

6: Choice and consent in the trans* community: voices from Africa

The sixth of the ten part essay series has been adapted from presentations by Leigh Ann van der Merwe and Adrian Jjuuko at the Global Dialogue on Decriminalisation, Choice and Consent.

After a long and tedious legal battle, in early October 2014 the Nairobi High Court ordered that the National Examinations Council conduct a name change on transgender activist Audrey Mbugua's academic certificates. Where once her academic qualifications read 'Andrew Mbugua' today they read 'Audrey Mbugua': an accurate reflection of her name and gender identity. In a country where trans* people face barriers finding employment because of the discrepancy between the names on their qualifications and the genders they present today, Mbugua's case was no less than a landmark win for the trans* rights movement in Kenya.

However, the battles for legal, social and cultural recognition of the rights of trans* people continue in Kenya and world over. To simply be accepted as the gender you are and be accorded with rights as a full human being appear to be pretty obvious demands; however, trans* people across the world are denied access to these basic rights. What's more, transphobia is rife everywhere, creating a global culture in which trans* people are routinely discriminated against, bullied and demeaned on the basis of their gender.

In her blog ['Living Lindsay: My Life as a Transgender Girl in Kenya'](#), 26 year old Lindsay exposes how the world that she - and countless others - navigates each day is full of intolerance and hate. In a great section entitled 'Living Lindsay: My Life as a Transgender Girl in Kenya', Lindsay lists out the big no-no's which include 'When did you decide to become a girl?' ('We don't *decide* to become girls. We just are), 'So are you a real woman?' ('This implies I'm a fake woman...What's a real woman anyway?') and the ubiquitous 'Do you still have your dick?' (to which some of Lindsay's many responses include, 'How would you feel if I suddenly started asking you about your genitals? How big is your dick? How small is your clitoris?').

While Lindsay maintains an impressive sense of humour through her anger, these issues are neither funny nor unique to her experience, and questions like these consistently work to undermine any choice and autonomy trans* people have over their bodies and their lives. Living as a trans* person in societies that are deeply invested in the gender binary and all the privileges that come with it is a tiring struggle. And depending on where you live, how wealthy you are, or what ethnic group you come from, your ability to choose and consent to decisions being made about your body greatly differ too.

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Over the last few months, Kenya's neighbour country Uganda has enacted several discriminatory laws that punish and criminalise sexuality. While there is no specific legislation directed against trans* individuals, this amounts to lack of legal protection rather than a loophole from discrimination for the trans* community. A major source of trans* abuse and harassment by law enforcement is on the basis of Uganda's Anti-Homosexuality Bill that was passed in 2013. Given that trans* identities are often misunderstood and unrecognised, trans* people are seen as 'engaging in homosexuality' and then persecuted by the police. Since the bill was signed, at least one trans* person has been killed in a hate crime, and countless others have faced homelessness, loss of employment, or fled the country.

It is within this fraught context that the trans* community must negotiate their basic human rights. One area in which the fight back has been at least partially possible has been in the case of name changes. In contrast to Mbugua's hard-won name change battle, the Ugandan Registration of Births and Deaths Act allows adults to change their names, which has meant that up to this point, over ten trans* people have managed to change their legal names.

And interestingly, despite there being no recognition of the rights of transgender people in Ugandan law, the same Act allows for sex changes to take place - but only for minors with their parents' consent. While this provision provides a certain amount of leeway for some individuals, it rests heavily on parental consent, which is often very difficult for young trans* people as many trans youth are ostracised by their families. And moreover, it rests on the hugely unjust idea that beyond the age of 18, a sex change is legally out of the question.

Jump across and down the continent to South Africa, which has some of the most extensive anti-discrimination legislation in the world. Following apartheid the importance of enshrining identity-based equality in the constitution was incredibly important for lawmakers, and the South African Constitution clearly states that no one should be discriminated against on the basis of either their sexual orientation or gender identity. Moreover, the Alteration of Sex Description Act of 2003 allows those who have undergone a medical and/or surgical sex change to apply for an official name change (however, this doesn't account for those who have changed their gender without changing their sex). For the most part, though, the country's laws have been designed to include trans* people as a legitimate gender identity. However, as activist Leigh Ann van der Merwe aptly puts it, 'South Africa is a country of beautiful laws whose only function

is to gather dust somewhere on the shelves of Parliament.’

Take the law that ‘ensures’ sexual and reproductive health services - including gender reassignment surgery and hormone therapy - for trans* people: the only one in the world of its kind. While this looks great on paper, in reality the waiting list is 26 years long. Yes, 26. And moreover, access to hormone therapy is limited, as is the time allocated to surgeries, which fall under the category of ‘cosmetic’ rather than ‘medical’. This also means that most insurance companies will not pay for this treatment, leaving it as inaccessible as if the law had not existed at all.

Moreover, given that name change laws are only relevant if someone has undergone sex change surgery (after navigating their way through that 26 year long waiting list), the majority of trans* people in South Africa still don’t have proper identification or documentation. Living without any form of ID essentially criminalises the identity of trans* people, and also prevents them from fully accessing health services: something that becomes particularly significant in the context of HIV services. When trans* people do access such services, the attitude of ‘the doctor is always right’ pervades most of their experiences, which limits people’s choices and relegates ‘consent’ to a situation forced by circumstance. The medical fraternity is given a large amount of power over the bodies of trans* people, and there are very few meaningful choices when it comes to making health and medicine related decisions.

No matter how you look at it, the gender binary is everywhere we turn. Toilets. Children’s clothing. Hollywood. Company policies. Constitutions. Rent agreements. Laws. The list is endless. In several African countries trans* communities have used legal challenges to counter some of this and have made some progress. But there is still a long way to go.

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