuming the country, you consuming them, so it will be no." Tey Meadow (2010: 832) notes that should legal constructs of gender be unable to keep pace with, or account for, the current manifestations of genders (which she calls contemporary demands for fluidity), "it will become even more difficult to quantify and achieve legal gender recognition." The constant inability to function on a day-to-day basis has driven Ava to a point of corruption. Note here that it is a combination of the repetitive nature of her life as an asylum seeker, in combination with incongruent documents as a transgender person, and the almost everydayness of this experience:

> I am tired of every time having to explain, I am tired of having to go all the time. So I have two paper: I am having a fake that says it is me, female, and I have a legal one [which says male …]. I paid ZAR 250 I use the same names. My names are not complicated for me and the new picture of me and the gender female not male […,] I just have to walk with it or to apply for jobs maybe. If now I am applying my CV is female, if they ask me my ID then I will bring them that paper so I don't have to show them the real one because if I show them the real one telling the whole fucking story I don't want that.

This regime of documents is used to prove that one is who one claims to be, particularly when seeking a service from the state or applying for a job. A document, in this case an asylum-seeker paper provided by the Department of Home Affairs, sets the groundwork for other necessary documents, or works as what is known as a "seed document" (van der Ploeg 1999: 38). When a false seed document is attained, as Ava has already done, it can be used to attain other identity documents that, "in accumulation, are supposed to present reliable evidence of a person's identity" (van der Ploeg 1999: 38). She explains that this is only a make-shift plan to address her immediate need to navigate day-to-day life with a relative sense of safety and to access employment. Her real project is far more cunning: Ava plans to apply for a new passport at the consulate of a country that borders her country of origin:

> To get passport from [Country B …] embassy here is easy […]. I want to got to Pretoria and apply for passport and then get my female passport which is going to be easy because I have already got a connection in the embassy – the woman who interviews

people […;] when you a refugee and you want to leave refugee system because you want to apply for the passport, they only ask you what paper you use. You show them you used their paper, they will read it and then they will ask you if you left the country before the elections. So I tell them I left the country before the elections. I tell them I speak the languages […] so I go passed interview, of course I don't want to be a [… Country of Origin] identity anyway [….] I am not a corrupted person but I've done corruption […] to get my way […;] you have to do what you have to do to get your life.

Life here for Ava is moving into binary and being seen as the woman she is – being in control of her visibility. This is predicated, however, on exiting asylum. It would seem that being able to pass and move into a binary position would resolve the need for community support. Ultimately, for those in constant visibility, rights and the claiming of rights – whether to protection or to state-sanctioned paperwork – ensure visibility. The logical conclusion of exiting or falling out of the system is statelessness and compounded erasure, unless – like Ava – there is a way in which to reclaim community, reclaim humanness through binary presentation, and manoeuvre through the system.

Not the System: Trans Men

Arthur and Tom both entered South Africa using work/student visas. Arthur, having accessed both gender-affirming surgery and hormone therapy prior to arriving in South Africa, lives, identifies, and – vitally for him – passes as a man. Through some deft handling of his country's administrative system, he was also able to have his passport changed to male – a near-impossible feat – thanks to a series of "friends" he had who worked in various areas of his country of origin's administration. Tom, on the other hand, has just started transitioning in South Africa.[16]

Arthur came to South Africa because he knew that it was the only country where transgender people within Africa could access gender-

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16   It should be noted here that it is generally agreed that trans women and transgender people who are non-binary face greater struggles globally. It is often harder for them to pass, to find access to gainful employment, and to be treated with respect. This, as Julia Serrano notes, can be attributed to the fact that "women's appearances get more attention, women's actions are commented on and critiqued more than men['s], so in that world it just makes sense that people will focus more on trans women than trans men" (see Alter 2016).

affirming healthcare with a certain level of ease. After his transition, he did not want to return to his home country or community. Unlike other participants who came to South Africa actively to pursue rights and freedoms, Arthur came to live "like a normal guy under the radar." Critically, he does not identify as transgender; rather he is just a man. This is in contrast with the other participants who *need* to identify as transgender or gay within the asylum system – a system that requires exposure for protection. South Africa represents the possibility of a new life where his past is unknown.

> I know for a fact if I go back to the house [where] I used to stay, the society, the village, the township that I used to stay, they will know. It's going to be hard because they know me from my childhood, they saw me grow up. Now I come back and say, no, this is who I am right now. It's going to be tough and for the sake of my family […] I wanna save them the shame.

Tom has a job and a work permit and, by extension, self-reliance; this means he very rarely has to say anything to anyone, and his survival is not predicated on his visibility. He is not looking for public benefits or for the state to provide anything, including access to gender-affirming healthcare, as he can afford private access. Tom understands himself as a man who wants to access gender-affirming healthcare available in South Africa, but not necessarily be anything other than "a person." As with Arthur, personhood is central here, and is to a certain degree maintained by a combination of passing and avoiding state administrative systems.

For Tom and Arthur it is their ability to pass most of the time, if not all of the time, as cisgender, in combination with paperwork and employment, that allows them both a life that is liveable – where they do not rely on state systems for protection or access to rights. What is clear here is that

> transgender bodies that conform to a dominant standard of dress and behaviour may be legible to the state not as transgender at all, but instead as properly gendered and "safe." But not all gendered bodies are so easily normalised. (Beauchamp 2009: 359–360)

Arthur is not oblivious to the privileges that his documents, masculinity, and "common-sense" passing have provided him. He is adamant that the lives of trans men are far easier and happier than those of trans women.

> I feel so sad for trans women because not only here but wherever they are it is known that these are men. It's never been easy [….] I have friends in such situations as well. That's hard, for them it's

very hard. You can just identify them by looking at them. That's where the problem starts.

For Arthur, there is a clear tension between access, passing, visibility, and rights. He suggests that those at the lowest rungs of society are most desperate for rights: being both the most visible and the most in need traps them in a continuous cycle of visibility. Arthur believes that as long he avoids interactions with the state, his life is actually better than even South African transgender men. To his mind, he has been able to come to a country with access to the necessities for his existence and start a new life, unknown. However, he believes that South African trans men have similar access and opportunities but they cannot go anywhere, they will always be known. They cannot escape their families, their communities, their relatives, and their childhoods:

> I've met some of the South African trans men […;] they are also going through the same challenges by means of family issues and relatives and friends [….] [T]his is their home country and people know them from their childhood, and when it comes to job it's also difficult for them because of their names, their IDs, and certificates [….] [M]eeting those kinds of friends you feel […] lucky God has given me a favour […]. So I'm very happy with my life.

Even his choice to become a participant was for him in his complete control in that in order to be a participant – as he pointed out – he had to make himself visible to me. Moreover, what he also points out here is that in passing and being read as a man by society, his community is other men:

> You meet me on the road I'm just like any guy. I don't go chasing for rights and stuff like that because you know […]. It's a little bit selfish but it just makes me accepted. It makes me feel accepted and I like it […]. For me personally I don't like to put myself in a private corner where I see that I am different from other guys. I like to associate myself with other male friends. Whatever they do I do, so I feel part and parcel of them.

He has been able to provide the basic necessities for himself because his documents align with how he presents and he is considered normative in the eyes of society. Arthur and Tom do not need to "chase rights" because they have personhood, they have national identities, permits allowing them work, socio-economic safety, community and, most importantly, genders readable in a system that relies on "common-sense"

assumptions. As Arthur reiterates, "I don't care much about the rights whatsoever because I'm not going to claim them anyway."

To be clear, it is not that trans men, as men, in this case can access greater socio-economic resources but rather that people who pass, in this particular example these two foreign trans men who have papers identifying themselves as such, find it easier to navigate South African society. They do not rely on the state and are in many senses not state-less, having been recognised bureaucratically. Ava, too, eventually fell into this group, having found a way out of the system. She, in both passing and purchasing documents, has also become part of the broader community of "rightly" gendered humans, validating "common-sense" readings of gender verified by her bribed identity documents.

Conclusion

Gender refugees, in coming to South Africa and applying for asylum, enter a kind of limbo: they cannot go but they also struggle to stay. They are allowed in but evidently nothing more. They cross the border, and have every right to do so, but that does not mean that the state or South African society for that matter in any way has to allow them a notion of home or a recognisable life. South Africa enshrines a universal approach to human rights that by extension should encompass transgender identity and expression. In fact, in many ways, it is this recognition that gender refugees hope transgender will do for them in the country. Yet, beyond the doors of the RRO, the notions, perceptions, and imaginings of gender refugees – those ideas, as Arthur notes, of "freedom, freedom, freedom" – meet the actuality of a space that is structured very much like the countries most asylum seekers have just fled.

In relation to asylum, there are clearly two strategies being deployed by gender refugees in South Africa. The first group, though they can claim asylum, have specifically chosen not to. They actively choose not to enter the system because they pass, and by passing – in this case as men (although Ava may soon be included in this group) – in society, they have already entered the zone of the living. For them, being transgender is a means to accessing healthcare and something to be hidden. The second group is populated mostly by asylum seekers who, as transgender-identified, feel they are women or on a spectrum of feminin-ity: their documents, however, read as assigned male. They apply for asylum in the clear hope (predicated on rights enshrined in the Constitution) that there will be recognition by the state of their trans-gender status, enabling access to safety, protection, personhood,

membership within a community of others, and a place in the zone of the living, or a liveable life. This group – as has been argued – find the requirements, either of being acknowledged directly or of maintaining their presence within the asylum system, almost impossible. The inability to be seen by the state in relation to their gender identity and their official documents is only one hurdle. In cases where socio-economic security is available – either through sponsorship or actual employment – falling out of the system is seemingly slightly less brutal, but eventually, every participant who has turned to the state for assistance has had to trade in some sort of illegality in order to survive.

When Arendt suggests that perhaps there needs to be more investment in the "right to have rights," she is arguing for rights based on humanity and not citizenship. Refusing the logic of binaries inherent within the structure of human rights frameworks, though among these binaries male/female is not mentioned, it is plausible that Arendt might support this position. Treating statelessness/rightlessness as an anomaly or a transitory or exceptional state has allowed for the system within which transgender asylum seekers have to move to remain intact, "avoid[ing] a radical questioning of its underlying principles" (Gündoğdu 2014: 112). One of these principles, as I have argued elsewhere, is the necessity of sex/gender as a critical organising principle within this system. The inability of transgender asylum seekers to find a place and protection within the broader structure of South African society and the asylum system (perhaps even globally) is not a transitory position or exceptional. Instead, it is an indication of a crucial issue, a symptom of broader issues with the framework within which transgender refugees and asylum seekers are expected to navigate access to safety and protection. It also suggests tensions regarding rights, gender, and asylum beyond a local framework.

As has been shown by the focus on the hindrances to local integration in relation to community and familial issues, the nature of asylum in South Africa is turbulent at best, making survival for the average asylum seeker difficult. Being transgender often obstructs access to traditional asylum support networks, employment, and shelter, requiring NGOs to fill the gap. NGOs, for their part, are not equipped to deal with the very specific needs of individuals who are both asylum seekers and transgender. The combination of these pressures ensures that transgender asylum seekers eventually find themselves either falling out of the asylum system altogether or becoming pinned within an endless cycle of asylum-paper renewal, seemingly stuck. Transgender becomes – or is – stuck, too: in coming to South Africa, transgender people believe they will access

humanity and be protected. But it is only those who do not obviously violate the "common-sense" readings of gender, who are able to actively manipulate the system, those enclosed within the "intricate web," that are able to do so. For the rest, because they violate the rules of normative gender that still apply here, they find themselves with rights but without community, home, or security, and so unable to fully actualise these rights.

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„Genderflüchtlinge" in Südafrika: Das Paradoxon des „gesunden Menschenverstandes"

Zusammenfassung: Südafrika ist das einzige Land auf dem afrikanischen Kontinent, das Transgender-Asylsuchende verfassungsrechtlich schützt. Dies erklärt den deutlichen Anstieg dieser Personengruppe im Asylsystem. Untersuchungen zwischen den Jahren 2012 und 2015 zeigen allerdings, dass als transgender bezeichnete Flüchtlinge oder „Genderflüchtlinge" in Südafrika statt Zuflucht weiterhin erhebliche Hürden im Alltag erfahren, die vergleichbar mit der Verfolgung in ihren Herkunftsländern sind. Ich argumentiere, dass dies zum Teil auf die Art ihres Asylantrags in Bezug auf das Geschlecht als ein System der dichotomen Verwaltung „des gesunden Menschenverstandes" zurückzuführen ist. Anstatt geschützte Genderflüchtlinge zu sein, werden sie als die Norm verletzendes Geschlecht angesehen. So finden sie sich paradoxerweise mit Rechten ausgestattet, aber unfähig, diese einzufordern.

Schlagwörter: Südafrika, Transgender, Geschlechtsidentität, Migration, Flüchtling und Asyl