

**Triangle Project Submission on the Green Paper on International Migration
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Endorsed by:
Access Chapter 2

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1. Glossary

- **Cisgender:** – describes someone who feels comfortable with the gender identity and gender expression expectations assigned to them based on their physical sex.¹
- **Corrective rape:** The prejudiced notion that a lesbian woman can be raped to ‘make her straight’: i.e., to ‘correct’ her lesbian sexuality. ‘Corrective rape’ seeks to justify the rape of those people who are perceived to not conform - or to disrupt - expected gender roles, behaviour and/or presentation. Misogyny and homophobia underpin the prejudice associated with ‘corrective rape’²
- **Gender (identity):** - A person’s sense of being masculine, feminine, or other gendered.³
- **Gender nonconforming:** people who do not subscribe to gender expressions or roles expected of them by society.⁴
- **Heteronormative:** - The assumption, in individuals or in institutions, that everyone is heterosexual until proven otherwise, and that heterosexuality is superior to homosexuality and bisexuality⁵
- **Homophobia:** - The irrational fear or hatred of homosexuals, homosexuality, or any behaviour or belief that does not conform to rigid sex role stereotypes. It is this fear that enforces sexism as well as heterosexism⁶
- **Intersex:** People who naturally (that is, without any medical intervention) develop primary or secondary sex characteristics that do not fit neatly into society’s definitions of male or female.⁷
- **LGBTQI:** A common abbreviation for lesbian, gay, bisexual, transgender, queer and intersexed community. ⁸
- **Queer:** An umbrella term which embraces a matrix of sexual preferences, orientations, and habits of the not-exclusively- heterosexual-cisgender-monogamous majority. Queer includes lesbians, gay men, bisexuals, transpeople, intersex persons, the radical sex communities, and many other sexually transgressive explorers.⁹
- **Secondary victimisation:** Behaviours and attitudes of social service providers that are "victim-blaming" and insensitive, and which traumatize victims of violence who are being served by these agencies.¹⁰
- **Sex:** a medically constructed categorization. Sex is often assigned based on the appearance of the genitalia, either in ultrasound or at birth.¹¹

¹ <http://www.lgbt.ucla.edu/Resources/LGBTQ-Terminology#284251062-s>

² J. A. Nel & M. Judge. ‘Exploring Homophobic Victimization in Gauteng, South Africa: Issues, Impacts and Responses’ *Acta Criminologica* 21(3) 2008.

³ IBID

⁴ <http://lgbtqia.ucdavis.edu/educated/glossary.html>

⁵ <http://www.lgbt.ucla.edu/Resources/LGBTQ-Terminology#284251062-s>

⁶ IBID

⁷ <http://lgbtqia.ucdavis.edu/educated/glossary.html>

⁸ <http://www.lgbt.ucla.edu/Resources/LGBTQ-Terminology#284251062-s>

⁹ <http://www.lgbt.ucla.edu/Resources/LGBTQ-Terminology#284251061-q>

¹⁰ <https://mainweb-v.musc.edu/vawprevention/research/victimrape.shtml>

¹¹ <http://lgbtqia.ucdavis.edu/educated/glossary.html>

- **Sexual orientation:** – The desire for intimate emotional and/or sexual relationships with people of the same gender/sex, another gender/sex, or multiple genders/sexes¹²
- **Transgender:** A person who lives as a member of a gender other than that expected based on anatomical sex. Sexual orientation varies and is not dependent on gender identity.¹³
- **Transphobia:** The irrational fear of those who are gender variant and/or the inability to deal with gender ambiguity¹⁴
- **Transition:** This term is primarily used to refer to the process a gender variant person undergoes when changing their bodily appearance either to be more congruent with the gender/sex they feel themselves to be and/or to be in harmony with their preferred gender expression.¹⁵

¹² <http://www.lgbt.ucla.edu/Resources/LGBTQ-Terminology#284251062-s>

¹³ <http://www.lgbt.ucla.edu/Resources/LGBTQ-Terminology#284251062-s>

¹⁴ IBID

¹⁵ IBID

2. Introduction

Triangle Project is an LGBTQI human rights organisation based in Cape Town. We are involved in research, advocacy, and community empowerment and offer a range of direct medical and psychosocial services to LGBTQI persons.

As an organisation, we are committed to ensuring that LGBTQI people receive equality and dignity when accessing services and work closely with different stakeholders on issues such as hate crimes and discrimination. For LGBTQI people who are refugees or asylum seekers, challenges are multifaceted and extend beyond xenophobia but also homophobia and transphobia. These combine to make LGBTQI refugees incredibly vulnerable and requiring special attention to protect their rights.

This submission will focus on the Green Paper as it relates to - or excludes - LGBTQI persons from an understanding of international migration and human rights. More than that, we argue that the Green Paper sets out a vision for the management of international migration that is detached from the current Department of Home Affairs (DHA) and its ability to execute such a policy and should focus on broad infrastructural issues plaguing the department as a starting point.

3. Specific context for LGBTQI refugees, migrants and asylum seekers

3.1 Complexities

It is very hard to figure out exactly how many of the refugees in South Africa identify as LGBTQI. This is partly due to the high probability that LGBTQI persons have lived in societies that condemned that part of their identity, and therefore hide that fact about themselves in fear of continuous persecution or second victimisation.

What we know, is that the majority of the influx of asylum seekers are from countries where homosexuality is criminalized¹⁶. Anti-homosexuality legislation only concerns sexual orientation, but can often work as an indicator as to the level of tolerance with regards to gender performance and gender nonconformity as well. Therefore we can assume that, for example, a transgender person will be persecuted in a country with anti-homosexuality legislation, even though transgender identities are not directly criminalized. We can also assert that persecution is not only something that the state implements through legislation, but is also something created by a history of a homophobic and transphobic norms that are still reinforced outside of the state. Persecution based on sexual orientation or gender identity is therefore not only a question of how the state law is regarding LGBTQI identities, but is much more complex than

¹⁶ Green Paper page 30

that. South Africa is an example of a country where framework established by the constitution is often very different from the lived reality of LGBTQI persons.

Someone can still get persecuted in a state that has legalized same sex relationships and, if the state is passive and does nothing to protect its citizens against this persecution, there is reason to apply for asylum in another country. These dynamics are often not recognized in asylum application processes.

Granting refugee status on the basis of sexual orientation or gender identity is therefore a complicated matter which relies on a nuanced understanding of the lived realities of LGBTQI people in their home countries. Where a state does not have a legal prohibition on same-sex sexual activity, for example, but also does not enforce the civil rights of LGBTQI people, the person in question is seeking refuge due to their sexual orientation or gender identity.

The home countries of the majority of persons who migrate to South Africa have legal prohibitions on same-sex sexual activity which have varying levels of enforcement. It can be assumed that a significant portion of people claiming refugee status in South Africa are doing so because their sexual orientation or gender identity make it unsafe to live in their home country.

This is one of the major reasons why LGBTQI refugees are especially vulnerable, and would be even more so in a detention facility.

3.2 Definitions and applications

The definition of a refugee in the green paper is almost identical to the internationally recognized definition. The problem with these two definitions is that persecution based on sexual orientation or gender identity is not directly stated as a viable reason for seeking asylum, and can therefore be subject to interpretation.

According to Free and Equal, (the “UN for LGBTQI equality” initiative¹⁷) a lot of countries still do not recognize LGBTQI as being part of a social group or being basis for persecution. We know of instances where LGBTQI people have been ordered to return to their country of origin with the argument that they could just live their identity discreetly, and thereby hide their sexuality and/or gender expression (this has also happened in South Africa). There are no such instances where a political or religious refugee has been told to return and hide their political opinion or religious belief.

According to the Geneva Convention, states may self-define whoever qualifies as a refugee. States are however still obligated by the non-refoulement policy to not return individuals to countries where their life or freedom would be threatened on account of race, religion, nationality, political opinion or membership of a particular social group. The convention further obligates states to secure the fundamental rights of the refugees they host.

¹⁷ https://www.unfe.org/system/unfe-54-UN_Fact_Sheets_Refuge_Asylum.pdf

While the current definition accords to international standards, we argue that formulation can lead to uncertainty about the inclusion of LGBTQI persons within the categorisation.

Recommendation: the definition of refugee should be amended to read:

“someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, political opinion, **sexual orientation or gender identity**”

4. Specific issues relating to the Green Paper

As a human rights organisation, we are deeply troubled by the suggestion in the Green Paper for asylum seekers to be detained while waiting for their status to be determined. In many ways, we see this as the most dangerous single part of the Green Paper and will be critiquing it from several different angles.

4.1. Legality and human rights

While protecting South Africa’s borders and acting as a deterrent for bogus applicants is a laudable goal, it is doubtful whether these grounds serve as a sufficient justification for detention where the detained person has not committed a crime.

The justification for this measure is that large numbers of people choose to apply as refugees rather than using the correct channels - i.e., through immigration law - because of the benefits of being able to work and study while the application is being processed. However, there is scant evidence for this claim, save for the fact that the DHA rejects such a large number of claims. For LGBTQI people fleeing persecution and often deadly violence there should not then be an additional punishment when they have reached the relative safety of South Africa.

The deterrence rationale also contradicts other information presented in the Green Paper which set out the various push and pull factors that leads to South Africa being a net recipient of migrants - including refugees. Even with detention for asylum seekers, push factors will drive people out of their home countries and into the most stable and developed country on the continent. The proposed policy is likely to deter few and cause misery for many legitimately vulnerable men, women and children seeking safety in South Africa.

The prospect of detention while someone is an asylum seeker is deeply troubling - not least because the reason asylum seekers are allowed to work is because courts declared that, due to the DHA’s inefficient process, it was unfair to deny asylum seekers the right to work and study. This could potentially mean that people are detained for years at a time while their status is being processed.

The Green Paper suggests that those refugees who are able to be released to the custody of a family member will be allowed avoid detention so long as they undertake not to work and their family undertakes to support them¹⁸. While this at least partially eases the burden on some refugees, for LGBTQI persons who are often - willingly or not - estranged from their family because of their sexual orientation or gender identity it is discriminatory.

The current proposals of detention for people claiming refugee status can be construed to violate the rights to equality; human dignity; freedom and security of the person; privacy; freedom of association; freedom of movement and residence; freedom of trade occupation and profession; healthcare, food, water and social security; and the right to basic education for children.

The DHA and others already suffer from severe constraints in terms of resources and capacity and it is doubtful that in the short-term, adequate provision would be made for those being detained and therefore, abuse of human rights would be almost inevitable.

4.2. Considerations for LGBTQI asylum-seekers

4.2.1 Family and community

While the Green Paper suggests that certain categories of asylum-seekers would be suitable for release, this is only on condition of certain criteria being met. One of these is that the asylum-seeker in question could be received by family or community members as well as various organisations. While this seems like a positive move, it is one that does not take into account how LGBTQI persons navigate their personal lives and obligations, including necessary secrecy. For many LGBTQI persons who have fled persecution in their home country, resettlement in South Africa with family or community members is likely to be out of the question. In this way, LGBTQI persons would be less likely to qualify for the kind of concessions more readily available to heterosexual and cisgender asylum-seekers, further prejudicing them in their need to find safety from persecution.

4.2.2 Physical and sexual violence

A body of research shows that, both in immigration and non-immigration detention contexts, LGBTQI individuals are more vulnerable to sexual violence than cisgender, heterosexual detainees¹⁹. Rape is very common in detention centres and instances of so-called corrective

¹⁸ Green Paper on the International Migration page 66

¹⁹ Stop Prisoner Rape, *In the Shadows: Sexual Violence in U.S. Detention Facilities*, Los Angeles, 2006, p. 14; see also: Clement Lee interviewed by Erwin de Leon, *The Plight of LGBT Immigrants Detainees*, 2012, Huffington Post; and Fernández-Rouco N. et al. 'Sexual Violence History and Welfare in Transgender People', *Journal Of Interpersonal Violence* (2016) Sage Publications.

rape are widespread both in immigration detention and other kinds of incarceration²⁰. These violences are perpetrated by other detainees but also, in many cases, by staff and authorities²¹.

It is therefore clear that LGBTQI persons are a very vulnerable group in different detention settings around the world. We presume that, since the influx of refugees to SA mostly come from countries that either makes homosexuality invisible or criminalizes homosexuality, the detention that the Green Paper suggests will create unacceptably violent conditions for LGBTQI persons.

Furthermore research shows that the continuous experience of sexual violence or discrimination can enhance depression, eating disorder, PTSD, suicide attempts, and other mental illnesses²². This makes LGBTQI persons extra vulnerable in a detention setting since they will most likely be fleeing from experiencing persecution in their home country. The reality for these people in detention would therefore most often be a reinforcement of already experienced violence and trauma that will spiral into severe mental illnesses. The damage already done to these people through the transphobic and homophobic experiences in their home country, will be sustained through the continuous experience of discrimination, harassment and violence.

4.2.3 Isolation

In current migration detention facilities worldwide, the solution to this problem is in many cases, to isolate LGBTQI persons from the rest of the detention centre²³. This isolation serves as a protection, but in most current asylum centres, such administrative segregation is indistinguishable from solitary confinement²⁴. A vast body of research shows the effect of isolation on mental health²⁵, and we therefore again presented with a situation where LGBTQI person's basic rights are broken, and their mental health is consistently damaged. In many instances isolation of innocent individuals for a longer period of time has been recognized by international law as torture and/or cruel inhumane treatment²⁶. The isolation of already traumatized and innocent refugees fleeing from persecution is in direct conflict with the South African Constitution and Human Rights. It is not a viable solution to offer some sort of protection to LGBTQI persons seeking safety.

Furthermore a detention facility will put LGBTQI refugees in a difficult dilemma when attempting to avoid violence. A public expression of gender identity or sexual orientation may result in

²⁰ Thompson, Anthony C. 'What Happens Behind Locked Doors: The Difficulty of Addressing and Eliminating Rape in Prison' *New England Journal on Criminal & Civil Confinement*; Vol. 35 no. 1, 2009 p 11-176

²¹ Stop Prisoner Rape, *In the Shadows: Sexual Violence in U.S. Detention Facilities*, Los Angeles, 2006, p. 14

²² P.A. Resick 'The Psychological Impact of Rape', *Journal of Interpersonal Violence*, vol. 8 no. 2, 1992, p 223 - 255.

²³ S. Tabak & R. Levitan. 'LGBTQI Migrants in Immigration Detention: A Global Perspective' *Harvard Journal of Law and Gender*. Vol 37. 2014

²⁴ IBID.

²⁵ C. Haney 'Mental Health Issues in Long-Term Solitary and "Supermax" Confinement' *Crime & Delinquency*, vol. 49 no.1, 2003, p. 124-156

²⁶ S. Tabak & R. Levitan. 'LGBTQI Migrants in Immigration Detention: A Global Perspective' *Harvard Journal of Law and Gender*. Vol 37. 2014

increased protection, but if not appropriately recognized by authorities it may result in increased violence. Therefore, in order to avoid violence, comprehensive measures need to be taken in order to create safety for LGBTQI refugees, and even then, the human rights of this group cannot be ensured.

To put it simply - LGBTQI persons are forced to conform to stereotypes and/or publicly express their gender identity and sexual orientation in order to obtain asylum (which in itself is problematic). This creates a protection gap in a detention setting, where these claims most likely will result in direct violence, or solitary confinement.

Therefore LGBTQI refugees will not be protected in detention facilities. If they are isolated or not, violence will be committed against them, and this will have severe impact on their lives and their human rights, especially when considering the probability of this group having already experienced violence.

4.2.4. Medical issues

The particular vulnerabilities that LGBTQI persons have towards medical issues are rarely met in detention facilities. HIV/AIDS, sexually transmitted infections (STIs) more common in LGBTQI population, gender reassignment and transition among transgender detainees are very important physical issues, which are often not met in detention centres.

This is partly due to centres limited capacity to deal with anything but urgent medical issues, but also often it is the authorities lack in knowledge on LGBTQI related medical issues and a lack of capacity for translators etc.²⁷.

Research shows that transgender people suffer from excessive anxiety and depression if they cannot get the hormonal treatment they need²⁸, and furthermore they will most likely be even more exposed to direct violence since they will start to appear less gender conforming.

The Green Paper mentions that these centres should be placed close to the border which presumably creates even more difficulties in making health services accessible when it is considered that only two public health institutions offer trans-affirming healthcare - Groote Schuur in Cape Town and Steve Biko in Tshwane.

If detention facilities are implemented it is important to have resources for the medical needs of LGBTQI persons, because, as explained above, this group is already extremely vulnerable in a detention setting.

²⁷ S. Tabak & R. Levitan. 'LGBTQI Migrants in Immigration Detention: A Global Perspective' *Harvard Journal of Law and Gender*. Vol 37. 2014

²⁸ Darren Rosenblum, "Trapped" in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism, 6 MICH. J. GENDER & L. 499, 545-48 (2000)

4.3 Practical considerations

At this stage, it is unclear what kind of resources would need to be mobilised in order for detention of asylum seekers to become a reality. We know that in year 2014 and year 2015 South Africa received 71914 and 62159 requests for asylum, respectively.²⁹

Providing for the detention of such a number of people is likely to be hugely expensive and while the Green Paper hopes the measure will decrease the number of applicants in the medium term, it is likely that large numbers of men, women and children will have to be detained for long periods of time.

It is also unclear how DHA and other agencies will be able to adequately plan and budget resources to deal with highly variable numbers of migrants as push and pull factors change both over time and suddenly.

Recommendation: We strongly urge the DHA to not implement a system of detention for asylum-seekers.

Measures can be taken to prevent fraud and make South Africa a less attractive destination for those wishing to cheat the system. One of these measures includes speeding up the process of granting refugee status. One of the main pressure points referred to by the Green Paper is the fact that many are able to use their long process of asylum seeker status in order to work and study in South Africa. If the DHA were able to secure the kind of human and financial resources from Treasury to reduce this waiting time, it would become a less attractive option.

Recommendation: Where detention is being pursued as an option, it should be so only once the average waiting time for an asylum application is under 12 months.

5. Process of granting asylum for LGBTQI persons

There are several complex and interweaving factors that impede the asylum seeking process for LGBTQI refugees in South Africa. This has severe consequences for the lives of people who are fleeing persecution.

5.1 Self-identification

There is first and foremost a problem with identification. At what point in the asylum seeking process should someone be identified as LGBTQI and who makes this identification? LGBTQI persons meet challenges of different kinds than other minority groups, because their identification is more complex and unidentifiable than for example identifying someone as a minor, or identifying a certain nationality. Therefore in the asylum seeking process, authorities often demand “proof” that you are LGBTQI.

²⁹ Statistics by the DHA, found here: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308Asylum.pdf>

This often manifests into demands and expectations of gender performances which is based on existing stereotypical ideas of how an LGBTQI person acts, moves, speaks etc. People's gender identity or sexual orientation is often questioned if they do not conform to these stereotypical understandings of what an LGBTQI identity looks or acts like. It is of course extremely problematic since it takes away the credibility of many LGBTQI persons and either forces people into performing their identity in ways that are unnatural or false, or their application is not taken seriously by authorities, who do not believe in the validity of their asylum claim.

To complicate this further, people who are fleeing persecution will most likely already have been masking certain aspect of their gender identity or sexual orientation in order to survive. To then expect someone to conform to stereotypes in order to be identified as LGBTQI is of course unendurable, and creates situations where persons are not recognized as LGBTQI and therefore get their asylum claim rejected even though they are fleeing persecution.

5.2 Information and anonymity

Furthermore it is also extremely important to create information around the asylum application process and how fleeing from persecution based on sexuality or gender is a legitimate reason for applying for asylum. A lot of LGBTQI refugees are used to hiding this fact about themselves, especially from authorities. And when they do explain their situation to authorities, their explanation is not deemed satisfactory as an asylum seeking claim. Oftentimes authorities do not recognize sexual orientation or gender identity as a viable reason for seeking asylum. This maybe has to do with that this reason is not mentioned directly in the general definition of what a refugee is³⁰, or it may have to do with general lack of knowledge of how gender nonconformity and sexual orientation plays part of identity, and is not something that is chosen or can merely be suppressed.

No matter what the reason, LGBTQI refugees in South Africa sometimes get their application rejected based on the grounds that they can just hide their sexual orientation or gender identity in their home country in order to escape persecution.³¹ This is an argument that is never made when talking about political or religious refugee, and of course should not be considered at all when dealing with LGBTQI refugees.

One of the biggest problems in South Africa's asylum seeking process today, is the lack of anonymity and information for refugees. The first authorities refugees are met with do not explain the circumstances for the application process. There are therefore a lot of examples in SA of LGBTQI refugees who do not state their gender or sexuality at first in the process. This is both based on a fear of continued persecution, harassment or discrimination, and also a lack of knowledge of the possibility of seeking asylum based on gender identity and sexual orientation. A lot of LGBTQI asylum seekers therefore get their application denied based simply on misinformation (see for example Makumba vs Department of Home Affairs). Safe spaces,

³⁰ A person with a well founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. (This is the definition used in the Geneva Convention, by UNHCR, OAU and Amnesty International etc.

³¹ <http://madikazemi.blogspot.co.za/2003/05/pink-refugees-in-south-africa-see.html>

where applicants anonymously can go through their application process with authorities educated in all of the different dynamics and problems stated above, is highly needed.

5.3. Discrimination and sensitivity from staff

Staff of Home Affairs have earned a reputation of being homophobic and transphobic despite recent attempts by the Department to sensitise and train staff around various issues³². Despite its legalisation 10 years ago, staff at more than 70% of Home Affairs offices have used the voluntary opt-out clause from marrying same-sex couples, effectively making it impossible for same-sex couples to be married at certain offices³³. This more open discrimination is only part of the problem with DHA staff abusing or misunderstanding the law related to trans- and gender nonconforming people and making the process of affirming documentation incredibly difficult³⁴.

We therefore strongly urge the DHA to educate their staff in dealing with LGBTQI sensitive issues and with the complexities of LGBTQI identities. This should be implemented throughout the department, and is especially crucial in a refugee context since these people are already vulnerable. Part of this training must include an understanding of the differences between legal rights and lived realities and how these impact an LGBTQI person's vulnerability.

5.4 Recommendations for change in general asylum seeking process

That sexual orientation and gender identity to be a self-identification process, because anything else will go against basic human rights. People's credibility as LGBTQI should never be questioned based on stereotypical concepts and it should be recognized that the LGBTQI group consists of manifold, complex identities that does not fit into a narrow understanding of LGBTQI identity.

The Department of Home Affairs to create information for asylum seekers concerning both the possibility to seek asylum from persecution based on gender identity and/or sexual orientation, *and* on the legal situation for LGBTQI in South Africa.

The creation of a safe environment where vulnerable LGBTQI refugees can disclose their sexual and/or gender identity in the application, with correct information on the effects of doing so, and without the fear of continuous persecution or discrimination from staff or other refugees.

The DHA undertakes a programme of sensitisation and training of key staff so that they can provide services equitably to LGBTQI persons.

³²<http://www.news24.com/SouthAfrica/News/Home-affairs-trauma-for-Pretoria-transgender-20150819>

³³<http://mg.co.za/article/2016-09-13-homophobic-home-affairs-officials-government-sanctioned-discrimination>

³⁴<http://www.news24.com/SouthAfrica/News/Home-affairs-trauma-for-Pretoria-transgender-20150819>

We further express deep concern for the possibilities of ensuring the demands stated above, in a context of detention.

6. Final summary of all recommendations

- Detention should never be applied to the most vulnerable population-groups, hereunder refugees, and especially LGBTQI refugees.
- If the DHA still chooses to implement this proposal, there are some initiatives that are crucial to be implemented as well:
 - The DHA needs to provide alternatives to detention for sexual and gender minorities, and this alternative must not be isolation, in order to prevent further victimisation and violence of this particular group.
 - Ensuring LGBTQI detainees' safety and end discrimination and abuse (both by other detainees and by staff) must be top priorities.
 - The DHA needs to implement system so that a refugee can disclose being a sexual or gender minority without being at risk of violence, and get appropriate protection (again, isolation is not an option).
 - Contact with the outside world, adequate welfare services, legal counsel and external LGBTQI support systems must be ensured.
 - LGBTQI refugees need better access to medical health care, especially access to hormonal treatment for transgender persons is crucial if detained.
- Recommendations in general:
 - The DHA needs to role out a programme of sensitisation and training for staff related to the complexities of LGBTQI identities and create a safe space where LGBTQI persons can anonymously state their identity without fear of secondary victimisation.
 - Being LGBTQI is a self-identification process, and a person's credibility should never be questioned. Stereotypical ideas of what an LGBTQI person is, needs to be challenged at the DHA. T
 - Fleeing from persecution based on sexual orientation or gender identity is a viable reason, and this needs to be communicated to asylum applicants.
 - Authorities need to be taught that hiding that part of your identity is not an option, that being "out" is a human right. The officials determining the asylum applications needs to be aware of the situations for LGBTQI persons in other countries, and that persecution does not only happen on a state level or a legal level.
 - The DHA needs to restructure the asylum application process, so the timeframe is less than 6 months before discussions of encampments can even begin.

7. Conclusion

This response to the Green Paper has first and foremost been concerned with the notion of detention for asylum seekers. We are deeply troubled and concerned about this suggestion and oppose it strongly. Detention of innocent individuals is a violation of human rights and the South African Constitution itself, but considering the history of the efficiency of the DHA we are predicting this initiative to have a very violent outcome, with long-term incarceration of people and subsequent mental and physical health repercussions for an already vulnerable group.

The current proposals of detention for people claiming refugee status can be construed to violate the rights to equality; human dignity; freedom and security of the person; privacy; freedom of association; freedom of movement and residence; freedom of trade occupation and profession; healthcare, food, water and social security; and the right to basic education for children.

We predict that it is not just legal and ethical issues that this proposal will create, but also economic issues. Considering the difficulty of planning exactly how many refugees are fleeing to SA every year, and the concrete economic burden of having people in detention for several years this proposal will be economically unsustainable.

As an LGBTQI organisation we further identify several problems relating to the implementation of detention facility, and of the asylum seeking process in general.

LGBTQI refugees are an especially vulnerable group. Research shows that LGBTQI persons are exposed to physical and sexual violence much more often than heterosexual and cisgender persons. When we put this fact together with the notion that the asylum seekers that SA receives mostly comes from countries that have criminalized same-sex relationships, we simply cannot predict an outcome of these detention facilities that won't be extremely violent for LGBTQI persons.

No matter what it will be impossible to uphold refugees' human rights in a detention facility, and LGBTQI is going to be especially victimized.

We have taken the time in this paper to also outline some of the more general problems that LGBTQI persons are met with when applying for asylum.

We advocate that establishing LGBTQI identities is something that only the individual can do through self-identification. DHA need to establish safe and anonymous spaces where refugees can get adequate guidance in a non-discriminatory environment. LGBTQI persons needs to get informed that fleeing persecution based on sexual orientation or gender identity is a valid reason to flee, and that they should and can state it in their application. DHA officials needs to be informed how LGBTQI identity is wide spectrum of identities, expressions and feelings and is not something that can just be outlived "discreetly" as has been suggested in the past.

In short, a thing that is severely needed is education of authorities and staff at the DHA in LGBTQI issues and identities. The DHA has so much history of discriminating this particular

group and of being extremely inefficient. Before there is even talk about implementing detention centres, we need to establish a DHA that is efficient, non-discriminatory and works towards upholding *everyone's* human rights.

With the current situation it is very unlikely that the DHA can do this sufficiently, and therefore the establishing of detention centres will most likely be a complete failure for everyone involved.

Ultimately, the violence, abuse, harassment, discrimination and trauma that LGBTQI refugees suffer in detention is not merely a violation of LGBTQI rights, refugee rights or detention rights. This scenario that the DHA suggests will encompass violations of fundamental, basic human rights, explicitly protected under international law, and therefore this proposal is simply unethical and unconstitutional.