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Lesbian, Gay, Bisexual and Transgender Rights in South Africa:

The fight for human rights equality in policy outputs

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Summary

This thesis researches whether either the interest group theory or the international human rights treaty theory has greater explanatory power when it comes to LGBT rights in South African policy outputs. The research question is: "*Is either the 'interest group theory' or the 'international human rights treaty theory' the theory for better explaining LGBT rights in South African policy outputs?".* By deducting several expectations for both theories and applying the expectations to the empirical observations, I try to find out which theory better explains the situation of LGBT rights in South Africa. The observations have been done in three important episodes of South African LGBT outputs, these being: the 1996 Constitution, the 2006 Civil Union Act and the 2011 national taskforce. With the help of many existing sources, such as: UN treaties, South African laws, newspaper articles and prior scholar research, information was gathered.

The analysis shows that the interest group theory has more explanatory power when it comes to LGBT rights in South Africa. South African LGBT interest groups have enough resources; build coalitions; have access to government; educate society and develop policy with the government, which makes them successful in their lobbying efforts for LGBT equality in South Africa. The international human rights treaty theory has some explanatory power, but less than the interest group theory. This is primarily due to the fact that in some cases there are no UN treaties in place that cover certain aspects of LGBT rights and the UN has no hard means by which it can force countries to comply to the treaties it has signed.

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List of Abbreviations

ABGLT	Brazilian Association of Lesbians, Gays, Bisexuals, Travestites and Transsexuals
AHSI	African Human Security Initiative
ANC	African National Congress
BDS	Blue Diamond Society
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination Against Women
CSDF	Civil Society Development Fund
ICCPED	International Convention for the Protection for All Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
HRC	Human Rights Council
HRT	Human Right Treaties
LGBT	Lesbian Gay Bisexual Transgender
NCLGE	National Coalition for Lesbian and Gay Equality
TNN	Transgender Network Netherlands
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America

Chapter 1: Introduction

In 1996, with the proclamation of the constitution under the new government ruled by the African National Congress (ANC), South Africa became the first country in the world to express the need for protection of gay and lesbian rights in its country as well as the prohibition of discrimination based on sexual orientation (Croucher, 2002; 315). From that moment onwards, South African courts have granted substantial rights to the gay community. An example of this is the decriminalization of sodomy and support for immigration rights for foreign partners of gay South Africans (Croucher, 2002, 315).

This development seems odd considering the circumstances the country was in at that time. Important to keep in mind is that South Africa had other, very salient issues to deal with in the wake of apartheid such as the economy, racial segregation and its international reputation (Croucher, 2002; 318). According to Baumgartner et al. (2009) there is limited opportunity to push new issues on the agenda if the policy agenda is full with other issues. Another factor that should have made it hard to develop more LGBT rights was that other African countries and South Africa itself were extremely homophobic. Some examples of African leaders that have expressed homophobia are President Mugabe of Zimbabe, who stated that "gays are worse than pigs and dogs", former President Nujoma of Namibia, who stated "seek to it that there are no gays in your villages", former President Obasanjo of Nigeria, who stated "such a tendency is un-Biblical, unnatural and definitely un-African" and President Museveni of Uganda, who stated "look for homosexuals, lock them up and charge them" (The Times Newspaper, 2005). These are just a few of many examples of homophobia from Africa's leaders. Furthermore, homosexuality was framed as un-African, referring to it as a Western import and a threat to the Afrikaner identity (Croucher, 2002; 318). These, amongst other problems, led the gay movement in South Africa to be hardly existent and weak before the 1990's (Croucher, 2002; 319).

On the other hand, this was also the time that South Africa changed from a nationalist-dominated republic to a democracy. With this change the entire population of South Africa gained the opportunity to participate in politics. Prior to the founding of the democratic government the LGBT (Lesbian, Gay, Bisexual and Transgender) community focused mainly on social activities, such as opening bars and creating newspapers, rather than seeking political influence. However, the combination of the end of apartheid, the democratization and the fight for equality for people from different races, which was seen as a human right, also lead to a fight

for equality amongst women (gender equality) and gays (sexual rights) as these were considered to be human rights as well (Van Zyl, 2011; 337). In other words, the end of apartheid led to a wave of promoting social justice and political equality. A passage from the Human Rights Watch research of 2003 grasps this energy of standing up for equality in these beginning years; "*They were organizing, campaigning, doing outreach—or leading their lives boldly, walking down streets proudly, looking for hope or love. Many spoke of wanting to claim their own rights, to take charge of their futures*" (Human Rights Watch, 2003; 230).

However, inside pressure from interest groups, was not the only pressure on improving the (LGBT) human rights situation in South Africa, there has also been pressure from outside the country to let women, all races and gays have equal rights. Through international human rights treaties set up by countries in the UN (United Nations), the community also gained more and more equality. South Africa, during the apartheid, was suspended from participating in the UN and only accepted back in, after the apartheid, when it became a democratic country. By becoming a democratic country and fully participating in the UN, came the responsibility to accept the international human rights treaties that the UN has in place (Permanent Mission of South Africa to the United Nations, 2013).

Though South African LGBT activists have named Cape Town the 'gay capital of Africa', the current situation in South Africa is similar to the one two decades ago, the circumstances have hardly changed. Homophobia in Africa is still omnipresent, as was illustrated in February 2012 when President Mugabe of Zimbabwe, which is South Africa's neighboring country, stated "to hell with gay rights" (NRC Newspaper, 2012). Besides homophobia, there are other issues, for example economy and health that need the South African government's focus. In addition, there is huge social pressure to conform to heterosexuality, this pressure is often direct and violent (Ready, 2001; 83). One can think of collective rapes of lesbian women. It is a widespread belief amongst the population of (especially the townships in) South Africa that collective rapes will correct the lesbian behavior of women and will 'free' them from homosexuality. But also kidnapping, assaults, exclusion from the community and even murder. The LGBT community also experiences discrimination in health, education and employment and their cases are often not being taken serious by the concerned authorities such as the police (Human Rights Council, 2011; 3). Clearly, this pressure comes from all parts of society: family, townships, government and police.

Nevertheless, LGBT rights have been increasing significantly over the years and are still

transforming in the present. This leads to wonder what causes this rise of human rights equality in South Africa in political outputs. Is it the strength of the LGBT interest groups? Or have international human rights treaties sparked the LGBT success? There are several theories that could explain this trend. In this thesis two theories, the interest group theory and the international human rights treaty theory, will be researched in terms of how its factors effect political equality in political outputs. It will be an in-depth research where the focus will only be put on South Africa as the unit of analysis. In the next chapter the research question will be clarified, followed by predictions deducted from the theories. By the end of this research the conclusion will show which theory is more successful in explaining the current outcome of the fight for equality for the LGBT community.

Chapter 2: Research Question

2.1 Problem Statement and Research Objectives

Unequal treatment of the LGBT community in South Africa has been a problem both before and after the apartheid. Nonetheless, the LGBT community has won many battles and gained more and more equality over the past two decades. This success can be explained through several theories, in this paper the focus lies on two theories, that have played into this development. However, it is interesting to find out which theory, in comparison to the other theory, has more explanatory power and has a stronger position in explaining reality. In addition, this thesis aims to provide more insight on LGBT rights in South Africa in general, as LGBT rights is a topic which is constantly discussed on national and international level.

2.2 Research Question

To find out which theory has been most influential the following research question has been formulated: *Is either the 'interest group theory' or the 'international human rights treaty theory' the theory for better explaining LGBT rights in South African policy outputs?* In order to answer the main question I have developed several sub questions. It seems that international treaties and LGBT interest groups influence the rights of LGBT people, therefore:

- In what way do LGBT interest groups influence LGBT rights in South Africa?
- In what way do international human right treaties influence LGBT rights in South Africa?

2.3 Theoretical Relevance

As comes forward from the introduction LGBT rights are quite extensive in South Africa, even though the environment for creating human rights equality is not optimal. In order to help the LGBT community improve its rights and equality further, it is important to research this topic. However, this topic can also generalize for other minority interest groups in South Africa. More importantly, LGBT communities in other countries (especially African countries) can draw from this research to try and change their rights. From this thesis it will come forward which factors affect the enhancement of equality in political output of countries. Research has been done on LGBT interest groups and on human rights treaties separately, but these two variables have hardly been compared to each other and thus it is unclear which factors cause better results. According to Lehnert et al. (2007) a theoretically relevant question has at least one of eight characteristics, in this case it is the following: 'empirically testing so far untested theoretical

hypotheses'. It is a topic that has not been researched extensively and will add new insights to the discussion of LGBT rights in the world and especially Africa. The aim of this research is thus to add knowledge to the field of LGBT human rights equality and its causes.

2.4 Practical Relevance

Practical relevance has to revolve around the question 'do citizens and policy makers care or might care about an issue?' (Lehnert et al., 2007; 25). LGBT rights are an issue that people around the world care a great deal about. The Western world has developed immensely over the past decade when it comes to LGBT rights. Illustrative are the legalization of same sex marriages in several Western countries (most recent Denmark, France and England and Wales, and with Luxembourg adopting pro same sex marriages in the near future), as well as better rights for gay couples to adopt children (allowed in e.g. Belgium and Denmark) (The Washington Post, 2013) & Adoption Laws, 2013) . In addition, there is an ongoing discussing about LGBT rights in the UN and the ways in which the UN can facilitate LGBT equality in the UN countries (Office of the United Nations High Commissioner for Human Rights, 2013) . The discourse on LGBT rights in African nations is not as positively driven as it is in Western nations, many African leaders have a traditional view on sexuality and the topics that come with it; such as marriage and adopting (see introduction for examples of views on LGBT rights from African leaders). Furthermore, the population of African nations, including South Africa (especially in townships) has little knowledge on the matter and out of this ignorance discrimination and violence is born (Van Zyl, 2011). It is important to discuss this issue in order to make it more visible and ultimately help LGBT groups acquire equality as well as inform the rest of the population about this issue, in both the Western and African countries.

2.5 Unit of Analysis

The unit of analysis in this thesis is the country South Africa.

Chapter 3: Background Information

The aim of this chapter is to provide background information in which it is made clear what is meant with the term political equality in this thesis and in which the development of LGBT rights in South Africa, as well as the development of international human rights treaties, is clarified. A timeline will be provided to visualize the developments that have occurred from 1996 onwards, as this is the year that South Africa became a constitutional democracy and LGBT rights began to blossom. Next to an overview of LGBT rights, an overview of the relevant episodes in international human right treaties will be provided.

3.1 Political Equality

Lesbian, gay, bisexual and transgender people have been discriminated against for centuries. Homophobia is still deeply engrained in modern day society in the Western world, but even more so in African countries (Human Rights Council, 2011; 3). LGBT people are considered as a health hazard and a threat to public morality (Ungar, 2000; 61). This homophobia is in paradox with the basic human rights that all countries should uphold, which is protecting the basic rights of all citizens and preventing violence against citizens (Ungar, 2000; 61). According to Ungar (2000) and Tomuschat (2004), defending these rights depends heavily on the constitutional democracy. Moreover, Ungar (2000) sees keeping this pledge as the ultimate test of a democracy. This notion is shared by other researchers; Arat (1991) mentions that a democracy should pursue policies that respect and protect civil and political rights in the way the population demands. Arat (1991) states that a democracy stands or falls on the way it recognizes and enforces civil and political rights.

South Africa has been a democracy since 1994. The world was impressed with the peaceful, free and fair elections that followed, in which millions South Africans voted (Croucher, 2002; 315). But democracy is about much more than the right the vote and associate. It is about the government opening up to minorities and allowing them to participate in discussions. Giving these minorities the opportunity to make changes in policy through lobbying. The government should be open to discuss a variety of issues, with a variety of interest groups (Dryzek, 1996; 475). This important indicator of democracy was also seen in South Africa, the inclusion of various minority groups in the elections as well as access to the government through lobbying (Croucher, 2002; 315). Democracy thus entails higher levels of competiveness, participation and liberties. Democracy can thus be expected to form political equality.

However, one needs to be critical when exploring democracy. Formal political equality is often followed by hidden continuous oppression or exclusion of parts of society (Dryzek, 1996; 475). It often occurs that a country will move from a non-democratic system to a democratic system by incorporating democratic features, but are still leading the country in a, in essence, non-democratic manner. Through this the elite tries to legitimate their monopoly of power by controlling and distorting the 'fair' and 'open' elections and thus the electoral process (Schedler, 2002; 103). This is nicely put by Schedler (2002) as 'democracy as a deception'. This deception can be executed in numerous ways, some of which are: exclusion, fraud, manipulating rules, unfair competition and manipulating actors (Schedler, 2002; 108). Moreover, according to Ungar (2000) state violence is often still present in 'democratic' countries around the world and has a history in South Africa. This violence occurs on three different levels and LGBT people are often targets of all three. The first level of violence is legal violence, government institutions, courts and prisons allow for discrimination to happen. The second level consists of semi-legal police violence. In most new democracies police is armed with edicts, military laws and special operations that fuel violence. Finally, the third level holds extra-judicial violence, which is violence secluded from the state in the forms of harassment by death squads and individuals (Ungar, 2000; 62).

To illustrate up to the level of political equality, it is important to look at the new laws and rights the LGBT community gains, the way the government interacts with these interest groups and the way the government protects the community against discrimination and violence.

3.2 Overview of LGBT rights 1996-2013

In 1996 the proclamation of the new constitution of South Africa took place. The document includes in chapter 2, section 9 the following: "*the right to equality before the law and freedom from discrimination. Prohibited grounds of discrimination include race, gender, sex, pregnancy, marital status, ethnic, or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth*" (Statues of the Republic of South Africa – Constitutional Law, 1996; 1247) South Africa was the first country in the world to include sexual orientation in its constitution (Van Zyl, 2011; 335).

Then in 1998 the Employment Equity Act was presented, which includes in chapter 2, section 6.1 the following: "*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,*

sex, 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." (The South Africa Department of Labour, 1998; 7). Also in this legal document the government explicitly names sexual orientation as a factor onto which unfair discrimination cannot take place.

In 2000 the government came forward with the Promotion of Equality and Prevention of Unfair Discrimination Act, in short the Equality Act. It is an anti-discriminatory law, which prohibits hate speech and harassment from government, organizations and individuals towards people (Republic of South Africa, 2000). The act follows the 1996 and 1998 acts in terms of stating sexual orientation as one of the grounds on which discrimination is prohibited.

In 2003 the very progressive Alteration of Sex Description and Sex Status Act came into force. This act allows people to change their sex (under certain circumstances) recorded in the population registry. This act is beneficiary for transgender people, who are now allowed to change their sex after they had a sex change surgery (Republic of South Africa, 2003).

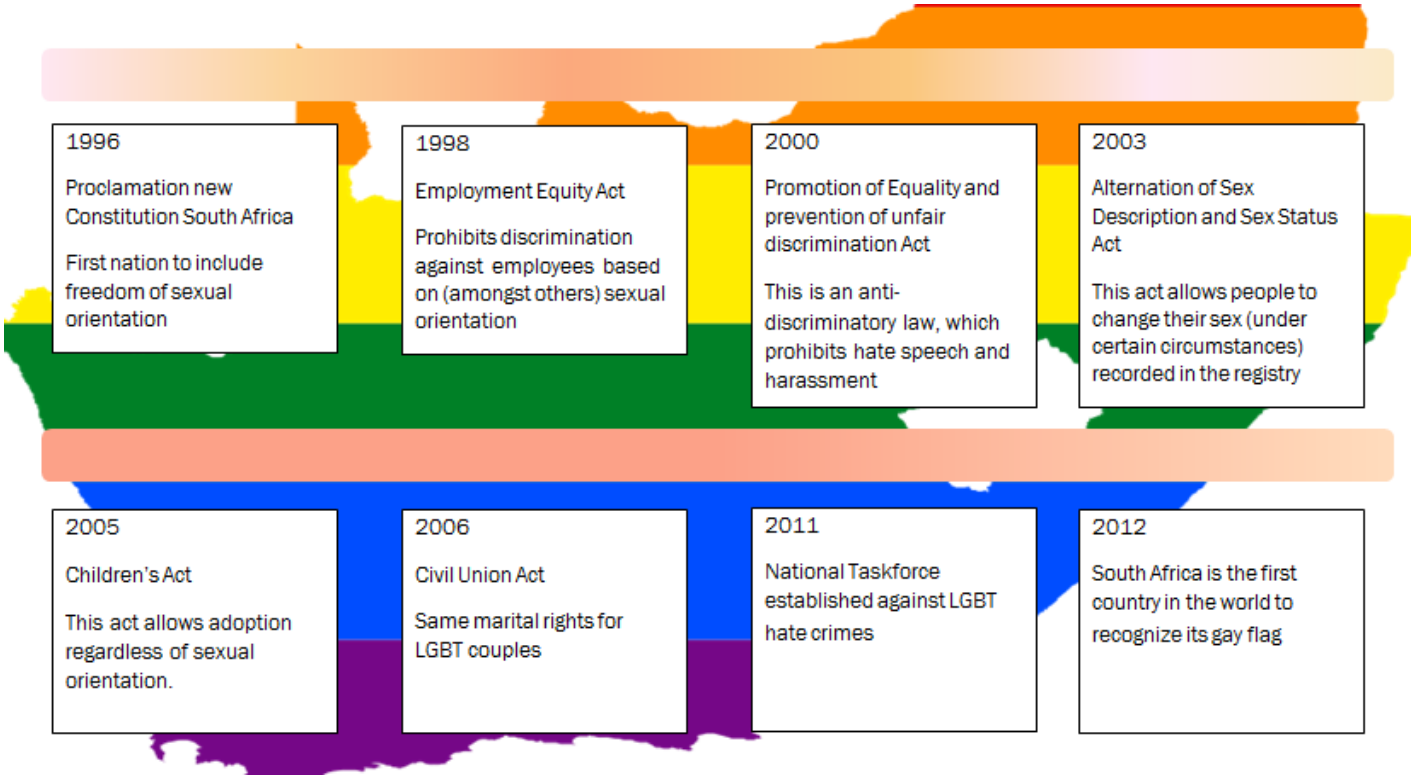
The 2005 Children's Act is an act in which all different kinds of laws in relation to children are written down in. A part of this act covers what kind of people may adopt children, it is stated that the act allows adoption regardless of sexual orientation (Department of Justice and Constitutional Development, 2005).

One of the most well-known LGBT laws of South Africa is the 2006 Civil Union Act, which legalizes same sex marriage. South Africa was one of the first countries in the world and the very first in Africa (to this day, the only African country) to allow same sex marriage. In this act homosexual marriages are one hundred percent equal to heterosexual marriages and same sex married couples are granted all the same rights as husbands and wives (Wingfield, 2008; 4).

In 2011 the South African government established the national taskforce which was established to address the issue of hate crimes against the LGBT community (Department of Justice and Constitutional Development, 2011). Though this is not a law or a right, it is still a policy output and it has been an important episode in the fight for LGBT equality and will thus be considered in this thesis.

The most recent pro LGBT decision made by the government is the in 2012 recognition of the Gay Flag of South Africa. South Africa is the first in the world to have an officially recognized gay flag (LGBTQ Nation, 2012).

Figure 1 – Timeline of LGBT policy outputs in South Africa



As can be observed, over this fifteen year period, the LGBT rights and laws have been growing steadily. Approximately every two years a new law, right or victory in relation to LGBT is achieved. It is a topic that is constantly evolving and developing. This constant development of the topic makes these LGBT rights interesting to research.

3.3 Overview of relevant Human Right Treaties

There are ten core international human rights treaties (Office of the United Nations High Commissioner for Human Rights, 2013). From these ten, five are considered to be important for the LGBT community in this thesis. An example of some of the treaties that are not considered of relevance for this thesis are the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, these are too specifically aimed at a certain type of person.

In addition to these five treaties covered, also the UDHR will be discussed as this is the absolute base and framework for all other treaties and the 2011 resolution on LGBT human rights as this is the first document in the history of the UN to be specifically about LGBT rights. The

UDHR and the resolution will be referred to as treaties, this makes the total of treaties covered in this research to seven. The seven treaties will now be presented.

In 1948 the Universal Declaration of Human Rights (UDHR) for equal and inalienable rights of all members of the human family was adopted by the UN. The declaration was created in order to avoid the violations of human rights that have occurred during the Second World War (Coomans & Kamminga, 2004; 1).

In 1966 the UN adopted the International Covenant on Civil and Political Rights (ICCPR), which states in the preamble: "*the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights*" (Office of the United Nations High Commissioner for Human Rights, 2013). The covenant commits its parties to protect and respect civil and political rights of all of its citizens.

Also adopted in 1966 is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states the same quote as the ICCPR in the preamble. This covenant covers the right to health, education, labor and a standard of living for its parties in regards to all of its citizens (Office of the United Nations High Commissioner for Human Rights, 2013).

The 1979 Convention on the Elimination of Discrimination Against Women (CEDAW), which states in the preamble: "*Considering that it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women*" is considered as the international bill of rights for women (Office of the United Nations High Commissioner for Human Rights, 2013). This convention is important for the LGBT community, because women's rights, racial rights and LGBT rights were all fought for together in the immediate period after the end of the apartheid (Lukow, 2012; 17).

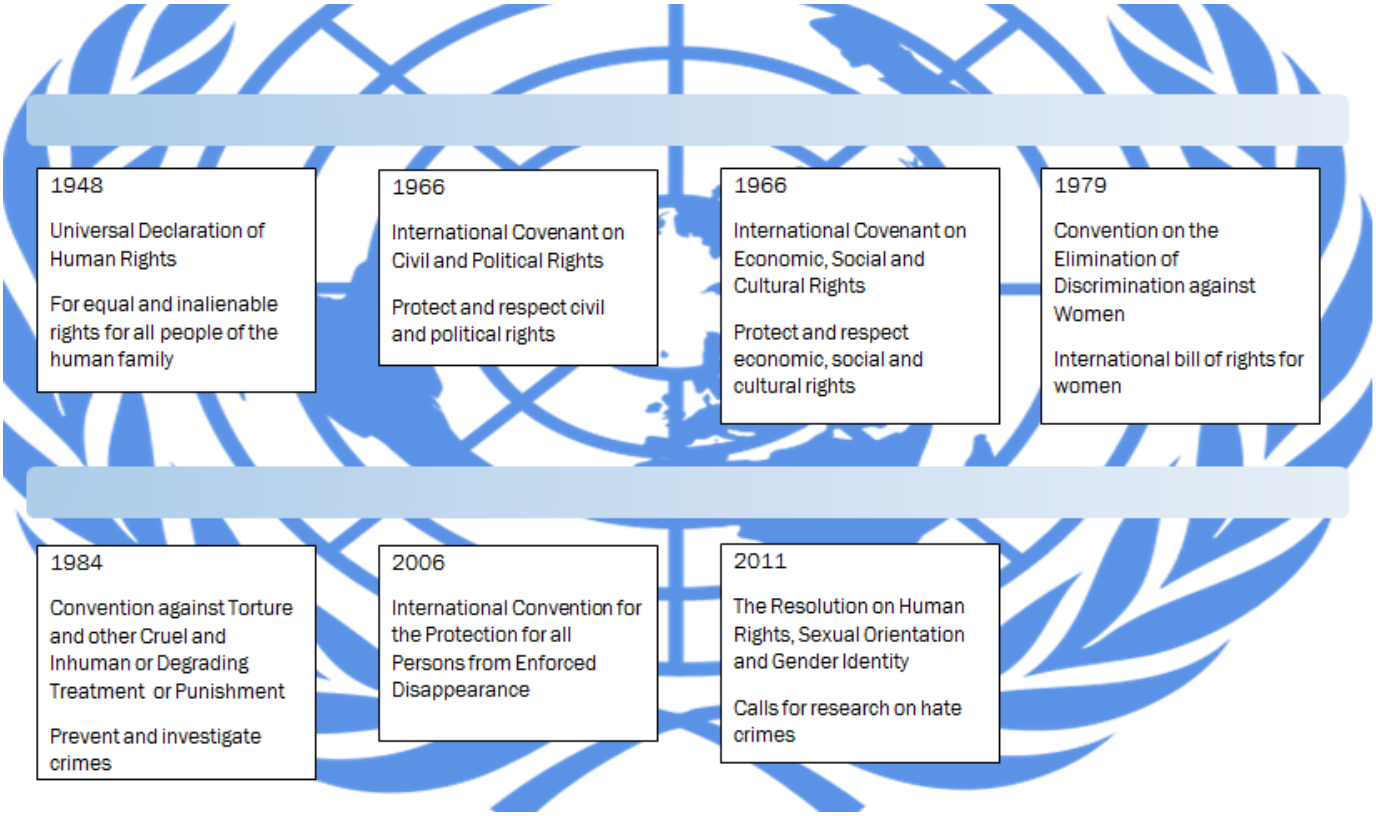
In 1984 the UN adopted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which states in the preamble: "*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*" (Office of the United Nations High Commissioner for Human Rights, 2013). The treaty obligates its partners to prevent and investigate these crimes.

The most recent HRT (Human Right Treaty) that is relevant to LGBT rights is the 2006 International Convention for the Protection for all Persons from Enforced Disappearance (ICCPED), which states in part 1, article 2: *'"enforced disappearance" is considered to be the*

arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State" and in the preamble "*Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation*" (Office of the United Nations High Commissioner for Human Rights, 2013).

Finally, in 2011 several countries initiated a resolution, the Resolution on Human Rights, Sexual Orientation and Gender Identity, which called for the UN to conduct a research and report on hate crimes against the LGBT community (Office of the United Nations High Commissioner for Human Rights, 2013). Though this is not a treaty, it will be considered as such as this resolution can have an influence on the way UN countries relate to and develop policy in terms of LGBT rights in their country. Moreover, it is the first document in the history of the UN that specifically addressed LGBT rights in the UN countries (Office of the United Nations High Commissioner for Human Rights, 2013).

Figure 2 – Timeline of UN international human rights treaties



In the sixty-five years that the UN has tried to defend human rights in the world, seven treaties can be considered to aid the LGBT community. Moreover, only one treaty was developed specifically for LGBT rights (the 2011 Resolution), the other six were developed in the broader sense of human rights. There does not seem to be a consistent development of LGBT rights within the UN, as could be seen in South Africa. However, it seems that the past ten years more attention is handed to this issue.

This does not mean that the HRT, by definition, had less influence on the LGBT situation in South Africa. One must keep in mind that it is, of course, much more complicated to create a treaty within the UN, than to create a law within South Africa. The UN has to deal with a great amount of countries that all have very different opinions on LGBT. Thus the fact that there are fewer treaties in place has no meaning for the influence on LGBT rights in South Africa.

Chapter 4: Theoretical Framework and Expectations

In this chapter the two chosen abstract theories, the interest group theory and the international human rights theory, will be explained. From these theories, a set of expectations will be deducted, which will later be compared to the empirical observations. Also, the important concepts in this thesis will be clarified. These definitions are formed to make the concepts in this thesis accurate, precise and informative. They will help understand and observe aspects of the research, as well as communicate it to others (Buttolph Johnson et al., 2007; 81). In social science definitions can differ from one and other. This influences the research measurements and findings, so it is necessary to define the concepts in your own work. In this research, interest groups, human rights and human rights treaties will be defined, as the definition of these concepts will make the research clearer.

4.1 Interest Group Theory

In this part the interest group theory will be broken down into three subcategories to better understand what interest groups are, how and why interest groups form and in what way interest groups operate. These categories being: the formation and goal of interest groups; the means of interest groups and the barriers of interest groups. After the initial introduction to interest groups, in the formation and goal subcategory, the other two subcategories will go into further detail, from which a set of expectations will be deducted. From each of these two subparts one or two expectations will be deducted (six in total), followed by a short summary of the theory as a whole.

4.1.1 Formation and goal

It is clear that LGBT rights had to be protected and fought, thus it is not surprising that LGBT interest groups were formed. But how do interest groups form and why? Interest groups form when like-minded people come together to fight a disturbance in the political environment (Lowery, 2007; 31). Lowery (2007) goes on describing interest groups as a group of motivated people whose primary goal is to survive. The group is formed by people who share a sense of belonging through their shared mutual interest. This common interest and the positive benefits that stem from joining a group lead to forming a specific interest group. They represent salient interests in society (Lowery, 2007; 31).

An important part of interest groups is the fact that it is an *organized* body of individuals

(Berry; 1984; 5). Interest groups are planned, strategic and have a clear goal. Surviving is their primal need, which is given direction by trying to change the policy in a country and by trying to change the general public's opinion (as a change in the public's opinion is able to change to direction of government policies). These attempts to influence policy making is the act of lobbying. Through interactions with politicians and bureaucrats in government institutions and interaction with society, they pursue their interests in policy formation and policy change (Berry, 1984; 6). This is only done when they are not content with the status-quo or when the government does not pursue their interest automatically (Lowery, 2007; 38). Interest groups thus represent a part of the civil society of a country in the policy-making process (Hix & Hoyland, 2011; 159). According to Berry (1984), Dryzek (1996) and Lowery (2007) interest groups can be highly successful in reaching their goals in influencing government policies.

4.1.2 Means

It is clear what interest groups are and the goal they have, but in what way to they pursue this goal? As mentioned above interest groups try to influence politicians, bureaucrats and society by interaction. This interaction in government can take place in the legislative, judicial and executive institutions (Berry, 1984; 6). Interaction and influence can be achieved in numerous ways. One primal approach, from which lobbying takes its name, is standing in government buildings lobbies and try to get a minute from a certain politician or bureaucrat. Another strategy often used is fighting the law in court with the goal to achieve or stop policy change (Berry, 1984; 7). According to Berry (1984) using litigation as a lobbying tactic is one of the best ways to maximize influence in policy making. Engaging in litigation is however very costly and takes a lot of knowledge, because of this only the biggest and financially able interest groups are able to use this strategy (Berry, 1984; 6).

Other ways of lobbying are through letter writing, conducting and publishing research (to support arguments made), filing formal comments on regulations, debating, program monitoring (writing evaluation reports on policy), face to face conversations and more. Every legal means an interest group has at its disposal is considered lobbying (Berry, 1984; 6).

Interest groups also try to influence and educate the rest of the society, as more information and knowledge leads to more understanding, support and acceptance (Berry, 1984; 6). In addition, following Lowery (2007) public opinion matters to government as popular and salient issues that have been discussed previously within society have a better chance of changing

the status-quo. Berry (1984) describes several ways by which this can be done; by organizing conferences, rally's, workshops and trainings the LGBT interest groups broaden their public and make more people aware of their situation. Confronting the media is also part of this societal approach.

In both the societal approach and the governmental approach interest groups can work in coalitions, either with media or other similar international and national interest groups (Berry, 1984; 42). Through working together resources can be shared to maximize the output. These resources can be money, staff, time, knowledge and information. Interest groups can complement each other in resources one group is lacking (Baumgartner et al., 2009; 205). Besides the sharing of resources there are other reasons to build coalitions. When working in a big group the interest groups can take on a larger goal, which they could not have fought alone due to a lack of attention or support (Berry; 1984; 201). These coalitions are usually created in an ad hoc manner. Interest groups come together to work on an issue and dissolve as soon as they feel they have reached their goal. When a different issue comes up interest groups with like-minded intentions form and dissolve again (Berry; 1984; 202). Baumgartner et al (2009) however mentions that interest groups tend to keep working closely with their allies. Even when interest groups do not form a coalition keeping close ties to their allies helps them to be kept informed about changes, struggles and successes of other interest groups.

4.1.2.1 Expectations

If this theory is correct interest groups have an effect;

- if LGBT topics are popular and salient in society.

or

- if LGBT interest groups organize meetings, workshops and conferences to educate the rest of the society.

or

- if these interest groups have access to the government.

or

- if these interest groups are developing policy with the government.

or

- if interest groups are working together to lobby government.

4.1.3 Barriers

Though it is clear how interest groups work, achieving their goals is not easy. Along the process, interest groups are confronted with multiple barriers that make it hard to pursue their goal. LGBT groups have a hard time accessing the government due to several barriers, both from their side as well as the side of the government (Baumgartner et al., 2009; 76).

For interest groups lack of resources is an important barrier. Think of lack of money, size of the group, time, knowledge and information. Using the litigation strategy is something only a small amount of interest groups are able to do due to a lack of resources. In addition, the inclusion and access to the government often leads to 'symbolic rewards' and not to a genuine power sharing, especially for groups with a lack of resources (Dryzek, 1996; 476). Having resources at hand helps interest groups hire more and better staff, attract members, making ties with allies, conduct research, produce campaigns, set up workshops and trainings and so on (Baumgartner et al., 2009; 194).

Baumgartner et al (2009) mentions several other barriers besides a lack of resources. According to Baumgartner et al (2009) gaining attention and mobilizing the public and government for 'your' issue is hard due to either unwillingness, inability or indifference to engage in or consider the issue (Baumgartner et al, 2009; 74). Interest groups are often simply ignored. Another significant barrier interest groups can face is opposition from other interest groups, politicians, society and media that fight for the counter interest (Baumgartner et al., 2009; 76). For every group fighting for change, there is a group fighting to protect the status quo (Baumgartner et al, 2009; 47).

The government barriers can be cultural, political or economic (Dryzek, 1996; 477). From the side of the government the main barrier is that the government does not necessary gains from interacting with interest groups and thus chooses not to interact with the groups (economic). Interest groups can also function as a monitoring and critique agency against the government, which does not make them popular amongst governments (political) (Reenock & Gerber, 2007; 416). A cultural barrier in this situation is the general homophobic attitude of Africa.

4.1.3.1 Expectations

If this theory is correct interest groups have an effect if;

- LGBT interest groups have resources to influence policy.

4.1.4 Summary

There are several factors that contribute to the success of interest groups in terms of policy change which have come forward from the interest group theory. These factors are; the topic the interest groups engage in is a popular and salient issue in society, the interest groups organize activities to educate society, the interest groups have access to government, the interest groups are developing policy with government, the interest groups are working together to lobby and the interest groups have resources to lobby.

4.2 International Human Rights Treaty Theory

In this part the international human rights treaty theory will be broken down into five subcategories to better understand what human rights are, what human right treaties are and in what way the treaties can affect the policies of UN members. The subcategories being: human rights, international human right treaties, HRT and states, domestic legal enforcement and the collateral consequences of the decision. The subcategories human rights, international human right treaties and domestic legal enforcement provide introductory information on the topic, whilst the subcategories HRT and states and the collateral consequences of the decision provide information from which a set of expectations will be deducted (six in total), followed by a short summary of the theory as a whole. For this theory it is important that there is a precondition. The precondition for the international human rights treaty theory to be explanatory is that there has to be a HRT concerning the observed case, if there is no treaty on the topic, the rest of the expectations cannot be discussed and the theory cannot explain the changes in the policy outputs of South Africa.

4.2.1 Human Rights

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" – Universal Declaration of Human Rights (UDHR) (1948)

The above quote is the very first sentence of the UDHR. From this quote stems that human rights are rights a person gains by simply being a human being, no exceptions. It is attached to all members of society, regardless of their age, sex, race or mental capabilities. This however is a very broad and general view on human rights, so it is necessary to make the concept clearer.

Human rights were developed to protect citizens from the power of authorities in their state (Coomans & Kamminga, 2004; 1). These rights were developed on the principles of freedom, equality and political participation (Staerkle et al., 1998; 209). Though sexual orientation is not named as such, the UN in 1994 confirmed that the reference 'sex' is to be taken to include sexual orientation and that thus all signatories to treaties including the word 'sex' means having obligations to protect sexual orientation (Human Rights Watch; 2011; 64).

In Arat (1991) human rights are divided according to the Universal Declaration of Human Rights proclaimed in 1948, in three subcategories; civil, political and social and economic rights. Civil rights are: freedom from slavery and servitude, torture and inhuman punishment, and arbitrary arrest and imprisonment; freedom of speech, faith, opinion, and expression; right to life, security, justice, ownership, and assembly. Political rights are: right to vote and nominate for public office: right to form and join political parties. Finally, social and economic rights are: right to education, work, food, clothing, housing and medical care (Arat, 1991; 3). In relation to LGBT rights, all of these categories are of importance, as the LGBT community is deprived from rights in all three categories (Human Rights Watch, 2003; 3).

4.2.2 International Human Right Treaties

An important factor in the protection of human rights, and thus the fight for equality, are international treaties. In this era there are over 50.000 international treaties covering nearly every aspect of international relations (Hathaway, 2007; 588). In this thesis only human rights treaties (HRT) will be considered. The central goal of these treaties is to define and protect the rights of individuals against abuse by their own government institutions (Hathaway, 2007; 592). States have the choice to sign these treaties, withdraw from the treaties, sign and ratify the treaties, or sign, ratify and add reservations to the treaties (Lijnzaad, 1994; 3).

There are several HRT that call states to protect their society against violations and to provide them with the political and civil rights they have a right to, as has been mentioned before the UN has ten of these core human rights treaties.

4.2.3 HRT and States

HRT limits states in their freedom as certain actions from government are being prohibited, therefore it is useful to consider why states would join them and how the treaties influence their behavior (Hathaway, 2007; 588). Not only do HRT limit states in their freedom, another issue of HRT is that there are no reciprocal benefits from signing the treaty. The treaties are based on mutual promises by the other signing members (Hathaway, 2007; 589).

According to Hathaway (2007) there are two dynamics that influence commitment to HRT. First, domestic legal enforcement of the terms of the treaty and second, the collateral consequences of the decision (Hathaway, 2007; 592). The former is of particular relevance since international treaties are hardly backed up by hard international enforcement and thus often viewed as 'dead letters'. The treaties are however legally binding as soon as, and if countries ratify the treaty, and thus requires hard law commitments (Hathaway, 2007; 592). A side note to this is that countries can make so called reservations to treaties. States can sign and ratify treaties, but add adjustments (known as reservations), which means the country will not follow that part of the treaty (Lijnzaad, 1994; 3). Lijnzaad (1994) & Tomuschat (2003) explain that reservations in treaties can be taken as a sign of superficial interest in human rights and as a display of false willingness to actually implement the conditions of the treaties. Countries that add reservations often do not share the philosophy of the treaties due to cultural or religious differences. This false willingness can be caused by pressure from the other countries to participate or a false attempt to the citizens to show that human rights are being respected (Tomuschat; 2003; 61). There are other scholars who argue that when a country is engaged in treaty negotiations, whether or not the country is putting reservations on the treaty, it shows a genuine aspire to comply to the treaty and compliance is regarded as a normal organizational presumption (Neumayer, 2005; 928).

4.2.3.1 Expectations

If this theory is correct international human rights treaties have an effect;

- if South Africa is signing these treaties.

and

- if the treaties are not only signed, but also ratified.

and

- if there are no reservations made to the treaty articles.

or

- if South Africa is engaged in the development of international human rights treaties.

4.2.4 Domestic Legal Enforcement

In a state where powerful domestic actors exist, the HRT can be enforced through these domestic players (Hathaway, 2007; 593). These players can hold the government accountable and force the government to enforce its legal commitments. In this way the power moves away from the government and into independent judiciary hands. Interest groups are important in this dynamic as it is assumed that in a country with a large number of human rights interest groups the chance of the government signing HRT is higher than in a country with a low number of human rights interest groups (Hathaway, 2007; 593). This part of international treaties will not be covered, as this will be discussed in the interest group variable.

4.2.5 The Collateral Consequences of the Decision

The collateral consequences of the decision are connected to the way domestic and transnational actors react to the decision to commit to the treaty (Hathaway, 2007; 595). The reaction of domestic actors is important as these reactions can back up the powerful domestic players who can enforce commitment to HRT. The reaction of transnational actors is important as the decision to commit or not commit to a treaty can influence relationships with other countries and international actors, these relations are not related to terms of the treaty. The relationships that can change involve relations such as trading, foreign direct investments, political support and aid relationships (Hathaway, 2001; 596). To clarify, the World Bank for example before handing out a loan, takes into account to what extent a country upholds its promises to human rights treaties (Hathaway, 2011; 596). Another example is the United States which yearly reports on the situation of the human rights in the countries they provide aid too (US Department of State, 2013). It could thus be that either a country or an organization considers, based on the country's commitment to the treaties, whether or not a loan or aid is granted. These collateral consequences can create strong incentives for states to commit to the UN treaties (Hathaway, 2001; 597). By showing signals that the country is committing to the treaties, it shows that it is a good international player and the country's good reputation is upheld.

Tomuschat (2003) & Neumayer (2007), like Hathaway (2001), also state that inference or

pressure from international actors through for example; naming and shaming, monitoring reports or threats to stop aid or trade can bring decisive change for a fresh start and thus a commitment to HRT (this is what Hathaway (2001) refers to as collateral consequences). Naming and shaming can be done through inter-state complaints to the UN or by reporting on violations in official reports and/or research by states themselves (Office of the United Nations High Commissioner for Human Rights, 2013). Monitoring reports are required to be submitted by states that follow a treaty in regular intervals (mostly every two to five years), the reports examine the compliance of states to the treaty obligations. The research is done by a committee of experts with the result of the inquiry being widely publicized (Tomuschat; 2003; 137). Moreover, concerns and recommendations are given to the state, known as so called concluding observations. From this a dialogue emerges which can lead to the improvement of human rights (Office of the United Nations High Commissioner for Human Rights, 2013). Some countries themselves monitor human rights in other countries as well, the United States of America (USA) for example makes reports on human rights every year for every country they provide aid or assistance to in order to examine if this relationship should be kept intact (US Department of State, 2013).

4.2.5.1 Expectations

If this theory is correct international human rights treaties have an effect if;

- South Africa is pressured/shamed by other countries that have signed the treaties to change their ways.

or

- if the collateral consequences of a decision are high, there will be a greater commitment to the treaty.

4.2.6 Summary

For the international human rights treaty theory factors to be influential it is important for countries to sign and ratify the treaties, without reservations. HRT legally bind governments that ratify the treaties to follow policy that will achieve the goals of the treaties. Signing the treaty is does not make them legally binding, it does however show a certain informal commitment to the treaty. When signing a treaty states can add reservations to the treaty which will take certain parts out of the treaty before ratifying. This means that the state will not have to follow certain

conditions. Taking part in the development of treaties also shows a certain commitment to the treaty and to human rights in general.

Another factor is naming and shaming from other UN countries. For countries that do not show commitment from themselves, this pressure from other countries on states to sign treaties (this can be done through several ways which are mentioned in the theoretical framework) is influential in its commitment to HRT. This is in relation to other collateral consequences, as the abolishment of aid relations, trade relations and so on and so forth. If the collateral consequences are high, it is expected that countries show greater commitment to treaties.

4.3 Conclusions

As comes forward through the theoretical framework both internal as external pressure can improve the rights of the LGBT community. Through interest groups lobbying for their rights and the government's reaction to change policies to improve LGBT life, this is internal pressure. But also HRT have the power to improve LGBT rights, through pressure of the UN and other countries on South Africa to sign and ratify the treaties on LGBT rights the lives of the LGBT community are improved, which is external pressure. But what pressure, internal or external, has a bigger impact on the policies of the South African government regarding LGBT rights and lives of LGBT people in South Africa? This question will be answered after an extensive analysis.

Chapter 5: Research Design

There are several research designs from which a researcher can build his or her research. In order to explain why the congruence analysis has been chosen for this particular research, it is important to understand what the other designs look like and why the congruence analysis was chosen from these designs.

5.1 Covariational Design

One of the options for a research design is a covariational analysis design (comparative case study), in which the variation between cases is being examined (Blatter & Haverland, 2011; 3). The most common goal of such a design is to find out whether a policy or a change 'works' (Blatter & Haverland, 2011; 4). If in this research the cross-sectional comparison would have been used, two countries would have been chosen and then compared them to each other in terms of HRT, interest groups and political equality at one point in time (Vaus, 2001; 171).

The problem with a comparative case study is that it is hard to generalize its findings. It generalizes only for countries with similar conditions (Blatter & Haverland, 2011; 2). Another problem might occur concerning the internal validity. In order to avoid measurement errors it is important to select good cases, so extensive research on possible cases prior to starting the actual research is necessary. Besides extensive research prior to selecting cases, operationalization and measurement should also be carefully looked at to avoid errors (Blatter & Haverland, 2011; 53). This design is not feasible for this thesis, as South Africa is a very unique country and it would be hard to find another African country (if there even is) that is similar to compare it to.

5.2 Experimental Design

The experimental design is very useful, as you can shape the whole experiment to fit the goal of the research. However, a major issue using this design is that the researcher himself/herself changes the conditions in the real world. This makes the external validity extremely weak. However, the internal validity is extremely strong. The experiment is controlled, so that errors can be removed when needed (Kellstedt & Whitten, 2008; 68). This research design however is not feasible either. It is not possible, as a researcher, to change the factors of South Africa nor the UN.

5.3 Congruence Design

The research design chosen for this thesis is a congruence analysis. In this analysis one country (South Africa) will be researched in order to answer the research question at hand. The reason only one country will be researched is that researching more countries would be more complicated, time-consuming and thus not feasible, whereas researching one country will lead to a lot of insight and precision on the subject. The congruence analysis can show which of the two theories researched in this thesis offers a better explanation in comparison to the other theory in terms of LGBT rights in South Africa. This analysis provides a broad range of information which then can be used to reflect on the relationship between the empirical observations with the abstract concepts (Blatter & Haverland, 2011; 1). Through deducting several expectations for the two different, abstract theories and by subsequently comparing the empirical evidence to the deduced expectations will show which of the theories has more explanatory power for this case. However, this thesis is viewed in the light of a complementary theories approach, and it is thus expected that the different theories in this thesis complement each other when it comes to enhancing equality (Blatter & Haverland, 2011; 3).

5.4 Explanation chosen Research Design

Not all designs are feasible either due to difficult data collection or an unrealistic design. For this research the congruence analysis design is used. This is partly because of the possibility of in-depth research. As the research consists of one specified case, in-depth details and insights can be attainted. This design is also the most feasible for this thesis. The case study is built on existing theories which makes it easier to collect data and to generalize theory for similar cases. It is interesting to find out which factors of which theory (interest groups or HRT) play a more significant part in political equality for the LGBT community, as this information can be used either by interest groups or the UN to enhance their influence on policy outputs. Moreover, the findings of the research can add to the existing debate and possibly add new knowledge to the field.

5.5 Data Collection

As the congruence analysis is in-depth and precise, data will be collected through several sources. Using multiple sources enhances the validity and reliability of this research as it eliminates measurement errors (Yin; 2003, 107). By using multiple sources a bigger and more varied part of the topic is covered which enhances both the validity and reliability of the research by providing

both a richness and balance in information. The data has been collected through desk research and only existing information has been collected. The data has been collected mainly through previous scholarly literature studies, extensive literature exists on both interest groups and international human right treaties and their influence on policy change. A big part of the data collection focuses on media, primarily newspaper articles. In South Africa where there is freedom of press a lot has been written about LGBT rights in national newspapers, as well as in gay newspapers, but also in magazines and blogs. Very important for this research are the documents from South African law (the laws itself as well as reports, draft, memo's and information from the governmental website) and the UN international human rights treaties (as well as reports, drafts, memo's, reservations and reactions of countries). Data is also drawn from the websites of LGBT interest groups who offer opinion pieces, yearly reports, open letters to government, activities programs and campaign information. Finally reports of human rights organizations, e.g. Amnesty, Human Rights Watch, who report on the state of LGBT rights in countries around the world and national state reports from e.g. the USA in which also LGBT rights are covered. This broad collection of sources covers not only a significant amount of information, it offers information from various angles and from different opinions.

Chapter 6: Research Findings

The research findings will be presented in three episodes, which are three events/actions that have occurred in the past twenty years that have caused great reactions and changes in the field of LGBT rights in South Africa. These episodes are the 1996 constitution, the 2006 civil union act and the 2011 national taskforce. These three episodes that have impacted the LGBT community, in the sense that these three episodes have provided more extensive rights and rights that are equal to the rights of heterosexual couples. It are events that were a milestone in LGBT rights (the constitution as it was the first constitution in the world to include LGBT rights, the civil union act as it was one of the first countries in the world and the first country in Africa to accept gay marriages and the national taskforce as it is an unique way of battling LGBT violence) and are thus important events in the LGBT history to research.

Some of the expectations are more general for both the interest group theory and the international human rights treaty theory and are presented first. These expectations apply to all the three episodes and to the overall development of LGBT rights in the past twenty years (since 1996). The results of these general expectations thus provide an introduction and framework to reading the results to the three episodes.

6.1 General

6.1.1 Interest Group Theory

- If this theory is correct interest groups have an effect if LGBT topics are popular and salient in society.

With the end of the apartheid equality and injustice became a popular and salient issue in the South African society. People were fighting for equal rights regardless of race, color, gender or ethnicity. Colored people were claiming their rights, women were claiming their rights and the LGBT community lifted on that general fight for equality (Lukow, 2012; 17). Homosexuality was not a particular popular topic as such, but in the light of equality for all and the end of apartheid, homosexuality became part of the battle. It was a battle of ‘we’ versus ‘them’. LGBT issues were framed as a part of basic human rights, just like not being discriminated on the base of color, because of this connection to human rights the LGBT interest groups were accepted as part of a coalition fighting for equality with for example the Women’s Alliance (Lukow, 2012; 19). This context made LGBT issues a popular topic in the 90’s.

However, over time, the interest for LGBT issues from society and government succumbed. In the 2003 Human Rights Watch report Evert Knoesen, coordinator of the Equal Rights Project of the Equality Project, states that the Human Rights Council (HRC) focuses its attention on issues that the society has a strong sentiment on like refugees or illegal immigrants. Homosexuality was no longer a popular issue with the South African citizens and thus the state did not put much attention or resources into that topic (Human Rights Watch, 2003; 221). When the general society lost interest in LGBT issues it is up to the many LGBT interest groups to continue their own battle.

But society did not close its eyes to LGBT issues all together. In 2010/2011 the massive rise in hate crimes against the LGBT community caught the attention of the South African society. Though the issue was brought to the attention of society by LGBT interest groups, society came together and helped the interest groups to campaign and lobby the government for help on this issue (Luleki Sizwe, 2013). Hate crimes were obviously an issue that the society did care about and did want to do something about. A research report on hate crimes states that *"people of South Africa widely condemn any kind of violence perpetrated against LGBT persons"* (Statement by the Department of Justice and Constitutional Development; 2012). The attention for LGBT issues has fluctuated over time, but it is an issue that is never forgotten and the support for LGBT issues is present when the times are hard.

So even though, in general, LGBT issues are not a particularly popular issue for the South African society, it does seem to be a salient issue, which means that this expectation is confirmed.

- or if LGBT interest groups have resources to influence policy.

From the existing theory it is shown that for interest groups the lack of resources is an important barrier to stop them from having access to governments, from having actual success in interacting with the government and from creating society awareness activities. In terms of lack of resources one can think of a lack of money, support, knowledge and information.

The Durban Gay and Lesbian Community Health Centre notes that the state provides almost no resources for LGBT rights (Human Rights Watch, 2003; 201). The state hardly produces campaigns or material for educating the society and the organization receives no local or central government funding despite being a health center (Human Rights Watch, 2003; 2002). Human Rights Watch (2003) states that the Durban Health Centre is only one of many LGBT groups that have trouble with acquiring resources, the report names a lack of human capacity and

money as the main problems. Even the biggest LGBT organization has troubles with resources. The Triangle Project states in its 2010-2011 report that it has too few resources and too little finances. They try to do more than their resources can handle. Recently one of its sponsors has opted out of renewing their contract with the organization, the Triangle Project mentions in the report that it is having difficulties in finding a replacement for the lost donor (The Triangle Project, 2011; 1). Not only the biggest LGBT organization, but also the oldest and most influential LGBT organization, the Equality Project, closed its doors in 2005 and had to stop all of its activities due to lack of financial means (Oswin, 2007; 650). The website of the interest group had been offline for a significant amount of time, but is back online and states that the group had been financially supported by the Civil Society Development Fund (CSDF) over the year 2012 and is back to its activities, mainly campaigning against hate crimes (The Equality Project, 2013).

The biggest, most influential South African LGBT interest groups have all struggled, or are struggling with, the lack of resources which means the groups have to limit their activities to the bare minimum. The groups essentially do have a sufficient amount of resources as they can continue some of their activities, but are definitely limited in their capacities, which makes it harder to have influence on the state.

I would conclude that South African interest groups have little resources, but enough resources to lobby government. This expectation is confirmed.

- or if LGBT interest groups organize meetings, workshops and conferences to educate the rest of the society.

South Africa has a very extensive network of interest groups that spread awareness of LGBT either through educating society or simply through being visible in society. South Africa is the only country on the African continent to have openly gay and lesbian bars, newspapers and magazines, NGOs and community centers. It even has, in Cape Town, a tourist industry especially for LGBT visitors (Human Rights Watch, 2003; 179). As can be read in Coucher (2002) and Van Zyl (2011) in the years leading up to the constitution, LGBT interest groups mainly put their efforts for standing up for their rights into public campaigning. The groups did this mostly by raising awareness and acceptance for LGBT issues through opening bars, writing articles in newspapers and other social activities. These years the campaigning was characterized by this non-political manner of campaigning, as the apartheid government was not willing to have

a dialogue with these groups. In that time there was also no opportunity to fight their rights in court as there was no legal foundation (the constitution) for the LGBT community to sue on.

In the present the interest groups organize a range of activities, similar to the interest group during the apartheid. The largest LGBT rights organization is the Triangle Project, this organization was founded in 1981 and is still active. The Triangle Project organizes meetings, workshops and trainings for society, e.g. healthcare workers, public officials, township inhabitants, to educate them about LGBT rights. Important work for sharing knowledge is done through accessing the media and holding radio interviews, panel discussion and covering LGBT issues to journalists (The Triangle Project, 2011; 5). The organization also provides health and development programs for the LGBT community. These health programs involve providing home based care, victim support, a helpline and support groups (The Triangle Project, 2013). Another example is the Durban Gay and Lesbian Community Health Centre which distributes condoms within clubs and communities, runs workshops and seminars, and educates communities on gay and HIV/AIDS issues (Human Rights Watch, 2003; 202).

The Lesbian and Gay Equality Project offers legal advice and helps LGBT people access and understand their constitutional rights (Human Rights Watch, 2003; 2009). The Lesbian and Gay Equality Project aims to empower the LGBT community by creating self-reliance, accountability and sustainability of advocacy, so that the community learns to stand up for itself and organize itself (The Equality Project, 2013). These are just a few examples of the many interest groups fighting for equality by educating their society.

One activity that is notable and must be mentioned is the Cape Town Pride, which is held every year since 2001 and is organized by volunteers and a network of LGBT organizations. It is one of the largest LGBT events in South Africa, Africa and even in the world. The event is growing every year and attracts a lot of people from all over the world. During its one week festivities, the event tries to create more awareness for the LGBT community (Cape Town Pride, 2013).

I would conclude that South African interest groups definitely put a lot of effort into educating society. This expectation is confirmed.

6.1.1.1 Findings

General expectations	Interest Group Theory (A)
Expectation 4 (popular/salient issue in society)	in line
Expectation 5 (resources)	in line
Expectation 6 (organize activities to educate society)	in line

For the overall society of South Africa, LGBT rights are not a particular salient issue. There are other issues like refugees and economy that society takes more interest in. However, when a large problem arises in the LGBT community, society does not turn a blind eye. Examples of the public's interest in LGBT rights are: the constitution where all societal groups came together and fought for every right as a team and more recently in the case of the hate crimes where society helped lobby the government for protection. Nonetheless, this expectation has been rejected. Important for any interest group is to have a sufficient amount of resources to help attain their goals. It has come forward that even though the LGBT interest groups struggle with their resources, particularly a lack of money, they have enough resources to continue to exist and make a change, which means that the expectation is confirmed. Besides resources and lobbying with the government, it is important for interest groups to educate society in order to receive acceptance, tolerance and ultimately, support. The LGBT groups in South Africa are very active in this field, as a big part of the South African society is still opposing towards the LGBT community. Interest groups organize workshops, trainings, movie festivals and, of course, the gay pride. This expectation is also confirmed.

6.1.2 International Human Rights Treaty Theory

In this thesis seven international human right treaties will be discussed in relation to South Africa and LGBT rights. Below a brief overview of the treaties and whether South Africa has signed and/or ratified them:

International Human Right Treaty	Signed	Ratified
1948 Universal Declaration of Human Rights (UDHR)	1995	1998
1966 International Covenant on Civil and Political Rights (ICCPR)	1994	not ratified
1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)	1994	1995
1979 Declaration on the Elimination of Discrimination Against Women (CEDAW)	1993	1995
1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1993	1998
2006 International Convention for the Protection for All Persons from Enforced Disappearance (ICCPED)	not signed	not ratified
2011 Resolution on Human Rights, Sexual Orientation and Gender Identity	supported	n/a

- *If this theory is correct international human right treaties have an effect if South Africa is signing these treaties.*

South Africa joined the UN as one of the original members in 1945. When the UDHR was adopted in 1948 South Africa chose to abstain from voting and thus not signing this agreement. South Africa was eventually expelled from the UN from 1974 to 1994 due to the apartheid in the country. The country was welcomed back after the successful democratic elections that were held in 1994 (Glendon; 2004). Upon its acceptance to the UN, South Africa adopted the UDHR in 1995.

South Africa went on to sign the 1966 International Covenant on Civil and Political

Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of Discrimination Against Women and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Treaty Collections, 2013). The fairly recent ICCPED has not yet been signed by South Africa despite active participation in the discussions prior to the drafting. In 2008 it was stated that the country would sign the convention in April of 2008, this has however not happened (Lawyers for Human Rights, 2008; 3). The 2011 resolution could be supported, opposed or disregarded by the UN countries, South Africa has supported this resolution.

Concluding it is observed that only one of the treaties has not been signed. This expectation is thus confirmed.

- *and if the treaties are not only signed, but also ratified.*

Even though the five (excluding the UDHR and the 2011 resolution) above treaties were signed, this does not mean that the treaties are all ratified. The ICCPR was signed in 1994 and ratified in 1998. The CEDAW was signed in 1993 and ratified in 1995. The CAT was signed in 1993 and ratified in 1998. Remarkable is however that the ICESCR was signed in 1994, but has never been ratified. Though the South African constitution includes many of the same understandings as the ICESCR the state has chosen not to ratify this treaty. According to Nkuepo (2011) this has to do with firstly the fact that some parts of the convention clash with the South African constitution and secondly a lack of resources to implement the convention. The ICCPED has neither been signed nor ratified, most likely the reasons are the same as for the ICESCR, a lack of resources to implement. This brings the total of two of the five treaties not being ratified, which is quite a large number.

As South Africa has not ratified all treaties, this expectation is rejected

- *and if there are no reservations made to the treaty articles.*

To the five treaties that have been signed, there have been no reservations made.

Making no reservations is a good sign as it shows willingness to accept the treaty as it is without any exceptions. This expectation is thus confirmed.

6.1.2.1 Findings

General expectations	**International Human Rights Treaty Theory (B)**
Expectation 1 (signing treaties)	in line
Expectation 2 (ratifying treaties)	contradicting
Expectation 3 (no reservations)	in line

Out of the six HRT discussed in this dissertation, South Africa has signed five and has promised to sign the sixth in the near future. The five signed treaties have all been signed before the 1996 constitution. The signing of treaties can be seen as a positive sign of commitment to human rights, moreover these treaties, especially the UDHR, have been the foundation for South Africa's constitution. This expectation is confirmed. But signing treaties is not enough. For treaties to actually be enforced and become part of the legal framework of a country, the treaties have to be ratified by the country. South Africa has ratified two out of five (the UDHR only needs to be signed) treaties. Naming a lack of resources to implement the treaties and a clash with its own constitution as reasons to not ratify. Not ratifying treaties, according to theory, can be considered as a false willingness towards treaties or a superficial interest sparked by pressure from other countries to sign the treaties. This empirical information of this expectation is in contradiction with the theory. Not only not ratifying, but also adding reservations to treaties (which makes it possible to leave out parts of the treaty the country does not want to follow) can be considered as a superficial interest in the treaties. In the case of South Africa no reservations have been made to any of the five treaties, which is a good sign. This expectation is thus confirmed.

6.2 Episode 1; 1996 Constitution

Proclamation of the Constitution of South Africa which includes in chapter 2, section 9 the following: *"the right to equality before the law and freedom from discrimination. Prohibited grounds of discrimination include race, gender, sex, pregnancy, marital status, ethnic, or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*"

6.2.1 Interest Group Theory

- If this theory is correct interest groups have an effect if these interest groups have access to the government.

As Dryzek (1996) explains democracy is about much more than the right the vote and associate, it is about the government opening up to minorities and allowing them to participate in discussions, allowing lobbying and giving them the opportunity to make changes in policy through policymaking as well as opening up to a variety of issues. This important indicator of democracy is also observed in South Africa, the inclusion of various minority groups in the elections as well as access to the government through lobbying (Croucher, 2002; 315).

In 2004 a research was performed by a network of seven non-governmental, African research organizations, the African Human Security Initiative (AHSI), on the relationship between several African countries and their respective civil societies. One of these countries was South Africa. The countries were researched on several factors including tolerance and accommodation of diverse views, passions, interests and demands in the public sphere.

Before the end of apartheid the relationship between the government and civil society was non-existent, as civil society was oppressed by the government. After 1994 this relationship experienced a huge, positive turnaround and the relationship between state and civil society became close. The report describes this perfectly by stating 'Post-Apartheid South African civil society groups are experiencing the golden age of state-civil society relations' (M'Boge & Doe, 2004; 20). This new and close bond let interest groups to form, adapt and shape policies with the ruling party (M'Boge & Doe, 2004; 19). From the 2004 AHSI report it comes forward that the years after 1994 and thus the years leading up to the 1996 constitution can be considered a golden age for South African interest groups. The ANC party wanted nothing more than to part with the previous government and its ideals and thus made a tremendous effort in including all parts of society that were previously excluded from government and society. The new government made

deliberate efforts in including civil society in public decision making. Creating equality and creating the same basic rights for all society was top on the ANC list, in order to promote this development the government actively engaged in a relationship with the diverse group of civil society groups, including the LGBT community (M'Boge & Doe, 2004; 64). The ANC party did this by creating a climate where public scrutiny was accepted and by repelling repressive legislation towards civil society. Furthermore an act was established which officially recognized civil society and lastly financial support programs were set up (M'Boge & Doel 2004; 64).

LGBT interest groups have had a great amount of access to the government, this expectation is thus confirmed.

- or if these interest groups are developing policy with the government.

In the years leading up to the 1996 South African constitution (1990-1995) the LGBT interest groups started an extremely strategic lobbying campaign. Forty-three LGBT interest groups formed a coalition to lobby with the government in the constitution making process in a professional manner, the National Coalition for Lesbian and Gay Equality (NCLGE). This coalition hired a full-time lobbyist (a white lawyer from Johannesburg) with legal experience and ties to other successful lobbyists (Croucher; 2002; 320). The coalition opted for a strategy of persuasion instead of an aggressive, defensive strategy. By sending out a full-time, experienced lobbyist who understood how to communicate with members of parliament in a respectful manner and also of importance, face to face, the communication between the coalition and the government was smooth, based on mutual respect and understanding making it possible to build bridges between the two parties, make compromises and come to a constitution that satisfied both the coalition and the government (Oswin, 2007; 652). Through this persuasion strategy, public debates, conferences and by, most importantly, framing the LGBT issue in the light of apartheid and the right to be who you are regardless of who you are the campaign turned out to be an obvious success story in the developing of the constitution, as the 1996 constitution included LGBT rights to the rights that needed to be protected (Croucher; 2002; 324). The coalition however did not stop after the constitution got formalized, the coalition continued to challenge every other discriminating act in legislation, mainly through the court system (Van Zyl, 2011; 337).

Through the professional manner of lobbying the interest groups had the opportunity to develop the constitution with the government. This expectation is confirmed.

- or if interest groups are working together to lobby government.

According to a report from the Human Rights Watch (2003) the constitution of South Africa in 1996 was influence greatly by interest groups and their efforts to work together. The report talks about the extraordinary efforts and advocacy of gay and lesbian activists; to effective coalition-building with other civil society groups (Human Rights Watch, 2003; 52). Most notably in this would obviously be the NCLGE, the coalition existed of forty-three separate interest groups that decided to work together to lobby with the government into providing the basic human rights for the LGBT community.

This is a clear case of interest groups working together to lobby the government in a successful way, the expectation is thus confirmed.

6.2.1.1 Findings

Episode 1 expectations	**Interest Group Theory (A)**
Expectation 4 (access to government)	in line
Expectation 5 (developing policy with government)	in line
Expectation 6 (working together to lobby government)	in line

In terms of access to the government during this episode, the interest groups had no problems. After the apartheid the new government was extremely open to all kinds of interest groups, including LGBT groups. This expectation is confirmed. This interaction resulted to a coalition of 43 LGBT interest groups, the NCLGE, developing policy with the government by having the opportunity to first of all, lobby their interests and secondly, actually being successful in doing so, in terms of including sexual orientation in the constitution. Not only did LGBT interest groups coordinate their efforts, so did pro women right groups, black power groups and many more. By cooperating with all these groups, equality for all groups of people in the South African society became the main focus. This strategy has shown to be rewarding. From the theoretical framework it has come forward that coalition building is an important success factor for interest groups, as they can unite resources. In this episode coalition building forms an essential part of the story, the

expectation is thus confirmed. The coalition also managed to lobby in such a way that the constitution was developed in accordance to what the interest groups wanted. This last expectation is confirmed.

6.2.2 International Human Rights Treaty theory

- If this theory is correct international human rights treaties have an effect if South Africa is engaged in the development of international human rights treaties.

Even though South Africa was part of the UN during the time the UDHR was developed, South Africa did not play a role in forming the declaration nor did it have interest in the other 4 treaties drafted. South Africa in the period before 1994, was expelled from full participation in the UN until the country became democratic, which explains the lack of involvement and development of the actual treaties. The 1996 South African constitution is however build on the foundation of the UDHR principles, and in specific the ICCPR treaty which is used as an authorative reference for the constitution, in which sexual orientation is not written as such but is considered to fall under protection of discrimination in the treaty (Saiz, 2004; 49).

South Africa has not been engaged in the development of any of the treaties during this episode, the expectation is thus rejected.

- or if it is being pressured/shamed by other countries that have signed the treaties to change their ways

The elimination of the apartheid regime has been on the agenda of the UN since its inception. As early as 1946, countries in the UN started to put the issue of discrimination in South Africa on the agenda (United Nations Regional Information Centre for Western Europe, 2013). In the decades leading up to the eventual 1996 constitution, much pressure was put on South Africa to end apartheid. The UN, as a world body, and the separate UN country members, fought apartheid by drawing world attention to the inhuman treatment of the regime, supporting anti-apartheid movements, instituting an arms embargo (in 1977 a resolution was adopted that made it mandatory for all UN states to stop the selling and shipment of all arms to South Africa) and by boycotting the apartheid regime in other ways (United Nations Regional Information Centre for Western Europe, 2013). Some notable actions the UN against South Africa have been; the establishment of the UN Centre Against Apartheid (1976), the World Conference on Sanctions against Racist South Africa (1986) and the adaptation of a consensus to start negotiations to end

discrimination (1989) (United Nations, 2013). From 1990 onwards, South Africa opened up towards the efforts of the UN the help in the elimination of the apartheid and its consequences. The next four years were used to rebuilt the relationship between the UN, the UN members and South Africa. There was much discussion and collaboration between the UN and South Africa to abolish what the apartheid had created. This eventually led to the 1994 democratic elections. This was also the year that the new president of South Africa, Nelson Mandela, stated that South Africa would sign the UDHR and all of the other human rights conventions and would incorporate these human rights in the new constitution of South Africa (South African History Online, 2013).

The UN strongly condemned the apartheid regime and has put tremendous efforts in to abolishing the regime, which South Africa ultimately did. This expectation is in line with the theory.

- or if the collateral consequences of a decision are high, there will be a greater commitment to the treaty

The collateral consequences of South Africa not supporting the UDHR and the other human rights conventions eventually turned out extremely high. South Africa was not only expelled from participation in the UN for twenty years due to its position on human rights during the apartheid era, but many more specific actions against South Africa were taken place. These actions, varying from the arms embargo, to an oil embargo, to exclusion from other international organizations such as the World Health Organization and the United Nations Educational Scientific and Cultural Organization, excluded South Africa from the international playing field (South African History Online, 2013).

In the process of becoming a democratic country South Africa managed to get a new chance in the UN, eager to show the world that the country had moved on from the apartheid era, eager to improve its reputation and eager to improve the relations with other countries. Showing great commitment to the human rights related treaties was part of the consequences from being expelled. In this episode the theory holds up.

The collateral consequences for South Africa during this episode have been very high, as a result of that South Africa has shown greater commitment to the treaties. This expectation is confirmed.

6.2.2.1 Findings

Episode 1 (constitution) expectations	**International Human Rights Treaty Theory (B)**
Expectation 4 (engaged in development treaties)	contradicting
Expectation 5 (pressured/shamed by other countries)	in line
Expectation 6 (high collateral consequences, high commitment)	in line

The UNDHR and some of the other treaties discussed, were used as a foundation for the new post-apartheid South Africa. In this episode South Africa has not developed any of the treaties that call for the protection of human rights. This is easily explained as the apartheid government was expelled from the UN for several decades for its non-commitment to human rights. The expectation is rejected. South Africa had been pressured by several UN countries, as well as the UN as a whole, to finally commit to the UDHR and the other human right conventions, South Africa did this from 1993 onwards (signing most treaties from 1993 to 1995). This expectation is confirmed. After the great collateral consequence of South Africa being expelled from the UN, the country has shown great commitment to the treaties when it was let back in the UN (after ending apartheid and signing the UDHR). It signed all the treaties that relate to human rights issues and ratified over half without any reservations. This expectation is thus confirmed.

6.3 Episode 2; 2006 Civil Union Act

The Civil Union Act allows same sex marriages and civil unions.

6.3.1 Interest Group Theory

- If this theory is correct interest groups have an effect if these interest groups have access to the government.

The previously mentioned 2004 AHSI research examines the situation twenty years after this promising start of the 1996 constitution. Luckily the research shows that civil society is still in the so called golden age of government and society relation. Interest groups are invited and encouraged to lend their expertise, their support, but also their monitoring skills and criticism to the ruling party. It is expected that this situation of full acceptance will remain in the upcoming years and decades (M'Boge & Doe, 2004; 89).

The fight for same sex marriage accumulated from the legislative strategy that the Coalition started back in the 90's. In the 10 years after the constitution South Africa's LGBT community has fought many battles in court for equality. Many of these court trials relate to the benefits married couples have in regards to adoption, inheriting property, immigration benefits and many other benefits one gets from having a legal partner (Human Rights Watch, 2003; 181). These trials have let to small steps and laws towards equal rights for LGBT people. The trial that is acclaimed for starting the series of trials that eventually accumulated to the Civil Union act of 2006 is the 1998 National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others in which the LGBT community sought to end the laws that prohibited sexual activity between men. After this case many other followed all for one cause, to have equal rights as heterosexual couples (Human Rights Watch, 2003; 181). One example is the 2003 trial of J and Another v Director General, Department of Home Affairs and Other which led to a change in the law in which it states that a child born through artificial insemination to a lesbian couple is the legitimate child of both women (South African Legal Information Institute, 2013). Another example is the 2002 case of Du Toit and Another v Minister of Welfare and Population Development and Others which eventually led to the 2005 Children's Act that allows adoption to gay couples (South African Legal Information Institute, 2013).

These cases and the change in laws following led to a strong base for the 2005 Minister of Home Affairs and Another v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others trial which led to the court ruling that same sex couples

have a constitutional right to marry (South African Legal Information Institute, 2013).

Through winning many court cases concerning LGBT rights, the Coalition had a strong foundation to start its 2005 court case for the creation of the Civil Union Act. The court ruled in favor of the Coalition and the parliament was told to produce the Civil Union Act before the end of 2006. During this one year period the parliament organized several public hearings all over the country and went through all the received submissions, the conclusion of these interactions were presented in October of 2006 in a formal governmental report (Parliamentary Monitoring Group, 2006). It is written in the report that "*the Committee wanted to interact face-to-face with the public to hear their views on the Civil Union Bill*" as well as "*to engage in a robust and rigorous process of hearing the views of the people"* (Parliamentary Monitoring Group, 2006). During this platform not only religious leaders, media organizations and general public were invited, also LGBT groups were invited to share their opinions on the matter. The report shares all of the opinions and proposals shared by every group that was present during these meetings.

The access to the government in this episode is great, this expectation is confirmed.

- or if these interest groups are developing policy with the government.

The first draft of the Civil Union Bill was rejected by many of the separate LGBT interest groups and by the LGBT umbrella coalitions OUT Wellbeing and the Joint Working Group. Arguments brought up were that the first draft of the Bill was still discriminating LGBT people from 'normal' people, and it was proposed that homosexual marriages had to be 100 percent equal to heterosexual marriages (Parliamentary Monitoring Group, 2006). Ultimately, the criticism of the LGBT community was successful and the Civil Union Bill was amended in their favor and adopted by the end of 2006. Same sex marriages are no different from different sex marriages and a same sex married couple has the full status and rights that come with being married (de Vos, 2007; 463).

In this episode the LGBT interest groups definitely have had the opportunity and took the opportunity to develop the Bill in cooperation with the government, this expectation is confirmed.

- or if interest groups are working together to lobby government.

The NCGLE which was founded in 1994 had as one of its central goals to expand the rights of LGBT people in law. The coalition has participated and filed many cases before court and has won many of these. One of its best achievements is the trial which led to the Civil Union Act. In this 2005 trial the Lesbian and Gay Project (the successor of the NCGLE) fought with several

LGBT citizens for equal marriage rights. The NCGLE actually embarked on a strategic litigation path in 1997 in which they sought to first make LGBT activities legal as a basis for the eventual recognition of LGBT partnerships and all the rights that come with marriage (Human Rights Watch, 2003; 184). Fighting litigation was one part of the strategy for the right to marry, another major activity of the Lesbian and Gay Project together with other LGBT interest groups, was the 'right to marry' campaign. This campaign was mainly aimed at improving the knowledge of the whole society on being gay and having the right to marry (The Equality Project, 2013).

A well-known LGBT organization in South Africa, OUT Wellbeing, states in its 2005-2006 annual report that one of the strengths of the LGBT community is its synergy and cooperation. Looking back on its efforts of 2005-2006 OUT Wellbeing in cooperation with the Joint Working Group, which is a group of forty-three LGBT organizations that work together and share information, worked on advocating for same sex marriages through the same sex marriage program (OUT annual report, 2006; 3). The report mentions lobbying in parliament, working together with progressive partners on preparing supportive submissions and informing about LGBT constituencies through campaigns as its efforts (OUT annual report, 2006; 26).

In the case of the Civil Union Bill the various LGBT interest groups came together and fought for their right to marry as a united front. The expectation is confirmed.

6.3.1.1 Findings

Episode 2 expectations	**Interest Group Theory (A)**
Expectation 4 (access to government)	in line
Expectation 5 (developing policy with government)	in line
Expectation 6 (working together to lobby government)	in line

The interaction with the government during the formulation of the Civil Union Act has been intense. The government organized many open hearings, where everyone interested could voice their opinions on the matter. All of these opinions were considered by the parliament and put in an official report on the matter. Not only did the interest groups have this interaction with the

government, they also had a say in the actual development of the Act. The government had developed a first draft of the Act, which was rejected by several LGBT interest groups on the base of it still being discriminating. The interest groups brought forward their concerns and offered ideas to change the first draft to eliminate this problem. The government did eventually change the first draft into the Act that we know now, which is non-discriminatory. In the case of the Civil Union Act, the different LGBT groups made a tremendous effort to form a coalition and lobby the government together. The NCGLE started many court cases which resulted in the 2006 Act. In order to achieve success in the same sex marriage ruling, the LGBT interest groups lobbied the government profusely. The NCGLE spent its resources on the many court cases in order to develop a legal base for same sex marriage. All expectations in this episode have been confirmed.

6.3.2 International Human Rights Treaty Theory

In terms of same sex marriage right, in HRT there is no explicit piece of document that makes a statement on this issue. In the ICCPR covenant in part 3, article 23 it is written that *"the right of men and women of marriageable age to marry and to found a family shall be recognized".* The interpretation of the right to marry in the ICCPR technically only applies to women and men, not to every human being. This exact wording is what many courts hold on to when rejecting same sex marriage lawsuits. Not only the wording, but also the traditional definition of marriage (as being between a man and a woman) is an argument used by courts at expense of same sex marriage (Wingfield, 2008; 9). Though the HRC has stated that 'men and women' should be interpreted as people in general, this issue was researched by a group of experts in international law, which state that at the moment there is no HRT that allows or protects same sex marriage, though this might evolve in the future (Wingfield, 2008; 9). However, at the moment, same sex marriage is still an issue that is not often discussed at the UN and that has not been written down as a right yet, nor are there signs that this will change in the near future. As the precondition of having a treaty on the topic is not met, the expectations cannot be observed. The implication of this will be discussed later on in the conclusion.

6.3.2.1 Findings

Episode 2 (civil union act) expectations	**International Human Rights Treaty Theory (B)**
Expectation 4 (engaged in development treaties)	n/a
Expectation 5 (pressured/shamed by other countries)	n/a
Expectation 6 (high collateral consequences, high commitment)	n/a

In relation to same sex marriage and HRT, there is a tremendous lack of HRT that cover this issue. In fact, there is not one UN treaty which covers the issue nor are there signs that this will change in the near future. As the precondition is not met, none of the expectations can be analyzed.

6.4 Episode 3; 2011 National Taskforce

A special task team that is established to deal with the sexual violence against the LGBT community. A need for this team came after a series of violent attacks on LGBT people in the mid to late 2000's (Human Rights Watch, 2011; 14).

6.4.1 Interest Group Theory

- If this theory is correct interest groups have an effect if interest groups have access to the government.

The establishment of the national taskforce stems from the tremendous efforts of the LGBT interest group Luleki Sizwe. The group heavily lobbied the African and international society to come into action against the terrible hate crimes that were increasing since 2000. Only when the government could no longer ignore the pleas from society to address the issue, the government opened its doors to LGBT interest groups to discuss the issue. The interaction that occurred, only occurred after tremendous lobbying efforts (Luleki Sizwe, 2013). In this episode the access and interaction to the government was a difficult battle and will thus be considered as negative.

Another example of difficult interaction with government, that stems from the same timeframe as the establishment of the taskforce, is presented below to illustrate that this is not a unique event. The Triangle Project, the biggest LGBT organization in South Africa, with several success stories behind its advocacy which will be elaborated on later on, has experienced a great deal of a lack of interest from government officials. In its annual report for 2010-2011 the organization named one of its huge challenges in that year its work with the Department of Education. The organization received increasing hostility and resistance from principals and school governing bodies in its quest to stop bulling, victimization and gender violence. The organization was blocked in their interventions with teachers from high schools and colleges as well as with LGBT students and teachers (The Triangle Project, 2011; 6). So even though the Triangle Project had access to government, the interaction was far from smooth.

In this episode the access to government was one dimensional. Interest groups attempted lobbying, but the government was not open to receiving the interest groups. This expectation is thus rejected.

- or if these interest groups are developing policy with the government.

In May of 2011 the South African government established a special task team to deal with the sexual violence against the LGBT community. The creation of this task team stems from the effort of the Luleki Sizwe, an LGBT interest group based in Cape Town. This interest group set up a petition, through an international petition website Change (www.change.org), for the fight of corrective rape. This petition got a lot international attention and was signed thousands of times within a few weeks. A representative of the change.org website states the following: "*In less than six months, a tiny group of township activists has mobilized more than 170.000 people from 163 countries and gotten the highest levels of government to address their basic demand, that the sadistic crime of 'corrective rape' be taken seriously*" (Jadoo, 2011).

Through the media the awareness of this petition grew even larger and the South African Minister of Justice was flooded with emails regarding corrective rape. He had no choice but to respond to this topic (Luleki Sizwe, 2013). As a result the South African government started direct negotiations with a group of LGBT interest groups, including Luleki Sizwe and the largest LGBT interest group in South Africa, the Triangle Project. In these meetings the interest groups could share their opinion and recommendations on the topic. One of the direct recommendations was the establishment of a national task team. This team would focus on enhancing public awareness campaigns, sensitization programs and training for staff (court officials, including prosecutors and the police) amongst other things. This team would also contribute to developing policy for the protection of the LGBT community (The Department of Justice and Constitutional Development, 2011).

After the initial bad access to the government, the interest groups did eventually managed to develop policy with the government. This expectation is confirmed.

- or if interest groups are working together to lobby government.

From the literature on lobbying it is found that building coalitions helps interest groups in attaining there goal. This based on the fact that working together means sharing resources. Resources such as money, knowledge and government ties. In the case of LGBT interest groups from South Africa there seems to be a significant amount of cases that back this expectation up.

A more extensive example of successful coalition building of interest groups will be illustrated. The Yogyakarta Principles (2007) were developed in 2006 by a collaborative effort of a group of human rights experts and activists from all over the world. LGBT interest groups that

have contributed to this document are (amongst others); the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), the Transgender Network Netherlands (TNN), the Brazilian Association of Lesbians, Gays, Bisexuals, Travestites and Transsexuals (ABGLT) and the Blue Diamond Society (BDS) from Nepal. All of the involved groups have contributed knowledge, volunteers, information and other resources for the formation of the Principles.

The twenty-nine principles in the document are based on parts of international human rights treaties, how the treaties can be applied to LGBT rights and how states that have signed the HRT are obligated to protect the rights of LGBT people (however when reading the document it is not clear which treaties are used, it seems to all fall back on the universality of the UDHR, which makes it impossible to relate the twenty-nine principles back to the other human rights treaties). The main target of the Principles are thus states, as states have the responsibility to act on the HRT to protect its inhabitants. The document does not create new rights, the document simply articulates the rights already in place, but articulated in such a way that it relates to LGBT rights (The Yogyakarta Principles, 2007; 19). The goal of the document is to make HRT more comprehensive in terms of what it says about LGBT rights. The document can be used as a tool and a resource by states to incorporate the right laws in relation to HRT and LGBT rights, furthermore the document presents recommendations for states on what actions can be. Another important target of these Principles besides states are interest groups, the document can be used as a tool in activism, as all the rights of LGBT people are documented in one paper (The Yogyakarta Principles, 2007; 37).

After the murder of two lesbians in South Africa a coalition of LGBT interest groups launched a campaign, the successful 07-07-07 Campaign, to productively put their anger into a call for legal action and political change. The 07-07-07 Campaign used the Principles to underline the rights the LGBT community has and to make the South African government aware of the obligations it has towards this community (The Yogyakarta Principles, 2007; 131). The campaign has been successful in two aspects. First, it has stirred up public activism and second, it has provided training and direction to the new generation of LGBT activists in South Africa. Since the 07-07-07 Campaign many others have followed with the help of the Yogyakarta principles which eventually added up to the establishment of the national task force.

This example of the Yogyakarta Principles shows that working together with other interest groups can create big things. The document created is now a powerful tool for other interest groups to use in their fight for equality. The Yogyakarta Principles can be used in several

ways such as; challenging oppressive legal standards, developing new government policy, seeking a more responsive government, educating the public and building a movement (The Yogyakarta Principles, 2007; 87).

A few more general examples of interest groups working together to try and influence the government is the Coalition to End Discrimination. Together with the Triangle Project, this coalition has staged several public protests aimed at the parliament to end discrimination against the LGBT community (The Triangle Project, 2013). But also the Lesbian and Gay Equality Project, of which the main goal is to build a community of LGBT organizations and people that can work together in organizing protests, claiming constitutional rights and building community centers (The Equality Project, 2013).

In the national taskforce episode the LGBT interest groups have again worked together to lobby government and society. This expectation is confirmed.

6.4.1.1 Findings

Episode 3 (national taskforce) expectations	**Interest Group Theory (A)**
Expectation 4 (access to government)	contradicting
Expectation 5 (developing policy with government)	in line
Expectation 6 (working together to lobby government)	in line

LGBT interest groups lobbied heavily with national and international society to address the hate crimes that are happening in South Africa. Through social media great attention has focused on the corrective rape of lesbians and violence against gay, lesbians and transgender persons. The government only got involved when it could no longer ignore the pleas of society to solve these problems. The expectation on access is thus rejected. As a result of this societal pressure the government opened a discussion with LGBT groups to see what could be done about the hate crimes. From this interaction the national taskforce was formed, which includes several members from LGBT interest groups to assist the taskforce with its tasks. This expectation on development

is confirmed. Also in this episode several LGBT groups formed a coalition to e.g. start the 07-07-07 Campaign that tried to address hate crimes amongst society and government. This expectation is confirmed.

6.4.2 International Human Rights Treaty Theory

Within the UN exists a document that calls for the protection of LGBT people against hate crimes from society. This is the UN resolution on human rights, sexual orientation and gender identity, which was submitted to the Human Rights Council in June of 2011. The main sponsor of this draft was South Africa and it was co-sponsored by several other countries including France, the Netherlands and Sweden amongst others (Human Rights Council, 2012; 192). The resolution could be supported, opposed or disregarded by the UN countries, with South Africa being one of the drafters it clearly supported the resolution. In several media South Africa is titled the leader of the UN regarding gay rights and praised for taking this first step for more attention to LGBT rights. The resolution is considered to be historical, it being the first resolution specially aimed at LGBT rights (International Service for Human Rights, 2011).

The draft resolution expressed grave concern for "acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity" and requests the United Nations High Commissioner for Human Rights to conduct a research on violence and discrimination towards LGBT people around the world and how international human rights can improve this situation. Furthermore a panel discussion on the conclusions of the report was requested for the 19th session in March of 2012 (Human Rights Council, 2011; 1).

The resolution was adopted with twenty-three countries in favor, nineteen against and three abstaining. It was the first ever resolution on sexual orientation adopted by the UN. It was expected by the Human Rights Watch that the report that stems from this resolution would provide important guidance on how human rights law can be used to end violence and discrimination on the base of sexual orientation (Human Rights Watch, 2011).

The report was published by the end of 2011. The report provides extensive information on malpractices in countries all over the world, but also names some examples of 'good practices', positive actions that have been conducted by countries that fight violence and discrimination based on sexual orientation. The example of the South African National Task Team is mentioned as one of these good practices. The conclusion of the report is quite generic,

terms are used like "*the Council should promote universal respect*" and "*further action is needed, especially on national level*". A set of recommendations follows that mostly focuses attention on national governments to fight this violence, but also calls on the Council to keep investigating and keep informed (Human Rights Watch, 2011; 25). The panel discussion during the 19th session discussed the report and the situation further, the responses were widely spread as the voting has been. Since this resolution the UN has launched the Free & Equal campaign, which strives to promote tolerance and equality for LGBT people (UN Free & Equal, 2013).

However, this resolution was submitted to the UN in June of 2011. The South African national taskforce was established in May of 2011. Moreover, the taskforce is named in the resolution as a good practice and an example to other countries. So even though there is a document on hate crimes within the UN, it is not possible that this document had influence on the establishment of the national taskforce in South Africa. It seems to be the other way around.

6.4.2.1 Findings

Episode 3 (national taskforce) expectations	**International Human Rights Treaty Theory (B)**
Expectation 4 (engaged in development treaties)	n/a
Expectation 5 (pressured/shamed by other countries)	n/a
Expectation 6 (high collateral consequences, high commitment)	n/a

For this episode, the same can be said as for the second episode. As the UN resolution was created later than the South African national taskforce, there is no way the resolution could have influenced the establishment of this taskforce. Because of this the expectations cannot be applied.

Chapter 7: Conclusion and Discussion

In this final chapter a conclusion is drawn based on the findings from chapter six. The findings from all the three episodes as well as the general part will be presented in an overview table, followed by an extensive conclusion. After the conclusion, a short discussion will touch on the limitations of this research, explanation of personal choices made and suggestions for future research will be made. This chapter will start with an overview of all the findings from chapter six;

General expectations	**Interest Group Theory (A)**	**International Human Rights Treaty Theory (B)**
Expectation 1 A (popular/salient issue in society)	in line	x
Expectation 1 B (signing treaties)	x	in line
Expectation 2 A (resources)	in line	x
Expectation 2 B (ratifying treaties)	x	contradicting
Expectation 3 A (organize activities to educate society)	in line	x
Expectation 3 B (no reservations)	x	in line
Episode 1 (constitution) expectations	**Interest Group Theory (A)**	**International Human Rights Treaty Theory (B)**
Expectation 4 A (access to government)	in line	x
Expectation 4 B (engaged in development treaties)	x	contradicting
Expectation 5 A (developing policy with government)	in line	x
Expectation 5 B (pressured/shamed by other countries)	x	in line

Expectation 6 A (working together to lobby government) Expectation 6 B (high collateral consequences, high commitment)	in line x	x in line
Episode 2 (civil union act) expectations	**Interest Group Theory (A)**	**International Human Rights Treaty Theory (B)**
Expectation 4 A (access to government) Expectation 4 B (engaged in development treaties)	in line x	x n/a
Expectation 5 A (developing policy with government) Expectation 5 B (pressured/shamed by other countries)	in line x	x n/a
Expectation 6 A (working together to lobby government) Expectation 6 B (high collateral consequences, high commitment)	in line x	x n/a
Episode 3 (national taskforce) expectations	**Interest Group Theory (A)**	**International Human Rights Treaty Theory (B)**
Expectation 4 A (access to government) Expectation 4 B (engaged in development treaties)	contradicting x	x n/a
Expectation 5 A (developing policy with government) Expectation 5 B (pressured/shamed by other countries)	in line x	x n/a

Expectation 6 A (working together to lobby government)	in line	x
Expectation 6 B (high collateral consequences, high commitment)	x	n/a

As can be seen in the table above in two of the three episodes the interest group theory has more explanatory power. This is especially visible in the second episode with the Civil Union Act and the third episode of the national taskforce.

The UN has no treaty or other document in place that allows same sex marriages. South Africa on the other hand does have a law that allows same sex marriage. If the international human rights treaty theory had been more explanatory, the Civil Union Act of South Africa had never existed. It was thus not the external power from the UN that made the government decide to allow same sex marriage, but the internal pressure from the combined LGBT interest groups. In the third episode the UN resolution was submitted after the national taskforce was already established. This means that the resolution could not have influenced the creation of the taskforce. In episode one, it is observed that all expectations in the interest group theory hold up next to the empirical observations. Regarding the international human rights treaty theory for one of the expectations the empirical information is in contradiction with what the theory prescribes. This means that the international human rights treaty theory is explanatory to some extent, but the interest group theory has more explanatory power as the results found, are exactly as prescribed. In the general expectations it is observed that the interest group theory observations are confirmed again for all of the expectations, where for the international human rights treaty theory for one of the expectation the empirical information is contradictory. In the third episode it seems that both theories can explain the national taskforce event.

Initially it seems that the interest group theory has more explanatory power (in four out of four expectations clusters). When looking more closely at the empirical data a more detailed conclusion can be drawn.

In the 1996 constitution episode it seems that interest groups played the biggest part in the equality for gays in the constitution, this is confirmed by the analysis of the empirical evidence against the deducted expectations. When examining the episode further we can actually see that

the constitution was built on the foundation of the UDHR and the other treaties. The HRT provided not only the base for interest groups to build their case further on, but also the opportunity. If the new government was not so keen on promoting human rights as the base for the new South Africa, it would have been much harder for the LGBT community to have gained influence in the government. The 1996 constitution used the UDHR and the other treaties as the foundation for a constitution based on equality and human rights for the whole society. South Africa used the UDHR as an inspiration and motivation to release itself from the apartheid era. Showing this commitment to the UDHR and the other treaties and thus the UN, increased the reputation of the new South Africa and the international community welcomed the country back in the international playing field. The UN treaties definitely made sure that the basic human rights for all groups, including the LGBT community, were laid down. In this episode I would argue that, in fact, the international human rights treaty theory factors has been more influential in developing LGBT rights in South Africa than the interest groups factors even though the direct evidence shows the opposite.

From the results of the general part of the interest group theory and the international human rights treaty theory it shows that the LGBT interest groups in South Africa not only have a good relationship with the government, they also have the resources to lobby with governments and educate society. In addition, despite of the overall lack of popularity within society, homosexuality does seem to be a salient issue within society. When the LGBT community calls for help, in the case of the constitution and the case of the hate crimes, society does show support. One factor that could explain this trend is that the general fight for equality for all people of the South African community, regardless of whether you are black, gay, old, man or woman, is still present almost twenty years after the end of apartheid. Those events still seem to be deeply rooted in the South African society and thus the community supports each other's battles. From the HRT theory it comes forward that HRT have been influential during the first period after apartheid when constructing the constitution as it served as the base, but may have not been as influential as first expected. Almost half of the treaties covered in this dissertation have not been ratified, which raises the question, if this is because of a lack of resources to implement as the government claims or because of false willingness. HRT can initiate a willingness to improve human rights to some extent. A country that is signing, ratifying and not making reservations to the treaty shows commitment to improve human rights. HRT in this extent are a powerful tool to improve human rights. When countries however choose to sign but not ratify, or to ratify but with reservations, it

can be a sign of superficial interest. From this research it seems that for the case of South Africa signing and ratifying the HRT is a going through the motions kind of thing, it seems necessary to do this to maintain a good reputation with the other UN countries. The rights specified in the HRT are however broad, vague and are not backed up by enforcement. South Africa's interest groups seems to have had a much greater influence through court cases and lobbying as the government is adding very specific laws for the LGBT community into its constitution. Not ratifying treaties holds that the treaties are factually not liable and thus not effective in South Africa. All of the terms written down in these treaties mean nothing if not ratified. South Africa can proceed to do as it desires and the UN cannot do anything to impose the rules laid out in the treaties. Through naming and shaming and collateral consequences such as bad relationships between South Africa and other UN countries, the UN tries to pressure South Africa to ratify the rest of the treaties, but so far nothing has changed. Not adding reservations and signing treaties is a good sign, but falls out when these signed treaties are not being ratified. From these general expectations it is clear that the interest group theory has more explanatory power than the international human rights treaty theory.

In the second episode on the Civil Union Act it is utterly clear that the Act came about because of the efforts of the LGBT interest groups as has been concluded above. Same sex marriage was an issue that these groups cared greatly for and in which they put many resources such as time (it has been an effort of ten years to get to the final goal) to accomplish. Unfortunately, the UN has not shown any effort regarding protecting or the acceptation of same sex marriages.

In the third episode, just like in the second episode, it is clearly the interest group theory that has most explanatory power. The national taskforce was established in May 2011, and the UN resolution was adopted in June 2011. Though there is only a one month difference is it obvious that the national taskforce was created before the UN started its research on hate crimes towards the LGBT community (in South Africa and the rest of the UN countries). It seems that South Africa used its national taskforce to show the UN how a country can stand up against these hate crimes (in the report South Africa is named as a good practice).

From examining the results of the three episodes and the general expectations it has shown that in three cases the interest group theory has had more explanatory power. Only in the first episode of the constitution the human rights treaties theory has more explanatory power. I would argue that

the UN is an organization to keep relationships with other countries tight and good. The UN however hardly possesses any methods of actually making a country stand by its promises when a treaty is signed. The UN can try to expel a country, as had happened with South Africa, but this requires a complicated voting procedure with some UN members having more power than others and is a procedure that is not often used. The UN can call on or urge countries to change its ways, but in the end there are hardly any hard measures to actually make countries keep to its promises. Because of this treaties are often regarded as 'dead letters'. Whereas interest groups do have to power to force the government to keep to its promises. The LGBT interest groups in South Africa have won many battles through its litigation strategy moreover, the groups can rally the South African society as well as the international society which puts great pressure on the government to change. These results are useful for the LGBT community and LGBT interest groups in South Africa as it shows that LGBT interest groups have a positive effect on enhancing equality and their fight for equality is thus not in vain.

One of the limitations of this research is that no interviews have been done, this means that the thesis is built on existing sources of information. Adding interviews would have made the research more complete in terms of information gathered and would have made it a more personal research. However, Blatter & Haverland (2011) do mention that in the congruence analysis many researchers opt to not to interviews. The main reason for not conducting interviews has been the fact that South Africa is a country far away which leads to large difficulties in arranging personal meetings. Luckily, there was more than enough existing information to use for this thesis. Another limitation might be that South Africa is a very unique country in the world. The apartheid has left a huge mark on the country and its society which has sparked a commitment to equality and human rights. In other countries the influence of interest groups and international human right treaties may be very different. This would make it interesting to research other countries and the effects of the theories on LGBT rights outputs. Finally, the choosing of the episodes could affect the results of the research. There is a possibility that by choosing other important events in South African LGBT rights, other results would come forward. This would also be interesting to research in a future research.

References

Adoption Laws (2013) *"Ultimate Gay Adoption Guide"* Retrieved July 29th 2013, URL: http://adoption.laws.com/gay-adoption

Arat, Z. (1991) "*Democracy and Human Rights in Developing Countries"* Questia

Baumgartner, F.R., Berry, J.M., Hojnacki, M. et al. (2009) *"Lobbying and Policy Change"* The University of Chicago Press

Berry, J.M. (1984) *"The Interest Group Society"* Little, Brown and Company, Boston Toronto

Blatter, J. and Haverland, M. (2011) "*Congruence Analysis*"

Bowler, S., Donovan, T. and Karp, J. (2007) "*Enraged or Engaged? Preferences for Direct Citizen Participation in Affluent Democracies"* Political Research Quarterly, Vol. 60, No. 3, p. 351-362, published by Sage Publications

Bowman, K., Lehoucq, F. and Mahoney J. (2005) "*Measuring Political Democracy: Case Expertise, Data Adequacy and Central America"* Comparative Political Studies, Vol. 38, No. 8, p. 939-970, published by Sage Publications

Buttolph Johnson, J., Reynolds, H. and Mycoff, J. (2007) "*Political Science Research Methods"* CQ Press

Cape Town Pride (2013) "*History of Cape Town Pride"* Retrieved on July 25th 2013, URL: www.capetownpride.org

Coomans, F. & Kamminga, M. (2004) "*Extraterritorial Application of Human Rights Treaties"* Intersentia

Coucher, S. (2002) "*South Africa's Democratisation and the Politics of Gay Liberalisation"* Journal of South African Studies, Vol. 28, No. 2, p. 315-330, published by Taylor & Francis, Ltd.

The Department of Justice and Constitutional Development (2005) *"Children's Act 39 of 2005"*

The Department of Justice and Constitutional Development (2011) "*Task Team is set up to attend to LGBTI issues and corrective rape"* Retrieved on January 7th 2013, URL: http://www.justice.gov.za/m_statements/2011/20110504_lbgti-taskteam.html

Dryzek, J. (1996) "*Political Inclusion and the Dynamics of Democratization"* American Political Science Review, Vol. 90, No. 3, p. 475-487, published by American Political Science Association

The Equality Project (2013) "*Welcome to the Equality Project"* Retrieved on July 2nd 2013, URL: http://www.equality.org.za/

Glendon, M.A. (2004) "*The Rule of Law in the Universal Declaration of Human Rights"* Northwestern University Journal of International Human Rights, Vol. 2, No. 5, published by Northwestern University School of Law

Hathaway, O. (2007) *"Why Do Countries Commit to Human Rights Treaties?"* The Journal of Conflict Resolution, Vol. 51, No. 4, p. 588-621, published by Sage Publications Inc.

Hix, S. and Hoyland, B. (2011) "*The Political System of the European Union"* Palgrave MacMillan

Human Rights Council (2008) "*Report of the Working Group on the Universal Periodic Review; South Africa"* Report of the United Nations High Commissioner for Human Rights

Human Rights Council (2011) "*Discriminatory laws and practices and act of violence against individuals based on their sexual orientation and gender identity"* Report of the United Nations High Commissioner for Human Rights

Human Rights Council (2012) *"Report of the Working Group on the Universal Periodic Review; South Africa"* Report of the United Nations High Commissioner for Human Rights

Human Rights Watch (2003) "*More than a name: State Sponsored Homophobia and its Consequences in Southern Africa"*

Human Rights Watch (2011) "*Landmark UN Vote on Sexual Orientation"* Retrieved on June 28th 2013, URL: http://www.hrw.org/news/2011/06/17/landmark-un-vote-sexual-orientation

International Service for Human Rights (2011) "South Africa tables historic resolution on sexual orientation and gender identity" Retrieved on August 1st 2013, URL: http://www.ishr.ch/council/376-council/1094-south-africa-tables-historic-resolution-on-sexual-orientation-and-gender-identity

Jadoo, Y. (2011) "*Task Team set up to tackle Homophobic Attacks"* Retrieved on June 13th 2012, URL: http://mg.co.za/article/2011-05-04-task-team-set-up-to-tackle-homophobic-attacks

Kellstedt, P. and Whitten, G. (2009) "*The Fundamentals of Political Science Research"* Cambridge University Press

Kuenzi, M. (2006) "*Nonformal Education, Political Participation, and Democracy: Findings from Senegal"* Political Behavior, Vol. 28, No. 1, p. 1-31, published by Springer

Lawyers for Human Rights (2008) "*International Convention for the Protection of all Persons from Enforced Disappearances: Implications for South Africa and the Region"* Conference

Lehnert, M., Miller, B. and Wonka, A. (2007) "*Increasing the Relevance of Research Questions: Considerations on Theoretical and Social Relevance in Political Science"* Chapter 2 in Gschwend, T. & Schimmelfennig, F. (Ed.), "*Research Design in Political Science: How to Practice What They Preach.*", (p. 21-33)

LGBTQ Nation (2012) "*South Africa first to recognize gay flag as an official national symbol"* Retrieved on July 27th 2013, URL: http://www.lgbtqnation.com/2012/10/south-africa-first-to-recognize-gay-flag-as-an-official-national-symbol/

Lijnzaad, E. (1994) "*Reservations to UN Human Rights Treaties"* Martinus Nijhoff Publishers

Lowery, D. (2007) "*Why Do Organized Interests Lobby? A Multi-goal, Multi-context Theory of Lobbying"* Polity, Vol. 39, No. 1, p. 29-54, published by Palgrave MacMillan.

Lukow, M. (2012) "*Opportunity & Repression: LGBT Activism in an African Context"* University Honors

Luleki Sizwe (2013) "*Campaign"* Retrieved on 29th of July 2013, URL: http://www.lulekisizwe.com/campaign/

M'Boge, F. and Doe, S. (2004) "*African Commitments to Civil Society Engagement: A review of eight NEPAD countries"* AHSI, paper 6

Neumayer, E. (2005) "*Do International Human Rights Treaties Improve Respect for Human Rights?"* The Journal of Conflict Resolution, Vol. 49, No. 6, p. 925-953 published by ProQuest

Neumayer, E. (2007) "*Qualified Ratification: Explaining Reservations to International Human Rights Treaties"* Journal of Legal Studies, Vol. 36, p. 397-429 published by the University of Chicago

NRC Newspaper (2012) "*Mugabe sluit verjaardagsweek af met oproep to hell with gay rights"* Retrieved on April 9th 2012, URL: http://www.nrc.nl/nieuws/2012/02/25/mugabe-sluit-verjaardagsweek-af-met-oproep-to-hell-with-gay-rights/

Nkuepo, H.J. (2011) "*Importance of South Africa's ratification of the ICESCR and OP CESCR and the Link between Economic, Social and Cultural Rights and MDGS"* University of Iowa

Office of the United Nations High Commissioner for Human Rights (2013) *"Combatting discrimination based on sexual orientation and gender identity"* Retrieved on February 16th 2013, URL: http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTVideos.aspx

Office of the United Nations High Commissioner for Human Rights (2013) *"The Core International Human Rights Instruments and their monitoring bodies"* Retrieved on July 2nd 2013, URL: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

Oswin, N. (2007) "*Producing Homonormativity in Neoliberal South Africa: Recognition, Redistribution and the Equality Project"* Signs, Vol. 32, No. 3, p. 649-669, published by The University of Chicago Press

OUT Wellbeing (2006) "*Annual Report 2005-2006"*

OUT Wellbeing (2013) "*OUT concerned about lack of Communication on LGBT Violence Task Team"* Retrieved on June 29th 2013, URL: http://www.out.org.za/index.php/what-s-hot/news/267-out-concerned-about-lack-of-communication-on-lgbt-violence-task-team

Parliamentary Monitoring Group (2006) "*A Report of the Portfolio Committee on Home Affairs on Peoples' Public Hearings In Provinces on the Civil Union Bill, 20 September to 9 October 2006, and the Public Submissions"* Retrieved on January 7th 2013, URL: http://www.pmg.org.za/docs/2006/061031hearings.htm

Permanent Mission of South Africa to the United Nations (2013) Retrieved on June 27th 2013, URL: http://www.southafrica-newyork.net/pmun/

Republic of South Africa (2000) "*Promotion of Equality and Prevention of Unfair Discrimination Bill"*

Republic of South Africa (2003) "*Alteration of Sex Description and Sex Status Act"*

Reenock, C. and Gerber, B. (2007) "*Political Insulation, Information Exchange and Interest Groups access to the Bureaucracy"* Journal of Public Administration Research and Theory, Vol. 18, No. 3, p. 415-440, published by Oxford University

Saiz, I. (2004) "*Bracketing Sexuality: Human Rights and Sexual Orientation: A Decade of Development and Denial at the UN"* Health and Human Rights, Vol. 7, No. 2, p. 48-80, published by The President and Fellows of Harvard College

Schedler, A (2002) "*The Nested Game of Democratization by Elections"* International Political Science Review, Vol. 23, No. 1, p. 103-122, published by Sage Publications Inc.

The South African Department of Labour (1998) *"Employment Equity Act, No. 55 Of 1998"*

Statement of the Department of Justice and Constitutional Development (2012) *"SA: Statement by the Department of Justice and Constitutional Development, condemns hate crimes against Lesbian, Gay, Bi-sexual, Transgender and Inter-sex people"* Retrieved on January 4th 2013, URL: http://www.polity.org.za/article/sa-statement-by-the-department-of-justice-and-constitutional-development-condemns-hate-crimes-against-lesbian-gay-bi-sexual-transgender-and-inter-sex-people-06122012-2012-12-06

Statues of the Republic of South Africa – Constitutional Law (1996) *"Constitution of the Republic of South Africa No. 108 of 1996"*

The Times Newspaper (2005) *"Same-sex marriages given blessing by South Africa"* Retrieved on December 12th 2012, URL: http://www.ecademy.com/node.php?id=59909

Tlhwale, L. (2013) "*SA Task Team representatives fail the LGBTI community"* Retrieved on May 17th 2013, URL: http://inkanyiso.org/2013/05/18/2013-may-15-sa-task-team-representatives-fail-the-lgbti-community/

Tomuschat, C. (2003) "*Human Rights; Between Idealism and Realism"* Oxford University Press

The Triangle Project (2011) "*Annual Report 2010-2011"*

The Triangle Project (2013) *"Vission and Mission"* Retrieved on August 2nd 2013, URL: http://triangle.org.za/about-us/vision-and-mission

Ungar, M. (2000) *"State Violence and Lesbian, Gay, Bisexual and Transgender (LGBT) Rights"* New Political Science, Vol. 22, No. 1, p. 61-75, published by Routledge.

United Nations (2013) "*The United Nations: Partner in the Struggle against Apartheid"* Retrieved on August 1st 2013, URL: http://www.un.org/en/events/mandeladay/apartheid.shtml

United Nations Regional Information Centre for Western Europe (2013) "*UN and Apartheid from 1946 to Mandela Day"* Retrieved on August 1st 2013, URL: http://www.unric.org/en/nelson-mandela-day/26991-un-and-apartheid-from-1946-to-mandela-day-

UN Free & Equal (2013) Retrieved on August 1st 2013, URL: https://www.unfe.org/en/about

UN News Centre (2011) "*UN issues first report on human rights of gay and lesbian people"* Retrieved on June 27th 2012, URL: http://www.un.org/apps/news/story.asp?NewsID=40743

US Department of State (2011) "*Human Rights Report South Africa 2011"*

Van Zyl, M. (2011) "*Are Same-Sex Marriages UnAfrican? Same Sex Relationships and Belonging in Post-Apartheid South Africa"* Journal of Social Issues, Vol. 67, No. 2, p. 335-357, published by The Society for the Psychological Study of Social Issues

Vos de, P. (2007) "*The 'Inevitability' of Same Sex Marriage in South Africa's post-Apartheid State"* South African Journal on Human Rights, Vol. 23, No. 3, p. 432-465

The Washington Post (2013) "*This Map shows how America compares to the rest of the world on gay rights*" Retrieved on the 29th of July 2013, URL: http://www.washingtonpost.com/blogs/worldviews/wp/2013/06/26/this-map-shows-how-far-america-has-come-on-gay-rights-compared-to-the-rest-of-the-world/

Wingfield, R. (2008) "*Four Rights and a Wedding: The Right to Same-Sex Marriage under Human Rights"* University of Nottingham

Yin, R. K. (2003) *"Chapter 4 Conducting Case Studies: Collecting the Evidence"* In Yin, R.K. (Ed.), Case Study Research: Design and Methods., (pp 83-108)

The Yogyakarta Principles (2007) "*An Activist's Guide to the Yogyakarta Principles"*