

Annex III: Human Rights Watch Letter to Constitutional and Legal Affairs Minister Augustine Mahiga, December 24, 2019

The Honorable Augustine Mahiga, Minister
Ministry of Constitutional and Legal Affairs
Government City, Mtumba
P. O. Box 315 Dodoma
TANZANIA

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December 24, 2019

Dear Hon. Minister Augustine Mahiga:

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, looking at how laws and policies prevent key populations, particularly men who have sex with men (MSM) 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 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. While it focuses on the right to health, the report will also discuss other rights violations experienced by lesbian, gay, bisexual and transgender (LGBT) people in Tanzania, including arbitrary arrests, forced

anal examinations, and denial of the right to freedom of association. As you are aware, we also recently published a report on threats to independent media and civil society in Tanzania, which included some discussion of violations of freedom of association as it affects groups working on LGBT health and rights.³¹⁴

We include here summaries of several of our findings, followed by questions to allow us to better understand the government’s position. We are reaching out to the Ministry of Health directly, given that several of the human rights violations we identified arise from that ministry’s policies. However, given your responsibility for safeguarding the human rights of all Tanzanians, we also wish to raise our concerns with you regarding health policy that is inconsistent with fundamental rights.

Access to Targeted, Non-Discriminatory Health Services

The mainland Ministry of Health, Community Development, Gender, Elderly and Children has closed drop-in centers that provided targeted HIV services to key populations including men who have sex with men and transgender people, and has prohibited community-based organizations from conducting HIV outreach to these groups. Most of the LGBT people we interviewed said as a result, they no longer have access to friendly, non-discriminatory health services. They reported numerous experiences of anti-LGBT discrimination when they attempted to seek health services at government facilities.

For example, one 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: “I didn’t want anything to do with that hospital because of their cruelty.”³¹⁵

³¹⁴ Human Rights Watch, *“As Long as I am Quiet, I am Safe”*: Threats to Independent Media and Civil Society in Tanzania, October 28, 2019, <https://www.hrw.org/report/2019/10/28/long-i-am-quiet-i-am-safe/threats-independent-media-and-civil-society-tanzania>.

³¹⁵ 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.’”³¹⁶

We would appreciate your response to the following questions:

What is the role of the Ministry of Constitutional and Legal Affairs in ensuring the right of all Tanzanians to equality, as guaranteed in the Constitution of the United Republic of Tanzania and in international human rights treaties to which Tanzania is a party?

What steps is the Ministry of Constitutional and Legal Affairs taking to ensure that LGBT people do not face stigma and discrimination when seeking health services at government health facilities?

Is there any process by which LGBT can people safely and anonymously report such stigma and discrimination in the health sector if they experience it?

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.”³¹⁷ Human Rights Watch has previously reported on how forced anal examinations have no medical or scientific value and result in long-lasting trauma for individuals who undergo them.³¹⁸

We would appreciate your response to the following questions:

³¹⁶ Human Rights Watch telephone interview with Suleiman (pseudonym), October 2, 2018.

³¹⁷ 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.

³¹⁸ Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions*, July 12, 2016, <https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions#5f63ba>.

What is the position of the Ministry of Constitutional and Legal Affairs on the use of forced anal examinations as evidence of consensual sexual conduct? Does the ministry approve of or permit the use of anal examinations in any context in which the examinations take place without the express consent of the person who is examined?

Will Tanzania prohibit forced anal examinations for the purposes of homosexuality prosecutions, under all circumstances?

Arbitrary Raids of Meetings and Workshops

Since 2016, police have raided meetings and workshops organized by health and human rights activists, arresting participants for allegedly “promoting homosexuality.” There is no such offense under Tanzanian law, and police have not been able to sustain charges against participants in the majority of these cases, but the raids have a chilling effect on civil society, sending the message that even meeting to discuss HIV prevention among LGBT people is unlawful. Incidents include the following:

- On December 14, 2016 police raided a meeting at a Protea hotel in Dar es Salaam, arresting eight participants and interrogating them about whether the meeting was a “gay people’s meeting.” Lawyers secured their release the same day, but police held their identity documents for several days.³¹⁹
- On September 15, 2017, police in Zanzibar raided a workshop organized by a community-based organization for parents of members of key population groups about HIV prevention and treatment, arresting 20 participants, volunteers, and staff, on grounds of “promoting homosexuality.” Eighteen were released without charge the same day, while two remained in detention for two days.³²⁰
- On October 17, 2017, police raided a workshop on strategic litigation at Dar es Salaam’s Peacock Hotel, arresting 13 people, including South African and Ugandan

³¹⁹ Email communications to Human Rights Watch, December 14 and December 18, 2016; Andrew Green, “In an apparent crackdown, Tanzania government raids NGO meeting on reproductive rights,” Devex, January 6, 2017, <https://www.devex.com/news/in-an-apparent-crackdown-tanzania-government-raids-ngo-meeting-on-reproductive-rights-89394> (accessed September 22, 2019).

³²⁰ Email communication to Human Rights Watch from a Zanzibar-based activist, October 24, 2019; University of Pretoria Center for Human Rights and Pan Africa ILGA, “Press statement: Centre for Human Rights and Pan Africa ILGA express grave concern about threats to the right to freedom of association and right to information as twenty are arrested at training workshop in Zanzibar, Tanzania for alleged homosexuality,” September 20, 2017, <https://www.chr.up.ac.za/news-archive/1225-press-statement-centre-for-human-rights-and-pan-africa-ilga-express-grave-concern-about-threats-to-the-right-to-freedom-of-association-and-right-to-information-as-twenty-are-arrested-at-training-workshop-in-zanzibar-tanzania-for-alleged-homosexuality> (accessed July 18, 2019).

lawyers and activists representing the Initiative for Strategic Litigation in Africa (ISLA), representatives of the Tanzanian health and rights organization CHESA, and other Tanzanian activists. They were accused of “promoting homosexuality” and detained for a week.³²¹

We would appreciate your response to the following questions:

On what legal grounds did police break up these workshops and meetings about health and human rights and arrest participants?

Is the Ministry of Justice willing to take steps to ensure that these raids and arrests end, including by clarifying publicly that holding meetings about the health and rights of key populations is not an offense under Tanzanian law?

We would appreciate your responses to these questions and any additional information on the government’s position with regard to the application of the right to health, the right to be free from torture and cruel, inhuman and degrading treatment, and the right to freedom of association as these rights pertain to LGBT people 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, Neela Ghoshal, at [REDACTED]

We look forward to constructive dialogue in order to advance the rights of 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

³²¹ Wendy Isaack, “Facing Prosecution for Challenging HIV Policies in Tanzania,” Human Rights Watch, October 20, 2017.