

Catch and Release

Transgender Migrants and Opposite of Deportation in South Africa

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Established in August 1996 by the South African Department of Home Affairs, the Lindela Repatriation Centre (a former Apartheid era hostel compound) is a privately operated deportation and detention facility about 30 minutes outside of Joburg, South Africa.¹ It is the only facility of its kind in South Africa, created in part to alleviate the strain of illegal and undocumented migrants on the South African prison system.² Designed to hold 4,500 people at a maximum the centre has been known to host as many as 7,000 detainees at a time giving rise to allegations of widespread abuse and maltreatment of migrants awaiting deportation.³ In 2007 South Africa deported 300,000 people making it the world leader for that year in deportations.⁴

As one of the most economically prosperous on the continent democratic South Africa has a difficult relationship with migrants many of whom come to the country seeking jobs or simple protections provided for by the country's Constitution. This is particularly true for those from across the continent who find themselves persecuted on the basis of gender and/or sexual orientation. Indeed, South Africa is the only country on the African continent that explicitly protects the rights of transgender people. Migrants are overwhelmingly seen as 'illegal aliens', 'illegal immigrants' or simply 'illegals'. It is well documented that the perception of who migrants are or might be, in particular for the South African Police Service (SAPS), in South Africa is based on visible difference – darker skin tones, visible inoculation scars and at its most basic the inability to produce identity documents.⁵ 'Illegals' are blamed for a variety of social ills, specifically crime, drug trafficking and the lack of available employment. This perceived undifferentiated flow of non-citizens into the country has led to increasing moral panic and large scale xenophobic attacks.

In 2014 when carrying out research work with transgender migrant sex workers living in Johannesburg I heard several stories regarding Lindela. None of the transgender migrants I interviewed had any paperwork of any kind through which to legally qualify their presence in South Africa. Given this and the nature of their work – sex work, which is criminalised in South Africa – several of the transgender migrants I interviewed had been arrested by the SAPS. Due to their lack of legality in the country

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1 Marais, H. (1997, February 7) Twilight zone where deportees wait. *Mail and Guardian*. Retrieved July 12, 2014, from <http://mg.co.za/article/1997-02-07-twilight-zone-where-deportees-wait/>

2 Human Rights Watch. (1998) *Prohibited Persons*. New York: Human Rights Watch p. 105.

3 Klaaren, J., & Ramji, J. (2001) Inside Illegality: Migration Policing in South Africa after Apartheid. *Africa Today*, 48(3).

4 Landau, L. (Ed.). (2011) *Exorcising the Demons Within: Xenophobia, Violence and State Craft in Contemporary South Africa*. Johannesburg: Wits University Press.

5 Crush, J., & Williams, V. (Eds.) (2001) Making Up the Numbers: Measuring "Illegal Immigration" to South Africa. *Southern African Migration Project* (Migration Policy Brief No. 3) p. 1.

they were sent to Lindela for deportation. In all cases, though, instead of being deported – as South African law mandates – each had been released and told in no uncertain terms to return to Joburg. This paper briefly probes these expulsions and considers what release – the opposite of deportation – might tell us about the socio spatial production of borders, legality and belonging for transgender migrants in South Africa.

Transgender Migrants

South Africa, as noted, is the only country on the African continent that not only recognises but also constitutionally protects transgender individuals; these are rights that acknowledge their very existence. South Africa also offers the possibility of asylum on the basis of persecution due to sexual orientation or gender identity, through the South African

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Refugees Act (1998) implemented by the Department of Home Affairs (DHA). Since the inception of the Refugee Act in 1998 the country has seen a steady increase in the number of transgender identified asylum seekers and migrants seeking refuge and life in the country. Though many apply for asylum directly, given the general corruption,⁶ poor management and difficult conditions⁷ with regards to accessing asylum, many choose to remain outside of the system. Those who remain outside the asylum system find innovative means through which to stay in the country. Often these are means that the South African state would consider illegal.

The majority of those who do not apply for asylum and therefore lack the adequate paperwork to apply for employment turn to sex work as a means to sustain themselves. It is not simply that transgender migrants choose not to gain the required paperwork in order to access legalised forms of employment but rather that even if they were to have the required paperwork it is highly likely that would still be relegated to survival sex work in South Africa.⁸ Sex work, as noted, is illegal in South Africa. The Sex Workers Education and Advocacy Task Force (SWEAT), an NGO that hosts a support group for trans sex workers, notes that criminalisation leaves sex workers vulnerable to violence and economic abuse by police, clients and members of the public.⁹ Their relationship with the police is a difficult one. Sometimes they are chased as sport, at other times they are harassed and still at other times asked for sexual favours in exchange for not being arrested.

Trisha and Musa are from a country that borders South Africa. They work as sex workers in an area they have dubbed the 'Gay Corner' in Johannesburg. They are among a group of several transgender migrants that work this specific corner all of whom remain in the country through means that the South African state would consider illegal. The vast majority have no paperwork whatsoever to legitimate their presence in the country. Trisha is the eldest of the group and is often looked up to by the others as a mother figure of sorts. She has been in South Africa the longest having followed other

6 Thamm, M. (2015, July 22) Report reveals shocking levels of corruption and serial abuse at SA refugee centres. Retrieved July 30, 2015, from <http://www.dailymaverick.co.za/article/2015-07-22-report-reveals-shocking-levels-of-corruption-and-serial-abuse-at-sa-refugee-centres/>

7 Difficulties for trans asylum seekers specifically include the bifurcated queuing system outside the doors to any Refugee Reception Office which immediately forces a trans asylum seeker to make a choice regarding gender prior to being able to apply for asylum. See: Camminga, B. (2017). Categories and Queues: The Structural Realities of Gender and the South African Asylum System. *TSQ: Transgender Studies Quarterly*, 4(1), 61–77.

8 van der Merwe, M. (2015, July 21). Transgender in Focus: Past, Present, Future. Retrieved from <http://www.dailymaverick.co.za/article/2015-07-21-transgender-in-focus-past-present-future/>

9 Lakhani, I. (2015). Position Paper on Sex work in South Africa. Sex Worker Education and Advocacy Taskforce. Retrieved from <http://www.sweat.org.za/wp-content/uploads/2016/02/Position-Paper-on-Sex-Work-in-South-Africa-2015-1.pdf>

transgender friends who came to South Africa to gain access to particular kinds of gender affirming healthcare. Musa came to South Africa to feel safe and protected by the law after being attacked in their country of origin.

Lindela

When Musa was arrested she was wearing a dress. At first the arresting officers did not know she was trans. Once she entered Lindela though this swiftly became evident to the officials. As a trans woman she confused the officials at Lindela and at first they were unsure where to place her. She says that initially they held her in the clinic because they didn't want her mixing with the other detainees. Part of their decision to do so, as Musa explains, is because as they entered the building the other detainees began to shout at her:

They started to shout gay, 'stabani'¹⁰, you know . . . They didn't know . . . because when I dress I will be like a real woman. So one of them said – "No, no, no this one is not a lady".

The officials referred to her as gay and Musa went along with it given that she uses both transgender and gay as personal identity categories. On the same day that Musa entered Lindela she was released. More than this the officials almost begged her to leave the facility giving her money to catch a train back into Joburg.

When they discovered me I'm gay so they say "No, please go. Go we can't deport you because you are gay" . . . So I used the train to come back.

Trisha's story is perhaps the most fascinating in terms of deportation. One night while at work the police stopped at the gay corner and asked for documents. Trisha's documentation said she was in her country of origin and not in South Africa. She was, to her surprise, immediately arrested and taken to Lindela. Unlike Musa, she waited for two days to be released.

They kept me for 2 or 3 days waiting for [country of origin] . . . Home Affairs to come . . . they got no right to take us back. I mean, especially if I'm in drag . . . They feel pity that – What is my family gonna say about this? . . . You can't tell them my family understands what I am . . . You just tell them my family doesn't understand what I am.

As with Musa, they also held her in the clinic:

I wasn't feeling comfortable. There are a lot of men there. Some will be screaming bad about you, but some they are nice. . . Three quarters they are not nice, so you don't feel comfortable. Luckily enough, you know, they kept me by myself, they didn't take me to the other rooms with the other men. I was safe, because I was staying at the clinic. There is a clinic . . . by myself, I wasn't mixed with the other people.

Trisha suggests that the officials, thinking she was gay, took pity on her. They asked her what her family would say should she be returned. She knew that if she told them that actually her family accepted her and understood who she was they would be more likely to deport her so she told them what they expected to hear – a story of persecution and rejection. The officials were so eager to release her and not have her return that they gave her asylum seeker papers, documents that she had not at any point requested. Documents that she had specifically chosen not to pursue in South Africa. After she was released, Trisha let her asylum seeker papers lapse stating that she could either bribe people in the asylum queue or bribe police not to arrest her: either way, she would have to bribe someone, and if she was arrested and sent to Lindela she was now certain she would never be deported.

Borders and Belonging

Eithene Luibheid notes that immigration and citizenship controls function "in a double sense as the means to delimit the nation, citizenry, and citizenship, and conversely, as the loci for contesting and reworking these limits."¹¹ Critically, citizenship is not just about paperwork: it includes fundamental

¹⁰ Insulting term used in South Africa to denote gay men.

¹¹ Luibheid, E. (2005). Introduction: Queering Migration and Citizenship. In E. Luibheid & Cantu Jr, (Eds.) *Queer Migrations*:

notions of who belongs and who does not. The constant tightening of immigration policies, not just in South Africa but globally, suggests harder lines of demarcation regarding who can and cannot be a citizen – who can and cannot belong. In the vast majority of African countries homosexuality often functions as the fault line of citizenship – of national belonging. Overarching, homosexuals, in the perception of their being un-African and therefore underserving of rights and protection, do not belong. This link between rights, belonging and national space is critical. A 2010 study by the Southern African Migration Project notes that in South Africa there is a clear and unambiguous linkage between citizenship and rights.¹² To this end, South Africa has often been globally celebrated (while being continentally derided) for its extension of citizenship to LGBT people through the provision of constitutional rights and protections within the country.

The assumptions made by the officials at Lindela regarding the substance of Trisha and Musa's lives beyond South Africa's border are then not completely erroneous. Moreover much of the policing then of foreign bodies in South Africa, as noted, is based on visibility – what can be seen. It should perhaps then be unsurprising that what the officials in Lindela use as their evidence to establish the perceived sexuality of both Musa and Trisha is a combination of their bodies and their attire – their dresses. It is this reading of bodies and their exclusion or inclusion that is critical here. Sally Peberdy argues that the treatment of migrants in South Africa must be seen in the context of the new nation-building project of the democratic South Africa and its aims to forge a new inclusive national identity based on "citizenship and national territorial integrity".¹³

The behaviour of the officials suggests that when notions of gender and sexuality are taken into account and considered as part of the substance of South African citizenship and nationhood the socio-spatial borders regarding 'illegality' and 'belonging' shift considerably. Rachel Silvey notes that there is a "politics of interlinkages between place and identity, and the socio-spatial production of borders".¹⁴ By allowing transgender migrants to stay, even if it is because they are perceived as gay, the behaviour of the officials suggests that being homosexual is a crucial element to their imagined understanding of place and belonging in South Africa. Trisha and Musa cannot be removed from South Africa for fear of what might happen to them, most clearly noted in the words "No, please go. Go we can't deport you because you are gay". They cannot go, so they must stay and it is this staying that seemingly reworks the limits of the imagined citizenry suggesting that the protections of the country must extend to Musa and Trisha regardless of their legal status. As Trisha notes almost nonchalantly at the end of our interview when she discusses letting her asylum papers lapse "they take me to Lindela, but I'll come back from there, because Home Affairs does not allow gay people, you know, to be deported".

Sexuality, Citizenship and Border Crossings. Minneapolis: University of Minnesota Press, p. xi.

12 Crush, J., Pendleton, W., & Ramachandran, S. (2013) Soft Targets: Xenophobia, Public Violence and Changing Attitudes to Migrants in South Africa After May 2008, *Migration Policy Series* No 64 p. 12.

13 Peberdy, S. (2001) Imagining Immigration: Inclusive Identities and Policies in Post-1994 South Africa. *Africa Today*, 48(3).

14 Silvey, R. (2006) Geographies of Gender and Migration: Spatializing Social Difference. *International Migration Review* 40(1): p. 65.