

Categories and Queues

The Structural Realities of Gender and the South African Asylum System

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Abstract South Africa is the only country on the African continent that not only recognizes but also constitutionally protects and offers asylum to transgender-identified individuals. On entering the country, an individual has fourteen days to report to a Refugee Reception Office and apply for asylum. To access a center, asylum seekers are required to queue. Faced with two separate lines, one for men and one for women—much like the issues surrounding transgender access to public bathrooms—gender refugees approaching the South African state for asylum are immediately forced to make a choice. This queue also creates the conditions for surveillance, particularly as different regions are serviced on different days, which brings together the same asylum seekers from similar regions on the continent. This can make life for those who transition in South Africa doubly exposing, as they possibly move between queues witnessed by local communities. This article questions the necessity of an ever-ubiquitous system of sex/gender identification in the lives of asylum seekers, noting current developments internationally, regionally, and locally in relation to the development of third-gender categories, “X” category passports, the suppression of gender markers, and wider debates about the removal and necessity of sex/gender identifiers on documents and their impact.

Keywords refugees, migration, state administration, transgender realities

A seemingly banal administrative system the world over, gender manifests most often, for transgender people, even those with some access and privilege, as nodes of confrontation, but its presence, as a site of discipline and exclusion—often violently so—is felt most strongly by those who are poor or rely on the state most acutely for support (Spade 2011: 11). South Africa is the only country on the African continent that recognizes sexual orientation¹ and gender²—including gender identity/expression—as human rights, enshrined in its Constitution.³ In recent years, partly because of these far-reaching constitutional protections, the country has seen the emergence of a relatively new class of refugee⁴—those who identify as transgender, or “gender refugees.”⁵ In essence, these are *people who can make claims to refugee status, fleeing their countries of*

origin based on the persecution of their gender identity—turning to a state that is not their own for refuge and assistance. Drawing on interviews conducted between 2012 and 2015 with transgender-identified asylum seekers from Africa living in South Africa, this article argues that there are two interconnected sites of discipline in relation to asylum at work in the country.⁶ The first can be considered universal—paperwork/documentation. The second, a focus of this article, and possibly a peculiarity of the South African asylum system, functions as an initial site of surveillance at the very entrance to any Refugee Reception Office—the queue.

Harald Bauder (2008: 316) notes that citizenship is a “strategically produced form of capital, which manifests itself in formal (legal and institutional) as well as informal (practiced and cultural) forms.” Viviane K. Namaste has been critical of how institutions, for instance, asylum, manage the lives of transgender people. She also argues that one of the most severe limitations of what she terms “Anglo-American scholarship” on trans people is that it lacks “any sustained analysis of how . . . [transsexual/transgender] . . . people are situated (and/or situate themselves) outside institutions” (Namaste 2000: 269). Although probably not intended as literally by Namaste, I use the queue as a fruitful way to analyze the deployment of gender “outside institutions.” This article argues that South Africa presents, in some ways, a unique opportunity to understand how gender refugees are situated in relation to the institution of asylum and how this affects their ability to access citizenship, experience social integration, and actualize “embodied cultural capital” (Bauder 2008: 318). This discussion of institutions and management—in particular, the notion of queuing—allows transgender to function as an analytic posing wider questions about the necessity of sex/gender as a category of classification for notions of citizenship, human rights, and viability of transgender lives in asylum systems more broadly.

The Refugee Process in South Africa

Once entering South Africa, an asylum seeker has fourteen days to report to a Refugee Reception Office (RRO), run by the aptly named Department of Home Affairs (DHA), and apply for asylum. There are several RROs throughout South Africa, but the most prominent are in the larger cities of Cape Town and Johannesburg. At the RRO asylum seekers are required to furnish a Section 23 permit and any proof of identification stipulating country of origin and a travel document, should they be in possession of one. A Refugee Reception Officer will conduct an initial eligibility interview, with the assistance of a translator if necessary, to establish identity and reasons for asylum application. An Eligibility Determination Form is completed, applicants are fingerprinted, and their data and image are captured in the refugee system. These are then printed, signed,

dated, stamped, and issued as a Section 22 Asylum Seekers Permit, which gives applicants the right to work and study in South Africa and protects them from deportation. Given that the country practices local integration, rather than encampment as found elsewhere in Africa, asylum seekers experience freedom of movement within the country. Moreover, for those who identify as transgender, the permit is crucial to gaining access to state-subsidized gender-affirming health care, although this in itself is limited.⁷ I touch on some of the broader implications of health care access, but exploring these linkages in greater detail is beyond the scope of this article. The initial permit is valid for six months while asylum seekers await their second interview—a status determination hearing—with a Refugee Status Determination Officer (RSDO) and the outcome of their asylum application. The document is not allowed to expire and must be renewed by applicants pending a decision on their status. The RSDO must, on conclusion of the status determination hearing, either grant asylum; reject the application as manifestly unfounded, abusive, or fraudulent; reject the claim as unfounded; or refer any question pertaining to the law to the Standing Committee for Refugee Affairs. If granted asylum, refugees are issued a Section 24 permit, allowing them to remain in South Africa for four years. If not granted asylum, refugees have the right to appeal the decision to the Refugee Appeals Board (DHA 2014).

The *Home* of Home Affairs

Jay Prosser (1998: 204), on trans bodies and existence, asks quite productively: “What are the politics of home?” Aren Aizura (2006: 295) notes that for Prosser, “‘home’ is doubly inflected as the task of finding a home in the body, and being able to call the state home.” For first-time arrivals, or “newcomers,” wanting to apply for an asylum seeker permit in South Africa, the first step is *not* entering an RRO but finding one. Arguably, the *home* intended by the DHA for asylum seekers is seemingly a constantly perplexing, vexed, and elusive edifice. Over the past several years it has become increasingly difficult to both find and access RROs, as they themselves are constantly moving, closing, or restructuring. For example, between 2003 and 2004 the Johannesburg RRO moved three times in six months. According to Human Rights Watch, during this time there were no notices providing information on where the offices had relocated. This created “confusion and, potentially, the risk of arrest, detention, and deportation for those who were due to renew their permits but found the former offices shut” (Human Rights Watch 2005: 13).

It is well documented that asylum seekers in general in South Africa struggle to gain access to RROs. Queuing daily, the amount of time they queue often exceeds that of their fourteen-day visa. Daniel, a transgender-identified asylum seeker from East Africa, explains that you can wait in the queue all day and

night, only to be told: “No, we are not working on newcomers today.” Over the years the number of people waiting outside the ever-migratory RROs has steadily increased, but the capacity to assist those queuing has not been able to keep pace (Cornelius and Jordan 2014). Many have been forced to wait outside the offices for days; some sleep there overnight. The documentation—the “paper”—asylum seekers receive is critical to their survival. Not only does it establish that they have made their presence in the country known through the correct legal channels, but it allows access to rights conferred on asylum seekers, such as access to health care, including gender-affirming health care, education, and social services. Though the general condition of the queues has been described as “completely inhumane” (South African National AIDS Council 2008), fear of arrest has meant that asylum seekers, including gender refugees, would rather remain in the queue and near the RRO, for an indefinite period of time, no matter the conditions, than risk being caught without documentation (Theron 2011). These experiences are concerns for everyone who attempts to access an RRO in South Africa—what sets the experience of gender refugees apart from those of other asylum seekers is the very nature of this system outside an RRO.

“There Is No Queue for Gender Change”

State actors produce and police gender in myriad ways.⁸ These are often influenced by perceptions of culture, historical legislative approaches, international norms and treaties, transnational organizations, and individual perceptions of what can be read as stable from the site of the body. State systems require standardized classifications and metrics for measuring, in essence taking “exceptionally complex, illegible, and local social practices” such as gender and forcing them into “a legible and administratively convenient format” (Scott 1999: 3). So intimately intertwined are perceptions of citizenship and gender that Benedict Anderson (2006: 5) suggests, “Everyone can, should, will ‘have’ a nationality, as he or she ‘has’ a gender.” In essence, citizenship—acknowledgment, protection, rights, and personhood—pivots on any given state’s perceptions and categorical understandings of gender. Moreover, being perceived as “correctly” gendered or fitting into the state’s available framework functions as a “symbolically legitimate form of cultural capital” (Skeggs 2004: 24). This capital, for Bauder (2008: 316), is interchangeable in its social, economic, and cultural forms and is intimately linked to the reproduction of the social order. Citizenship, then, as a form of capital, in this view, is tied to constructions of identity and belonging along with struggles related to recognition.

Much like the issues surrounding transgender access to public bathrooms in both the United States⁹ and South Africa,¹⁰ gender refugees approaching the South African state for asylum are immediately forced to make a choice between two separate lines, one for men and one for women. Arguably, the queue makes

clear that not only are there two distinct categories of people that Home Affairs expects to interact with but these categories are based on unchanging, visibly readable anatomical difference. Moreover, these “anatomical distinctions are a legitimate way of organising and sorting people” and, by extension, are the legitimate categories to be sorted as a human being (Cohen 2012: 168). Alex, a trans-identified person from Central Africa, illustrates the difficulty in making the right choice on the first day of approaching an RRO:

There was a lot of people and there was confusion. . . . You know there was two queues and you have [to] choose. Am I gonna be to the girl’s queue or the men’s queue? I was like in the middle. I was just in the middle. . . . There were people fighting there. Everyone wanted to go inside to get the permit.

Akraam, a trans woman from the Horn of Africa, explains the trauma of gendered surveillance and being the object of discussion in the queue:

I can hear people talking, “why is he like this?” and in [a] loud voice too to make me feel bad. “This man is supposed to be a man. He is a disgrace.” Discussing about me when I’m in the queue. I ignore it. . . . Even though I’m hurting inside, I just show just pretend that I’m confident.

Simply having to queue with many others and choosing to identify as either male or female is compounded by the fact that specific countries or regions queue on certain days. For participants, then, some of whom are either living in stealth in South Africa—living outside their country-of-origin communities in South Africa—or are living in country-of-origin communities in South Africa because they provide support but are not out to them, there is very real concern about being seen. Moreover, regional days can change, often with little information or notice, which means an applicant can end up queuing with the wrong group for quite some time without ever being informed otherwise. The assumption would be that other members of the queue would provide clarity or information, but for gender refugees the aim is to remain as inconspicuous as possible, often not talking to another soul. Kelly from East Africa goes to Home Affairs in a disguise—baggy stereotypical male attire, no makeup or handbag:

I dress differently because I don’t want to be called those names. I don’t want trouble with people. . . . I put on big jeans, big shirt . . . no one bothers me . . . I stand in the men’s queue. There is nothing you can do, my dear. I have to balance it.

Kelly notes that disguise is not uncommon—“those transgender things like dresses are for at night”—and that this is the approach of most transgender-identified

people in order to avoid detection. This may seem counterintuitive in a system, like asylum, that hinges on self-exposure for access: “A sphere of immigration law that focuses on taking in the vulnerable, not only can asylum law cope with dissident expressions—be they political, sexual or gender related—it requires them” (Solomon 2005: 20). The queue evidently takes on the function of surveillance, particularly as different regions report on different days, meaning that during the process to renew asylum documentation, the same asylum seekers from similar regions on the continent often gather together.

Ava, from East Africa, was one of the first asylum seekers to access gender-affirming health care and transition in South Africa. Her story shows how gender and nationhood are mutually constitutive; at least this is the case in South Africa currently. In Ava’s case the ability to claim rights and protection from the South African state, possibly any state, has become more elusive the farther she has moved from the gender/sex she was assigned at birth. As it currently stands in South Africa, for gender refugees who embrace a particular iteration of transgender—something that signifies transition to the “opposite sex”—there is very little room for recognition in the South African asylum system. The Alteration of Sex Description and Sex Status Act No. 49 of 2003, which facilitates the ability of South African citizens to alter sex/gender markers on identity documents, does not apply to asylum seekers or foreign nationals.¹¹ Asylum seekers do have the right to access state health care, meaning that, as with Ava, access to state-provided gender-affirming health care such as hormones is entirely possible and fairly easily attained, at least for hormones. Access and availability of surgical interventions is far more limited, as the waiting list in the public health care system is prohibitively long. Ava, as an asylum seeker, also pays a reduced fee. She initially applied for asylum from the men’s queue and like Kelly attempted to disguise herself.

It’s a problem when you stand in the queue, people look at me and I was like, “Oh my God, I don’t know what to do!” . . . I try when I go to “boy it up.” I’m going to be a boy and everything but the figure it shows you, so I remove my earrings and everything, but people still notice it, you know?

This option became untenable once she began to take hormones. She became concerned about returning to Home Affairs to renew her asylum application, which would mean being faced with asylum seekers from the same region on the same day, some of whom already knew her.

I was thinking how are these people going to treat me? Now should I go to the women’s queue? The problem is the security; they come and check if you [are] in the right queue. . . . they read all the details (from her papers). So what if they read you are male and you [are] in the queue of females?

The closer it came to the time for Ava to return to Home Affairs, the more anxious she became and the more documents she accrued—from her doctor, her counselor, and her endocrinologist—to provide proof should anyone confront her. Alex astutely describes the experience of the queue, the tension from hiding and being visible to people from one's country of origin and to asylum seekers from the same region, as well as the role of security officials in surveying correct sex/gender, which combine to create a “double oppression” faced by asylum seekers who are transgender. One way to mitigate this would be to have asylum seeker papers adjusted to reflect self-identification. Ava was one of the first to request this; to her mind this would at least present the possibility, should she be in the women's queue, of having security ostensibly checking her paper and leaving her in place, thereby tacitly supporting her claim to her queue of choice. Though this may seem a relatively simple solution, the response of Home Affairs officials to her request suggests a far more intricate relationship between the administrative uses of sex/gender, asylum, statehood, and citizenship.

She [the Home Affairs official] saw my paper . . . then she looked at me. . . . Look at the paper and look at me. . . . She asked me is this your paper? . . . I was like “yes,” but she can't deny it because she had to check my fingerprints. . . . It was positive, it was me. Then she looked at me again and then she said, “So what happened?” I told her actually I am in a process, I am transgender. . . . I always go to Home Affairs with my papers for doctors, I took them out and showed them. She read them and she was like, “OK I think you are the first person I have seen, so why don't you change?” . . . Then she went to the manager and told her the story in front of a whole lot of other people. . . . She was asking permission to actually change the picture and change the gender to female. The manager refused . . . then she said “*I feel sorry for you because if the police or something happens, then you will be in trouble. This person here, this paper, and you there is two different people. . . . This is a legal paper. It is you and everywhere you go in South Africa they will see it's your fingerprint but . . . there is no way they can confirm. The only way is here at Home Affairs. It says it's male but when I see you, you [are a] complete female and your face, when I see this face of yours and I see this face on the paper, it's not same person. So if you go to the police or somewhere else, they may even detain you for weeks to try and find out if this paper is you.*”

The manager suggested that in order to have her documents rectified, Ava would need to make a request to the Appeals Board. Yet, as noted, access to the Appeals Board only becomes available to asylum seekers once a negative decision is made on a claim to refugee status and not before. The question of “two different people” is critical here. As Ava explains:

They were saying, “if we change her gender, we are naturalizing her to South Africa because she is not going to be recognized [by her country of origin].” . . . I am not allowed to change that paper because I am not a South African citizen and South Africa has no right to change other nationalities’—other people from other countries’—genders. If they do so it means I will become definitely a South African because that country [her country of origin] does not recognize me as a woman and there is no legal binding paper in that constitution that says they must give me that. . . . I am no longer the same person who left that country.

Arguably the situation comes down to an issue of citizenship and naturalization. Ava is not a South African citizen. If the South African state were to adjust her gender on her asylum paper, to their mind, they would effectively be naturalizing her. To be clear, the country she has left does not recognize her as a woman, while the South African state argues that were it to do so, she would then no longer legally be the same person who left her country of origin. The physical experiences of the queue—the uncertainty, the surveillance, the anxiety, and the fear of reprisal—have for Ava become self-perpetuating beyond it because of the nature of her documentation.

The impact of this nonrecognition is monumental for the survival of gender refugees—a direct block to accessing what Bauder (208: 319) might call “embodied cultural capital.” As Ava explains, this is not exceptional in the South African asylum system but part and parcel of how a system that can only see dichotomy functions.

It’s not a life. I am actually living like someone who is illegal in a country where I am using legal papers because everywhere you go they will tell you “no this is not you.” . . . It’s like life stops because that is the only thing you use for identification. This is the thing that you use to the banks, this is the thing you use for employment for jobs, this is the thing that you [are] going to use at school and this is the thing that everybody, everywhere you go, everybody looks at . . . [the paper] . . . and looks at you again and questions . . . “This is not your paper?” . . . What if you go to apply for a job and they bring you in and you put female [on the form] and you go to an interview. They [are] going to bring that stuff that says male and they don’t see a male in front of them. . . . What are you going to do?

The constant inability to function on a day-to-day basis has driven her to the point of corruption. Note here that it is an amalgamation of the repetitive nature of her life as an asylum seeker, in combination with incongruent documents as a transgender person, and the almost routineness of this experience:

I am tired of every time having to explain, I am tired of having to go . . . [to the RRO] . . . all the time. So I have two papers: I [have] a fake that says it is me—female and I have a legal one [which says male]. . . . I paid R250 I use the same names . . . the new picture of me and the gender female not male. . . . I just have to walk with it or to apply for jobs maybe . . . if they ask me [for] my ID then I will bring them that paper . . . [the fake one] so I don't have to show them the real one because if I show them the real one telling the whole fucking story I don't want that. I am tired.

Eithne Luibhéid (2002: 44) notes in the closing chapter of *Entry Denied* that fraud and the subversion made possible through forged documents may be dismissed as lawless by the state but can also be usefully read “as a competing system of knowledge that is brought against the state.” It is arguable that Ava, in this instance, has responded to her exclusion by reading the possible form of capital that “false” (though correct for her image, name, and gender marker) documentation might open up to her. As Bauder (2008: 318) notes, “Individuals and social groups do not simply respond to market forces but, rather, strategically create, valorize, and endorse different forms of capital.”

Sex/Gender: What Are the Options?

There is within South Africa a clear lack of institutional coordination and cohesion between asylum and state-sponsored health care. Documents, as proof of a gendered identity, come to play a critical role in this discordance and function as a barrier to accessing particular kinds of capital for gender refugees. As Namaste (2006: 164) has noted, this is not uncommon with regard to the daily working of state administrative practices. The *complexity* of situations in the administration of gender is in fact a “function of its administration” (164). There is a connection here between the performance of gender, its use as an administrative tool, nationhood, and citizenship. In terms of the constitutional rights provided by the South African state and the theoretical possibilities of this in relation to asylum, South Africa represents a space in which transgender-identified asylum seekers might find themselves, or imagine themselves, to be included in the “we” of the nation. That transgender would perform a particular type of labor for citizenship in South Africa. However, in the South African asylum system, parts of which can be extrapolated to asylum systems (and state systems) globally for transgender-identified asylum seekers like Ava, the nature of the wider regulatory framework based on a bifurcated system of sex/gender is a direct impediment to the actualization of this imaginary/citizenship. For South Africa, as I have argued, this issue is acutely visible for both the queue and the nature of documentation, where one can be read as the physical manifestation of the other—both key sites of

discipline and surveillance. V. Spike Peterson argues that the state system at its heart is based historically on the differentiation of gender. She adds that the codification of binary sex difference is an outcome of the historical heterosexism that has underpinned much of the creation of the world's legal systems, in large part influenced by Western scripts and understandings of governance. The "either/or thinking that this imposes fuels hierarchical constructions of difference and social relations of domination" (Peterson 2010: 54). Since 2000, discussions about sex/gender markers, their meaning, and their utility have been in flux, presenting several options for addressing these issues in South Africa. While some states, namely, Bangladesh, India, Pakistan, and Nepal, countries with historically acknowledged "third gender populations,"¹² have added third-gender categories, others such as Australia and New Zealand have attempted to expand the possibilities for self-definition, introducing an "X" category on passports, and still others, such as the Netherlands, have opened the debate over the necessity of sex/gender markers and registration more generally.

Although perhaps more equitable for countries with historically acknowledged third-gender populations who may envision themselves as neither male nor female, the third-gender stance in general has been critiqued for limiting the possibilities for self-definition and reinstating rigid biological determinism (Cauterucci 2015). As Mauro Cabral notes:

People tend to identify a third sex with freedom from the gender binary, but that is not necessarily the case. If only trans and/or intersex people can access that third category, or if they are compulsively assigned to a third sex, then the gender binary gets stronger, not weaker. (Quoted in Byrne 2014: 22)

In essence, adding a third category would be much like adding a third queue: this may well work for Alex, who acknowledges "standing in the middle," but for Ava, who identifies as a woman, this would be highly problematic. As she points out,

If there was a separate queue . . . I would not support it. . . . Even if there were many transgender there would be . . . bullying. . . . For me, if you are trans it means you are transitioning. You [are] becoming something. . . . I have this belief. . . . I know I am a female.

Activists have noted that a more inclusive approach, something Ava certainly desires, would be to increase the options for people to self-identify or define their sex/gender (Byrne 2014). In the case of the queue this would arguably translate into a single, combined queue rather than several queues.

In 2005 Australia began a wider discussion about the place and necessity of the recording of sex/gender and concomitant visibility in documents. Since then,

both New Zealand and Australia have implemented the possibility of replacing M or F on passports with X (unspecified or indeterminate). This shift has affected the use of sex/gender on international travel documents such as passports and may eventually have a direct impact on refugee documents. Assigned by the United Nations, the International Civil Aviation Organization (ICAO) controls the standards and stipulations for passports internationally. Under ICAO rules there are in fact three designations for sex on passports—M, F, or X. Initially X was introduced in 1945 as a result of the sheer volume of refugees who needed to be processed after World War II. Notably at the time of its creation nowhere was it stipulated that X would eventually need to be resolved into an M or F designation (OII Australia 2011). Currently the ICAO allows X as a marker on passports to signify “sex unspecified.” Thus far ICAO has argued that it would be too costly to enact universally (New Zealand 2012: 3).

The Netherlands has perhaps been the most far-reaching in discussions on the necessity of gender markers. In 2012 the Dutch organization Feministisch Netwerk GroenLinks began a campaign for the “abolishing of gender as a legal distinction” (FEMNET 2011: 4). The group has argued that sex/gender is a private matter much like ethnic origin, sexual orientation, and political opinion and that if states are determined to treat people equally, with no distinction or difference, then there is no need for sex/gender to be registered. Moreover, given the continuing issues worldwide with doing so, they have argued that it has become increasingly evident that sex/gender is too complex to register. As they point out, the most common argument for maintaining sex/gender is the need for positive discrimination, but society is able to practice this in relation to ethnic minorities and disabilities without registration or visible information on documents (10). For FEMNET, the registration of sex/gender continues to affirm for society, regardless of what might be argued about social construction, that there are two kinds of people and that the difference between them is so essential that it must be registered (van den Brink 2009: 167).

There have certainly been legal challenges by transgender people over rights and identity issues on the African continent. Victor Mukasa won a court battle against Uganda’s attorney general in 2008, which established that the articles of Uganda’s Constitution, in particular the right to privacy and freedom from torture or inhumane and degrading treatment, apply to all people regardless of sexual orientation and gender identity (Hivos 2008). This certainly may create some room to challenge sex/gender and identity categories in the future.¹³ Audrey Mbugua, a trans activist from Kenya, won a court battle in 2014 to have her name amended on her official school-leaving certificate (Chigorimbo 2015). Along with this, Mbugua has also been involved in a case, led by LGBT rights activist Solomon Gichira, in the Kenyan High Court to establish a third-gender category for people who do not identify as male or female in Kenya (Matata 2015).

Anne Fausto-Sterling has argued, perhaps as a kind of middle ground, that to ensure legal protection for all but particularly those who are “gender-diverse,” the suppression of the category of gender from official documents would be most prudent. As she notes, “Surely attributes both more visible (such as height, build and eye colour) and less visible (fingerprints and genetic profiles) would be more expedient” (Fausto-Sterling 2000: 23). To suggest that South Africa consider either suppressing the registration of sex/gender is not outlandish, particularly as the country has been moving since at least 2004 toward a Smart Card biometric-based identity system that would include refugees (Rulashe 2004). In fact, this point was raised by the South African intersex activist Sally Gross in discussions with Home Affairs in 2012 on the poor implementation of Act 49. Those present seemed quite amenable to her suggestion. As Gross notes:

If ID was shifted to a biometric system it would actually remove the problem (regarding sex/gender) because fingerprints or retinal patterns do not change. The issue of gender would become irrelevant. So that would be rather an elegant solution. (Quoted in Portfolio Committee on Home Affairs 2012)

In essence, the DHA may need to collect information on the sex/gender of asylum claimants, but this does not necessarily mean that this information needs to be reflected on documentation in general. Notably, Gross, in her conversations with the Portfolio Committee, was suggesting this as an option for South African society in general, but it would most certainly have an impact on refugee documents and asylum papers.¹⁴ In essence, it would not be about abolishing categories but mooting them, disinvesting from them while allowing people the room to self-identify. This would theoretically mean creating a combined queue in which those lined up may have specific sex/gender designations across a spectrum of possibility, but security would be unable to ascertain these from documents; more than this, ascertaining them would have no point. Moreover, for those stuck in a legal limbo like Ava, the grounds on which the state denies the possibility of personhood would no longer be a factor.

Conclusion

The asylum process in South Africa, as reported by myriad organizations and international bodies, is by no means easy for anyone (Amit 2015). It is widely acknowledged that the system is overburdened, generally corrupt, and poorly managed, but there are specific issues that make this process that much more difficult for those who identify as transgender. Some issues, like the queue, are perhaps peculiar to the South African system. It signals the perception of Home Affairs that there are two and only two sex/genders—discernible, definable, and

easily differentiated. Moreover, these genders are often determined by what the security guards see when they move up and down the queues checking that people are in the “right” place. As Luibhéid (2002: 53) argues, though, it is not about individual officials, although they do carry prejudice, but about the makeup and underlying assumptions of the system itself—the “techniques and systems of knowledge on which its daily operations depend.” Sex/gender diversity the world over, in its many geopolitical iterations, questions the need for sex/gender to be visible on identity documents. For Bauder (2008: 327), the imagining and reimagining of citizenship and the possibilities of accessing capital related to it is not simply the realm of legal bodies; people, in this case gender refugees, articulate the realities of “ever changing systems of distinction and exclusion.” As categories expand, collapse, solidify, and possibly disappear, legal systems will need to adjust in order to address the wider structural concerns about the facilitation of the movement of people, not only in South Africa. Scholars have certainly grappled with this issue in the recent past, but notably it has been only in relation to the relatively privileged position of international air travel, licensing documents, or adequate documentation for citizens of states (Currah and Mulqueen 2011).

This article has mapped the experiences of gender refugees who have attempted to access the South African asylum system and has noted the barriers to their gaining access and adequate documentation. It has also suggested that issues of access and documentation directly inhibit gender refugees’ abilities to draw on any form of “embodied capital” — nonrecognition being a key stumbling block to not only social integration but everyday survival. This article, drawing on the work of South African activists such as Gross and international and regional developments, has suggested some possible solutions for addressing these issues. The erasure of sex/gender markers may seem unreal or prove difficult to implement; indeed, this is why this article suggests suppression. Certainly in South Africa’s transition to a biometric-based smart card system, this is a possibility. Such cards may not directly address wider structural concerns, which are global issues over the administrative uses of sex/gender, but it may offer the beginnings of relief and greater social integration. Certainly more research and thinking is needed, not just on South Africa but internationally, on the meanings of human rights, citizenship, personhood, documentation, and the right to self-definition of sex/gender as it pertains to people who may not be citizens of a given state but have turned to that state for refuge and asylum.

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Notes

1. In *The National Coalition for Gay and Lesbian Equality v. Minister of Justice and Others* (1998) at paragraph 21, the Constitutional Court stated that sexual orientation, as in Section 9(3) of the South African Constitution, “be given a generous interpretation” and thus was extended to include the prohibition of discrimination against transsexual people. The judgment did more than just recognize transsexuality; it provided a space for the varying ways that individuals come to identify themselves using a mixture of signifiers and language, while acknowledging that the *language* is contingent but not the experience the language attempts to name or describe. By extension this also opens the possibility for transgender. See de Vos 2009.
2. A 2010 decision in the South African labor court on the unfair dismissal of a trans person further suggests a possible reading of gender to include gender identity/expression. See *Ehlers v. Bohler Uddeholm Africa (Pty) Ltd* (JS296/09) [2010] ZALC 117; (2010) 31 ILJ 2383 (LC) (13 August 2010); and Theron 2011.
3. Section 9(3) of the Bill of Rights of the South African Constitution is referred to as the “Equality Clause.” The clause affirms the rights to nondiscrimination and equality on the basis of sexual orientation and gender among other grounds.
4. In 1951 the UN passed the Geneva Convention relating to the Status of Refugees. The convention defines a refugee as “any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion.” Prior to 1990, claims to refugee status based on sexual or gender-based persecution were not recognized within the convention. International LGBT organizations rallied around notions of sexual orientation and gender identity as human rights, building an increasingly influential lobby (Kollman and Waites 2009).
5. For recent work also addressing issues of transgender asylum, see Shakhari 2013.
6. Pseudonyms along with only regional, instead of national, origins have been used to protect the identities of the participants who took part in this project.
7. It is far easier to access hormonal care than surgical interventions. Asylum seekers pay a reduced fee at public hospitals for hormonal care. The access points are limited to a handful of public hospitals across the country. These spaces are often overburdened and struggle to manage demand (Theron 2014).
8. Ava, interviewed April 9, 2014.
9. See Kogan 2009.
10. In South Africa this debate has been largely prevalent at institutions of higher learning (Chang 2016).
11. In the parliamentary discussions leading up to the act, South African activists argued that any bill, considering that it was being written for South Africa, would need to draw on international standards while remaining cognizant of the country’s unique social and economic position, including the provision “for legal recognition of a change in sex identity . . . [for] . . . foreign-born people.” The chair of the committee clarified that the legislation was intended for South African citizens only, as the National Population Register did not contain the details of foreigners and thus it would not apply to them (Parliamentary Monitoring Group 2003).
12. Constructed slightly differently in each of the Asian nations but usually as Transgender, Hijra, “Khawaja Sarra,” or “Other.”

13. The United Nations Commission against Torture recently released findings about the Convention against Torture, “explicitly recommending the repeal of ‘abusive’ preconditions to legal gender recognition and called for respect for transgender people’s ‘autonomy and physical and psychological integrity’” (Yeung 2016). These arguably could be extended to wider legal litigation with regard to legal gender recognition through necessary documentation.
14. The Smart Cards were meant to phase out the maroon refugee identification documents as early as 2005, although this has yet to take place (Human Rights Watch 2005: 35).

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