

GENDER IDENTITY: THE

BY BRENDA OKOTH

Kenya's first public transgender person was a woman only identified as Rose. She made headlines in the 1980s after she got sex reassignment surgery because gender identity disorders were unheard of then. Following her surgery, her life became a nightmare.

According to reports, Rose was constantly a subject of ridicule. She was ostracised and couldn't get a job or support because she was viewed as a disgrace and recluse in the society. Six months after her surgery, following all the stress and depression she was battling, Rose took her own life.

Last year in Kisumu city, a transgender woman was exposed and humiliated in public after seeking work as a house help. Her attackers not only beat her up and stripped her, but also had her arrested.

In June, Alex, a transgender man, was hanging out in a bar in downtown Nairobi when he got assaulted. His attacker who was with a group of friends walked up to him and started hurling insults at him after which he told Alex, "I am going to hit you to prove that you are not a man." Alex, who is also a member of Transgender, Education and Advocacy, was helpless as his attacker and his friends beat him up.

"The whole time, they taunted me saying, 'bring your lesbian lawyers.'" Alex with the help of Audrey Mbugua, TEA's programmes manager, reported the matter at Central Police Station. The police directed Alex to get a P3 form from the police surgeon. Once he got it, Alex went back to the police and two days later his attacker was arrested.

Following the arrest, his attacker's friends threatened him and tried to intimidate him to drop the charges, but Alex stood his ground. His determination not to be cowed for being a transgender person paid off when the court found his attacker guilty of assault and had him jailed for two years.

"Taking Alex's attacker to court was important for us because most times transsexuals will not report such matters to the police for fear of repercussions. We transsexual people need to represent ourselves because we know where the shoe pinches most and we have brains and mouths to speak for ourselves. We have the right not to be called all manner of names simply because of our vulnerable and marginalised position in the society. We cannot afford to don kid gloves when handling non-transgender people who don't care about the future of our transsexual race," says Audrey.

The cases noted above encompass most of the five main challenges that transgender people face in Kenya. According to the Transgender Education and Advocacy these are:

Stigma and shame: Due to the lack of understanding of the transsexual concept, there is the general prejudice, hostility and shame of having a transgender sibling, parent, friend, relative or classmate.

Discrimination: It involves being denied access to certain services, for example medical services, because of one's transgender status. This is due to the fact that changing names and sex in legal or educational documents is a torturous long process. Also, due to ignorance and outright hostility by individuals in institutions who have a negative attitude towards transgender people. In a recent case, a transgender woman was denied a change of name; the registrar of persons demanded proof for a change of sex. This



DESPAIR: Transgender/transsexual people are prone to depression and need a lot of support and understanding.

is not normally requested from non-transgender people.

Religious intolerance: There are religious people who feel that changing sex is ungodly or goes against their religious tenets. This propagates their hostility towards transgender people.

Violence: Both by state actors and non-state actors. State actors include police officers. This could be in the form of verbal, emotional or physical abuse. It is meant to cause physical and psychological pain.

Mislabelling: Due to the lack of understanding by the general public and advocacy groups, such labels include: gays, drag queens, hermaphrodites, she-he, he-she and cross-dressers. They don't understand that transsexualism/transgenderism is an issue of gender identity and is not sexual orientation or identity.

Despite these facts, there exists a number of laws that are meant to guarantee people with transsexualism fundamental rights and freedom to access health care services, freedom from discrimination, access legal services such as change of names in identity and academic documents. However sometimes, they edge them out too. These laws include:

Registration of Persons Act (Cap 107)

This Act provides all Kenyans the right to have a national identity card. At the moment, no section prohibits transsexuals from changing particulars in their national identity card. But, the government is proposing:

18(4) The Director may decline to change the particulars of a registered person appearing in the register if in his or her opinion such change will result in a change of the registered person's identity, notwithstanding that such a change is permissible under any other written law or registration system.

Audrey says, "In the course of my interaction with government officials, I have witnessed a general confusion about name changes and sex changes. A change of name is not the same as a change of sex and a change of name does not necessitate

a doctor's report to confirm a surgical change of sex.

"Additionally, there is the construct of male and female names. There are no male names and neither are there female names. There is no law that stipulates what male and female names are. It is just our culture has conditioned us to believe that there are male and female names. And we all have the right to practice or not to practice our culture. Everyone has

the right to take a name of their choice and drop their given names.

"We have made calls for an amendment of this clause; we wait to see whether they will change."

Kenya National Examination Council Act
Part 4 of the Education Act gives the Minister of Education powers to provide guidelines for the conduct of examinations and issuance of certificates. The Education Act is however silent about lawful alteration of names in certificates.

The KNEC Act however allows for changes of names or other particulars (but is worth noting the language is vague. Additionally, it denies the holder of the certificate that right since :

Section 9 (3) The Council may at any time withdraw a certificate for amendment or for any other reason where it considers it necessary

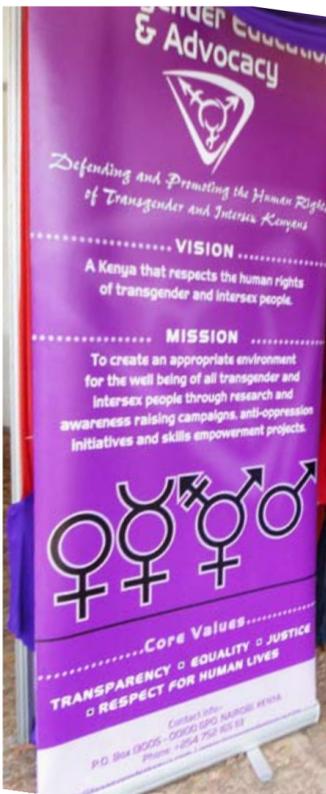
When Audrey applied for a change of names in particulars she received the following response from the examination council:

"Kindly note that we do not effect name changes on certificates after release of examination. You are advised to attach the gazette in cases that require use of your previously acquired certificates."

This exposes her to discrimination during employment. "It's even worse now because the current Kenya National Examination Council Bill 2012 dropped the section on amendments of certificates," she says.

Births and Deaths Registration Act (Regulating issuance of Birth Certificates)
Section 14 states "Where the birth of any child has been registered before it has received a name, or where the name by which it was registered is altered, the parent or guardian of such child may within two years of the registration, on payment of the prescribed fee, and on providing such evidence as the registrar may think necessary, register the name that has been given to the child."

"This law discriminates against people with transsexualism (in addition to all non-transsexual citizens) on grounds



TEA BANNER: Advocates for respect.

OTHER SEX, PART 3

of age since transsexualism cannot be diagnosed at the age of two years. A change of name in birth certificates is a right for all citizens not just people below the age of two. However, addition of names in birth certificates is allowed," says Audrey.

The second part of this act further states, "Where the name by which a child was registered is changed, the parent or guardian of such child may within seven years of the birth, and on payment of the prescribed fee, and on providing such evidence as the registrar may deem necessary, register the name that has been given to the child provided such change is done only once.

"These are some of the legal problems we are having with regard to legal reforms and owing to the reluctance various government offices are demonstrating in respecting the rights of transsexuals, the final battles might have to be played in courts," she says.

Reproductive health

The Constitution of Kenya Article 43.

(1) (a) provides that Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. However this is not always the case. Audrey shared, "There are a number of pitfalls that people make in interpreting the law whenever there is a debate about transsexuals:

1. The Law does not recognise sexual orientation as a ground for non-discrimination. This is discriminative and a classic case of mislabelling since transsexualism/transgenderism is an issue of gender identity and health status not sexual orientation (who one is sexually attracted to). People don't change sex to sleep with A or Z.

2. People expect to see the name "transgender" in our laws for them to accept that the law protects transgender people. Demanding to have the term transgender as a sacrosanct constant in the law by which we can protect the rights of transgender people will be a tall order. For instance, we don't have the term "diabetes/diabetics" in our constitution,

but we don't discriminate diabetic people because our constitution doesn't have the term in it."

The Bill of Rights Article 27(4) (4) states that:

The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth, sex, health status, disability, dress and birth are grounds for non-discrimination.

"If you look at the first line, 'The State shall not discriminate directly or indirectly against any person on any ground' is in itself satisfactory but often times it is the state actors like, for instance, the police who don't respect this. I remember there was one instance where a transgender woman was arrested along one of the streets in Nairobi and charged with 'importuning for immoral purposes' the police officers ordered fellow inmates to strip her to determine her sex."

Audrey believes that there is need for transsexual persons to engage with the ongoing processes of legal and policy reforms in Kenya - be it in the health sector, citizenship and education sectors. "There are no magical fixes for our problems and we cannot afford any level of laxity. We have made fundamental changes in certain sectors and more is in the conveyer belt - but we should not expect anything short of a street fight.

"Most Kenyans have an incomplete grasp of the transsexual concept or issues and it is not uncommon to see them confusing transsexuals with gays, lesbians, intersex, cross dressers and bisexual people. This means that rarely will transgender issues be discussed in an objective fashion. To stem this, the Transgender Education and Advocacy has created relevant frameworks to facilitate constructive debates that will enlighten the society and create capacity in government to offer services to transgender people in line with Section 47 of our Constitution that is Fair Administrative Action."

TRANSGENDER RIGHTS NOT SIMPLY GAY RIGHTS

BY AUDREY MBUGUA

THERE is a systematic ploy to erase the transgender community, experiences and lives. The ubiquitous actions that are slowly expunging transgender people from our civilisation and their pernicious nature are weighing heavily on the transgender community.

It's worth dissecting the issue of human rights activists to get a better perspective of how their activism is of benefit to transgender people. Luckily, there is a growing momentum in the transgender community to ensure the restoration of the dignity and autonomy of the community. There is a plethora of pitfalls - and mostly among the people who are targeted for re-education about the transgender concept.

Richard Feynman, an American physicist, once said that if you think you understand quantum mechanics then you don't understand quantum mechanics. Without the fear of sounding cocky, I will say this: if you think you really think you understand the transgender concept, then there is a chance you don't have the slightest clue what it is all about, and might never be able to get it.

The field of human rights activism targeting the lesbian, gay, bisexual and transgender community is overflowing with fundamental flaws on the subject and issues of transgender people. The problem is further compounded by a similar lack of awareness among a large section of the donor community. The result of course is that you end up having a huge chunk of funds being utilised to marginalise and spread misinformation about transgender people.

While I appreciate and recognise people's freedom of speech - the right to say anything under

the sun or moon (but away from the police) - and that there are communities out there who have been vilified and their rights violated, I will not don kid's gloves in addressing the matter at hand due to the people involved. This is an educational approach and it would be immature for anyone to blow a gasket because they have been told they are wrong.

'BE A REAL WOMAN, DON'T CONFUSE PEOPLE'

There are a number of stereotypes about women: they are soft, don't fight back, are timid, cry for no reason, walk swinging their hips and, the most ubiquitous one, they all have broken wrists. There is a whole array of laws transsexuals have to abide by, some extending to who they should date. This phenomenon is referred to as gender-normative garbage. Some activists refer to it as hetero-normative (they are wrong) but that's a topic for another day. Pamela Hayes reveals that transgender women get entrapped by this to the point of being defenceless in the face of oppression.

"Some transsexuals are so concerned with how they appear to people, that they come across like robots. I have been in the company of transwomen who seem like they have no personality. They are so preoccupied with being sweet and ladylike that they come off acting like a machine.

"So many times, transwomen have been out in public and have been insulted by a store clerk or have had people to get in their face and utter pejoratives... "Why didn't you say something to the person who insulted you?" ... "But I don't want to be unladylike."

"I don't think saying something derogatory to someone who has insulted you is being unladylike. And maybe transwomen need to knock it off with this perpetual



CHAMPION: Audrey Mbugua

ladylike garbage. Sometimes you can't be ladylike. Circumstances preclude that."

This gender policing means that transgender women have to conform to these laws or face censure, which can take the form of being called a man in a dress, sissy boy or bottom. At times the pain of seeing what transgender people have to put up with is so intense you nearly get an anger stroke. For example, we all recall the arrest and trial of Auntie Tiwonge and her boyfriend Steven in Malawi that sparked condemnation from local and international human rights fora.

Despite the evident transgender status of Tiwo, these activists humiliated her over and over again for them to perpetuate the gay agenda in Africa. Instead of these activists taking the opportunity to educate others about the transgender concept and challenge the lack of laws that cater for people who are changing sex, they branded her and her boyfriend as male homosexuals. It's only after their release that some gay activist made token noise that Tiwonge is indeed transgender, but the damage had

already been done.

This gaynisation trend by some gays among gays is spectacularly unnecessary and in fact yields more transphobia by some gays and lesbians towards transsexuals.

What consequences are there as a result of this mislabelling? Homosexuality is criminalised in Kenya - note the difference for some gays and lesbians to say that LGBT people are criminalised (it's wrong). You go around telling members of the public LGBT people are the gay community (but being transgender does not make one gay), then a transgender woman goes to the hospital for gender reassignment. Don't you think she will be denied access to medical services because the doctors will think by providing hormones and surgery to her they are assisting to legalise homosexuality? And, extrapolate the same on changing names in identification documents like the ID card.

Additionally, transgender people are more visible than gays and lesbians. During and after the transition, the parents/guardians or family and relatives will actually know about the transition (unless they are blind). Then amidst these 'difficult' times, they see some LGB individuals calling transgender people gays/homosexuals. What will be the reaction? They form a twisted and wrong picture of who their daughters or sons are.

Note that I am not saying it is okay for gays to be denied access to medical services. But you cannot turn transgender people into sacrificial lambs for the sake of activism. You are messing up people's lives and surely they never gave you their consent for you to do so. Who loses out of this misinformation?

And let's consider the ever-ridiculous habit of the images

that LGBT organisations use to depict transgender people. What happens is they use a picture of a person busy applying a tonne of make-up and a wig. Then this person has to have features that are meant to say 'it's a man putting on make-up', or a picture of a person with a very hairy torso and in a dress. This results in the world believing that transgender people are female impersonators, pretending to be women and going late at night to get unsuspecting straight men to sleep with them. They get accused of the crime of deception, which results in hostility and violence against transgender people.

Most people would point out at my imbalanced perspective of the dynamics of the LGB and transgender activism. There are some gays who are mature and don't oppress transsexuals. I totally agree but am not in the business of counting evil sheep. I have so far refrained from making sweeping generalisations about gays and lesbians.

Not all gays and lesbians oppress transgender people and in fact some great strides that have benefited transgender people have been made with the support of some gays and lesbians. And still there are people who are not gays and lesbians or bisexuals who have also made significant contributions in the lives of transgender people.

We appreciate all these contributions but that should not preclude us from challenging all forms of oppression by the LGB community. If it's a trade where some gays help us in return for us acquiescing our identities and lives and take on theirs then that's unacceptable and we shall resist it to our graves.

- This is an edited version of an article Audrey Mbugua did for an online magazine last year.