

Annex I: Human Rights Watch Letter to Health Minister Ummu Mwalimu, August 9, 2016

Hon. Ummu Ally Mwalimu, Minister
Ministry of Health, Community Development,
Gender, Elderly and Children
Kivukoni Front
P.O. Box 3448
Dar es Salaam
Tanzania

Via Email: umwalimu@gmail.com; umwalimu@parliament.go.tz

Via the Permanent Secretary: ps@mcdgc.go.tz

Re: Water-based lubricant and HIV prevention

Dear Hon. Minister Ummu Mwalimu,

We write on behalf of Human Rights Watch, an international organization that documents human rights violations in over 90 countries around the world and works with governments to improve their respect for human rights. In recent years, we have reported on human rights abuses affecting vulnerable groups in Tanzania, including widows' inheritance rights, child marriage, and child labor in the mining sector. With respect to discrimination against key populations affected by HIV, we have focused on sex workers, men who have sex with men (MSM), and people who inject drugs.

We are writing to express our deep concern over the Tanzanian government's recent decision to ban the distribution of water-based lubricant to men who have sex with men, as set forth in the Ministry of Health statement of July 19²⁹⁵ and further clarified in your

²⁹⁵ Habari 360, "Hili Hapa Tamko la Wizara ya Afya Kuhusu Matumizi na Usambazaji wa Vilainishi," July 19, 2016, <http://www.habari360.com/2016/07/hili-hapa-tamko-la-wizara-ya-afya.html?m=0>.

Facebook post of July 24. The decision appears to be based on a desire not to “promote homosexuality.”

As you may be aware, Tanzania’s National Strategic Framework on HIV and AIDS, published by the Prime Minister’s Office in 2013 and in effect through 2018, calls for increased access to water-based lubricant for MSM and sex workers.²⁹⁶ A set of national guidelines on HIV programming for key populations, published by your ministry in September 2014, affirms that, “Increasing the availability, accessibility, affordability and use of... condom-compatible lubricants among people from key populations through targeted distribution programmes is an essential component of the HIV response.”²⁹⁷

Water-based lubricant has been shown to be highly effective in helping to prevent the spread of HIV. Condoms are more likely to tear when partners engage in anal sex without lubricant, or when they use oil-based lubricants such as Vaseline. The World Health Organization describes “comprehensive condom and lubricant programming” as essential in responding to HIV among key populations.²⁹⁸ UNAIDS guidelines state that “Programmes should always make water- or silica-based lubricants available with condoms,” noting that lubricants are “highly important for men who have sex with men, sex workers and post-partum women.”²⁹⁹

As you have noted, HIV prevalence among men who have sex with men in Tanzania is much higher than among the general population. According to the Tanzania Commission on AIDS (TACAIDS), a governmental body, prevalence among the general population was at 5.1 percent in 2012, while studies on MSM indicated prevalence rates between 12 percent and 41 percent.³⁰⁰

²⁹⁶ The United Republic of Tanzania, Prime Minister’s Office, *Tanzania’s Third National Multi-Sectoral Strategic Framework for HIV and AIDS (2013/14 – 2017/18)*, November 2013, p. 39, p. 47.

²⁹⁷ The United Republic of Tanzania, Ministry of Health and Social Welfare, Tanzania Mainland, *National Guideline for Comprehensive Package of HIV Interventions for Key Populations*, http://www.emtct-iatt.org/wp-content/uploads/2016/01/Tanzania_KP_Comprehencive_Guideline_sept_29th_2014.pdf, September 2014, p. 25.

²⁹⁸ World Health Organization, *HIV Prevention, Diagnosis, Treatment and Care for Key Populations: Consolidated Guidelines*, July 2014, http://apps.who.int/iris/bitstream/10665/128049/1/WHO_HIV_2014.8_eng.pdf?ua=1&ua=1, p. 3.

²⁹⁹ UNAIDS, *Condom and lubricant programming in high HIV prevalence countries*, Guidance Note, 2014, http://www.unaids.org/sites/default/files/media_asset/condoms_guidancenote_en.pdf, pp. 5-8.

³⁰⁰ The United Republic of Tanzania, *Global AIDS Response Country Progress Report*, March 31, 2014, http://www.unaids.org/sites/default/files/country/documents/TZA_narrative_report_2014.pdf, p. 13.

This high prevalence rate suggests that the Tanzanian government needs to be doing much more, not less, to reach out to MSM and ensure that they are fully included in HIV prevention programs – and that they are not subjected to stigma and discrimination when accessing services. Research conducted in 2012-2013 by Human Rights Watch and the Wake Up Step Forward Coalition, a network of Tanzanian MSM organizations, found that discrimination and violence prevent MSM, as well as sex workers and people who inject drugs, from adequately accessing government services.³⁰¹ UNAIDS has affirmed that stigma and discrimination contribute to high HIV rates among key populations, and that countries should tackle stigma and reform discriminatory policies and laws if they wish to achieve lower HIV prevalence.³⁰²

Lack of access to water-based lubricants is among the factors that likely contributes to the spread of HIV among MSM and sex workers, according to Human Rights Watch and WASO's research. Almost all the MSM interviewed by Human Rights Watch and WASO in 2012 and 2013 said they did not know where to get water-based lubricant, or could not afford to buy it in pharmacies. According to "Lester," a gay man in Arusha, "It's easy to get condoms, but not lubricant. You might go to five stores asking for it without getting KY [a water-based lubricant]. So I'm using [oil-based] Vaseline." In Mbeya, "Christian," a male sex worker, told Human Rights Watch he had been compelled to use oil-based lubricant, since water-based lubricants generally were not available. Both Lester and Christian said that knew that oil-based lubricants such as Vaseline could damage condoms and increase their risk of contracting HIV, but they did not see any alternative.³⁰³

Recent lubricant programming by nongovernmental organizations in Tanzania was an attempt to address this critical gap and make water-based lubricants widely available to men like Lester and Christian – an objective that civil society organizations working on HIV in Tanzania have recognized as a priority. At a meeting coordinated by AIDS Accountability in May 2014, 78 Tanzanian civil society organizations met to outline priorities for the

³⁰¹ Human Rights Watch and WASO, "*Treat Us Like Human Beings*": *Discrimination Against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania*, June 18, 2013, <https://www.hrw.org/report/2013/06/18/treat-us-human-beings/discrimination-against-sex-workers-sexual-and-gender>.

³⁰² UNAIDS, *Key Programmes to Reduce Stigma and Discrimination and Increase Access to Justice in National HIV Responses*, Guidance Note, 2012, http://files.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf.


³⁰³ Human Rights Watch and WASO, "*Treat Us Like Human Beings*": *Discrimination Against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania*, pp. 80-81.

Global Fund in its work to address HIV/AIDS in Tanzania; they listed “friendly low-threshold services for key populations,” including access to condoms and lubricants, as the second highest priority for Global Fund resources.³⁰⁴ These organizations recognized that distributing water-based lubricant has nothing to do with “promoting homosexuality” – it has everything to do with saving lives.

If the Tanzanian government is serious about ending the spread of HIV, it should be promoting the use of water-based lubricant, not restricting it. Tanzania is party to the International Covenant on Economic, Social and Cultural Rights, which protects the right to the highest attainable standard of health. Rejecting evidence-based approaches to preventing HIV among marginalized populations, and discriminating in providing access to essential health services, violates that right.³⁰⁵ The more Tanzania restricts the distribution of lubricant to key populations, the more it is likely to see higher HIV rates – and preventable deaths – among these populations.

We strongly urge you to ensure that Tanzania’s approach to water-based lubricant is guided by best practices as set out by agencies with decades of expertise in addressing HIV, such as UNAIDS and the World Health Organization, and by a commitment to upholding the right to the highest attainable standard of health.

We would appreciate your response to this letter, informing us what steps the Tanzanian government will take to ensure that nongovernmental organizations are able to continue and expand their distribution of water-based lubricants to members of key populations.

Please reply to our Senior Researcher, Ms. Neela Ghoshal, at 

Sincerely,

Diederik Lohman

³⁰⁴ AIDS Accountability International, “Tanzania Civil Society Priorities Charter: An Advocacy Roadmap for the Global Fund to fight AIDS, Tuberculosis and Malaria New Funding Model,” May 2014, <http://www.aidsaccountability.org/wp-content/uploads/2014/02/Tanzania-Civil-Society-Priorities-Charter.pdf>.

³⁰⁵ Office of the High Commissioner for Human Rights, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, <http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf>, para. 12(b).

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The Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV
(African Commission on Human and Peoples' Rights)
Via Email: au-banjul@africa-union.org

The UN Special Rapporteur on the Highest Attainable Standard of Health
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