

**Male Sex Work within Transnational Migration: Exploring Identities, Practices for Survival, Vulnerabilities and the Law in the South African Context**

**By**

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Mini-dissertation submitted in partial fulfilment for the requirements of the degree: Master of Philosophy (MPhil) in Sexual and Reproductive Rights

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**July 2017**

## **DECLARATION**

I, Yumba Bernadette Kakhobwe, hereby declare that this mini-dissertation, submitted in partial fulfilment for the MPhil in Sexual and Reproductive Rights at the University of Pretoria is my original work. It has not been presented at any other university or institution. All sources used and cited have been duly acknowledged.

**Signature:** .....

**Date:** .....

This dissertation is submitted for examination with my approval as supervisor.

**Signature:** .....

## **DEDICATION**

I would like to dedicate this mini-dissertation to my siblings: Nthanda, Penelope, Gregory, Eugenia and Edwina. Love, laugh, dream, dare, pray!

## **ACKNOWLEDGEMENTS**

I would like to thank He who has kept me, cushioned, comforted and blessed me. It is the simplest yet most profound things that continue to remind me of His presence, especially in the darkest of days.

To my parents, for providing me with a foundation in the best way you could. Thank you for the sacrifices you make so that I can have choices and a chance to soar on my own terms.

To my siblings: Nthanda, Penelope, Gregory, Eugenia, Edwina. My little people: Dalitso, Yami, and Matthew, and to the ones still to come.

To my friends: Angela Zeleza, Faith Kachimera, George Naphambo, Ongezwa Mbele, Tapiwa Nkhoma, Thenji Mbayiwa, Veronica Fletcher. Thank you for still being here and for remembering me even in the busyness and challenges of your own lives. To my champion, my anchor, my friend, my playmate: Chancy Chaguluka, for helping me find light.

I would like to acknowledge the Centre for Sexuality, AIDS and Gender (CSA & G) which was previously known as the Centre for the Study of AIDS (CSA). Thank you for helping me find my way and purpose.

Lastly, I would like to extend my appreciation and eternal gratitude to my supervisor, Professor Charles Ngwena, for the dignity and finesse with which you always carry yourself. Thank you for inspiring me, for helping me to build confidence in my writing and for always demanding excellence even when it feels like I cannot give anymore.

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## SUMMARY

By paying attention to male sex workers specifically within transnational migration, this study hopes to give greater prominence to discourses on sexual minorities within academia. Furthermore, it is the intention to show the possibility of unearthing queer narratives in contexts and spaces that only seem to reflect gender binaries and hetero-normative arrangements. Therefore, a challenge to no longer limit our observation of the human condition and experiences, particularly as they relate to gender identity and sexuality is posed. Although South Africa is the main jurisdiction of the study, the particularities of its social, political and cultural landscape provide an opportunity to peer into both local and regional responses to so-called 'sexual subversion' and sexual diversity. Very significant to 'the politics of the queer' has been the manner in which states may be implicated in the concealment of narratives and the creation of 'silencing cultures' that make knowledge building around issues such as male sex work within transnational migration complex. Efforts to configure these trials within a human rights framework continue to be met with resistance, as states make use of legal provisions and hostile articulations against what are claimed to be perverse and impermissible sexualities. Therefore, there is an intention on their part to ward off contaminating elements that are regarded as threats to nation-state sovereignty as well as possibly halting an allegedly corruptive Western influence. It is thus the goal of this study to add nuance to discourses on sexual diversity, merging literature in a manner that will elevate queer narratives but also highlight chasms in academia, policies and practices.



## CHAPTER 1: INTRODUCTION TO THE STUDY

### 1.1. Introduction: Background to the Study

Within migration studies, gender as an area of interrogation is a slowly evolving phenomenon. This is illustrated in many circumstances as being particularly sensitive to the fluctuations of economies and development, or in some cases the lack of development of societies. It was once an area that for the most part focused on men's migration for work in relation to the proliferation of industries. This was later followed by the increased migration of women to diverse parts of the world. Motivations for women's migration predominantly centred on the preservation of the nuclear family. Many of the narratives include settling into informal kinds of labour, with domestic work being the most prevalent.<sup>1</sup>

Links have been made between globalisation and failing state welfare systems, particularly in Third World<sup>2</sup> contexts in which women especially have been adversely affected. Furthermore, this has aided in advancing the phenomenon of the 'feminization of poverty', which women would seek to mitigate through their migration.<sup>3</sup> Additionally, whether intentionally or not the majority of the narratives on migration and gender are built around heterosexual identities and experiences.<sup>4</sup> Whether this reflects an indifference to sexual diversity within academia is uncertain. However, this constitutes missed opportunities to unearth migratory narratives embedded with grains of sexual diversity that may possibly enrich the individual or hybrid studies of human rights, migration, gender or sexuality prevail.<sup>5</sup>

This study will therefore look at male sex work, specifically within migration. It will delve into the different ways in which male sex work may intersect with social, cultural and legal frameworks. Within a context in which migrants have left their home countries, family and familiarity, the study seeks to critically explore how receptive South Africa is as a destination for settlement. Possible responses to male migrants who find themselves in sex work, the vulnerabilities that may manifest, as well as the strategies used for survival will be considered. Together with an analysis of discourses on

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<sup>1</sup> K Kempadoo 'Global sex workers' rights' (1998) 22 *Canadian Woman Studies* 145; SM Sinke 'Gender and migration: Historical perspectives' (2006) 40 *The International Migration Review* 92.

<sup>2</sup> The use of the term 'Third World' for the purpose of this study may be taken to mean developing countries, at least when compared to First World countries such as the United States, United Kingdom and France.

<sup>3</sup> AM Jaggard 'Transnational cycles of gendered vulnerability: A prologue to a theory of global gender justice' (2009) 37 *Philosophical Topics* 33-34.

<sup>4</sup> MF Manalansan IV 'Queer intersections: Sexuality and gender in migration studies' (2006) 40 *The International Migration Review* 224.

<sup>5</sup> Manalansan IV (n4 above) 224.

sex work, sexuality, gender and migration, South Africa provides a uniquely challenging setting. Not only is sex work illegal, attacks against foreign nationals either sporadically or through organised mobilisation are known to erupt. Furthermore, despite prohibiting discrimination on the ground of sexual orientation within the South African Constitution,<sup>6</sup> homophobia is rife.<sup>7</sup>

In its seemingly apparent affront to dominant hetero-normative masculine codes, an opportunity to explore male sex work through the lens of queerness within an African context is presented. Furthermore, an opening is created to question dominant perceptions of African sexualities, understood to be static within many cultural spaces.<sup>8</sup> Interestingly, the notion of static sexualities is being increasingly challenged by African writers on sexuality who through their works show their discontent with inflexible gender and sexual binaries.<sup>9</sup>

There is a substantial body of work that covers female sex work, not only in relation to migration but also modes of operation, stigma, trafficking and agency. One of the distinct characteristics in the advancement of globalisation continues to be the movement of bodies from either rural to urban spaces, across regions and even continents.<sup>10</sup> Within the context of migration and globalisation, female sex work has taken shape in diverse and unique ways, with women travelling specifically for the purpose of sex work or finding themselves in circumstances where they become sex workers. Added to this is the growing occurrence of sex tourism with the movement of bodies, usually from the North, to what are regarded as exotic and less sexually restrictive locales in order to seek out sex workers.<sup>11</sup>

Male sex work, though traceable from as early as the Seventeenth Century,<sup>12</sup> continues to be on the fringes of academic discourse. Furthermore, it is only

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<sup>6</sup> Article 9(3) of the Bill of Rights in the Constitution of the Republic of South Africa, 1996, referring to equality states that: 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation...'

<sup>7</sup> M Mutua 'Sexual orientation and human rights: Putting homophobia on trial' in S Tamale (ed) *African sexualities: A reader* (2011) 457-458.

<sup>8</sup> V Reddy 'Homophobia, human rights and gay and lesbian equality in Africa' (2001) 16 *Agenda* 83; S Nyanzi 'Dismantling reified African culture through localised homosexualities in Uganda' (2013) 15 *Culture, Health & Sexuality* 954.

<sup>9</sup> J Bennett 'Subversion and resistance: Activist initiatives' in S Tamale (ed) *African sexualities: A reader* (2011) 80; S Tamale 'Researching and theorising sexualities in Africa' in S Tamale (ed) *African sexualities: A reader* (2011) 11.

<sup>10</sup> R Holmes 'Selling sex for a living' (1994) *Agenda* 37.

<sup>11</sup> NA Wonders & R Michalowski 'Bodies, borders, and sex tourism in a globalized world: A tale of two cities - Amsterdam and Havana' (2001) 48 *Social Problems* 545-547.

<sup>12</sup> TD Logan 'Personal characteristics, sexual behaviors, and male sex work: A quantitative approach' (2010) 75 *American Sociological Review* 681.

mildly visible in the context of public health concerns and HIV/STI<sup>13</sup> prevention programmes,<sup>14</sup> and within the human rights arena particularly in the face of suppressive anti-homosexuality legislation.

Like female sex work, male sex work may offer potential for depth of knowledge and complex nuances that may not only contribute to migration and gender studies, but give further insight into sexuality. In addition, the intersection between sex work and race, class and gender provides further insight. This study aims to go beyond viewing migration through the 'push' and 'pull' factors of markets that tend to dominate migration studies.<sup>15</sup> While not disregarding economic factors, within a human rights framework it is also essential to begin to privilege the manner in which desire, sex, sexuality and sexual identity define migratory narratives.<sup>16</sup> Moreover, how migrants 'engage and reshape desire and sexuality in various sex/gender systems in multiple social spaces' is worthy of investigation.<sup>17</sup>

## **1.2. Problem Statement**

According to Pessar and Mahler, 'despite the separation between scholarship on sex work and on migration, in practice the two phenomena are frequently linked and reinforcing.'<sup>18</sup> In the exploration of male sex work within the context of migration, attention will be given to the motivations for leaving one's home country as well as the modes of operation as a male sex worker. This is particularly interesting in a context such as South Africa where disenfranchised foreign sex workers may be vulnerable to xenophobia, homophobia, deportation (in the case of illegal immigrants) and the criminalisation of sex work. In addition, the manner in which male sex workers shift sexual identities and negotiate who they were within their home countries, the roles played in their host countries and within the context of sex work will be investigated. Furthermore, the process in which male sex workers create networks for support, survival, comfort, safety or familial/home country familiarity will be probed.

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<sup>13</sup> HIV refers to Human Immunodeficiency Virus and STIs refer to Sexually Transmitted Diseases.

<sup>14</sup> LC Rispel & CA Metcalf 'Breaking the silence: South African HIV policies and the needs of men who have sex with men' (2009) 17 *Reproductive Health Matters* 133-34.

<sup>15</sup> C Howe, S Zaraysky & L Lorentzen 'Transgender sex workers and sexual transmigration between Guadalajara and San Francisco' (2008) 35 *Latin American Perspectives* 32.

<sup>16</sup> Howe, Zaraysky & Lorentzen (n15 above) 32.

<sup>17</sup> AJ Cravey 'Desire, work and transnational identity' (2005) 6 *Ethnography* 357; SJ Mahler & PR Pessar 'Gender matters: Ethnographers bring gender from the periphery toward the core of migration studies' (2006) 40 *The International Migration Review* 29.

<sup>18</sup> PR Pessar & SJ Mahler 'Transnational migration: Bringing gender in' (2003) 37 *The International Migration Review* 837.

For the purposes of this study male sex workers are men who may identify as heterosexual or homosexual. In addition, they may have sex exclusively with either men or women. They may also have sex with both men and women. Both female sex work and male sex work occur in a transactional setting in which sex will primarily, but not exclusively be exchanged for money. It is significant to note at this juncture that the sexual orientation or sex of the sex worker will not necessarily dictate their sexual practices with clients.

### **1.3. Research Questions**

The following questions have been framed in order to create a foundation on which this study is built. They provide insight into the broader issues which were broken down and refined during the research process with the main jurisdictional context being South Africa:

#### 1.3.1. Main research question

Within the context of transnational migration, what challenges does the social, cultural and legislative framework in South Africa pose for foreign male sex workers?

#### 1.3.2. Sub questions

- I. What are the different intricacies of male sex work and how different or similar is it to female sex work?
- II. What are some of the forces behind transnational migration and eventual entry into male sex work?
- III. What are the different vulnerabilities that foreign male sex workers may be exposed to? How are they navigated?
- IV. How does one negotiate their identity outside sex work with their identity as a male sex worker? What are some of the challenges?
- V. What are the networks or support structures created in order to cope with being in a foreign country but also with being a male sex worker?
- VI. What appropriate human rights mechanisms may be useful in addressing the diverse circumstances of male sex workers in transnational migratory contexts?

#### **1.4. Methodology**

The study being undertaken is desk-based. It is my aim to contribute to the intersection between human rights, gender, sexuality and migration. Furthermore, the intention is to bring to light what I regard as missing from academic discourse and literature within the South African context. This includes the link between sexuality and migration, the invisibility of counter-hegemonic narratives and the intersections that occur within the context of male sex work. Based on the fact that the occupation of male sex workers makes them a population that is not easily accessible, I have primarily made use of literature on sex work, sex, gender, sexuality and migration.

Employing a human rights perspective as well as critical theory and post-structuralism doctrine to the issue of male sex work, this dissertation attempts to illuminate and elevate nuances of the male sex work debate. Most importantly, by sifting through discourses of law, human rights, history, gender, sexuality and migration, this study aims to not only apply a human rights framework, but to view the lives and experiences of sex workers by destabilising and resisting traditionally applied gender binaries.

#### **1.5. Importance of this Study**

Male sex work on the African continent, as a research area, remains quite novel. Although there is a growing interest in men who have sex with men (MSM), especially in response to repressive anti-sodomy laws that have had grave implications for the health and security of MSM due to stigma, the investigation of male sex work with all its possible complexities has been greatly untapped. Certainly, there may be overlaps with female sex work. However, the manner in which men are discursively produced as subjects within social and political contexts may have a unique bearing on how they experience sex work. This may even affect the power dynamics of transactions with clients in comparison to their female counterparts.

The African continent, though with resistance continues to engage with the subject of sexual minorities. It is undoubtedly the opportune moment to challenge the hetero-normatively defined binaries that have dictated and implied that the manner in which sexual identities manifest and are expressed can or should be contained. In addition, what should be defied is the notion that anything other than what is prescribed should be regarded as deviant. Male sex work thus provides an opportunity to delve into rich and diverse perspectives that move away from the daily impositions of essentialist identities.

## **1.6. Limitations of this Study**

As an area of investigation, male sex work and transnational migration in the African context come with certain telling challenges in relation to the subject of sexualities. Even as a perceptibly marginalised population in which a variable number of vulnerabilities seem apparent, the subject of male sex work in itself remains gravely unexplored on the African continent. This is noticeable not only from the perspective of public health, but within academia too. From what is known, for male sex workers unlike their female counterparts, invisibility is a significant part of their *modus operandi*. This may perhaps speak to an understanding of legislation or possibly knowledge of the social responses to sexual practices that are considered to be counter-hegemonic. In the South African context specifically, not only is sex work criminalised, but sexual practices thought to subvert the norm have been met with violent reaction in certain spaces.

Besides a lack of available literature on male sex work in the African context, the clandestine nature in which they operate makes male sex workers a hard to reach population. This means it is difficult to allow male sex workers to speak and narrate their experiences on their own behalves. This is unfortunately a reality that this study acknowledges as missing from the vast literature on sex work, and is therefore not particular to male sex work. Nonetheless, the objective of the study is to deliver a nuanced exploration of male sex work within transnational migration, and its intersection with a myriad of social, cultural, political, legal and human rights debates.

## **1.7. Conclusion**

This chapter has provided background into the phenomenon of male sex work and migration. Furthermore, insight into how male sex work intersects with cultural, social and political discourses on sexuality is given. Particularly significant to male sex work is the manner in which it is said to subvert hegemonic gender binaries which are thought to be fixed. This is an issue which is disentangled throughout this study.

The following chapters will gradually unpack male sex work as an occupation pathologised due to the manner in which it is said to steer away from traditionally accepted forms of sexual expression. Chapter 2 consists of the literature review and will put many of the abovementioned debates into perspective. A broad understanding of sex work will be afforded, including the link to gender binaries and how this impacts on the differently lived experiences of sex workers. Some of these experiences may be dependent on

sex and sexual practices. Chapter 3 and 4 will discuss and tackle many of the debates found in the literature review. Chapter 3 has been divided into two sections. Finally, Chapter 5 contains the concluding remarks.

## **CHAPTER 2: LITERATURE REVIEW**

### **2.1. Introduction**

The following literature review together with the study as a whole aims to create an opportunity to advance the politics of queer. This will be done by delving into male sex work within transnational migration. Debates on gender binaries, sexual identities and sexual practices in the case of male sex work, and how this comes to define one's place, purpose and experiences within society will be an integral part of the literature review. These discourses feature prominently throughout the study.

Drawing on the literature review, this chapter provides a broad understanding of sex work, and more specifically highlighting many of the contemporary debates on this subject. The intersections between sex work with other social, cultural, political, legal and human rights discourses are examined. On one hand, African and global anti-homosexual sentiments are located. In many contexts they have found expression within legal frameworks. This gives some insight into possible perceptions of male sex work. On the other hand, in the case of South Africa, there is a unique opening in which to consider male sex work due to the criminalisation of sex work, together with the provision of non-discrimination on the ground of sexual orientation as stated in the South African Constitution<sup>19</sup> in a context where homophobia is argued to be prevalent.

### **2.2. Exploring Intersections between Male Sex Work and Female Sex Work**

The body has been referred to as a site of conflict. It is imbued with political, religious and cultural ideology.<sup>20</sup> Taylor argues that 'essentialist constructions of gender and heterosexuality blur understandings of sexual exploitation and victimhood'.<sup>21</sup> On the one hand, the bodies of women and specifically the preservation of their sanctity seem to be linked to the honour of their families, communities and nation-states and investment in 'social ideals of female heterosexuality'.<sup>22</sup> Furthermore, women are 'rendered subordinate, within a social world constructed by men'.<sup>23</sup> On the other

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<sup>19</sup> Article 9(3) of the Constitution of the Republic of South Africa, 1996.

<sup>20</sup> Holmes (n10 above) 40.

<sup>21</sup> JS Taylor 'Female sex tourism: A contradiction in terms?' (2006) 83 *Feminist Review* 42.

<sup>22</sup> Taylor (n21 above) 47.

<sup>23</sup> J Gaffney & K Beverley 'Contextualizing the construction and social organization of the commercial male sex industry in London at the beginning of the Twenty-First Century (2001) 67 *Feminist Review* 134.



hand, the bodies of men though also sites of conflict have conferred upon them the responsibility of guardianship and of maintaining the moral integrity of societies. This is achieved partly through the use of surveillance and control over women's bodies, but most importantly women's sexuality.

For women that fail to uphold the required standard of hegemonic heteronormativity, particularly by exploring beyond the bounds of endorsed sexual practices and expressions, female sex work shows that punishment is harsh, prone to pathologising and reducing women to public ridicule and spectacle. This has often resulted in stigma and discrimination, as well as the manifestation of repressive laws. Paradoxically, the increased regulation of sex work continues to give greater visibility to female sex workers than male sex workers.<sup>24</sup>

The wide availability of literature on female sex work may be owed to the possibility that historically there has been greater prevalence of female sex work than male sex work. However, this is a perception not factually proven as the greater public visibility of female sex work does not necessarily imply that male sex work did not exist in greater or equal numbers. What is clear, however, is the fascination with what is regarded as female deviance, whether in a religious moralising context or academia.

Particularly problematic has been the commodification of intimate relations that traditionally have been reserved for the enjoyment of men, especially husbands or for the purpose of reproduction.<sup>25</sup> Therefore, female sex workers 'demand more money than women should, for services men expect for free'.<sup>26</sup> Just as difficult to absorb has been the development of a 'recreational sexual ethic' driven by sexual urge and sensation outside the bounds of marriage<sup>27</sup> with all relationships outside marriage 'diminishing in respectability'.<sup>28</sup> Constable suggests that rather than mourning these changing relations, it is essential to 'attend to the multiple, complex, transnational, and also transgressive and transformative ways in which emotional ties and relationships are understood, formulated, or prohibited within and beyond local and global spaces'.<sup>29</sup>

It is possible that the very clandestine nature of male sex work in the African context could explain its neglect as an area of study. The rarity of the study of men as 'intimate gender subjects' requires increased research

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<sup>24</sup> Gaffney & Beverley (n23 above) 134.

<sup>25</sup> N Constable 'The commodification of intimacy: Marriage, sex, and reproductive labor' (2009) 38 *Annual Review of Anthropology* 54.

<sup>26</sup> A McClintock 'Sex workers and sex work: Introduction' (1993) *Social Text* 1.

<sup>27</sup> Constable (n25 above) 55.

<sup>28</sup> K Davis 'The sociology of prostitution' (1937) 2 *American Sociological Review* 747.

<sup>29</sup> Constable (n25 above) 58.

into a subject that is not only counter-hegemonic but may provide insight into 'transnational intimacies'.<sup>30</sup> The lack of attention given to male sex work may also point to the difference in which male identities are framed within societies. While the deviance of women may be unforgiveable, in comparison, similar acts by men can be excused as mere mischief.<sup>31</sup> It may be plausible that the threat of male deviance may not lie in the exploration or experimentation of vice, or the subversion of constructed masculinities. Instead, the actual threat may simply be in the possibility of its permanence.

Female sex workers are generally known to service men, however, very little has been written about sexual diversity within female sex work. In the case of male sex work, literature indicates that although a majority of the clients of male sex workers are men, most male sex workers will not necessarily identify as homosexual or even as sex workers.<sup>32</sup> It is thus worth considering how men and women have been framed historically. How the gender binary may shape the experience of sex work, as well as the social and structural realities that may be linked to the sex of sex workers may also call for further enquiry.

### **2.3. Modes of Operation in Sex Work**

Perusing through literature, one sees that there are indeed similarities in terms of the way both female sex workers and male sex workers operate. Luckenbill is of the view that although modes of operation provide different levels of advantage and disadvantage, especially with regard to safety and resources, they are not separated by prestige.<sup>33</sup>

Street sex work, usually occurring in public spaces such as parks or streets and alleys may entail brief transactions. Brothel sex work can include both brief and prolonged sessions that may cover a variety of services. These services may depend on the sex worker, or based on what services a client is willing to pay for. Furthermore, rooms are rented for transactions. In the case of escort agencies, a share of the money made by sex workers is given to the agency and sex workers do not have to go through the tedious process of finding and vetting clients as an agency would do this on their behalf.<sup>34</sup>

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<sup>30</sup> Constable (n25 above) 58.

<sup>31</sup> D Romesburg '“Wouldn't a boy do?” Placing early-Twentieth-Century male youth sex work into histories of sexuality' (2009) 18 *Journal of the History of Sexuality* 367.

<sup>32</sup> Romesburg (n31 above) 383-384.

<sup>33</sup> DF Luckenbill 'Deviant career mobility: The case of male prostitutes' (1986) 33 *Social Problems* 286.

<sup>34</sup> Logan (n12 above) 681.

Street sex work in the case of both female sex work and male sex work is the most common and lowest form of sex work, with the least amount of earnings.<sup>35</sup> However, escorts are more tolerated possibly because of their invisibility even in plain sight.<sup>36</sup> Furthermore, within the sex work industry, street sex work due to its haphazard nature does not necessarily depend on the availability of specific venues or require gatekeepers. This is unlike bars that may have bouncers that refuse entry to sex workers wanting to conduct business with patrons, or escort agencies that may exclude sex workers based on levels of attractiveness.<sup>37</sup>

There are other modes of operation in sex work not common in the South African context that male sex workers do not seem to be associated with. Female sex workers, for example, might display themselves in doorways and windows advertising their availability. For the most part, in comparison to female sex work, male sex work seems to encompass a great deal of invisibility, and independence, making use of private and confined spaces. Particularly for heterosexually-identifying male sex workers, anonymity within public spaces can be maintained by blending into areas or establishments not often frequented by their peers, such as gay bars, bath houses or adult movie houses. For the purposes of this study, it may be interesting to peer into what modes of operation are available to foreign male sex workers. This is imperative because of the criminalisation of sex work, and, but also because of the implications of detection due to possible illegal immigrant status.

#### **2.4. Male Sex work and African Masculinities: Shifting Identities and the Sexual Subject**

Masculinity, specifically as some literature has suggested, becomes a domain of complexity, displaying both the conformity and contradiction of the sexual subject in relation to constructed binaries. As some academics have suggested over time, what can be contested is the stability of identities and the formation of social subjects.<sup>38</sup> Within the context of specifically African masculinities, homosexuality, same sex acts or anything other than

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<sup>35</sup> C Harcourt & B Donovan 'The many faces of sex work' 3 November 2005 <http://sti.bmj.com/> (accessed 23 February 2016) 202.

<sup>36</sup> Harcourt & Donovan (n35 above) 203.

<sup>37</sup> Luckenbill (n33 above) 288.

<sup>38</sup> J Butler *Gender trouble: Feminism and the subversion of identity* (1999) 10; S Hall 'Who needs identity?' in J Evans & P Redman (eds) *Identity: A reader* (2000) 17.

heterosexuality has been met with fiercely resistant homophobia, dismissed as a Western import and a stain on nation-state sovereignty.<sup>39</sup>

Male sex work, whether one identifies as heterosexual and has sex with both/or women and men, or identifies as homosexual and does the same, lodges a spanner in the turning wheel of the binaries that societies closely cling to. It also challenges the supposed natural inclinations towards sexual acts based on sex, bringing into question the fluidity of sexuality. Thinking in terms of sex work and migration, sexual fluidity may not exclusively be a physical experience, but a psychological shift teased out by unfamiliar circumstances or a new environment. Speaking of 'environment' or 'location' in their influence on sex work, Howe *et al*, propose that rather than simply perceive a border as a physical 'geopolitical marker' to perhaps view borders in 'metaphorical terms'. Transformation therefore becomes a part of the process of migration, shifting identities in response to the conditions of new territories.<sup>40</sup>

Admittedly, as some literature will show, much of sex work, whether involving males or females encompasses performance, 'a 'manufactured identity' for the work place, often cemented by ritual practice around time and space'.<sup>41</sup> Although referring to the role of stigma in forming sex worker identities, Scambler speaks of the possibility of compartmentalising or having 'multiple identities' and the displacement of '*grand* narratives by *petite* narratives' in which possibly sex work can be 'confined to one set of identities' in order to manage the stigma attached to sex work.<sup>42</sup>

To put the notions of both Howe *et al*<sup>43</sup> and Scambler<sup>44</sup> in perspective, Mai<sup>45</sup> provides the opportunity to juxtapose two different positions. Mai<sup>46</sup> refers to the experiences of young adult male sex workers from poorer parts of the European Union who migrated to more cosmopolitan cities of Europe. An 18-year-old Albanian male sex worker speaking about sex work stated that:

Yes, I do it . . . everybody does it . . . I started doing like all others . . . for money . . . it is not the kind of life that I would like doing . . . but it is the life I was given and I try and live it as much as I can . . . I would rather steal. . . I think it is better . . . if you sell sex you are over, you are not a man anymore . . . it is better to go to jail than to become a queer . . . In my country it is different from here . . . in my country

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<sup>39</sup> B Anderson 'The politics of homosexuality in Africa' (2007) 1 *Africana* 124.

<sup>40</sup> Howe, Zaraysky & Lorentzen (n15 above) 38.

<sup>41</sup> G Scambler 'Sex work stigma: Opportunist migrants in London' (2007) 41 *Sociology* 1082.

<sup>42</sup> Scambler (n41 above) 1089.

<sup>43</sup> Howe, Zaraysky & Lorentzen (n15 above) 38.

<sup>44</sup> Scambler (n41 above) 1089.

<sup>45</sup> N Mai 'Tampering with the sex of 'angels': Migrant male minors and young adults selling sex in the EU' (2011) 37 *Journal of Ethnic and Migration Studies* 1246.

<sup>46</sup> Mai (n45 above) 1246.

it is the greatest shame not only for me . . . I mean if I become a queer then all of my family loses its honour . . .

Mai<sup>47</sup> also describes the experience of a 22-year-old male sex worker living in Barcelona who explained that:

I am straight when I have money and bisexual when I don't . . . It is about the money . . . when I have money I go to girls and have sex with them . . . When I don't, I go to bed with men to have money . . . It is better like that, more clear-cut; you go and get what you want without problems . . .

The first excerpt shows the subject's difficulty in reconciling his participation in sex work with ideas of masculinity, manhood and family expectations. Shame and internal stigma are therefore an integral part of his experience as a sex worker and in his engagement in homoerotic acts. On the other hand, in the second excerpt, the young man consciously shifts sexual identities which he rationalises based on financial need. Although not clearly apparent from the excerpt, his financial needs seem to override possible feelings of shame.

Circumstances have shown that at times the lines between performance and reality can become blurred, especially when male sex workers identify as homosexual.<sup>48</sup> In a study on the history of youth male sex workers, Romesburg further sheds light on the way identity and occupation can become distorted.<sup>49</sup> Romesburg makes reference to a research subject named 'Edward' who identifies as heterosexual and has sex with men and describes that 'while he would 'rather have a girl anytime,' he enjoyed the feeling of men giving him oral sex, hugging him, and kissing him'.<sup>50</sup> Romesburg thus advises against basing analyses on sex work on the homosexual/heterosexual binaries.<sup>51</sup> In line with Romesburg, doing so may limit the way one thinks about the evolution of sex and sexuality and the 'general channeling of male sex work into circuits of 'gay history'... obscures the very real ways in which they fuse, differentiate, and run parallel to one another'.<sup>52</sup>

Viewing male sex work through migration may provide opportunities in which patriarchal notions of masculinity are challenged whether due to desire or survival and where sex and sexuality are no longer viewed as 'fixed categories'.<sup>53</sup> Gillies and Parker speak of conflict that may manifest in males

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<sup>47</sup> Mai (n45 above) 1246.

<sup>48</sup> Harcourt & Donovan (n35 above) 204.

<sup>49</sup> Romesburg (n31 above) 386.

<sup>50</sup> Romesburg (n31 above) 386.

<sup>51</sup> Romesburg (n31 above) 389.

<sup>52</sup> Romesburg (n31 above) 391.

<sup>53</sup> PA Gillies & RG Parker 'Cross-cultural perspectives on sexual behaviour and prostitution' (1994) 4 *Health Transition Review* 258.

navigating the sex work industry.<sup>54</sup> This is significantly displayed through the denial of the term sex worker or prostitute, rather referring to transactions as strictly ‘business’. By giving the impression that they find no pleasure in their sexual escapades, they ensure their masculinity is not diminished within what they are aware is a stigmatised domain.

Substantiating the views of Gillies and Parker,<sup>55</sup> Taylor emphasises the value of heterosexual sex as being ‘real sex’ and its importance for ‘social affirmation’.<sup>56</sup> Further illuminating contradictions and complexities, Logan, describes the world of male sex work as being ‘one of the few places where men who adopt homosexual identity and those who refuse it are in intimate contact with one another’.<sup>57</sup> Adding further irony is the notion that this occurs against a backdrop of counter-hegemony, and in which traditional masculine characteristics and attributes are revered, for example, a muscular body.<sup>58</sup>

Gaffney and Beverley present an interesting perspective when they make reference to a study in which male sex workers whilst feeling a sense of objectification due to their work, on the other hand, actively participate in behaviour that perpetuates their objectification.<sup>59</sup> For example, in the manner they present themselves in order to appear attractive to male clients through dress or maintaining a certain physique through exercise.

The literature suggests that in spite of existing binaries that seek to give the impression that identities are unshakeable, contradictions may be visible in the operationalization of male sex work and that will not necessarily be motivated by the need for survival. It may then be fruitful to contemplate especially how foreign male sex workers who identify as heterosexual are able to reconcile their perceived identities, perceptions of masculinity and manhood with sex work, as well as the mechanisms used to cope with their shifting roles.

## **2.5. Multiple Vulnerabilities and Implications for Health and Security: The Criminalisation of Sex Work, Illegal Status, Homophobia and Xenophobia**

### 2.5.1. Migration, sex work and intersections with the law

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<sup>54</sup> Gillies & Parker (n53 above) 263.

<sup>55</sup> Gillies and Parker (n53 above) 263.

<sup>56</sup> Taylor (n21 above) 48.

<sup>57</sup> Logan (n12 above) 682.

<sup>58</sup> Logan (n12 above) 685.

<sup>59</sup> Gaffney & Beverley (n23 above) 134.

South Africa provides a unique context in which to interrogate transnational migratory experiences, particularly as one considers the possible multiple intersections of vulnerabilities that may affect a migrant sex worker's life and that a migrant sex worker may be forced to navigate. The legislative framework in particular may provide various complexities considering the criminalisation of sex work, but also through the administrative processes of migration. Even before a migrant enters a host country his or her conditions of settlement may be defined much earlier on. For example, by not meeting certain requirements a migrant may be deemed undesirable forcing the migrant to enter the country by illicit and stealthy means.

Due to a diverse range of circumstances, including limited finances, escaping conflict or even fleeing repressive sodomy laws, the possibility of migration through strictly legal means may not be possible. Detection by local authorities may lead to repercussions such as detention and eventual deportation. Furthermore, even when legal processes are followed the reality of being in a foreign country may prove to be harsh.

#### 2.5.2. Vulnerability due to the criminalisation of sex work

Strides continue to be made in relation to advocacy and activism by sex workers or on their behalf. One of the most profound accomplishments has been the campaign for the de-criminalisation of sex work. These efforts speak to the marginalisation and disenfranchisement experienced by sex workers which has made access to justice and healthcare particularly daunting.<sup>60</sup>

Indeed, anti-sex worker legislation in South Africa has gone through some modification, focusing more on creating punitive measures for the clients of sex workers rather than the actual sex worker. And yet, the prejudice with which the laws were first written continues to prevail and is most notable in the ill-treatment of female sex workers by law enforcement as well as health practitioners, contributing to the vulnerability of this group.<sup>61</sup>

The manner in which anti-sex worker laws are implemented and interpreted tends to drive sex workers underground.<sup>62</sup> Moreover, there is undeniably a preoccupation with the surveillance of female sex workers, compared to their male counterparts. Unsurprisingly, much of the literature on the effects of anti-sex work laws is dominated by research on female sex workers.

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<sup>60</sup> Harcourt & Donovan (n35 above) 205.

<sup>61</sup> ST Fried & S Kowalski-Morton 'Sex and the Global Fund: How lesbians gays, bisexuals and transgender people, and men who have sex with men are benefitting from the Global Fund, or not' (2008) 10 *Health and Human Rights* 127-128.

<sup>62</sup> Harcourt & Donovan (n35 above) 205.

### 2.5.3. Foreign sex workers and vulnerability to homophobia

Since the first democratic elections in 1994, much has been done to sever ties with the repressive apartheid regime. This is most symbolically apparent in the tone of the South African Constitution. Stipulated within this very Constitution is the provision for non-discrimination quite significantly with the inclusion of sexual orientation. This has set South Africa apart from other nation-states. Twenty years later, South Africa remains one of the few countries to repeal anti sodomy laws, making strides through advocacy that focuses on lesbian, gay, bisexual, transgendered and intersex (LGBTI) persons, as well as setting precedence through litigation.

Even with the unambiguous nature of the Constitution concerning the rights of LGBTI persons, its practical implementation is not always felt.<sup>63</sup> Resistance to the provision has culminated in the injury and death of many LGBTI persons, and even resulted in poor access to services, such as health services due to experiences of stigma and discrimination.<sup>64</sup> Therefore, barriers to the realisation of the human rights of LGBTI persons remain both social and structural. Furthermore, the rhetoric that homosexuality is a Western import, 'un-African', or even a threat to nation-state solidarity further fuels the flames of what encompasses the hetero-normative propaganda that justifies the hate that is levelled against non-hetero-conforming persons.<sup>65</sup> Certainly not all male sex workers identify as homosexual, yet, same-sex acts continue to be regarded with the same abhorrence as homosexuality itself, thus potentially placing same-sex practicing foreign male sex workers at great risk.

### 2.5.4. Foreign sex workers and vulnerability to xenophobia

It is significant at this juncture to acknowledge South Africa's history of not only racial segregation, but also economic inequality. Much of this was deliberately orchestrated by the apartheid government and disproportionately affected black people with a system rigged to stunt or stimulate economic mobility and progress based on race.

Undoubtedly, the current political dispensation has gone to great lengths to reverse this legacy. However, many years later communities continue to

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<sup>63</sup> C Potgieter 'Guest editorial: The imagined future for gays and lesbians in South Africa: Is this it?' (2006) 49 *Agenda* 4; M Epprecht 'Sexual minorities, human rights and public health strategies' (2012) 111 *African Affairs* 223.

<sup>64</sup> M O'Flaherty & J Fisher 'Sexual orientation, gender identity and international human rights law: Contextualising the Yogyakarta Principles (2008) 8 *Human Rights Law Review* 210.

<sup>65</sup> CI Niang, P Tapsoba, E Weiss, M Diagne, Y Niang, AM Moreau, D Gomis, AS Wade, K Seck & C Castle 'It's raining stones: Stigma, violence and HIV vulnerability among men who have sex with men in Dakar, Senegal' (2003) 5 *Culture, Health & Sexuality* 508; CA Johnson *Off the map: How HIV/AIDS programming is failing same-sex practicing people in Africa* (2007) 11.



struggle through a plethora of challenges, including lack of housing, sanitation and most profoundly the scarcity of employment opportunities. It is particularly frustrating over the lack of jobs that allegedly resulted in the eruption of violence, and subsequent deaths of many foreign nationals of African descent during the year 2008. They were blamed for the unavailability of jobs and the proliferation of cheap labour below the minimum standard making it difficult for locals to negotiate higher wages.<sup>66</sup>

The increased influx of African foreign migrants has thus been viewed as a threat to the livelihood and security of local persons and has culminated in sporadic attacks of violence throughout the country since 2008. According to Koen the threat of foreigners exists even within sex work and in some cases alliances have been formed between local sex workers and the police in order to rid territories of foreign sex workers.<sup>67</sup>

Although I list the criminalisation of sex work, illegal status, homophobia and xenophobia as significant variables that may lead to the vulnerability of sex workers, in practice this list is neither exclusive nor binding. For purposes of this study, 'vulnerability' in relation to sex work is ideally a category open to critique. It is complemented, contradicted or redefined based on context or experience. Nonetheless, the list provided above is intended to bring into perspective the South African social and political context in which sex work and issues around sexuality are framed.

## **2.6. Creating Networks: Bonds for Safety, Security, Comfort and Recreating Family Ties**

Whether male sex workers maintain connections with friends or kin from their home countries may depend on the circumstances in which they leave their countries. It may also be an essential part of how they are able to cope with their situations in new territories. The aim of this point of interrogation is to explore how male sex workers cope within new and unfamiliar environments. Cravey stipulates that '[t]he transnational search for work requires abandoning certain channels of support; while one's physical and emotional survival necessitates the construction of new social networks of care and care giving'.<sup>68</sup> Cravey also speaks of the acquisition of 'new spaces of social reproduction' and the significance of sex and sexuality in influencing this process.<sup>69</sup> Important questions must therefore be

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<sup>66</sup> V Williams 'Xenophobia in South Africa: Overview and analysis' 8 *Perspectives* 3-4.

<sup>67</sup> K Koen 'Crossing borders and boundaries: From 'foreign prostitutes' to 'victims of trafficking in persons'' (2004) 62 *Agenda* 89.

<sup>68</sup> Cravey (n17 above) 359-360.

<sup>69</sup> Cravey (n17 above) 365.

considered, including: What are the significant support structures that are created during the migratory transition and process of becoming a sex worker? What are the circumstances in which these networks manifest? What do these support structures provide? Or, in what ways if at all do these networks allow foreign male sex workers to cope with their circumstances? Do these networks possibly allow for a sense of safety, security, familiarity or normality? And, are any of these networks or support structures created within the sex work context?

## **2.7. Conclusion**

What the literature review hopes to convey is the possibility of viewing identities as malleable and prone to contradiction. However, in practice, there is instead an apparent difficulty in challenging the tendency to become fixated on the specifics of categories that restrict possibilities for diverse forms of expression. Male sex work, for example, illustrates in some cases that one's socialisation, although seemingly entrenched, may experience a shift due to changing circumstances and challenges. Migration to foreign territories and difficult economic conditions as this study shows can serve as effective stimuli for such a shift. With respect to changing expressions of sexuality, this is made complex due to the value placed on rigidly constructed gender binaries and social expectations.

The South African landscape provides an interesting yet socially complex milieu in which to explore male sex work. It is a society still in transition and continuing to come to grips with its post-apartheid dispensation and democratic aspirations, including those pertaining to openness and non-discrimination in relation to gender and sexuality. The intersection with male sex work thus exposes many existing chasms.

The literature review sought to bring together diverse discourses on sex work, whilst still focusing on male sex work and its surrounding issues. Although it may certainly not be claimed that all perspectives have been featured, the intention is to present the literature in a way that problematizes what is claimed and 'known', as well as what calls for further curiosity and investigation. The following chapters will thus expand and contextualise many of the debates discussed in the literature review.

## **CHAPTER 3: A DISCUSSION ON THE CHALLENGES OF GENDER BINARIES AND NARROW DEFINITIONS OF SEX AND SEXUALITY: IMPLICATIONS FOR MALE SEX WORK:**

### **3.1. Introduction**

The objective of this chapter is to challenge existing stereotypes related to sex work, many of which have relied on constructions of gender. In addition, I will reflect on definitions of 'African' sexuality and masculinities in migration.

This chapter is divided into two sections. Section 3.2: *Male Sex Work and Female Sex Work: A Comparative Study*, seeks to point out some of the similarities and differences between female and male sex work. For the most part the narratives are tied to the formulation of gender binaries that have a direct impact on how female and male sex workers operate. This also affects how sex workers experience the application of laws, particularly in contexts where sex work is criminalized.

In Section 3.3: *Male Sex Workers as Subjects in Transnational Migration*, the importance of positioning men as both gendered and sexual subjects within the context of transnational migration is proposed. The aim is to go beyond exploring men as simply economic migrants, but to reflect on the silenced vulnerabilities that may take place during the migration process. Hostilities in a host country are also considered, and the need to increase inclusion of queer subjects within migration discourse such as male sex workers is suggested.

### **3.2. Male Sex Work and Female Sex Work: A Comparative Study**

Often while attempting to prescribe a 'rightness' or 'wrongness' to sex work, a one-dimensional approach is deployed and what becomes lost are the complexities and layers within.<sup>70</sup> The fact that some sex workers approach their work like any other business that requires time management, pricing, negotiation as well as reserving the right of refusal tends to be lost. Instead, sex work is reduced to selling one's body.<sup>71</sup> Also not regularly highlighted are the relationships that manifest amongst sex workers, but also between sex workers and clients. At times these interactions momentarily or permanently mimic the role of wives, girlfriends, husbands, boyfriends,

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<sup>70</sup> R Weitzer 'Sociology of sex work' (2009) 35 *Annual Review of Sociology* 214; Tamale 'Researching and theorising sexualities in Africa' in Tamale (ed) (n9 above) 12.

<sup>71</sup> McClintock (n26 above) 1-2.

lovers, guardians and mentors.<sup>72</sup> What are concealed are the narratives of sex workers themselves, the meanings they attach to their work, their relationships and the diversity that most likely is a great part of their experiences, never 'legitimized as spokespersons or self-determining agents'.<sup>73</sup>

Through a comparison of male sex work and female sex work, this chapter seeks to problematize some of the discourses related to this occupation, many of which have incorporated myths and stereotypes. In addition, what has been suggested is the use of some of these discourses to not only condemn and police the behaviour of sex workers, but also to control the behaviour of the larger population through the use of legal provisions, moralising language and tendencies, as well as visible processes of social exclusion and isolation.

### 3.2.1. Discourses of disempowerment in female sex work versus discourses of choice in male sex work

In Dworkin's work on pornography she likens the women in the porn industry to an abused lot. She considers them as being trampled on by a patriarchal system intent on ensuring their submission through experiences of indignity, 'turned to subhumans'.<sup>74</sup> Pornography is viewed as a system rigged to keep women dependant on the generosity and temperament of men for survival. Many radical feminists would describe female sex work in much the same way: a manipulation of systems and circumstances created to hamper women's economic mobility, 'sexual slavery of the worst kind'.<sup>75</sup>

Raymond opines that the terms 'voluntary' or 'forced' sex work are misleading, concealing the real harms associated with this industry.<sup>76</sup> Women are kept beholden to a patriarchal brethren with whom they barter their bodies, and although having relations at times that mimic affection, are reined in through violence when need be. Once used and having shed their self-respect, they are discarded to the edges of society only to be labelled as 'fallen women'.

Reference to the 'whore/madonna' dichotomy remains quite prominent in discourses on female sex work. Many times it is to contrast a normative ideal of femininity: dainty, modest, obedient, and reserved. In comparison, women who through their sexual knowledge stray too far beyond the limits

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<sup>72</sup> Weitzer (n70 above) 223-224.

<sup>73</sup> McClintock (n26 above) 2.

<sup>74</sup> A Dworkin 'Against the male flood: Censorship, pornography, and equality' in D Cornell (ed) (2000) *Feminism & pornography* 26.

<sup>75</sup> Gaffney & Beverley (n23 above) 134.

<sup>76</sup> JG Raymond 'Prostitution as violence against women: NGO stonewalling in Beijing and elsewhere' (1998) 21 *Women's Studies International Forum* 2-3.

of their station are: corrupt, oversexed, wild, and untameable. One might argue that in their assessment of female sex work, both patriarchy and radical feminism inadvertently collude in their paternalistic approach and gatekeeping of women's sexuality. Women especially are 'forced to make livelihood decisions between only bad alternatives' in which sex work should not necessarily be viewed as the worst.<sup>77</sup> However, rather than observe a rational response to circumstances, both patriarchy and radical feminism provide a diagnosis of abnormality. In one instance female sex workers are detached from what a woman in society ought to be. In the second instance some feminists are of the opinion that female sex workers are simply not in possession of the tools to realise their disempowerment and are in need of rehabilitation. In both cases the faculties of female sex workers are undermined, and so too are their capabilities to make rational decisions about their own lives.

While discourses of disempowerment in female sex work are certainly abundant, others detract from claims of mere 'victimhood' pointing to a need to acknowledge and give credit for the resilience of female sex workers to survive at all costs in what can sometimes be very harsh contexts. If, as according to feminists the structural barriers erected to stifle women's mobility do in fact exist, could sex work then not be seen as a show of resistance? Wojcicki and Malala, speaking in the context of HIV intervention programmes for sex workers declare the significance of not viewing agency as simply being based on the decision to leave sex work.<sup>78</sup> They advocate for the need to recognise the micro-decisions that sex workers make on a daily basis, such as, negotiating with clients to wear condoms in order to protect themselves from HIV and other sexually transmitted infections (STIs).<sup>79</sup> Not recognising moments of agency has thus added to a 'negative discourse' that contributes to the stigmatisation of sex work.<sup>80</sup>

Many times sex workers are forced to manoeuvre between predictable and unpredictable situations requiring both strategy and foresight. Therefore, it could be said that the insistence to view female sex workers as hapless victims has resulted in a tendency to by-pass narratives in which a great deal of agency has undeniably surfaced and as Tamale points out 'the resourcefulness of the erotic'.<sup>81</sup> Moreover, there has been little appreciation for how sex workers navigate through the many opinions about their lives,

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<sup>77</sup> S Tamale 'Paradoxes of sex work and sexuality in modern-day Uganda' in S Tamale (ed) *African Sexualities: A Reader* 147.

<sup>78</sup> JM Wojcicki & J Malala 'Condom use, power and HIV/AIDS risk: Sex-workers bargain for survival in Hillbrow/Joubert Park/Berea, Johannesburg' (2001) 53 *Social Science & Medicine* 101.

<sup>79</sup> Wojcicki & Malala (n78 above) 102.

<sup>80</sup> Wojcicki & Malala (n78 above) 102.

<sup>81</sup> Tamale 'Paradoxes of sex work and sexuality in modern-day Uganda' in Tamale (ed) (n77 above) 147.

or the many decisions made for survival that prove full consciousness of their reality.

Male sex work is illustrated quite differently to female sex work despite the overlaps in experience, with male sex workers seeming to have an uncompromised awareness about their conditions. They are not commonly painted as disempowered nor exploited but cognisant and able to make rational decisions for their survival, and as is often mentioned for the sake of their families.<sup>82</sup> Gaffney and Beverley provide an alternative perspective by stating that as objects of sexual desire, male sex workers occupy a subordinate position just as much as women.<sup>83</sup> Even in encounters with men thought to be their equals, the notion that the 'power differential is part of a heterosexual 'sexual contract'' can be disrupted.<sup>84</sup>

Taylor proposes that the fact that male sex workers serve a male clientele may obscure gendered power.<sup>85</sup> Victimhood within male sex work is so often underplayed that it is yet to find a footing even within the trafficking debate. Initiating conversations that consider male exploitation or submission are either limited or eliminated. However, women's absence of agency, lack of control and child-like naiveté are said to be fully subsumed as continues to be highlighted in the media and much literature on sex work and migration.<sup>86</sup>

Discourses on male sex work, particularly heterosexual-identifying males tend to become desexualised and rationalised.<sup>87</sup> There is a degree of 'sense making' not always afforded within the narratives of female sex work. The impression is that unlike female sex workers, heterosexual male sex workers would otherwise not be involved in sex work if it were not for a lack of choice.<sup>88</sup> While women's promiscuity is naturalised, the nudity and sexuality of men in this case is seemingly less repulsive. On the one hand, what is clear is that within the hierarchy of male sex work in relation to morality, heterosexuality is viewed as a redeeming quality.<sup>89</sup> On the other hand, those who identify as 'other' or permanently queer are relegated to the lot of women, an aberration and perhaps the only justifiable reason men could possibly be associated with powerlessness.

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<sup>82</sup> ML Tan 'Walking the tightrope: Sexual risk and male sex work' in P Aggleton (ed) (1999) *Men who sell sex* 250; Gaffney & Beverley (n23 above) 138.

<sup>83</sup> Gaffney & Beverley (n23 above) 138.

<sup>84</sup> JP Dennis 'Women are victims, men make choices: The invisibility of men and boys in the global sex trade' (2008) 25 *Gender Issues* 20.

<sup>85</sup> Taylor (n21 above) 50.

<sup>86</sup> N Distiller 'Advocating for the right to sell sex' (2001) 47 *Agenda* 35.

<sup>87</sup> Tan 'Walking the tightrope: Sexual risk and male sex work' in Aggleton (ed) (n82 above) 251.

<sup>88</sup> Taylor (n21 above) 50.

<sup>89</sup> S Grenz 'Conference report: The globalization of sexual exploitation, 10 July 2000' (2001) 67 *Feminist Review* 143.

Constable suggests that instead of lamenting over the evolution of intimacy from the domestic arena to the market space, to perhaps pay greater attention to ‘experiences’ and ‘meanings’ thus avoiding ‘overly binary notions of victim and agent’.<sup>90</sup> In addition, while women’s agency continues to be de-emphasised, what has been illuminated is that male sex workers’ exposure to experiences of vulnerability is unacknowledged. Furthermore, it is apparent that assumptions that have been made about binaries require that we question what we know about patriarchy and the power dynamics it has forged between men and women, within sex work and in contexts which are said to subvert the norm.

### 3.2.2. Gender binaries and the role of dichotomies in the operationalization of sex work

In the operationalization of sex work, the framing of gender binaries and dichotomies plays a significant role in the manner in which both females and males experience sex work. The construction of gender roles has a bearing on where sex work takes place and with whom. Both visible and invisible spaces are navigated, between wanting to be seen and not seen at all, in some cases to ensure privacy. In other cases, for physical security or to protect one’s identity.<sup>91</sup> Different modes of operation not only provide varying levels of security, but also different levels of income. For example, a sex worker who operates within the street will most likely earn less than an escort operating indoors.<sup>92</sup>

Diverse imagery, performance and stereotypes provide paradoxes and are imperative in sex work with certain kinds of femininity and masculinity being appropriated. In the South African context it is the norm to see female sex workers on street corners. Agha and Nchima state that ‘sex workers (female) are not difficult to identify because of their dress: they wear short skirts or form-fitting trousers and use heavy make-up’.<sup>93</sup> Male sex workers are said to dress smartly, paying particular attention to their physique in order to attract their clientele. In addition, it is assumed that female sex workers are clad in order to be noticed and for their availability to be known, playing into stereotypes of femininity, sexuality and male desire.<sup>94</sup>

The subject of clothing is a socially contentious issue for both female and male sex workers. The messages clothes are said to convey have notably had implications for women not even in sex work, supposedly ‘inviting’ rape,

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<sup>90</sup> Constable (n25 above) 58-59.

<sup>91</sup> S Agha & MC Nchima ‘Life-circumstances, working conditions and HIV risk among street and nightclub-based sex workers in Lusaka, Zambia’ (2004) 6 *Culture, Health & Sexuality* 286.

<sup>92</sup> Luckenbill (n33 above) 294.

<sup>93</sup> Agha & Nchima (n91 above) 286.

<sup>94</sup> Agha & Nchima (n91 above) 286.

other forms of violence and intrusion into sexual history. Such stereotypes also cement the dichotomy between a patriarchal ideal of womanhood and one who due to insolence, a lack of modesty attracts spectacle, willing harmful yet deserved experiences. These very discourses have continued to plague women in the South African context and beyond, particularly in cases of sexual violence where women's bodies are put on trial and not the perpetrators. If it was not what she said, where she was then it must have been what she wore that provoked such violent reaction.

The subject of performance in sex work is illustrated in an assessment of race and sexuality. Taylor claims that racism tends to be undermined within sexual encounters that have been historically marked by race and class.<sup>95</sup> Speaking specifically of male sex workers in the Caribbean, Taylor is of the view that male sex workers due to their marginalisation play into rather than resist racist stereotypes.<sup>96</sup> Therefore, paradoxically, the performance of the virile, beastly, 'hypersexual', 'black stud' rather than being offensive, may arguably become empowering as it provides economic advantage.<sup>97</sup>

Male sex workers are said to not frequent visible spaces within the South African context. This masks their existence and as the lack of current literature on male sex work in South Africa shows, it also provides an excuse to not acknowledge their presence. According to Liguori and Aggleton the use of concealed spaces also serves the purpose of protecting the identity of male clients who are not keen on being associated with the homosexual scene.<sup>98</sup> Ironically, for both sex worker and client, the nature of being unseen stems from an awareness that they occupy a position in which they subvert the norm and in which stigma and hostility tend to be attracted. Perhaps this is knowledge gained through their knowledge of perceptions of female sex work or the known consequences for those who veer beyond the boundaries of prescribed gender norms.

Male sex workers are perceived as being mindful of their place in society, the significance and power of gender roles as well as the 'responsibility' placed on their sex to uphold and preserve a hetero-patriarchal order in which they would certainly fall short should their deviance be exposed. One might propose that there seems to be a conscious effort to not want to compromise the social and economic privileges their sex affords them, allowing them the flexibility to move freely and unharmed between conflicting spheres.<sup>99</sup>

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<sup>95</sup> Taylor (n21 above) 54.

<sup>96</sup> Taylor (n21 above) 54.

<sup>97</sup> Taylor (n21 above) 56.

<sup>98</sup> AL Liguori & P Aggleton 'Aspects of male sex work in Mexico City' in P Aggleton (ed) (1999) *Men Who Sell Sex* 105.

<sup>99</sup> Liguori & Aggleton 'Aspects of male sex work in Mexico City' in Aggleton (ed) (n98 above) 105.



Already being disadvantaged as a result of their sex, (more naturally linked to deviance) female sex workers are presented as having fewer qualms about being seen. Perhaps this stems from a cognisance of the unlikelihood of changing circumstances, even more so because they are not disillusioned about the limitations set upon them due to their occupation. Nonetheless, both female sex workers and male sex workers through their practices show that they are awakened to the realities, implications and possible consequences of their trade and how they conflict with normative gender binaries and existing dichotomies. Moreover, they resist and conform in ways that are financially rewarding or may guarantee their security.

### 3.2.3. Legal frameworks in practice and the policing of sexuality and sex work

Greek literature provides an abundance of heroines who strayed from the path meted out for them, defying tradition and norms of female subservience. More often than not, their fate led to tragedy, usually ending in death. While some applaud Second Century playwrights for their seemingly progressive portrayal of women's fortitude, there are critics who hold the opinion that these so-called heroines are in fact anecdotes to curb women's ambitions. They serve as cautionary tales with misogynist underpinnings to remind women of their limitations and place within the social hierarchy. In many contexts, the law is said to work in much the same way, framed to manage behaviour and prohibit what is perceived as uncouth and unwelcome.

Within many legal systems, traditional family values are of importance. They are materialised and reinforced through diverse institutional schemes machinating to ensure that a hetero-normative ideal is realised and protected, from legal provisions to health services. Through marriage men become heads of households, women provide silent and reserved support, and further allegiance to this order indicated through the birth of children. Unlike sex workers, appropriate displays of modesty earn certain women and men the right to not have their sexuality become the subject of public moral debate with vivid, obscene description. They are therefore protected.<sup>100</sup>

The Sexual Offences Act 23 of 1957 (SOA),<sup>101</sup> arguably not concealing its sexism and homophobia was committed to preserving a hetero-normative order in South African society and led to female sex workers especially bearing the brunt of this law. Through their public shaming female sex

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<sup>100</sup> Tamale 'Paradoxes of sex work and sexuality in modern-day Uganda' in Tamale (ed) (n77 above) 153.

<sup>101</sup> Sexual Offences Act 23 1957 (South Africa).

workers have become an example to all women of what not to aspire to.<sup>102</sup> The SOA which was previously the Immorality Act 21 of 1950<sup>103</sup> has since been modified and replaced by the Sexual Offences and Related Matters Act 32 of 2007.<sup>104</sup> It may appear to be a less harsh approach in deterring sex work by focusing more on the clients of sex workers, however, the moralising remains.<sup>105</sup> The daily insecurity due to aggression from law enforcement, the difficulty of accessing health services without experiences of stigma, as well as the wrath of sometimes violent clients have not subsided.<sup>106</sup>

The criminalisation of sex work, resulting in absence of protection and legal recourse serves as a reminder of female sex workers' lack of value in society. In theory, laws relating to sex work are meant to be equally applied to both female and male sex workers. However, in practice, this is not the case and women are disproportionately affected. The very observation came to the fore in *S v Jordan* when it was argued that laws relating to sex work were discriminatory, targeted female sex workers yet excused their male clients.<sup>107</sup>

In *S v Jordan*, it was put to the Constitutional Court that section 20(1)(aA) of the SOA was inconsistent with the constitutional provision of non-discrimination on the ground of gender. Most significant with regards to the application of this law was that clients of sex workers tended to evade punishment. It was recognised that the majority of sex workers affected by this law were female, while clients were predominantly male. The appellants were therefore of the opinion that the inclusion of Section (1)(aA) in the SOA together with its practical application by law enforcement agents, for example, police officers, amounted to discrimination on the ground of gender. Section 20(1)(aA) reads that:

20. Persons living on earnings of prostitution or committing or assisting in commission of indecent acts.

(1) Any person who –

(aA) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward;

shall be guilty of an offence.

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<sup>102</sup> Tamale 'Paradoxes of sex work and sexuality in modern-day Uganda' in Tamale (ed) (n77 above) 155.

<sup>103</sup> Immorality Act 21 of 1950 (South Africa).

<sup>104</sup> Sexual Offences and Related Matters Act of 32 2007 (South Africa).

<sup>105</sup> S Pudifin & S Bosch 'Prostituting the 2010 Soccer World Cup: A more practical approach to prostitution policy in South Africa' (2009) 42 *The Comparative and International Law Journal of Southern Africa* 278.

<sup>106</sup> Tamale 'Paradoxes of sex work and sexuality in modern-day Uganda' in Tamale (ed) (n77 above) 157.

<sup>107</sup> *S v Jordan and Others* 2002 CCT 31/01 (Constitutional Court of South Africa).

It may be argued that unequal application of the law in the case of sex worker and client may not necessarily be a result of the law. However, one might also suggest that this would have been an opportune moment for Judge Ngcobo to not simply emphasise the distance between law and practice, but to chastise law enforcers who do not follow the law, but instead undermine it and bring it into disrepute. Moreover, most troubling are statements made by Judge Ngcobo that may be construed as blaming sex workers for their conditions.<sup>108</sup> He implies that sex workers are guiltier and thus much worthier of punishment compared to their clients. Judge Ngcobo thus continues the tendency that regards women's deviance as a permanent stain, while certain men remain redeemable even in their mischief. He makes an assumption and an unverifiable distinction between sex workers and clients by stating that:<sup>109</sup>

There is a qualitative difference between the prostitute who conducts the business of prostitution and is therefore likely to be a repeat offender, on the one hand, and the customer who seeks the service of a prostitute only on occasion and thus may or may not be a repeat offender.

Although admitting that women were primarily thought to be associated with sex work, Judge Ngcobo disagreed with the utterances of the appellants. He reiterated that the application of punishment for sex workers was 'gender neutral' and targeted the 'merchant' regardless of gender.<sup>110</sup> Judge Ngcobo however states that while the law is meant to punish all who participate in sex work, including clients, 'one of the effective ways of curbing prostitution is to strike at the supply'.<sup>111</sup> Furthermore, he opines that the law cannot be held accountable for any differential treatment between sex workers and clients. In addition, he states that any stigma experienced by sex workers is a result of social attitudes and not the fault of the law. Therefore, sex workers participate in their trade at their own risk and 'knowingly attract the stigma associated with prostitution'.<sup>112</sup>

Referring to the stigma and discrimination said to be experienced by sex workers, Judge Ngcobo speaks to existing social values that he deems as not necessarily being within the ambit of the law. He reverts to emphasising stereotypes related to sex work, such as 'violence, drug abuse and child trafficking'.<sup>113</sup> One might suggest that the judge may possibly undermine how in some cases the law may actually inform or reinforce social values. This was certainly the suggestion made by the applicants in *Naz Foundation*

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<sup>108</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 10.

<sup>109</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 10.

<sup>110</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 10.

<sup>111</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 15.

<sup>112</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 17.

<sup>113</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 24.

*v Government of NCT Delhi*.<sup>114</sup> The applicants argued that anti-sodomy laws ‘creates a class of vulnerable people’ and mould attitudes which ‘drive the activities of gay men and MSM, as well as sexuality minorities underground thereby crippling HIV/AIDS prevention efforts’.<sup>115</sup>

It could be said that Judge Ngcobo failed to recognise that stigma in relation to sex work is pronounced not simply because it is regarded as an undesirable and immoral occupation. Rather, it is an occupation associated with women, a population that has been historically and in many cases deliberately disadvantaged.

The stigma experienced by women is by no means limited to sex work.<sup>116</sup> It tends to find itself wherever women seek to improve their social or economic position and claim independence. Within institutions and policies, actions taken to protect women include gender mainstreaming programmes that have surged since the transition to a democratic dispensation.<sup>117</sup> This has been done in order to counter resistance to gender equality and shift mind-sets. Doing so has had very little to do with what is regarded as socially popular, but instead what is considered morally correct. Ironically, it is only within sex work that mechanisms to protect women’s dignity are not provided.

Whilst the constitutionality of Section 20(1)(aA) may stand, Judge Ngcobo recuses himself from observing its imperfections, associated with application or implications of application.<sup>118</sup> Rather than critically weighing existing legal provisions against social realities, the Court is thus in some ways represented as a passive enforcer of laws. The judge instead points out that:

It is not for this Court to pass judgement on the effectiveness or otherwise of the choice made by the legislature. Indeed we are not entitled to set aside legislation simply because we may consider it to be ineffective or because there may be other and better ways of dealing with the problem.

Not targeted for sex work specifically, men face stigmatization due to same-sex sexual practices and identity. Furthermore, unlike female sex work, there is a perception that male sex work is usually brief and thus less problematic. Perhaps this may stem from an obsession with women’s sexuality, yet it could also be reasoned that the general invisibility of male sex work contributes to unequal application.

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<sup>114</sup> *Naz Foundation v Government of NCT Dehli*, WP(C) No.7455/2001 (High Court of India).

<sup>115</sup> *Naz Foundation v Government of NCT Dehli*, WP(C) No.7455/2001, paragraph 7.

<sup>116</sup> A Martabano & M O’Sullivan ‘Three steps forward, two steps back: Legal activism for women’s rights in South Africa’ (2004) 60 *Agenda* 55-56.

<sup>117</sup> GW Seidman ‘Gendered citizenship: South Africa’s democratic transition and the construction of a gendered state’ (1999) 13 *Gender and Society* 288-289.

<sup>118</sup> *S v Jordan and Others* 2002 CCT 31/01, paragraph 26.

Considering the discrimination levelled against female sex workers, one might assume that male sex workers would undergo similar intolerance due to the 'popular' perception of their sexual practices as being abnormal. What separates male sex workers from female sex workers is the public invisibility of their so-called 'deviance'. Based on Judge Ngcobo's assertions on the matter of gender discrimination in relation to female sex workers, any stigma experienced by male sex workers would likely be considered a characteristic of their trade and not their sexuality. However, it begs the question of whether male clients of male sex workers would be afforded the same flexibility in the application of the law as the clients of female sex workers whom are assumed to be heterosexual. Bearing in mind attitudes towards homosexuality, this seems unlikely.

New Zealand's Prostitution Reform Act of 2003 may arguably be perceived as the first example of legislation that in its essence has incorporated a human rights approach to sex work, first and foremost by recognising the importance of safeguarding the health of sex workers. Section 3 of Prostitution Reform Act partly states its intention as being:<sup>119</sup>

[T]o create a framework that safeguards the human rights of sex workers and protects them from exploitation; promotes the welfare, occupational health, and safety of sex workers; is conducive to public health;

Expressly requiring the participation of the public health system and health professionals, the Act has been structured to create an environment in which the disclosure of one's occupation as a sex worker, male or female, neither leads to experiences of stigma, nor becomes a barrier to treatment or assistance.

Speaking within the context of abortion, Amir and Biniamin make an assessment that could very easily be applied to sex work or any other practice or occupation regarded as falling outside respectability.<sup>120</sup> Amir and Biniamin claim that legal mechanisms work to control and discourage certain kinds of behaviour and to protect gender roles with greater yet subtle emphasis on women's sexuality.<sup>121</sup> Allowances are made for interference that will not necessarily require approval or consent, in particular denying women full sexual autonomy. Sex work, abortion, marriage out of wedlock, the use of contraceptives outside marriage and same-sex practices all beckon different levels of ire and dishonour. The bodies of women (and some men) that deviate from their 'natural' purpose are therefore criminalised. Many years after its alteration the SOA, its motives ingrained in public

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<sup>119</sup> Prostitution Reform Act of 2003 (New Zealand).

<sup>120</sup> D Amir & O Biniamin 'Abortion approval as a ritual of symbolic control' in C Felman (ed) (1992) *The criminalization of a woman's Body* 6-7.

<sup>121</sup> Amir & Biniamin 'Abortion approval as a ritual of symbolic control' in Felman (ed) (n120 above) 10.

consciousness, continues to be applied although not officially, as though it was still in its original form. It may therefore be problematized as a reflection of popular ideals.

This section sought to put into perspective the similarities and differences in the manner in which sex work is experienced by both women and men. Particularly poignant has been the assertion of traditional notions of gender, defining whether sex workers at least according to literature, experience sex work, as either 'victims' or 'agents'. Furthermore, the law is not only used as an instrument to enforce gender binaries, but also to discourage sexual practices that are thought to subvert what is considered normal.

### **3.3. Male Sex Workers as Subjects in Transnational Migration**

In this section I propose considering men as gendered and sexual subjects within transnational migration, as well as problematizing the notion of inherently African sexualities and masculinities.

Male subjects in migration discourse have been typecast as 'breadwinners' and 'heads of households', therefore concealing dimensions worthy of exploration and limiting our perception of men as gendered and sexual subjects.<sup>122</sup> This section hopes to unsettle the oversimplification of gender binaries by first acknowledging how this practice has affected the observance of migrant experiences. Furthermore, the purpose of this section is to contribute to a discussion on the need to deconstruct male subjects, being cognisant of their social, political and cultural formations and the essentialised narratives complicit in this process. For the purpose of this study the focus will mainly be on African sexuality, masculinities and manhood. Viewing these phenomena within the context of migration provides an opportunity to test or challenge the notion of fixed identities and how these may be affected by the process of migration and entry into foreign territory.

#### **3.3.1. Integrating men as gendered and sexual subjects in transnational migration discourse within the African context**

In researching male sex work within the context of migration what is abundantly clear is the scarcity of conversations that consider men as sexual and gendered subjects in migration circumstances, most recognisably within the African context. Furthermore, most glaringly lacking has been the inclusion of queer narratives. Abound however, are various

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<sup>122</sup> PR Pessar 'Engendering migration studies: The case of new immigrants in the United States' (1999) 42 *American Behavioural Scientist* 577-579.

descriptions of women's migration from rural to urban regions in the face of harsh structural adjustment programmes that have had devastating effects on their welfare, health and particularly limiting their participation as independent, self-determining agents within the public domain of money and markets.<sup>123</sup> Their response has also been to explore far beyond the borders of their locales to spaces as far as Germany, Italy, and the United Kingdom in order to capture some semblance of a dignified life notably within the domestic and care industry, and in many cases deliberately or through circumstance becoming sex workers.<sup>124</sup>

Sex work and sex tourism especially have provided much material for which to critique women as both gendered and sexual persons in migration discourse both locally and globally, all aiming to profess women's agency or victimhood against a backdrop that is said to be discriminatory and suppressive for them.<sup>125</sup> Certainly, various depictions of men's mobility exist and similar to women's mobility reacting to the fluctuation of markets, economic insecurity, the lack of opportunity as well as civil unrest. What is missing however is an acknowledgement of how men as gendered and sexual subjects are affected by these processes, especially considering the social and cultural mores of their diverse locales and how these familiar normative roots may become destabilised within the migration process.

Manalansan IV proposes the necessity to go beyond heterosexual dialogues centred on family and reproduction but rather to opt for 'a queer studies-derived idea of the sexual that goes against the normalizing of heterosexual institutions and practices'.<sup>126</sup> Mahler and Pessar suggest that '[c]onceptualizing gender as a process yields a more praxis-oriented perspective wherein gender identities, relations, and ideologies are fluid, not fixed'.<sup>127</sup> Therefore, two significant questions to ask would be: 1) What are the different manifestations that occur when masculinities are no longer insulated by the protection and familiarity of their social, cultural and legal jurisdictions? 2) How can migration studies begin to elevate queer or alternative narratives?

It is tempting to reduce sexuality to the 'sex act'. Nevertheless, as this study hopes to show, gender and sexuality manifest when normative notions of self and identity settle, find meaning, cope, interact and even conflict within social spaces. Thus, they may arguably be named sites of struggle that may

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<sup>123</sup> Jaggar (n3 above) 34.

<sup>124</sup> Sinke (n1 above) 92; Jaggar (n3 above) 44.

<sup>125</sup> Sinke (n1 above) 96.

<sup>126</sup> Manalansan IV (n4 above) 224.

<sup>127</sup> Mahler & Pessar (n17 above) 29.

lead to exhilaration and a sense of strength just as much as they could result in anxiety, uncertainty, and even shame within a migratory context.

It may be plausible to consider that there may be a reluctance to bring illumination to masculinities that may potentially be unstable and distressed, considering that it is these very masculinities that are said to be the backbone of most African societies. Besides revelations of agency and vulnerability, unfortunately, what we further deprive ourselves of is richer, more comprehensive and nuanced understandings of masculine identities. Opportunities that may potentially rattle and dislodge gender binaries if it were not for a 'reliance on hetero-normative meanings' are therefore missed.<sup>128</sup>

South Africa provides a fascinating terrain in which to excavate migratory narratives, considering the influx of foreign nationals hailing especially from the African continent. Walker writes that the 'transition to democracy has precipitated a crisis of masculinity'.<sup>129</sup> The previously repressive apartheid regime and the subsequent democratic dispensation have formed black masculinities especially and a sense of citizenship in complex ways. In the former, the experience of black males was one of much prohibition and limited prospects for economic mobility, while the latter came with the promise of greater freedom and opportunity. Needless to say, that promise is yet to be realised for many who still reside in great poverty and squalor.

The current regime has meant that men have had to reframe ideals around power and dominance within the domestic space, due to a Constitution that aims to guarantee women more political and legal autonomy. Women thus no longer require the permission of their husbands, fathers, uncles or brothers to make decisions.<sup>130</sup> Therefore, to say that this may be a context in which investigating men as gendered and sexual subjects could provide great insight does not seem farfetched, as we consider a possibly troubled sense of masculinity, manhood and male citizenship in South Africa.

We may have an opportunity to survey what materialises as local and foreign masculinities converge. The eruptions of xenophobic violence against foreign nationals since 2008 seem to suggest that there is indeed something worthy of observation. What has been witnessed are both local and foreign masculinities in battle, struggling for territory, a sense of ownership, dominance and belonging, anxious over threats to livelihood all brought to a head due to the migration process.

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<sup>128</sup> Manalansan VI (n4 above) 224.

<sup>129</sup> L Walker 'Men behaving differently: South African men since 1994' (2005) 7 *Culture, Health & Sexuality* 225-226.

<sup>130</sup> Walker (n129 above) 226-228.



Revealed are ‘tensions and contradictions in the ideologies, practices, and distributions of power within the lives of immigrants and native-born populations’.<sup>131</sup> Both sides provide their own narratives and truths, and it would be most informative to discover how the identities of men as gendered and sexual subjects become reshaped or adapt in such precarious conditions especially as accent, language and skin tone serve as permanent indicators of difference making the process of assimilation complex. Moreover, it would be interesting to comprehend how such conflict coincides with pressures of familial obligations, especially when dependents of migrants have been left behind in home countries with expectations of assistance or eventual resettlement in the seemingly hostile environment of the host country.

It is beyond the scope of this study to sufficiently highlight all that can be said with regards to men as gendered and sexual subjects within the migration process. Nonetheless, it is poignant to point out that the African context offers an abundance of narratives, moving ‘beyond male versus female analyses’ that may highlight how male identities said to be rooted and contained can become malleable under conditions such as migration.<sup>132</sup>

### 3.3.2. Considering South Africa as a destination for male sex work in transnational migration

The exodus of foreign nationals of African descent into South Africa is unquestionably not new. History has noted the influx of ‘non-native populations’ seeking prospects in gold mines and other industries, mesmerised by the progress in commerce and bustle not yet experienced in their native lands. Since South Africa’s journey towards liberation and subsequent elections in 1994, what has followed has been a mad rush of migratory flows and the acquisition of foreign bodies, not all welcome as the xenophobic attacks since 2008 demonstrate. However, the achievement of liberation, together with a new democratic dispensation finding expression within the Constitution has set South Africa apart from other African nation-states.<sup>133</sup>

The determination to succeed where other African states had failed during their own political transitions was apparent. Through interaction with other nation-states, endorsement of international human rights bodies including the ratification of various human rights mechanisms, South Africa has arguably branded itself as a place of progress, modernity and opportunity.

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<sup>131</sup> Mahler & Pessar (n17 above) 38.

<sup>132</sup> Mahler & Pessar (n17 above) 38.

<sup>133</sup> D Posel ‘Sex, death and the fate of the nation: Reflections on the politicization of sexuality in post-apartheid South Africa’ (2005) 75 *Journal of the International African Institute* 125.

Furthermore, through adherence to human rights standards, South Africa, at least, has the appearance of being in a far better position than many of its African counterparts.

The transition to democracy, although a local victory, within the rest of the continent what this triumph has stirred is a possibility for belonging and security not found in their own jurisdictions.<sup>134</sup> South Africa has thus perhaps inadvertently positioned itself as an attractive destination for those escaping economic, social and political fragility. The vast numbers of officially recorded refugees suggests this,<sup>135</sup> so too are the speculated numbers of 'illegal' and undocumented persons who through desperation and determination brave the journey to South Africa under what are at times dangerous and unpredictable circumstances, for what they imagine will be a better life even with the threat of detection and eventual deportation.<sup>136</sup>

Although male sex work in South Africa is known to occur, there exist very little documented narratives that could provide the depth of nuanced insight and knowledge. It is much the same on the rest of the continent. An indifference to counter-normative narratives in the arena of both politics and academia may thus be reasonably believed especially endorsed by the legal frameworks of many African states that have embedded within them anti-homosexuality ideologies.

Posel claims that there has been a politicisation of sex and sexuality in South Africa.<sup>137</sup> Furthermore, she indicates that 'the regulation of sexuality has inhered in the production of the modern state and its conditions of citizenship'.<sup>138</sup> Kenya, Malawi, Uganda, Zambia and Zimbabwe are examples of African states who through their leadership and hostile pronouncements continue to devise a sense of being African, of nationalism, citizenship and sovereignty through the use of anti-homosexuality rhetoric.<sup>139</sup> This rhetoric privileges a heterosexual ideal and actively seeks to root out and destroy alternative forms of gender or sexual expression that have been strategically labelled as Western imports. Dlamini, however, is of the opinion that it was

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<sup>134</sup> S Peberdy 'Imagining immigration: Inclusive identities and exclusive policies in post-1994 South Africa' (2001) 48 *Africa Today* 16-20.

<sup>135</sup> Peberdy (n134 above) 16-20.

<sup>136</sup> B Maharaj & R Rajkumar 'The 'alien invasion' in South Africa: Illegal immigrants in Durban' (1997) 14 *Development Southern Africa* 256-258.

<sup>137</sup> Posel (n133 above) 127.

<sup>138</sup> Posel (n133 above) 127.

<sup>139</sup> M Epprecht 'Black skin, 'cowboy' masculinity: A genealogy of homophobia in the African nationalist movement in Zimbabwe to 1983' (2005) 7 *Culture, Health & Sexuality* 254-256.

not homosexuality that was inherited but ‘rather intolerance of it and systems of surveillance and regulation for expressing it’.<sup>140</sup>

In Uganda, the threat to adopt the Anti-Homosexuality Act of Uganda 2014 attracted protest from political leaders and civil society organisations outside the African continent.<sup>141</sup> Yet, African state leaders including that of South Africa remained silent even when this Act sought to undermine international and local treaties, not forgetting the diverse vulnerabilities and human rights violations that would potentially lay ahead for LGBTI persons. It is then not surprising that male sex workers have come to be known as a ‘hard to reach population’, or that in such a resistant climate there is a reluctance to uncover narratives in which men especially subvert idolised forms of masculinity. There is however, a growing body of work by African authors such as Cheryl Potgieter<sup>142</sup> and Vasu Reddy<sup>143</sup> of South Africa, and Sylvia Tamale<sup>144</sup> and Stella Nyanzi<sup>145</sup> of Uganda who seek to thwart widely approved and essentialised gender binaries that are claimed to reflect the values of the majority of populaces.

Tracking entry into male sex work within the African continent is scarce. Creating a picture of the reality has meant piecing together fragments from what is known and not known. Public health programmes that focus on HIV/AIDS prevention for sex workers (named key populations),<sup>146</sup> queer studies, patterns and trends in female sex work, deduced generalisations, and existing literature from other parts of the globe such as Asia, Europe

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<sup>140</sup> B Dlamini ‘Homosexuality in the African context’ (2006) 67 *Agenda* 135.

<sup>141</sup> Anti-Homosexuality Act of 2014 (Uganda).

<sup>142</sup> C Potgieter ‘Black South African lesbians’ (2003) 7 *Journal of Lesbian Studies* 135-151; C Potgieter ‘Masculine bodies, feminine symbols: Challenging gendered identities or compulsory femininity?’ (2006) 20 *Agenda* 116-127; H Eslan-Ziya, A McGarry, C Potgieter, & FCG Reygan ‘Equal but separate? LGBTI rights in contemporary South Africa’ in U Korkut, K Mahendran, G Bucken-Knapp, & R Henry Cox (eds) (2015) *Discursive Governance in Politics, Policy, and the Public Sphere* 179-189.

<sup>143</sup> V Reddy ‘Perverts and sodomites: homophobia as hate speech in Africa’ (2002) 20 *Southern African Linguistics and Applied Language Studies* 163-175; V Reddy ‘Decriminalisation of homosexuality in post-apartheid South Africa: A brief legal case history review from sodomy to marriage’ (2011) *Agenda* 146-157; T Sandfort, H Bos, J Knox, & V Reddy ‘Gender nonconformity, discrimination, and mental health among Black South African men who have sex with men: A further exploration of unexpected findings’ (2016) 45 *Archives of Sexual Behavior* 661-670.

<sup>144</sup> S Tamale ‘A human rights impact assessment of the Ugandan Anti-homosexuality Bill 2009’ (2009) 4 *The Equal Rights Review* 49-57; S Tamale ‘Confronting the politics of nonconforming sexualities in Africa’ (2013) 56 *African Studies Review* 31-45.

<sup>145</sup> S Nyanzi, B Nyanzi-Wakholi, & B Kalina ‘Male promiscuity: The negotiation of masculinities by motorbike taxi-riders in Masaka, Uganda’ (2008) 20 *Men and Masculinities* 1-17; S Nyanzi, J Nassimbwa, V Kayizzi, & S Kabanda ‘“African sex is dangerous!”: Renegotiating ‘ritual sex’ in contemporary Masaka district’ (2008) 78 *Journal of the International African Institute* 518-539; S Nyanzi ‘Queer pride and protest: A reading of the bodies at Uganda’s first gay Beach Pride’ (2014) 40 *Signs* 36-40.

<sup>146</sup> The South African National Strategic Plan (NSP) 2012-2016 on HIV, STIs and TB refers to LGBTI persons, MSM and sex workers as key populations. The NSP acknowledges that current health interventions may not adequately address their sexual and reproductive needs, owing partly to the stigma and marginalisation they experience, as well as other social and structural barriers.

and Latin America have all played a part.<sup>147</sup> For some, South Africa may indeed be regarded as a sexual haven in light of the provision of non-discrimination due to sexual orientation in the Constitution. Unfortunately, this provision is yet to be realised even in the lives of local LGBTI persons, as many continue to lose their lives, a result of homophobic or sexual orientation-based attacks.

Motivated to resist the urge to moralise rather than rationalise, Mai proposes viewing male sex work as a form of compliance with systems of commodification within neoliberal regimes.<sup>148</sup> By bringing male sex work into a discussion on homosexuality, this study does not seek to misrepresent or claim that all male sex workers are homosexual, or that they entered South Africa specifically for sex work. The intention is rather to acknowledge that the majority clientele of male sex workers are known to be males. Moreover, heterosexual or not, male sex workers occupy a position traditionally associated with women, and in which same-sex sexual acts are said to be performed. It is for this reason that the narratives of male sex workers may arguably find meaning in queer discourse, providing language and ensuring a deserved respectability and integrity that may propel these conversations, particularly in academia and transnational migration discourse.

### 3.3.3. Addressing male sex work, African sexualities and masculinities

Male sex work in many ways challenges normative perceptions of what masculinity is or thought to be. This forces us to question and critique the manner in which masculine ideals and identities are framed, promoted and controlled. Furthermore, it has been argued that African masculinities have been essentialised giving the impression that there is one particular kind, a singularity rather than a plurality.<sup>149</sup> This might be believed however, if it were not for the diversity of the continent, richly textured with languages, cultures, traditions, religions and colonial pasts that at different moments in history shaped masculinities in various ways. Additionally, there is a misconception that only Africans within Africa have been and will continue to be at the forefront of influencing and shaping African sexualities.<sup>150</sup>

It is necessary to acknowledge that the process of identity formation can be reactive, as much as it can also be a choice encompassing both submission and resistance. Arnfred argues that 'sexuality in Africa has been externally conceptualized and produced, initially by colonial anthropologists and later

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<sup>147</sup> R Weitzer 'New directions in research on prostitution' (2005) 43 *Crime, Law & Social Change* 220.

<sup>148</sup> Mai (n45 above) 1248.

<sup>149</sup> Bennett 'Subversion and resistance: Activist initiatives' in Tamale (ed) (n9 above) 80; S Tamale 'Exploring the contours of African sexualities: Religion, law and power' (2014) 14 *African Human Rights Law Journal* 154.

<sup>150</sup> D Lewis 'Representing African sexualities' in S Tamale (ed) (2011) *African sexualities: A reader* 201.

in contexts of biomedical discourses of risk and danger'.<sup>151</sup> Colonialism, which constructed African sexuality as perverse, depraved and 'quintessentially other', together with the imposition of religions and legal frameworks has been significantly influential even in the face of retaliation and resistance.<sup>152</sup> Reid and Walker articulate that part of research on sexuality must encompass challenging the 'colonial gaze that has been so influential in shaping an understanding of African sexuality'.<sup>153</sup>

Bennett states that when it comes to claiming a purity to culture, tradition or even sexuality 'the source of the conviction informing them is often dubious'.<sup>154</sup> The idea of an African nationalism, at times so defensively and vehemently articulated in recent years in its own way can be said to serve as a response to colonialism.<sup>155</sup> A clear struggle to shed a sense of African emasculation is subtly audible. It is a statement declaring a historical shift, claiming self-governance, and self-control, a purity of future 'African' narratives.

Ironically, the very foundation said to be purely African due to changes in regime and political transitions have been built on remnants of inherited non-African legacies that very much continue to define how African societies are organised and ruled, including how sexuality is expressed and thus 'syncretised into postcolonial discourses'.<sup>156</sup> A prime example of this lack of 'pure' sovereignty is apparent in Africa's reliance on structural adjustment programmes and donor funding, which continues to dictate local and regional priorities, policies and practices. This has been most noteworthy in HIV/AIDS prevention programmes where as part of funding protocols one finds that solutions to the epidemic are not locally produced. The notion of true sovereignty in this case becomes problematic.

Hetero-normativity, also said to be inherited is a concept argued to not accurately represent what is thought to be the fluidity and essence of African sexualities. Its rhetoric has especially pathologised homosexual behaviour resulting in great anxiety within male sexualities 'caught up in fears related to homophobic violence and exaggerated fears regarding sexual orientation'.<sup>157</sup> Lewis refers to these as 'colonial-inspired scripts', 'recrafted by Africans ostensibly concerned with independent self-definition or

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<sup>151</sup> S Arnfred 'African feminists on sexualities' (2009) 43 *Canadian Journal of African Studies* 151.

<sup>152</sup> G Reid & L Walker 'Sex and secrecy: A focus on African sexualities' (2005) 7 *Culture, Health & Sexuality* 186.

<sup>153</sup> Reid & Walker (n152 above) 188.

<sup>154</sup> Bennett 'Subversion and resistance: Activist initiatives' in Tamale (ed) (n9 above) 80.

<sup>155</sup> PR Ireland 'A macro-level analysis of the scope, causes, and consequences of homophobia in Africa' (2013) 56 *African Studies Review* 53-55.

<sup>156</sup> M Van Zyl 'Taming monsters: Theorising erotic justice in Africa' (2015) 29 *Agenda* 148.

<sup>157</sup> T Msibi 'Not crossing the line: Masculinities and homophobic violence in South Africa' (2009) 23 *Agenda* 50.

ennobling views of Africa'.<sup>158</sup> It has made use of both law and religion from Islam to Judaeo Christianity in order to keep its foundation in place and achieve its end with men specifically appointed as chief custodians 'all converging in the idea of heterosexuality as naturally human'.<sup>159</sup> Due to 'assumptions about a fixed relation between particular bodies and their social expression' the possibility to express sexuality or masculinity in diverse ways will continue to be hampered which becomes difficult in the realm of male sex work.<sup>160</sup>

The trajectory male sex workers must negotiate and navigate requires enduring the fear of being ostracized.<sup>161</sup> Literature provides very few examples of male sex work on the African continent, however, violent responses to same-sex practices in general allow us to deduce that reaction to male sex work would be no different. The secrecy associated with male sex work may allow male sex workers to traverse two opposing spheres with some flexibility, a 'manufactured identity' that requires that aspects of one's life become compartmentalised and concealed, permitting them to avoid the wrath of disapproving agents.<sup>162</sup>

This section hopes to encourage the positioning of men as gendered and sexual subjects within transnational migration. The aim is to create a contrast with many of the narratives that have historically dominated migration discourse in which men have been framed as labourers and 'breadwinners'. This section also seeks to highlight some of the conflicts and challenges to notions of masculinity that may be confronted once entering a host country.

### **3.4. Conclusion**

The intention of this chapter was to question descriptions of sex work as they relate to both male sex workers and female sex workers. It can be argued that definitions of gender or gender binaries greatly impact the manner in which sex workers operate. Furthermore, understanding of gender roles may affect how laws criminalising sex work are applied to both male sex workers and female sex workers. Moreover, besides providing a discussion on perceptions of 'African' sexuality, this chapter also aimed to advocate for a more diverse exploration of masculinities in migration,

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<sup>158</sup> Lewis 'Representing African sexualities' in Tamale (ed) (n150 above) 201.

<sup>159</sup> Arnfred (n151 above) 155.

<sup>160</sup> Van Zyl (n156 above) 149.

<sup>161</sup> K Ratele 'Male sexualities and masculinities' in S Tamale (ed) (2011) *African sexualities: A reader* 413.

<sup>162</sup> Scambler (n41 above) 1091.

questioning stereotypes and steering away from traditional patterns where possible.

The next chapter will reflect on the South African jurisdiction, particularly the application of the Constitution and its role in advancing sexual diversity. Furthermore, I will consider the impact of human rights mechanisms and anti-homosexuality laws on sexual minorities.

## **CHAPTER 4: A DISCUSSION ON THE IMPACT OF LEGAL FRAMEWORKS AND HUMAN RIGHTS MECHANISMS ON SEXUAL MINORITIES**

### **4.1. Introduction**

In this chapter, I reflect on the South African jurisdiction and the application of the Constitution in the advancement of sexual diversity. In addition, I discuss the use of legal frameworks and human rights mechanisms to propel sexual minority rights, as well as the policing of sexuality by making use of migration and anti-homosexuality laws.

I begin with a discussion on South Africa's liberation struggle and history of activism which culminated in the construction of the Constitution. Furthermore, the role of the Constitution in addressing inequality, particularly in advancing sexual diversity through the prohibition of discrimination on the ground of sexual orientation will be explored. In addition, this section will attempt to shed light on the difficulty of asserting sexual minority rights using a human rights framework. Even in contexts where international human rights mechanisms have been ratified, the interpretation very often will exclude provisions for sexual minorities. Lastly, a debate on the use of migration and anti-homosexuality laws to police sexual practices and to bar migrants will ensue.

### **4.2. Contemplating Legal Frameworks, Human Rights, Migration and Sexual Diversity**

Without diminishing the importance of increasing levels of activism on the African continent and efforts to bring into sharper focus the rights of sexual minorities in order to improve the convergence of those rights with human rights, this chapter seeks to highlight the continued chasm between existing provisions and the lived experiences of sexual minorities. Although male sex workers are not referred to throughout this section, they remain a significant part of this discourse, not only due to their occupation but in the way their sexual practices are said to fall outside what is 'natural' and 'normal.' Their subversion, whether identifying as homosexual or not places them on the margins of society facing similar forms of discrimination and stigma as LGBTI persons, and therefore exposed to shared vulnerabilities.

It is thus the intention to illuminate the continued lack of political will and indecisiveness of state parties in this matter. Furthermore, the aim is to recommend a need to cultivate a practice of making visible queer narratives in diverse spaces, in this case within the context of migration and



displacement. In addition it is imperative to note a historical resistance to sexual diversity, manifesting especially in the form of anti-homosexuality laws and in some parts of the world migration laws too.

#### 4.2.1. The creation of non-constitutional cultures: Sex and sexual diversity in South Africa

The South African Constitution continues to be lauded both regionally and internationally as a constitutional feat that is both progressive and inclusive, primarily seeking to be representative of diverse populations.<sup>163</sup> Making the Constitution even more significant was the history of violence and divisiveness from which it hailed. This led to its inspiration and the birth of a nation with a political dispensation intent on severing ties with a racist regime that was determined especially to stifle the progress of non-white populations, creating inequalities based on race, class and gender.

Before and since the first democratic elections in 1994, various civil society groups have mobilised in order to clearly articulate their imagined vision of liberation, and very poignantly to counter inequality in its many forms.<sup>164</sup> Although not always with coherence, specifically vocal was the Women's Movement.<sup>165</sup> This was a coalition of women-focused organisations both rural and urban that sought to challenge traditional notions of womanhood,<sup>166</sup> to ensure the inclusion of feminist principles and to nurture a sense of entitlement to citizenship amongst women and all that could be gained from it.<sup>167</sup> The fruits of these labours include increased educational opportunities for women and girls as well as improved access to health services.

The intention of the Constitution is most admirably expressed in the non-discriminatory clause, speaking especially to the rights of marginalised populations from women to the disabled. However, most significant was the inclusion of non-discrimination based on sexual orientation,<sup>168</sup> read as follows in Article 9(3) of the South African Constitution:<sup>169</sup>

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<sup>163</sup> P de Vos 'Mind the gap: Imagining new ways of struggling towards the emancipation of sexual minorities in Africa' (2015) 29 *Agenda* 40.

<sup>164</sup> S Meer 'Freedom for women: Mainstreaming gender in the South African liberation struggle and beyond' (2005) 13 *Gender and Development* 36; AM Tripp, I Casimiro, J Kwesiga & A Mungwa *African women's movements: Changing political landscapes* (2009) 174.

<sup>165</sup> J Cock & A Bernstein 'Gender differences: Struggles around 'needs' and 'rights' in South Africa (2001) 13 *Gender and Social Policy: Local to Global* 138-141.

<sup>166</sup> Cock & Bernstein (n165 above) 138-141.

<sup>167</sup> S Hassim *Women's organizations and democracy in South Africa: Contesting authority* (2006) 166 – 168.

<sup>168</sup> J Cock 'Engendering gay and lesbian rights: The 'Equality' clause in the South African Constitution' (2002) 26 *Women's Studies International Forum* 35.

<sup>169</sup> Article 9(3) of the Constitution of the Republic of South Africa, 1996.

No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

There has undeniably been much reason to celebrate. However, contemporary South Africa has also had its challenges from the spread of HIV and Tuberculosis (TB) together with attached stigma and discrimination,<sup>170</sup> gender-based violence,<sup>171</sup> and sexual-orientation based stigma and discrimination, which many times have also resulted in violence and death.<sup>172</sup> The social and structural trials have been noted and the quest to find solutions to the abovementioned issues has certainly not been without controversy, division or the surge of factions. Furthermore, in no other period has sex, gender and sexuality been at the forefront of public and political debate than in the last twenty-two years of the country's history. One would thus expect that the increased numbers of platforms for these conversations, and the freedom of expression allowed would have resulted in more radical, political, practical and legal gains positively manifesting in the lived experiences of all residing in South Africa.

Noticeably in the area of sexual diversity, it could be said that constitutionally a failure to launch non-discrimination on the basis of sexual orientation as a practical political priority is lacking.<sup>173</sup> Questioning the idea of 'full citizenship' for gay men and women since the democratic elections, Potgieter opines that this can only truly be achieved once the claiming of these identities no longer come with the expectation of discrimination.<sup>174</sup> This failure may also be noted on both regional and international platforms where opportunities for the state to endorse and support programmes to increase the rights of sexual minorities have not been capitalised.

Van Zyl insists that part of transformation must include framing justice and human rights by not exclusively making use of a Western paradigm of individual rights, but to rather look towards inherently African approaches from which cultures of care, community and humanity are derived and emphasised.<sup>175</sup> Although arguably the most progressive and visible queer movement on the African continent, Cock criticises the gay rights movement

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<sup>170</sup> D Skinner & S Mfecane 'Stigma, discrimination and the implications for people living with HIV/AIDS in South Africa' (2004) 1 *SAHARA-J: Journal of Social Aspects of HIV/AIDS* 157-160.

<sup>171</sup> RK Jewkes, K Dunkle, M Nduna, & N Shai 'Intimate partner violence, relationship power inequity, and incidence of HIV infection in young women in South Africa: A cohort study' (2010) 376 *The Lancet* 41-42.

<sup>172</sup> D Posel "'Getting the nation talking about sex': reflections on the discursive constitution of sexuality in South Africa since 1994' (2004) 18 *Agenda* 57-59.

<sup>173</sup> Potgieter (n63 above) 4; H Wells & L Polders 'Anti-gay hate crimes in South Africa: Prevalence, reporting practices, and experiences of the Police' (2006) 2 *Agenda* 20-21.

<sup>174</sup> Potgieter (n63 above) 4.

<sup>175</sup> Van Zyl (n156 above) 152.

in South Africa as being ‘fragmented’, non-cohesive and male dominated. She proposes a transformative solution that Van Zyl is also in agreement with, a revolutionary approach not simply focused on recognition but ‘involves expanding the focus from justice as rights to include redistribution’.<sup>176</sup>

Barnard-Naudé argues that more emphasis needs to be placed on the ‘political struggle for equality’ and not simply the ‘legal subject of human rights’. He further claims that not doing so undermines the political process necessary to gain equality beyond legislative and constitutional provisions in tangible ways.<sup>177</sup> Barnard-Naudé adds that this may aide in avoiding a common trap in which sexual minority rights are essentialised as being a Western import, reduced to a ‘sub-culture’.<sup>178</sup> For many of the organisations that work with and represent sexual minorities, the majority of activism seems to take place very much outside state reliance, support and collaboration. Therefore, efforts to bridge the gap between policy, practice and lived experience have not been inspiring, especially for those who due to stigma constantly live under the threat of its many unpredictable and sometimes deadly manifestations.<sup>179</sup>

It could be propounded that South Africa may be folding under pressure, ‘bedevilled by political expediency and theological dogma’.<sup>180</sup> While unsubstantiated, it has been cited that the legalisation of same-sex unions in South Africa in the year 2006 did not occur without some backlash. Not only was there disapproval, it may have incited greater determination by some African leaders to condemn same-sex relations.<sup>181</sup>

Following a report commissioned by the United Nations in 2011, on the prevalence of human rights violations against persons based on sexual orientation and gender identity (SOGI), South Africa committed to hosting a forum to unpack continental input on how best to approach these challenges.<sup>182</sup> More than four years later, South Africa is yet to honour this promise.<sup>183</sup> There may indeed be a fear of retaliation from African counterparts whose regimes are built on the notion that heterosexuality partly forms the foundation for sovereignty and being African, as well as

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<sup>176</sup> Cock (n168 above) 35; Van Zyl (n156 above) 153.

<sup>177</sup> J Barnard-Naudé ‘For a politics of presupposed equality: The struggle for sexual minority freedom in Africa’ (2015) 29 *Agenda* 85.

<sup>178</sup> Barnard-Naudé (n177 above) 85.

<sup>179</sup> De Vos (n163 above) 41.

<sup>180</sup> AJGM Sanders ‘Homosexuality and the law: A gay revolution in South Africa?’ (1997) 41 *Journal of African Law* 107-108.

<sup>181</sup> Johnson (n65 above) 21.

<sup>182</sup> J Bennett & V Reddy ‘African positionings’: South African relationships with continental questions of lgbti justice and rights’ (2015) 29 *Agenda* 11.

<sup>183</sup> Bennett & Reddy (n182 above) 11.

entitlement to citizenship.<sup>184</sup> Ironically adamant that heterosexuality is fixed, yet perturbed by ‘the supposedly corrosive influences of human rights’.<sup>185</sup>

Bennett and Reddy propose a concept of ‘embedding pan-African solidarity into actual initiatives’ targeting diverse forums, as is more increasingly seen in academic spaces in which ‘the politics of queer’ is being disentangled. Preferring instead to focus on ‘economic and political traction’, what is undeniable is that South Africa has not taken a decisive leadership role, locally, regionally and internationally in linking the rights of sexual minorities with human rights.<sup>186</sup> Hence, the blind eye turned on atrocities against sexual minorities that occur on the continent.

Although many draconian laws have indeed been shed, in some respects particularly with regard to sexuality, a lingering conservatism remains even within state operations and that continues to stagger the potential for true sexual citizenship.<sup>187</sup> With little state intervention and support created to tackle associated social and structural complexities, civil society organisations whose mission it is to bring about greater equality for diverse sexually marginalised populations have had to rely on international platforms and support in order to continue their work.

Sexuality, sexual orientation, sexual expression and sexual identity and the meaning they may have to individuals or communities has been gravely undermined. According to Cock, ‘[t]he cornerstone of contemporary sexual politics is the assertion of a gay identity that can be claimed and celebrated’.<sup>188</sup> As the fault-lines continue to remain unaddressed, this has certainly defined the realities of many, not always in a positive manner. Sex workers and non-hetero conforming persons very often continue to find themselves outside the protection of the law, unable to access mechanisms for justice as well as health services which lead to increased vulnerability. Therefore, for foreign male sex workers choosing to reside in South Africa and whose protection as migrants under the Constitution is in itself only implied,<sup>189</sup> one can only assume that their level of vulnerability is even greater.

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<sup>184</sup> Anderson (n39 above) 124.

<sup>185</sup> Human Rights Watch *Together, apart: Organizing around sexual orientation and gender identity worldwide* (2009) 3.

<sup>186</sup> Bennett & Reddy (n182 above) 19.

<sup>187</sup> S Croucher ‘South Africa’s democratisation and the politics of gay liberation’ (2002) 28 *Journal of Southern African Studies* 327.

<sup>188</sup> Cock (n168 above) 42.

<sup>189</sup> Article 9(1) of the Constitution of the Republic of South Africa, 1996 states that ‘[e]veryone is equal before the law and has the right to equal protection and benefit of the law’.

Ideally, the Constitution must be promoted as a living document that seeks to merge civil and political rights with human rights, and further reinforced by the ratification of various human rights mechanisms without using sexual practice as a condition of worthiness. Very importantly, a quintessential aspect to any approach must be cognisant of the existence of particularities related to intersections of race, class and gender and how they may define the manner and context in which one lives out their sexuality. Instead, what has been witnessed is the emergence of non-constitutional cultures that threaten the freedoms and promise of representation fought for during the liberation struggle.

#### 4.2.2. Applying human rights perspectives and mechanisms to migration, sexual diversity and sex work within the context of displacement

There are a variety of human rights concerns that may be flagged when surveying the intersections between migration, sexuality and male sex work. These could be linked to the reasons for migration, the process of migrating and the experiences migrants may encounter once situated in their intended destinations. As previously stated the reasons for migration may vary and be related to economic hardship and the search for better opportunity; however, what continues to be seen is that migration can also be the result of political and civil unrest. Increasingly migration can also be attributed to legal hostility towards same-sex practicing persons in the form of anti-homosexuality legislation at times resulting in displacement or refugee status. This may result in a countless variety of vulnerabilities.

Most recently there has been marked attention given to linking gender-based violence with conflict and displacement.<sup>190</sup> It has been the 'natural' route to link gender-based violence with women. Bearing in mind women's historical position of marginalisation even outside the context of conflict, the spotlight given to this problem should not be surprising and is certainly warranted.<sup>191</sup>

Of particular concern have been allegations of sexual violence perpetrated by militants and peace-keepers deployed to protect and serve the vulnerable.<sup>192</sup> The documented consequences have been especially devastating for women and young girls, with HIV infection together with other STIs being rife, as well as unwanted pregnancies and unsafe

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<sup>190</sup> AL Wirtz, N Glass, K Pham, A Aberra, LS Rubenstein, S Singh, & A Vu 'Development of a screening tool to identify female survivors of gender-based violence in a humanitarian setting: Qualitative evidence from research among refugees in Ethiopia' (2013) 7 *Conflict and Health* 1-2.

<sup>191</sup> N Linos 'Rethinking gender-based violence during war: Is violence against civilian men a problem worth addressing?' (2009) 68 *Social Science & Medicine* 1548.

<sup>192</sup> M Bastick, K Grimm & R Kunz *Sexual violence in armed conflict: Global overview and implications for the security sector* (2007) 9.

abortions.<sup>193</sup> This may not only occur in tumultuous circumstances, but, the availability of sexual and reproductive health services may be unpredictable, particularly in a context in which the rule of law or governance may be blurred making access to mechanisms for justice and recourse complex.

With the backing of various human rights mechanisms, solutions to gender-based violence in conflict, post-conflict and displacement as they relate to women continue to be formalised, gaining much recognition and support regionally and internationally. Article 10 ‘Right to Peace’ and Article 11 ‘Women in Armed Conflicts’ of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) speak to the considerations that are to be taken for women in situations of armed conflict.<sup>194</sup> Article 28 of the Southern African Development Council (SADC) Protocol on Gender and Development refers to ‘Peace Building and Conflict’ with specific reference to women and children.<sup>195</sup> In addition, United Nations Resolution 1325 calls on states to implement preventative and protective measures.<sup>196</sup>

As we become more cognisant of the escalating hostility towards LGBTI persons, reinforced through anti-homosexuality legislation in many African countries, there is the shocking realisation of the invisibility of counter-hegemonic sexual identity narratives including male sex work as an essential part of the gender-based violence, conflict and displacement debate. In addition, what is surprising is the lack of consideration that non-hetero-normative conforming persons may actually make up the large number of displaced or refugee persons. Certainly, sexual violence against men and boys does feature in some literature, first highlighted in the Bosnian war in the early 1990s as a weapon used for torture or emasculation, however, there is ostensibly an assumed heterosexuality of both perpetrators and victims.<sup>197</sup> Furthermore, solutions have been therapeutic in tone rather than a call for a broader more encompassing approach to sexual and reproductive health provision.

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<sup>193</sup> Bastick, Grimm & Kunz (n192 above) 18.

<sup>194</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted 11 July 2003, (entered into force 25 November 2005), 2nd Ordinary Session of the Assembly of the African Union, AHG/Res. 240 (XXXI).

<sup>195</sup> Southern Africa Development Council (SADC) Protocol on Gender and Development, adopted 17 August 2008 (entered into force 22 February 2013), SADC Heads of State Summit, Johannesburg, South Africa.

<sup>196</sup> United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security, adopted at the 4213th Meeting of the Security Council, S/RES/1325.

<sup>197</sup> P Oosterhoff, P Zwanikken & E Ketting ‘Sexual torture of men in Croatia and other Conflict situations: An open secret’ (2004) 12 *Reproductive Health Matters* 68-69; Linos (n191 above) 1549.

Nyanzi documents the work of organisations providing HIV/AIDS services in Ugandan rural settlements and notes the general exclusion of displaced populations from such services.<sup>198</sup> Nyanzi further criticises many of these services for their ‘overt concentration on normative hetero-sexualities’ where sex is ‘narrowly constructed as penile-vaginal penetration’, a trend seen across the African continent.<sup>199</sup> This becomes particularly problematic in contexts where either or both same-sex practices or (male) sex work is outlawed.

It would be naïve to reason that the trends of stigma and discrimination faced by those said to subvert the norm through their sexual practices in most African societies would suddenly dissipate within the context of displacement. In fact, they would most likely become exacerbated as tends to be the case whenever hetero-sexual protocols and norms are not observed and where mechanisms for protection do not exist or are not guaranteed.<sup>200</sup> The likelihood of exposure to various degrees of vulnerability may also be expected, including sexual violence and ill health such as HIV and STI infection.<sup>201</sup> Admittedly, the chaos of conflict and displacement may mask the occurrences of such vulnerabilities. However, this only calls for greater vigilance and requires that human rights solutions become embedded in policies and practices related to migration, conflict and displacement in ways that speak to diverse experiences.

In seeking a possible answer for improving health provision for sexual minorities in homophobic and hostile contexts, Epprecht juxtaposes two positions in order to address ‘silencing cultures’.<sup>202</sup> The first calls for an open, confrontational and unapologetically audible engagement on sexual minority rights by civil society, activists and advocates. However, the second approach would appropriate more ‘stealth’ methods by embedding and camouflaging health services applicable to non-hetero conforming persons within public health systems. The latter would seem to be the most obvious choice within the complexity of displacement; although, one may argue that it may undermine the discursive and educational work needed to create tolerance for sexual diversity. Epprecht further emphasises the need to weigh how either one or both methods may be effective through a consideration of what is realistic in any given context.<sup>203</sup>

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<sup>198</sup> S Nyanzi ‘Homosexuality, sex work, and HIV/AIDS in displacement and post-conflict settings: The case of refugees in Uganda’ (2013) 20 *International Peacekeeping* 452.

<sup>199</sup> Nyanzi (n198 above) 452.

<sup>200</sup> Nyanzi (n198 above) 456.

<sup>201</sup> C Beyrer ‘Pushback: The Current Wave of Anti-Homosexuality Laws and Impacts on Health’ (2014) 11 *PLoS Med* 2.

<sup>202</sup> Epprecht (n63 above) 223.

<sup>203</sup> Epprecht (n63 above) 231-232.

Interpreting the provision of non-discrimination on the basis of 'sex' to also include sexual orientation in Article 26 of the International Covenant on Civil and Political Rights (ICCPR),<sup>204</sup> the Human Rights Council (HRC) in 1994 challenged Tasmanian laws that criminalised sexual relations, in *Toonen v Australia*.<sup>205</sup> Although this landmark case has since given activists and human rights advocates greater leverage, the findings are still yet to filter into debates on displacement. As yet, the silence on sexual diversity is deafening and remains one of the largest threats to the lives of non-heterosexual defining persons in displacement and post-conflict circumstances.

Referring to the UN system, yet certainly applicable in the context of displacement, Saiz asserts the necessity to articulate sexual-orientation related rights 'within a broader concept of sexual rights, including the right to sexual health'.<sup>206</sup> Not without consideration for the challenges, it may certainly offer opportunities for improving the health of all sexual minorities. The Human Rights Council (HRC),<sup>207</sup> the Committee on Economic, Social and Cultural Rights (CESCR),<sup>208</sup> the Committee on the Elimination of Discrimination against Women (CEDAW),<sup>209</sup> the Committee against Torture,<sup>210</sup> as well as the Committee on the Rights of the Child (CRC)<sup>211</sup> have made recommendations to state parties in order to reverse the scourge of violence and discrimination on the basis of sexual-orientation, either by repealing laws that incite stigma or by providing better information and

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<sup>204</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, (entered into force 23 March 1976) G.A. Res. 2200 (XXI), U.N. GAOR, 21st Session, Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

<sup>205</sup> *Toonen v. Australia*, Communication 488/92, Human Rights Committee, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 1994) (Human Rights Council); I Saiz 'Bracketing sexuality: Human rights and sexual orientation: A decade of development and denial at the UN' (2004) 7 *Health and Human Rights* 49.

<sup>206</sup> Saiz (n205 above) 51.

<sup>207</sup> United Nations High Commissioner for Human Rights Report on 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation or gender identity' (2011), submitted to the Security Council at the 19<sup>th</sup> Session, A/HRC/19/41.

<sup>208</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, paragraph 2.

<sup>209</sup> United Nations Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 28 (2010) on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, paragraph 18.

<sup>210</sup> United Nations Committee against Torture, General Comment No. 2 (2007) Implementation of Article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at the 39<sup>th</sup> Session of the Committee against Torture, CAT/C/GC/2/CRP, 1/Rev.4, paragraph 21.

<sup>211</sup> United Nations Committee on the Rights of the Child, General Comment No. 4 (2003) Adolescent Health and Development in the Context of the Convention on the Rights of the Child, adopted at the 32nd Session of the Committee on the Rights of the Child, CRC/GC/2003/4, paragraph 2; United Nations Committee on the Rights of the Child (CRC), General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, paragraph 8.



healthcare.<sup>212</sup> Unfortunately, it seems a link between displacement and the exposure of sexual minorities to diverse harms is still yet to be made.

Unlike the ICCPR, regionally, it might be argued that the African Charter on Human and Peoples' Rights (Banjul Protocol) has not been adequately utilised or interpreted in defence of the rights of sexual minorities, nor the condemnation of state parties that adopt anti-homosexuality laws, linking these laws to a multitude of violations.<sup>213</sup> Since the historic adoption of Resolution 275 on the Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity in the year 2014 by the African Commission,<sup>214</sup> there remains anticipation to see the extent to which the Resolution will have an impact on the lives of sexual minorities, if at all.

What this study seeks to highlight is how much is yet to be done in terms of acknowledging the existence of queer narratives within different migratory contexts and the necessity to undercut the insistence to view the world in heterosexual terms in which diverse sexual experiences are set aside due to protocols that only privilege supposedly fixed heterosexual gender binaries. Although the visible lack of political will should not at all be surprising, the fact that this is an issue that seems to be outside public conversation is disquieting, and most worrying is that it appears to be minimally on the radar of civil society. One might therefore argue that it may be the opportune moment especially for regional and international human rights agencies to develop and reframe approaches to displacement and conflict that acknowledge sexual diversity through the inclusion of appropriate sexual and reproductive health services as well as relevant training for health personnel.

Nyanzi proposes an expansion of the conceptual frameworks guiding peace-building efforts that include diversity in sexuality, gender identity, sex work and approaches for HIV intervention.<sup>215</sup> A discursive and ideological shift must indeed take place in order to ensure that human rights begin to have meaning within lived experiences in all their diversity, and where subversion moves from becoming a conservative political conundrum to a norm. This is particularly possible in a context such as South Africa that is said to

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<sup>212</sup> Saiz (n205 above) 51–53.

<sup>213</sup> African Charter on Human and Peoples' Rights, adopted 27 June 1981, (entered into force 21 October 1986), OAU Doc CAB/LE/67/3 Rev 5, 1520 UNTS 217; R Murray & F Viljoen 'Towards non-discrimination on the basis of sexual orientation: The normative basis and procedural possibilities before the African Commission on Human and Peoples' Rights and the African Union' (2007) 29 *Human Rights Quarterly* 86-88.

<sup>214</sup> African Commission Resolution 275 on the Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity, adopted at the 55<sup>th</sup> Ordinary Session of the African Commission held in Luanda, Angola, Res. 275 (LV) 14.

<sup>215</sup> Nyanzi (n198 above) 464.

represent the rights and interests of diverse populations and in which civil society groups have the constitutional leverage and political opportunity to garner support for such a cause.

#### 4.2.3. The role of migration laws and anti-homosexuality laws in the exclusion of the deviant and undesirable

Although not always apparent, state machineries have a vested interest in the embodiment of society and the form it takes, sometimes but not always subtly weeding out characteristics that may be deemed dangerous or threatening to state ideology. Different kinds of legislation converge and play a part in this, none more obvious than those relating to criminal law.

Seemingly far removed from the mundane day to day experiences of ordinary citizens, the role of migration laws may appear to have no direct impact or implications for the citizen body. They are perceived as processes for sieving through permissible and impermissible persons. However, an impression is given that entry into a jurisdiction is only a matter of establishing the legitimacy of visas, identity documentation, relevant skills, and avoiding those with a history of criminal activity.

The recent migratory flows of refugees from war-torn Syria to various parts of the Western World including Australia, Canada, and Germany reveal in part the complexity of balancing local interests and responsibilities with international and diplomatic obligations. Migration laws do not therefore only entail the control of bodies across borders, and are just as much concerned with maintaining amicable regional and international relations, as they are an essential part of realising what a state views as its political purpose and vision.

In order to expand the discourse on gender and migration, Mahler and Pessar suggest a consideration of gender as it intersects with other variables or 'axes of difference', such as race, class and sexual orientation.<sup>216</sup> According to Mahler and Pessar this is necessary to 'reveal tensions and contradictions in the ideologies, practices, and distribution of power within the lives of immigrants and native-born populations'.<sup>217</sup>

The issue of sexuality has not always been frequently pronounced within migration laws as criteria used to determine exclusion or entry. However, historically, evidence of this can be found. As early as 1875, the Page Act in the United States served as an example of migration laws passed in order to uphold patriarchy, and permissible hetero-sexualities.<sup>218</sup> For example, based

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<sup>216</sup> Mahler & Pessar (n17 above) 38.

<sup>217</sup> Mahler & Pessar (n17 above) 38.

<sup>218</sup> Page Act of 1875 (United States).

on the stereotyping of Chinese women as promiscuous and prone to 'prostitution', restriction on the immigration of Chinese women stood,<sup>219</sup> 'a product of intersecting processes of racialization and sexualization'.<sup>220</sup>

In the US, the Immigration and Nationality Act of 1952,<sup>221</sup> also known as the McCarran-Walter Act banned the immigration of homosexuals, citing 'psychopathic personalities'. Currently, the Immigration Act of 1969 of Trinidad and Tobago as well as the Immigration Act of 2000 of Belize both refer to homosexuals and 'prostitutes' as 'prohibited' persons. Discussing the work of Luibhéid,<sup>222</sup> Manalansan IV professes that:<sup>223</sup>

[T]he movement of migrants are [sic] not only monitored and controlled by state authorities by specific racial, ethnic, and gender preferences and prohibitions, but are mediated though implicit sexualized ideas in law and immigration proceedings.

Therefore, in many contexts, migration laws have been used to underline and reinforce state values and ideals, favouring traditional heterosexual arrangements. This has occurred in defence of reproduction and family values in order to stave off sexual behaviour seen as potentially contaminating the psyche and behaviour of the populace.<sup>224</sup> Speaking of a European context, yet also conceivable within an African setting, Mahler and Pessar further illustrate this point by stating that 'immigration laws act to reproduce traditional notions of women's dependency on men by assuming that the latter are the breadwinners and thus the heads of households'.<sup>225</sup>

Being even more obvious in their intentions, laws relating to sexual offences or conduct serve to regulate sexual behaviour and expression and like some migration laws, hampering what is deemed unsuitable and corruptive. In their own way boundaries are set for belonging and rejection. The criminality associated with homosexuality was clearly expressed in the proposed 2014 Ugandan Anti-homosexuality Bill.<sup>226</sup> Sections of this Bill make reference to 'aggravated homosexuality', 'attempt to commit homosexuality', 'victims of homosexuality' in order to emphasise this practice as an undesirable social ill. Met with disapproving commentary, the proposed Bill attracted protest from political leaders and civil society

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<sup>219</sup> Mahler & Pessar (n17 above) 38.

<sup>220</sup> Manalansan IV (n4 above) 230.

<sup>221</sup> Immigration and Nationality Act of 1952 (United States), also known as the McCarran-Walter Act.

<sup>222</sup> E Luibhéid 'Queering migration and citizenship' in E Luibhéid & L Cantu (eds) *Queer migrations: Sexuality, U.S. citizenship and border crossings* (2005), referred to in MF Manalansan IV 'Queer intersections: Sexuality and gender in migration studies' (2006) 40 *The International Migration Review* 235.

<sup>223</sup> Manalansan IV (n4 above) 235.

<sup>224</sup> Mahler & Pessar (n17 above) 40.

<sup>225</sup> Mahler & Pessar (n17 above) 40.

<sup>226</sup> Anti-homosexuality Act of 2014 (Uganda).

organisations outside the African continent. Nonetheless, African leaders remained silent even with regard to the diverse vulnerabilities and human rights violations that would potentially lay ahead for LGBTI persons as a result of the Bill. Though the Bill is yet to be ratified, its intention revealed from the onset is ‘to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations’.<sup>227</sup> Consequently, no laws have expressed disdain with sexually diverse practices more sharply than anti-homosexuality laws as well as laws relating to sex work.

In 2013, the Supreme Court of India overturned a landmark decision by the High Court in *Naz Foundation v Government of NCT Delhi* to amend Section 377 of the Indian Penal Code (IPC).<sup>228</sup> Testimony submitted by the Naz Foundation and other parties claimed that Section 377 of the IPC referring to the crime of sodomy, gravely discriminated against LGBTI persons. Furthermore, the provision most disproportionately affected MSM. The decision of the High Court thus spoke to what was concluded as being severe acts of discrimination against LGBTI persons, allegedly aggravated due to Section 377. This case demonstrated the prejudice against sexual minorities. In addition, it revealed how anti-homosexuality laws are held together by the state’s use of the judiciary but further operationalized through state office bearers.

Similar to *Naz Foundation v Government of NCT Delhi*, in *Banana v Supreme Court of Zimbabwe*,<sup>229</sup> the Supreme Court claimed it could not interpret the Zimbabwean Constitutional provision of non-discrimination on the grounds of gender to include sexual orientation. In *Utjiwa Kanane v The State*,<sup>230</sup> in Botswana, not only were myths and stereotypes related to homosexuality given a platform, it was claimed that contempt for homosexuality reflected general popular sentiment. On one hand, these are three cases amongst many others in which the judiciary has been used to reinforce stigma and in which a determination to stamp out diverse forms of sexual expression has been displayed furthering the ends of anti-homosexuality laws and state ideology. On the other hand, in *National Coalition of Gay and Lesbian Equality v Minister of Justice*, Judge Ackermann states that ‘[t]here can be no doubt that the existence of a law which punishes a form of sexual

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<sup>227</sup> Anti-homosexuality Act of 2014 (Uganda).

<sup>228</sup> *Suresh Kumar Koushal and another v Naz Foundation*, Civil Appeal No.10979 of 2013 (Supreme Court of India); *Naz Foundation v Government of NCT Dehli* WP(C) No.7455/2001; Indian Penal Code (IPC) Section 377 (India).

<sup>229</sup> *Banana v State*, (2000) 4 LRC 621 (Supreme Court of Zimbabwe).

<sup>230</sup> *Utjiwa Kanane v The State*, Trial No. F94 of 1995 (High Court of Botswana); *Utjiwa Kanane v The State*, Criminal appeal No. 9 of 1995 (Court of Appeal of Botswana).

expression for gay men degrades and devalues gay men in our broader society'.<sup>231</sup>

Many of those failing to meet required standards of sexual conduct find themselves on the margins of society, ostracised from their families and communities, and cut-off from state protection and assistance. Admittedly not frequently seen as colluding to propel heterosexuality as an ideal, historically migration laws and laws relating to sexual conduct have been known as tools to stifle and discourage what is regarded as deviant or undesirable behaviour, limiting the right to participate fully or not at all in mainstream society.

### **4.3. Conclusion**

The intention of this chapter was to enter into a discussion on the advancement of sexual diversity. As an African country and one of the few to legislate non-discrimination on the grounds of sexual orientation, South Africa provides a unique opportunity to delve into this subject. Moreover, the aim was to illuminate some of the challenges in framing sexual minority rights as being human rights. Different contexts interpret human rights in diverse ways and migration and anti-homosexuality legislation that specifically target sexual minorities contribute to their vulnerability. This results in much dilemma and complexity for sexual minority activists and human rights agencies as well as putting a dent in campaigns for equal rights.

The next chapter consists of the concluding remarks and recommendations.

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<sup>231</sup> *National Coalition of Gay and Lesbian Equality v Minister of Justice*, 1998 (12) BCLR 1517 (Constitutional Court of South Africa).

## **CHAPTER 5: CONCLUDING CHAPTER**

### **5.1. Introduction**

Male sex work, besides providing an opportunity to delve into a subject that has not been fully explored in the African context, allows us to observe the gaps that exist within the study of gender, sex, sexuality and migration. These chasms suggest that there may indeed be a deliberate mission to not only essentialise gender binaries, but to hinder alternative forms of gender and sexual expression from surfacing and gaining legitimacy. Therefore, the purpose of this study is to contribute to the advancement of queer narratives within academia, especially those reflecting experiences from the African continent.

It is clear that even as queer movements become activated and mobilise, with the very same vigour and possibly even greater resources opposing and conservative wings continue to galvanise and rally support. The latter have looked to tradition, so-called Africanism, nation-state sovereignty and religious conviction as part of the basis for their points of view, none of which can be relied upon for exactness or historical accuracy. However, the power amassed by dissenting voices has certainly hampered any consensus on the recognition of sexual minority rights as being human rights both on regional as well as international platforms.

In the case of sex workers specifically, though arguably adversely affecting female sex workers more than male sex workers when compared, has been the creation of one-dimensional and pathologised subjects. Moreover, they have been viewed through the lens of moralising tendencies and from which a large body of work has been generated and dominates within academia and public health. The marginalisation of sex workers due to their inability to conform, at least in their sexual practices not only demonstrates the meaning attached to sex and sexuality, but the extent to which gender binaries hold significance in many societies. This may also explain the lack of material available giving sex workers the right and platform to speak on their own behalves. Literature has thus tended to de-humanise and vilify sex work, limiting the ways in which it can be understood and denying those who practice it any form of acceptability or respectability.

### **5.2. Concluding Remarks**

Perusing over literature on male sex work within the context of transnational migration reveals that the attitudes and hostilities towards

practices outside hegemonic hetero-sexualities are not specific to any one location. However, based on the social, cultural and political landscape, the kind of activism needed as well as the pronouncement of human rights must be applicable to each context. Whilst there may be agreement among activists concerning the need to protect sexual minorities, the type of protections and the level of recognition sought may not necessarily be the same across the board, presenting a challenge amongst activists as well as for transnational activism and advocacy.

The chapters included in this study sought to illuminate the subject of male sex work within the context of transnational migration. By doing so many of the debates on sexual minority issues are also problematized. An occasion to discover diverse perspectives is presented, particularly as male sex workers are not only a hard to reach population, but the existing body of work on male sex work alone remains sparse, especially within the African context. Much of the literature on male sex work is confined to Europe, Asia, North America and Latin America. Interestingly, this is where the majority of funding for sexual and reproductive health intervention programmes for sexual minorities is said to be concentrated.<sup>232</sup>

Limitations in the way gender and sexuality are framed within a migratory context continue. For the most part there has been a tendency to lean towards stereotypes and widely endorsed hegemonic norms centred on family and reproduction. Furthermore, there seems to be a particular reluctance to explore gradations of masculinities that do not neatly conform to accepted or acceptable forms of heterosexuality. A stark example is the reluctance to associate male sex work with moral degradation or vulnerability, an association that continues to plague much writing on female sex work. Unlike the judgement reserved for women, this suggests that as long as masculinities do not remain permanently subverted they are redeemable. Unfortunately, not only are gaps dangerously visible within public health interventions, a vacuum is especially noticeable within academia.

Throughout this study and by delving into literature on male sex work, impressions have been framed on intersections with gender, sexuality and migration. Of particular importance to is the framing of non-hetero-conforming sexual practices as 'unnatural' or 'immoral'. This has resulted in the growing evolution of formal and informal antagonistic utterances by influential persons and state leaders, followed by the formalisation of prohibitive legal provisions in the form of anti-homosexual laws.

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<sup>232</sup> SM Goldenberg, J Chettiar, P Nguyen, S Dobrer, J Montaner, & K Shannon 'Complexities of short-term mobility for sex work and migration among sex workers: Violence and sexual risks, barriers to care, and enhanced social and economic opportunities' (2014) 91 *Journal of Urban Health* 737-738.

Unlike many of its counterparts, the South African political landscape is more liberal as reflected in its constitutional provisions. On the surface at least, South Africa has the appearance of being a safer haven for sexual diversity, yet in practice reports of violence and discrimination remain rampant. Although the impact of legislation on lived experience should not be undermined, both the South African example and that of its counterparts demonstrate the significance and necessity of political will and leadership.

Male sex work within transnational migration provides a backdrop for which to disentangle narrowly defined gender binaries. These binaries certainly have a bearing on the manner in which gender identity and sexuality are constructed and expressed. Furthermore, an opportunity to discuss the manifestations of anti-homosexual laws on the African continent is given, especially as they are claimed to be reflective of widely endorsed African attitudes and African sexualities. Therefore, not only is it necessary to contemplate the practical implications for non-hetero conforming persons, but to also consider how the complexity of context may contribute to the difficulty of addressing these challenges within a human rights framework.

### **5.3. Recommendations**

The following recommendations have been made in order to address some of the challenges that became apparent during the course of this study.

Observing existing disparities on the African continent with regard to non-heterosexual-conforming persons, it is essential to ensure that Resolution 275 on the Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity has a meaningful impact. As such, holding the African Union accountable in order to ensure the promotion of the Resolution is essential. Furthermore, the Resolution provides greater reason to give prominence to civil society organisations working on sexual minority issues by making use of platforms provided by the African Union.

Migration discourse on its own has shown to be dominated with 'heterosexual' male narratives or at least an assumption of heterosexuality, particularly showcasing traditional family arrangements and values. Therefore, more room certainly needs to be made within migration discourse to consider narratives that transgress from the hegemonic path. This will not only inform migration studies, but will contribute to discourses in gender and sexuality too. Consequently, such effort is particularly important within academia and more encouragement to discover queer narratives in diverse contexts is necessary. This is not simply for the purpose of knowledge making, but to further awaken the world to contradictions in the



way we comprehend human categories and arrangements. Transgendered experiences especially have been deducted.

There is a seeming reluctance to challenge gender binaries thus affecting which experiences become visible and investigation pertaining to subjects such as male sex workers remains sparse. This is a trial particularly within the African context. Hence, it is imperative to ensure that engagements for activism continue both locally and on the continent to further link sexual minority rights to human rights. Moreover, as some literature has shown, a one-size-fits-all approach may not gain the most traction. Thus, it is important to be conscious of the boundaries in which progress may steadily be made, taking into consideration the realities of specific contexts. The aim must be to elevate alternative narratives, bringing illumination to the experiences of sexual minorities.

Noting the importance of recording knowledge, the last recommendation of this study would be to increase opportunities that allow subjects to speak on their own behalves. The vulnerabilities associated with the culture of silencing or making certain voices inaudible, in this case those voices that are said to subvert the norm has shown to have dire consequences, affecting both security and health.

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