

Submission to the UN Universal Periodic Review: Zimbabwe 40th session of the HRC UPR Working Group, Jan/Feb 2022

INTRODUCTION

1. In this submission, Trans and Intersex Rising Zimbabwe (TIRZ) provides information under section C (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):
 - a. In section C, we describe human rights violations experienced by young key populations (YKP). YKP are defined in this submission as lesbian, gay, bisexual, transgender and intersex (LGBTI) and young people who use drugs under the age of 24, and sex workers aged 18-24.
 - b. In particular, the human rights violations covered in this submission are as follows: criminalisation of HIV transmission and young key populations; stigma and discrimination of YKP; violence against YKP and gender-based violence; rights of young intersex people; education and information on sexual and reproductive health services and care; and gender markers on identification documents.
 - c. We suggest a number of recommendations to address these human rights violations.
2. TIRZ was founded in early 2017 and registered in 2021 in Zimbabwe. TIRZ is a community-based, youth, trans and intersex-led organisation. It seeks to increase awareness and advocate for the rights and identities of the sex- and gender-diverse community in Zimbabwe. TIRZ has been part of initiatives that aim to reduce the risk of HIV/AIDS among young key populations, including gay and other men who have sex with men, sex workers, those who inject drugs, lesbians, bisexual women, transgender persons, and intersex persons.
3. The information in this submission is based on three consultations held with young key population members in Zimbabwe, information collected through the course of TIRZ's work, and widely-available research.

C: PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Criminalisation of HIV transmission and YKP

4. Criminalising HIV transmission, consensual sex between two adult males, and sex work increases the stigma and discrimination facing young people living with HIV and young key populations, makes them more vulnerable to violence from family, community and law enforcement, arbitrary arrest by law enforcement, and results in young key populations and young people living with HIV less willing to access critical health care services, thereby increasing their vulnerability to HIV. Further, overbroad criminalisation, and criminalising same-sex sexual relations and sex work violate rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR) and

the International Covenant on Economic, Social and Cultural Rights (ICESCR).

5. Section 79 of the Criminal Law (Codification and Reform) Act, 2004 broadly criminalises potential HIV transmission. Section 79 reads in relevant part: “any person who knowing that he or she is infected with HIV; or realizing that there is a real risk or possibility that he or she is infected with HIV intentional does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realizes involves a real risk or possibility of infecting another person with HIV”. It is a defence if the “other person concerned knew that the accused was infected with HIV; and consented to the act in question, appreciating the nature of HIV and the possibility of becoming infected with it.”
6. Under this section, no intent to transmit is required; it can apply to anyone who may have “a real risk or possibility” that they have HIV, which could include LGBT people, sex workers and people who use drugs, regardless of whether they are aware of their HIV status; and it does not require HIV transmission to have occurred between the two parties.
7. Zimbabwe has regularly prosecuted individuals under this law, with the media reporting on a recent case in late 2020 of a HIV-positive woman who sought to breastfeed a friend’s baby to calm it. There was no evidence to suggest that HIV was transmitted to the baby. In early 2021, a woman was charged after her partner accused her of deliberately infecting him with HIV. According to news reports, neither knew their HIV status when they had unprotected sex, but later the woman tested positive for HIV while the man tested negative. There was no evidence that HIV had been transmitted.
8. Section 73 of the Criminal Law (Codification and Reform) Act, 2004 criminalizes consensual sex between adult men. In the previous UPR cycle, Zimbabwe noted the recommendations from Spain, Canada, France, Brazil and Uruguay to decriminalise the criminalisation of consensual sex between adults. However, there has been no progress on decriminalisation.
9. Research has shown that laws criminalising sexual orientation increase stigma and discrimination, make young LGBT people more vulnerable to violence and HIV, and make them less likely to access health services. This has been the experience of many of our members.
10. For instance, a 19-year-old gay man recounted his experience: “We face a lot of challenges especially being looked down upon. I faced a similar challenge, last year in December, when I had an [sexually-transmitted illness] STI. So, I went to the hospital and explained that I had an STI. They scolded me and wanted to take me to the police. I pleaded for forgiveness because I was sick and they understood me in that moment, but they really scolded me, which traumatized me. From that time on I have been afraid to have sex with anyone because of the belittling I experienced. It really hurt me...When I am too embarrassed to visit the clinic when I am sick, I will keep my illness to myself. Then at some point I might find someone I will have sex with. Then I will transmit my illness to that person. The disease will then spread in the community because we will all be too embarrassed to go to the clinic because they laugh at us. I was born this way. This is who I am. So, when I am discriminated, I feel as though I am not a human being who is

like others.”

11. Sex work is also criminalised under sections 81 and 82 of the Criminal Law (Codification and Reform) Act, 2004, which prohibit solicitation and living off the earnings of sex work, respectively. This makes sex workers more vulnerable to violence, arbitrary arrest and HIV. A young 23-year-old sex worker recounted her experience: “If I get into a clinic as a sex worker, the nurses-because I am young-will ask me where I work. They are going to start mocking me saying these are the girls that steal our men. There is a time when I went to seek health services at a local clinic. So, the nurse that attended to me noticed that I had a nose ring and a piercing on the side of my mouth. She started treating me as if she was disgusted by me, so I started to feel guilty. After she stamped my card, I went and sat alone. When the time to be served came I did not end up telling her my actual illness. I started lying that I had a headache. Yet I actually had an STI. I actually left the clinic holding paracetamol tablets in my hand. I think it is important that when nurses are being trained, they need to be taught that at the clinics they will go to, they will come across gay people, lesbians, sex workers and such. We are all human beings, and we are all the same.”

Stigma and discrimination against YKP

12. Stigma and discrimination on the basis of sexual orientation and gender identity violates the right to be free from discrimination guaranteed under international human rights treaties, including the ICCPR and the ICESCR.
13. In 2014, the People Living with HIV Stigma Index found that over 65% of people living with HIV and tuberculosis in Zimbabwe experienced discrimination in the prior 12 months preceding the study. This was greater among key populations with over 90% of sex workers and 77.8% of men having sex with men reporting that they had experienced discrimination in the past 12 months preceding the study.
14. YKP face significant stigma and discrimination within their homes, families, communities and schools, limiting their access to health information and basic health care, and rendering them more vulnerable to violence. YKP experience regular bullying in school for their perceived sexual orientation or gender identity making them less likely to continue staying in school and more likely to engage in high-risk behaviour. LGBT youth face a heavy psychological burden for keeping their sexual orientation and gender identity secret within the family and community setting for fear of being thrown out of the house or violence, among others.
15. This is reflected in the experience of our community members. For instance, a 23-year-old lesbian recounted the following: “Are we facing stigma and discrimination in society? Everyday we are. Every single day. And it affects everything I then do. If I am try to access a service, if I’m trying to go to a healthcare provider I’m thinking, as I leave my home with my partner or by myself, how have I left this house? Am I feeling confident in my own skin? Am I worried that people are going to judge me the minute they hear that I am sexually active? I’m not only sexually active, it’s with another woman. Do they then treat me differently? Are they giving me a cringe? Are they frowning upon me?”

16. A 23-year-old transman recounted the following experience when accessing healthcare services: “So I went for cervical cancer screening and I sat there and then the nurse came and then she was like, “Excuse me, sir, why are you seated there? You know it’s for women, right?” So already everyone started looking at me to say what was I doing there. And I walked towards her and tried explaining myself. ‘So, I am transgender and...’ And she was like, “Ok, come in.” And then I started explaining, it was now more like a questioning session. And then I didn’t go through...She started taking out the instrumentals that they use for cervical cancer and I was like no, I am not doing this. I literally said, “You know what, I think I would need to prepare myself emotionally and mentally for the process.” Because also understanding with issues around body politics within trans-identifying individuals. So that was me being brave enough and also being privileged and empowered enough. So, what happens for a young person who is not well-informed of their rights?”
17. In the previous UPR cycle, Zimbabwe noted recommendations from Canada, Chile, Italy, Argentina, Czechia and Israel calling for the prohibition of discrimination against persons because of their real or imputed sexual orientation, gender identity or expression, and ensure adequate protection for lesbian, gay, bisexual, transgender and intersex persons, sex workers, and other marginalized groups. However, there has been little progress towards prohibiting such discrimination.

Violence against YKP

18. The ICCPR clearly prohibits torture and other mistreatment. In addition, the African Commission on Human and Peoples Rights in its Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity condemns violence on the basis of sexual orientation and gender identity.
19. Despite this, YKP face high levels of violence by law enforcement, family members and members of the community. Sex workers face significant violence from clients and law enforcement, and lesbian and bisexual women are victims of corrective rape.
20. For instance, a 22-year-old LBQ woman was raped by her uncle because of the way she dressed. When she had the courage to tell her mother of the rape, her mother told her that the rape happened because she dressed as a man and she might be able to get a boyfriend now. Having no support from her family, it was difficult for her to report the rape to the police. She was also fearful that the police would make the case about her sexuality and not about her uncle’s rape. This severely limited the reporting of abuse to the police from the LBQ community.
21. In the previous UPR cycle, Zimbabwe noted recommendations from Israel, Czechia and Chile to address violence on the basis of sexual orientation and gender identity. However, there has been little done to address violence on the basis of sexual orientation and gender identity.

Rights of young intersex people

22. Young intersex people are subjected to “corrective” gender surgery without their informed consent. Often these procedures take place when the person is young and they

are unable to fully understand the impact of the surgeries on their wellbeing. Indeed, many intersex people in Zimbabwe report lifelong physical and mental health issues due to these surgical interventions, especially as they are irreversible. Intersex children may have a body that does not reflect their gender identity as the surgery has been done prior to their awareness of their gender identity.

23. Such practices violate the right to be free from torture and cruel, inhuman and degrading treatment guaranteed under the ICCPR and the right to health guaranteed under the ICESCR.

Education and information on sexual and reproductive health services and care

24. There is inadequate comprehensive sexuality education in schools. Even in cases where there is sexuality education, it does not address sexual orientation and gender identity or the specific health risks facing LGBTI youth violating the right to education guaranteed under the ICESCR and the Convention on the Rights of the Child (CRC).

25. Young people's sexuality, including birth control and condom use is seen as culturally taboo and sinful to discuss, and therefore there is limited information and opportunity for young people to access sexual and reproductive health care.

Gender markers on identification documents

26. Trans people are unable to change their gender markers on official documentation making them more vulnerable to stigma, discrimination and violence. In addition, it limits their ability to exercise other fundamental rights including voting.

27. For instance, a young transman recounted how he was unable to vote in the previous Zimbabwe elections because he identifies as a man, but his gender marker on his identification documents is female. He did not know whether to stand in the male or female queue given the discrepancy between his gender and his gender marker on his identification.

28. The Human Rights Committee has regularly recommended countries enact legislation that provides for the changing of an individual's gender on their identity documents to ensure they are in compliance with the ICCPR.

F: RECOMMENDATIONS

Criminalisation of HIV transmission and YKP

29. Review Section 79 of the Criminal Law (Codification and Reform) Act, 2004 to allow for prosecutions of wilful HIV transmission only where there is intent proven, the accused was aware of his or her HIV status and HIV transmission between the accused and the victim is proven. Additional safeguards should be implemented to ensure that prosecution does not infringe with the right to privacy and other human rights, such as disclosure of HIV status.

30. Review section 73 of the Criminal Law (Codification and Reform) Act, 2004 to decriminalise consensual sexual relations between adult men.

31. Review sections 81 and 82 of the Criminal Law (Codification and Reform) Act, 2004 to decriminalise sex work.

Stigma and discrimination against YKP

32. Review and amend Part II of the Prevention of Discrimination Act [Chapter 8:18] to include people living with HIV; pregnant women; children; people with disabilities and key populations.
33. Train health care workers on existing age of consent laws, in medical ethics and human rights, and on the sexual health needs of YKP.
34. Clarify the age of consent to medical treatment in law.
35. Review HIV and health laws and policies to include specific provision for the rights of people with disabilities and key populations to accessible and appropriate health information and health care services, including HIV-related prevention, treatment, care and support, access to sexual and reproductive health care without discrimination, and participation in the design, development and implementation of programmes.

Violence against YKP

36. Train law enforcement, especially victim friendly units on dealing with violence against YKP and on sexual orientation and gender identity and expression and sex characteristics-related (SOGIESC) issues.

Rights of intersex people

37. Revise government policy to make clear that hospitals should not provide “corrective” gender surgery for intersex children until children are able to provide their own informed consent for the procedure.

Education and information on sexual and reproductive health services and care

38. Undertake to ensure the inclusion of comprehensive, age-appropriate sexuality education in all schools that includes SOGIESC in line with the United Nations’ International Technical Guidance on Sexuality Education.

Gender markers on identification documents

39. Revise existing policies to enable the changing of gender markers on official identification documents.