

Annex II: Human Rights Watch Letter to Health Minister Ummu Mwalimu, December 24, 2019

The Honorable Ummu Mwalimu
Minister of Health, Community Development, Gender, Elderly and Children
Ministry of Health, Community Development, Gender, Elderly and Children
University of Dodoma,
College of Social Science and Humanity,
Block 11,
P.O. Box 573,
40478 Dodoma, Tanzania

Via fax: +255 26 2963348

Via email: ps@communitydevelopment.go.tz

Via web form: submitted online at <https://www.moh.go.tz/en/contact-us>

December 24, 2019

Dear Hon. Minister Ummu Mwalimu:

We write on behalf of Human Rights Watch, an international organization that documents human rights violations in over 100 countries around the world and works with governments to improve their respect for human rights. Human Rights Watch has recently conducted documentation on the right to health in Tanzania, specifically looking at how laws and policies have prevented key populations, particularly men who have sex with men and transgender people, from enjoying the right to the highest attainable standard of health, as guaranteed under international law. This is the subject of a forthcoming report, and we wish to offer your office the opportunity to consider and respond to our preliminary findings by January 10, 2020, so that we can reflect the government's views in our published report.

The report is based on 35 interviews with lesbian, gay, bisexual and transgender (LGBT) people who have been directly affected by the laws and policies that the report examines, along with over 20 Tanzanian, regional, and international health and human rights organizations and experts, donors, and UN agencies. It assesses the impact of several

policies implemented by the Ministry of Health, Community Development, Gender, Elderly and Children, including the ban on water-based and silica-based lubricants, the prohibition on HIV prevention and outreach led by civil society organizations representing men who have sex with men, and the closure of drop-in centers providing HIV services to key populations. It documents how stigma and discrimination continue to affect men who have sex with men and trans people in government health facilities, inhibiting access to health services. It also documents a series of police raids on civil society workshops and trainings related to health and rights. While we are aware of some recent Health Ministry measures to improve dialogue with key populations, such as the formation of the Key and Vulnerable Populations Advisory Committee, we remain deeply concerned that the Health Ministry along with other government agencies continue to erect and maintain roadblocks to key populations' right to health.

Access to Personal Lubricant

The Health Ministry's prohibition on access to personal lubricant deprives people of an evidence-based method of mitigating the spread of HIV. According to your ministry's statement on October 27, 2016, "The Government and the Tanzanian community needs further appraisal of this intervention in terms of its efficacy and its acceptability in the country before it is advocated as an effective HIV prevention intervention."³⁰⁶ But there is no doubt among global health agencies and experts as to the efficacy of lubricant. 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."³⁰⁷ Tanzania's own Second National Multisectoral Strategic Framework (NMSF-II) called for access to lubricant, and the Ministry of Health has advocated for access to lubricant in the past. Choosing to withhold an essential HIV prevention commodity in the name of social "acceptability" means willfully putting lives at risk.

The majority of the 23 gay and bisexual men interviewed by Human Rights Watch said they had no access to water-based or silica-based lubricant. Some interviewees said they used coconut oil for lubrication, while others used petroleum jelly products such as Vaseline or baby oil, all of which can damage condoms. Some said they used saliva, which provides

³⁰⁶ The United Republic of Tanzania, Ministry of Health, Community Development, Gender, Elderly and Children, "Statement by the Minister for Health, Community Development, Gender, Elderly and Children. Hon. Ummu Mwalimu on Key Population HIV Services in Tanzania, 27th October, 2016." On file with Human Rights Watch; also available at <https://m.facebook.com/afyatz/posts/1230922863594845> (accessed May 15, 2019).

³⁰⁷ UNAIDS, Guidance Note, "Condom and lubricant programming in high HIV prevalence countries," 2014, https://www.unaids.org/sites/default/files/media_asset/condoms_guidancenote_en.pdf (accessed June 4, 2019).

inadequate lubrication and can result in condom breakage, increasing the risk of transmission of HIV and sexually-transmitted infections (STIs).

We would appreciate your response to the following questions:

What specific steps has the government taken to undertake “further appraisal” of water-based lubricant as a health intervention, as indicated in your ministry’s statement of October 27, 2016?

What criteria has your ministry used to evaluate the “acceptability in the country” of water-based lubricant as a health intervention, a factor mentioned in your ministry’s statement of October 27, 2016?

Will the Health Ministry consider reversing the directive and allowing the importation and distribution of lubricant, as it advocated for in 2015?

Prohibition on Community-Led, Key Population-Centered Drop-in Centers and HIV Outreach Services

Our research has found that the prohibition on “community MSM [men who have sex with men] outreach activities and MSM drop-in centers” in October 2016, followed by your directive in February 2017 closing all drop-in centers for key and vulnerable populations, means that many men who have sex with men, as well as other key populations, no longer have adequate access to HIV prevention services. As one gay man told Human Rights Watch:

Whenever I had a health problem, I could go to those centers for help or to be connected to a healthcare provider that did not discriminate, that treated me like everyone else. These days, even if I have a health problem, I don't have a place to go where I can describe my problem, so I just keep quiet [and avoid seeking services].³⁰⁸

We are aware that the government has allowed the opening of Centers of Excellence affiliated with the Sauti program in several government facilities, and that some men who have sex with men are able to seek services at these centers. However, our interviews

³⁰⁸ Human Rights Watch interview with Medard (pseudonym), location withheld, May 18, 2018.

indicate that others find existing resources to be inaccessible or unwelcoming compared to the drop-in centers that served these communities in the past. In addition, men who have sex with men and trans people no longer benefit from outreach activities conducted by community-based organizations. While some agencies conduct outreach to men who have sex with men, and employ men who have sex with men as peer educators, several interviewees expressed a preference for outreach conducted by community-based organizations themselves.

With respect to these findings, we would appreciate your response to the following questions:

Has your ministry evaluated the health impact of the October 2016 prohibition on “community MSM outreach activities and MSM drop-in centers” and the February 2017 directive to close all drop-in centers for key and vulnerable populations?

Will the government allow community organizations to re-open drop-in centers and to conduct HIV prevention outreach, in accordance with internationally recognized best practices?

Violations of Freedom of Association

The Health Ministry’s National Guideline for Comprehensive Package of HIV Interventions for Key and Vulnerable Populations (KVPs), April 2017, points out that friendly services for KVPs should involve “self-help and support groups.”³⁰⁹ Our research has found, however, that such groups for men who have sex with men are not allowed to register as NGOs or to operate safely because they are accused of “promoting homosexuality.”

In April 2019, the NGO Co-ordination Board, which operates under your authority, revoked the registration of six organizations, including Community Health Education Services and Advocacy (CHESA), which provided health services and advocated for the rights of LGBT people.

We would appreciate your response to the following questions relating to these points:

³⁰⁹ United Republic of Tanzania, Ministry of Health, Community Development, Gender, Elderly and Children, National AIDS Control Programme, April 2017, “National Guideline for Comprehensive Package of HIV Interventions for Key and Vulnerable Populations,” <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2018/03/Tanzania-KP-GUIDELINE-1.pdf>, p. 10.

What steps is the Ministry of Health taking to facilitate the existence and functioning of self-help and support groups for MSM and transgender people, in accordance with your 2017 guidelines and internationally recognized best practices?

On what grounds was CHESA’s registration revoked?

How do you see this decision as consistent with Tanzania’s obligations under the African Charter on Human and Peoples’ Rights and the International Covenant on Civil and Political Rights to uphold the freedom of association for all, and with international best practices that call for community-led HIV prevention and treatment work?

Discrimination in Government Hospitals and Health Centers

The KVP guidelines also state that “MSM and transgender people are commonly underserved and under-resourced... A combination of stigma, discrimination and criminalization limits MSM and transgender people from accessing available services. There has been a global failure to understand and respond adequately to their global health and human rights needs.” The General Guiding Principles within the guidelines include: “Improve the legal, policy and social environment to allow access by KVPs to available health services.”³¹⁰

Most of the men who have sex with men and transgender people interviewed by Human Rights Watch said that they faced discrimination in accessing government health services. A 24-year-old HIV-positive gay man told us that a health worker at Sinza Palestina Hospital, where he sought HIV treatment, told him: “You’re a good boy, why do you have gay sex? That’s why you got AIDS, because those acts angered God.” The interviewee added, “They also told me to stop these games and get saved, to chase out Satan, who caused me to have sex, and to find a wife, get married and have a family.” He eventually identified an NGO that provided LGBT-friendly medical services, but for a time he avoided seeking out health care altogether.³¹¹

³¹⁰ United Republic of Tanzania, Ministry of Health, Community Development, Gender, Elderly and Children, National AIDS Control Programme, April 2017, “National Guideline for Comprehensive Package of HIV Interventions for Key and Vulnerable Populations,” <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2018/03/Tanzania-KP-GUIDELINE-1.pdf>, p. 5, 8.

³¹¹ Human Rights Watch interview with Osman (pseudonym), location withheld, May 22, 2018.

Another gay man told us that when he went to Mwananyamala Hospital in September 2018 for an HIV test, medical staff “didn’t respond well when I told them I was gay... They were using bad language – ‘If you’re gay, another time don’t come to this hospital, because we’re not treating people like you.’”³¹²

We would appreciate your response to the following questions relating to these findings:

What steps is Ministry of Health taking to improve the legal, policy and social environment facing MSM and transgender people in Tanzania in order to improve their access to services?

Specifically, what steps have been taken to ensure that government health facilities provide health services to men who have sex with men (MSM) and transgender people without discrimination?

Forced Anal Examinations

Human Rights Watch interviewed three men in Tanzania who were subjected to forced anal exams. According to the UN special rapporteur on torture, “In States where homosexuality is criminalized, men suspected of same-sex conduct are subject to non-consensual anal examinations intended to obtain physical evidence of homosexuality, a practice that is medically worthless and amounts to torture or ill-treatment.”³¹³

The US Office of the Global AIDS Coordinator, which oversees the US President’s Emergency Plan for AIDS Relief (PEPFAR), has called on the Ministry of Health to issue a circular prohibiting forced anal examinations in homosexuality prosecutions under all circumstances. We understand that rather than putting in place an immediate ban, the Health Ministry formed a Key and Vulnerable Populations Committee, with MSM representation, and that one of the aims of the committee is to develop a circular that would ban forced anal exams.

We would appreciate your response to the following questions:

³¹² Human Rights Watch telephone interview with Suleiman (pseudonym), October 2, 2018.

³¹³ UN Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” A/HRC/31/57, January 5, 2016, <http://www.refworld.org/docid/56c435714.html> (accessed May 19, 2016), para. 36.

What guidance has the Health Ministry issued to health personnel on forced anal examinations for the purpose of homosexuality prosecutions?

Does the health ministry plan to prohibit health personnel from conducting forced anal examinations for the purposes of homosexuality prosecutions?

* * *

We would appreciate your responses to these questions and any additional information on the government's HIV prevention efforts and its health policies with respect to key populations by January 13, 2020. We may not be able to include responses received after that date in our forthcoming report. Please reply to our senior researcher, Ms. Neela Ghoshal, at [REDACTED]

We look forward to constructive dialogue in order to advance the right to the highest attainable standard of health for all Tanzanians, regardless of sexual orientation or gender identity.

Sincerely,

Graeme Reid
Director, LGBT Rights Program

Mausi Segun
Executive Director, Africa Division
Human Rights Watch