

THE UNITED REPUBLIC OF TANZANIA

Joint Stakeholder Submission to the United Nations Universal Periodic Review For 25th session April–May 2016

This document is submitted jointly on behalf of the following organizations:

- Community Health Education Services & Advocacy(CHESA)
- Tanzania Community Empowerment Foundation (TACEF)
- Young Women Initiative Group(YWIG)
- Waremba Forum (WAREF)
- KBH Sisters
- Tanzania Trans Initiative (TTI)
- Amka Empowerment
- LGBT Voice
- House of Empowerment and Awareness in Tanzania (HEAT)
- Tanzania Network of People Who Use Drugs (TaNPUD)
- Community of Hope and Support (CHS)
- Youth Movement for Change (YMC)
- Zanzibar Youth Empowerment Association (ZAYEA)
- Tanzania Service Foundation (TASEFO)
- Zanzibar Society for Sustainable Environment (ZASOSE)
- Wake Up and Step Forward Organization (WASO)
- Community Peer Support Services (CPSS)
- Self Help Initiatives Group (SHIG).
- Youth Wings

The above designates organizations are members of the Tanzania Key Populations and Sexual Minorities Working Group

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Background and overview

This report is a submission to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for Tanzania's appearance before the Universal Periodic Review session, scheduled for April 2016.

This submission is consistent with the guidelines approved by the Human Rights Council and the Civil Society Unit of the OHCHR.

This submission focuses primarily on violations of human rights, including health rights, for Key Populations and Sexual Minorities in Tanzania.

We acknowledge the effort of Stakeholders in the First Cycle Shadow Report of 2011. However, the Key Population and sexual minorities did not participate and were not involved, and therefore Key Populations issues were not addressed. Unfortunately, for human rights in the United Republic of Tanzania, these issues are now even more crucial and important.

The International Gays and Lesbian Human Rights Commission (IGLHRC) congratulated the government of Tanzania for the submission of the report in 2011 during first cycle and suggested improvements in certain human right issues. Among others IGLHRC recommended that Tanzania should:

1. Ensure that everybody is equal before the law and is entitled, without any discrimination, to the equal protection of the law, and
2. Take all necessary measures to protect consenting adults engaged in same sex relations from discrimination and harassment.

This current report presents justifications for the recommendations that are presented in this document.

Methodology

The preparation of the present report started with capacity building training for Key Population groups to create understanding about the UPR process, its significance and the methodology for preparation and submission of the stakeholders' reports. It was followed by broad consultation with various stakeholders involving representatives of Key Population organizations from different parts of the country. Information was also gathered from the field, victim testimonies and from reports of various stakeholders. It is to be noted that no NGOs working in these groups were invited by the State during the preparation of the National report.

Terms used

The term *Key Population* describes populations disproportionately impacted by HIV when compared with the general population. While this may vary according to local epidemic dynamics, principally this describes men who have sex with men (MSM), people who use drugs (PWUD), sex workers (SW) and transgender people.

Sexual minorities include lesbians, gay, bisexual, transgender and intersex people.

Executive Summary.

This report is a joint submission by Key Population groups, gender and sexual minority organizations which are sex workers, MSM/gay men, drugs users, transgender in Tanzania. This report is prepared specific to the United Nations Human Rights Council on the occasion of the 25th Session of the Working Group on the Universal Periodic Review. This submission presents human rights violations in Tanzania on account of actual or perceived sexual orientation, gender identity, or status as a sex worker or a person who use drugs (PWUDs). The report focuses primarily on, but is not limited to, health rights.

These violations consist of acts of violence against sexual minority individuals, denial of health services, arbitrary administrative measures, and a hostile approach of State officials towards the sexual minorities and Key Population community in Tanzania.

In preparing this submission, we relied on documentation and data from the following sources: sexual minority and Key Population organizations and allies in Tanzania; reports by national and international human rights NGOs.

This submission proposes a number of recommendations for improving the human rights of these groups in Tanzania, these are few to mention;

- Request the government to increase the available domestic resources for Key Population programmes that serve to reduce the spread of HIV/AIDS and the subsequent deaths associated with the disease
- Ensure the government takes action against all police officers who based on sexual orientation or identity conduct harassment, torture, or all other forms of ill-treatment against sexual minorities and Key Populations
- Remove all restrictions on the registration of groups working with Key Population and sexual minority, including groups dealing with HIV interventions, sexual and reproductive health, and human rights. These groups are necessary to better uphold the objectives of the Third National Multi-sectoral Strategic Framework for HIV and AIDS
- independent investigations into all allegations of violence against sexual minorities and Key Population individuals, leading to prosecution of perpetrators

1. Right to access to health services

1.1 Tanzanian Key Populations and the Sexual Minorities Working Group (in the following, the working group) appreciate the fact that the government under the Prime Minister's Office and the Tanzanian Ministry of Health and Social Welfare, like many health ministries around the world, have recognized that essential partners in the fight against HIV are men who have sex with men, or gay men (MSM), sex workers (SW), and people who use drugs (PWUDs). The Third National Multi-sectoral Strategic Framework for HIV and AIDS, 2013 - 2018, recognized that stigma inhibits access to services. Key Populations were also emphasized in the updated Strategic Framework National Guidelines for provision of comprehensive health services to Key Population 2013 to 2017¹ This updated strategic framework pledges to increase to HIV preventive information and services, condom access, peer education, and friendly testing aimed at Key Populations. The National Guidelines also commit to building partnerships between government and civil society organization (CSOs) and others agencies that work with vulnerable populations in order to advocate for their empowerment. Lastly, these guidelines acknowledge the vulnerability of SW and MSM and PWUDs.²

1.2 In Zanzibar, the National HIV Strategic Plan II (2011-2016)³ recommends a national advocacy campaign promoting tolerance toward Key Populations. It also calls for other progressive measures, like needle and syringe programs for people who inject drugs, and for condoms and water-based lubricant to be distributed to MSM.⁴

1.3 Despite all these commitments by the government of Tanzania, there are still several challenges with regard to Key Populations' access to health services. The working group documented several cases of human rights violations within the health sector affecting Key Populations. These violations include denial of services, verbal harassment, abuse and violation of confidentiality.

1.4 For example in one case, a gay man was turned away from a government dispensary in Dar es Salaam, while in another case, a gay man in Zanzibar was

¹National guidelines for provisional of comprehensive health services for Key Population 2013 to 2017

² Human Rights Watch Report 2013 pg 5 www.hrw.org/report/2013/06/18/treat-us-human-being/discriminationagainst-sex-workers-sexual-and-gender

³National HIV Strategic Plan 11(2011-2016)

⁴ Human Rights Watch report pg5

diagnosed with gonorrhoea, but was then refused treatment because of his sexual orientation.⁵

- 1.5 Therefore, despite the effort of the government to develop strategies and guidelines for health service providers, there are no effective implementations of those guidelines by the health service providers.

Recommendations

- 1.6 Ensure the effective implementation of all the following programmes in all sectors: the Tanzania Third Multi-Sectoral Strategic Framework for HIV and AIDS 2013/14-2017/18⁶, National Guideline for Comprehensive Package of HIV Intervention for Key Population 2014⁷, Third Health Sector HIV and AIDS Strategic Plan (HSHSP III) 2013-2017,⁸ Comprehensive National Multi-Sectoral HIV and AIDS Stigma and Reduction Strategy 2013-2017⁹, Tanzania National HIV & AIDS Advocacy and Communication Strategy 2013-2017¹⁰ and for Zanzibar the National HIV Strategic Plan II (2011-2016) .
- 1.7 Request the government through the ministry responsible to recognize and include transgender and intersex people in the national HIV strategies for both Mainland and Zanzibar.
- 1.8 Urge public health providers to make an effort to acknowledge, reach out to, and educate Key Population groups, as indicated by the Third National Multi-Sectoral Strategic Framework on HIV/AIDS,.
- 1.9 Request the government to increase the available domestic resources for Key Population programmes that serve to reduce the spread of HIV/AIDS and the subsequent deaths associated with the disease.
- 1.10 Request the Government to provide mandatory trainings on the international standards of non-discrimination to government officials such as police, prison/detention staffs and judiciary with specific emphasis on Key Population and sexual minorities to address their vulnerability to HIV infections.
- 1.11 Request the government to procure HIV prevention commodities such as condom-compatible lubricants, needles and syringes and to include in the health commodities essentials list.

⁵ Human Right Watch report pg 71-72

⁶Tanzania third Multi-Sectoral strategic framework for HIV and AIDS 2013/14-2017/18

⁷National Guideline for Comprehensive Package of HIV Intervention for Key Population 2014

⁸Third Health Sector HIV and AIDS Strategic Plan (HSHSP III) 2013-2017

⁹Comprehensive National Multi-Sectoral HIV and AIDS Stigma and Reduction Strategy 2013-2017

¹⁰Tanzania National HIV & AIDS Advocacy and Communication Strategy 2013-2017

2. Police Harassment.

2.1 The working group has knowledge of dozens of incidences of grave human rights violations by police, including arbitrary arrest, torture, rape and inhuman treatment, often combined with extortion for money or sex. In most of these cases there was denial of access to justice, as police officers refused to accept complaints from members of Key Populations and sexual minorities.¹¹ Additional sources known to the working group indicate that members of Key Populations and sexual minorities are sometimes arrested on false charges or are victims of arbitrary arrest.¹² For example, in one case two gay men were arrested and held in police custody because one was "walking like a woman"; they were not released until the next day, after they had paid a bribe.¹³ Likewise, a gay man in Tandika was arrested, beaten and detained for two days for trying to organize a seminar on health issues for MSM.¹⁴

2.2 The working group disclosed evidence of several more cases of police mistreatment of Key Populations and sexual minorities, including cases of physical abuse, inhuman treatment, and extortion of money or sex. For example one transwoman from Tanga explained the way she was stripped naked in a police station.¹⁵

2.3 Report indicates that police continue to physically assault and verbally harass to Sexual Minority in Tanzania. As recently as January 2015, a transgender man was arrested in Dar es Salam on suspicion of being in a same sex relationship. During his arrest, police used verbal harassment, assault and treated him inhumanity.¹⁶

2.4 Several reports indicate that also sex workers are subjected to high levels of police harassment such as extortion, rape, assault, and verbal harassment. For example, in March 2015 in Tandale a sex worker was raped, beaten by two police men and after her effort to report to the Magomeni police station, she was denied services. Instead, she was falsely charged with bringing false allegation against police officers and therefore remanded for three days in Segerea Prison.¹⁷

¹¹ Working groups report of 2015 available at CHESA office

¹² Human Rights Watch Report treat us like human being pg 53

¹³ Ibid pg 53

¹⁴ Ibid pg 44

¹⁵ Evidence under custody of the working group

¹⁶ 76Crimes.com/2015/01/30/Tanzania-trans-man-wife-arrested-on-gay-sex-charges/ visited on 13th August 2015

¹⁷ Waremba Forum report

2.5 The working group realized¹⁸ that the police Gender Desk perceives gender as women and children, so the structure of the police Gender Desks in fact do not accommodate sexual minorities. These groups frequently experience gender-based violence and should be afforded access to sensitive and responsive services when they have been abused. For example, lesbians who have been raped should be assisted by the Gender Desk. However, they are often afraid of reporting the offence for fear of experiencing stigma and discrimination at the police station, and people in same sex relationships are reluctant to report violence for the same reasons.

Recommendations

2.6 Ensure the government takes action against all police officers who based on sexual orientation or identity conduct harassment, torture, or all other forms of ill-treatment against sexual minorities and Key Populations.

2.7 Ensure the government takes action against any police officer or civil servant who based on sexual orientation or identity obstructs access to justice and to health services by Key Populations and sexual.

2.8 In police officers raise awareness of sexual orientation and gender identity, including training in collaboration with civil society groups.

2.9 Include sexual minorities in the police Gender Desk partners' forum. Gender Desks should be prepared for, equipped to, and mandated to handle cases of abuse against sexual minorities.

3. Rights to Freedom of Assembly and Association:

3.1 A high prevalence of HIV/AIDS among Key Populations and sexual minorities is recognized in the national framework and guidelines (The Third National Multi-sectoral Strategic Framework for HIV and AIDS 2013-2018 and National Guideline for Comprehensive Package of HIV Intervention for Key Population 2014). These national strategies call for more interventions to be directed to Key Populations and sexual minorities and encourage multiple approaches of reaching most at-risk populations. For instance, proposals are put forth for community outreach work and for peer-to-peer education, a strategy which is logically and prudently for the Key Populations themselves to provide these services.

¹⁸ Several feedbacks from beneficiary

3.2 The right to freedom of association and freedom of assembly are articulated under Article 20 of the Constitution of United Republic of Tanzania¹⁹. However, as recently as April 2014 an NGO working on sexual minority issues and health rights for Key Populations in Tanzania was officially de-registered by the Permanent Secretary of the Ministry of Community Development Gender and Children (MoCDGC). The organisation known as Tanzania Sisi Kwa Sisi Foundation (TSSF) was de-registered because they allegedly were "promoting LGBTI activities." ²⁰, By doing this Tanzania violated its own Constitution's Article 20.

3.3 Most organizations working with Key Populations and sexual minorities experience many challenges with the authorities when they register as an organisation. For instance, they are denied the use of direct names, they may not incorporate specific words in their name, and they have to change their mission, their vision and their objectives. For example in 2014 one group from Zanzibar, then named "Association for sexual health and Human Rights," was denied registration because their name included the term "sexual health;" the word "sexual" had to be removed²¹.. Likewise, a sexual minority group from Iringa was denied registration and forced to remove the words "Sexual Orientation and Gender Identity (SOGI)" from its name.²²

Recommendation

3.4 Remove all restrictions on the registration of groups working with Key Population and sexual minority, including groups dealing with HIV interventions, sexual and reproductive health, and human rights. These groups are necessary to better uphold the objectives of the Third National Multi-sectoral Strategic Framework for HIV and AIDS.

3.5 Raise the awareness of the staff of the Ministry of Community Development Gender and Children (MoCDGC) to understand issues of Key Populations, sexual minorities and human rights.

4. Right to access to work and non-discrimination

¹⁹ URT Constitution of 1997 as amended from time to time

²⁰ Default note under custodian of TSSF

²¹ The Constitution is available under the custody of Youth Movement for Change

²² Case discussed by this working group

- 4.1 Key Population and sexual minorities face several challenges with employment, including termination of employment, denial of employment opportunities, denial of financial loans, abuse while on duty, and harassment due to colleagues or bosses perceiving them as immoral.
- 4.2 The right to employment is provided for in the Constitution of United Republic of Tanzania under Article 22.²³ The same Constitution stipulates clearly that there shall not be any discrimination against anyone.²⁴ Section 7(1) of the Employment and Labour Relations Act of 2004 requires every employer to strive to eliminate discrimination. Section 7(4) sets out the grounds on which discrimination is prohibited, including sexual orientation, gender, HIV/AIDS status and station of life. Despite all these provisions, sexual minorities in Tanzania have experienced employment discrimination on several occasions.
- 4.3 For example, in 2008, a MSM in Dar es Salaam was terminated from his employment (hotel employment) merely because of his sexual orientation.²⁵ In another reported incident, a primary teacher was terminated from his employment also because of his sexual orientation; his supervisor claimed that he was a gay, who will spoil the students.²⁶
- 4.4 Other trustworthy research indicates that at least six people from the Key Population and sexual minority communities have lost their jobs or were forced to change their residence following an anti-gay backlash to a "Gender Festival" in 2011; some because they were seen on television, while others became targets of "a witch hunt in which suspected gays were publicly scorned by family members, neighbors, and employers".²⁷

Recommendations;

- 4.5 Issue directives and guidelines to all employers' associations and other employment actors on issues of human rights, sexual orientation and gender identity.

²³ URT Constitution of 1977 as amended from time to time

²⁴ Article 13(4) of URT Constitution as amended from time to time

²⁵ HEAT Organization report

²⁶ CHESA report 2015

²⁷ Human Rights Watch June 2013, 24, 25

5. Right to life and security

5.1 The right to life of sexual minorities and Key Populations has been violated several times in Tanzania. Despite all these violations, the incidents do not appear to be investigated by police on the grounds of the victims' sexual orientation. Right to life is provided under Article 14 of the United Republic of Tanzania Constitution.²⁸

5.2 For example, Maurice Mjomba was murdered on 2012 by an unknown assailant. Mjomba was working with Center for Human Rights Promotion (CHRP), a group that educates MSM about sexual health.²⁹

5.3 In another human rights violation, an Australian who belongs to the sexual minority community living in Tanzania was also killed "almost in the same manner as Morris Mjomba."³⁰

Recommendations

5.4 Abolish impunity for crimes committed against sexual minorities and Key Populations.

5.5 Ensure independent investigations into all allegations of violence against sexual minorities and Key Population individuals, leading to prosecution of perpetrators.

5.6 Communicate to the Tanzanian public that violence on the grounds of sexual orientation or gender identity will not be tolerated and will be prosecuted to the full extent of the law.

End of joint stakeholder submission.

²⁸ URT Constitution 1977

²⁹ Report available at CHESA office

³⁰<http://www.refworld.org/docid/540421f24.html> 12 May 2015