



**Unveiling a Paradox:
The Persisting Discrimination against Black LGBT Workers
amidst Progressive Policies in South Africa**

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Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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Contents

Acknowledgements	iii
List of Figures	vi
List of Maps	vi
List of Appendices	vi
List of Acronyms	vii
Abstract	viii
Chapter 1: Introduction	1
1.1 Contextual Background	1
1.1.1 The nature of South Africa's Legislation	2
1.2 Problem Statement	3
1.3 Research Objective	4
1.4 Research Questions	4
1.5 Structure of the paper	5
CHAPTER 2: Research Methodology	6
2.1 Study Area	6
Source	7
2.2 Study Design	7
2.2.1 Phenomenology approach	8
2.3 Sample size	8
2.4 Framing of black LGBTs	8
2.5 Research Instruments	9
2.6 Ethical Considerations	9
2.7 Limitation and challenges of Anti-discriminatory interventions	10
CHAPTER 3: Conceptual and Analytical Framework	11
3.1 Historical underpinnings of Discrimination against LGBT people in South Africa.	11
3.2 Facts on ground: Legality at crossroads with reality in South Africa	12
3.3 Constitutional provisions protecting LGBT people in Post-Apartheid Era.	12
3.3.1 Progressive laws: Two steps forward for LGBT workers	12
3.4 Contemporary violations of the constitutional provisions against LGBT workers.	13
3.4.1 Discrimination against LGBTs employees: One step back	13

3.4.2 Prevalence of Workplace Discrimination: Discrimination and its manifestations	13
3.4.3 Coming out or not in the work place: LGBTs caught between a wall and hard rock	14
3.5 LGBT Friendly Workplace Policies	15
3.6 Mis(conceptions) held about LGBTs	16
3.6.1 African Traditional Metaphysics	17
CHAPTER 4: Research Findings and Analysis	20
4.1 The Nature of progressive laws	20
4.2 Two Steps forward one step back: Critique of the Laws	21
4.3.1 Nothing but the Real Truth	21
4.4 Discrimination at different stages in the Workplace spaces	22
4.4.1 Discrimination in Hiring.	24
4.4.2 Discrimination in the workplace	25
4.4.3 Discrimination after dismissal	27
4.4.4 Institutions for appeal the role of courts and trade unions	27
4.4.5 Is it an end to a Career? Coping mechanisms for LGBT	29
4.4.6 Ending up in the informal sector (self-employment)	30
4.5 Workplace Policies	30
4.6 Paradox broken: Evidence of paradox getting broken.	31
4.6.2 LGBT bosses discriminating LGBT workers	32
4.6.3 The dilemma within the LGBT movements	33
4.7 Beyond the workplace	33
4.7.2 Lack of political will	34
4.8 Summary of this chapter	34
CHAPTER 5: Conclusion and Recommendation	36
5.1 A matter of Emphasis	37
5.2 Recommendations	38
References	41
Appendices	47

List of Figures

Figure 1: The Paradoxical linkage between progressive laws and a homophobic society.....	12
Figure 2: Intersectional dimensions relating to discrimination	18
Figure 3: Vicious cycle of discrimination in the workplace amidst Labor Laws	20
Figure 4: Analytical evidence of a paradox unveiling	Error! Bookmark not defined.

List of Maps

Map 1: Map indicating the location of KwaThema	7
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List of Appendices

Appendix 1: Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996).....	47
Appendix 2: Employment Equity Act, 55 of 1998, issued in terms of Section 25(1).....	47
Appendix 3: Basic conditions of Employment Act, 1997.....	48
Appendix 4: Promotion of Equality and prevention of Unfair Discrimination Act 4 of 2000 (Equality Act, Act No. 4 of 2000)	49
Appendix 5: Interview Guides	49

List of Acronyms

ISS	Institute of Social Studies
LGBT	Lesbian, Gay, Bi-Sexual, Trans-gender
ILO	International Labour Organization
NGOs	Non-Governmental Organization
ANC	African National Congress
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
LRA	Labour Relations Act
EEA	Employment Equity Act
BCEA	Basic Conditions of Employment Act
FEW	Forum for the Empowerment of Women
CEO	Chief Executive Officer
COSATU	Congress of South African Trade Unions

Abstract

This research report focuses its attention on findings from a qualitative research study conducted in South Africa about the persisting discrimination in the workplace against black LGBT workers. This paper unveils an intriguing paradox that exists in South Africa's workplaces, where the legal framework and political climate promotes anti-discrimination against LGBT workers while a complex social system sets realities of the lived experiences of black LGBT employees within the South African labour market.

This research explores deep and untouched areas of the lived experiences of Black LGBT workers by drawing respondents about a variety of issues regarding inclusion and exclusion in workplace, but also looks through the lens of the national policies and laws aimed at protecting such groups and the actual facts on ground about people's perceptions, attitudes and behaviours towards LGBT workers. The study also looks at the consequences of coming out at work, workplace cultures and policies, institutional challenges and opportunities, and the coping strategies devised by LGBT workers. The research concludes that there is a need to look beyond legislation and consider people's attitudes which are embedded in the cultural, religious, institutional beliefs and also the weaknesses with in the institutions aimed at protecting the employees, as a basis for eliminating all forms of discrimination in the workplace.

Relevance to Development Studies

The potential of social protection policies and legislation to promote inclusion of diverse marginalized social groups within the labour market is increasingly being recognized in the development paradigm. Therefore protection of groups such as the Lesbians, Gays and Bi-sexual and Transgender (LGBT) persons is seen as essential, not just in tackling risk and vulnerability but also in promoting social inclusion and respect of human dignity, as this will lead to human development in the long run.

Limited efforts have been directed towards research that explores the living experiences of black LGBTs in a progressive political system in the African context as research has always been in countries with repressive policies. May be the perception is that with progressive laws, it is a bed of roses for the LGBTs.

The paper highlights the different experiences of a minority social group living alongside a hegemonic group that considers the other to be "deviant" thus socially excluding them from the public arena, but also brings out the strength of social structures and systems over national laws in maintaining the heterosexuals attitudes and perceptions over homosexuals. Social protections should therefore address structural vulnerabilities and power hierarchies at all levels of society if it is to be an effective means of tackling social exclusion and marginalization.

Keywords

Discrimination, Labour market, LGBT, black, heteronormative, heterosexuality, homosexuality, Homophobia, workplace, homo-prejudice, discrimination

Chapter 1: Introduction

Millions of people have undergone different forms of discrimination in their workplaces and this subsequently has had negative consequences on the social and economic aspects of their lives. Therefore eliminating all forms of discrimination is an essential part of promoting decent work as success at this level can go beyond the workplace. The International Labour Office, in a research conducted on workplace discrimination on the basis of sexual orientation and gender identity in three countries including South Africa, notes that “discrimination and harassment are commonplace for Lesbian, Gays, Bisexual and Transgender(LGBTs)¹ workers and it always begins at the level of education, and in the process hampering future employment prospects, it continues in access to employment and throughout the employment cycle” (ILO 2013: 2). The assertion still held by ILO (2013) is that the heteronormative preconceptions of “normal” gendered presentation is cited as the one typically fuelling workplace victimization and exclusion: “Often women who are perceived to be ‘masculine’, or men who are perceived to be ‘feminine’, in behaviour or appearance, suffer discrimination or harassment on the basis of their perceived sexual orientation” (ILO 2013: 2)

Earlier studies conducted in the field of discrimination against LGBTs² at the workplace concentrated more on detrimental homophobic tendencies that get noticed through harassment and physical violence perpetrated by work-mates, It was noted that most LGBT employees always ended up being terminated by their employers after discovering that they were LGBT (Levine and Leonard 1984, Palmer 1993, Woods 1994), and as result, this has had a significant influence on career development of most LGBT persons. This continuum explains why work discrimination has turned out to be an interesting phenomenon in the growing research and literature on issues concerning protection of LGBT in the workplace (Croteau 1996, Fassinger 1995, Levine and Leonard 1984, Worthington et al. 1998).

1.1 Contextual Background

Limited research has been conducted on workplace discrimination in South Africa with little known about the daily ordeals of black LGBT persons. The majority of research has focused on white LGBT persons in a broader context and not much on labour market discrimination. However, the studies conducted so far do show that black LGBT workers are always distinctively identified for possible discrimination simply because of their sexual orientation (Muzend 2012, Levine and Leonard 1984, Polders and Wells 2004, Judge and Nel 2008).

¹ The terms Lesbian, Gay, Bisexual and Transgender are used throughout the report, but often abbreviated to LGBT. These terms are used to refer to same-sex behaviour, identities or relationships and non-binary gender identities. In several places in the text, discrimination against intersex persons is also addressed

There are no comparative studies done about the discrimination at different intersecting points like class, race and gender in the general population of South Africa and if any, it would give a clear cut social differentiation of the lived experiences of black, white and coloured LGBT workers. Even international studies paint a similar picture of LGBT workers both in countries with Anti-gay laws and progressive laws undergoing discrimination and harassment, such as verbal abuse, being dismissed, being denied employment, threats, assault, being chased or followed, or being spat in their workplaces (Michele J. Eliason 1996, Samelius and Wagberg 2005).

1.1.1 The nature of South Africa's Legislation

The preamble of the Constitution of the Republic of South Africa Act 200 of 1993 mentions that:

Whereas there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms³.

In light of the constitution, Section 9 provides particular focus on sexual orientation as a ground on which discrimination should not come to light and states that;

Everyone is equal before the law and has the right to equal protection and benefit of the law and 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, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth⁴.

As a result of these provisions, the South African constitution has received praise for the exceptional inclusion of a clause that offers legal protection to LGBTs, making it the first to do so in the world (Cock 2003). Chapter Two of the South African Constitution⁵ clearly underlines the rights of LGBT people in South Africa. The Bill of Rights seeks to “respect, protect, promote and fulfil” the rights of all individuals regardless of affiliations like sexual orientation. No wonder, South Africa is perceived as having championed a:

Peaceful and rapid transformation to becoming an open society, founded on democratic values and a constitution that enshrines the principles of human dignity, freedom, equality, and social justice (Judge and Nel 2008:19).

Subsequently, as a ploy to give a practical face to these constitutional provisions, the government of South Africa has formulated a legal framework to protect LGBT workers from being discriminated against in the workplace. These laws and policies include; the LRA (Labour Relations Act), EEA (Employment Equity Act) and BCEA (Basic Conditions of Employment Act),

³ Interim constitution of South Africa, at the Preamble

⁴ See Appendix 1

⁵ Ibid

which can also be found in Appendices I, II, III and IV. This paper discusses these laws and policies further in the subsequent chapters. Therefore the promotion of the progressive laws have strengthened diversity of social equality in the rainbow nation⁶, and a “diverse” and “pluralistic” community like South Africa needs such laws to bridge the gap in the differences between a homophobic society and the freedoms of excluded groups which are discriminated against on the basis of sexual orientation (Cock 2003:35-45).

1.2 Problem Statement

The background shows that the South African government has made vast strides in the fight for LGBT equality, and such strides cannot be compared to any other nation on the African continent. However, much as the Constitutional and legal system in South Africa promotes equality, inclusion and freedoms towards LGBT persons, social acceptance of LGBT persons is generally lacking (Croteau 1996, Fraser 1997, Fredman 2012, Graham and Kiguwa 2004, Levine and Leonard 1984, Reddy 2001).

Surveys carried out in South Africa have all painted a similar picture of resentment among the general population against LGBTs, the picture is so grim that majority of South African society says that homosexual behaviour is wrong and society should not accept it (Kohut 2013, Smith 2011). The Human Rights Watch report “We’ll Show You You’re a Woman” confirms that indeed there is a homophobic society which is rampantly intolerant towards homosexuals and that homophobic sentiments are enshrined in both cultural and traditional values of the general population (Nath 2011). Interviewees for this research also hinted on LGBTs living in fear at their workplaces as a result of homophobia⁷ they face on a daily basis that culminates into discrimination (Ibid).

This clearly shows that while looking at South Africa on the surface, it may seem like the model for progressive gay rights legislation but underneath it is an intransigent conservative and homophobic populous opposed to every liberal legislation promoting anti discriminatory tendencies. In fact homophobia and sexism is rooted in the general social, economic, political structures, which also trickles down to the workplaces. Worse still, the institutions in place that are meant to reinforce the provisions as enshrined in the constitution are not doing much to sensitize the general public about tolerance and diversity. To make matters worse even the South African president has been quoted in the media making derogatory statements about LGBTs, at one point he condemned people marrying partners of the same sex as “a disgrace to the nation

⁶ Rainbow Nation is a term coined by Archbishop Desmond Tutu to describe post-apartheid South Africa, after South Africa's first fully democratic election in 1994. The term was intended to encapsulate the unity of multi-culturalism and the coming-together of people of many different nations, in a country once identified with the strict division of white and black.

⁷ See. Weinberg, G. H. 1972. He claimed that homophobia is the fear and hatred of homosexuality and homosexual people

and to God.”⁸ . Now, this clearly shows that the state is not willing to implement these laws into reality, therefore institutions like the Judiciary, police, workers union, employers have followed suit in denying protection to black LGBTs workers.

1.3 Research Objective

Today’s workplaces are becoming increasingly diversified in many ways, with employees having different religious affiliations, sexual orientation, race, age, qualifications and origin. With respect to sexual orientation, LGBT employees constitute one of the largest but least studied minority groups in the workforce. Sexuality might be imperceptible but is essential for each worker’s personality and way of life within the workplace. This research is represented by an episteme that explains the plight of black LGBT workers in South Africa’s workplaces. This study aims at: a) Exploring and discovering the relationship between progressive laws and the societal attitudes and perceptions towards the black LGBT workers. b.) To unveil a paradox that exists in South Africa’s labour market but also gain insight into understanding the underlying factors contributing to these increasing homophobic sentiments within the workplace and the complex challenges faced by LGBT workers in South Africa. To achieve this purpose, the research explored the lived experiences of the LGBTs within workplace spaces putting emphasis on Laws and policies on one hand, a homophobic society on the other and the LGBTs powerlessly positioned in the centre.

1.4 Research Questions

Research questions were purposively developed to achieve the research objectives and also answer questions that lingered in the mind of the author about challenges faced by LGBT workers in South Africa. These questions include the following:

1. How do the national laws and policies shape the perceptions and attitudes of heterosexuals towards black LGBT workers?
2. How do the workplace policies shape the perceptions and attitudes of heterosexuals towards black LGBT workers?
3. What stages within the workplace do black LGBT workers face discrimination?
4. What are the differences between a workplace with ‘friendly’ progressive policies and those without?
5. What consequences and opportunities do black LGBTs face in their working lives when they come-out and how do they cope to this?
6. What factors beyond the workplace have limited LGBTs from enjoying full access to their rights as enshrined in the constitution and the labor laws?

⁸ See.Ismail, Sumayya, and SAPA. 2006. Mixed Reaction to Zuma Apology. Mail and Guardian Online, 28 September. Accessed 5 November 2014<www.mg.co.za/article/2006-09-28-mixed-reaction-to-zuma-apology>.

1.5 Structure of the paper

This chapter (chapter 1) provides the introduction of the general discourse of discrimination against LGBTs, and the context of the discrimination against black LGBTs in their workplaces. Chapter 2 provides the methodological approach used in this research, it shows that this research was entirely qualitative and employed a data collection method entailing In-depth Interviews. Chapter 3 provides Literature and an analytical focus of the different processes under which discrimination is emanated against black LGBT workers with a basis on theoretical and conceptual dimensions of discrimination, workplace policies, labour market and society. Chapter 4 contains an exploratory account of the lived experiences of LGBTs within the workplaces, their challenges and opportunities, coping strategies and the legislative provisions. Chapter 5 provides the conclusion and recommendations.

CHAPTER 2: Research Methodology

This research paper generated questions that were used to gather field data in the period August-September, 2014. In this section, there is a clear explanation of the area of study, the target groups who subscribe as the respondents and the location of this study. Being a critical issue, discrimination of LGBTs provides an array of perilous views about the lived experiences of black LGBT workers in their workplace as respondents gave their ordeal of work experiences, attitudes and perceptions. The author further highlights data collection methods used, ethical consideration, challenges faced in the field and opportunities as well as lessons learnt in the whole process of doing this research. All the respondents were identified through snowball sampling that was purposively inclined.

2.1 Study Area

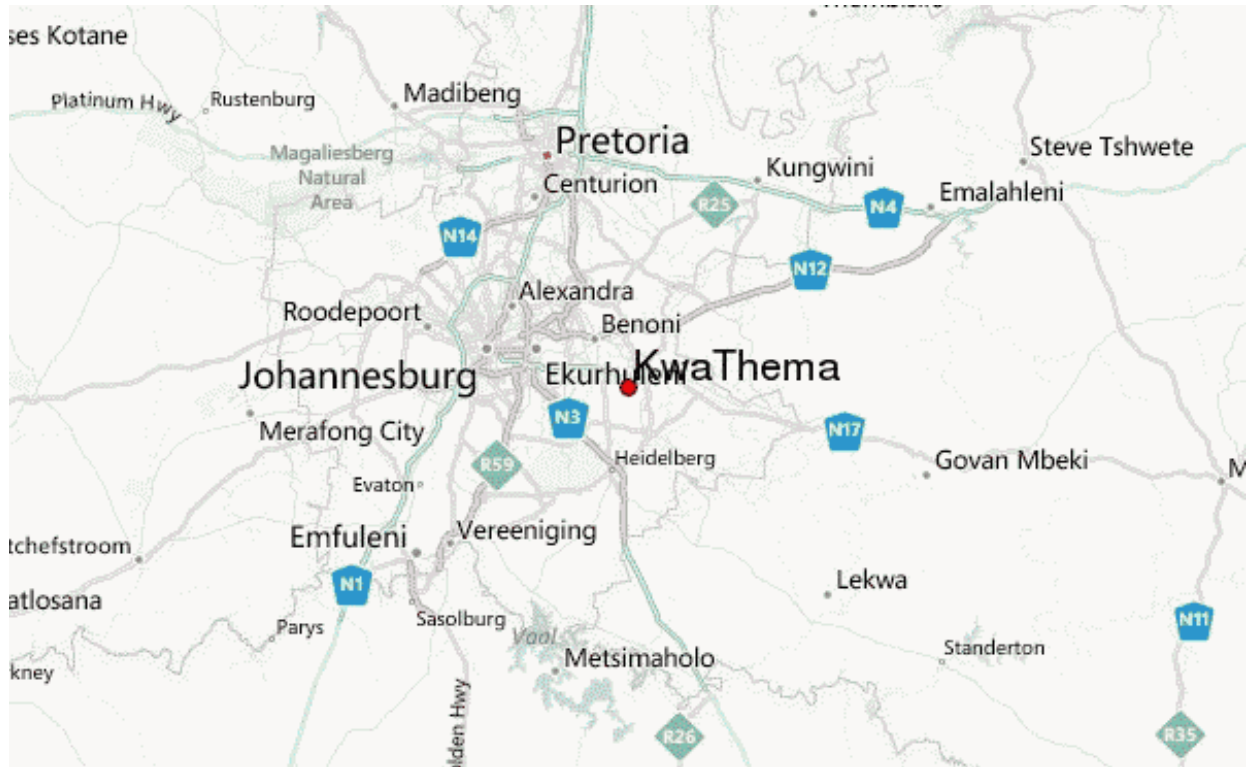
The study was conducted in South Africa, often called ‘the rainbow nation’, which is one of the most ethnically and culturally diverse countries in the world with a population of 50.7 million¹⁰. South Africa although characterised by widespread poverty and high crime rate associated with unemployment, it has one of the biggest economies on the African continent. This study however was particularly centred in the city of Johannesburg, which is the largest city in South Africa. The city has witnessed a number of socio-economic and political upheavals between races, resulting in segregation and limited opportunities for the LGBT black population who are the centre of the research. The study was narrowed to a black township KwaThema with majority black population of LGBTs residing here.

This township fits in the parameters of the paradox, as KwaThema has a contradictory history of violence and its known long held reputation as a space of relative tolerance for sexual minorities. The existence of a strong base for LGBT organizations, a large LGBT community and movement made it possible for the researcher to access potential informants, given the fact that Snowball sampling was used and this made the selection of KwaThema inevitable.

⁹ See 6

¹⁰ <http://www.bbc.com/news/world-africa-14094835>

Map 1: Map indicating the location of KwaThema



Source¹¹

2.2 Study Design

This study used qualitative research methods and utilized both primary and secondary data. The author chose to use qualitative data because it offers an in-depth understanding of social phenomenon within a prescribed community, and in so doing offering a valuable intuition of the living experiences and perspectives of a studied community (Patton 2002, O'Leary 2009). Therefore, qualitative research methods positioned the researcher to an exploratory mission of finding out the different experiences of LGBTs within a workplace, and in the process discovering numerous facts about the different forms of discrimination at various stages in their career and also find out the reasons behind this increasing homophobia towards LGBT workers amidst laws protecting them (Denzin and Lincoln 2011, O'Leary 2009).

Secondary data was equally utilized through desktop reviews collected from Policy documents, media reports, documentaries, and research reports on LGBT discrimination. The names of the respondents were not recorded so that confidentiality is guaranteed.

¹¹ Adopted from: http://www.weatherforecast.com/place_maps/kw/KwaThema.8.gif

2.2.1 Phenomenology approach

The author based the research on a Phenomenological paradigm, which focuses mainly on the processes and experiences one goes through (O'Leary 2009).

Since it is also hard to observe or measure experiences externally, this approach made it possible to explore more by asking LGBT workers in a more conversational manner about their experiences. The sensitivity of the issues surrounding homosexuality makes minimal discussions about it in such conservative cultures like that of South Africa. The homophobia surrounding this topic has even made scholars to term the situation as an academic amnesia, and few have ventured into researching about LGBT issues. Therefore using a phenomenological approach enabled the researcher and the researched in this case the black LGBTs workers to explore and create a deep narrative that is both expressive and informative thus making it possible to understand the lives of LGBTs in the workplace, and in the process creating a rich and whimsical description of their experiences.(O'Leary 2013)

2.3 Sample size

The interviews were conducted with 16 respondents identified from snowball sampling. The author initially targeted 25 respondents who included LGBTs, employers, NGOs, trade union workers. This was not possible because of time factor, and some officials were hard to see. However, the study was aware of these limitations of a reduced sample size, which Patton (2002) supported that in as much as the sample is smaller, qualitative research tends to have small samples in nature. But the study went further to utilize secondary data in order to provide further validation of the data.

Among the respondents were Black gay men, lesbians, Bi-sexual and Transgender persons (12), employers (2), LGBT organizations (2), and Workers representative (1). Given the sensitivity surrounding the issue of 'Homosexuality' the researcher found it hard to choose participants randomly, but rather it was purposive in nature as this enabled the researcher to identify with key gatekeepers and informants as that chain referral offers a more effective way to reach hidden population¹²

The study focused primarily on persons who identified themselves as LGBTs, and particularly centred on black LGBTs residing in the township of KwaThema. This township has a big population of blacks residing there who are working in different parts in the Gauteng region of Johannesburg¹³.

2.4 Framing of black LGBTs

The constitution of South Africa prohibits any form of discrimination on the basis of sexual orientation and talks about LGBTs as a homogenous group.

¹² Explorable.com (Apr 24, 2009). Snowball Sampling. Retrieved Nov 06, 2014 from Explorable.com: <https://explorable.com/snowball-sampling>

¹³ KWA-THEMA. Retrieved August 12, 2014. <http://www.saweb.co.za/townships/township/gauteng/kwathema.html>

This study also looked at LGBTs as a group and not as distinctive individuals. The term **LGBT** (lesbian, Gay, Bisexual and Transgender)¹⁴ is used in this paper as reference to those who experience discrimination based on the (overlapping) phenomena of sexual orientation in the workplace. Sometimes the term will be used to mean the general LGBT community however in this situation reference will be made clear. The definitions of the terms lesbian, gay, bisexual and transgender for the purpose of this review are as follows:

Lesbian – female-identified women who seek sexual relationships with other female-identified women, transgender women or intersex women.

Gay – male-identified men who seek sexual relationships with other male identified men, transgender men or intersex men.

Bisexual – female-identified women and male-identified men who seek sexual relationships with other men and women

Transgender – persons who live as a gender other than the gender assigned to them at birth – whether they have chosen to make use of surgery and/or hormones, or not.

This study does not dwell much on identity politics because of the variations and contests about their framing. So focus will be on LGBTs as a homogenous group without much reference on identity.

The term “**black**” as used in this paper, will be referring to all black LGBT South Africans facing discrimination in their respective workplaces. At no one time does the author use the term to mean other South Africans who are black.

2.5 Research Instruments

An interview guide with open ended questions guided the data collection process (as shown in Appendix 5). These were used mainly on LGBTs who were the primary targets as victims of discrimination within the labour market, and other questions were directed towards NGOs that were working to promote the cause of LGBT rights, employers, and Labour union workers. All interviews were conducted by the author, having utilized his own experience working as a human rights activist for minority groups such as LGBTs in Uganda. The author used the human rights networks in Uganda to link to major LGBT organizations in South Africa, who in turn provided necessary support to access the respondents. Interviews were conducted in an informal setting and notes were made with the consent of the respondents, because the author needed an environment which would enable the respondents to feel at ease given the sensitivity of the matter.

2.6 Ethical Considerations

The respondents had concerns about exposing their identities and confidential information about themselves to the researcher. Introducing the author as a Ugandan, they thought the author would easily share their information with

¹⁴ Definitions as enshrined in the Protection Manual for LGBTI Defenders, Protection International 2010.

anyone. The author discovered that most of them, much as they are 'out', feel uncomfortable talking about their personal lives to anyone. For example they never allowed the author to take any photos, and that nothing should be publicized about the organizations they work for. However, they shared their personal experiences about daily ordeals in the workplace as LGBTs living in such a homophobic environment like South Africa, and how they manage to cope. Even the employers the author met did not want to reveal their company's identity. All the respondents emphasized the issue of consent and anonymity of information given, respondents requested not to use their names anywhere in the study, if possible they requested that quasi names are used where necessary. All this was aimed at not exposing their identity as LGBTs.

2.7 Limitation and challenges of Anti-discriminatory interventions

A further issue to bear in mind is that research on the issue of LGBTs only focuses mainly on those who self-identify as LGBT. It is difficult to find LGBTs who are still living closeted lives, therefore getting their views and experiences on this matter could be hard.

Much has been written about workplace discrimination. However, there is limited study on LGBT experiences in the workplaces. Most of the literature available is from developed economies like USA and Europe and little is found about South Africa and Africa as a whole. This partly explains why the researcher explored this green area of LGBT workplace discrimination as a way to fill the gap that seems to exist in researched and under-researched areas of LGBT workplace experiences.

CHAPTER 3: Conceptual and Analytical Framework

This chapter draws from literature on workplace discrimination against LGBT workers through a conceptual, analytical and empirical presentation. This literature is directly related to the objectives of this research; underlying factors between an increasing homophobic workplace and the provisions enshrined in the legal framework whose mandate is to protect LGBT workers within the workplace spaces. Literature used here is from National (South African) and International scholars who have written comprehensively on this topic. The literature applied here is indeed appropriate and the researcher found it easy to apply and link to the research questions. This is because it has a strong explanatory power about the different dimensions as linked to the realities of discrimination experienced by LGBTs in South Africa within their workplaces. But first the author takes us back in time and explains the lived experiences of LGBTs before the post-Apartheid reign because normally to understand the future it's important to reminisce on the past.

3.1 Historical underpinnings of Discrimination against LGBT people in South Africa.

A dark history of subjugation, discrimination, persecution and harassment looms around gay people in South Africa (Kaplan 2001). Even as early as the 19th century, homosexuality was a criminalized offence in South Africa, and the Apartheid reign was such a horrendous and atrocious period for minority groups such as black LGBTs in South Africa (Ibid). With the introduction of new anti-gay laws, and the daily distress of criminalization of homosexuality activities, many LGBTs lived in fear of their lives. For example Section 20a of the Sexual Offences Act¹⁵ outlawed men from engaging in any romantic act in the presence of more than two persons and such offences were punishable with either jail sentences of close to two years imprisonment or a R400 fine (this was later increased to R4000), and sometimes both¹⁶.

The Apartheid government was so motivated to create a country that was purely white with no black and homosexual populous because it emphasized only marriage between heterosexuals for purposes of reproduction. This led to the formulation of harsh racial and public doctrines as a set of requirements to promote procreation in form of sexual activities, and these requirements were determined by the state (Leap 2004), and never encouraged homosexual behaviours.

¹⁵ Section 20A, inserted in 1969, created the infamous "men at a party" offence. This made it a crime for any two men to commit, at "a party" an act which stimulated sexual passion or gave sexual gratification. The definition of "party" was, however, any occasion where more than two people were present

¹⁶ See 15.

3.2 Facts on ground: Legality at crossroads with reality in South Africa

Figure 1: The Paradoxical linkage between progressive laws and a homophobic society

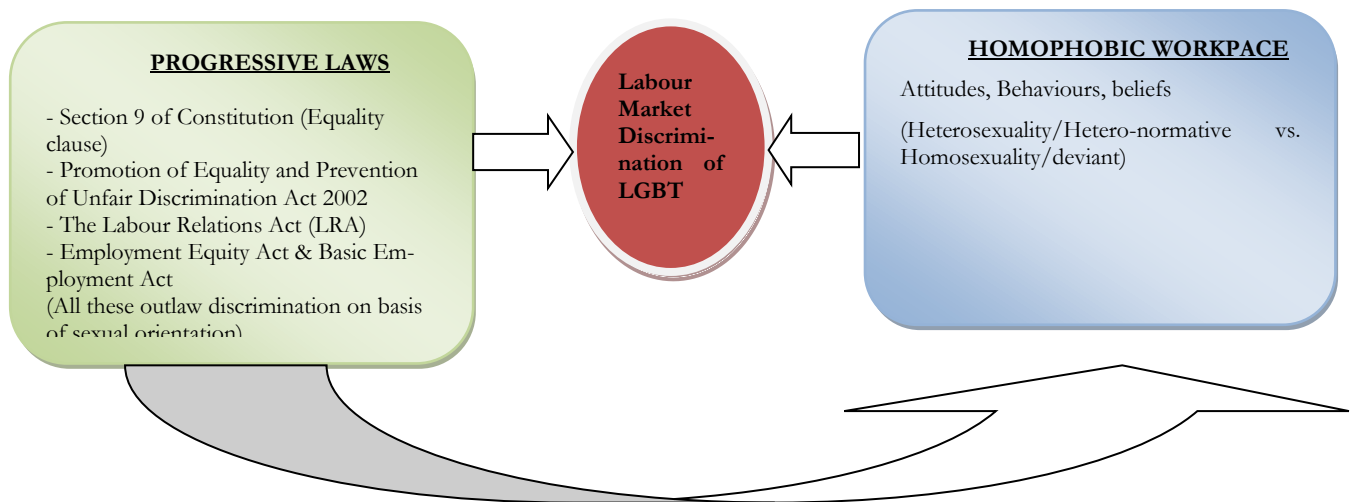


Figure 1 Illustrates a paradox that exists in South African society, the first line of thought is that the existence of laws and policies tend to influence the outcome of the labour market in form of protection of LGBTs from any form of discrimination and oppression, this shapes grounds for punishment of offenders and perpetrators. The second line shows the contradicting realities on ground about the large homophobic South African society with cruel attitudes, behaviours and beliefs towards LGBTs with the heterosexuals taking Centre stage as the normative and hegemonic sexuality over the “other” sexuality which is commonly known as Homosexuality and seen as deviant, it is this fact that has exacerbated discrimination against LGBTs within the workplaces.

3.3 Constitutional provisions protecting LGBT people in Post-Apartheid Era.

3.3.1 Progressive laws: Two steps forward for LGBT workers

After taking over the realms of leadership in South Africa, the African National Congress (ANC) ensured that all minority groups had their rights, as this was enshrined in the subsequent legislative provisions. The ANC endorsed recognition of same-sex marriages, and later in the interim constitution opposed discrimination on the basis of sexual orientation (Christiansen 1999, Fine and Nicol 1995). The new constitution which was drafted and approved in 1996 maintained these provisions, and with the lobbying efforts of LGBT activists, South Africa became the first nation to explicitly prohibit discrimination based on sexual orientation in its constitution (Cock 2003).

In terms of section 9(1) of the Constitution, all South Africans are equal before the law and have the right to get protection and benefit from the law. It

continues to guarantee in section 9(3) that the State may not unfairly discriminate against anyone on grounds such as sexual orientation.¹⁷ To reinforce this commitment, the South Africa parliament passed the Employment Equity Act¹⁸ in 1998 whose mandate is to protect South Africans from Labour discrimination on the basis of sexual orientation. Several other laws were brought up to deter any discrimination against minority groups within the South African post-apartheid labour environment like the workplace. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000)¹⁹ which is a comprehensive South African anti-discrimination law was also enacted to prohibit unfair discrimination by the government, private organizations and individuals against homosexuals. The fact is that even the LRA (Labour Relations Act), EEA (Employment Equity Act) and BCEA (Basic Conditions of Employment Act) not only outlaws discrimination on the basis of sexual discrimination within the workplace but also promotes the inclusion of workplace benefits for all employees regardless of race, sex, age and sexual orientation.

3.4 Contemporary violations of the constitutional provisions against LGBT workers.

3.4.1 Discrimination against LGBTs employees: One step back

Despite these post-Apartheid constitutional provisions, there are constant violations of the rights of minority groups such as LGBT workers as enshrined in the labour laws and legislative laws (ILO 2007). This was the order of the narratives by LGBT workers for this study, as many interviewees reported that there is a continuously social intolerance against LGBT people with in the general South African spaces and particularly in workplaces.

Conservative attitudes of that nature towards LGBT workers have persisted in the South African society and this confirms that a gap indeed exists between what the constitution provides and the realities on ground. Even constitutional provisions such as the equality clause are contested in reference to same-sex prejudice as it is believed that this part of the constitution is selective and not necessarily relevant to the vulnerable and marginalized poor black LGBT workers who are limited by resources to seek legal redress in the constitutional courts when facing discrimination at work (Vincent 2011).

3.4.2 Prevalence of Workplace Discrimination: Discrimination and its manifestations

When employees or job applicants are unfairly or negatively treated basing on characteristics that are completely unrelated to the job requirements and per-

¹⁷ See 4

¹⁸ See Appendix 2

¹⁹ See Appendix 4

formance is what Chung (2001) terms as work discrimination. Now, this has been the trend of the lived experiences of most black LGBT workers interviewed for this research, as the author found out that indeed LGBT workers are either denied employment, denied employee benefits, harassed, mistreated and even dismissed from their jobs..

Research done by several scholars suggests that work discrimination is such a complex phenomenon (Brown and Ford 1977, Chung 2001). In a classical rhetoric, Brown and Ford (1977) rightfully simplifies this complexity when they placed work discrimination into two different categories of entry into work and treatment during work. These categories indicate that discrimination is experienced at different stages with in the workplace and therefore show that LGBT workers are faced with hurdles throughout their working experiences as homosexuals. Even within these two categorized stages there exists structures that shape the responses LGBTs get from workplace colleagues and employers with in the workplace, and these in fact paint a picture of actual state of affairs within the workplace. These were analytically stated by Chojnacki and Gelberg (1994) who recognized work discrimination in four different structural units:

- (a) Overt (presence of explicit formal and informal discriminations), (b) covert (presence of discrimination in the absence of a formal antidiscrimination policy), (c) tolerance (presence of formal antidiscrimination policy, but lacking informal support), and (d) affirmation (presence of both formal and informal support)(Chojnacki and Gelberg 1994:5).

Reports do generally indicate that heterosexism is a prevalent phenomenon in the workplace, with indications of about 25-66% LGBT workers reporting to have experienced discrimination in their workplace due to their sexual orientation (Croteau 1996:198), and national studies also equally indicate the same for example a national study of 534 gay and lesbian professionals carried out in the United States showed that over a third of the respondents had faced different forms of verbal or physical harassment because of their sexual orientation, with 37% saying that they faced discrimination because others suspected or assumed they were gay, while 12% left their last job because of discrimination (Ragins and Cornwell 2001). All these reports indicate that it is not a bed of roses for LGBTs at the workplace in as much as some places have workplace policies protecting LGBTs from discrimination. However, discrimination is not always practiced in open and explicit ways but rather subtle and silent (Chung 2001). For example, there are instances where interviewers have less eye contact with LGBT interviewees, and are also edgy and unfriendly towards LGBT interviewees (Hebl et al. 2002).

3.4.3 Coming out or not in the work place: LGBTs caught between a wall and hard rock

Many LGBT workers do not disclose their sexual orientation due to a horrific homophobic environment in which they live thus fearing to reveal because of the consequences that may follow (Bowen and Blackmon 2003), coming out can easily expose one's identity as a homosexual which opens the window for discrimination and usually when LGBTs remain silent about their sexual orientation, they do experience psychological torture of increasing anxiety and blame which affects their esteem and confidence (Coleman 1982, Peterson 1996).

The author finds this interesting because even interviewees for this research hinted on the fact that LGBTs try as much as possible to keep away from their work colleagues in fear of telling them who they are. However, psychiatrists state that it is very important for one to come out to his or her colleagues about their sexual orientation in order to increase mental wellness, confidence and esteem (Coleman 1982, Peterson 1996), though studies do indicate that coming out is not an easy matter for LGBT workers who genuinely fear to face the wrath and exclusion in case they uncover their secrets (Goldfried 2001).

For a black gay person whose beliefs and values are deeply rooted in traditional African cultures is sometimes tolerated in the opinion of the laws and policies as is the case in South Africa, but this case is not rested because LGBTs are often cracked down when it comes to the defence of public morality, *this indeed is a paradox unveiling*. Now, with a boundary drawn between homosexuals and heterosexuals, the former seen as not conforming to the heteronormative orientation has to come out and prove to the heterosexuals that they are normal human beings who are as productive as other heterosexuals, and as Eribon (2004) stated that coming out by the homosexuals can stir a process of recognition and respect from the hegemonic sexualities, but it is not something that comes so easily. In his words, he stated that:

One thing that characterizes a gay man is that, he is a person who, one day or another, is confronted by a decision to tell or not to tell what he is. A heterosexual man will not need to do this, being presupposed by the world to be what he is. One's relation to his 'secret' and to the different ways of managing it in differing situations is one of the characteristics of gay life. It is, of course, one of the things at stake in the struggle for visibility and affirmation being conducted today, the struggle to show that homosexuality exists and thereby to interrupt the process by which the self-evidence of heteronormativity is reproduced (Eribon 2004:52)

3.5 LGBT Friendly Workplace Policies

Findings from various studies have related the impact of LGBT-supportive policies on workplace productivity inform of interpersonal and business outcomes, thus supporting the notion that there exists many positive links between LGBT-supportive policies or workplace climates and outcomes that will benefit employers, employees and clients (Badgett et al. 2013). However, none of the studies provides direct quantitative estimates of the impact on the bottom line. More specifically, the existing set of studies demonstrates that LGBT-supportive policies and workplace climates are linked to greater productivity, positive workplace relationships and job contentment among LGBT employees (Badgett et al. 2013). Furthermore, LGBT-supportive policies and workplace climates are also linked to less discrimination against LGBT employees and more openness about being homosexual. Less discrimination and more openness (Ibid).

To add on that, more progressive companies are characterized with both 'friendly' policies and practices such as employer partner benefits, health care benefits, non-discriminatory policies and tough penalties against discrimination offenders and these translate into a conducive working environment for LGBT persons which eventually reduces discrimination and increases the chances of

more LGBTs coming out at their workplace (Eribon 2004, Goldfried 2001, Ragins and Cornwell 2001). This study reports that indeed having policies at workplace level can be more effective in eliminating discrimination and its consequences as compared when legislation is at a national level or without any (Ibid).

3.6 Mis(conceptions) held about LGBTs

In the workplace, discrimination is centred on heterosexual's attitudes and behaviours towards LGBTs. However in as much as discrimination in this case homophobia (homo-prejudice) is a characteristic of individuals having fear or hatred, it is thus overly narrow in any sense because it is also embedded within the policies and actions of governments, private sectors, and other institutions (Adam 1998, Logan 1996, Nungesser 1983).

Institutions, policies and beliefs tend to reinforce the perceptions of homo and heterosexuality towards each other, but again these ideological perceptions and sentiments tend to promote the hegemonic thinking of heterosexuality being the dominant homo-normative sexuality over the non-normative sexualities (Dreyer 2008). Perceiving LGBTs as a minority group ignited their desire for recognition and the emanation of LGBT activism for the past decade, this partly explains the increasing hostility towards homosexuals because of the hegemonic sentiments driven by the heterosexuals who have branded homosexuals to be a civil rights activist group and trying to fit in their spaces (Dreyer 2008, Jara 1998, Tamale 2009). This claim is also supported by Fraser (1997) who states that;

Gays and lesbians suffer from heterosexism and the authoritative construction of norms that privilege heterosexuality. Along with this goes homophobia and the cultural devaluation of same sex behaviours. Their sexuality thus disparaged, homosexuals are subject to shaming, harassment, discrimination, and violence, while being denied legal rights and equal protections- all fundamentally denials of recognition (Fraser 1997:18).

However, in as much as "the lack of social recognition has an effect on the capacity of LGBTI people to fully access and enjoy their rights as citizens" (Takács 2007:6) the argument is whether LGBTs opening up and come out would create a platform for them to reduce or eliminate situations of marginalization or discrimination and thus getting the recognition they have yearned for or cement the grounds for discrimination.

The paradox that exists in South Africa is constructed by the fact that it opened its doors to all minority groups to "come out" and live freely regardless of their sexual orientation thus opening a public space for the LGBTs to live in²⁰ However, this space has also exacerbated an intriguing response from the conservatives towards the LGBTs who are seen as defying odds.

²⁰ See 4

3.6.1 African Traditional Metaphysics

The question that comes on the lips of any African person in the discourse of homosexuality will always be whether it is un-African to be gay. Actually many African indigenes believe that homosexuality is not African (Tamale 2009), yet a lot of research points to the fact that same sex activities have taken place in countries as diverse as Kenya, Tanzania, Nigeria and Sudan (Tamale 2009). It is true that any discussion on sexual orientation is not an easy one in any social context but it must take place nevertheless because it touches on the most fundamental of all human values (Mutua 2011, Terry 1999).

In the African society, homosexuality can even lead to death by stoning, hanging, life imprisonment and violence, it is even a taboo to discuss this phenomenon. Policy makers, Human rights activists, police, judiciary and union leaders and even government officials have all failed to establish public spaces in order to explore further the existence of homosexuality and how gay people can be integrated in the general social system of society. For instance Uganda with an estimated LGBT of 500,000 has prohibited all forms of discussions and activities related to sexual orientation, and indeed any debate on such has been always acrimonious and rancorous (Jjuuko 2013). According to Mutua (2011) the assertion is that the time is now for the African continent to learn how to challenge important issues, but also learn to live and respect those deviant to the so called hegemonic heterosexuality (Mutua 2011). The fact therefore is not that communities are so heterosexual, but rather like how Stern²¹ calls it that heterosexuals are in a state of gay denialism, and according to him it is a new homophobia and is terrifying, this kind of homophobia is embedded in human behaviour²² and such tendencies are exhibited when persons decide to live in denial of the truth because they just can't deal with it²³

3.7 Intersecting dilemmas: Race, Social class, Sexuality and gender

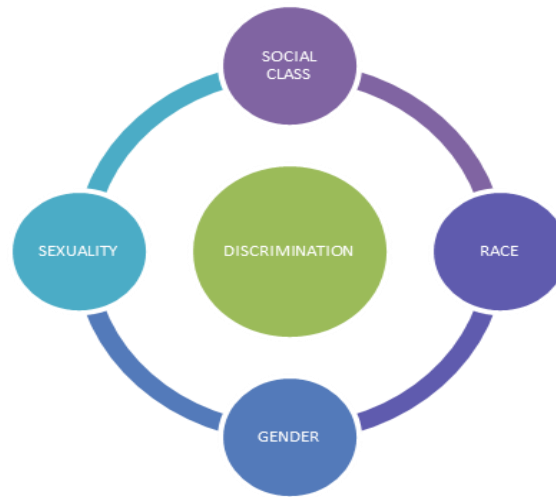
Taking an intersectional approach is unavoidable in understanding the different dilemmas of LGBTs living amidst a complex situation where the law says yes and the reality on ground is saying no, considering the nature of South Africa's society which is so diverse and unique in nature would provide a detailed account of challenges in identity negotiation, cultural pressures, racial and gender discourses in the face of discrimination and exclusion of the LGBTs from labour market opportunities, thus as noted by Schmitt and Branscombe (2002) that the prejudiced significance of any alleged form of discrimination is mostly dependent on the position of one's cluster in the structures of the social systems. This intersectional dimension is highlighted in Figure 2 below and explains why sex and race as a combination of sexual orientation usually draws a clear line of the consequences and mixed experiences of LGBTs in such a di-

²¹ Mark Joseph Stern is a writer for Slate. He covers science, the law, and LGBTQ issues.

²² See. Janet Maslin (2009), Firing Bullets of Data at Cozy Anti-Science. New York Times. Accessed on 20, October, 2014. http://www.nytimes.com/2009/11/05/books/05book.html?_r=3&

verse country like South Africa where people's way of living is embedded within the institutional, cultural and traditional beliefs.

Figure 2: Intersectional dimensions relating to discrimination



It is purported according to LGBT anti hate campaign ‘The Rose Has Thorns’²⁴, that LGBT people from poor African communities and black lesbian women in particular, are disproportionately at risk for discrimination. Studies have also shown that lesbians face violence twice as often as heterosexual women (Graham and Kiguwa 2004), such is witnessed in the Gauteng township where black lesbian women are raped by heterosexual men in order to correct their lesbian sexuality (Judge and Nel 2008, Reid and Dirsuweit 2002). The problem with this kind of horrible treatment of black LGBTs is that it comes in forms which are from within and outside communities in which LGBTs live which makes it hard to control and stabilize leading to situations of exclusion and devaluation of the LGBT group.

The dilemma as reported by Branscombe et al.(1999) is that vulnerable groups have the problem of coping up with the fact that they are marginalized and always find themselves isolated, however for the case of LGBTs they have adopted the Rejection-Identification Model which creates avenues for LGBTs to come together as a unit as a way to fight stigma, no wonder they are homogenously referred to as LGBTs

This study therefore also did an exploration of the social contextual factors that can affect how the LGBT people cope amidst all these forms of exclusion and devaluation. Black LGBT workers as members of a social minority group can suffer from various forms of socio-economic and cultural injustice. Homo-prejudiced tendencies in form of discrimination and violence are so common in black and poor communities of South Africa. This is the impression given by the 2011 Human Rights Watch report which emphasized that:

²⁴ The Rose Has Thorns Anti-Hate Campaign was a ground-breaking campaign that ushered in a new focus on the greater vulnerability to violence of black lesbians and on the need to make the connection between homophobic violence and violence against women.

For historical reasons, black gay men, lesbians and transgender men living in townships, peri-urban and rural areas, and informal settlements are among the most marginalized and vulnerable members of South Africa's LGBT population(Nath 2011:2).

The report further indicates that the level

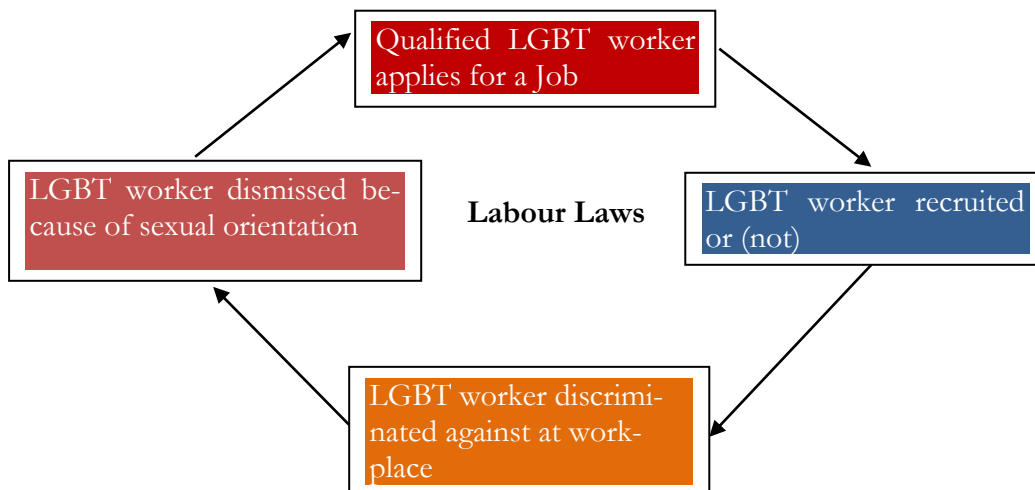
The economic and social position of Lesbian, Gay, Bisexual, or Transgender (LGBT) people in South Africa has a significant impact on their experience. Those who are able to afford a middle-class lifestyle may not experience the same degree of prejudice and discrimination on the basis of sexual orientation. But for those who are socially and economically vulnerable, the picture is often grim. Lack of access to such things as secure employment, housing and transport options greatly increases people's vulnerability to violence (Nath 2011:2)

This clearly shows that black LGBT workers are in a vulnerable position within the public discourse, living them in spaces for vulnerability. This study also indicates that black LGBT workers experience vulnerability at different fronts, first as blacks, then as LGBTs, and it gets horrific with Lesbians and Transgenders.

CHAPTER 4: Research Findings and Analysis

This chapter exposes the realities of the lived experiences of LGBT as workers with in the workplaces. The author, in an exploratory manner shows the margins that draw a line between the so called progressive laws and the facts on ground. In addition, showing the different stages and processes under which discrimination is exhibited and these demonstrate the experiences of LGBTs outside their workplace informing of the coping strategies where they either join the informal sector as self-employed LGBT or seek the support and intervention of LGBT organizations, workers Unions or courts of Law which in most cases do not do much to serve the interest of LGBTs, therefore LGBTs have to go through the same process of applying for new job opportunities as illustrated in figure 3 below:

Figure 3: Vicious cycle of discrimination in the workplace amidst Labor Laws



Source: Field Study August 2014

4.1 The Nature of progressive laws

Section 9 of the Constitution of South Africa contains a guarantee of equality and a prohibition of public and private discrimination. The Employment Equity Act, 1998 is the implementing strategy preceding Article 9 of the Constitution that ensures conformity of the promotion of the dignity of human rights and elimination of all forms of exclusion of South Africans on the basis of Sexual Orientation. The purpose of the Act is to achieve equity in the workplace, by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and implementing affirmative action measures to reduce the disadvantages in employment which is experi-

enced by designated groups in order to ensure their equitable representation in all occupational categories and levels in the workforce²⁵.

In order to comply with the requirements of the Equality Act, the South African Government enacted the Basic Conditions of Employment Act (BCEA)²⁶ with an aim of regulating and enforcing fair basic conditions of employment within the workplace. This act works in a collaborative obligation as mandated by the International Labour Organization.

The above laws are all subordinate to the Labor Relations Act (LRA) which is the centerpiece of labor laws and its Primary objective is to realize and regulate the fundamental rights of workers and employers in the Constitution and to entrench the following rights which include; That everyone has the right to fair labor practices and its Scope applies to employment relationships between employers and employees and it makes no distinction whether these are in private or public sector.

4.2 Two Steps forward one step back: Critique of the Laws

In as much as the laws made history, with South Africa branded as the first country to approve laws aimed at protecting people on the basis of their sexual orientation, the progressive government and constitution did not reflect the attitudes of most south Africans who did not support gay rights (ILO 2007, ILO 2013, Vincent 2011). In fact the government created a gap between its tolerant laws and the conservative social attitudes of its citizens. The dilemma is that the legal framework (Labour Act, Employment Equity Act) in South Africa is aimed at ensuring that all South Africans are judged in the workplace based on their competencies at work (Chung 2001), yet many South African LGBT workers are being judged on their sexual orientation and gender identity— factors that have no impact on how well a person performs their job.

The general atmosphere in labour market, as well as corporate culture in the business world, is still not encouraging for LGBT people to freely live and also express their sexual orientation. With several reports showing that LGBTs continue to face widespread discrimination in the workplace (ILO 2013).

4.3 Discrimination in the Workplace

4.3.1 Nothing but the Real Truth

The workplaces are already unfriendly to LGBT workers, and this puts a lot of pressure on them because they are seen as challenging the traditions of the society in terms of sexual categorization and cultural values. The question remains about how well the reality matches the rhetoric with the general atmosphere in society about experience of LGBTs in the workplace. Cases about qualified, hardworking South Africans facing discrimination in employment on

²⁵ See 18

²⁶ See Appendix 3

a daily basis are so rampant with reports of LGBTs being denied job opportunities, dismissed or otherwise discriminated against simply because they are lesbian, gay, bisexual or transgender (LGBT) recorded every day. These workplace abuses pose a real and immediate threat to the economic security of gay and transgender workers (Badgett et al. 2013). The realities that LGBTs have to live with is either coming out or not at work with the prevailing and unquestioned hetero-normative attitudes putting non-heterosexuals in the position of having to decide whether or not to disclose their sexual orientation and in both cases they have to face the consequences.

This study reveals an intriguing pattern to justify the lived experiences of which LGBT are discriminated against in the workplace. These experiences expose a critical paradox that puts South African LGBT community on the parallel with the laws meant to protect them. Since life in the workplace is a process, the research focused on discrimination at different stages as this shows the nitty-gritty of the facts underlining how LGBTs live within their workplaces.

4.4 Discrimination at different stages in the Workplace spaces

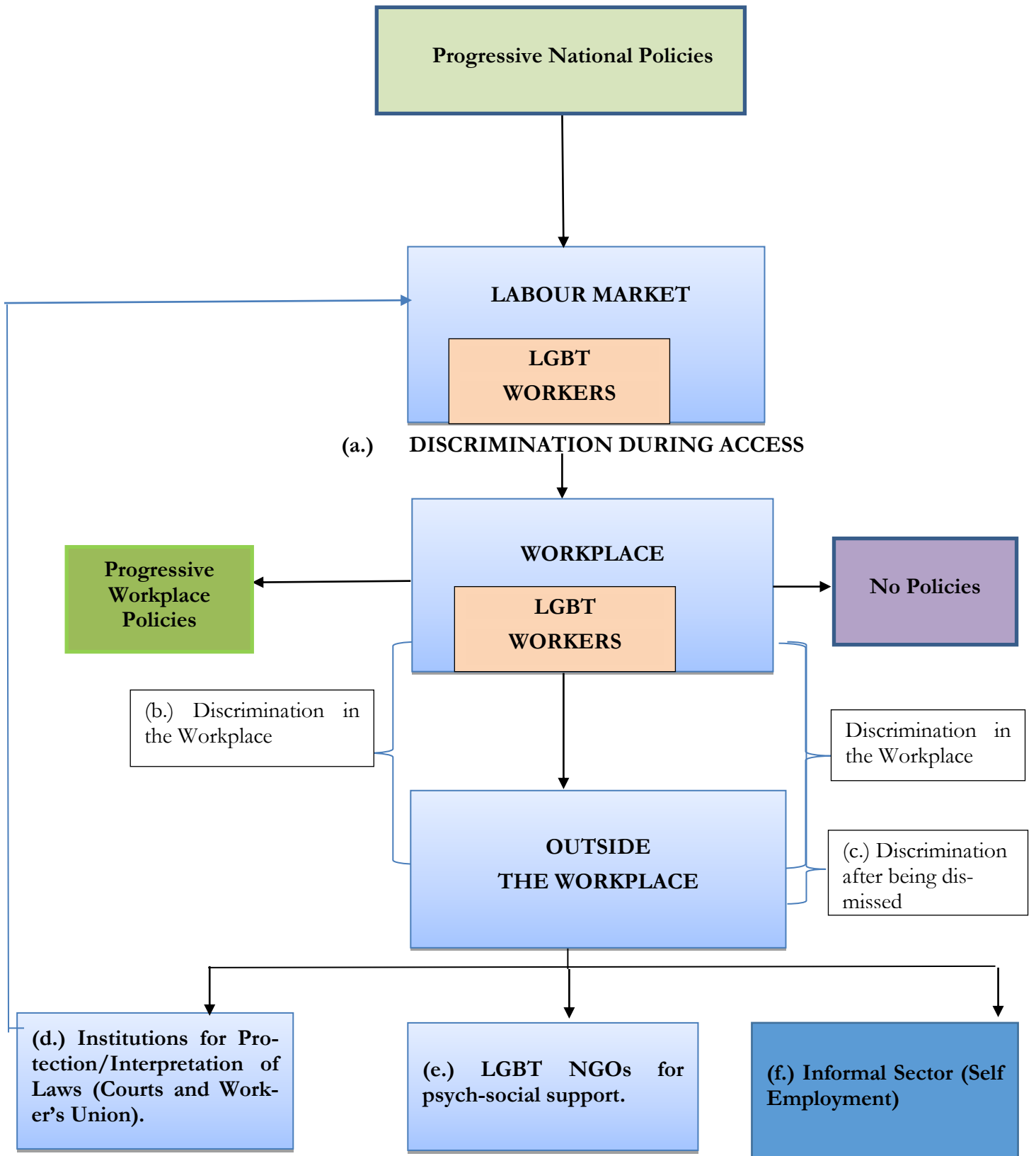
LGBTs workers in South Africa have to endure this wrath from the heterosexual colleagues who see them as outcasts or misfits in society therefore not worth being part of societal structures, since their characteristics are associated with poor performance, which is not the case, it is just homo-prejudice.

The author capitalizes on the work of Brown and Ford (1977) by categorising the different stages of discrimination into three situational processes, and these include Access inform of recruitment and interviews(Hiring), Treatment inform of workplace discrimination as a result of either coming out or not, and the third being life outside the workplace after dismissal, this focuses on the coping strategies of LGBTs, how institutions for protection are utilized, and how LGBTs pick up from here, this involves starting the process afresh of applying for jobs or starting up self-initiatives within the Informal sector and how NGOs help to provide psycho-social support to LGBTs in these spaces.

This is illustrated in Figure 4 below, but also shapes the presentation of the research findings. Clearly showing that with the existence of progressive laws both at the national level and Workplace environments, discrimination still persists within the workplaces. The following elements will be discussed in depth in the next section.

- a) Discrimination in Hiring
- b) Discrimination with in the workplace
- c) Discrimination after being dismissed (Life after being dismissed)
- d) The court and Trade Unions come in the picture
- e) Coping mechanisms by the LGBT
- f) Ending up in the informal sector (self-employment)
- g) Back to Zero (LGBT's will always have lessons to learn)

Figure 4: Analytical evidence of a paradox unveiling



Source: Field study September 2014

4.4.1 Discrimination in Hiring.

Discrimination always begins during access to employment (Brown and Ford 1977, Chung 2001), and this mainly happens during interviews and the entire hiring process. All LGBT respondents mentioned how they remained covert about their sexual or gender identity during job interviews in order not to expose their sexual orientation in the first impression with potential employers. However most of the respondents reported incidences of not being hired due to their sexual orientation either as a result of stereotyping, prejudice or assumption because of the way they talked, dressed and handled themselves. High aura of discrimination at this stage was exhibited during recruitment (Interviews, orientation) usually after interviewers or employers discovering that these employees were gay.

Sometime last year, I forwarded my Resume to a company that had advertised for a vacancy, fortunately I was invited for interviews. However, during interviews I felt embarrassed when my interviewers questioned the way I handled myself, telling me to stop acting like a girl. I was never offered that job (Gaston 2014, Personal Interview)

One would expect employers to focus their energies on the qualifications, skills and experiences of the interviewees for the job (Chung 2001, Croteau 1996) but most of the Interviewees for this study hinted on the fact that employers put a lot of emphasis on the sexual orientation as a factor that will hinder their productivity and those of other employees. Stereo types are sometimes directly exhibited during interviews and these have lasting impact on the employee as Cherie describes the inappropriate questions her interviewer asked about her relationship status and how she was later explicitly fired because she was lesbian.

During interviews they asked me about my personal life whether I had children since I was 37 years old and questions about my husband were equally raised, I completely did not get the correlation between working in a hotel as a receptionist and having children. Ok I downplayed that, but when they asked me why I wore a suit that looks like men's I knew the interview was taking a different twist, until when one female interviewer wondered why I had a deep voice. They went ahead and told me that they preferred a woman and not a man, Michael I was dumbfounded. She said in utter disgust. ("Cherie" 2014, Personal Interview)

Just like Chung (2001) noted, this study also discovered cases where LGBTs had better qualifications than the rest but were still denied employment and instead hired those with less professional experience just like one interviewee responded below.

I painfully remember a bitter experience 2 years ago applying for a job that required someone with MBA, which I applied for with three of my colleagues who were heterosexuals. During the interviews I was asked a lot of questions about my personality and family, and I found myself coming out to them that I was lesbian. This was a backlash, and I have never heard from those people again...I was never recruited, and yet my friends with undergraduate qualifications were all recruited. I have come to realize that people think being gay is a handicap and you cannot do anything produc-

tive. Where they now expect us to earn our livelihoods, Thandeka retorted. (“Thandeka” 2014, personal Interview).

As a matter of fact, there are a number of challenges in the initial stages of the selection process for most of the LGBTs the researcher interviewed. The study discovered that this stage is indeed a crucial barrier for LGBT to access work and employment. Most continue to encounter obstacles in acquiring gainful employment, and while interviewing one respondent for this study she described the inappropriate questions her interviewer asked about her relationship status and how she was explicitly fired because she was lesbian:

I was asked all kinds of inappropriate questions you can ever imagine, Saskia why do you dress like a man, Saskia why do you wear men’s shoes, Saskia why do you have short hair, Saskia do your parents know that you are like this, Saskia do you hope to get married one day? Good enough they hired me, but later I was fired from work due to reasons up to now I cannot make sense out, I managed to get a court order and was reinstated back to work but unfortunately the discrimination went on and on and I had to resign eventually. We go through this every day (Saskia 2014, personal Interviews).

4.4.2 Discrimination in the workplace

This study received story after story about the lived experiences of LGBTs in the workplaces with respondents reporting discrimination as a common practice in the workplace despite legal provisions provided by the constitution and other labour policies. Even those who manage to make it through the job market reported being terminated when their sexual orientation or gender identity is discovered and to make matters worse beyond the initial hardships in getting a job as earlier on showed, LGBTs struggles around employment do not end at accessing work but rather is exacerbated throughout the working experiences with many mentioning discrimination from bosses and managers, colleagues, and clients. The workplace is like a playing field for discrimination with stories of painful discrimination and eventual dismissal.

I was always referred to as a hard working employee by my colleagues and management. But the day they discovered my sexual orientation as being gay, my workmates started talking behind my back, when this reached our clients they never wanted me to serve them. Eventually I was fired and could not report to any authority because I know they would not do anything as usual. (Njabulo 2014, Personal Interviews)

Even within the workplace there is unfair treatment of LGBT staff in accessing their benefits, since most of the LGBTs live closeted lives, they can’t expose the fact that they are married to partners of the same sex yet it’s clearly enshrined in the constitution of the Republic of South Africa. This makes it hard for LGBT staff to access benefits that cover employees’ partners, and on most occasions they self-exclude themselves. One gay man...narrated how he missed out dental and health insurance coverage for his partner and 2 adopted children because he was scared to reveal to the Human resource department that he was gay, and since the coverage amounted to thousands of Rands per

year, he ended up earning less than the married colleagues who were earning the same amount of money.

Then one who came out and revealed his sexual orientation to the human resource department had the shock of his when they revealed this to the top management who summoned him to explain his status and how long he had been working in the company while he was gay

...My immediate manager said that he was surprised that all along he had been working with a paedophile, and the other management staff were laughing over it and told me to go back to work. After 3 months my contract was terminated with benefits, they claimed to be cutting company expenses as a result they had decided to reduce the number of staff. Imagine the author was the first and last to live that company. (Njabulo 2014, Personal Interviews).

To most of the respondents their workplace had turned into a den, and as Croteau (1996) mentioned that workers do face discrimination in their daily experiences at work, this study also discovered that LGBT workers are forced to resign or get dismissed on unclear grounds, and some interviewees could not imagine how all of a sudden employers could turn around against LGBT workers the moment they discover their sexual orientation. There is an incidence as narrated by one lesbian worker who had worked for over 5 years and was among the best employees receiving awards year in and year out, but could never get promoted until when she went to her boss, who told her that he didn't like the way she dressed and behaved like a man. He even told her that he suspected her to be a lesbian and warned her to stop or she loses her job. In fact she ended up losing her job when she fought with a heterosexual man who wanted to touch her breasts. Imagine she could not get promoted because she was lesbian and also couldn't be protected in the workplace from sexual harassment instead they dismissed her. Interviewees for this research actually wondered when exactly laws do come into practice.

Tshepiso had always been the sales king pin in her company, as the best sales manager in her company she won a trip to Dubai which was fully sponsored by the company and she was meant to travel with her partner. Unfortunately for her she was a lesbian, and she had to come out before management that she was lesbian. This led to the cancellation of her ticket and shopping voucher, as management couldn't imagine putting a photo of her and the partner on their monthly magazine and according to the CEO

“...this could bring shame to the company and also make us lose a lot of customers...”

From that day henceforth she started being harassed by her workmates, and this ended up escalating into violence as her locker was broken into, and someone scratched a screw driver in her desk. Eventually when she ran to police and she narrated the whole story, they said it is hard to believe and even told her that:

Lesbians have no rights in this country, and that she should just change and remain a woman”. And according to her she responded “I was not sacked because I was unproductive because I really put in a lot of effort in my work. But it's until when my employer found out that I a homosexual

that he sacked me. Yet they had all praised me throughout my working period in that company Tshepiso 2014, Personal Interviews

Staying In or Coming Out

When Bowen and Blackmon (2003) claimed that coming out has consequences, they were indeed right. For example, 'Bongeka', had always lived a closed gay life with only his partner knowing his actual sexual orientation. As a result of living painful in a closet for over 4 years, even Goldfried (2001) stated that it is not easy coming out, Bongeka found himself opening up to his colleagues whom he thought had got close enough to tell them his orientation. However, it all seemed like he had opened a can of worms. Everyone in the workplace started shunning him with most of his supposedly close friends talking to him behind closed doors, in fact no one ever wanted to talk to him again and some of his colleagues warned him never to get close to them. This feeling of discomfort from his workmates forced him to live in fear. *"I had to resign he said"* ("Bongeka" 2014, Personal Interviews).

4.4.3 Discrimination after dismissal

This is one of the most critical stage in the life of a homosexual, because it sets challenging grounds for their survival. This research discovered that as a result of being dismissed, LGBTs experience stigma, and eventually losing self-esteem and confidence just like it was noted by Coleman (1982) that one may experience psychological discomfort. Such news of dismissal can spread up to family members and friends who come to know about their kin's sexual orientation and might also end up disowning him/her. On many occasions LGBT workers are dismissed without any benefit which makes it hard for them to cope up. Respondents for this study who had undergone this traumatizing moment of getting dismissed insisted that it is one hard condition to go through, this was also mentioned by Badgett et al (2013).

According to Tshepiso (Personal Interviews) it was so daunting to her after losing her job, she narrates.

After dismissal, it was such a painful experience that changed the story of my life. Since I worked with colleagues who knew my family, the news of my dismissal spread like a wild fire up to my family and friends who also expressed their anger and disappointment, Michael I had nowhere to go...how could I forget such an experience? Wondered tshepiso. Tshepiso 2014, Personal Interviews.

Such experiences do influence the agency and resilience of LGBTs in adjusting their lives accordingly, whether to go in oblivion or seek support from the existing institutions for protection.

4.4.4 Institutions for appeal the role of courts and trade unions

Losing a source of livelihood is one of the most daunting moment in one's lives. After being unfairly treated, discriminated and eventually dismissed from work on the basis of sexual orientation LGBTs end up facing different forms of stigma and trauma, this is all associated with the fact that they are branded as societal misfits and moments like these are so critical in their lives, and en-

tails making decisions that will shape their lives, and this is where they seek legal protection as enshrined in the constitution and other labour laws. Those who are aware of their rights usually turn to courts for litigation, and others go to Workers unions for protection. Some reported incidences where these bodies help to interpret the laws for them and in the process suing their former employers. But it is always on rare occasions that they even end up in court as most of them feel that justice will not prevail as one pointed out.

I don't see any need of going to court and embarrass myself from there, those courts are there to protect the perpetrators, yet the law is clear about this, that you are not supposed to discriminate against your workers, but we go through all kinds of ill treatment and when you go to court they ask you to produce evidence in form of witnesses, how can you bring witnesses and they are the same people are harassing you, wondered Njabulo. (Njabulo 2014, Personal Interviews)

There was one incidence reported for this study where a victim of discrimination sought legal intervention and she was reinstated back to her work, unfortunately for her this did not change the attitudes of the staff towards her and discrimination became even worse until when she resigned. What makes her case unique is the fact that it was clearly stated being a lesbian was the reason for her sacking and used this as the basis for her evidence during the litigation process. The email that was sent to her by management while dismissing her partly read that;

...We will not tolerate your unnatural sexual behaviour which is making other staff members uncomfortable... (Saskia 2014, Personal Interviews).

Therefore without any legal recourse to contest their dismissal, LGBTs always find it hard or impossible to seek legal intervention or protection. However, even the government has not done much to create awareness about possible constitutional protection for sexual minorities against discrimination in the workplace; this was demonstrated by most of the respondents as they were not familiar with the laws meant to protect them. This actually is compounded by the fact that in as much as the constitution talks about equality clause, majority respondents don't know how they can claim their rights from the legal discourse of the law.

I hear from my friends that the law protects us (LGBTs) from being witch hunted by our bosses, but every day I am abused, called all sorts of names, left out of company retreats but no one does anything ("Xhanti" 2014, Personal Interviews) and when I asked him whether he has ever reported to police or workers union, he just laughed.

This clearly shows that LGBTs do not have trust in the system that is meant to protect them as the system itself has not been strengthened to embrace LGBT matters. Even the police that is meant to be the first point of contact for reporting incidences of discrimination are homophobic because some respondents say that they usually send away victims for lack of evidence. Such kind of undesirable attitude and prejudice by officials who are supposed to protect the rights of LGBTs exacerbate the victimization and compound more discrimination. It is like running out of a house on fire into a bush fire.

Even workers' umbrella bodies that are supposed to interpret these laws and form the platform to protect the rights of LGBTs are not doing much.

The COSATU²⁷ has been thought to be a critical ally in the fight against homophobia and discrimination against LGBTI people in South Africa, and it is within their mandate to ensure that workers receive a better living wage, decent work and social justice but also cross out a system that excludes LGBT persons. Workers unions have indeed acknowledged the existence of discrimination within the workplace and reported also horrible instances where LGBTs have had their rights violated, denied promotions, dismissed without cause and also hate crimes committed against them. But in as much as Workers Union officials acknowledge the existence of these violations, the respondents reported incidences where such violations and discrimination have landed on the deaf ears of the workers' officials. Even labor officials have not taken the initiative to sensitize LGBT workers on the nature of their rights and also how to seek protection in situations of ill treatment at the workplace. In fact some interviewees when asked how often they meet their representatives in unions, they wondered if at all LGBTs are also represented:

When men started touching my breasts at work to prove to me that I'm a woman and not to behave like a man, no one cared to listen to me, and when I reported to my boss he said I should listen to them and start behaving like a woman, when I went to our union representative he said that issues of homosexuality are not easy to deal with maybe I should report to police for sexual harassment, he did not bother to check with the perpetrators. (Ishami 2014, Personal Interviews)

This clearly shows that labor union officials in as much as they are not sensitizing the LGBTs about their rights as enshrined in the labor laws, have not created a platform to also sensitize the masses to respect the rights of LGBTs within the workplace.

The workers representatives also point out a claim that:

It is hard to deal with this kind of discrimination that is so silent and where most of our members have not yet come out, they even don't come to report to us about their situation. So how do you expect us to provide the necessary coverage and protection? Wondered one of the workers representative official.

4.4.5 Is it an end to a Career? Coping mechanisms for LGBT

Discrimination in the workplace is a continuous process which goes on and on without shame as homophobic tendencies are enshrined in the minds of heterosexuals who see homosexuals as misfits in society so they try as much as possible to exclude them from the mainstream this is evidenced in the experiences shared to me by the interviewees. Now, most of the respondents thought this was a learning lesson for them in the first instance however, according to them every workplace produces new learning experiences on how to manage their lives and it is always up to them to adjust accordingly by exercising their agency in forging a way forward for their future career goals and plans. Respondents

²⁷ The Congress of South African Trade Unions (COSATU) was launched in December 1985 after four years of unity talks between unions opposed to apartheid and committed to a non-racial, non-sexist and democratic South Africa. - See more at: <http://www.cosatu.org.za/show.php?ID=925#sthash.1xLhBAmk.dpuf>

pointed out that most times they have to go through the process over and over again by applying for work and whatever the decision the LGBTs take within the workplace influences a lot on their lifestyles and outcome of their productivity at work as noted by one interviewee:

The reason why I lost the previous job is because I had come out to my employers, unfortunately it did not go down well with them and they started coming out with all sorts of excuses to get rid of me. I was eventually dismissed. So now I am careful with whom I come out to. Tshilidzi 2014, personal Interviews

NGO's have also provided a fall back ground for LGBTs to access services such as psychosocial support, while others take their cases to the media within their networks.

These mediums have helped to promote the cause of the LGBTs. And as a result such interventions have influenced the level of resilience and have also transformed LGBTs into agents of their cause through LGBT movements (Gay Pride). This has somehow levelled some ground for respect and also awareness creating among the population on LGBT matters.

4.4.6 Ending up in the informal sector (self-employment)

Some LGBTs, who cannot resist this kind of treatment within the workplace have resorted to the informal sector or jobs that do not require daily interaction with workplace colleagues for example street vending, shop attending, taxi driving, rubbish collection, home based care workers, barbing, garage operations, prostitution and shop attendants. In South Africa the informal economy is part of an initiative to counter unemployment with an aim of fostering sustainable livelihoods²⁸. Therefore for most LGBT this sector is one important source of work and income for their survival as told by one respondent.

I now own a small kiosk where I sell household electronics, I don't have to fear for my life at work again and I make my own money. (Field Interview, 2014)

4.5 Workplace Policies

Respondents hinted on the fact that employers generally do not have workplace policies to match the mandate enshrined in the constitution and other labour laws protecting minorities such as LGBTs. (The Constitution and the Labour Relations Act guarantee LGBTs with equality and non-discrimination in the workplace). Experiences as narrated by the LGBT interviewees show that they undergo discrimination within the workplace, this notion is also held by Badgett (2013) who emphasizes that LGBTs indeed do experience discrimination. Therefore there is a need to add LGBT-supportive policies including

²⁸ See. The South African Led network, Networking Practitioners developing local economies. <http://led.co.za/topic/informal-economy>

non-discrimination policies. This study found out that companies with progressive workplace policies had minimized or no discrimination at all and the workplace was considered a more conducive working environment as compared to those with no policy in place to protect LGBTs from harassment and discrimination. Policies of this nature have somewhat made LGBTs to come out and pronounce their sexual orientation without any fear of reprisal from management and staff who usually hold homophobic sentiments.

My workplace is like my second home, no one cares about who my partner is. When my workmates found out that I was gay after finding photos in my laptop of me and my partner kissing everyone wanted to know more about me, and when I came out to them and told the truth they all encouraged me, and said that as long as it is what makes me happy then I shouldn't hide. All my colleagues know that our company has anti-discrimination policies against LGBT. In fact the working environment here has been so friendly for people like us, I'm so happy. This clearly shows that in a conducive environment of that nature, LGBT feel so included in the mainstream and surely their productivity can be increased as a result. (Dsaqui 2014, Personal Interviews).

Therefore to tackle all forms of discrimination within the workplace, employers need to reinforce a friendly workplace environment for the LGBTs and go beyond just enacting workplace anti-discrimination and harassment policies but instil a culture that enables both homosexuals and heterosexuals respecting each other's sexual orientation. Unfortunately this is not the case in most South African workplaces and this is attributed to the hetero-normative discourse that make restrictive definitions society has given to concepts such as marriage, relationship, spouse, dependent and family which form the basis for the exclusion of the LGBTs from the mainstream, as one interviewee noted that;

I work in a company where staff are required to sign the Anti-discrimination policy whose purpose is to protect gays like me, unfortunately every day I go through a hell of an experience from my workmates who harass me and even call me names. One even said that his understanding of relationships is for a man to sleep with a women and not fellow men, he says it is against his religion and culture so he will do anything until I live the workplace, when I report them to management, nothing is really done apart from telling them to apologize to me. This place is not friendly for me. (Xhanti 2014, Personal Interviews).

4.6 Paradox broken: Evidence of paradox getting broken.

An interesting part to this research was the issue of heterosexuals getting punished for discriminating and harassing colleagues who do not conform to the heteronormativity discourse of sexual orientation. In instances where companies fully implemented and respected the workplace policies, all employees were expected to desist from this vice of discrimination. This study found out that while working in companies with progressive workplace policies, LGBTs had good working relationships with heterosexual staff. Heterosexuals were severely punished with some even getting dismissed as a result of constant as-

saults and discrimination directed towards LGBTs, a case in hand is of one heterosexual line manager who persistently disregarded one LGBT occasionally denying him field trips and also giving false reports about him, and referring to him in meetings as “a faggot” and therefore not fit “to sit among humans” a case was lodged before the top management, and he eventually lost his job. This company has attracted several capable and brilliant LGBTs whose sexual orientation is equally respected by the heterosexuals. In fact for fear of losing their jobs, heterosexuals have turned into mouth pieces for LGBTs with in the workplace in providing friendly working environment and they have also had a change in attitudes and behaviours towards LGBTs. *“we now share cups and also flirt during breaks, they call me brother, they like us”* Dsaqui said this in excitement (“Dsaqui” 2014, Personal Interviews). This clearly shows that if laws are aligned with social structures then there can be cohesion in the way people live thus shaping the way people behave towards others

4.6.1 Weaknesses among the LGBT workers

In order to provide an objective argument into LGBT discrimination, current sentiments may seem positively biased making it seem like LGBTs themselves are victimized or powerless victims. A lot of literature and research shows that LGBTs are always victims of persecutions, but nothing is said of their weaknesses. This study found out that LGBT workers have their own weaknesses and they are not necessarily vulnerable all the time. For instance when LGBTs get dismissed, the blame always goes to sexual orientation but one employer respondent confirmed that a gay employee who was sacked was indeed not serious about work and according to him the LGBT staff in question

“ could always come late to work every morning, he never submitted reports on time and even his work productivity was low during the monthly evaluations and appraisal, so management had to sack him and it had nothing to do with his sexual orientation, because I remember another straight colleague was also sent packing over similar issues” (Jude, 2014, Personal Interviews).

This study suggests that consideration needs to be directed on factors that may be caused by LGBTs and may lead to their vulnerability within their workplaces, and not necessarily caused by heterosexuals.

4.6.2 LGBT bosses discriminating LGBT workers

Employers who subscribe as LGBTs can sometimes discriminate against LGBT workers on grounds of sexual orientation. The reason that was forwarded for this matter was for bosses to hide their sexual identity from other employees. The company head will get rid of the LGBT staff member(s) in order for them to avoid being exposed. So they will come up with all reasons to fire them. Most of Kwathema’s LGBTs know each other as a result of LGBT networks in Kwa Thema, so it is always easy for one LGBT to recognize another. And being Closeted means a lot to most LGBTs in higher management positions so they usually take the axe beforehand.

One LGBT who manages a company and preferred to remain anonymous assured me that he would do anything to protect his identity, and he said that

he tries as much as possible to act like any other person and even hints on some girls in the workplace. He responded:

My dear, if I am sacked here I lose my job, which means no income comes, my image is tarnished which means my future is ruined so I do that to protect my interests, but inside me I know I am gay, and I get rid of those who claim to know me and they are gay....it is not easy. (Response from LGBT employer)

4.6.3 The dilemma within the LGBT movements

LGBT movements have shaped the line of thinking in South Africa in terms of recognition; even the inclusion of the Equality clause is attributed to the role and influence of these movements during the Apartheid and Post-apartheid period. However, like it is typical of such movements that fight for the inclusion of the minority in the mainstream, the marginalized lot who are always the minority within the movement are left out. Most of these movements survive on the mercy of its members and for the case of Kwa Thema, where some movements have black majority who are poor, usually are not in position to sustain their existence and even when they do they usually benefit more of the top leaders than the poor LGBT members who need more of their support in terms of public lobbying, advocacy and protection. This to a certain extent explains why Movements within the cities are operating successfully as compared to those in townships, and puts much more sense to the reasons why many LGBTs can't have their case heard or prosecuted because they lack enough political and social representation from these kinds of movements.

One interviewee said

for sure these LGBTs movements have given us a sense of belonging, but when it comes to following up cases of discrimination with the police, courts of law, workers union and may be our former workplace they keep giving excuses such as, we don't have funds because members have not paid up their subscription. Yet I paid, it is so unfair can't get any kind of justice, but the struggle continues" (Bongeka 2014, Personal Interviews).

4.7 Beyond the workplace

With an arm of the laws set on one hand to influence the promotion of respect for the rights of sexual minority groups such as LGBTs and the increasing homophobia among the general population on the other hand, has created a paradox within the general understanding of the general system in the workplace. As highlighted above LGBTs are undergoing discrimination which seems to be increasing day in and day out. Even in situations where policies are clear and laid out to the general staff, we still record massive cases of harassment and discrimination. Here we are seeing two worlds existing alongside each other but with one occupying the overall spaces within the public and private discourses.

A number of factors were attributed to this fact when the author considered looking at the arrangements of the social structures within the South African mainstream society. This enabled me to understand the way South African social, economic and political systems are arranged in such a way that they

influence the outcome of all aspects within the South African communities in terms of the way people think, the way people perceive and treat others, attitudes and behaviours as well as national beliefs and values. This has got a great deal of how minority groups can be framed and managed by the majority groups in this case the heterosexuals. Throughout my research, these issues were raised as those exacerbating discrimination and therefore widening the intriguing aspects of the paradox within the workplace and indeed some of them were going beyond the workplace. And they included;

4.7.2 Lack of political will

The African National Congress has been at the forefront of political leadership in South Africa, and at the helm of bringing an end to apartheid which had massively violated the rights of many South Africans of black descent. After the downfall of the Apartheid regime, ANC granted as is commonly known granted rights and freedom to all groups that had been marginalized and indeed LGBTs had a share of the cake. Since then conservative South Africans have questioned the legitimacy of the leaders to include issues like sexual orientation in the constitution, something they consider un-African and therefore not fit to have even a mention in the treasured constitution. Even leaders have come out to condemn the same sex relationships and have also denounced their existence. The South African President Jacob Zuma has made remarks that clearly show that the government is not ready to enforce these laws as enshrined in the constitution and other labour policies into practical realities but rather live it on paper and romanticize its existence, he once said that homosexuality in a way can bring dishonour to God and the country²⁹.

While it is true that any discussion on sexual orientation is not an easy one in any social context, it must take place nevertheless, no matter our personal positions, and as Mutua(2011) says, it is a discussion that every society must have because it touches on the most fundamental of all human values. In the African society, homosexuality can even lead to death by stoning, hanging, life imprisonment and violence; it is even a taboo to discuss this phenomenon.

4.8 Summary of this chapter

This indeed is a paradox unveiling, and how it will end is still a paradox! LGBT workers in South Africa are ideally protected by a number of legislative provisions which provide them access to the same rights as those enjoyed by the heterosexuals. However, the societal beliefs and norms in South Africa don't make this possible for LGBTs to enjoy workplace benefits and freedoms as they experience social and workplace exclusion throughout their working experience. Heterosexuals (employees, employers and clients) usually ensure that LGBT workers face the wrath from the job application phase, and even when they are employed LGBTs are not treated fairly with reported cases of discrimination, harassment and assault.

This happens until such a time when LGBT workers end up resigning or getting dismissed by the employers for being homosexuals and this may happen as a result of LGBTs either coming out to others and telling about their

²⁹ Van Onselen, G., 'Jacob Zuma's top ten disturbing cultural quotes', 5 March 2013, <http://inside-politics.org>. Retrieved, 17 Aug. 2014.

sexual orientation or concealing it. It is usually a horrific experience for those who come out or even suspected to be LGBTs. However, in instances where workplace policies were present there was a more conducive working environment for LGBTs unlike workplaces that had no policy at all. But also having these workplace policies does not amount to elimination of discrimination, but rather elimination is possible when employers are at the forefront of ensuring enforcement. In fact workplace policies can help to impact on heterosexuals' attitudes and perceptions towards LGBT workers. However, there are factors beyond the workplace that have maintained homophobia and xenophobia within the South African labour market such as, Weak institutional capacity to reduce homophobia (Institutions such as the Judiciary, police workers' union) are heavy laden with limited resources and technical personnel to fight this homophobic scourge, lack or limited political will from the government (the government has not done much to table the issues of LGBTs for public discussion and dialogues with other stakeholders like religious institutions, Civil Society Organizations, political parties and private sector stakeholders).

CHAPTER 5: Conclusion and Recommendation

In this chapter the author concludes that the situation in South Africa is a mixture of thorns and roses, and wonders how complex the situation would have been in such a diverse and pluralistic society like South Africa if at all Anti-discrimination laws were not in place. This is because in as much as there is a cream of laws and national labour policies protecting minority groups, black LGBT workers still do face wide spread discrimination from their heterosexual colleagues.

The main objective of this research was to understand how these progressive laws can translate into positive societal attitudes and perceptions towards Black LGBT workers, and particularly explore the realities of the lived experiences of LGBT workers within the Workplaces amidst policies aimed at protecting them.

This study discovered that the constitution and other Anti-discrimination laws are just rhetoric gripped in cheap popularity which has even managed to position South Africa into praise worthy nation, always considered to be the first nation to allow same sex marriage and thus guaranteeing protection from discrimination of LGBT workers. However, this research discovered a completely different story of the lived experiences of LGBTs within the workplaces. The study found out that black LGBTs in South Africa experience discrimination at different levels within the workplace which turn out to be a journey walked throughout their lives and in any case fronting them as misfits in society. LGBTs have been discriminated against during a) access to employment, b) during employment and this stretches at even c) after dismissal within the labour market in terms of protection from the e)worker's unions and courts of law that are purposively meant to protect them as enshrined in the constitution of the republic of South Africa, here a lot of cases are reported of these institutions not doing much to protect the rights of LGBTs but also incidences are reported of some LGBTs having fair hearings and cases ruled in their favours. As part of the coping strategy we found out that most LGBTs end up in f) informal sector this is done to fit in their own spaces where there is limited interactions and also taken on self-employment either in petty trades or join g) other companies as employees, this involves starting from zero and usually due to experience from previous workplace they end up concealing their sexual orientation from their new employers.

This study confirms to the fact that it is indeed not a bed of roses in South Africa, Ncube(2013) notes that noble and respected constitutions like that of South Africa does not easily find its way into social structures of the nation, reaffirming the fact that legislation alone cannot change the homophobic attitudes within the workplace directed towards LGBT employees, and in such situations workplace policies become handy in promoting a change of attitude against LGBT workers.

Interventions should therefore aim at balancing legislation and change of people's attitudes and behaviours towards LGBTs, this is because regulations in form of legal protection can provide some cover for LGBT workers and in

the process ensuring that they are included in all workplace activities without any form of discrimination whatsoever,

While improved legal protections are necessary, establishing a more hospitable social and cultural environment is a catalyst and most likely a necessary precondition that sets the stage for improved legal protection (Beatty and Kirby 2006:41).

Because In this era of protecting human rights, it is necessary and paramount for employers to ensure that all their staff are covered against issues that will deter them from being productive at the workplace. Even to make matters possible for intervention, today's workplaces are becoming increasingly diversified in many ways, with employees having unique characteristics that are called into consideration when developing workplace policies.

In addition, the study also found out that companies that had workplace policies aimed at protecting workers, recorded wide spread agreement that the working environment can always be more conducive as compared to Companies without any. However, this depends on how committed employers are in ensuring that these policies are respected in all departments because even in corporations with praiseworthy, all inclusive workplace practices and policies, but lacked commitment from employers had LGBT workers complaining.

The policies are therefore a giant step towards achieving a conducive working environment but they should also trickle down to the daily beliefs and cultures of the South African people. Failure to do so has left black LGBT workers with no option but to live a detached life of being closeted.

5.1 A matter of Emphasis

South Africa has undoubtedly made progress by securing legal and fundamental rights for the LGBT people within its constituency, something that has failed many countries in the world and Africa in particular for example Russia, Uganda and Nigeria. The past few years have witnessed a sweeping tide of Anti-homosexuality laws across most African nations, with several passing criminalization laws that could even lead to death or long sentences in jail, and in some countries like Nigeria stoning to death was considered as an option. Even Msibi (2011) agrees with this fact when he amazingly attributed this to the fact that "...renewed efforts to label same-sex desire as un-African represents a façade that conceals neo-conservatism and a resurgence of patriarchy, coated in the constructs of religion, nationalism, and law" which he blamed on "anxious masculinities" (Msibi 2011: 55) such instances shape the hegemonic discourse of sexuality which favours one sexual orientation in this case heterosexuals over homosexuals (Herek 1988) and as Patriarchy contributes to homo-prejudice because it is linked to the hetero-normative model which views same-sex relationships as abnormal. These also explain the reasons why majority South Africans do not conform to the South African legislative framework as enshrined in its laws and policies as according to a 2013 survey which showed that 61% South Africans said that society should not accept homosexuality(Kohut 2013).

This research also considered the impact of institutions and their role in protecting LGBT workers. However, interviews with most LGBTs workers exposed weaknesses within these institutions such as police and the judiciary

failing in the fight to topple discrimination within the workplace, and even workers' Union is also not doing much to sensitize workers, employers, and the general public about the existing laws purposely aimed at protecting LGBTs, and even where they have done so, it is not enough otherwise workers would not be complaining as exhibited in the research interviews with LGBT workers. trade unions have complained about workers not "coming out"³⁰ about their sexual orientation which makes it hard for them to help them and also follow up on their cases, a situation which the LGBTs themselves admit because they think that if one comes out he or she will have opened doors for drastic forms of harassment, discrimination and hatred towards them. The government its self has not done much ever since they enacted such a romantic document (Constitution), as any one would expect it to be at the forefront of ensuring that rights are promoted and maintained within the workplace but this is not the case. Employers who are supposed to protect workers are not doing much themselves, this research found few workplaces that had workplace policies emphasizing protection of LGBT workers from discrimination and those that had policies did not have support from management. But in workplaces with polices that were equally supported by management reported incidences of calmness and tolerance towards LGBT workers. Surprisingly heterosexuals who mistreated LGBTs were punished.

5.2 Recommendations

Creating an equal society for all is such an ambitious initiative that entails long term interventions and calls for a multi sectoral and multi-level approach in order to foster a sustainable all inclusive society. South Africa has taken a massive legal step towards achieving Equality with in its spaces. And the workplace being one of the central point for human livelihood and survival, its paramount that such spaces are all inclusive by having decent work policies that aim at promoting Anti-discrimination in all forms against gay workers.

From the above discussions in the literature and findings, I would like to make the following recommendations

5.2 a. Employer:

To avoid discrimination during access to work and at the workplace, employers should ensure equal treatment by:

- Developing an organizational culture that sincerely embraces diversity and inclusion within the workplace(s) it should therefore be the responsibility of senior management to set the stage for diversity initiatives.
- Employers to formulate workplace policies that are all inclusive both in hiring and treatment of all applicants

³⁰ Coming out of the closet, or simply coming out, is a figure of speech for lesbian, gay, bisexual, and transgender (LGBT) people's self-disclosure of their sexual orientation and/or gender identity.

5.2 b. LGBT persons:

To avoid a recurrence of any mistreatment directed towards LGBTs at their workplaces and also in order to avoid exclusion:

- LGBT workers should take control over their own lives and advocate for their own rights by reporting to labor office when they are victims of unfair dismissal or any kind of discrimination in the work place.
- Promote a support system in order to overcome loneliness by participating in other gay community or solidarity network for LGBT persons
- LGBTs can be encouraged to join the informal sector as a remedy to avoid the homophobic society

5.2 c. The Government and other institutions:

In order to ensure that provisions as enshrined in the legislative framework, that is the national laws and workplace policies Government and the workers union should:

- Take affirmative measure to prevent, stop and prosecute acts of discrimination against LGBT Workers. The government of South Africa can borrow a leaf from the USA, which just took a giant step in ensuring equality for homosexuals in the US labor market. This was done through an executive order that prohibits employers from discriminating against LGBT workers³¹.
- Provide training to police, prison officers and other law enforcement personnel, and support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in public institutions.
- Government should establish a special agency to handle LGBT related issues.

5.2 d. The Civil Society Sector

In order to bridge the gaps within the government interventions, CSOs should:

- Carry out advocacy campaigns to increase awareness of the obstacles facing the LGBT workers within the workplace, with the goal of aligning the nation's anti-discrimination laws with its practices. Specifically, advocacy is needed to ensure compliance by Law enforcement officials, employers and public with their legal duty to abstain from discriminating against individuals on the basis of sexual orientation

5.2 e Learning lessons for South Africa: A message from Argentina.

Argentina which has the most progressive legislation in the global south towards LGBTs recently advocated through the United Nations Human

³¹ This marks the first time federal policy has been used to require equal employment opportunities for LGBT workers in the private sector in the U.S. See. <http://feministeconomicsposts.iaffe.org/2014/08/27/the-latest-step-toward-expanding-equality-for-lgbt-employees/> Accessed 15 September 2014

Rights Council for a resolution against anti-LGBT homophobic violence and discrimination. Argentina also passed a resolution of granting same-sex couples all their rights entitled to a married couple, the same rights enjoyed by heterosexuals. This has been the priority of the Argentine government headed by Christina Fernandez and has ensured that provisions are in place to enforce the laws and policies.

Note: So the government, workers Unions, employers should step up and sensitize the Workers within the labour market about the importance of these policies in maintaining and respecting the rights of sexual minorities like the LGBTs with in the workplaces and strategies to eliminate any form of discrimination within the workplace should be directed towards these factors in a broader approach targeting all stakeholders and not just in simple and homogenous forms. For example policy makers should also consider empowering the legal institutions like the Judiciary, police, and workers unions, social institutions like church, and the general public in order to change national and traditional cultures, beliefs and values towards homosexuals. This will eventually lead to heterosexuals living in harmony with homosexuals within the workplace. These are some of the factors that the constitution of South Africa did not consider.

5.3 Opportunities for further research

- Investigate the economic(business) and social consequences of discrimination to firms or companies
- Investigate the motivation behind heterosexuals negative or (positive) attitudes towards LGBTs
- Make a comparative study between white and black LGBT workers' coping strategies in the workplace
- Study the discrimination taking place within the LGBT community

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Appendices

Appendix 1: Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996)

Chapter 2(9) - Bill of Rights (Equality).

1. Everyone is equal before the law and has the right to equal protection and benefit of the law
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievements of the equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken
3. 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, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).National legislation must be enacted to prevent or prohibit unfair discrimination
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Appendix 2: Employment Equity Act, 55 of 1998, issued in terms of Section 25(1)

1. Chapter 1 – Definitions, purpose, interpretation and application

1.1 Purpose of the Act: Section 2

The purpose of the Act is to achieve equity in the workplace, by

- a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- b) Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce.

1.2 Application of the Act: Section 4

- a) Chapter II (sections 5 – 11) applies to all employers and employees.
- b) Chapter III (sections 12 – 27) applies to designated employers.

- c) A designated employer means an employer who employs 50 or more employees, or has a total annual turnover as reflected in Schedule 4 of the Act, municipalities and organs of state. Employers can also volunteer to become designated employers.
- d) A designated group means black people, women, or people with disabilities.
- e) The South African National Defence Force, National Intelligence Agency, and South African Secret Services are excluded from this Act.

2. Chapter 2 - Prohibition of Unfair Discrimination

2.1. No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice, on one or more grounds including race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, color, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth.

2.2 It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.

Appendix 3: Basic conditions of Employment Act, 1997

Purpose of this Act

1. The purpose of this Act is to advance economic development and social justice by fulfilling the primary objects of this Act which are—
 - a) To give effect to and regulate the right to fair labor practices conferred by section 23(1) of the Constitution—(i) By establishing and enforcing basic conditions of employment; and (ii) By regulating the variation of basic conditions of employment;
 - b) To give effect to obligations incurred by the Republic as a member state of the International Labor Organization.

Application of this Act

- a) This Act applies to all employees and employers except—(a) members of the National Defense Force, the National Intelligence Agency and the South African Secret Service; and (b) unpaid volunteers working for an organization serving a charitable purpose.
- b) This Act applies to persons undergoing vocational training except to the extent that any term or condition of their employment is regulated by the provisions of any other law.
- c) This Act, except section 41, does not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies except to the extent provided for in a sectoral determination. Inclusion of provisions in contracts of employment

This Act or anything done under it takes precedence over any agreement, whether entered into before or after the commencement of this Act.

Informing employees of their rights: Section 30

A statement of employees' rights must be displayed at the workplace in official languages used at the workplace.

Monitoring, Enforcement and legal proceedings: Section 63-81

- 3.1 Labor inspectors must advise employees and employers on their rights and obligations in terms of employment laws. They conduct inspections, investigate complaints and may question persons and inspect, copy and remove records and other relevant documents (S. 64 – 66).
- 3.2 Employees may not be discriminated against for exercising their rights in terms of the Act (S. 78 – 81).

Appendix 4: Promotion of Equality and prevention of Unfair Discrimination Act 4 of 2000 (Equality Act, Act No. 4 of 2000)

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 2000 (Act No. 4 of 2000) (the Equality Act) was promulgated in 2000 to give effect to Section 9 of the Constitution. It endeavours to facilitate the transition to a democratic society united in its diversity and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.

The Main objectives of PEPUDA are:

1. To prevent, prohibit and eliminate unfair discrimination and harassment
2. To promote equality
3. To prevent and prohibit hate speech
4. To provide for matters associated with unfair discrimination

Appendix 5: Interview Guides

The questions below guided the interview process. It's important to note that respondents may lack knowledge on questions asked so basing on their responses, I will ask questions that do not necessarily follow the sequence as outlined below but rather ask questions basing on the flow of the discussion and responses from the interviewees. This keeps the session lively and also helps to build confidence and trust between the interviewer and the interviewee. However, the interviewer will be careful about not getting dragged into unnecessary conversations but rather focus on the objectives of the interview since it will only last 30 minutes.

1. LGBT Workers

Research topic: Unveiling a Paradox: The Persisting Discrimination against Black LGBT Workers amidst Progressive Policies in South Africa

Introduction: My name is Dhatemwa Michael Mawambi, a student of Institute of Social Studies in The Hague, pursuing a Master's Degree in Development

Studies and majoring in Social Policy for Development. The Objective of this research is to explore and discover the relationship between progressive laws and the societal attitudes and perceptions towards black LGBT workers and also to unveil a paradox that exists in the South African labor market in order to gain insight into the underlying factors contributing to this increasing homophobic discrimination within the workplace and the complex challenges faced by LGBT workers in South Africa. LGBTs are becoming excluded from the mainstream even with the presence of Anti-discriminatory laws deterring this discrimination against LGBTs.

I have selected you to be part of the sample that will enable me to achieve the above objectives. I promise you the information given in our discussion will be used solely to achieve the objectives of this research. I promise that confidentiality will be accorded towards the information you will provide. Your names and contact details will not appear anywhere in this study. I therefore seek your consent to respond to the questions as asked in order achieve the objectives of this research.

Request for Your Consent:

I.....do accept to take part in this research being carried out by Dhatemwa Michael Mawambi a student of the Institute of Social Sciences of Erasmus University Rotterdam based in The Hague, on the paradox that exists in South Africa about the persisting discrimination against LGBT workers amidst a progressive legislation.

- Are there any workplace policies protecting you in your workplace?
- What strategies do you have to confront or avoid homophobia
- Do you feel comfortable opening up to your peers at work as a homosexual?
- Do you think it's easy to get employment being a homosexual
- How do people perceive you in the workplace?
- How are you treated at your workplace
- If you don't open up at your workplace, do you open up at home?
- What difficulties do you experience in the workplace as a gay person
- Does your employer know that you are gay?
- How challenging is it to be a black LGBT person?
- Do you think south Africa is tolerant of homosexuality, if not why, if yes why
- Have you ever experienced any form of discrimination, do you feel excluded or isolated?
- How has this happened?
- What form of discrimination do you face and how often does it happen.
- If you did, did you report to the Workers representative
- Do co-workers that do not like you or harass you ever get punished? And how do they get punished, by whom?
- Do you know of any LGBT that was denied a job or sacked as a result of his/her orientation?

- How do you cope up or manage amidst all these challenges
- Do you belong to any Labor Union? And what kind of protection do you get from them?
- Do you think the government of South Africa has done much to protect your rights
- Is your company open about the concerns of LGBT employees, if not why and if yes how?
- Why do people not feel protected when progressive laws are in place?

2. Employers

Introduction and Consent: Refer to Appendix V(1)

- Do you have any workplace friendly policies protecting LGBTs?
- Do your staff like working with LGBTs?
- Do you think workers should come out in public about their sexual orientation
- What happens when you find out that one of your staff is LGBT?
- What do you think about LGBTs sexual orientation?
- How do you help your staff to work with LGBTs?
- Do you think the government is doing much to protect LGBTs
- Does the company provide benefits in form of social protection to same sex partners for example medical insurance etc.
- Should people 'come out' at work, and if they do not come out, how can the trade union protect them?

3. Workers Union

Introduction and Consent: Refer to Appendix V (1)

- What challenges do you experience while agitating for the rights of LGBTs
- Are there any workplace friendly policies protecting LGBTs?
- Do you know of any incidences where LGBT worker(s) were denied work or sacked as a result of his/her orientation?
- How do you assist LGBT workers amidst such discrimination
- Do you work hand in hand with the government in promoting LGBT causes, what kind of support do you get from the government?
- Do you think the government has done much to protect LGBTs from any form of discrimination?
- What cases/complaints of discrimination do you receive from LGBTs and how do you manage them? Are there any incidences you know of me?
- What do you think about the attitudes of the people towards LGBTs
- Do you ever sensitize the general population about changing their attitudes and behaviors towards the LGBTs?
- Do you ever sensitize the importance of workplace policies in changing their attitudes and behaviors towards the LGBTs
- Do you think South Africa is tolerant of homosexuality, if not why, if

yes why

- Do you think people are tolerant towards LGBTs if not, why?
- Have you heard of any form of discrimination against LGBTs in their workplaces
- Do you think LGBTs can easily get jobs
- Do you think the government has done much to protect the rights of LGBTs if not why and if yes how?
- Do employees/employers that harass LGBT colleagues ever get punished, and how do they get punished, by whom?

4. Civil Society organizations:

Introduction and Consent: Refer to Appendix V (1)

- What challenges do you experience while agitating for the rights of LGBTs
- Are there any workplace friendly policies protecting LGBTs?
- Do you know of any incidences where LGBT worker(s) were denied work or sacked as a result of his/her orientation?
- How do you assist LGBT workers amidst such discrimination
- What kind of services do you give to the victims of the discrimination
- Do you work hand in hand with the government in promoting LGBT causes, what kind of support do you get from the government?
- Do you think the government has done much to protect LGBTs from any form of discrimination?
- What cases/complaints of discrimination do you receive from LGBTs and how do you manage them? Are there any incidences you can share with me?
- What do you think about the attitudes of the people towards LGBTs
- Do you ever sensitize the general population about changing their attitudes and behaviors towards the LGBTs?
- Do you think South Africa is tolerant of homosexuality, if not why, if yes why?
- Do employees that harass LGBT colleagues ever get punished, and how do they get punished, by whom?