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HOMOPHOBIA: EXPERIENCES AND PERCEPTIONS OF THE LGBT COMMUNITY OF POLICE IN THE DURBAN METROPOLITAN AREA

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ABSTRACT

While the South African criminal justice system has become increasingly aware of issues affecting women, matters pertaining to the lesbian, gay, bisexual and transgender (LGBT) community have largely been ignored. The homosexual panic, as well as the quasi-militaristic nature of discrimination among police and within law enforcement agencies in relation to LGBT issues, suggests an apparent omission in the law and sets an example of institutional homophobia, and this fosters antipathy towards the LGBT people in larger communities. With the employment of post-structural feminist theory, this research argues that police homophobia and homophobia in general, reinstates conservative hetero-patriarchal dominance and new forms of marginalization. Criminal law, disregard for human rights legislation and public opinion have been used by some police to reduce and suppress protection of the LGBT community within the Durban Metropolitan area.

This dissertation aims to add to current debates on LGBT sexuality by interrogating violence motivated by homophobia and heterosexism as this is the most frequent, visible, violent and culturally legitimized form of hate crimes in Durban. It highlights the antagonism that the LGBT community faces at the hands of police when reporting these crimes. It aims to engage Foucault's theory of power in conjunction with other major theories such as Butler's theory of performativity, Queer theory, as well as Theron's criminalizing theory in order to unpack reasons why power dynamics come into play between police and the LGBT community. The study establishes how fundamentalist moralist Christian notions of sexuality perpetuate violent anti-LGBT rhetoric within law enforcement structures and other institutions in Durban. It seeks to add a new dimension regarding the interrogation of power structures by questioning law enforcement with the aim of demonstrating how homophobia dictates to the victim that they cannot negotiate different forms of sexuality. It sets out to explain how dominant heterosexual culture and religious discourses set boundaries on how the LGBT community in Durban should enjoy their bodies. This research analyzes the human cost of the fusion between culture and conservative religious discourses and how these posit a serious threat to LGBT subjects in negotiating gender fluidity within law enforcement spaces. The concluding chapter offers suggestions on how to strengthen the fragile relationship between the LGBT community and police officials.

CHAPTER ONE

1.1 INTRODUCTION AND BACKGROUND OF THE STUDY

Homophobia constitutes one of the world's most pervasive forms of human rights violation. Since the 1980s a plethora of studies world-wide have been published that examine the extent and the nature of victimization experienced by the lesbian, gay, bisexual and transgender (LGBT) community (Cox 1990&1994; Mason & Plummer 1996). Although this research focuses on crimes perpetrated in response to the victim's perceived sexuality, it has been noted that 70% of the LGBT community experience harassment and physical violence (Judge & Nel 2008). Roads (cited in Hall & La France 2007), substantiates this by asserting that between 72% of gay men and 93% of lesbian women have experienced harassment and physical threats because of their sexual orientation. According to Lasenza (1997), violence against the LGBT community is endemic in most societies but remains unrecognized as a serious gendered security issue. Studies show that anti-gay hate crimes represent a serious problem in South Africa. Research conducted by Wells and Polders (2006) postulates that challenges to masculinity and traditional gender roles can lead to anger, aggression, marginalization as well as sexual and homophobic violence. To this end, this research recognizes that any measures geared towards combating homophobia need to be based on an understanding of how and why negative attitudes are held so that harmful consequences may be averted (Hall & La France 2007).

In 38 out of 53 countries in Africa, consensual gay sex is criminalized in what Human Rights Watch says is a method of political manipulation (Cook &Thoreson cited in Wells & Polders 2004). Uganda has come under fire for the enactment of the bill against what the country terms "sinful lifestyle" (Blandy 2011). This bill is meant to toughen penalties for gays as well as to punish anyone who promotes homosexuality. In countries like Nigeria, the northern Muslim states have instituted death penalty for homosexuality, while anti-gay incidents have flared in Senegal where bodies of gay men have been exhumed and tossed out of Muslim cemeteries (Blandy 2011). Just recently in October 2011, Cameroon has been under fire for detaining LGBT individuals under a discriminatory law that prosecuted the LGBT adults who had consensual sexual relations (Pereira 2011). All these are an indication of a disconcertingly high prevalence of homophobia and homophobic discrimination. Societal concern for minority groups coupled with objections to discriminatory practices have resulted in extensive media reports on anti-gay hate crimes, however, when the LGBT are victims little media coverage is given to the violations perpetrated (Theron & Bezuidenhout 1994). In this regard Herek (quoted in Theron & Bezuidenhout 1994) argues that these crimes are either ignored, or reported in a way that

portrays the victims as perpetrators; or the impression is given that offences committed against the LGBT community are not serious.

Within the South African context, despite the country's progressive constitution, violence against "queer communities" is regarded as culturally acceptable and law enforcement authorities are also reluctant in developing meaningful interventions. This is evident in some police officers' failure to provide non-discriminating services to victims of anti-gay bias crimes. Similar to the South African context, most countries in the world lack legal protection against sexual orientation and gender-based discrimination despite the fact that LGBT people are often discriminated and experience violence because of their sexuality (Samelius & Wagberg 2005). This is further complicated by the fact that in South Africa, specifically in Durban, some police officers discriminate. Even in countries with permissive social attitudes towards LGBT people such as the Netherlands and South Africa where same sex orientation has long been decriminalized and gender variations socially and legally accommodated, responses to sexual -orientation- based hate crimes have been inadequate (Schippers 1997). These are indications that homophobic hate crimes increase as the LGBT communities become more visible and that police involvement in LBGT issues is crucial (Eliason 1996; Schippers 1997).

The witnessing of LGBT activities and research prove beyond doubt that people with "queer identities" especially black lesbians are assaulted as a result of their identification with homosexuality. According to Gqola (2006), their bodies become the ground on which the frequently vicious gender and sexuality wars of the contemporary South Africa are fought. This study reflects on the LGBT community bearing witness to a deeply entrenched homophobia lived out in daily encounters within educational establishments, community streets, homes, police stations, public transport and other public environments in the Durban Metropolitan area. It illuminates what it means to be LGBT, the perceptions and experiences of the LGBT community with the police as well as their difficulties in accessing the criminal justice system within Durban. This research mainly focuses on the threat the LGBT community poses to police officers who cannot tolerate the LGBT's sexual independence and choice of sexuality. Towards the attainment of this, this study interrogates hetero-patriarchal views as well as essentialist discourses of law enforcement that support patriarchal power structures, promotes binary ideas of masculinity and femininity and determine sexual roles according to biological sex. This is of paramount importance as law enforcement is the embodiment of the constitutional rights of individual citizens.

This study engages theories such as essentialism and biological determinism in order to establish how binaries between two sexes are used to propagate hetero-normative superiority, incite harm, intimidate, threaten, undermine LGBT dignity as well as frame LGBT as targets of crime in Durban.   Judith Butler's theory of performativity, as well as queer theory explains how police homophobia in Durban adversely affects the constitutional right to equality and freedom within the LGBT community.

Although the primary focus of this research is related to incidents of secondary victimization at the hands of some police officers in Durban, it is worth mentioning that international research purports that the vast majority of openly-gay people have encountered some form of discrimination and victimization such as verbal abuse, threats, being chased or followed or being spat on by police officers (Judge & Nel 2008). According to Eliason (1996), gay bashing is said to affect 20% of LGBT persons residing in the United States alone. As it will later be discussed, comparable trends of homophobic police violence can be traceable within the Durban Metropolitan area where police have been indifferent, verbally abusive and have threaten the LGBT community. Similar findings are also reported by Herek & Berill (1992) in a study in a Sacramento area, in the USA on victimization. Interestingly, more adult men (25%) than adult women (20%) experience discrimination because of their sexual orientation yet police officers fail to take serious cognizance of these abuses. This research aims to explore reasons why some police officers want to dictate to the LGBT how they should use their bodies as well as why the LGBT in Durban are not allowed to make decisions around how they choose to express their sexuality. LGBT wellbeing efforts to assess the extent of LGBT's experiences of victimization makes it clear that the LGBT, especially black lesbian women in South Africa, are experiencing sexual assault as a result of their sexual identity and the vast majority of these go unreported (Mkhize et al. 2010).

Overtime, there have been reports of violence and discrimination unleashed against the LGBT people because of their sexual orientation and gender identity, instilling debilitating fear and worry within the LGBT community. In many cultures in Sub-Saharan Africa, the lives of LGBT individuals are manipulated for political gain and the gravity of the consequences of disclosure of sexual preference go beyond vulnerability, deterring victims from seeking justice, support and reporting these crimes (Cook & Thoreson cited in Wells & Polders 2004). Homophobic rhetoric is made to divert focus from political instability to homosexuality. Crime and violence against the LGBT community in South Africa and, in this case Durban, are also widespread, indicating a

society that continues to enforce gender and sexuality norms through violence. Some police officers are reluctant to investigate LGBT crimes in Durban and this constitutes a serious discriminatory practice. Thirty one lesbians have been murdered, based on their sexuality, in the last ten years in South Africa and the number is on the increase, yet statistics do not reflect the full extent of the occurrence of anti-gay hate crimes in the Durban area. According to Theron & Bezuidenhout (1994), this is because police do not distinguish between anti-gay violence and violence in general, thereby creating the impression that anti-gay hate crimes do not occur.

In Kwa-Zulu Natal alone, 9 lesbians have been reported murdered since the beginning of anti-gay militarism in 2000, yet no significant arrests have been made (Thathiah & Lewis cited in Jones 2008). Reid and Dirsuweit argue that violence is a means of gaining control and reasserting power in a highly patriarchal environment (Reid & Dirsuweit cited in Polders & Wells 2006). South Africa's history of transitional justice has been marked by a culture of impunity for the gross human violations committed in the country, particularly those committed against the LGBT community. The range of transitional mechanisms has failed to adequately address the widespread gender-based violence against the LGBT community in the country. In the context of South Africa, homophobic attitudes still prevail, and as a transitional state, it is impossible to attempt national re-building, democratization and reconciliation without fully understanding sexual orientation and sexual needs; and to theorize about these within specific material conditions and access to state facility such as the LGBT's equal access to criminal justice system.

Research on LGBT issues in South Africa, including homophobic hate crimes and experiences of secondary victimization by law enforcement officials is minimal. Previous studies focused primarily on white middle class gay men and not much focus has been directed towards law enforcement and this includes Durban. Even less is known of the experiences of bisexual and transgender people (Judge & Nel 2008). Existing studies and growing evidence, however, suggests that LGBT people are often targeted for discrimination as a result of their sexual orientation. Violence is not experienced equally across class, race and gender lines in the general population of South Africa (Campaign 07-07-07 2007; Isaack 2007). LGBT from lower socio-economic levels are more susceptible to gender-based crimes such as rape, domestic violence and child abuse (Nel & Kruger 1999; Van de Hoven & Maree, cited in Judge & Nel 2008). The role played by physical appearance in intersection with other aspects such as race, sex and gender are critical to understanding LGBT hate crimes as a person may experience interlocking

forms of discrimination on one or more of the listed grounds (Nel & Kruger 1999). This research also reports on the prevalence of anti-gay hate crimes as demonstrated in the way police handle crimes motivated by homophobia, the incidents of reporting these crimes to the police, LGBT experiences and perceptions about the Durban police when reporting, as well as reasons for not reporting.

The need to address police homophobia and gender-based violence against the LGBT is a critical one as a component of LGBT struggles for human rights, especially in the context of Durban where transitional justice and violence against LGBT is met by slow development of adequate measures. Within the Durban municipality the inclusion of LBGT issues in transitional justice has been weak. These weaknesses range from a number of judicial and non-judicial approaches that have been adopted by post-apartheid societies to address LGBT abuses.

In the Durban municipality, for instance, no legislation exists that addresses anti-gay hate crimes irrespective of the high prevalence of these crimes. As Herek (1988) points out, police also tend to be prejudiced and discriminatory towards the LGBT thereby making it extremely difficult for victims to report victimization. Referring specifically to the South African situation, Retief (cited in Theron & Bezuidenhout 1994) contends that for more than forty years the LGBT have been subjected to unjust treatment by state institutions such as the police and the legal system. *The Triangle Project,* a leading South African gay rights Commission, argues that lack of immediate police action results in the culture of impunity around these crimes. It says these crimes are unrecognized by the legal system and lead to a lack of legal action (Kalipa cited in Herek 1988). It is important to also understand the historical flow of the relationship between the LGBT and the police in the country as this informs the current situation. The next sub-section addresses the historical aspect of homophobic crimes.

1.2 HISTORICAL CONTEXT OF POLICE HOMOPHOBIA IN SOUTH AFRICA

While space does not allow for a detailed investigation into the position of the government and police officials on homosexuality, a brief discussion is crucial to understand the historical context of police homophobia and how it has influenced the current situation. Homosexuality in South Africa had been associated with criminal activity since the beginning of the colonial period (Jones 2008). Laws governing sodomy and "unnatural acts" regulated deviant behavior (Jones 2008). Legal and social ideas of homosexuality in South Africa were framed within male/female, heterosexual/homosexual, normal/abnormal and criminal and lawful

differentiations. According to the Department of Justice and police authorities of the apartheid state, homosexual practices were viewed as psychological deviations that inevitably led to criminal and anti-social behaviors such as rape, murder, prostitution, incest, pedophilia, bestiality, inter-racial sex, suicide, theft, public indecency, blackmail, the spread of venereal diseases, alcoholism and exhibitionism (Jones 2008). As Sember cited in Reddy et al. (2009) points out, criminalization and legal sanctions against homosexuality characterized the apartheid regime, crystallizing the homosexual into models of illness and perversion by policies. This resulted in criminalizing and politicizing adult consensual sexual activity between people of the same sex. It is in this period that homosexuals were denied political gains, constitutional equality, rights and protection. Even traffic violations could be blamed on homosexual practices since it was suggested that homosexual men hitchhiking would make advances towards innocent heterosexuals and that could cause traffic accidents.

The decriminalization of anti-gay laws by western countries in the 1960s resulted in the South African government and police officials' concern that this wide-reaching trend of decriminalization would enable homosexual behavior to become widely accepted in South Africa. This led to accelerated police attention on homosexuality manifested in raiding gay clubs and arresting the LBGT for publicly showing affection (Jones 2008). Professing that homosexuality was a mental disorder that could spread to innocent white heterosexual communities, many police and government officials prohibited all homosexual activities by asking for legislation review so that individuals who partook in homosexual acts could be convicted (Jones 2008).

Male homosexuality and the discourse of moral order in the apartheid era supported white male power structures, prompted binary divisions of masculinity and femininity, normalized heterosexual gender norms and determined sexual roles based on biological sex (Elders 1995). The state's control over sexuality and sexual identity of its population was more than just controlling sexuality; it sought to limit the practice of interracial sexual intercourse and retain white political dominance. Ideas about homosexuality posed a serious threat to the Christian nationalistic procreative ideals of the apartheid government and increased fears about the perceived moral degradation of society (Jones 2008). In the words of Glen Retief, the state had to keep the white nation morally and sexually pure so that it had the strength to resist the black communist onslaught (Retief cited in Jones 2008). Notions of gender, sexuality, sex, and madness were often unclear and confused. This was particularly evident in 1968 when a select

government committee was convened to investigate the feasibility of amending the Immorality Act of 1957 so as to better define homosexuality and to legislate behavior of individuals. This still negatively influences current homophobic trends as much police work on anti-gay crimes follows the apartheid onslaught. In addition to the fear of disclosing, Herek (1988) points out that the tendency of police officials to be prejudiced towards the LGBT community and to discriminate against victims still discourages them from reporting injustice perpetrated by police officers.

Herek and Berrill argue that this sub-population has historically been marginalized and this places them at risk of targeted victimization (Herek & Berrill 1992; Reid & Dirsuweit 2002). Referring specifically to the South African situation, Retief (1994) contends that for more than 40 years LGBT individuals have been subjected to gross indignities and unjust treatment by representatives of the state such as the police and the legal system. Wells and Polders (2004) postulate that as a consequence of this history, police homophobia, illegal as it is, denies LGBT people recourse to the law when they have experienced victimization. Thus, in many cases, it is impossible for these LGBT people to claim that they have been victims of crimes as they themselves are seen as perpetrators or criminals because of their sexual orientation. In the 1970s and 1980s, the LGBT were under the constant surveillance of the police, who often raided bars and "cruising spots" (Wells & Polders 2004). Those caught were often photographed and threatened with exposure of their sexual orientation. In the puritan social culture of the time, this would have meant total social ostracism and in some cases, job losses (Wells & Polders 2004). As a result of this, the necessity for a heterosexual gender presentation on the surface results in invisibility of the LGBT communities even today (Retief 1993).

For this study, the qualitative method used unraveled traces of discourses of moral order are still prevalent as in the apartheid policing. A considerable number of informants for this study affirm that police handle crimes with bias, thereby denying them rights and protection. This in some sense unduly controls LGBT sexuality and portrays institutional and individual homophobia towards the LGBT.

With the fall of the apartheid regime in 1994, for the first time discrimination based on sexual orientation was prohibited through the adoption of the new legislation, however, despite the new South African Constitution, South African LGBT community still face discrimination. It is important, from the outset to understand aspects that give meaning to anti-gay hate crimes and

their implications in contemporary South Africa. The following section will conceptualize hate crimes in the light of this research's findings while simultaneously elaborating on their effects on both the LGBT community and society at large.

1.3. CONCEPTUAL CLARIFICATION: TOWARDS A BETTER UNDERSTANDING OF ANTI-GAY HATE CRIMES.

1.3.1 GENERAL CONCEPTION OF HATE CRIMES.

Hate crimes have been the bone of contention among political, psychological, legal and gender studies scholars. Arguments about determining bias intent and the measuring of hypothetical constructs such as hate have all been included in contemporary South African legislation through the institution of anti-hate laws (Plumm, cited in Mason 2000). Arguments for the establishment of such statutes are related to the nature of what a hate crime entails and the necessity to have harsher penalties in place for the perpetrators of such crimes (Plumm, cited in Mason 2000). Since its first emergence in the 1980s, there has been much controversy over how "hate crimes" should be defined (Mason 2000). In a very general sense hate crimes commonly refer to a criminal offence motivated by prejudice (Mason 2000). More expansive approaches define hate crime with reference to its effects as well as its causes. In this sense, hate crimes are defined as acts of violence and intimidation usually directed towards already-marginalized and stigmatized groups. Mason (2000) defines hate crimes as a mechanism of power and oppression intended to reaffirm the precarious hierarchies that characterize a given social order. For an event to be characterized as a hate crime, the perpetrator must at least be motivated, in part, by prejudice or bias towards the group-affiliation of the victim (Mason 2000). In this sense the individual is targeted on the basis of a presumed membership of a certain group.

Plumm (cited in Theron 1995) state that a hate crime is defined as the crime in which the victim is selected because of his or her actual or perceived race, color, religion, disability, sexual orientation or nation of origin (United States Department of Justice cited in Plumm 2010). In the research presented in this dissertation 95% of the respondents experienced discrimination and they cited their sexual orientation as the reason for discrimination. Theron (1995) argues that vulnerable groups include people belonging to a certain racial group, groups with specific

religious affiliations and groups whose sexual orientation differs from the norm within societies. As is the case in this research sexual orientation is the root cause of discrimination. For the purpose of this study, discrimination is understood in relation to anti-gay primary and secondary victimization.

Within South African law there is no consensus around how to conceptualize anti-gay hate crimes. Kalipa (cited in Theron 1995) contends that the lack of a legal definition of anti-gay hate crimes has resulted in a negative attitude towards local LGBT communities and invisibility of this category of crimes. The intensity of hate crimes coupled with the lack of immediate police action is causing the LGBT community to lose faith in the justice system. In this study, 41 out of 57 (72%) of the LGBT informants expressed a severe lack of trust in South African police and the criminal justice system. Reasons cited include lack of seriousness with which anti-gay hate crimes are dealt, ridiculing, and deliberate mishandling of cases on the part of the police.

Some legal definitions relating to hate crimes require proof that the crime is wholly or partially motivated by prejudice or hatred towards the victim and/or the groups s/he identifies with (in this case a portion of Durban's LGBT community). Others adopt a group selection model requiring evidence that the victim was chosen on the basis of or because of his/her presumed race, religion and sexuality (Mason 2000). To illustrate this within the South African context, Eudy Simelani's sexuality was ruled out as the motive of her murder but activists had linked the case to corrective rape[1]. In Durban the murder of 23 year old Nqobile Khumalo in May 2011 was met by similar denial of hate as the motive of murder (mambaonline 2011). Police said they had no knowledge of Khumalo's murder being linked to her being a lesbian. Lexit, an organization that defends the rights of lesbian and bisexual women, claims Khumalo was killed because of her sexual preference (Thathiah & Lewis in Jones 2008). Either way, the concept of hate crime is designated to make a symbolic gender claim that prejudice is at the core of 'hate' and should be rejected in favor of models that promote tolerance and respect for oppressed groups.

Despite the seriousness of anti-gay victimization, the majority of LGBT people prefer to endure their victimization in silence and isolation. The reason for this is because they fear stigmatization and secondary victimization should their sexuality and sexual orientations become known to the police (Wertheimer 1990). The subsequent section aims to establish what hate-crimes are and their relevance to this particular study.

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[1] Corrective rape is a rising phenomenon in South Africa where lesbians are raped and often killed to cure them of homosexuality.

1.3.2 ANTI-GAY HATE CRIMES

Since the birth of modern gay liberation movements in the 1960s, a large amount of anti-gay violence and other victimization against homosexual men and women has developed (Berill & Herek 1992). These are termed anti-gay hate crimes. Thousands of episodes including, defamation, harassment, intimidation, assault, murder, vandalism and other abuses have been reported to the police departments and local and national organizations (Berill & Herek 1992). Recently there has been a great deal of literature published on blackmail in African countries where consensual sex between people of the same sex is criminalized. Many thousands more incidents have gone unreported. According to Berrill & Herek (1992), numerous empirical studies, many of them unpublished, also bear witness to vast problem of under-reported, anti-gay hate crimes.

Orientation-based hate crimes are extreme expressions of homophobia, also known as homo-prejudice through criminal acts committed against people, their property, or organizations because of their actual or perceived sexual orientation (Eliason 1996; Hattingh 1994). Violence against LGBT people motivated by sexual-orientation- related bias is not just an individual injury, but can be classified as a hate-crime that is part of the larger system of domination against LGBT people (UNISA Center for Applied Psychology (UCAP) & Out 2008b). In October 2011, Johannesburg was terrorized by a serial killer who targeted gay men yet the state did not recognize these crimes (mambaonline 2011). Such crimes against LGBT people are often calculated to send a message to the victim's group of affiliation that sexual orientation and/or gender non-conformity is deviant, punishable and deserving of change (Judge 2008).

The concept of anti-gay hate crime is used when individuals become victims of bias crimes on the basis of their sexuality. In Theron's words, this concept is used when the LGBT or persons who are perceived as LGBT become victims purely because of their sexual orientation (Theron, 1995). In this regard both Bohn (1983) and Harry (1982) point out that reasons for anti-gay hate-crimes can be found in homophobia (Bohn & Herry cited in Theron 1995). Anti-gay hate crimes indicate animosity towards homosexuality (actual or perceived) as the common denominator in incidents of violence. Findings confirm that higher levels of "outness" and integration into LGBT communities and the adoption of gender roles associated with the opposite sex (i.e. increased visibility of gay men and lesbian women) lead to the increased rates of homophobic victimization (Wells 2003). In Durban, individuals who challenge patriarchal gender roles, culture and certain religious beliefs by dating people of the same sex experience higher levels of

hate speech than those who conform to such roles. Respondent number 43 states that he was expelled from church because he was gay; statements were made that he did not belong there. This link between gender presentation and vulnerability to victimization point to the highly-gendered nature of homophobic discrimination. The LGBT individuals are perceived to subvert or undermine normative patriarchal and religious gender roles, behaviors and stereotypes and are simply punished through discrimination as a form of social control. This can also be explained by criminalizing theory in which LGBT communities are victimized and their sexuality criminalized because of their subordinate sexual orientation.

Research conducted by Judge and Nel (2008), a Psychologist and Activist respectively, indicates that in South Africa, against the constitutional guarantees of freedom and human rights, homophobic victimization is endemic. Durban is not immune to this as the LGBT community continues to face discrimination and murder because of their sexual orientation. In a study conducted by Hattingh (1994) in a university community in the USA, verbal harassment stood out as the most prevalent form of discrimination. In this study, 76% of respondents had experienced verbal abuse, 26% had been threatened with violence, 17% had had their property damaged; most had concealed their sexual orientation. In the research 42% had made specific adjustments to avoid discrimination and harassment (D'Augelli in Hattingh 1994). A comparison of seven USA anti-gay victimization surveys (1988-1991) with a South African study conducted in 1992 found that, while South Africans were more likely to experience verbal abuse and threats of violence than their American counterparts, South Africans were more prone to physical violence and substantially more were sexually assaulted (Theron & Bezuidenhout 1995). In their research, with a predominantly white male sample, Theron & Bezuidenhout (1995) report that 22% of gay hate victimization involved rape and sexual assault, 22% physical assault and 67% involved hate speech. Similarly, a study by Theuninck (2000) found that 75% of the sample, again consisting primarily of white gay males, had experienced hate speech; 22% had been physically assaulted while 17% had been victims of sexual assault.

Studies have shown that lesbians face violence twice as much compared to heterosexual women (Graham & Kiguwa 2004). The phenomenon of corrective rape has been documented amongst Gauteng township-dwelling, black lesbians (Mufweba 2003; Special Assignment 2010). Unpublished research findings of the Forum for Empowerment of Women (FEW) suggest that black lesbians, particularly in townships, are increasingly targeted for rape. These women are perceived to pose a serious threat to patriarchal and essentialist gender norms. Of the 46 black

lesbian women that were interviewed by Mufweba (2003) in Gauteng, 41% had been raped, 9% were survivors of attempted rape, 37% had been physically assaulted and 17% verbally abused. Most survivors know their perpetrators, who are often a family member, friend or neighbor (Smith 2004). This is called primary victimization and it will be further elaborated on in the next section.

1.3.3. PRIMARY VICTIMIZATION

Any behavior shown towards the LGBT community that may have a negative effect on them is regarded as primary victimization (Berk cited in Theron and Bezuidenhout 2001). Primary victimization in this context, therefore, is characterized by a perpetrator's perception of the victim as having homosexual orientation and therefore perpetrators victimize individuals on the basis of their perceptions (which may or may not be in line with the victim's own identification). In other words, it is a first-hand experience of an anti-gay hate crime based on the perpetrator's perception of the victim's sexual orientation. In this research, 95% of the respondents suffered first-hand victimization in public places as well as in private spaces. More than half of primary violations (51%) happen in public areas where there is visible police presence. North American feminist, Andrea Dworkin (1989), rightfully observes that patriarchal structures are maintained even in institutions such as universities and police organizations. This is a place where one would expect highest levels prevalence of the law and gay acceptance, but contrary to this, the University of Kwa-Zulu Natal (UKZN), (Howard College) alone constitutes 9% of these victimizations. Respondent number 27 cites that he had to be accompanied by security guards out of a student residence because his fellow students could not tolerate a homosexual in "*their*" residence. Heterosexuality, in this case, did not only give the victimizers power and dominance but it also instilled a sense of possession over the university property. Worse still, the university system favors the victimizer at the expense of the victim, as often the victimized has to be evacuated from the university residences while the perpetrator/s remain. This can result in double victimization.

Anti-gay victimizations can be experienced on multiple levels. In this study, many of the respondents had experienced multiple victimizations. Perpetrators vary in aspects of domination and, as the study that forms the basis of this dissertation reveals, they often include law enforcement officials such as police officers. This study found that in Durban alone, 83% of the LGBT victims who report primary victimization encounter further discrimination at the hands of

the police. Berk (cited in Theron & Bezuidenhout (1995) points out that the symbolic status ascribed to homosexuality is of cardinal importance for primary victimization to take place. According to Theron and Bezuidenhout (1995) the victim of primary victimization is vulnerable to victimization on account of:

-relatively little or no access to the police and legal system

- membership to a group that will not readily approach the police for help

- involvement in activities that expose their vulnerability to a perpetrator

-being involved in high risk activities[2]

-being marginalized by a society that regards their behavior as abnormal and criminal.

Although primary victimization can be by both individuals and groups, the attack on an individual is seen more frequently (Conyers, quoted in Theron 1995; Harry 1982; Kiersh 1993). Research conducted in the United States has shown that in 64% of incidents relating to gay victimization that was reported to the police, more than two perpetrators were involved (Theron & Bezuidenhout 1994). Similar trends are found in Durban as most respondents who were assaulted in public and in private areas(home) indicated that they were attacked by a group of people, that is either parents, family members, students, a community of faith or a group of strangers. Respondent number 16 even cited that a group of perpetrators wanted to take her girlfriend with them, an indication that culturally, the culmination of female sexuality is being with a man as heterosexual discourses link female sexuality to their male counterparts. According to international studies, the average number of perpetrators involved in committing a hate crime against an individual is four (Theron & Bezuidenhout 1994). In the study conducted for this dissertation, the average number of perpetrators is three. On the basis of this, a deduction can be made that when gay men and lesbian women are targets, the number of victimizers will outweigh the number of victims.

A possible explanation for this is that being able to victimize someone who is obviously unable to defend himself/herself enables the perpetrator(s) to defend themselves and to experience power without threat of losing it (McDevitt cited in Theron & Bezuidenhout 1994). The tendency of perpetrators to choose effeminate men as targets is associated with the fact that they are often defenceless and cannot offer resistance. This explains how gender roles are deeply embedded as culturally, women are weaker and defenceless and thus, men who display feminine

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[2] These high risk activities include cruising, drinking etc. These activities are often coded as immoral, and as such, associated victimization is rarely reported.

traits are considered as women under patriarchy. Respondent number 5 cited that he experienced first-hand physical and verbal homophobic attacks and when reporting this, the police did not pay attention. When he asked why he was not given attention, the police officer on duty told him that it is because he was a "sissy boy" and the police started imitating him. This also informs the subordinate position of women in society as effeminate men are equated with women. From this analogy, it can also be deduced that violence against these sub-groups is often not taken seriously by some police officers in Durban.

Some young men regard primary victimization of individuals identified as homosexual as a sport. Gay bashing is sometimes even referred to by these groups as "the hunt", "the game" or "diesel-dyke thumping" (Thathiah & Lewis cited in Hattingh 1994; 24). In line with this, Mitchell (1992:16) states that "gay bashing is becoming a South African blood sport". In South Africa, specifically in major cities including Durban, anti-gay discrimination is characterized by immeasurable levels of violence.

In comparison with assault in general, the assault of the LGBT people in homophobic victimization is marked by brutality and multiple stab wounds, mutilation, strangulation or numerous gunshot wounds (Miller & Humphreys 1992). The multiple aspects of the murder of a football star, Eudy Simelani, is a clear example as she was raped, brutally beaten and stabbed twenty-five times in the face, feet and chest. Such brutality often renders victims of homophobic hate crimes unrecognizable. As is the case in South Africa, Mellissa Mertz, Director of Victim Services, in New York states that "attacks against gay men were the most indecent and heinous brutality she has ever encountered" (quoted in Berill, 1992:280). Informant number 42 cites that during a homophobic attack in the Durban CBD, perpetrators cut their faces with broken bottles, and upon arrival, police further assaulted them by verbally passing homophobic comments about their lesbianism before they left them unassisted. Such occurrences support Mertz's statements that anti-gay attacks represent brutal torture, cutting, mutilation and severe beating and the intent to rub out the human being because of their sexual orientation (Mertz 1999).

In South Africa, lesbians are thrown out of taxis and beaten up (Kelly 2009). In one incident a group of men kidnapped a lesbian and coerced her into sucking a male hobo's penis (Kelly 2009). In this context, as Sanger (2008) puts it, lesbian desire is located within the logic of hetero-normative hegemony. This does not centralize women's pleasure outside the hetero-patriarchal male gaze. Sanger (2008:277) argues that in South Africa, lesbian sex is set up as "just for fun", an activity secondary to hetero-sex where men are penetrators. In this way the

possibility of same-sex relationships is erased so that sexuality fits within the hetero-patriarchal framework where men are controllers of women's sexualities. This type of discourse, according to Sanger (2008), feeds stereotypical discourses that lesbians can change their sexualities, thereby reinforcing the normative constructions of heterosexuality as the only sexuality. In Gauteng, a lesbian woman's thirteen year old female twins were raped to show them that they should not be like their mother and that they should date men (Kelly 2009). One of the twins died the following year as a result of the complications of the rape (Kelly 2009).When these incidents were reported, police demanded evidence, but they did not follow up.

Many LGBT people in the Durban area have a perception that police are hostile and unwilling to assist when the LGBT person needs help; this is a phenomenon termed secondary victimization, as will be discussed in the following section. Herek (1989 cited in Theron 1995) points out that the tendency of the police to be biased towards the LGBT community and to discriminate against them discourages them from reporting. According to Theron and Bezuidenhout (1994), the reason why the LGBT individuals refrain from reporting their victimization to the police is because they believe the police cannot be trusted and will subject them to secondary victimization.

1.3.4 SECONDARY VICTIMIZATION

Prejudice renders LGBT people frequent targets of further victimization when they resort to service providers for assistance after an assault; a phenomenon known as secondary victimization Department of Social Development (DSD) 2005). According to Theron (1995), the LGBT are aware that reporting their victimization does not elicit empathy and understanding, but an increase in negative responses from law enforcement and police officers. Evidence of secondary victimization is visible in Durban as some police officers further verbally attack and blame the LGBT community for their victimization. Due to societal negativity and stereotypes, members of the LGBT community who disclose primary victimization may find that, in addition to the trauma they experience, they may even experience secondary victimization such as losing their jobs, social standing and respect. Theron (1995) supports this by asserting that in spite of changing attitudes towards people of color, women and religious groups, the LGBT communities are often confronted with negative attitudes and discriminatory practices even at the hands of those who are supposed to protect them. This homophobia is kept alive by institutions like the family, schools, the church, mass media and law enforcement agencies.

Negative attitudes and prejudice on the part of the criminal justice system, officials and services play a role in secondary victimization, which in turn can be referred to as institutionalized homophobia (Eliason, 1996). In this study, out of the 13 informants who reported gender-biased crimes, 83% experienced homophobia at the hands of police officers while 23% received appropriate treatment when reporting homophobic victimization. The LGBT victims are aware that reporting homophobic incidents does not elicit empathy and understanding, but an increase in negative responses (Berrill & Herek 1992; Lavin & Snyder, 2000), thus, due to societal homo-negativity, the LGBT individuals who experience victimization disclose primary victimization suffer additional trauma on a secondary level. Sexual assault and other incidences of interpersonal violence obviously increase the urgency of the individual's needs for support (American Psychological Association (APA) 1998).

In related research conducted by Judge (2008), in Gauteng South Africa, approximately 33% of the respondents experienced police apathy in assisting them when they reported anti-gay hate crimes. Polders and Wells (2004) postulate that this bias can extend beyond the security forces into the court systems thereby delaying prosecution or resulting in lack of prosecution. This has a negative impact on conviction rates. In instances such as the reporting of corrective rape or gay bashing in Durban, the sexual orientation or gender presentation of the victims has sometimes been fore-grounded during the consultation process with the police. This has elicited negative reaction from some police, resulting in LGBT people being afraid to compromise their well-being by disclosing their sexual identity. As Eliason (1996) puts it, fear of discrimination can therefore lead to avoidance or delaying of access to criminal justice systems.

In the context of this study, 23% of the incidents of rape and sexual assault against LGBT people are reported to the police while 73% indicated that they have not reported victimization in the past. Contrary to this, in Gauteng, only 42% of cases get reported (Wells & Polders 2004). Reasons for this are numerous and include inaccessibility to police stations, fear of further discrimination, as well as lack of resolve with which police officials approach anti-gay crimes. A significant proportion of the respondents reflected the core of this dissertation in that they indicated that victimization had embarrassed them and they feared that reporting would compromise the confidentiality of their sexual orientation. Judge (2008) argues that police officers may also contribute to under-reporting by using oppressive language, asking heterosexist

and insensitive questions and thus making the LGBT victim feel uncomfortable and unable to access the criminal justice system (APA 1998).

Worse still, the LGBT employees in government departments such as the army and the police force are extremely prone to secondary victimization when they report primary victimization (Theron 1995). In this regard, Whitman (cited in Theron 1995) points out that the possibility of being dismissed poses a major threat. In South Africa the plight of the gay police officer is no better than in other countries (Theron 1995). A letter received by the first author from the Commissioner of Police states unequivocally that homosexuality within the South African Police Services is rejected in the strongest terms (Burke 1994). This could force LGBT employees to live a double life thereby exposing themselves to inception of a double life syndrome to avoid losing their careers; it also illustrates structural homophobia (Burke 1994).

Improvement in the criminal justice system's handling of cases involving LGBT people is important in order to ensure that needed services and access to justice is realized and to prevent homophobic crimes in the medium term. The lack of literature around these crimes in South Africa, especially in Durban, also contributes immensely to the current problem. The following chapter looks into the existing literature around anti-gay hate crimes as well as reasons for engaging in this study.

2. CHAPTER TWO

2.1 LITERATURE REVIEW AND REASONS FOR CHOOSING THE STUDY

Gender inequality and homophobia have been identified as key and significant in the high levels of anti-gay hate crimes in Durban. Hetero-normative ideas of manhood and womanhood have increasingly contributed to the spread of violence against the LGBT community. Understanding of and experiences of violence and discrimination are strongly influenced by the dominant culture. Gear (2010) argues that the behavior and beliefs that make this culture are considered as normal and are upheld by those wielding power. The way in which these dominant cultures normalize violence simultaneously makes it invisible (Gear 2010). The stigmatization of the LGBT lifestyle has also resulted in barriers in accessing the criminal justice system adequately, and this work adds another important dimension to LGBT victimizations as there have been minimal attempts to analyze the relationship between police and the LGBT community in Durban. Same-sex partners have been subjected to widespread violence and discrimination at the hands of the police and this has increased levels of vulnerability. Stigma at times compels the LGBT community to believe there are no fundamental human rights or comprehensive means to address violence based on gender and sexuality.

Little literature exists on the impact of the proliferation of violence against the LGBT community and incidents of secondary victimization at the hands of police in Durban. Issues relating to gender inequality and violence should be essential in the efforts geared towards the prevention of violence. To be viable, these efforts should target social norms and their roles in increasing the risk of vulnerability on matters surrounding gender-based violence. Strong emphasis should also be put on cultural change. In view of what the previous section postulates, this topic was chosen solely in order to argue that experiences of police homophobia form complex experiences of mental and physical abuse and marginalization amongst the LGBT community in Durban.

Since police identity inevitably tends to merge with the general practices of identity construction, it cannot, especially in a transforming society, be separated from civil knowledge as this provides an important starting point for understanding the discourses of service. LGBT communities are silenced and, as a community, are often perceived as second-class citizens who are unable to access the criminal justice system. Such perceptions are also evident in some police personnel, many of whom are members of the dominant culture. Gear's (2010) argument also

finds meaning in Durban where the LGBT people are seen as deviating from the universal norm and are brought to conformity through various degrees of coercion. This also conforms to biological determinist views that sexuality and gender only exists in relation to the binary sexes and that any sexualities that exist outside of these are deviant.

Engagements with human dignity in relation to sexual orientation and sexual identity have become urgent and can therefore not be seen as subsidiary discourse. According to Foucault (1995), the target of analysis should be practices with the aim of grasping the conditions which make homophobia acceptable at a given moment and setting. Since 1994, the greater South African community has continuously debated varying interpretations of LGBT rights in response to transitional developments, but little of this discussion has addressed LGBT's access to the criminal justice and little has been done to better enhance their experiences with police officers. Thus, democratic institutions such as The South African Police Services still display a lack of commitment to fight anti-gay forms of discrimination effectively. As is evident, the Durban Municipality also lacks bylaws that look at LGBT violence driven by discrimination (Durban Municipality bylaws 2011). In addition, it lacks efforts to confront this violence (Durban Municipality bylaws 2011). Traditional thinking about transition has also undermined the existence of the LGBT's fundamental rights as they are perceived as secondary citizens and have been portrayed only as victims. Recently there has been rising attention relating to the role of the LGBT in conflict and post-conflict situations.

In the local context, South African LGBT communities are not fully recognized in the reconstruction of their country as their recognition is often counteracted by cultural, religious and political systems that are homophobic and as such are not totally free from societal discrimination and other social challenges. There is also a culture of silence surrounding LGBT issues in South Africa. As it will be discussed at a later stage, this research has found that, in Durban, homosexuality is viewed negatively. Recently, the president of South Africa, Jacob Zuma had to apologize for homophobic statements he made on national TV (Blandy 2011). Irrespective of the progressive Constitution, at a grassroots level, the LGBT group continue to be harassed, intimidated and discriminated against even by people who are agents of law enforcement (Theron 1995). Country-wide the LGBT communities are confronted by high levels of homophobia and are not included in the planning and decision making in the wider processes of social change. It is important to understand why laws against anti-gay hate crimes in Durban are ineffective and the implications that this has on the local LGBT community. As already

stated, homophobia can result in inequality in accessing the criminal justice system as this research will reveal is the case in Durban.

Authors such as Gear (2010) argue that there are discourses around hate-crimes that focus on blaming the victim for harassment and building the perception that victimization is the targeted person's fault and the perpetrator is justified. In Charles' (1994) perception, areas where the LGBT live are under-policed as police are not empathic towards the LGBT. In a number of incidents the LGBT confirmed that the police misused their power in relation to them and that the LGBT were blamed for their own victimization. These patterns are viewed as evidence of discrimination resulting from institutional and personal homophobia. According to Gear (2010), while these discourses work to make anti-gay violence normal and acceptable, the meaning attached to manhood in society demands a capacity to both use and withstand violence, together with the ability to manipulate others and to display self-sufficiency. Central to the argument is the affirmation that violence is integral in order to reinstate patriarchal structures, as seen in homo-negativity. These opinions resonate with Whitehead's view that violence is rife where heterosexuality feels threatened and perpetrators are compelled to secure their superior hierarchical position and power (Whitehead 2009). Whitehead identifies two categories of violence used to assert masculinity. While the first establishes both the victim and the perpetrator as manly and worthy rivals, the second category of violence functions to exclude the victim from the category of man. Informant number 5, interviewed for the purpose of this study, states that he was harassed at a police station because police said he was a "sissy boy". Respondent number 26 recalled that he experienced assault and was told that he was not a man because of his sexuality. These affirmations exclude the victims from the category of man.

Decisions to report homophobic victimization to the police vary along a number of social dimensions including gender, race and the victim-offender relationship (Akens & Kaukinen 2008). Recognizing the way in which these reactions to crime are socially distributed is crucial if appropriate attention is to be directed to the victims of these crimes. Cultural notions of manhood also contribute to non-reporting; respondent number 23 refrained from reporting violence against the LGBT as "a real man fights his own battles".

Black (cited in Akens & Kaukinen 2008) describes how law as a quantitative variable increases and decreases from one setting to another. The quality of the law varies with the rank of the people involved, their integration into social life as well as their intimacy to one another (Black cited in Akens & Kaukinen 2008). He determines a number of ways in which the social and

structural features of society determine when and how much of the law should be used. The closer the victim is to the perpetrator, the less chance of reporting an incident and the police are less likely to treat the problem as a crime. In this study, various respondents reported having encountered emotional, physical, mental and verbal attacks from close relatives, those at home and from friends yet these victimizations were not reported. Reasons for non-reporting include

- Reluctance to report because parents do not know and understand gay life
- Dependence on parents and fear of the risk of expulsion from home
- Fear of jeopardizing relationships with family or family members
- Fear of further violence if parents discover incidents have been reported
- Fear of reporting intimately connected perpetrators
- Getting used to the assault and consequently not taking it seriously
- Fear of being blackmailed
- Ability by victim to overcome family homo-negativity

Often, these uneven power relations are maintained by other women in Durban; respondent number 17 cites female neighbors who discouraged her from reporting her girlfriend's rape under the pretext that she would be killed. This threat against accessing justice also demonstrates how women can act to oppress each other in maintaining patriarchal rhetoric. Black (cited in Akens & Kaukinen 2008) also argues that the quality of the law varies with individual social rank, so disadvantaged groups such as the LGBT community in Durban, will be less likely to report victimization to the police because of some police stigmatizing homosexuality. Theron and Bezuidenhout (1994) argue that the reason why the LGBT refrain from reporting their victimization to the police officers is because they believe the police cannot be trusted and will subject them to further victimization. In line with this, Comstock (1999) cites other reasons; these include LGBT individuals perceiving the police as being anti-gay and lack of preparedness to disclose sexual orientation to the police.

The theory of rational choices holds that individuals normally weigh up the costs and the benefits of their actions. If an individual is a victim of a crime, one of the decisions a victim may make is to notify the police based upon the calculation of the benefits derived and the costs incurred from the action (Goudriaan cited in Bevacqua 2000). Victims always take into consideration the possibility of police action and the aftermath of their notification as well as the potential culpability. Goudriaan (cited in Bevacqua 2000) found that victims weighed up the characteristics of the situation, particularly regarding the severity of the crime in their decision. In this study, there are various reasons cited in relation to reporting of a crime. Among other

reasons why respondents did not report was because there was a lack of physical evidence; they thus treated the case as not serious enough or reporting it would compromise the secrecy of their sexual orientation. Other respondents did not want to experience more trauma or risk ridicule as a result of being gay and feared further victimization by police.

Furthermore, various respondents from the sampled population viewed lack of follow-up information on the part of the police, lack of physical harm as evidence coupled with the victim's withdrawal often had negative implications in pursuing the case. Other reasons included fear of not being taken seriously by police. Bohn, (cited in Muller & Piensaar 2003) observes that in addition to feeling vulnerable within a hostile society, the LGBT community has the perception of the police as hostile and unwilling if approached for assistance. Consequently, the LGBT community has the perception that their complaints will be treated with hostility and contempt. A variety of respondents in this study portrayed Durban police as being incapable of follow-ups, lacking compassion and lacking knowledge of the seriousness regarding homophobic crimes. Informants also mentioned that police in Durban thought gay life was not "*real*" and as such were reluctant to assist the LGBT as victims. Various authors (Davis 1992; Mitchell 1992) confirm that within South African society the LGBT individual who approaches police for help generally faces negative attitudes.

According to Herek (1989), the dilemma of the LGBT community is not only police disinterest, but also the fact that police are themselves primary and secondary victimizers. In concurrence with respondent number 42, who was verbally assaulted by several police officers at a crime scene, Theron and Bezuindenhout (1995) rightfully observe that the most common form of police victimization is verbal harassment. Other forms of victimization include physical abuse, soliciting, application of the law in a discriminatory way, and handling complaints concerning anti-gay hate crimes in an inefficient or unfair manner. Fuss (1991) emphasizes the vulnerability of LGBT individuals both in the home and society. This vulnerability is mainly due to their subordination in both these areas as well as the discourses of patriarchy throughout every level of the society, including the private and the public sphere. Feminism holds that the LGBT are considered culturally-legitimate victims, a term used firstly by Weiss and Borges (1973) in discussing victims of rape. In a hetero-patriarchal society such as Durban, where almost all systems of power and influence are dominated by patriarchy, minority groups such as the LGBT are likely to be considered as legitimate objects of victimization and abuse (Bevacqua 2000.). The LGBT have historically been considered as subjects by heterosexuality, subjects they can

mistreat and abuse. In discussing violence, (Bevacqua 2000) considers it a social and criminal problem rather than an individual or family problem as hetero-normative societal structures strive to maintain monopoly, ownership, power and control over society. Often victims feel that their experiences are not believed and that their abusers will not be punished for their actions. This state of stigmatization of the LGBT puts them at greater risk of violence and they may also less often seek help or contact the police as readily as their perpetrators.

Gender is inextricably linked to other relations of power such as race, socio-economic status culture and sexuality. Radical feminists such as Andrea Dworkin (1989) conceptualize the reason for homophobia as rooted in institutionalized patriarchal power that is possessed and exercised by men and protected by law and religious practice. This power, according to Dworkin (1989) is protected by police and legislators and is counteracted with silence. Many respondents in the conducted study chose to suffer in silence. Reasons for this silence range from fear of retaliation to known lack of care by police in dealing with anti-gay hate-crimes. Homophobia, according to Dworkin (1989), benefits the fashion in which male supremacy works. Prohibitions to homosexuality exist to protect male power in the sense that men are destined to dominate and control women during sexual activity. According to Dworkin (1989), sex is full of hostility and expression of power and contempt over the stigmatized subject who is a woman. The maintenance of men as dominant in power depends on keeping heterosexuality sexually inviolate and other sexualities subordinate; homophobia, it could be argued, maintains that power dynamic.

In his later work, Foucault neglected the relation between knowledge and power. The effectiveness of power is clearly emphasized as he insists that "it is not the activity of the subject of knowledge that produces a corpus of knowledge, useful or resistant to power, but power of knowledge, the processes and the struggles that traverse it and of which it is made up, determine the forms and possible domains of knowledge" (Foucault 1995:28). Foucault emphasizes that society constructs the tools of discrimination against people that are discriminated against (Foucault 1995). These tools are not only the institutions that use brute force in order to keep the LGBT community, invisible; they also include maintaining intellectual atmosphere that renders these institutions possible, and they have a mutual relationship. Connell (1995) makes a similar observation: that the maintenance of patriarchal dividend and the subordination of LGBT, as manifested in Durban, confers power on heterosexual police officers. It is the way social

principles and norms are grounded to guide individuals and society as a whole that Foucault sees as being behind the mechanisms of normalization and oppression.

In arguing for agency, Foucault emphasizes that it is important to expand the dimensions of the definition of power if one wants to use this definition in studying the objectivity of the subject (Foucault 1995). According to him, there are two aspects of this understanding of power that relate to the subject. First of these aspects is the humanist assumption that power is by its nature oppressive. This misconception of power neglects the constitutive function of a power network, along with an understanding of human nature that has the potential to flourish. It gives the view of the world as it was depicted by the philosophical atmosphere of enlightenment, a view that Foucault rejects. According to that view, man is born with a positive, constituting essence, which is good by its nature and then comes face to face with oppressive sovereign powers that limit human existence. To support this, Turk (1969) believes that the LGBT community that is forced into conflict by dominant police, who judge their behavior as inappropriate, can develop disapproval of their own unjust treatment and become set as able to mobilize and defend their position and beliefs.

This juridical power, or as Foucault (1995) sometimes calls it sovereign power, is only exercised as a negative force which in this study is equated to discrimination against the LGBT. Sovereign power comes into play only at specific points where law or human rights have been violated and can only act to punish as hetero-normative discourses perceive the LGBT as deserving punishment in Durban. This perception of power does not take into consideration the constitutive, positive function of power (Foucault 1995). He is against the hypothesis of subjection of human persons to power for the sake of actualization of what is perceived to be their true essence.

Mason (2000) explores violence and power from a theoretical perspective. The core idea shared by both perspectives, according to Mason, is that violence is instrumental in demonstrating power. The instrumental function of power is perceived to be knowledge. Specifically, violence has the capacity to mold and shape the way things are known as per essentialism which limits sex and sexuality between the two (normative constructions of) binary sexes. Violence is viewed as oppressive and the oppression is based on hierarchical distinctions influenced by difference. Theron's criminalizing theory advocates that the dominant group sets rules and laws that can be used to justify oppressive cultural norms (Theron 1995). On the other hand, feminist theory asserts that violence is a manifestation of male power in order to maintain social order in line

with the status quo. According to Foucault (1995), violence is the opposite of extreme disciplinary power. Power is a mode of action in response to some previous action. Violence typically negatively impacts the LGBT subjects in Durban by acting on them both directly and immediately to minimize resistance or opposition.

Authors such as Turk (1969) argue that the social order in society is based on consensus-coercion balance. This implies that some persons or groups have the power to use legal processes to ensure their power positions and to act against those that show behavior that is condemned. The same can be said of police officers who use legal processes to purport hetero-normative patriarchal structures. As a result of his analysis of power not as a property or possession but a certain type of relation, Foucault sees human subjects as nodes in power networks, as not being determining how the networks operate, but rather as consequences of their operations. Hence the individual LGBT can be said to be products of power. Heterosexual police who abide by hetero-normative structures adopt a domineering position while the LGBT community is expected to be subordinate. Turk (1969) postulates that the differences are handled by either violence or withdrawal by the victim. In the research related to this dissertation most of the LGBT participants responded to heterosexual domination, in the form of homophobia by withdrawal of charges. Judith Butler (1990) points out that there is a political shape to the human body and this is a sexed human body that is the site of cultural inscription. These cultural inscriptions follow the hetero-patriarchal essentialist discourses of gender which maintain that sexual desire can only be expressed between two binary sexes. The sexed body according to Butler (1990) is the firm foundation on which gender and the systems of compulsory sexuality operate.

Horn & Horn (cited in Lewis 2003) articulate that men experience sexuality through the gaze[3]. In one of his famous writings, Lacan interrogates the nature of sexuality and the human condition in general and he stipulates that "*gazing*" also connotes desire (Lacan 1966). According to him, the '*gaze*' is twofold: when one person looks at the other, he/she constructs that person as a subject to personal thinking and that the internal desire is communicated through the eye. In relation to this study, it can therefore be deduced that society invisibilizes homosexuality on the grounds that it is undesirable to the gaze and opposed to hetero-normative discourse of gender. The rapes and murders of lesbians in Durban could be explained by construction of women as subject to

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[3] The gaze in this context means desire. To elaborate further, the gaze here means that men experience sexual desire through gazing as a manifestation of attraction and this attraction is predominantly directed to the opposite sex. The undesirability also comes with the fact that the subject in homosexuality is another man instead of a woman.

men's desires, the opposite of which is deviant and elicits violence from heterosexuals. Merleau Ponty (1945) also observes that if an aspect of one's identity is not visible, it is hardly spoken about. Some police officers in Durban could be said to consider gay identity as invisible[4]. The understanding is that the less visible homosexuality is, the lesser its ability to challenge normative gender discourses. As Horn and Horn (cited in Lewis, 2003) put it , masculine fantasies and fears supports the spectacle of a woman as an object to man's desire, not a woman as an object of another woman's desire or a man as an object of another man's desire hence why LGBT sexuality is undesirable to the hetero-normative, patriarchal gaze.

In Durban and across all cultures in the contemporary South Africa, homosexuality can be likened to the '*new black*'. During the apartheid era, blacks were oppressed on the basis of their skin color and being different from what was perceived as the norm. Homophobia shares the same mentality and therefore supports new forms of marginalization. Racism, sexism and other forms of oppression in which a human being is discriminated against on the grounds of his/her difference from the norm also form part of this mindset. In one of his famous writings, Steve Biko, a world renowned philosopher and anti-apartheid activist defines black as

> …….. Those who are by law or traditionally, politically, economically and socially discriminated against as a group in the South African society and identifying themselves as a unit in which the struggle towards the realization of their aspirations. (Biko1946-1977; 52).

"Black" in this context does not signify the pigmentation of the skin, but a reflection of the mental attitude and participation on a road towards emancipation (Biko 1946-1977). It is a fight against all forces that seek to use difference including homosexuality, as a stamp that marks one as a subservient being. In this regard, Theron (1995) notes that within the dominant heterosexual authority of the police, consensus exists with regard to their own heterosexual social and cultural norms and rejection of cultural and social norms of the LGBT community, and often these two clash. Homophobia is often justified in terms of uplifting the moral basis of society but in reality it is meant to dehumanize the LGBT community. This makes conflict between these groups unavoidable as the LGBT oppose the expectations of the dominant to change their behavior. In this regard, Turk (1969) observes that the more offensive the behavior is in the eyes of the law enforcers, the more the behavior becomes illegitimate and the more prone to harassment the LGBT will be.

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[4] Merleau Ponty wrote vastly on what exists and the means through which existence is perceived. He also wrote on the construction of knowledge around what is seen as the object and the subject

The analogy between LGBT rights and black rights can be drawn from the fact that they are both casualties of discrimination on the basis of deviance from normalized hegemony. Police always have more alternatives at their disposal, whether legal or illegal, to see that justice is done. Just as it seeks to repudiate the fact that black is an aberration from the *normal* white, homosexuality in Durban challenges the normalized hetero-normative discourses. Black consciousness also closely relates to issues of power relating to the black oppressed, or, by association, the homosexual who holds a disempowered position in society and needs emancipation. Additionally, many of the informants in this study are black and homosexual and this is in articulation with hooks' (1986) observation that there are interlocking systems of power existent in societies and that the LGBT victimization occurs on multiple levels.

Muller & Piensaar (2003) argues that police still regard violence motivated by sexual bias as peripheral to, and insignificant in their greater domain of work. Thenjiwe Magwaza (2002) further supports this observation by indicating that gender-based violence is rampant but is not reported because of lack of mechanisms and structures where these crimes should be reported. Gear (2010) articulates the view that even in incidents where police officers respond, efforts to respond to violence against the LGBT lack consistency and commitment. Attempts to remedy violence have also been dogged by problems, uneven commitment, bureaucracy and lack of prioritization. There have also been traces of lack of follow through in the context of the situation in Durban as police are reluctant to investigate and execute arrest laws against perpetrators of anti-gay hate crimes. As Waites (2005) rightfully articulates, engendering LGBT acceptance does not necessarily translate into biological determinist views of sexual orientation as manifested in bio-medical knowledge that sexual orientation is biologically determined. Lewis' (2003) findings indicate that factors such as religion, education, gender and age strongly shape differences in police homophobia[5].

Jayaratne (2006) argues that the notion of essentialism can lead to reification of social categories as a discrete, natural and stable categorization which has been historically used to explain and justify existing social hierarchies. Social heterogeneity and unequal distribution of power make the relationship between police and visible LGBT very fragile as often police are the most visible embodiment of the dominant groups' power (Reiner 1985). "Queer" victims often do not seek assistance from the SAPS because some police often abuse, neglect or assault them within the

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[5] The use of the word sodomy has a number of religious meanings which reflect sexual expression between men as abhorrent, sinful and abnormal.

Durban metropolitan area. This impedes the fluidity of sexuality and prevents the LGBT victims from establishing their public identity, as illustrated by proponents of Queer theory. Amnesty International (2011) affirms that police officers fail to assist the victims because they themselves are perpetrators of violence and torture against the LGBT community. Others have argued that the society functions to present acceptable ways of being men and women. In other words, forms of masculinities and femininities that challenge hetero-normative perspectives are rendered deviant and punishable. Kimmel (1992) argues that in many ways the normative presentation of masculinities and femininities are those that privilege heterosexuality and pathologize homosexuality. As Donna Smith (2010) of FEW says, the violation of the LGBT community, especially lesbian women, needs to be of priority within activism against social injustice, gender-based violence or homophobia in the works of state actors (such as certain members of the police force) who commit themselves to securing the constitution.

Authors such as Sanger (2008) emphasize the existence of femininity and masculinity that reinforces and reconstructs hetero-patriarchy which operates unchallenged in the South African democracy. These discourses naturalize and universalize meanings and values which are socially constructed. Harding and Norberg insist that it is important to understand

> How our lives are governed not primarily by individuals, but more powerfully by institutions, conceptual schemes and their texts which are seemingly far removed from our everyday lives, but are effective projects of social transformation. (Harding & Norberg 2005; 2009)

Institutions such as law enforcement departments in Durban operate as influential in socialization, privileging and normalizing particular types of discourses about gender and sexuality. This is evident from police homophobia and lack of interest in LGBT-related issues in Durban. Nadia Sanger, a well-known publisher on representation at the Human Science Research Council, speaks of a South African society that has a normative hetero-patriarchal system (Sanger 2008). In this system, the unnamed male is central in defining female sexuality, and certain aspects of female sexuality are located as in need of policing, regulation and fixing to conform to a specific, but unnamed and unmarked, norm and this norm appears to be hetero-normative in nature (Sanger 2008).

Ideas of African sexuality and essentialist constructions in this context represent a professed divergence from the colonial, racist and patriarchal past in relation to the LGBT community's sexual rights and bodily integrity, but in fact confirm and reinforce hetero-normativity. These ideas result in the normalization of heterosexuality as the ideal representation of sex and

sexuality by rarely interrogating heterosexualized constructions of gendered identity (Sanger, 2008). The LGBT community's sexuality is often defined by these hetero-normative discourses. In this research, informant 17 asserts that she was attacked in her room at a hostel and her girlfriend was raped. The neighbors discouraged her from reporting the case, citing reasons such as the risk of being murdered. This in some sense limits the impact of the law and demonstrates how deeply patriarchy is embedded. It also demonstrates and reinstated hetero-normative values as the culmination of a lesbian's sexuality is perceived in relation to a man by societies in Durban. The discouragement from reporting simply denies the victim her victimhood and enables the perpetrator to enjoy his power over the victim without any fear of retribution. According to Sanger (2008), LGBT individuals are not allowed to define their sexuality and sexual needs outside of a dominant patriarchal imperative. The message is that same-sex relationships can be corrected or changed through violence and exclusivist discrimination, an option serving to regulate and control the LGBT community's bodies and sexuality (Sanger, 2008).

It can also be argued that police homophobia marginalizes the LGBT community's basic needs. This marginalization is characterized by law enforcement that does not isolate the needs of the LGBT community and this has direct consequences for gender equality. Hassim (2005) writes that the state and state institutions, such as the police, are intrinsically gendered and unequal. This is clear in cases where patriarchal practices often silence its LGBT citizens and leave social and cultural power intact. Sanger (2008) argues that space has been created to integrate gender equality concerns into the legal reform and policy, but consistent and cautious efforts need to be made to bring gender interests to center stage in decision-making bodies like the South African parliament and police in individual municipalities. As Sanger (2008) rightfully points out, the lack of interrogation of power and consequent maintenance of gender inequality is often sidelined in favor of a basic-needs approach and this has marginalized and silenced strategic gender concerns focused on critiquing patriarchal power.

Oliviera & Artz (1997) argues that violent homophobia and homophobia in its entirety and the extent to which police use their discretion in law enforcement relating to violence, and in particular, violence against the LGBT community is refutable. This is frequently guided by a code of conduct set and influenced by societal norms and this undermines the intention and effectiveness of the legislation. Often habituated is the idea that the black LGBT's sexual identity is a white man's invention, that it is not their own and that they do not have control over

its destiny. In one brutal incident in Johannesburg a young woman, only known as Nandi, was dragged by a man determined to show her what real women do. "Rape would cure her lesbianism" he said (ENews 2010). With a knife, he raped her repeatedly and when she reported the matter at the Katlekgong Police, station she was mocked and interrogated by detectives, who subjected her to a further victimization (3rd Degree 2010). Contrary to this, Punt (2007) observes that Queer theory pursues the diversity of sexual identity and is characterized by desire instead of need. Punt (2007) also observes that this theory builds on post-structuralism and post-modernist views to locate social change on coincidental and non-teleological effects of the ongoing liberation of desire. Thus, it entertains a thinking that is characterized by a more fluid notion of sexual identity and inclusiveness of homosexual liberation along with other concerns in main-stream society.

The quest for transformation in South Africa and in Durban is an ongoing one and cannot be divorced from the focus on human rights and freedom of the LGBT community. Police homophobia impacts heavily on organized and structured police work as well as nation building. Stereotypical ideas of masculinity often result in homophobia, as will be discussed in the subsequent section, and this demands continuous efforts towards the inclusion of the groups on the margins of society, however, the extent of police homophobia remains an open question and the role it plays in LGBT marginalization in the country is not quantifiable.

2.2 STEREOTYPES IN HOMOSEXUALITY

"A stereotype is a socially-shared set of beliefs about traits that are characteristic of members of a social category" (Greenwald & Banaji 1995). Stereotypes do not always accurately reflect the individual and this can result in discrimination, sexism and racism. Stereotypes develop when there is an inability or unwillingness to obtain all of the information needed to make fair judgments about people or situations. In this case, stereotyping prohibits some heterosexual police officers in Durban from seeking information and understanding issues faced by the local LGBT community. Stereotypes most often operate from biased and discriminatory assumptions. As Ndom et al. (2008) argues, in the absence of the total picture, stereotypes, in many cases, allow for the filling in of the blanks. Societies often create and perpetuate these stereotypes, but these stereotypes often lead to unfair discrimination and persecution when they are unfavorable (Ndom et al. 2008). By stereotyping, it is assumed that a person or group has certain (other) characteristics.

More often than not, stereotypes evolve out of fear of persons from minority groups such as the LGBT community. As indicated earlier one of the respondents could not be helped at a police station merely because he was perceived to be effeminate by the police officers he consulted. Reddy et al. (2001) observes that legitimization of homophobic stereotypes is constructed as a message that deviation from traditional constructs of masculinity and femininity are aligned with African patriarchy, is not acceptable.

2.3 MASCULINITIES AND HOMOPHOBIA

Since it has been used, the meaning of the term homophobia has evolved considerably. This word was introduced in 1972 by Weinburg in his *Society and the Homosexual* (Plummer 2001). At the time he defined the term as *"the dread of being in close quarters with homosexuals"* (Weinburg 2002;12). The definition is consistent with formal criteria in the literature of phobia (Plummer 2001).

Homophobia is a problematic term especially when taken literally (Plummer 1999). Contemporary usage includes a wide range of negative emotions, attitudes and behavior towards homosexual people (Hagga in Plummer 2001). These characteristics of homophobia are not in articulation with accepted definitions of phobia, which Hagga describes as *"an intense, illogical or abnormal fear for a specific thing"* (Hagga in Plummer 2001; 4). Five different key aspects differentiate homophobia from other types of fear:

> First the emotion classically associated with phobia is fear, whereas homophobia is associated with anger and hatred. Second, phobia often signifies that the fear is excessive and unreasonable, but homophobic responses are often considered reasonable and understandable, justified and acceptable. Third, the phobia automatically triggers avoidance whereas homophobia often manifests itself as hostility and aggression. Fourth, phobia does not usually relate to a political agenda, while homophobia has political dimensions including prejudice and discrimination. Finally unlike homophobia, people suffering from a phobia often recognize that it is disabling and are more motivated to change (Plummer 1999; 4).

The lack of consistency between contemporary usage of homophobia and the criteria used to designate '*true*' phobias is also reflected in the Oxford English Dictionary. The dictionary defines homophobia as a fear or hatred of homosexuality. Even in Weinburg's writing, homophobia is used to refer to widespread social occurrences and to a wide range of anti-homosexual bias and is considerably broader than his initial definition allows (Plummer 2001). The expression of hostility and prejudice by police towards the LGBT community in Durban clearly signifies homophobia.

Durban societies are to a certain level patriarchal and much of the public interest remains fixed on the inferiority and subordination of the LGBT group. Morell et al. (2007) emphasizes that focus needs to be redirected to the change in masculinities and gender relations that has received less attention historically. According to Morrell et al. (2007) it is important to note that masculinities can and do change and that masculinity is not a fixed essential identity for men. Gender change reveals that men and women differ and that masculinity and femininity are not static nor are they universal. Connell (1995) developed an argument for a pluralistic understanding of masculinities by asserting that while men oppress women, and women oppress other women, some men also dominate other men. In developing his argument, Connell (1995) emphasizes the point that this dominant masculinity is hegemonic and it creates prescriptions and determines cultural images of what it means to be a true man and a true woman.

Morell et al. (2001) observes that the majority of South African societies perpetuate and reproduce the dominant masculinity resulting in hegemonic gender relations and forms of masculinity. Instead of people viewing homosexuality with disinterest, Plummer shows that anti-homosexual bias is extensive and often deeply felt (Plummer 1999). During the apartheid era, many South African men were involved in military actions and although the state is currently seen to be trying to stabilize gender relations, this is met by extreme resistance as its male citizens are unsettled and unsure of their place in the new order (Morrell et al. 2001). The post-1994 South Africa continues to be caught up in the imbalance of its uneven gender relations from its past; violence seems to be the only answer to the contradictions in masculinities. As a result there is a level of homophobic inconsistency between the constitution and people who mean to safeguard it, as will be discussed below.

Patterns of LGBT intimacy differ, and have different meanings and follow different patterns in different cultures therefore patterns of biasness against these acts also differ (Harry 1982). In the context of this study, respondents emphasized indifference, verbal attacks, deliberate mishandling of cases, disappearance of dockets and name calling as the most prevalent forms of police homophobia within the Durban metropolitan city. As Plummer (1999) articulates, the details of each of these cases are quite different and they are culturally and racially unrelated. It is only when the values such as *normal and abnormal* come into play that this marginalization becomes attached to these categories. Dichotomies that are perceived as naturally opposite and symmetrical in sexuality may not be essentially so, but are positioned that way by cultural, religious and traditional values that are attached to them. Plummer (1999) supports this by

affirming that categories that are labeled unnatural, unbalanced, and irregular appear so because of the values that define them in relation to other values; such is the relationship between the police and the LGBT community in Durban.

Heterosexuality is not the only valuable form of sexuality. Gender change is highly complex and its processes occur within individuals, within groups and within institutions. It is important therefore to demilitarize police and LGBT relations in Durban. As Foucault's (1995) dynamic of power is contradistinctive to the traditional image of power that is oppressive, activism and advocacy in Durban should develop resistance and agency. It is crucial to understand that the "queering" of gender means that the norm itself is questioned and is not understood as a clear-cut perception of things. Gender propels questions as to how norms and power delimit and animate bodies and desires as gendered (Theim 2007).

A body of theories have been established to address gender inequalities and the human cost resultant of these inequalities. The following chapter aims to further elaborate on previously-mentioned theories and establish their pertinence in relation to the lethal violence against the LGBT community within the Durban Metropolitan area.

3. CHAPTER THREE

3.1 THEORETICAL FRAMEWORK

Violence and victimization have been topics of immense public interest and concern throughout the 20th century. Less organized forms of violence and victimization affect millions of LGBT people each year and violent crime is considered a serious problem (Hanson 1995). Great importance has been attached to issues of violence and victimization to generate a diverse and growing body of empirical and theoretical literature around LGBT issues.

In her attempt to theorize patriarchy, Sylvia Walby articulates the view that patriarchy co-exists with other systems of oppression. She emphasizes that within the patriarchal mode exists hierarchies of power that articulate with other modes at different levels of social formation and these modes become critical in maintaining patriarchal structures (Walby 1994). Squires (2000) observes that the distinctions between sex and gender and a set of culturally-defined characteristics have been central to gender theory. Here the terms male and female connote a person's biological anatomy while masculine and feminine indicate one's gender which, according to Squires (2000), indicates the socially-constructed characteristics of the binary sexes. As Moi (cited in Squires 2000) says, it has long been established that the *feminine* and *masculine* represent social constructs imposed by social and cultural norms and reserve *male* and *female* for the purely biological aspects of sexual difference.

Constructionist gender theory emerged in the 1960s to counter biological determinism which argues that one's biological features determine social and cultural characteristics and gender roles (Squires 2000). In this approach, sex is considered to be unalterable, desirable and biologically given. The intention is to distinguish sex from gender and to erode the social construction. Simone de Beauvoir (1973) developed the theory of an account of sex and gender distinction. She claimed that one is not born into a certain gender but rather one becomes a certain gender. She stresses the role of tradition and culture in conditioning the LGBT person to adopt a sense of inferiority in society. She argues for transcendence of sexual minorities in order that they too can become human subjects.

Squires (2000) observes that in developing a structuralist framework, attention was placed solely on power relations that produced and perpetuated binary gender relations and identities. She asserts that if gender is not determined by sex, then it is socialization in which the role of men

and women are not decided in a contingent and haphazard way. Brittan (cited in Squires 2000) says that gender reflects the material interests of those who have power and those who do not. In the context of the research for this particular study, police have the power to decide which behavior is criminal and worth policing and use their power to discriminate against the LGBT community. This demonstrates the complexity of structural state homophobia beyond interpersonally exchanged interactions. Rubin (1975) articulates the view that structuralist accounts of the gender binaries and sexes construct the two sexes in a way that concentrates power in the hands of hetero-normativity as reflected in heterosexist police officers' domineering behavior in Durban. According to Rubin (1975), the family is the central institution that perpetuates these gender roles. Reproduction and sexuality are presented in a determined social structure for most authorities in Durban; lesbian sexuality is viewed in relation to hetero-normative masculine sexuality, while on the contrary gay men as the research conducted in this particular study reflects, are considered as secondary citizens because they challenge normative gender hegemony.

Accounts of the acquisition of gendered identity are now rarely seen as mono-causal, as they were in early articulations of constructionism, for they presume a stable category of sex upon which gendered identities are constructed; however, this presumption of the conceptual stability of sex has been criticized as invoking the notion of biological determinism for the reliance on the category of sex is presumed and culturally defined. Squires (2000) asserts that gender can be seen as a debate within social construction. According to her, sex is biologically determined whereas gender is socially constructed. She observes three dimensions of gender construction within constructionist theory. First, there is the question of whether gender can be considered a manifestation of contingent stereotyping or of structural power relations; secondly, whether these structures can be considered singular or multiple and lastly whether they are material or linguistic. As Moller (1987) puts it, at one end of the spectrum are those whose explanations of the subordination of LGBT focus primarily on biological differences as being causal in the construction of gender while, on the other hand there are those who argue that biological difference may not even lie at the center of social construction (Okin cited in Squires 2000).

The constructionist account of sex and gender takes the focus off biological sex to a large extent by introducing the notion of gender as socially constructed and by defining the feminine in relation to the masculine without any substantive content in its own right, but this still leaves the binary sexes in place. Harraway (1990) interrogates these binaries further by noting that there is

nothing about being female or male that naturally binds these statuses; they are by themselves, complex categories constructed in sexual discourses and other social practices, thus, LGBT bodies themselves are transformed in social practice. As Connell (1987) states, male bodies don't convey masculinity on individuals, rather the body itself receives masculinity. In other words, not only is biological determinism rejected, constructionist tendencies to accept sex as pre-social is also condemned. The physical sense of maleness or femaleness should therefore be understood by police as a consequence, not simply a chromosome or the possession/absence of a penis (among other male-identified biological traits), but of the personal history, habits of posture or movements of a particular physical skill and images of one's body.

The claim that biology itself is a result of social organization has been shared by a number of theorists. Daly (1987) famously noted that the effects of prohibition of LGBT bodies prevented them from developing various capacities in various ways. Relevant to this in the context of the situation in Durban is the fact that the LGBT people are not adequately empowered even in the labor force compared to their heterosexual counterparts. Dworkin (1989) has asserted that sex distinction itself may be, in part, a social product with inter-sex and transgender people being less likely to be chosen as sexual partners. As Wittig (quoted in Squires 2000) rightfully argues, natural divisions between men and women have been used to oppress the LGBT and other minority groups. This is clearly manifested in Durban where LGBT's sexual activity is limited to their natural sex.

In contrast, Deconstructionists tend to invoke the Foucauldian notion of discourse in which the discursive body and the material body link (Squires 2000). Discourse is to be understood as an amalgam of material practices and the forms of knowledge linked together in a non-contingent relationship (McNay 1994). In this sense both the material and the non-material are mutually determining. Gender is therefore both a material effect of the way in which power takes hold of the body and an ideological effect of the way in which power conditions the mind. This, according to Squires (2000), erodes the sex/gender distinction as well as the distinction of the body as simply an anatomical fact and the mind as socially influenced. Judith Butler also advocates for a similar position when she states that

> Gender ought not to be conceived merely as the cultural inscription of the meaning of a pre-given sex; gender must also designate the very apparatus of production where the sexes themselves are established. As a result, gender is not to culture as sex is to nature; gender is also the discursive cultural means by which sexed nature or a natural sex is produced and established as pre-discursive, prior to culture. (Butler 1990; 1-25).

The essentialist school of thought argues for the true essence of being. This essence, according to Fuss (1991) is irreducible, unchanging and therefore constitutive of a given person or thing. In feminist theory, essentialism is cast as a form of appeal to a pure or original femininity and masculinity, while a female or male essence outside of the social order, is deviant. The essentialist assumes the natural to be the determinant of social and political practices (Squires 2000). According to this theory, essences can be biologically, materially and symbolically given. Thus, the essence of a man and a woman is biologically, materially and politically given. It is no less essentialist therefore to admit there is a historically or socially given female and male essence within Durban. On this note it becomes clear that the constructionist account of sex/gender distinction may itself entail essentialist claims. Fuss (1991), however, argues that there is no sure way to bracket off and to contain essentialist maneuvers in anti-essentialist arguments. Forms of essentialism discussed by Davis (1992) entail constitution of a universalized set of categories around the terms man and woman. In contrast, Brown & Groscup (2009) argues that gender identities are fluid, diverse and impossible to generalize. This also erodes the link between gender and sex in a manner that renders sex non-pertinent and creates a situation where men and women from all sex categories are expected to participate equally in the public sphere and in accessing law enforcement.

The strategy of inclusion aims at equality between the sexes and assumes that, if achieved, gender would no longer be a significant category. It re-values the LGBT in relation to hetero-normative discourses of dominance. According to this theory, the category of sex is itself a product of an existing gender order and needs to be challenged. Ulrich's Uranian theory of the co-existence of a body of a man and the soul of a woman challenges these binaries. In this theory, homosexuality is inborn and beyond the individual person's control and homosexuals in this context ought not to be socially or legally marginalized. Ulrich established the body as the legitimate locus of homosexuality (Dunn 2010).

Le Vay isolated nuclei in the hypothalamus that indicated both a sex difference and a sexual preference difference (Dunn 2010). Moreover, Hamer (cited in Dunn 2010) identified a gene for male homosexuality Xq28, which indicated that the predisposition to male homosexuality is generally passed down from mother to son on the X chromosome. Dunn (2010) observes that despite the cautions regarding these twin scientific discoveries, as well as the fact that neither of their experiments has been widely replicated with much success, many of the LGBT communities embraced the biological determinist views of orientation. This resulted in a switch

from pursuit for cultural transformation through sexual liberation to one that seeks achievement of political rights through the use of biological determinist arguments in making a case for greater civil rights and pro-gay political reform. These developments advanced the prominence of biological determinism as the hegemonic liberal position of tolerance towards LGBT individuals. Politically this liberal position on the LGBT tolerance was opposed to the conservative politics of the religious rights.

Within the South African context, these debates find articulation through the notion of culture and ideas that homosexuality is articulated as a cultural import: a behavior that is unAfrican. Spaniere (1995) articulates the view that openly LGBT people have joined traditionally conservative biological determinists and are impelled by reasons ranging from simply feeling they were born gay to recognizing the strength of legal arguments that if gayness is inborn rather than a lifestyle choice, people should not be blamed for something over which they have no control. Constitutive of this conservatism is the highly-gendered nature of biology and social science which fails to address the invisibility of female homosexuality and transgendered people.

Homosexual liberationists advocate for LGBT inclusion from a contemporary standpoint. According to Punt (2007), they use the premise of the naturalness of homosexuality and argue against the claims that sex and sexual desire between men or between women is not good or natural. This theory argues on the basis of justice and in relation to the essence of the Christian conception of God and creation for homosexuality as a natural variation in human life and therefore re-reading biblical and political texts. In the words of Punt (2007), more than claiming legitimacy for homoeroticism, homosexual liberationists hypothesize a radical ethical programme in which fidelity, love and mutuality is re-focused and therefore perceived as more intentional and more open to diversity.

Criminalizing theory purports that labeling is central to the police officer's homo-negativity. Theron and Bezuidenhout (1994) argue that criminality is the state applied by individuals with the power to do so according to legal and extra-legal as well as illegal criteria. According to this theory, a label or status of criminality is applied to the LGBT persons who hold a powerless position within society (Brown & Groscup 2009). In this manner, the LGBT community's behavior is perceived as deviant and therefore deserving punishment within a specific social environment. In most cases, as Turk (1969) observes, it is the behavior of the powerless that is punished or penalized and often follows the colonial and apartheid regime's Christian nationalist ideas. The LGBT in Durban are officially regarded as punishable whether or not they have been

arrested and sentenced. This is done through deprivation of the individual of the rights and personal relationships they value. According to Turk (1969), though the Constitution recognizes LGBT rights, the attitudes shown towards them by some police officers, in reality, denies them freedom, equal citizenship rights and the right to establish a public homosexual identity. Directing offensive attitudes towards the LGBT group by law enforcers by making use of homophobic techniques however is equally criminal.

Additionally, Queer theory challenges the very concept of normal, and as such, identity categories such as 'heterosexual' or 'homosexual', 'male' or 'female' as well as notions of what constitute legitimate gender boundaries (Stone 2001; Pilcher & Whelehan 2004; Tate 2007; Thiem 2007; Warner 1993). Such questioning includes the notion of essential sexual characteristics or 'essences' (Dreyer 2006) or ideas about 'gender cores' (Butler 2004; Talburt & Steinberg 2000). Furthermore, Queer theory focuses its efforts on the seemingly natural binary relationships (such as male and female) to explore the implicit inter-dependencies that exist in such binary relationships (Stone 2001). In terms of sexuality, queer theory can be said in one instance to be leaning on Simone de Beauvoir's idea that one is not born a woman but becomes one (Butler 2004). This inclusivist model of sexuality challenges the sexual norms within Durban as it asserts that gender is not something that one is born with, but something that one is acculturated into. Queer theory challenges sexual beings to understand themselves in relation to the greater community or culture in which they are situated (Stone 2001).

Additionally, it challenges the universalized framework of human sexuality that produces heterosexuality and homosexuality and considers cultural means of production for such a system to render sexual identity pluralistic and unstable. Punt (2007) comments that it celebrates diversity and difference rather than threatening the LGBT community as some police evidently do in this research. Queer theory is of particular importance in the relationship of some police with the LGBT community in Durban as it deconstructs identity and gender, as well as its accompaniments such as power, social roles, and hierarchical locations. It questions the operation of binaries from an exclusive preoccupation with homosexuality to a heterosexuality that is a socially and politically an organizing principle and from the politics of minority interest to a politics of knowledge and difference (Punt 2007).

Theim (2007) argues that an inquiry into gender should entail a reflection on how bodies are formed and lived in relation to others and in relation to social norms. According to him, becoming sexed and gendered takes place at the intersections of relations of power and

trajectories of desires (Theim 2007). Thus, when bodies become sexed and gendered in line with what is contextually and culturally normative, they, in effect become queered. In this manner social practices and expectations become queered when they are inhabited in ways that do not fully conform to social norms and so mobilize bodies and practices as sites for renegotiating these norms. Butler (1993) supports this by arguing that there is no biological body outside of or prior to, the social and cultural framework that regulates and produces bodies and desires as intelligible and material realities. In this study, it can be argued that this gendering and sexing of LGBT bodies is tied to desire and sexuality and the rigid dimorphism of opposite sexes is possible only in so far as heterosexuality is already in place as the norm through which gender and sex attain meaning.

The theory of Performativity suggests that when it comes to the nature of sexuality or gender, 'gender is a complexity whose totality is permanently deferred' (Butler 1990). Police officers are to understand this statement and affirm that 'the body is not naturally "sexed" (Spargo 1999). In other words, sex or gender is something that is said about the body, not something that is intrinsic to the body. Thus, rather than being a naturally-occurring phenomenon, gender is a fluid socially or culturally constructed reality. Following this line of thought, one can say that the LGBT community in Durban does not behave in certain ways because of their gender identity, rather, they have a certain gender identity because of the way they behave. Sexuality or gender can thus be described as an outcome of discourses, institutions and practices used in particular cultures or interpretive community (Butler 1993; Plummer 1995). In describing gender in terms of 'performativity', Butler (1993) emphasizes that gender is something one does, and not something that one is; the totality of self-expression as individuals.

Butler is not asserting that gender is something that is freely chosen, so that one can say, 'I choose to be gay', or 'I choose to be heterosexual'. Rather, gender is something that the LGBT community in Durban is born into, not in the sense that they are genetically predetermined as a particular gender, but in the sense that the culture that they are born into determines, through its own pre-existing systems of signification, the gender that they are (Butler 1993). Hill articulates that

> "What people do, and the way they behave, are interpreted or understood by their pre-established position or positionality within language that we come to 'inherit' as a result of society associating certain body parts (or secondary sexual characteristics such as genitalia and body hair) with certain linguistic categories (Hill 2009:2).

Not only is it possible for persons to have a different understanding of their *genderedness* the older they become (as is the case with the 'coming out' experience of many gay men), but it is also possible that, on a cultural level, ideas concerning the expression of gender or sexuality can and do change (Hill 2009). To demonstrate that gender is not something that the LGBT individual are essentially born with, Butler is able to use the idea, or parody, of drag (Butler 2004). Thus, dragging men challenge, on a profound level, the notions of maleness and femaleness. This is because these men in drag behave differently from culturally assumed norms with regard to male or masculine conduct.

3.2 THE POLICY CONTECT OF SEXUALITY IN SOUTH AFRICA

South Africa's transition from an apartheid state to secular liberal democracy is one of the great political feats of modern society (Sember in Reddy et al. 2009). At the center of this transformation is the constitution of South Africa (Act no. 108 of 1996) particularly the Bill of Human Rights which is widely considered the most fully realized blueprint for rights-based governance in the world (Sember in Reddy et al. 2009). The most crucial content of the new dispensation is that it embraces difference and will create a significantly diverse society free of discrimination and prejudice (Sember cited in Reddy et al. 2009). The identities, practices and aspirations that are espoused in what is sexual, are broadly defined among the vectors of freedom embodied in the constitution. This constitution according to Sember (quoted in Reddy et al. 2009), is indeed the expansive articulation of the gender rights; the explicit mention of sexual orientation in the broader non-discrimination clause is one of the real innovations of the document when envisaging gender and sexual freedom. This links it to the Bill and is the realization of the success of the democracy as a whole.

The confident and unequivocal aspirations entrenched in the Constitution are the result of a violent and bitter history of the struggle and the implementation requires enormous labor (Sember quoted in Reddy et al. 2009). In fact since 1994 when the Constitution was reviewed, a variety of experiences has been and continues to be constructed. Many citizens, however, remain affected by inequality and prejudice (Sember cited in Reddy et al. 2009). Groups who blame either secularism or culture as the source of corruption and social ills in South Africa have grown more prominent and as well advocate different trajectories from the ones envisaged a decade ago. Their remedy is to return to the conservative Christian fundamentalism which harks back to the ideological foundation of the apartheid state, or some suggest the revival of the essentialist

conception of the African traditional culture as imagined to have existed in the pre-colonial era (Sember quoted in Reddy et al. 2009). In the 'gay-debate' there is tension between two extremes around which the controversy concerning homosexuality and the Bible revolve (Punt 2007). This tension can be expressed in terms of an 'essentialist' school of thought versus a 'constructionist' school of thought (Weeks 2000) or, to put it another way, a distinction is made between 'chromosomally-determined sex as opposed to culturally-constructed gender' (Parker cited in Warner 1993; hill 2009:1)

Gender and sexual grounds are the battle field for these groups which, irrespective of their irreconcilable differences on most matters, find common ground in their intractable opposition to abortion, gay marriages and in their support for death penalty (Sember quoted in Reddy et al. 2009). Gay rights, especially in relation to marriage, have been a lightening rod for the controversy. On close examination, seemingly straightforward cases of homophobia within the police force turn out to be the foundation of the deep-rooted prejudice, naturalized moral codes, historically rooted practices, displays of power, as well as distraction from political crises (Sember cited in Reddy et al. 2009). These are all reflections of a society that does not recognize the rights of its minority groups and misuses power to subvert diversity in society. The deconstruction and reformulation of these attitudes require that one dig deeply into the fundamentals of social organization in order to pinpoint where racism, patriarchy and heterosexism converge together into a logic that is the truly dominant organizing principle of the society in question (Sember cited in Reddy et al. 2009).

The terms of this logic, such as the concept of "African culture" and the "distinctions between masculine and feminine" as well as "devouring the natural order" are refutable and replaceable with political redefinition. Furthermore, the South African constitution and reality make these arguments now more available for debate, struggle and redefinition (Sember quoted in Reddy et al. 2009). One foundation for this debate is the complex historical revisionism used in many post-colonial African states to defend colonial era sodomy laws as expressly African (Sember cited in Reddy et al. 2009). Failure to engage these laws and debates is to endorse homophobia as culturally permissible and immutable and to become agents of the status quo. The struggle for gender and sexual liberation should be at the heart of remaking Africa.

Though the LGBT are allowed to vote, little is said about the role gender dynamics play in the construction of new democratic institutions. The constitution (and universal understanding) help the LGBT community to fully understand the universal terms of citizenship but it ignores the

different ways in which the LGBT individuals experience these democratic institutions (Seidman 1999). The current corrective rape and police service's hesitation to apprehend perpetrators demonstrate dominance, inadequacies and indifference to democratic institutions and how they fail to enhance the rights of the LGBT community. The LGBT persons are discussed as recipients of policies rather than agents of reconstruction. In other cases where the LGBT citizens form organizations that deal with lack of benefits and political struggles, they are met by intense opposition from their heterosexual counterparts, hence the importance of mass action and unions in Durban. Targeting media, tradition and policing to encompass greater sexual autonomy, campaigns that rid hegemonic sexual norms would be a step in the right direction. In this process, heterosexuality has itself to become the object of the struggle and transformation as well as a partner, not just condemnation and critique.

3.3 POLICE AS STAKEHOLDERS

Act 108 of 1996 of the constitution of the Republic of South Africa emphasizes that police as servants of the community should uphold and safeguard the Bill of rights and protect all citizens. It is in the light of this that the former Minister of Safety and Security, Sidney Mufamali, stated that

> "The new South African Police Service must and shall take pride in the Constitution. The human rights chapter of the constitution will remain close to the heart of the police official for this is key to the effectiveness and success of police work and the courts of the land. In many senses the police will be custodians of the constitution

> - they have to enforce its provisions even if it's the state officials who threaten to violate it
> - they will protect the exercise of human rights by citizens even if the police service itself does not agree   with the causes espoused by that group of citizens" (Mufamadi cited in Theron and Bezuindenhout 1994: 11).

On the basis of the above it is evident that police officers in Durban and the entire country should enforce arrest laws for anti-gay hate crimes even when they are not necessarily favorable towards officers. On a similar note, Stanz et al. (2007) say that police should strive for policing methods that satisfy community needs. Mangole (2004) also contends that the SAPS has the duty to serve and to protect members of the public, irrespective of their number, sexual orientation and the type of cases they are dealing with.

Durban police have been struggling to establish a LGBT client-oriented police culture and this calls for urgent steps to develop philosophies aimed at serving the LGBT community better. In 1996, the South African government adopted the national crime prevention strategy to serve as a

framework for a multi-dimensional approach to crime prevention. This should seek to better understand LGBT issues in policing. The new democratic dispensation should direct resources towards resolving the visibly disproportionate distribution of justice regarding the LGBT community. The results of this research demonstrate how insufficient and biased personnel combined with conservative belief systems, contribute to a system that does not afford the LGBT community in Durban satisfactory service. There are clear policy guidelines that relate to the investigation of offences. The policy guidelines are adequately outlined in the SAPS National Instruction no 22 of 1998 and deal with offences and support of victims. The guidelines state that police should treat victims with respect when taking statements and investigating cases; police should provide them with information about their cases and the criminal justice system and refer the victims to further support systems in the communities; but there is tension between the LGBT's needs and those of the system designed to help them. The Family Violence, Child Protection and Sexual Offences unit policy document also outlines the roles of police officials in abuses including abuse carried out on homophobic grounds. Specific mention is also made of LGBT rights in the Constitution of the Republic of South Africa which resonates with international charters such as the African Charter on the rights and welfare of all citizens and the United Nations Charter on Human Rights.

In a further effort to establish a client-driven police culture, the SAPS has reviewed its mission and vision statements to align it with the new Police Act of 1995 (Stanz et al. 2007). A service charter was also launched in 2002 to improve the service delivery to victims of crime, including crimes of bias, but police officers themselves commit these crimes. Despite the implementation of the charter, numerous complaints of poor service by police towards the LGBT community in Durban still surface. Irrespective of client-centered training, gendered crimes are still not taken seriously. This finding is supportive of the observation that there is a lack of will and commitment on the side of police regarding crimes committed against the LGBT community. Police training should consider the social make up of their employees as this influence their morale and how they deal with LGBT cases. It is also important for those researching LGBT issues and policing to make police officers aware of the dynamics that exist between the dominant group and the powerless minority groups. This is only possible if the SAPS opens its doors to researchers, introduces courses in which these issues can be addressed in depth, as well as re-training officers who encounter problems with the gay community (Theron 1995).

To elicit adequate data, theory has to be accompanied by appropriate research design and approach. Subsequent to this, the researcher has engaged appropriate methodologies and explains how and why they are utilized in the collection and analysis of the findings relevant to this particular type of research.

4. CHAPTER FOUR

4.1 RESEARCH DESIGN AND APPROACH

In this study, qualitative research methods were used to collect data. This research method is appropriate as it elicits the richest data as well as providing a platform to gain a broader understanding of the situation. Creswell (1994) argues that qualitative research is primarily interested in meaning. To be more precise, it explains how the LGBT community in Durban make sense of their lives, their experiences as well as their structures of the world in relation to the criminal justice system. A purposive probability sampling technique was used to select informants. In purposive sampling the researchers intentionally chooses the subjects who in their own view are thought to be relevant to the study (Sarantakos 1998).

This study investigates how the LGBT individuals from the selected sample group, have experienced and view the treatment and service offered during investigations related to their experiences of homophobia. As a means to facilitate easy summarization and analysis of the data, a self-administered questionnaire was used to collect data of the experiences and perceptions of self-identified LGBT persons in November 2011. This questionnaire was categorized into four parts: the introduction, informed consent, interview guide as well as the subsequent questions. For the purpose of adequacy and convenience, this questionnaire was available in two local languages, namely: IsiZulu and English, with a combination of open and closed-ended questions. This helped in exploring the LGBT community's perspectives and to improve the reliability of the study. The introduction was followed by demographic questions concerned with sex, age, time and race in order to guide and lead the respondents into the actual questions. This also served to gauge the respondent's age for consent purposes and to compare the binary sexes as well as their race and location for the purpose of call-backs.

Burns (2000) observes that offensive and frank questions at the beginning of a questionnaire can lead to refusal or withdrawal from the whole schedule. For this study, questions were worded simply and close-ended questions communicated specific messages to avoid distorting meaning. Open-ended questions were unbiased. Models to assess the nature of LGBT victimization and victimization rates were adopted. These models were instrumental in understanding whether or not anti-gay hate crimes were reported to the Durban police. Reasons for not reporting and the kind of treatment received at the hands of police in Durban were assessed. These were adapted from listed anti-gay hate crimes in South Africa using a research conducted by Wells and Polders

(2004). A range of different forms and number of cases of victimisation by police were taken into consideration using a three-point scale. The scale ranged from one to ten times and more. Discourse analysis has been instrumental in examining the meanings assigned to social practices in relation to the LGBT community and how these come into play in understanding police attitudes towards the LGBT in Durban. It seems relevant in understanding the taken-for-granted assumptions that surround LGBT issues and gay bashing within the Durban area. The questions were numbered to avoid confusing the informants during the interview.

One of the major reasons for adopting a questionnaire is because it is less expensive to administer, particularly in a dispersed sample population as is the LGBT community in Durban. As Burns (2000) states, the purpose of the questionnaire is clearly stipulated in print. Each respondent received a similar set of questions in the absence of an interviewer thereby contributing to the standardization of responses. In this way, the respondents were granted an opportunity to answer in their own time and at their own pace so that errors, resulting from recording of responses, were reduced, and fear and embarrassment, that could result from direct conduct, was avoided.

Blanche et al. (2006) stipulates that qualitative research methods are instrumental in situations where there is a need to engage open-ended, indicative exploration which, in this case, is the inappropriate treatment of the LGBT community within the Durban Metropolitan area. Exploratory methods were employed to investigate whether the relationship between some police and the LGBT in Durban could be characterized by homophobia. In defining exploratory research, Dane (1990) asserts that it is an attempt to determine whether or not a phenomenon exists. According to Dane (1990), it is used to answer questions of a general form such as whether or not homophobia occurs. Burns (2000) insists that the qualitative mode can be seen in its emphasis on naturalistic investigative strategies as they enable the researcher to explore complexities in interaction using interviewing as the main technique.

Qualitative methods are a way of understanding the LGBT and their behavior in relation to the police in Durban. Burns (2000) observes that qualitative methods research issues that

- explore folk wisdom and practices that do not work
- investigate real or hidden agendas of organizations as opposed to stated agendas
- cannot be done experimentally for ethical and practical reasons
- unravel informal and unstructured links and processes in organizations as well as

- delve in depth into processes.

Thus, the strength of qualitative methods in this study lies in its descriptive and exploratory nature as it stresses the importance of context and the subject's frame of reference (Burns 2000). In the same way qualitative methods have been used to explore hidden police agendas and unethical police conduct with the LGBT community.

The scientific value of qualitative research methods is based on the fundamental claim that social scientists must grasp the meaning that social actors themselves give to their activities as quantitative research methods do not adequately capture these meanings. Becker (cited in Weinburg 2002) advocates that to understand why police are homophobic towards the LGBT community, it should initially be understood how homosexuality appeals to them, their social police structures, delinquent subcultures, social norms and other commonly invoked explanations. Weinburg (2002) insists that qualitative research is crucial if a thorough understanding is to be obtained regarding perspectives which emphasize the LGBT's own stories. Qualitative research methods are important for gathering the life history, for covering everything else there is to know, while at the same time ensuring that every important fact squares with other available evidence and that the subject's interpretation is honestly given.

Becker (cited in Weinburg 2002) states that qualitative research methods can be instrumental in narrating life histories of a certain category of people, such as the LGBT, so as to highlight the subjective side of institutional processes. Thus, they can reveal how institutional arrangements are reproduced, sometimes unwittingly, through activities that are locally meaningful to the actors involved. This research method has been used to unravel points of view and social circumstances that would otherwise not be revealed thereby serving to expand social horizons between police and the LGBT community. Becker (cited in Weinburg 2002) says that data collected through qualitative interviews and life documents can be a valuable resource for scientific theorizing of formal hypothesis testing. A combination of descriptive analysis and traditional, content-analysis techniques were also employed to analyze data in this study.

No longer seen as a simple window into the worlds of research participants lives, the interview has been the subject of increasing analytic attention. Marjorie De Vault (cited in Becker 1970) has been at the forefront of a growing community of researchers who advise that greater analytic attention be paid to details of interviewers. Drawing from feminists scholarship, De Vault argues that interviews reveal how participants experience their worlds (De Vault cited in Becker 1970).

4.2. INFORMED CONSENT

Informed consent entails making the subject aware of the purpose of the study, its possible risks as well as the credentials of the researcher (van Zyl & Sinclair 2002). Hegan (1997) insists that such consent should be voluntary and informed to ensure that the participants' rights are respected and in order to promote willingness to share information honestly. In this case, consent was sought through the questionnaire. Participants were also informed that should they feel uncomfortable with the questions asked, they were free to withdraw from the study immediately.

4.3. ANONIMITY AND CONFIDENTIALITY

Singleton (1998) explains that the right to privacy is the individual's right to decide when, where, to whom and to what extent the respondents' attitudes, beliefs and behaviors will be revealed. In this research, participants were assured that pseudonyms were going to be used and that confidentiality would be assured. Participants were also assured that all information produced would only be used for the purpose of the study. The sample was chosen on the following grounds:

- all informants were members of the LGBT community living in Durban
- the majority of them had experienced homophobia either from the police or members of the public
- they had either reported a homophobic crime or had an idea of how homo-negativity was handled by police in Durban.

Through this research it was established that the LGBT were treated with disrespect and indignity by either the courts, members of the police or the public, hence it can be said that the questionnaire elicited factual data. Based on statistics from this study, it appears that the LGBT are particularly vulnerable to hate crimes within the Durban Metropolitan area. As will be shown below, the results indicated that most of the respondents had experienced victimization in their lives be it non-physical or physical.

4.4. FINDINGS AND DISCUSSION

Incidents of LGBT victimization within the Durban Metropolitan area are presented in Table 1 below; clearly hate speech was the predominant form of anti-gay victimization as it had been experienced by 47% of the total LGBT population who reported victimization. Wells and

Polders (2007) postulate that this form of violation is largely tolerated in society on the basis that it inflicts no physical harm on the victim. When examining the effects on the victim it is obvious that it lowers self-esteem, increases risk of depression and thoughts of suicide (Polders & Wells, 2006). It can also lead to physical violence. On a universal level, Reddy et al. (2009) argues that because the LGBT deviate from the traditional African patriarchal constructions of masculine and feminine, which is seen as unacceptable, hate speech is often legitimized and serves the purpose of maintaining a discourse that pathologizes LGBT sexuality.

Table 1: Recent trends of reported violations and rates of LGBT victimizations in Durban

Forms of Victimization	Victim's Gender		Totals	Prevalence percentages
	Gay men	Lesbian women		
Hate Speech	17	10	27	47.3%
Physical Abuse	7	1	10	18%
Sexual abuse	1	1	2	4%
Domestic violations	4	9	13	23%
Attack on property	2	1	3	5%

The statistics cited above indicate the severity of homophobic victimizations experienced at UKZN Howard College and the Durban Lesbian, Gay, Bisexuals and Intersex Health and Community Centre in Durban. Of particular interest is that in this study a considerable number of lesbian women seemed to encounter domestic assaults either from their parents, family members or society at large. Police homophobia subjects these women to double victimization thereby undermining the only resort they have to law enforcement. Newly emerged in these victimizations is the phenomenon of blackmail used by some heterosexuals to violate LGBT rights and threaten to disclose their sexuality in case of non-compliance. In this study, the LGBT have been disowned by their families based on their sexual orientation, and lesbian women have been battered and raped by members of the public in a bid to cure them of their lesbianism and

coerce them to conform to hetero-patriarchal societal expectations. As Wells and Polders (2006) argue, sexual violence against the LGBT may be due to a perceived threat to hetero-normative constructs of male and female, and in particular, ideas of masculinity[6]. This yields the conclusion that LGBT rights in Durban are not necessarily protected as in the rest of African societies. There is still evidence of homophobic rhetoric surfacing in many societies in Durban. As previously mentioned, although harmless on the surface, hate speech is dangerous as it harms individual confidence, portrays hate and often leads to physical damage or injury.

Domestic violence in this study encompassed violence experienced within families, at the hands of partners as well as extended family members. This violence can in part be explained by the notion of homosexuality being unAfrican and therefore unacceptable, coupled with a strong patriarchal culture in South Africa, including Durban communities in which women are inferior in status (Wells & Polders 2006). As said earlier, Sember (cited in Reddy et al. 2009) takes the view that hetero-normative constructs that allow a perpetrator to coerce lesbian women to conform to societal expectations, reinstates historical revisionism used in various states to defend sodomy laws as African. Failure to meaningfully engage these laws endorses homophobia as culturally acceptable and immutable. With regard to violence within relationships, it can be argued that it is perpetrated by male partners who want to assert their masculine gender roles as associated with aggression and violence.

4.5. PLACES OF GREATER RISK FOR ANTI-GAY HATE CRIMES IN DURBAN

Several respondents singled out particular places as prominent locale for homo-negativity and homophobic violence. Table 2 indicates places with notable occurrences of anti-gay hate-crimes in Durban.

Table 2: Places of greater risk for homophobic crimes in Durban

Notable locale of anti-gay hate-crimes	Gender of the victim		Totals	Prevalence percentages
	Male	Female		
Taxi Rank	-	1	1	2%
Durban Streets	11	7	18	36%

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[6] Corrective rape is a newly emerged phenomenon in South Africa, where lesbian women are raped with the belief that after experiencing a real man, lesbian women will become heterosexual.

Howard College residences	5	-	5	9%
Victim's home	4	9	13	23%
Workshop/city parks	2	-	2	4%
Durban South Beach	2	2	4	7%
Church	1	-	1	2%
Public areas\restaurants & Public transport	2	-	2	4%

South Africa has recently witnessed a new trend of sexism where women are assaulted at the taxi ranks across the country. This is done to degrade women who are perceived to contravene conservative hetero-patriarchal ideas of African womanhood. These include women perceived as lesbian women and women who wear revealing clothing. As indicated earlier these are often justified in terms of uplifting the moral basis of society yet in reality it dehumanizes women and the LGBT community. Findings in this study demonstrate traces of this new form of sexism, where a lesbian woman was assaulted because of her perceived sexuality. This reinstates hetero-patriarchal norms and dictates to women how they should enjoy their bodies.

Also noteworthy in this study is that venues like main streets, the home, institutions (UKZN), the beach and public areas such as transport depots and city parks, have significantly higher incidence rates. This may be attributed to use of public transport by LGBT citizens in Durban. This finding could be indicative of the fact that the majority of the LGBT individuals in Durban are still disempowered, under-resourced and economically marginalized. Also worth noting is the fact that violence is prevalent in most attacks as fighting frequently surfaced in the study and most assaults and rapes were executed at gun point. This adequately conforms to previously stated findings that anti-gay attacks are often characterized by extreme violence to send a message of hate to the entire community. The homophobic rhetoric within some churches could be due to the fact that some patriarchal structures remain unquestioned in the bible and because certain texts are directed at the LGBT to disclaim their membership in the community of faith. This also supports the rhetoric of colonial laws that render homosexuality as "unAfrican" and opposed to African Christianity. These churches are not adopting a more inclusive approach in which the legitimacy of same-sex relationships is grounded on a re-focused principle of fidelity, love and mutuality, thus being more open to diversity and the prophetic mission. Surprisingly is also the fact that the majority of black men are battered in townships. This could be explained in

terms of using violence against what is seen as a threat/challenge to normalized ideas of manhood.

4.6. ROLE OF POLICE IN THE REPORTING OF ANTI-GAY HATE CRIMES IN DURBAN

Victims of anti-gay hate crimes in Durban often choose to refrain from reporting incidences of homophobia to the police. There are a number of reasons for the under-reporting of anti-gay hate crimes; crimes perpetrated by someone related to or close to the victims, such as friends, immediate family, extended family and lovers are rarely reported due to perceived fear of further violence or fear of jeopardizing relationships. This compromises LGBT identity as they are often forced to adopt bogus heterosexual identity. The consequences of this fake identity are far reaching psychologically. On the other hand, crimes that involved violent injury and loss of property were reported.

Wells and Polders (2006) found that the LGBT community was less likely to report anti-gay hate-crime as they felt the police would be unsympathetic while others feared hostile responses. In this study more than half of the LGBT victims that experienced victimization recorded discomfort in reporting hate crimes to the police. In the sampled population, 82% (47) of the LGBT experienced primary victimization both by the larger community and at the hands of police officers within the Durban Metropolitan area. Out of the 47 individuals in this study who experienced primary victimization, 60% (34) did not report these anti-gay hate crimes. Out of the 34 who did not report them, 71% (24) of the LGBT group in this study expressed discomfort about reporting anti-gay hate crimes as opposed to the 29% (10) that indicated willingness to report in the future. The group that expressed unwillingness to report crimes perceived police officers and institutions in Durban as

- biased, unprepared to accept homosexuality and perpetuating discrimination against the LGBT community
- incapable of taking LGBT statements and making follow-ups
- humiliating, being inattentive and negligent when taking LGBT statements
- ignorant and uninformed about LBGT issues
- perpetuating violence and hetero-patriarchal ideas of masculinity with affirmations that   true men (as opposed to gay men) fought their own battles

In one incident police raped a gay man and threatened violence if he reported the crime. Even more disconcerting is the fact that out of the 18 respondents that have not experienced assaults on a primary level, 67% (12) of them expressly indicated uneasiness about reporting anti-gay hate crimes to the police in Durban. This supports the idea that the LGBT view the police as further victimizers, judgmental, homophobic and attributing victims' sexuality to homophobic violence. According to them, police in Durban subjected the LGBT community to further indignities and mistreated and ridiculed them. These views emanate from past personal experiences of reporting anti-gay hate crimes to the relevant officials. This is indicative of the disregard for LGBT rights and of structural homophobia within some South African Police Services units in the Durban area.

According to the findings of this research, the LGBT refrained from reporting homophobic violence on the basis of

- the feeling of helplessness about reporting every crime as they experienced abuse on a daily basis

- fear of jeopardizing a relationship with perpetrator or risking expulsion from home as victimizers were often friends and family

- lack of tangible evidence as they mostly experienced verbal assault

- neighbors advising victims not to report rape for fear of victimizer's retaliatory action

- the LGBT individuals having given up hope about the country's criminal justice system

- victims not being ready to reveal their sexual orientation due to the stigma attached to homosexuality.

- police stations being too far from the crime scene

- perpetrators being mostly strangers and not easily identifiable

- the LGBT counteracting assaults with violence which constitutes a punishable crime of public violence and, as such, the fear of reversible criminality

- the LGBT feeling unworthy due to the moral/sodomy law that homosexuality is biblically unacceptable.

- the LGBT being victimized at cruising spots and fearing unfavorable police questioning

- victimizers threatening to blackmail the LGBT by telling parents

Inaccessibility of public resources such as police stations has been an ongoing problem in South Africa. In this research, there was also evidence of mishandling of homophobic crimes by bodies like the University of Kwa-Zulu Natal's Howard College Rescue Management Services as extremely violent cases were often not reported to the police and no follow-ups carried out in cases where police intervention was made. In other cases the RMS handled these cases in its own capacity and as such did not punish perpetrators. This hinders not only the rule of law but also results in a culture of impunity around anti-gay hate crimes.

4.7. POLICE RESPONSE TO REPORTED ANTI-GAY CRIMES IN DURBAN.

The manner in which informants experienced police reaction when reporting anti-gay, hate-crime incidents is analyzed in Figure 1 below.

Figure 1. Experiences of the LGBT community with police while reporting anti-gay crimes in Durban
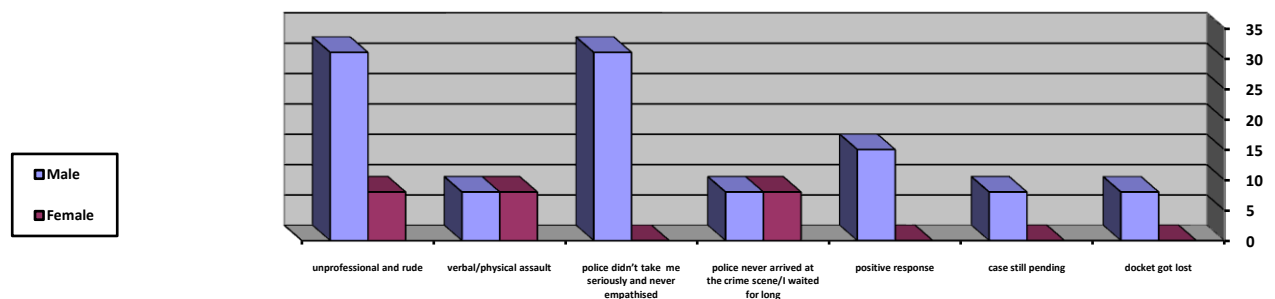
In this study unprofessional police behavior included officers' rude behavior, lack of attentiveness while the LGBT persons reported crimes, insensitivity, deliberate mishandling of files, lack of empathy during reporting, not providing relevant information, advice and explanations to the LGBT individuals during reporting as well as lying about having taken statements. A general lack of seriousness included laughing, ridiculing, mocking and not taking any action against reported homophobic crimes. While this type of behavior seems harmless on the surface, it presents a strong indication of the lack of seriousness of the SAPS regarding individual LGBT cases. This is particularly relevant for people who live in fear due to stigma. It also reinforces the fact that there is no protection for the LGBT community in Durban.

Other inadequacies included police taking a long time to arrive at the crime scene or not arriving at all. A notable number of the LGBT respondents (8%) remarked that their cases had been left pending and that some of the dockets went missing. Others (8%) indicated that though statements were taken for hate-crimes their cases had never proceeded for prosecution. This undermines the effectiveness of the South African criminal justice system. Police need to adopt a more pluralistic approach to LGBT hate crimes. A total of 39% reported lack a of professionalism on the part of police, 16% reported verbal and physical assault including rape by a police officer, 31% a lack of seriousness, while 16% remarked that police did not arrive at the crimes scene or took too long.

Additionally, in Durban, no separate crime register appeared to be kept to record hate-crime statistics, thus hate-crimes based on sexual orientation remained obscured in relation to broader crime statistics; this resulted in crimes against the LGBT community being relatively unknown. As Wells and Polders (2006) rightfully affirm, this increases the invisibility of gay and lesbian experiences, especially within Durban.

This study also found that the victim's right to have his/her statement taken in private was not always observed and adhered to by police. It emerged from the interviews that none of the respondents' statements was taken in a private room; instead during reporting, police would gather around respondents to ridicule the victims thus resulting in victims suffering secondary victimization. Other inappropriate behavior included incidents where police demanded evidence from the victim instead of conducting investigations.

Although some statements were taken, there still seemed to be unsympathetic responses from some police officers towards LGBT victims. Unfortunately, the LGBT victims are often too traumatized to challenge police to treat them in a respectful, humane and dignified way. They were also frequently unaware of their human rights and felt powerless to challenge homophobic police as they had legal powers. Most of the cases in this study were initially reported at a police station to uniformed police officers who were not always trained to deal with LGBT issues. In cases where statements were taken, police were often unwilling to share information with the LGBT individuals; police did not liaise with members of the LGBT community or serve as advocates for victims of homophobia.

The National Centre for Prosecution advises that after the interview with the victim, the interviewer (or other police members) should meet privately with the victim to provide simple straight-forward information about the criminal justice system and the procedures that will be followed. This is instrumental in the processes of clarification of any procedures that could be misunderstood. Most of the LGBT respondents who reported homophobic crimes said that police did not explain these procedures. The data also illustrate that there were a significant number of incidents where officers refused to file a report, thus, they failed to even acknowledge a crime had occurred. Finally, victims requested that verbal assault be recognized as a bias crime and this classification was frequently refused by law enforcement officials in Durban. This is particularly striking as verbal assault often leads to physical attacks and degrades the moral fiber of society. These particular crimes must be noted and investigated.

In general, the police desire to keep the LGBT group morally and sexually pure supports male structures, patriarchal dominance, prompts binary divisions of masculinity and femininity, normalizes heterosexual gender norms and determines gender roles based on biological sex. It also demonstrated willingness to control the sexuality and sexual identity of the population the SAPS is meant to protect. This perpetuates hetero-patriarchal colonial ideals and forms new systems of marginalization and, as such, these attitudes are criminal and need to be challenged. The conclusion offers effective ways through which police can rethink sexualities within the Durban metropolitan area if inclusivism is to be attained.

5. CONCLUSION

In recapitulation it is worth noting that, members of the LGBT community in Durban are unfairly discriminated against on the basis of their gender, gender identity and sexual orientation and are less likely to report incidences of violence particularly if they involve anti-gay bias. This reluctance to report is indicative of the stigma surrounding the LGBT community and a history of inadequate responses by the criminal justice system. Officers who participate in the harassment and victimization of those they are called to protect further exacerbate the situation (Cokely et al. 2007). This points to the importance of collective advocacy from within the LGBT organizations in Durban and further creates the need for change for those working in law enforcement. South Africa has one of the advanced Constitution that emphasizes protection against bias-motivated violence and intimidation, yet there are still low levels of reporting. Municipal bylaws should address LGBT issues as well as emphasize protection against bias-motivated crimes; Durban is not only a metropolitan city but also a sports city and a holiday destination for many LGBT African citizens. Clearly, more needs to be done on both sides to encourage the LGBT to contact police when they are victimized and to educate law enforcement officials.

In Durban anti-gay hate crimes occur unabated. Perpetrators operate unchallenged; perpetrators walk free while the LGBT live in fear. Forms of discrimination that prevail in Durban closely intersect with discrimination on account of gender and these intersections increase LGBT vulnerability and negatively impact on the extent to which they can exercise their human, constitutional and legal rights to access justice. Furthermore, anti-gay hate crimes are on the increase yet Section 9 of the Bill of Rights of the Constitution Act 108 of 1996 guarantees the LGBT the right to equality and the right not to be unfairly discriminated against on the basis of their sexual orientation. Section 9 also binds South Africa to promulgate legislation that advances the rights and interests of marginalized groups such as the LGBT. The Prohibition of Unfair Discrimination Act 4 of 2000 is one such piece of legislation and provides the LGBT with recourse in terms of civil law. Gaps still exist in law that specifically afford LGBT persons protection and that law needs to be promulgated in order for the state to fulfill its constitutional duty to advance the rights and interests of marginalized groups. Furthermore, hate crimes should fall under high-priority crime classification and penalties should be imposed on offenders who commit criminal offences against the LGBT groups on the basis of hatred of their sexual

orientation. In a country devastated by hate and xenophobia, the South African Police Service should also have a task force whose primary operations focus on incidents of hate crimes.

There is also a need for LGBT organizations to intimately engage with law enforcement authorities in order to recognize those who are serving the LGBT well. While determining bias motivation can be challenging based on the fact that the decision to do so predominantly lies with the police officers, Cokely et al. (2007) found that, contrary to popular conceptions of police attitudes, the way officers make decisions is largely informed by policies, attitudes and practices of officers and their supervisors, thus suggesting an institutional, rather than an individual-level problem. In the findings, 8% of the respondents indicated that even after seeing the supervisor no action was taken against reported hate crimes. This suggests that there needs to be ongoing outreach programs and education of officers and public officials on specific issues related to the LGBT community as well as a system of oversight and accountability regarding police response to the needs of LGBT people. Moreover, police officials needs to closely monitor anti-gay hate crimes in the criminal justice system from the time they are reported until prosecution to ensure that the criminal justice system does not secondarily victimize and traumatize the victim. Investigations should be duly conducted and trials should be finalized without unnecessary delays.

It is crucial, therefore, for the police officers in Durban to adequately document anti-gay crimes and for legislation to demand accountability on the part of law enforcement. Without these reports and statements, incidents of anti-gay, hate crimes remain unaccounted for and invisible thereby allowing the law enforcement officials to shirk accountability for these actions. Lack of accountability and failure to punish homophobic officers is one of the main factors in the perpetuation of police misconduct. In line with this, the memorandum that was handed to the Minister of Justice and Constitutional Development by Rape Crisis, Cape Town Trust and Triangle Project suggests that corrective rape cases should be heard in designated sexual offences courts, and that the National Prosecuting Authority should keep disaggregated statistics of hate-crimes that are declined for prosecution, together with the number of hate-crimes cases withdrawn by complainants and the number of convictions of perpetrators. The memorandum also demands that the National Prosecuting Authority to develop a directive for prosecutors to raise hate-crimes as an aggravating circumstance in opposing bail; it is recommended it be an exacerbating factor for sentencing and that prosecutors should advise complainants of the right to

apply to court not to have the trial conducted in open court in terms of Section 153 (1) of the Criminal Procedure Act 51 of 1997.

The National Crime Prevention strategy recognizes the right of the LGBT community as victims of homophobic crimes and the agency with which South Africa as a country should respond to these crimes across all cultures. Although the criminal justice system, as represented by the police and courts, does not cause homophobia, police homophobia plays no insignificant role in aggravating the problem. This research established that homophobic crimes have one of the lowest convictions and as such, this type of crime needs to be categorized as one of the serious crimes.

This study offers recommendations arising from the findings, some of which include the protocols on how to manage police homophobia which must be communicated to police officers through frequent workshops and on an ongoing basis. Police officers should be made aware of the policy documents that discuss LGBT victims' rights and the consequences of violation of these rights. Investigative officers should communicate the progress of the case to survivors up to the time of prosecution. Police officers need to transform their attitude in suggesting that LGBT victims are responsible for their own victimization.

The SAPS should have more skilled investigators available or on standby at police stations around Durban to deal with LGBT issues more effectively. The effect will also be an involvement of the investigator in the investigation from the reporting of the case until its finalization. Privacy during interview is also crucial as the circumstances under which reporting takes place are crucial to the value of police approach and sensitivity of LGBT issues. In conclusion, police do not always ensure privacy when taking LGBT statements, often mocking them and making it difficult for them to talk about sensitive issues in front of other officers or members of the public. However, the level and intensity of homophobia within the police force remains unchallenged in South Africa and needs to be interrogated as the plight of a gay police man still remains. Further studies should also investigate the silence on the experiences of bisexual, inter-sex and transgender people as their experiences remain unraveled.

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Consent Form

Consent form
To be signed by participant

Title of project
 HOMOPHOBIA ; EXPERIENCES AND PERCEPTIONS OF THE LGBT COMMUNITY WITH POLICE IN THE DURBAN METROPOLITAN AREA

Researcher: NTEBOHELENG MAHAPA
Contact details: 0766625207
Email: 208509626@ukzn.ac.za\hapzozo@webmail.co.za

Supervisor: Clare Graighead

Contact details: craighead@ukzn.ac.za

My name is Nteboheleng Mahapa. I am currently enrolled for a Master's degree in Gender Studies at the University of Kwa-Zulu Natal (Howard College) and I am currently conducting research within the Gender Studies programme. My area of interest is **Homophobia; Experiences and perceptions of the LGBT community with police in the Durban Metropolitan area**. While your contribution in this research will be greatly appreciated you are entitled to know that the research findings will be treated with utmost confidentiality and that as a participant it will be your prerogative to give as much information as you feel comfortable giving. The findings of this study are due to be submitted in June 2012 and if, for any reason, you wish to withdraw your responses before the submission, it is permissible to do so. The questionnaire is available in two indigenous languages (namely Zulu and English); you can choose one or the other. Respondents will be strictly in the 18-40 age group.

The interviews will be semi-structured; this means that the questions will be open-ended questions, where you, as the participant, will be able to freely give your answer with no restrictions or limitations. Also if it is possible on your part I wish to interview you twice.

By signing this form you will have indicated consent and will have understood and accepted the nature of this research. You will also be consenting to the recording of the interview and completing of the questionnaire. If you do not wish to be recorded you will not be recorded, however, I will take notes. You will also be confirming that you understand and accept that your name and details will remain anonymous.

By signing this consent form you will be confirming that you understand that you will receive no remuneration for your participation in this project.

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Signature of participant   **Date**

APPENDIX B

Information sheet

To Whom It May Concern:

My name is Nteboheleng Justinus Mahapa. I am currently researching/writing my Masters dissertation at The University of KwaZulu-Natal (Howard College Campus). I am conducting my research within Gender Studies Programme, under the supervision of Clare Craighead (full time staff member/lecturer in the Drama and Performance Studies Programme). My research topic is:

Homophobia : Experiences and Perceptions of the LGBT community with police in the Durban Metropolitan Area

As part of my research and data collection for this undertaking, I have drafted a questionnaire which is targeted specifically at the 'Lesbian, Gay, Bisexual and Trans-gender'(LGBT) who have encountered any form of discrimination in accessing public resources with specific focus on police in Durban. The questionnaire consists of 11 main questions and sub-questions and it would be most appreciative if you could spare some time to draft your responses and/ or fill out the electronic copy and email it to me at: 208509626@ukzn.ac.za. Please know that while your participation in this data collection exercise would be most appreciated –confidentiality is guaranteed and should you wish not to respond to this e-mail, you are under no obligation to do so. Should you require any further information regarding this, please do not hesitate to contact me.

Finally, any responses received will be included as appendixes within my dissertation, and I will also keep a disc copy and hard-copy on file as part of my processes of documentation and research for this particular undertaking. Should I, in the future undertake further research on this subject – I will reserve the right to access this data – should the study necessitate its use. This said, any information used from your responses will be properly referenced in accordance with standard academic practices and writing conduct of the University of KwaZulu-Natal.

I thank you for your time,

Nteboheleng Mahapa
Student No.: 208509626

Topic: HOMOPHOBIA: EXPERIENCES AND PERCEPTIONS OF THE LGBT COMMUNITY WITH POLICE IN THE DURBAN METROPOLITAN AREA.

1.   Biography of Respondent

Age:…………………………………………………………………….......
Race:…………………………………………………………………….........
Sex:…………………………………………………………………………………
Time:…………………………………………………………………...............

2.   Interview details

Mood of the respondent prior to the Interview:……………………………………….
Time and Date of the Interview:………………………………………………………
Place of the Interview:………………………………………………………………..
Location:……………………………………………………………………………...

3.Related Questions(NOTE: PLEASE CLEARLY PRINT YOUR ANSWERS IN THE SPACES PROVIDED IN SECTION 4

(i)Do you think the LGBT has equal access to public services especially the criminal justice system compared to other sexual groups in South Africa(**if no)**
- what do you think needs to be reviewed to accommodate the LGBT

(ii) What is your view on the way the South African criminal justice system generally handles hate crimes against the LGBT in South Africa?

(iii) Have you or anyone you know been to a police station to report any sort of crime in the past?

(iv)Would you commend the SAPS on the way they handle cases?

(v)Have you ever encountered any form of discrimination, anti-gay hate crime, criminal offence, assault on account of your sexuality? **N.B Assault may be any form of physical, verbal or attack on property**)
- Where did this happen

- What kind of offence was it(**e.g verbal, physical, domestic or attack on property**)
Which one of these best suits the situation
Assaulted by parent ☐   by a stranger ☐ by partner   ☐   by colleague ☐

Which one of these do you think is commonly experienced by LGBT in Durban (PLEASE TICK)

VERBAL ASSAULT (swearing) ☐ **PHYSICAL ASSAULT(beating)** ☐ **ATTACK ON PROPERTY** ☐ **ATTACK BY STRANGER** ☐

Please rate the number of times you have been assaulted because of your sexuality in the boxes provided ☐ 1-4 times ☐ 5-9 times ☐ 10 times and more

(vi). Did you report it to the police (**if not**)
- Do you have any reasons you can give for not wanting to report

(vii). (**if yes to V**)What kind of treatment/service did you get at the police station
- Were the police sensitive enough/did they empathize
- Did you feel further abused in any way
- Do you feel they took you seriously
- What advice did the police give you
- Did the police blame or blackmail you/did they make you feel bad for reporting
- Did you find the police to be polite, helpful and considerate

(viii). Did your case end up in prosecution? (**if no**)

(ix). Did the police explain to you why your case could not proceed for prosecution?(if so)

(x). What explanation did they give?

(xi). Would you like to make any recommendations regarding how the SAPS should handle same-sex criminal cases.

3.2 Subsequent questions

(i)   Do you think the SAPS is doing enough to protect minority groups like LGBT
(ii)   Would you feel comfortable to report a hate-crime if you were to experience one (if no)
(iii)   Do you have any specific reasons for not wanting to report?

4.RESPONSES (Please draft your responses in the spaces provided below)

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3.2 Subsequent questions
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Thank you for your time

APPENDIX D

Table 1: Recent trends of reported violations and rates of LGBT victimizations in Durban

Forms of Victimization	Victim's Gender		Totals	Prevalence percentages
	Gay men	Lesbian women		
Hate Speech	17	10	27	47.3%
Physical Abuse	7	1	10	18%
Sexual abuse	1	1	2	4%
Domestic violations	4	9	13	23%
Attack on property	2	1	3	5%

Table 2: Places of greater risk for homophobic crimes in Durban

Notable locale of anti-gay hate-crimes	Gender of the victim		Totals	Prevalence percentages
	Male	Female		
Taxi Rank	-	1	1	2%
Durban Streets	11	7	18	36%
Howard College residences	5	-	5	9%
Victim's home	4	9	13	23%
Workshop/city parks	2	-	2	4%
Durban South Beach	2	2	4	7%
Church	1	-	1	2%
Public areas\restaurants & Public transport	2	-	2	4%

Figure 1. Experiences of the LGBT community with police while reporting anti-gay crimes in Durban
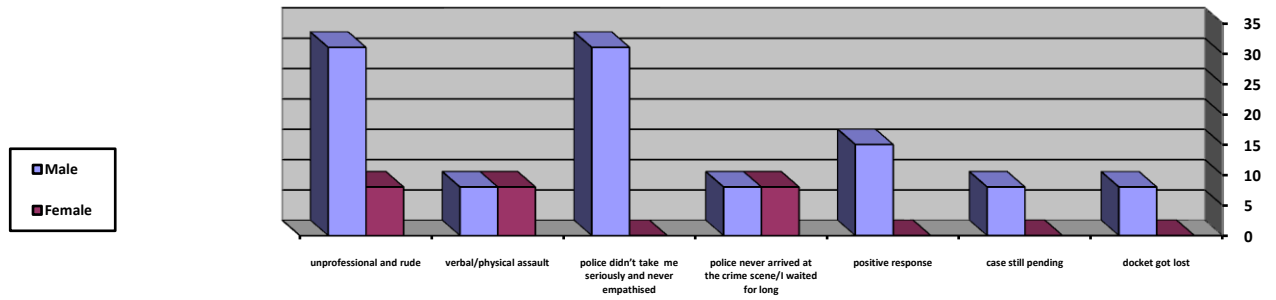
APPENDIX E

This list is provided to assist in directing victims of police homophobia and homophobia in general to appropriate counselling centres and information centres within the Durban Metropolitan city and in South Africa in General.

1.Durban Lesbian and Gay Community and Health Centre

Mark Lane, Durban

Tel (+27) 31 301 2145

Fax (+27) 31 301 2147

Email: info@gaycentre.org.za

Tel (27) 33 342 6165

Fax (+27) 86 508 2203

Email; info@gaylesbiankzn.org

2. Gay and Lesbian Network

185 Burger Street

Pietermaritzburg 3200

P.O Box 2721

Pietermaritzburg 3200

3. Move Ukzn

LGBTI Student Society of the

University of Kwa-Zulu Natal

Email;movingukzn@gmail.co.za

4. Gay and Lesbian Helpline

Tel; (+27 21 712 6699)

5. South African Youth Liberating Organization

CNR Lorne & Connor Street

Old Post Office Building

Escourt 3310

P. O Box 20

Escourt 3310

Tel (+27) 36 352 1320/ (+27) 72 156 1320.

Fax; (+27) 88 036 352/ 1320

Email; saylo2003@hotmail.com

6. UNISA Center for Applied Psychology

Theo Van Wijk Building

5th Floor, Room 152

Pretoria 0001

TEL; (+27) 12 429 8089

Fax; (+27) 12 429 8544

Email; nelja@unisa.ac.za

 ucap@unisa.ac.za

7. Gay and Lesbian Memory in Action (GALA)

706 University Corner

University of Witwaterstrand

P.O Box 31719

Braamfontein 2017

Tel; (+27) 11 717 4239

Fax; (+27) 11 717 1783

Email; gala@library.wits.ac.za

8. Forum for Empowerment of Women

No. 1 Kotze Street, Woman Gaol

Constitutional Hill, Braamfotein

P.O Box 10294

Tel; (+27) 11 339 1867

Email; info@few.org.za

9.Behind the Mask

Office A06-11, 1st Floor

Administration Building

1 Kotze Street, Women Gaol

Constitution Hill, Braamfontein

P. O Box 93843

Yeoville, 2143

Tel; (+27) 11 403 5566

Fax; (+27) 11 403 5567

Email; info@mask.org.za

10. Gender DynamiX

Klipfontein Road

Manenberg

P.O Box 347

Athlone 7760

Tel; (+27) 21 633 5287

Fax; (+27) 86 602 9538

Email; genderdynamix.org.za

11. Out LGBT Well Being

745 Park Street

Arcadia 0083.

P. O Box 26197

Pretoria 0001

Tel; (+27) 12 344 5108

Fax; (+27) 12 344 6501

Email; administrator@out.org.za

12. The Gay and lesbian Equality Project

P.O Box 27811

Yeoville 2143

Tel; (+27) 11 487 3810/1

Fax; (+27) 11 684 204

Email;info@equality.org.za

13. Triangle Project

Unit 29, Waverly Business Park

Dane Street,

Mowbray, 7700

P. O Box 13935

Tel; (+27) 21 448 3812

(+27) 21 448 4089

Email; info@triangle.org.za

14. Inner Circle

CNR York and Lester

1 Watkins Building

Wynberg 7824

Tel; (+27) 21 761 0037/4434

Fax; (+27) 21 761 3862

Email; admin@theinnercircle.org.za

15. ACTIVATE Wits

Room 29, DJ du Plessis Building

West Campus, Witwatersrand

University, Yale Road

Johannesburg

P. O Box 31719

Braamfontein, 2017

Tel; (+27) 11 717 1963

Email; activatewits@gmail.com

16. Eloquor Knights

LGBTI Student Society of Nelson Mandela University (P.E)

Email; eloquorsociety@gmail.com

17. Glorious Light MCC

771, 133th Avenue

Wonderboom, Pretoria 0001

mccpta@mweb.co.za

18. Out Africa Gay and lesbian film festival

1st Floor, 27 Caledon Street

Cape Town, 8001

Tel; (+27) 21 461 4027

Fax; (+27) 21 461 4062

Email; info@oia.co.za

19. Rainbow UCT

5th Floor, Steve Biko Student Union Bldg

University of Cape Town

Rondebosch 7700

Tel; (+27) 72 599 6994

Email; info@rainbowuct.org

20. OUTRhodes

LGBTI student society of Rhodes University

1st Floor Rhodes Steve Biko Bldg

Opposite Activate office

Prince Alfred Street

Grahamstown

Tel; (+27) 73 228 5650

Email; outrhodes.society@gmail.com

21. Out North-West

98 Rowlands Estate

Mafikeng 2745

Cell; (+27) 83 698 7998

Email;milly.maropefela@gmail.com

Email; henneib@anazi.co.za

21. UJ Liberati

LGBTIA+C group of the University of Johhanesburg

UJ Society Offices, Kingsway Road

Johannesburg

Email; ujiberati@gmail.com

22. Simon Nkoli Center for Men's Health

1st Floor News Nurses Home

Chris Hani Baragwanath Hospital

Tel; (+27) 11 989 9756/9865

23. XX/Y Flame

University of the Free State

Thakeng Bridge

P. O Box 659

Bloemfontein, 9300

Email;nicholaskh@hotmail.com

outatkovies@gmail.com

25. Good Hope Metropolitan Community Church

Zonnebloem College Chapel

Cambridge Street, District Six

P.O Box 51155

Waterfront, Cape Town 8001

Tel; (+27) 21 447 4464

Fax; (+27) 86 614 2297

Email; welcome@goodhopemcc.org

26. OUT @kofsis

Student Association of LGBT people at the University of the Free State

Tel; (+27) 79 025 2393

Email; info@outatkovies.co.za

27. Loud Enuf UWC

LGBT Group for the University of the Western Cape

Email; loudenuf@uwc.ac.za

2829718@uwc.acza

27. Health4Men

1st Floor, 24 Napier Street

De Waterkant

Cape Town

P. O. Box 13062

Woodstock 7915

Tel; (+27) 21 421 6127

Email;info@health4men.co.za

glenn@health4men.co.za

28. Gay Umbrella

P. O Box 199

Mafikeng 2745

Tel; (+27) 73 157 1791

29. Joint Working Group

National network of LGBT focused organisation in South Africa

Web; www.jwg.org.za

30. Lesbigay Stellenbosch

LGBTI student society of the University of Stellenbosch

Fourth Floor of the Neelsie

Stellenbosch

Email; lesbigay@sun.ac.za

31. POUT

LGBTI Students at North-West

Email; pout.puk@gmail.com

32. Hope and Unity Metropolitan Community

P. O Box 7035

Johannesburg, 2001

Tel; (+27) 83 770 3658
Email;rosebuddza@yahoo.com

APPENDIX F

Acronyms

- APA   AMERICAN PSYCHOLOGY ASSOCIATION
- UKZN   UNIVERSITY OF KWAZULU NATAL
- UCAP   UNISA CENTER FOR APPLIED PSYCHOLOGY
- FEW   FORUM FOR EMPOWERMENT OF WOMEN
- USA   UNITED STATES OF AMERICA
- LGBT   LESBIAN, GAY, BISEXUAL AND TRANSGENDER