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“If We Don’t Get Services, We Will Die”

Tanzania’s Anti-LGBT Crackdown and the Right to Health



“If We Don’t Get Services, We Will Die”
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Glossary

Bisexual: The sexual orientation of a person who is sexually and romantically attracted to both women and men.

Cisgender: The gender identity of people whose sex assigned at birth conforms to their identified or lived gender.

Closeted: Describes a person who does not acknowledge their sexual orientation to others. People may be “fully” in the closet (not admitting their sexual orientation to anyone), fully out, or somewhere in between.

Drop-in Centers (DIC): In Tanzania, a center providing health services to key populations, with an emphasis on services related to HIV and sexual health, including HIV prevention information, testing, treatment, counseling, needle and syringe programs, and provision of safer sex commodities.

Gay: A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

Gender: The social and cultural codes (as distinct from sex assigned at birth) used to distinguish between society’s conceptions of “femininity” and “masculinity.”

Gender Expression: The external characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress appearance, mannerisms, hair style, speech patterns, and social behavior and interactions.

Gender Identity: A person’s internal, deeply felt sense of being female or male, both, or something other than female or male.

Gender Non-Conforming: Not conforming to stereotypical appearances, behaviors or traits associated with sex assigned at birth.

Heterosexual: The sexual orientation of a person whose primary sexual and romantic attraction is toward people of another sex.

Homophobia: Fear of, contempt of, or discrimination against homosexuals or homosexuality, usually based on negative stereotypes of homosexuality.

Homosexual: The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

Intersex: An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

Key Populations: Populations disproportionately impacted by HIV when compared with the general population, irrespective of the epidemic type or local context. The World Health Organization defines key populations as comprising men who have sex with men, sex workers, people who inject drugs, people in prisons and other closed settings, and transgender people.

Key and Vulnerable Populations: Key populations and others who whose situations make them especially vulnerable, or who experience inequality, prejudice, marginalization and limits on their social, economic, cultural and other rights. In Tanzania, “vulnerable populations” is often used to refer to adolescent girls, orphans, street children, and mining and fishing communities.

Lesbian: The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.

LGBT: Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as “sexual and gender minorities.”

LGBTI/LGBTQ/LGBTIQ: Umbrella terms used to refer inclusively to those who are lesbian, gay, bisexual, and transgender along with those who are queer and/or intersex.

Men Who Have Sex with Men: Men who engage in sexual behavior with other men, but who may or may not identify as “gay,” “homosexual” or “bisexual.” Sometimes abbreviated to “MSM.”

Non-Binary: Gender identity of people who identify as neither female nor male.

Queer: An inclusive umbrella term covering multiple identities, sometimes used interchangeably with “LGBTQ.” Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.

Sexual and Gender Minorities: An inclusive term for people with non-conforming sexualities and gender identities.

Sexual Orientation: The way in which a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or different sex, both, or none.

Transgender: Adjective to describe people whose assigned sex (the sex they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice). A transgender person usually adopts or would prefer to adopt a gender expression in consonance with the gender with which they identify, but they may or may not desire to alter their bodily characteristics in order to conform to their gender.

Transgender Men: Persons designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

Transgender Women: Persons designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.

Transphobia: Fear of, contempt of or discrimination against transgender and transsexual persons, usually based on negative stereotypes of transgender identity.

Summary

“Because of government, LGBT people don’t have a place to get training [on sexual health]. People don’t get lubricants, they don’t get condoms, they don’t get services. In short, we are dying.”

—Victor, 25-year-old gay man, Dar es Salaam, interviewed by Human Rights Watch on September 28, 2018

Tanzania made international headlines in October 2018 when a regional official, Paul Makonda, claimed to have established a task force to round up all men suspected of being gay in the coastal city of Dar es Salaam, “test” them for homosexual conduct, and jail them for life. He called upon Tanzanians to send him text messages reporting anyone they suspected of being gay, and claimed to have received hundreds of such messages.

International pressure led the Tanzanian government to disavow the official’s comments. In a remarkable development given President John Magufuli’s demonstrable indifference to international opinion and the environment of hostility toward lesbian, gay, bisexual and transgender (LGBT) people that he has institutionalized, Magufuli affirmed in a meeting with World Bank officials that the government would end “discriminatory actions related to harassment and/or arrests” on the basis of sexual orientation.

Makonda’s threats did not bear out, but institutional homophobia continued to reign. In April 2019, with disregard to both freedom of association and the right to health, and in clear demonstration of Tanzania’s institutionalized homophobia, the government formally deregistered Community Health Education and Advocacy Services (CHESA), one of Tanzania’s most established organizations working to advance health and rights for LGBT people. The government reportedly accused CHESA of “promoting unethical acts.” In September 2019, the deputy home affairs minister called for arrests of LGBT people, in direct contradiction to the government’s commitment.

One of the most significant casualties of the government’s overt hostility to LGBT people is the right to the highest attainable standard of health, guaranteed under international treaties that Tanzania has ratified. Even in comparison to other countries that criminalize

same-sex relations, Tanzania has become an outlier in its efforts to render LGBT-friendly health services inaccessible.

Until 2016, although same-sex conduct was criminalized, Tanzania's health sector acknowledged and made some efforts to address the specific vulnerabilities of men who have sex with men and other groups considered to be "key populations," meaning that public health initiatives should take particular efforts to address the needs of these groups as part of their national HIV prevention and treatment efforts. Government bodies included gay men and transgender people in discussions around HIV prevention and treatment. Tanzania's overall approach to HIV and AIDS was considered largely successful, due to the fact that it was evidence-based and relatively inclusive.

In contrast, since 2016, the Ministry of Health has prohibited community-based organizations from conducting outreach on HIV prevention to men who have sex with men and other key populations, based on the pretext that such organizations are engaged in the "promotion of homosexuality." The Ministry closed drop-in centers that provided HIV testing and other services to key populations, run in many cases by international agencies, asserting that these centers, too, were involved in "homosexuality promotional activities." It banned the distribution of lubricant, an essential HIV prevention tool for key populations and for much of the wider public, including post-partum women.

The Health Ministry asserts that public health centers in Tanzania provide discrimination-free services to LGBT people and key populations and that there is no need for specialized services run by civil society organizations. Human Rights Watch research has found, however, that discrimination on the basis of sexual orientation and gender identity in government health centers is common.

The authorities have also undermined the right to health through a series of police raids on meetings and trainings organized by health and rights activists and their allies, arresting participants, including foreign lawyers, in an effort to silence and instill fear within activist communities as well as service provision groups and their beneficiaries. Among the activities shut down by police have been HIV education sessions, leading LGBT people to fear attending these potentially lifesaving workshops.

Police continue to conduct arbitrary arrests based on sexual orientation or gender identity. In some cases, police enlist health care providers to carry out forced anal examinations in attempts to find proof of homosexual conduct. This practice is a medical travesty and a grave violation of human rights that can amount to torture. Arrests and mistreatment of LGBT people not only violate rights to privacy, non-discrimination, and the right to be free from torture, they also drive vulnerable communities underground and away from health services, further undermining the right to health.

Human Rights Watch calls on Tanzania's Health Ministry to immediately reverse its rights-negating health policies, including the ban on distribution of lubricant and the prohibition on HIV and public health outreach and operation of drop-in centers by community-based organizations serving LGBT people and key populations. The Tanzanian authorities should cease arrests on the basis of sexual orientation and gender identity, end forced anal examinations, reform laws and policies that discriminate on the basis of sexual orientation and gender identity, and ensure freedom of association for groups working to protect LGBT people's access to health and rights.

Recommendations

To the President of the United Republic of Tanzania and the President of Zanzibar

- Refrain from anti-LGBT statements and hold government officials accountable for anti-LGBT statements or actions.
- Uphold commitments to end harassment and arrests based on sexual orientation.

To the Office of the Prime Minister

- Ensure that health policy and strategy documents published under the oversight of the Office of the Prime Minister, including the National Multisectoral Strategic Framework for HIV and AIDS and any other output from the Tanzania AIDS Commission (TACAIDS), are evidence-based and aligned with internationally recognized best practices, including with regard to availability of lubricant and community-based outreach.

To the Ministry of Home Affairs

- Instruct the police on the mainland and in Zanzibar to end arrests based on sexual orientation, gender identity, and gender expression and to stop raiding meetings and workshops organized by LGBT rights and health advocates.
- Issue a circular prohibiting police from using anal examinations as a means of seeking evidence in prosecutions for same-sex sexual conduct.

To the Ministry of Health, Community Development, Gender, Elderly and Children (Tanzania Mainland)

- Issue a directive reversing the ban on distribution of lubricant.
- Allow non-governmental organizations and community-based organizations to reopen drop-in centers providing HIV services and other health services to LGBT people and other key populations.

- Reverse the prohibition on community-based organizations conducting HIV education and outreach targeting men who have sex with men and other key populations.
- Refrain from statements accusing organizations that work to provide health services to key populations of “promoting homosexuality.”

To the Ministry of Health, Community Development, Gender, Elderly and Children (Tanzania Mainland) and the Zanzibar Ministry of Health

- Issue circulars strictly prohibiting health workers from conducting or assisting anal examinations as a means of seeking evidence of homosexual conduct, on the grounds that taking part in such examinations violates medical ethics and that the examinations are unscientific and serve no medical purpose.
- Ensure that health policy and strategy documents published under the oversight of the Health Ministry, including the Health Sector HIV and AIDS Strategic Plan and any other output from the National AIDS Control Programme, are evidence-based and aligned with internationally recognized best practices.
- Take steps to make water-based or silica-based lubricant and high-quality condoms widely available, through non-governmental organizations and community-based organizations as well as at government hospitals and clinics.
- Train government health workers on non-discrimination on the basis of sexual orientation and gender identity. Partner with Tanzanian or regional LGBT organizations in planning and conducting all such trainings.
- Hold health providers accountable through an anonymous complaints mechanism that allows patients to submit complaints regarding discrimination or abusive treatment, and that results in investigation and disciplinary measures against health providers that are found to discriminate on the basis of sexual orientation, gender identity, or gender expression.
- Approve tailored, community-vetted health messaging crafted to reach LGBT people and provide information regarding healthy sexual decision-making.
- Publicly support and advocate for the decriminalization of consensual same-sex conduct.

To TACAIDS, the National AIDS Control Programme, the Zanzibar AIDS Commission, and the Zanzibar Integrated HIV, Hepatitis, TB, and Leprosy Programme (formerly the Zanzibar AIDS Control Programme)

- Ensure that all health policy and strategy documents drafted are evidence-based and aligned with internationally recognized best practices.
- Leverage your health expertise to advocate with the larger Tanzanian government on best practices on HIV and AIDS, including the need to make available water-based or silica-based lubricant and the importance of targeted outreach and provision of friendly HIV services to men who have sex with men and other key populations.

To the Non-Governmental Organizations Coordination Board and the Registrar of Non-Governmental Organizations

- Reverse deregistration of organizations that work to promote the health and human rights of LGBT people and other marginalized groups, including sex workers, and allow such organizations to register in the future.
- Refrain from invasive measures authorized under the Written Laws (Miscellaneous Amendments) Act No. 3 of 2019, including investigation and evaluation of non-governmental organizations.

To the Tanzania Police Force and the Zanzibar Police Force

- End arrests based on sexual orientation, gender identity, and gender expression.
- Stop raiding meetings and workshops organized by LGBT rights and health advocates.
- End the use of forced anal examinations as a means of seeking evidence of homosexual conduct.

To the Parliaments of Tanzania and Zanzibar

- Through the Standing Committee on HIV/AIDS (Tanzania), conduct an investigation into the consequences of policies implemented by the Ministry of

Health since 2016, including the ban on distribution of lubricant, the ban on HIV outreach to men who have sex with men, and the closure of drop-in centers, as well as any instances of refusal of services and discrimination against LGBT people and key populations in accessing HIV/AIDS services.

- Exercise the oversight functions of the Parliamentary Standing Committee on Foreign Affairs, Defence and Security (Tanzania) and the Constitution, Justice and Governance Committee (Zanzibar) by investigating police abuse of LGBT people, including raids on meetings, arbitrary arrests, and the use of forced anal examinations.
- Amend the Non-Governmental Organizations Act of 2002, revoking sections added through the Written Laws (Miscellaneous Amendments) Act No. 3 of 2019 that authorize the Registrar of NGOs to intervene in the activities of non-governmental registrations, including by investigating and evaluating their activities.
- Introduce amendments to decriminalize same-sex conduct between consenting adults by removing articles 138A, 154, 155, and 157 from the Tanzania Penal Code, and articles 150, 151, 153, 154, and 158 from the Zanzibar Penal Code.

To the Ministry of Foreign Affairs and East African Cooperation

- Uphold the October 2018 commitment to “respect all international agreements regarding human rights signed and ratified” by advocating internally within the government for the restoration of health services that are needed to uphold the right to health for LGBT people and for an end to police harassment, arbitrary arrests, and the use of forced anal examinations.

To the Tanzania Communications Regulatory Authority

- Stop sanctioning media outlets that provide voice to LGBT people or discuss LGBT rights in a positive or neutral manner.

To the Commission of Human Rights and Good Governance (CHRAGG)

- In accordance with its mandate to proactively monitor human rights violations, document and report on human rights violations affecting LGBT people in

Tanzania, including violations of the right to health and the right to freedom of association, as well as arbitrary arrests and forced anal examinations.

- In accordance with its mandates to monitor government compliance with international treaties and to suggest law reform in order to ensure such compliance, call for the decriminalization of consensual same-sex conduct.

To the Office of the US Global AIDS Coordinator and Special Representative for Global Health Diplomacy (OGAC), responsible for the President’s Emergency Plan for AIDS Relief (PEPFAR), and the U.S. Agency for International Development (USAID)

- Require the Tanzanian Ministry of Health, Community Development, Gender, the Elderly and Children to uphold commitments it made in the 2019 PEPFAR reauthorization process, including to undertake health policy reforms and to ban forced anal examinations.
- Ensure that the Key Population Investment Fund provide funds directed to LGBT-led organizations, and that such organizations receive adequate funding and support through all PEPFAR financing streams.

To Joint United Nations Programme on HIV/AIDS (UNAIDS)

- Seek every opportunity to use its convening authority to encourage dialogue between government officials and LGBT communities.
- Ensure adherence to and offer technical support on the provision of normative guidance in the HIV response for key populations.
- Conduct a high-level mission to meet with Tanzanian authorities and call for a rights-respecting, evidence-based approach to HIV prevention and treatment.

To the Global Fund to Fight AIDS, Tuberculosis and Malaria

- In accordance with the Global Fund’s Sustainability, Transition and Co-financing Policy, ensure that the Tanzanian government take meaningful steps to address human rights and gender-related barriers that block effective national responses to HIV and that it improves the legal and policy environment for LGBT people, and conduct regular evaluations, with LGBT

involvement, of government-led human rights programming funded by the Global Fund.

- Ensure that the Country Coordinating Mechanisms (CCM) in mainland Tanzania and Zanzibar are responsive to LGBT people’s health and rights concerns and provide LGBT people meaningful space to participate.

To the World Bank

- Hold President Magufuli accountable to his commitment to end harassment and arrests based on sexual orientation, including by monitoring violations, maintaining regular dialogue with LGBT civil society organizations, and calling on the government to take all necessary steps to end violations.
- Undertake risk assessment to ensure that no loans disbursed to Tanzania will contribute to discrimination based on sexual orientation or gender identity, and that no World Bank-funded projects will be implemented discriminatorily.

To Other Donors to Tanzania

- Support LGBT-led civil society organizations, through funding, technical support, and facilitation of dialogue with government authorities.
- Ensure that funding directed to HIV/AIDS in Tanzania includes funds specifically aimed at the health needs of LGBT people, and closely monitor how such funding is used.
- Make available “emergency response” funds to support LGBT activists that are impacted by crackdowns, violence, and arrests.
- Coordinate with other donors to ensure comprehensive and consistent support to LGBT activists on the ground.
- Engage in public and private advocacy with the Tanzanian government, pressing officials to uphold the rights of LGBT people under international law.

Methodology

This report is based largely on interviews conducted with 35 self-identified lesbian, gay, bisexual, and transgender Tanzanians between May 2018 and June 2019. Because of efforts by the Tanzanian government to prevent independent investigations of human rights violations, Human Rights Watch conducted many of the interviews remotely via telephone and video applications.

Human Rights Watch also worked with a consultant in Tanzania with previous experience with our methodology, who conducted in-person interviews in Dar es Salaam and Zanzibar and by phone with individuals from Tanga, Arusha, and Morogoro, and who assisted Human Rights Watch in connecting with those who were interviewed remotely. Semi-structured Interviews were conducted in English or Kiswahili based on a questionnaire which focused on access to health, but also included questions with regard to arrests and violence on the basis of sexual orientation or gender identity.

All interviewees were informed that the interviews were voluntary and that they could decline to answer any questions and end the interview at any time. No one was compensated for participation in an interview. Most interviewees who are LGBT Tanzanians have been given pseudonyms in this report to ensure their privacy and security; where pseudonyms have been used, this is indicated in the footnotes.

Human Rights Watch specifically sought out interviewees who had experienced violations in accessing health care, specifically related to HIV prevention, treatment, and care. Because men who have sex with men and trans women face a higher risk of HIV and were more likely to be directly affected by the Health Ministry's ban on lubricant and withdrawal of friendly community-based services, they made up a significant portion of our interviewees. However, because we were also interested in how the anti-LGBT crackdown affected LGBT people of all identities, we also interviewed transgender men and queer women. In total, twenty-three respondents were men who have sex with men who self-identified with a range of terms including gay, bisexual, and *kuchu* (an inclusive term coined by Ugandan LGBT activists). Five respondents were transgender women, four were transgender men, two were lesbian or queer women, and one identified as nonbinary and queer. Because we identified interviewees through civil society organizations and personal

networks, the individuals we interviewed were largely from urban areas and connected with LGBT services. The voices of some of Tanzania's most marginalized and isolated LGBT people, including those in rural areas and those who remain fully closeted, are not included.

This report also draws on both formal interviews and informal conversations with Tanzanian LGBT rights activists, human rights activists, and lawyers between 2014 and 2019 and on short research trips to Tanzania in 2014 and 2017, and on discussions with representatives of over 20 Tanzanian, regional, and international health and human rights organizations and experts, donors, and UN agencies.

This report builds on previous research conducted in 2012 and 2013 by Human Rights Watch and the Wake Up Step Forward Coalition (WASO), which was at that time a network of four Tanzanian organizations focused on health and rights for men who have sex with men (distinct from another organization currently operating in Tanzania which also goes by the name WASO). In that research, which resulted in the report "*Treat Us Like Human Beings*": *Discrimination Against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania*, we found that discrimination and violence prevent men who have sex with men, sex workers, and people who inject drugs from adequately accessing government services. From 2014 through mid-2016, Human Rights Watch researchers maintained regular contact with LGBT and key population activists in Tanzania as well as other stakeholders in order to contribute to ongoing advocacy efforts. Some information collected during that time period has also been used in this report.

Unlike in our 2013 research, for this report we did not conduct interviews with sex workers and people who inject drugs unless they also identified as LGBT. Although sex workers and people who inject drugs have also been affected by the withdrawal of essential health services and by increased policing under Magufuli's government, we chose to focus specifically on the anti-LGBT element of the crackdown. Important work remains to be done on how sex workers and people who inject drugs have been impacted.

Human Rights Watch reached out to the Ministry of Health in the early days of the anti-LGBT crackdown, in August 2016, to express concern regarding the ban on lubricant and to seek clarification of the government's position. We received no response to the letter. In December 2019, Human Rights Watch sent letters to the Ministry of Health and Ministry of

Constitutional and Legal Affairs summarizing the findings of this report and asking for clarification of government positions, but did not receive responses.

Timeline: Tanzanian Government Attacks on LGBT Health and Rights, 2016-2019

2016

April 2016: Tanzania undergoes its Universal Periodic Review (UPR) at the UN Human Rights Council, its second such review overall and its first since the inauguration of President John Pombe Magufuli in November 2015. The Tanzania Key Populations and Sexual Minorities Working Group, comprising 19 Tanzanian organizations, submits a shadow report documenting cases of police abuse, discrimination, and violence.¹ Six states make recommendations on abuses related to sexual orientation and gender identity, including recommendations to decriminalize same-sex conduct and to publicly condemn anti-LGBT discrimination.²

May 20, 2016: The Human Rights Council publishes the UPR Working Group report on Tanzania, indicating that Tanzania rejects all six recommendations that relate to sexual orientation and gender identity.³

June 28, 2016: Kaoge Mavuto, a Tanzanian trans woman, gives an interview on Clouds TV in which she discusses community-based organizations' provision of health services, including distribution of condoms and lubricant.⁴

June 29, 2016: A member of parliament raises concern in Parliament about the Clouds TV broadcast "promoting homosexuality," leading to a debate in Parliament.⁵

¹ Tanzania Key Populations and Sexual Minorities Working Group, "United Republic of Tanzania, Joint Stakeholder Submission to the United Nations, Universal Periodic Review, For 25th session April–May 2016," 2016, https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/js8_upr25_tza_e_main.pdf (accessed December 17, 2019).

² United Nations Human Rights Council, Working Group on Universal Periodic Review, "Draft report of the Working Group on the Universal Periodic Review, United Republic of Tanzania," https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/a-hrc-wg.6-25-l.9.pdf (accessed December 17, 2019). Recommendations came from Sweden, Uruguay, Chile, Canada, France, and Norway.

³ Ibid.

⁴ "Tanzanian TV Station in Trouble for Hosting Gay Man," *Kuchu Times*, July 6, 2016, <https://www.kuchutimes.com/2016/07/tanzanian-tv-station-in-trouble-for-hosting-gay-man> (accessed December 17, 2019).

⁵ Ibid.

July 2, 2016: The Dar es Salaam regional commissioner (an administrative official appointed by the president), Paul Makonda, makes an inflammatory speech in which he threatens to arrest gays as well as anyone who “follows” homosexuals on social media, and to ban organizations that “promote homosexuality.”⁶

July 8, 2016: The Tanzanian Communications Regulatory Authority orders Clouds TV to issue an apology for airing an interview with a trans woman.⁷

July 15, 2016: At a public event, the health minister for mainland Tanzania, Umyy Mwalimu, announces opposition to the distribution of lubricant in government hospitals and health centers.⁸ (Mainland Tanzania and Zanzibar each have their own health ministry, a function of Zanzibar’s partial autonomy. Unless noted otherwise, references to this health ministry or health minister in this report specifically refer to the mainland; the Ministry of Health in Zanzibar has not, to the knowledge of Human Rights Watch, taken specific steps to limit access to the right to health for LGBT people.)

July 19, 2016: The mainland Health Ministry publishes a statement opposing the distribution of lubricant and the “promotion of homosexuality.”⁹

July 23, 2016: The mainland deputy health minister, Hamisi Kigwangalla, tweets that lubricant will still be available at government hospitals, but that the government will no longer allow pharmacies to sell it or NGOs to distribute it.¹⁰

⁶ Ayo TV, “Three Things That Have Been Banned by RC Paul Makonda,” July 7, 2016, video clip, YouTube, https://www.youtube.com/watch?v=_1eKbNrkrk&app=desktop (accessed December 16, 2019), 5:48-6:53.

⁷ “Clouds TV Ordered to Run Apologies on Gay Interview,” *IBN TV*, July 9, 2016, <http://www.ibn-tv.com/sw/2016/07/clouds-tv-ordered-to-run-apologies-on-gay-interview> (accessed December 17, 2019).

⁸ The original speech was posted at <https://www.youtube.com/watch?v=TSPZFW1AG-U>, and was transcribed by Human Rights Watch, but is no longer available as of this writing. See also “Waziri Umyy Mwalimu apiga marufuku hospitali na vituo vya afya vya serikali kutoa vilainishi vya kusaidia kufanya mapenzi ya jinsia moja,” post to “Karagwe Forum” (blog), July 16, 2016, <http://juhudkaragwe.blogspot.com/2016/07/waziri-umyy-mwalimu-apiga-marufuku.html>.

⁹ “Tamko La Wizara Kuhusu Matumizi Na Usambazaji Wa Vilainishi Kwa Ajili Ya Udhibiti Wa Maambukizi Ya Ukimwi,” post to “Harakati Za Jiji” (blog), July 19, 2016, <https://harakatizajiji.blogspot.com/2016/07/tamko-la-wizara-kuhusu-matumizi-na.html> (accessed December 18, 2019).

¹⁰ Hamisi Kigwangalla, Twitter posts, July 23, 2016, <https://twitter.com/HKigwangalla/status/756724742653087744> and <https://twitter.com/HKigwangalla/status/756723329063608321> (accessed December 18, 2019).

July 29, 2016: Justice Minister Harrison Mwakymbe threatens to prosecute civil society organizations for “promoting” homosexuality, including by distributing lubricant.¹¹

August 1, 2016: CHESA receives a letter from the Registrar of NGOs providing notice of his intent to deregister the organization based on its alleged promotion of homosexuality.¹²

August 11, 2016: Deputy Minister Kigwangalla issues a statement in a newspaper and on social media, summoning LGBT Voice, a group that had spoken out in the media against state-sponsored homophobia, to appear at his office the following day. LGBT Voice does not respond to the summons.¹³

August 15, 2016: Deputy Health Minister Kigwangalla, with police and intelligence officers, raids CHESA’s office, questioning activists, searching the office for lubricant, and confiscating files. The following day, police question CHESA director John Kashiha for approximately eight hours.¹⁴

August 30, 2016: CHESA files a petition before the High Court of Tanzania challenging the NGO Registrar’s notice of intention to deregister, and the Health Ministry’s search and seizure of CHESA property, as unconstitutional.¹⁵

¹¹ “Serikali kuzifutia usajili asasi zisizokuwa za kiserikali zinazounga mkono ushoga nchini,” *ITV*, July 29, 2016, originally posted at https://www.itv.co.tz/news/local/1993-33856/Serikali_kuzifutia_usajili_na_kuzishtaki_asasi_zisizokuwa_za_kiserikali_zinazounga_mkono_ushoga_nchini.html?fbclid=IwAR3bJmV27tJd3yQZG4xSe7ggI-EcoGDtInBjUbUgl70legkZAFnsIHhF8 (no longer visible) and cited on the Facebook page of Human Life International, <https://www.facebook.com/HumanLifeInternational/posts/10155216627528569> (accessed December 17, 2019); reprinted by Donatila, post to “Jamii Forums” (blog), July 30, 2019, <https://www.jamiiforums.com/threads/serikali-kuzifutia-usajili-asasi-zisizokuwa-za-kiserikali-zinazounga-mkono-ushoga-nchini.1088295> (accessed December 17, 2019). See also Sophie Tremblay, “‘Seeds of Hate’ Sown as Tanzania Starts LGBT Crackdown,” *Guardian*, August 8, 2016, <https://www.theguardian.com/world/2016/aug/08/seeds-of-hate-sown-as-tanzania-starts-lgbt-crackdown> (accessed December 17, 2019).

¹² Affidavit of John Kashiha, Miscellaneous Civil Application No. 64 of 2016, Tanzanian High Court (Main Registry), Dar es Salaam, para. 7 (on file with Human Rights Watch).

¹³ “Tamko la Mhe. Dkt. Hamisi A. Kigwangalla (MB.) Naibu Waziri wa Afya, Maendeleo ya Jamii, Jinsia, Wazee na Watoto Kuhusu LGBT Voice Tanzania Tarehe 11/08/2016,” post to “Mwanahalis Forum” (blog), August 11, 2016, <http://mwanahalisforum.com/threads/11735-DR-KIGWANGALLA-LGBT-VOICE-TANZANIA-WANAHAMASISHA-MAPENZI-YA-JINSIA-MOJA> (accessed December 17, 2019); Jamii Forums, “N/Waziri Dr. Kigwangalla: LGBT Voice Tanzania wanahamasisha mapenzi ya jinsi moja, wajisalimisha,” posted August 12, 2016, video clip, YouTube, [youtube.com/watch?v=xunWjepyndk](https://www.youtube.com/watch?v=xunWjepyndk) (accessed December 17, 2019).

¹⁴ Human Rights Watch email correspondence with regional LGBT rights activist, August 16, 2016.

¹⁵ Affidavit of John Kashiha, Miscellaneous Civil Application No. 64 of 2016, Tanzanian High Court (Main Registry), Dar es Salaam, paras. 7-13 (on file with Human Rights Watch).

October 27, 2016: The Ministry of Health suspends all “community MSM [men who have sex with men] peer outreach activities and MSM Drop In Centers” pending the preparation of new guidelines on HIV programming for key and vulnerable populations.¹⁶

December 14, 2016: Police raid a meeting on health and human rights at a hotel in Dar es Salaam, arresting eight participants and interrogating them about whether the meeting was a “gay people’s meeting.” Lawyers secure their release the same day, but police hold their identity documents for several days.¹⁷

December 15 and 16, 2016: Police raid two bars in Zanzibar, arresting men they suspect of being gay.¹⁸

2017

January 2017: Police arrest more men on suspicion of homosexuality in Zanzibar and take them to Mnazi Mmoja Hospital, where doctors subject them to forced anal examinations.¹⁹

February 16, 2017: The Health Ministry orders the closure of as many as 40 drop-in centers providing HIV services for key populations, about 30 of which were run by JHPIEGO. The ministry states that key populations should go to government clinics for services.

February 2017: Police arrest two activists for leading a training in Songea on LGBT identities and rights.²⁰

¹⁶ 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. Umyy Mwalimu on Key Population HIV Services in Tanzania, 27th October, 2016,” on file with Human Rights Watch and available at <https://m.facebook.com/afyatz/posts/1230922863594845> (accessed December 17, 2019).

¹⁷ Human Rights Watch email correspondence with Tanzanian and Kenyan activists and lawyers, December 14 and 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 December 17, 2019).

¹⁸ Human Rights Watch telephone interviews with Tanzanian activists, January 2017; Edith Honan, “How Tanzania is Cracking Down on Gay People – and Getting Away with it,” *BuzzFeed News*, April 8, 2017, <https://www.buzzfeednews.com/article/edithhonan/how-tanzania-is-cracking-down-on-lgbt-people-and-getting> (accessed December 17, 2019).

¹⁹ *Ibid.*

²⁰ Human Rights Watch interview with Dixon (pseudonym), Dar es Salaam, March 14, 2017.

February 2017: On Twitter, Deputy Health Minister Kigwangalla orders the arrest of three social media personalities, including Kaoge Mvuto (the transgender woman who provided the 2016 interview to Clouds TV, frequently referred to incorrectly in media reports as a “gay man”), for allegedly “promoting homosexuality.”²¹ One person is arrested, detained for four days, and subjected to a forced anal examination, while the other two are not arrested.²²

March 2017: Police in Zanzibar arrest seven men on charges of homosexuality.²³

March 2017: In Zanzibar, then-Regional Commissioner for Urban West, Ayoub Mohammed, threatens to deregister all organizations “promoting” same-sex acts, accusing such organizations of “destroying our children.”²⁴

April 2017: The Ministry of Health publishes new Key and Vulnerable Populations Guidelines which make no reference to lubricant and require all community HIV prevention outreach efforts to be government-managed.²⁵

June 22, 2017: President Magufuli accuses foreigners of bringing homosexuality to Tanzania, stating that “even cows, even goats” don’t have same-sex relations: his first known public statement on LGBT issues.²⁶

²¹ Hamisi Kigwangalla, Twitter post, February 6, 2017, <https://twitter.com/HKigwangalla/status/828651474406215680?s=20> (accessed December 17, 2019); “Tanzania Orders Arrest of Three Men for Promoting Homosexuality,” *NBC News*, February 8, 2017, <https://www.nbcnews.com/feature/nbc-out/tanzania-orders-arrest-three-men-promoting-homosexuality-n718491> (accessed December 17, 2019); Sharifa Marira, “Polisi Dar yaanza msako wa mashoga,” post to “Jambo Leo” (blog), February 2017, <http://jambo-leo.blogspot.com/2017/02/polisi-dar-yaanza-msako-wa-mashoga.html> (accessed December 17, 2019).

²² Human Rights Watch telephone interview with Johnnie D. (pseudonym), April 27, 2017.

²³ Rahma Suleiman, “Polisi Zanzibar yanasa wanaodaiwa kuwa mashoga,” *IPP Media*, March 4, 2017, <https://www.ippmedia.com/sw/habari/polisi-zanzibar-yanasa-wanaodaiwa-kuwa-mashoga> (accessed December 17, 2019).

²⁴ Madina Issa, “Ayoub azionya NGO’s zinazohamasisha ushoga,” *Zanzibar Leo*, March 6, 2017, <https://zanzibarleo.co.tz/2017/03/06/ayoub-azionya-ngos-zinazohamasisha-ushoga/> (accessed December 17, 2019).

²⁵ United Republic of Tanzania, Ministry of Health, Community Development, Gender, Elderly and Children, Tanzania Mainland, “National Guideline for Comprehensive Package of HIV Interventions for Key Populations,” Second Edition, April 2017, <https://hivpreventioncoalition.unaids.org/wp-content/uploads/2018/03/Tanzania-KP-GUIDELINE-1.pdf> (accessed December 17, 2019).

²⁶ Global TV Online, “Rais Magufuli Apigilia Msumari Wanafunzi Kupata Mimba, Hakuna Kurudi Shule, Wanaume Jela Miaka 30,” June 22, 2017, video clip, YouTube, <https://www.youtube.com/watch?v=1EWGwQk6NqU> (accessed December 17, 2019), 36:30.

June 25, 2017: Minister of Home Affairs Nchemba threatens to deregister any organizations and deport any foreign activists “promoting” homosexuality in Tanzania.²⁷

September 15, 2017: Police in Zanzibar raid 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.²⁸ Regional police commander Hassan Ali Nasri threatened to “hunt and prosecute” LGBT people.²⁹

October 17, 2017: Police raid a workshop on strategic litigation at Dar es Salaam’s Peacock Hotel, arresting 13 people, including South African and Ugandan lawyer 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 are accused of “promoting homosexuality.”³⁰

October 20, 2017: The Office of the NGO Registrar, under the direction of the Ministry of Health, Community Development, Gender, Children and Elderly, issues an order suspending the work of CHESA, on accusations that it is “promoting same-sex marriage.”³¹

²⁷ “Mwigulu Nchemba aibua vita ya ushoga,” *EATV*, June 27, 2019, <https://www.eatv.tv/news/current-affairs/mwigulu-nchemba-aibua-vita-ya-ushoga> (accessed December 17, 2019); Tim Teeman, “Mr. President, Cows Are Not Homophobic: Inside Tanzania’s LGBT Crackdown,” *The Daily Beast*, June 28, 2017, <https://www.thedailybeast.com/mr-president-cows-are-not-homophobic-inside-tanzanias-lgbt-crackdown> (accessed December 17, 2019).

²⁸ Human Rights Watch email correspondence with a human rights defender in Zanzibar, 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 December 18, 2019).

²⁹ Peter Nyanje and Kate Bartlett, “Tanzania Police Vow to ‘Hunt’ Down Gays After Making 20 Arrests,” *DPA*, September 18, 2017, <https://www.africanindy.com/news/tanzania-police-vow-to-hunt-down-gays-after-making-20-arrests-11263659> (accessed December 17, 2019).

³⁰ Wendy Isaack, “Facing Prosecution for Challenging HIV Policies in Tanzania,” Human Rights Watch dispatch, October 20, 2017, <https://www.hrw.org/news/2017/10/20/facing-prosecution-challenging-hiv-policies-tanzania>.

³¹ Wizara wa Afya, Maendeleo ya Jamii, Jinsia, Wazee na Watoto, “Taarifa Kwa Umma,” signed by M.S. Katemba, Registrar of NGOs, <https://www.jamiiforums.com/mobile-gallery/5714701aa3c7d542fb90b4ae332eac22.jpg> (accessed December 18, 2019).

December 2017: Police in Geita arrest two women on “gross indecency” charges after a video circulates that allegedly shows them kissing at a bar. The bar owner and a man accused of circulating the video are also charged. Prosecutors drop charges in May 2019, but police then re-arrest the four accused on the same charges. Their case remains pending as of November 2019.³²

2018

October 29, 2018: Paul Makonda, the regional commissioner of Dar es Salaam, gives a press conference calling on Tanzanians to send him names of any suspected gay men as well as people using the internet for sex work, and threatens to launch a “hunt” for them the following week.³³

October 31: Makonda gives another press conference and says he has established a task force to hunt down gay men which will start operations on November 5. He says suspects will be “tested” for homosexuality, offered counseling if they “want to change,” and otherwise be imprisoned.³⁴

November 3, 2018: Police arrest ten men at a beach in Zanzibar, accusing them of conducting a “gay wedding.”³⁵ They are released on bail, but continue reporting to police on a weekly basis through January 2019.

November 4, 2018: Tanzania’s Ministry of Foreign Affairs disavows Makonda’s comments, issuing a statement that “these thoughts are his alone and not the position of the government” and that Tanzania “will continue to respect all international agreements

³² Judith Nyange, “kesi ya mapenzi ya jinsia moja yapigwa kalenda,” *Mtanzania*, January 9, 2018, on file with Human Rights Watch; Human Rights Watch email correspondence with Tanzanian attorney, September 25, 2018.

³³ “Tanzania: ‘Dangerous’ Plans for Homophobic Task Force Must be Abandoned Immediately,” Amnesty International news release, November 1, 2018, <https://www.amnesty.org/en/latest/news/2018/11/tanzania-dangerous-plans-for-homophobic-task-force-must-be-abandoned-immediately> (accessed December 18, 2019).

³⁴ “RC Makonda akitangaza kamati itakayotokomezha mashoga,” October 31, 2018, video clip, YouTube, press conference, <https://www.youtube.com/watch?v=ZFzhwL7HggA&feature=youtu.be> (accessed December 17, 2019).

³⁵ “Tanzania: 10 Men Arrested in Zanzibar for Being ‘Gay,’” Amnesty International news release, November 6, 2018, <https://www.amnesty.org/en/latest/news/2018/11/tanzania-10-men-arrested-in-zanzibar-for-being-gay> (accessed December 17, 2019).

regarding human rights signed and ratified.”³⁶ The statement follows démarches from several diplomatic partners raising concerns regarding Makonda’s planned crackdown.³⁷

November 7, 2018: The World Bank, Tanzania’s largest donor, suspends visiting missions to Tanzania, announcing that due to “harassment and discrimination against the Lesbian, Gay, Bi-sexual, Transgender (LGBT+) community, all visiting missions to Tanzania have been suspended with immediate effect until we are assured of the safety and security of all employees.”³⁸

November 14, 2018: Denmark’s foreign minister announces Denmark will temporarily withhold US\$10 million in aid from Tanzania on the basis of human rights, including discrimination based on sexual orientation.³⁹ Several weeks later, Denmark reinstates the aid.⁴⁰

November 17, 2018: High-ranking World Bank representatives meet with President Magufuli to discuss Tanzania’s policy of excluding pregnant girls and young mothers from secondary school, its law outlawing the publishing of statistics contrary to government data, and the anti-LGBT environment. Following the meeting, the World Bank lifts the suspension of visiting missions, indicating in a statement that President Magufuli

³⁶ Jamhuri ya Muungano wa Tanzania, Wizara ya Mambo ya Nje na Ushirikiano wa Afrika Mashariki, “Taarifa kwa Vyombo vya Habari” (Press Statement) Dodoma, November 4, 2018, <https://www.bbc.com/swahili/habari-46093978> (accessed July 21, 2019), and on file with Human Rights Watch.

³⁷ Human Rights Watch email correspondence with diplomat in Tanzania, December 16, 2019; Christina Finn, “Diplomatic Pressure Results in Tanzania Stating Anti-Gay Crackdown is Not Government Policy,” *The Journal* (Ireland), November 6, 2018, <https://www.thejournal.ie/tanzania-lgbt-arrests-4326426-Nov2018> (accessed December 17, 2019).

³⁸ The announcement was posted at https://wbappse.worldbank.org/WBG_BPC_1818SOCIETY_RSSFEEDAPPWEB/announcements/announcementresources# and viewed by Human Rights Watch but is no longer available at this writing. See also Hillary Orinde, “Unsafe place? World Bank Cancels Missions to Tanzania,” *Standard Digital* (Nairobi), November 9, 2018, <https://www.standardmedia.co.ke/article/2001302127/world-bank-suspends-funding-to-tanzania> (accessed December 17, 2019).

³⁹ “Danmark tilbageholder millioner til Tanzania for homofobi,” *DR* (Denmark), November 14, 2018, <https://www.dr.dk/nyheder/politik/danmark-tilbageholder-millioner-til-tanzania-homofobi> (accessed December 17, 2019), unofficial English translation available at <https://www.jamiiforums.com/threads/denmark-withholds-aid-and-cancels-minister-visit-to-tanzania-over-human-rights-situation.1508470> (accessed December 17, 2019).

⁴⁰ Alex Malanga, “Mahiga: Denmark’s Aid Intact,” *The Citizen* (Dar es Salaam), November 30, 2018, <https://www.thecitizen.co.tz/News/Mahiga--Denmark-s-aid-intact/1840340-4875198-68ftm2/index.html> (accessed December 17, 2019); Human Rights Watch email correspondence with Susanne Branner Jespersen, LGBT Denmark, December 4, 2018.

“assured the Bank that Tanzania will not pursue any discriminatory actions related to harassment and/or arrest of individuals, based on their sexual orientation.”⁴¹

2019

January 2019: Local officials order the arrest of 13 men in a small town on the basis of their perceived sexual orientation. Police subject them to forced anal examinations. Following the intervention of diplomatic missions, they are released on bail. However, three of them are later rearrested in Dar es Salaam and held for two weeks before being released.⁴²

March 2019: At a U.S. President's Emergency Plan for AIDS Relief (PEPFAR) meeting in Johannesburg, South Africa, PEPFAR calls on the Tanzanian government to ban forced anal exams. Tanzania's Health Ministry shares a circular issued in January 2019, previously unknown to civil society activists present at the meeting, which instructs hospitals to conduct anal examinations only when there is a valid court order. Activists insist this circular is insufficient, and PEPFAR joins them in calling for a full ban.⁴³

April 2019: NGO Registrar Neema Mwanga announces that the Non-Governmental Organisations (NGO) Co-ordination Board, a government body that operates under the aegis of the Ministry of Health, Community Development, Gender, Children and Elderly, has revoked the registration of six organizations, including CHESA. CHESA and two other organizations are accused of “promoting unethical acts.”⁴⁴

April 2019: Civil society organizations launch a petition calling on the Health Ministry to uphold its commitment prohibit forced anal examinations.⁴⁵

⁴¹ “World Bank Statement on Lifting the Suspension of Missions to Tanzania,” World Bank news release, November 19, 2018, <https://www.worldbank.org/en/news/statement/2018/11/20/world-bank-statement-on-lifting-the-suspension-of-missions-to-tanzania> (accessed December 17, 2019).

⁴² Human Rights Watch interviews and email correspondence with one of the detainees, diplomatic missions in Tanzania, and international organizations, March 2019.

⁴³ Human Rights Watch telephone interview with Stephen Leonelli, MPact, September 19, 2019.

⁴⁴ “Tanzania: Board Revokes Six NGOs' License,” *The Citizen* (Dar es Salaam), April 19, 2019, <https://www.thecitizen.co.tz/news/Tanzania--Board-revokes-six-NGOs--license/1840340-5079110-fhyocl/index.html> (accessed December 17, 2019).

⁴⁵ MPact, “Prohibit Forced Anal Examinations Now! Petition to Government of Tanzania,” April 2019, <https://mpactglobal.org/civil-society-petition-regarding-forced-anal-exams-in-tanzania> (accessed December 17, 2019).

September 2019: While in Zanzibar, Deputy Home Affairs Minister Hamad Masauni calls for arrests of anyone “promoting” homosexuality.⁴⁶

⁴⁶ “Hamad Masauni: Waziri ataka wapenzi wa jinsia moja kukamatwa Zanzibar,” *BBC News Online*, September 20, 2019, <https://www.bbc.com/swahili/habari-49773733> (accessed December 17, 2019); KTV TZ Online, “‘POLISI KAMATENI WANA OJHUSISHA NA USHOGA ZANZIBAR’ – MASAUNI,” posted September 21, 2019, video clip, YouTube, <https://www.youtube.com/watch?v=8CCOsQw3UbQ> (accessed December 17, 2019).

I. Background

“We are like ants fighting with elephants.”

—Toni (not her real name), transgender activist in Tanzania, October 9, 2018

Tanzanian law has criminalized consensual same-sex conduct since the period of British colonial rule (1919-1961).⁴⁷ For decades, social stigma combined with legal repression has led most LGBT people to remain closeted, and for those who are known or thought to be LGBT, discrimination is rife.⁴⁸ But since President John Magufuli assumed power in 2015, LGBT Tanzanians have been subjected to unprecedented and systemic rights violations at the hands of the state. The government is unapologetic in its rejection of basic rights for LGBT people: during its Universal Periodic Review process before the UN Human Rights Council in 2016, the government not only rejected recommendations to decriminalize same-sex conduct, but also refused to “[c]ombat impunity for crimes committed against sexual minorities, ensure that their right to assembly and association is upheld and ensure the right to equal treatment in accessing health services and justice.”⁴⁹

Political Context

President Magufuli’s party, Chama Cha Mapinduzi, has governed Tanzania since independence. Magufuli was elected on a campaign platform promising rapid economic development and an end to corruption. In his previous role as public works minister, Magufuli was nicknamed “The Bulldozer” for his infrastructure projects, a moniker that stuck in large part due to his governance style, road-building aside.⁵⁰ Since assuming power, Magufuli has targeted corruption and wasteful government spending, sometimes through unexpected, highly publicized visits to government departments. However, his

⁴⁷ Tanganyika was colonized by Germany from the 1880s through 1918, while Zanzibar became a British protectorate. Following World War I, in 1919, under the League of Nations, Tanganyika became a British mandate. At independence in 1961, the two territories unified to form contemporary Tanzania, with Zanzibar maintaining some autonomy.

⁴⁸ 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>.

⁴⁹ United Nations Human Rights Council, Working Group on Universal Periodic Review, “Draft Report of the Working Group on the Universal Periodic Review, United Republic of Tanzania,” para 137.66.

⁵⁰ “Tanzania’s Magufuli Sacks Officials Who Failed to Recall Public Works Budget Figures,” *Reuters*, November 7, 2017, <https://www.reuters.com/article/us-tanzania-politics/tanzanias-magufuli-sacks-officials-who-failed-to-recall-public-works-budget-figures-idUSKBN1D70E7> (accessed December 17, 2019).

“clean up” rhetoric soon extended to those whom he portrays as socially undesirable, including sex workers and drug users.⁵¹ From a rural, conservative Catholic background, Magufuli has described himself as acting in accordance with “the will of God.”⁵²

Bulldozing Rights

Magufuli’s administration has been marked by efforts to silence criticism, including through closure of media outlets and arrests of activists and opposition members.

In June 2019, Magufuli signed into law The Written Laws (Miscellaneous Amendments No. 3 of 2019) Bill, which amends the NGO Act to give the Registrar of NGOs broad powers to investigate and evaluate NGOs and to suspend their operations.⁵³ This followed a 2018 revision of NGO regulations that required NGOs to publicly declare sources of funds, as well as expenditures and activities they intend to undertake, within 14 days of obtaining such funds, under threat of deregistration.⁵⁴ Authorities have also more directly threatened and sought to silence civil society groups. When the Legal and Human Rights Centre held a press conference in January 2018 alleging election-related security force abuses, the Tanzania Communications Regulatory Authority fined five television stations for broadcasting it, claiming the content was “seditious.”⁵⁵ Police have detained activists working on local governance issues in mining areas.⁵⁶

⁵¹ “Tanzania Arrests 500 ‘Sex Workers,’” *BBC News Online*, March 13, 2016, <https://www.bbc.com/news/world-africa-35815997> (accessed December 17, 2019); Global Network of Sex Work Projects, “Tanzanian Sex Workers and Clients Face Mass Arrest and Criminalisation,” June 12, 2017, <https://www.nswp.org/news/tanzanian-sex-workers-and-clients-face-mass-arrest-and-criminalisation> (accessed December 17, 2019).

⁵² Jared Jeffrey, “Op-Ed: Does Tanzania’s Magufuli Dare to Take on the Church?” *CNBC Africa*, April 7, 2018, <https://www.cnbc.com/news/east-africa/2018/04/07/oped-tanzanias-president-john-magufuli-dare-take-church> (accessed December 17, 2019).

⁵³ United Republic of Tanzania, No. 9 of 2019, The Written Laws (Miscellaneous Amendments) Act, 2019, http://www.tnnc.go.tz/documents/THE_WRITTEN_LAWS_MISCELLANEOUS_NO.3_ACT_OF_2019_.pdf (accessed December 18, 2019); “Tanzanian Civil Society Rattled by Bill That Restricts Freedoms,” *The East African*, June 21, 2019, <https://www.theeastafrican.co.ke/news/ea/Tanzania-amendment-Bill/4552908-5167054-9jo8lo/index.html> (accessed December 17, 2019).

⁵⁴ Non-Governmental Organizations Act (Regulations), Government Notice No. 609 of 2018, http://www.mcdgc.go.tz/data/GN_609_NGOs_ACT_AMENDMENTS.pdf (accessed December 17, 2019), reg. 12.

⁵⁵ 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>, p. 24.

⁵⁶ Front Line Defenders, “Bibiana Mushi Acquitted,” November 2, 2017, <https://www.frontlinedefenders.org/en/case/judicial-harassment-two-human-rights-defenders-o> (accessed December 17, 2019).

Independent media is also under attack. Under the Cybercrimes Act (2015), at least four journalists were prosecuted in 2018 for alleged crimes such as the publication of false information. Four newspapers were banned in 2017 for publishing content deemed critical of the government, while others were temporarily suspended.⁵⁷ Police have physically assaulted and detained journalists without charge.⁵⁸

In 2016, Magufuli ordered that all political activities be suspended until 2020, seeking to hamstring the opposition. Police have implemented the order vigorously, arresting members of parliament who were visiting or holding rallies in their own constituencies and charging them with criminal offenses.⁵⁹ In 2019, Parliament amended the Political Parties Act, giving the registrar of political parties wide powers to deregister parties and providing prison sentences for conducting unauthorized civil education.⁶⁰ Numerous officials from the Chadema opposition party have faced criminal charges for carrying out political activities. Unknown assailants have killed and assaulted other Chadema officials in attacks that appeared to be politically motivated.⁶¹

Reversing Gains

Given Magufuli's assault on civil liberties, it is not surprising that LGBT people, too, came under attack.

⁵⁷ Human Rights Watch, *As Long as I am Quiet, I am Safe*, pp. 21-23; Zaheena Rashid, "Tanzania Daima Ban Adds to Press Freedom Concerns," *Al Jazeera*, October 26, 2017, <https://www.aljazeera.com/news/2017/10/tanzania-daima-ban-adds-press-freedom-concerns-171025181519339.html> (accessed December 17, 2019); Legal and Human Rights Centre, "Human Rights Situation Report. January – June 2018," August 2018, [https://www.humanrights.or.tz/assets/images/upload/files/Mid-Year%20Human%20Rights%20Report%202018\(2\).pdf](https://www.humanrights.or.tz/assets/images/upload/files/Mid-Year%20Human%20Rights%20Report%202018(2).pdf) (accessed December 17, 2019), p. 33; "Tanzania Authorities Cite Bias in Banning of Major English Newspaper," Human Rights Watch news release, March 6, 2019, <https://www.hrw.org/news/2019/03/06/tanzania-authorities-cite-bias-banning-major-english-newspaper>.

⁵⁸ Human Rights Watch telephone interview with Sitta Tuuma, journalist, Mwanza, September 11, 2018; "Opposition MP Matiko Held For 'Unlawful Assembly' in Tarime," *IPP Media*, August 10, 2018, <https://www.ippmedia.com/en/news/opposition-mp-matiko-held-%E2%80%99unlawful-assembly%E2%80%99-tarime> (accessed December 17, 2019).

⁵⁹ Amnesty International, *The Price We Pay: Targeted for Dissent by the Tanzanian State*, October 28, 2019, <https://www.amnesty.org/en/documents/afr56/0301/2019/en/> (accessed December 17, 2019), pp. 29-31.

⁶⁰ United Republic of Tanzania, The Political Parties (Amendment) Act, February 22, 2019, <http://www.sol.udsm.ac.tz/images/Mypdf/Politicalparties.pdf> (accessed December 17, 2019); Fumbuka Ng'wanakilala, "Tanzania MPs Grant Government Sweeping Powers Over Political Parties," *Reuters*, January 30, 2019, <https://www.reuters.com/article/us-tanzania-politics/tanzania-mps-grant-government-sweeping-powers-over-political-parties-idUSKCN1POoIA> (accessed December 17, 2019).

⁶¹ Human Rights Watch, *As Long as I am Quiet, I am Safe*, pp. 42-45.

Open discussion of sexuality is largely taboo in Tanzania,⁶² and prior to Magufuli's election, public discussion of sexual orientation and gender identity was almost nonexistent apart from occasional homophobic statements from politicians.⁶³ Former president Jakaya Kikwete, when asked about the criminalization of same-sex conduct in a 2014 media interview, equivocated by stating only that it would "take time for our people to accept the norms that the West is accepting."⁶⁴ Nevertheless, between 2007 and 2015, Tanzania made progress on issues related to LGBT rights under the framework of addressing the HIV epidemic by including key populations, including men who have sex with men, transgender people, sex workers, and people who use drugs in health policy planning.⁶⁵

LGBT organizations did not operate with complete freedom under Kikwete's administration. In 2014 the Ministry of Community Development, Gender and Children, which then oversaw NGO registration, banned what was then one of Tanzania's largest LGBT organizations, the Tanzania Sisi Kwa Sisi Foundation (TSSF), on the grounds that it promoted illegal activity.⁶⁶ TSSF's deregistration, in what proved to be a precursor to what was to come in 2016, followed the publication of comments on the organization's Facebook page criticizing the government's reluctance to allow non-governmental organizations to import lubricant as an HIV prevention commodity.⁶⁷ Other organizations were generally able to function, particularly if they kept a low profile.

But under Magufuli, government officials launched an assault on civil society organizations working with LGBT communities. Minister of Constitutional and Legal Affairs

⁶² See, for example, Jacob William Kahemele, "The Sanctioned Emotional, Physical and Sexual Abuse of Children in Tanzania," *Child Research Net*, May 14, 2014, https://www.childresearch.net/papers/rights/2014_08.html (accessed December 17, 2019).

⁶³ Emmanuel Muga, "Dar Plans to Introduce Tougher Anti-Gay Bill," *The East African*, March 29, 2014, <https://www.theeastafrican.co.ke/news/ea/Dar-plans-to-introduce-tougher-anti-gay-Bill-/4552908-2262374-format-xhtml-85bcn8/index.html> (accessed December 17, 2019).

⁶⁴ "Tanzania's Blood Ivory: 'This is Madness Now,'" *CNN*, February 13, 2014, <http://amanpour.blogs.cnn.com/2014/02/13/tanzanias-blood-ivory-this-is-madness-now> (accessed December 17, 2019).

⁶⁵ Among other initiatives, TACAIDS invited an openly gay man to address the parliamentary HIV/AIDS Committee in Dodoma in 2014 about the need to end violence and discrimination in order to end HIV. At the same parliamentary session, Human Rights Watch shared findings from its 2013 joint report with the WASO network on discrimination against key populations and recommended measures to reduce police abuse and discrimination in the health sector.

⁶⁶ Human Rights Watch telephone interview with Anna Maembe, permanent secretary, Ministry of Community Development, Gender and Children, June 12, 2014.

⁶⁷ Human Rights Watch interview with John Kashiha, Dar es Salaam May 5, 2014. Human Rights Watch viewed the deregistration letter, signed by then-Registrar Marcel Katemba on behalf of the permanent secretary.

Harrison Mwakymbe announced in July 2016 that he would prosecute organizations “promoting” homosexuality.⁶⁸ This statement was followed by increased scrutiny of organizations working on LGBT issues and even those working on public health and HIV more broadly, along with several waves of raids, arrests, threats to deregister organizations, and eventually the actual deregistration of several organizations, including Community Health Education and Advocacy Services (CHESA) in April 2019. Meanwhile, the Ministry of Health whittled away services for LGBT people and key populations, as documented in section II of this report.

President Magufuli was initially silent on the topic of LGBT rights. He broke his silence in June 2017 with a statement that foreigners brought homosexuality to Tanzania, along with drugs and rape. He stated, “Men and men, women and women – even cows, even goats have never done that.”⁶⁹

Magufuli’s efforts to centralize power, while at the same time vilifying minorities, echo tactics used by authoritarian populist regimes around the globe.⁷⁰ Human rights activists working on an array of issues are framed as representing “foreign” interests and working against “Tanzanian” culture and values, the same arguments that are leveraged against LGBT people. A lesbian activist told Human Rights Watch in late 2016, “I have never experienced this before in Tanzania. People were used to KPs [key populations] and LGBT people, but after the government statements, people think LGBT have been brought in from outside. Everyone is scared.”⁷¹

⁶⁸ “Serikali Kuzifutia Usajili Asasi Zisizokuwa Za Kiserikali Zinazounga Mkono Ushoga Nchini,” *ITV*, originally posted at https://www.itv.co.tz/news/local/1993-33856/Serikali_kuzifutia_usajili_na_kuzishtaki_asasi_zisizokuwa_za_kiserikali_zinazounga_mkono_ushoga_nchini.html?fbclid=IwAR3bJmV27tJd3yQZG4xSe7ggI-IEcoGDtnBjUbUgl7olegkZAFnsIHhF8 (no longer visible) and cited on the Facebook page of Human Life International, <https://www.facebook.com/HumanLifeInternational/posts/10155216627528569>; reprinted by Donatila, post to “Jamii Forums” (blog), <https://www.jamiiforums.com/threads/serikali-kuzifutia-usajili-asasi-zisizokuwa-za-kiserikali-zinazounga-mkono-ushoga-nchini.1088295>. See also Sophie Tremblay, “‘Seeds of Hate’ Sown as Tanzania Starts LGBT Crackdown,” *Guardian*, <https://www.theguardian.com/world/2016/aug/08/seeds-of-hate-sown-as-tanzania-starts-lgbt-crackdown>.

⁶⁹ Global TV Online “Rais Magufuli Apigilia Msumari Wanafunzi Kupata Mimba, Hakuna Kurudi Shule, Wanaume Jela Miaka 30,” <https://www.youtube.com/watch?v=1EWGwQk6NqU>, 36:30. Magufuli was misquoted in some English language media as stating that even cows “don’t approve” of homosexuality; see Tim Teeman, “Mr. President, Cows Are Not Homophobic: Inside Tanzania’s LGBT Crackdown,” *The Daily Beast*, <https://www.thedailybeast.com/mr-president-cows-are-not-homophobic-inside-tanzanias-lgbt-crackdown>.

⁷⁰ Ken Roth, “World’s Autocrats Face Rising Resistance,” *Human Rights Watch World Report 2019* (New York: Human Rights Watch, 2019), <https://www.hrw.org/world-report/2019/keynote/autocrats-face-rising-resistance>.

⁷¹ Human Rights Watch telephone interview with Elizabeth (pseudonym), December 2016.

One impact of Magufuli’s full-throttled attack on civil society is that mainstream human rights organizations in Tanzania—which have, with few exceptions, not offered vocal support for the rights of LGBT people—have become even more hesitant to take up their cause, for fear that it will discredit them or, in some cases, on the basis of their own entrenched antipathy toward LGBT people.⁷²

Legal Context

Tanzania’s laws prohibiting consensual sexual relations between people of the same sex are among the harshest in the world. In mainland Tanzania, section 154 of the Penal Code, which dates back to British colonial rule, punishes “carnal knowledge against the order of nature.” The law originally prescribed a sentence of 14 years in prison, but after independence, in a series of several penal code reforms, the Tanzanian government lengthened the sentence to 30 years to life in prison. Section 155 punishes any “attempt” to commit such acts with up to 20 years in prison.⁷³

In addition, section 157 punishes “gross indecency between males.” In a perverse attempt to equalize the impact of these invasive laws, in 1998 the Tanzanian government passed the Sexual Offenses Special Provisions Act, thereby adding to the Penal Code a new section, 138A, which punishes “gross indecency between both men and women with up to five years in prison.”⁷⁴

In semi-autonomous Zanzibar, laws punishing same-sex conduct have also been expanded in recent years. The Zanzibar penal code punishes “carnal knowledge against the order of nature” (section 150) and “gross indecency” (section 154) with 14 and 5 years in prison respectively, but Zanzibar also directly criminalizes sexual relations between women after adding a new provision to its penal code on “acts of lesbianism” (section 158) in 2004. Zanzibar also punishes same-sex “unions” (section 158).⁷⁵

⁷² For example, when Paul Makonda threatened to round up and arrest all gay men in Tanzania, only one prominent Tanzanian human rights activist, Fatma Karume, the president of the Tanzanian Law Society, vocally condemned his attacks. Human Rights Watch telephone interviews with Tanzanian LGBT activists, November 2018.

⁷³ Laws of Tanzania, Chapter 16, Penal Code, http://www.lrct.go.tz/?wpfb_dl=170 (accessed December 19, 2019), arts. 154, 155.

⁷⁴ Laws of Tanzania, Chapter 16, Penal Code, http://www.lrct.go.tz/?wpfb_dl=170, arts. 157, 138A; Human Dignity Trust, “Tanzania,” <https://www.humandignitytrust.org/country-profile/tanzania/> (accessed December 17, 2019).

⁷⁵ Zanzibar Penal Decree Act No. 6 of 2004, http://defensewiki.ibj.org/images/9/90/Zanzibar_Penal_Code.pdf (accessed December 17, 2019), arts. 150, 154, 158.

The law does not prohibit “homosexuality” in itself, and no law prohibits “promoting homosexuality,” although this bogus charge has at times been used by Tanzanian police as a justification for arrests.

While Tanzania’s constitution prohibits “all forms” of discrimination, and enumerates several protected grounds, including “nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life,” there is no express prohibition in Tanzanian law on discrimination based on sexual orientation or gender identity.⁷⁶

⁷⁶ The Constitution of the United Republic of Tanzania of 1977, revised 2005, <https://www.wipo.int/edocs/lexdocs/laws/en/tz/tzoo8en.pdf> (accessed December 17, 2019), arts. 9, 13.

II. Attacks on the Right to Health

“The Tanzanian government should educate its healthcare providers how to treat us *makuchu* [LGBT people] without slandering us with insults or stigmatizing us when we are people like other people.”

—Human Rights Watch interview with King (not his real name), a gay man, May 21, 2018

Tanzania’s crackdown against LGBT people began with a television talk show. Interviewed in June 2016 on a popular TV channel, a transgender woman, Kaoge Mavuto, discussed her involvement with civil society organizations that provided condoms and lubricant as part of their HIV prevention efforts.⁷⁷

The next day, a member of parliament accused the television channel, Clouds TV, of “glorifying gayism.”⁷⁸ Several days later, on July 2, Dar es Salaam’s regional commissioner, Paul Makonda, gave an inflammatory speech pledging to arrest gays as well as anyone who “followed” openly gay people on social media. Makonda, an appointed administrative official who claimed to have President Magufuli’s blessing for his remarks, also pledged to ban organizations that “promote homosexuality.”⁷⁹ The following week Tanzania’s Communication Regulatory Authority ordered Clouds TV to issue an apology.⁸⁰

Lubricant, an important HIV prevention tool, was among the first casualties of the ensuing moral panic. On July 15, at the opening of a USAID-supported hospital, Health Minister Ummu Mwalimu announced opposition to the distribution of lubricant in government hospitals and health centers. “We don’t agree with the promotion of homosexuality and homosexual acts,” she declared emphatically. “We should do these HIV/AIDS

⁷⁷ Human Rights Watch telephone interviews with Tanzanian activists, July 2016. Kaoge, who is also described in media reports using her birth name, Godfrey Majunga, died of an AIDS-related illness in November 2017. Human Rights Watch telephone interview with a Tanzanian activist, November 8, 2019.

⁷⁸ “Tanzanian TV Station in Trouble for Hosting Gay Man,” *Kuchu Times*, <https://www.kuchutimes.com/2016/07/tanzanian-tv-station-in-trouble-for-hosting-gay-man>.

⁷⁹ Ayo TV, “Three Things That Have Been Banned by RC Paul Makonda,” https://www.youtube.com/watch?v=_1eKbNrkrk&app=desktop, 5:48-6:53.

⁸⁰ “Tanzanian TV Station in Trouble for Hosting Gay Man,” *Kuchu Times*, <https://www.kuchutimes.com/2016/07/tanzanian-tv-station-in-trouble-for-hosting-gay-man>; “Clouds TV Ordered to Run Apologies on Gay Interview,” *IBN TV*, <http://www.ibn-tv.com/sw/2016/07/clouds-tv-ordered-to-run-apologies-on-gay-interview>; Edith Honan, “How Tanzania is Cracking Down on Gay People – and Getting Away With It,” *BuzzFeed News*, <https://www.buzzfeednews.com/article/edithhonan/how-tanzania-is-cracking-down-on-lgbt-people-and-getting>.

interventions, but my goodness, to distribute lubricants for men who have sex with other men in the United Republic of Tanzania.... In fact, I ban it in the entire country.”⁸¹

Mwalimu’s professed shock over the distribution of lubricant belied the fact that since 2014, the Health Ministry itself had embraced lubricant as an HIV prevention tool. (Mainland Tanzania and Zanzibar each has its own health ministry, a function of Zanzibar’s partial autonomy. Unless noted otherwise, references to the health ministry or health minister in this report specifically refer to the mainland.) Under former President Kikwete, Tanzania’s approach to HIV and AIDS was considered a relative success: evidence-based and at least somewhat inclusive of key populations.⁸² Between 2010 and 2015, Tanzania scaled up access to anti-retroviral treatment, piloted needle and syringe programs, and emphasized partnerships with community-based organizations. New HIV infections and AIDS-related deaths declined.⁸³

HIV prevalence among men who have sex with men was estimated at 25 percent in urban areas in mainland Tanzania in 2014,⁸⁴ compared to 4.7 percent among the general population (ages 15-49) in 2018,⁸⁵ down from at 5.1 percent in 2012.⁸⁶ No formal statistics exist on HIV prevalence among trans people in Tanzania—or in most other countries in

⁸¹ The original speech was posted at <https://www.youtube.com/watch?v=TSPZFW1AG-U>, and was transcribed by Human Rights Watch, but is no longer available as of this writing. See also “Waziri Ummu Mwalimu apiga marufuku hospitali na vituo vya afya vya serikali kutoa vilainishi vya kusaidia kufanya mapenzi ya jinsia moja,” post to “Karagwe Forum” (blog), <http://juhudkaragwe.blogspot.com/2016/07/waziri-ummu-mwalimu-apiga-marufuku.html>.

⁸² World Health Organization, “Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations: 2016 Update,” <https://apps.who.int/iris/bitstream/handle/10665/246200/978924151124-eng.pdf;jsessionid=18BD154698A96B4377976E45459674Fo?sequence=1> (accessed December 17, 2019), p. xii.

⁸³ Avert, “HIV and AIDS in Tanzania,” updated October 1, 2019, <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania> (accessed December 17, 2019).

⁸⁴ United Republic of Tanzania, Ministry of Health and Social Welfare, National AIDS Control Programme, “Consensus Estimates on Key Population Size and HIV Prevalence in Tanzania,” July 2014, https://www.healthpolicyproject.com/pubs/391_FORMATTEDTanzaniaKPconsensusmtgreport.pdf (accessed December 17, 2019). A study conducted by Muhimbili University in 2014 found HIV prevalence of 22.3 percent among men who have sex with men in Dar es Salaam. Elia John Mmbaga et al., “Hiv Prevalence and Associated Risk Factors Among Men Who Have Sex with Men in Dar Es Salaam, Tanzania,” *Journal of Acquired Immune Deficiency Syndromes*, 2017, accessed December 17, 2019, doi:10.1097/QAI.0000000000001593.

⁸⁵ UNAIDS Country Factsheets, “United Republic of Tanzania,” 2018, <https://www.unaids.org/en/regionscountries/countries/unitedrepublicoftanzania> (accessed December 17, 2019).

⁸⁶ United Republic of Tanzania, “Global AIDS Response Country Progress Update,” March 31, 2014, https://www.unaids.org/sites/default/files/country/documents/TZA_narrative_report_2014.pdf (accessed December 17, 2019).

Africa⁸⁷—but studies in other regions demonstrate that trans women are also at high risk of contracting HIV.⁸⁸

Statistics made clear that a gap in reaching men who have sex with men and other key populations was undermining overall HIV prevention efforts in Tanzania: only 14 percent of men who have sex with men were benefiting from HIV prevention efforts targeted to their needs, according to a 2014 Global Fund concept note,⁸⁹ while the government estimated in 2013 that only 25 percent of men who have sex with men had been reached through any HIV prevention program at all.⁹⁰ But the Prime Minister’s Office and the Ministry of Health issued a series of HIV strategy documents between 2008 and 2014 seeking to address that gap, advancing strategies to stem the epidemic among key populations, including by addressing stigma and discrimination. One strategy document even called for decriminalization of same-sex conduct.⁹¹ Government bodies such as the Tanzania AIDS Commission (TACAIDS) and the National AIDS Control Program in mainland Tanzania and the Zanzibar AIDS Commission in Zanzibar increasingly invited key population representatives to the table to ensure inclusive health programming.

⁸⁷ World Health Organization, Policy Brief, *Transgender People and HIV*, July 2015, https://apps.who.int/iris/bitstream/handle/10665/179517/WHO_HIV_2015.17_eng.pdf (accessed December 19, 2019), p. 7.

⁸⁸ Stefan D. Baral, “Worldwide Burden of HIV in Transgender Women: A Systematic Review and Meta-Analysis,” *The Lancet* 13 (2013), accessed December 17, 2019, doi:10.1016/S1473-3099(12)70315-8.

⁸⁹ The Global Fund to Fight AIDS, Malaria and Tuberculosis, “Tanzania Joint TB and HIV Concept Note,” 2014, p. 68, on file with Human Rights Watch. HIV prevention aimed at the general population, which does not take into account the specific needs and characteristics of groups such as men who have sex with men and transgender people, can be ineffective; as Human Rights Watch and WASO found in our 2013 report, several men interviewed did not know that they could contract HIV through anal sex. Human Rights Watch and WASO, “*Treat Us Like Human Beings*,” p. 20.

⁹⁰ United Republic of Tanzania, Global AIDS Response Country Progress Report, https://www.unaids.org/sites/default/files/country/documents/TZA_narrative_report_2014.pdf, p. 8. More recent statistics are not available.

⁹¹ United Republic of Tanzania, Prime Minister’s Office, “The Second National Multi-Sectoral Strategic Framework on HIV and AIDS (2008-2012),” October 2007, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125595.pdf (accessed December 17, 2019), p. 57; United Republic of Tanzania, Prime Minister’s Office, “Tanzania Third National Multi-Sectoral Framework for HIV and AIDS (2013/2014-2017/2018),” November 2013, http://www.nationalplanningcycles.org/sites/default/files/country_docs/Tanzania/nmsf-iii_eng_final_report_2013mail.pdf (accessed December 17, 2019); United Republic of Tanzania, Ministry of Health and Social Welfare, Tanzania Mainland, “National Guideline for Comprehensive Package of HIV Interventions for Key Populations,” September 2014, https://www.hivsharespace.net/sites/default/files/resources/7.%202014%20Tanzania_KP_Comprehensive_Guideline_sep_t_29th_2014%20%281%29.pdf (accessed December 17, 2019). Even under Kikwete’s administration, however, some of the material in these health strategies was apparently controversial: while an English version of the 2008-2012 National Strategic Framework called for the decriminalization of consensual same-sex conduct, the Kiswahili version omitted this language.

Following advocacy by non-governmental organizations, the Global Fund to Fight HIV, Malaria and Tuberculosis, and eventually even the Health Ministry itself, the Prime Minister's Office included provision of lubricant in Tanzania's Third National Multisectoral Strategic Framework on HIV and AIDS, published in 2013. The nongovernmental organization PSI imported the first bulk shipment of lubricant for an HIV prevention program targeting men who have sex with men in 2015, with the Health Ministry's blessings.⁹²

In June 2016, Tanzania publicly supported a UN General Assembly resolution entitled "Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030." According to the declaration, adopted by consensus, all states:

Reaffirm that the full enjoyment of all human rights and fundamental freedoms for all supports the global response to the AIDS epidemic, including in the areas of prevention, treatment, care and support, and recognize that addressing stigma and discrimination against all people living with, presumed to be living with, at risk of and affected by HIV is a critical element in combating the global HIV epidemic.⁹³

Tanzania's Deputy Health Minister Hamisi Kigwangalla stated, "The government applauds the work done on drafting the declaration. The translation of such global policies at local level will be key going forward."⁹⁴

Just weeks later, Tanzania changed its tune. It began implementing a series of policies that negated rights, inhibiting the HIV response. This included banning personal lubricants, prohibiting outreach activities, and forcibly closing drop-in centers that provided HIV and other health services to LGBT people and key populations.

⁹² Human Rights Watch telephone interview with a former representative of a donor agency, October 13, 2019.

⁹³ UN General Assembly, Resolution adopted by the General Assembly on 8 June 2016, "Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030," A/RES/70/266, https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf (accessed December 17, 2019).

⁹⁴ UNAIDS, "Tanzania Supports the Release of Zero Draft 2016 Political Declaration Ahead of High-Level Meeting on Ending AIDS," January 13, 2017, <http://rstes.unaids.org/highlights/2017/item/20-tanzania-supports-the-release-of-zero-draft-2016-political-declaration-ahead-of-high-level-meeting-on-ending-aids> (accessed December 17, 2019).

A health ministry that LGBT activists had generally perceived as an ally began to stoke fear around the so-called “promotion of homosexuality:”

Recently there emerged reports that some of the NGOs, in the name of anti-HIV activities, have been promoting activities toward same sex relationships which is against the law.... The Ministry of Health, Community Development, Gender, Elderly and Children would therefore like to clarify that it adhered to the best practices and recommendations as advised by the WHO and other International Organizations, but these have to be adapted to the Tanzanian context through stakeholder’s consultation, to ensure that they are in accordance with the countries’ laws, customs and traditions. This includes being cognizant to the Penal Code.⁹⁵

Public health experts have long recognized that criminalization, along with stigma and discrimination, inhibits LGBT people’s access to health and undermines efforts to tackle HIV.⁹⁶ The World Health Organization (WHO) unambiguously condemns criminalization of same-sex conduct.⁹⁷ The African Commission on Human and Peoples’ Rights has emphasized:

Criminalisation, violence, discrimination and other human rights violations based on sexual orientation are contrary to international human rights law. They also have significant negative consequences on the HIV epidemic and public health, contributing to an environment of fear that drives LGBTI

⁹⁵ 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>.

⁹⁶ UNAIDS, “Guidance Note 2012: Key Programmes to Reduce Stigma and Discrimination and Increase Access to Justice in National HIV Responses,” http://files.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf (accessed December 17, 2019); Global Commission on HIV and the Law, *Risks, Rights, and Health*, July 2012, <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf> (accessed December 17, 2019), chapter 3.3; Global Commission on HIV and the Law, *Risks, Rights, and Health: Supplement*, July 2018, <https://hivlawcommission.org/wp-content/uploads/2018/09/HIV-and-the-Law-supplement-FINAL.pdf> (accessed December 17, 2019).

⁹⁷ World Health Organization, “Guidelines: Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations,” 2016, <https://apps.who.int/iris/bitstream/handle/10665/246200/9789241511124-eng.pdf?sequence=8> (accessed December 23, 2019), pp. 86-88; “Twelve UN Agencies Issue Unprecedented Joint Statement on Rights of Lesbian, Gay, Bisexual, Transgender & Intersex people,” UN Office of the High Commissioner for Human Rights, September 29, 2015, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16511&LangID=E> (accessed December 19, 2019).

people away from HIV services. The possession of HIV and health commodities associated with or labelled for use by gay men and other men who have sex with men (such as lubricants) has been used as evidence in criminal cases. Fear of negative consequences can prevent uptake of health services and hinder gay men and other men who have sex with men from disclosing their sexual behaviour to health-care providers.⁹⁸

Health experts also concur that countries should make dedicated efforts to address the HIV epidemic among key populations. The World Health Organization emphasizes that “Without addressing the needs of key populations, a sustainable response to HIV will not be achieved.”⁹⁹ Focusing on key populations is essential to reaching UNAIDS’ target of ending the AIDS epidemic by 2030.¹⁰⁰ When governments do not adequately address concentrated epidemics among key populations, they not only fail to protect a vulnerable minority, but also jeopardize public health writ large.

Toni, a trans activist, said some health officials remained committed LGBT and key population health programming, but simultaneously sought to silence activists’ human rights claims:

At some point we went to a meeting where we were told [by government health officials], ‘You should not speak badly against the government, the government is like your father and you should obey.’ If we talk about human rights they say ‘This is not the right time.’¹⁰¹

⁹⁸ African Commission on Human and Peoples’ Rights, *HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses*, undated, https://www.unaids.org/sites/default/files/media_asset/HIV_Law_AfricanHumanRightsSystem_en.pdf (accessed December 17, 2019), p. 87, para 118.

⁹⁹ World Health Organization, “Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations: 2016 Update,” <https://apps.who.int/iris/bitstream/handle/10665/246200/978924151124-eng.pdf;jsessionid=18BD154698A96B4377976E45459674Fo?sequence=1>, pp. 2-3.

¹⁰⁰ Haley Mahler and Audrey Weber, “A Future Without AIDS Begins and Ends with Key Populations,” *FHI 360*, July 19, 2018, <https://degrees.fhi360.org/2018/07/a-future-without-aids-begins-and-ends-with-key-populations> (accessed December 17, 2019).

¹⁰¹ Human Rights Watch telephone interview with Toni (pseudonym), October 9, 2018.

Makame, a trans man, told Human Rights Watch, “My feeling is that the Health Ministry does not really care. They are trying to define us as a behavior to change.”¹⁰² Leticia, a queer woman activist, offered analysis of the breakdown of partnerships with former allies in the health sector: “You know, everyone is scared of our president. They can’t really show up for us. They tell us they know what’s going on, but they have to protect their position.”¹⁰³

The Lubricant Ban

Water-based and silica-based lubricants are essential HIV prevention tools. Condoms are more likely to tear when sexual partners engage in anal sex without lubricant, or when they use oil-based lubricants such as Vaseline. UNAIDS guidelines state that HIV prevention programs “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” in order to increase lubrication and decrease friction during sexual intercourse.¹⁰⁴ The World Health Organization describes “comprehensive condom and lubricant programming” as essential to the HIV response among key populations, including men who have sex with men, transgender people, sex workers, people in prisons and other closed settings, and people who inject drugs.¹⁰⁵ The WHO recommends both water-based and silica-based lubricants, but because water-based lubricant is more widely available, some interviewees, as well as some Tanzanian officials, used the term “water-based” lubricant when referring to any non-oil-based natural lubricant.¹⁰⁶

Water and silica-based lubricants are not produced in Tanzania. Before 2015, while lubricant was not strictly prohibited, it was considered a medical commodity that could not be imported without authorization of the Tanzania Food and Drug Administration (TFDA),

¹⁰² Human Rights Watch video interview with Makame (pseudonym), July 3, 2018.

¹⁰³ Human Rights Watch Voice telephone interview with Leticia (pseudonym), October 4, 2018.

¹⁰⁴ 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 December 17, 2019).

¹⁰⁵ World Health Organization, “Policy Brief: HIV Prevention, Diagnosis, Treatment and Care for Key Populations: Consolidated Guidelines,” July 2014, https://apps.who.int/iris/bitstream/handle/10665/128049/WHO_HIV_2014.8_eng.pdf;jsessionid=074B99A85B01F51C534F997091DC543B?sequence=1 (accessed December 17, 2019), pp. 3-4.

¹⁰⁶ World Health Organization, “Use and Procurement of Additional Lubricants for Male and Female Condoms: WHO/UNFPA/FHI360: Advisory Note,” 2012, https://apps.who.int/iris/bitstream/handle/10665/76580/WHO_RHR_12.33_eng.pdf;jsessionid=D95B2E0D1D6229BB61C68B10A61F2176?sequence=1 (accessed December 17, 2019).

part of the Ministry of Health, and in 2013 and 2014 TFDA impounded at least two lubricant shipments that non-governmental organizations working in the public health sector had ordered.¹⁰⁷ As discussed in Section I above, controversy over the wider availability of lubricant contributed to the government's deregistration of the Tanzania Sisi Kwa Sisi Foundation (TSSF) in April 2014.¹⁰⁸ On the other hand, Muhimbili University was authorized to distribute packets of lubricant to participants in a research trial in 2012.¹⁰⁹

Accountability International (formerly AIDS Accountability International), a South Africa-based research and advocacy organization that aims to hold governments accountable to their public health commitments, coordinated a meeting in Dar es Salaam in May 2014 attended by 78 Tanzanian civil society organizations, which met to help develop priorities for the 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.¹¹⁰ Tanzania's health ministry published national guidelines on HIV programming for key populations in September 2014, affirming 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."¹¹¹ Zanzibar's HIV strategy documents had already called for access to lubricant for key populations since 2011,¹¹² and Tanzania's Prime Minister's Office did so in 2013, through the Third National Multisectoral Strategic Framework on HIV and AIDS, which called for increased access to water-based lubricant for men who have sex with men and sex workers.¹¹³

¹⁰⁷ Human Rights Watch interview with UNFPA personnel, Dar es Salaam, July 4, 2012; Human Rights Watch interviews with non-governmental organizations and with TACAIDS, Dar es Salaam, May 2014.

¹⁰⁸ Human Rights Watch interviews with UNAIDS personnel and with John Kashiha, Dar es Salaam, May 5, 2014.

¹⁰⁹ Human Rights Watch text message correspondence with an activist involved in the trial, November 19, 2019.

¹¹⁰ 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> (accessed December 17, 2019). A Human Rights Watch researcher attended the meeting.

¹¹¹ United Republic of Tanzania, Ministry of Health and Social Welfare, Tanzania Mainland, "National Guideline for Comprehensive Package of HIV Interventions for Key Populations," https://www.hivsharespace.net/sites/default/files/resources/7.%202014%20Tanzania_KP_Comprehencive_Guideline_sep_t_29th_2014%20%281%29.pdf.

¹¹² The Revolutionary Government of Zanzibar, Zanzibar National HIV Strategic Plan II (ZNSP-II), 2011-2016, https://hivhealthclearinghouse.unesco.org/sites/default/files/resources/Zanzibar_ZNSPII2011-2016.pdf (accessed December 17, 2019).

¹¹³ United Republic of Tanzania, Prime Minister's Office, "Tanzania Third National Multi-Sectoral Framework for HIV and AIDS (2013/2014-2017/2018)," http://www.nationalplanningcycles.org/sites/default/files/country_docs/Tanzania/nmsf-iii_eng_final_report_2013mail.pdf.

PSI, a US-based organization, eventually received authorization to import lubricant in 2015 as part of a project funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria. PSI's project, involving social marketing of HIV prevention commodities to men who have sex with men, ended shortly thereafter. At one point, the Tanzania Food and Drug Administration sought to block a shipment of lubricant. The oversight committee within the Global Fund's Country Coordinating Mechanism made a formal recommendation to the government to release the shipment, noting that lubricant was included in the National Multisectoral Strategic Plan. The Health Ministry wrote to TFDA requesting the release of the lubricant. TFDA complied. Another US-based organization, JHPIEGO, began importing and distributing lubricant in 2016 as part of its PEPFAR/USAID-funded Sauti project, which included peer-led HIV outreach to key and vulnerable populations.¹¹⁴

JHPIEGO's distribution of lubricant was short-lived. Health Minister Umy Mwalimu effectively declared war on lubricant in her July 15, 2016, speech, quoted above.¹¹⁵ On July 19, the Health Ministry published a statement restating the ban, claiming the distribution of lubricant "conflicts with our customs," and opposing the so-called "promotion of homosexuality."¹¹⁶

On July 23, Deputy Health Minister Hamisi Kigwangalla posted on Twitter that lubricant would still be available at government health centers, but that the government would no longer allow NGOs to distribute it to men who have sex with men.¹¹⁷ The following day, a statement on Mwalimu's Facebook page clarified that the ban did not apply to all lubricant distribution, but specifically to "non-governmental organizations (NGOs) that buy and distribute lubricant to men who have sex with men." The statement threatened to deregister organizations that do not obey the directive.¹¹⁸ Human Rights Watch wrote to

¹¹⁴ Human Rights Watch telephone interview with a former representative of a donor agency, October 13, 2019.

¹¹⁵ The original speech was posted at <https://www.youtube.com/watch?v=TSPZFW1AG-U>, and was transcribed by Human Rights Watch, but is no longer available as of this writing. See also "Waziri Umy Mwalimu apiga marufuku hospitali na vituo vya afya vya serikali kutoa vilainishi vya kusaidia kufanya mapenzi ya jinsia moja," post to "Karagwe Forum" (blog), <http://juhudkaragwe.blogspot.com/2016/07/waziri-ummy-mwalimu-apiga-marufuku.html>.

¹¹⁶ "Tamko La Wizara Kuhusu Matumizi Na Usambazaji Wa Vilainishi Kwa Ajili Ya Udhibiti Wa Maambukizi Ya Ukimwi," post to "Harakati Za Jiji" (blog), <https://harakatizajiji.blogspot.com/2016/07/tamko-la-wizara-kuhusu-matumizi-na.html>.

¹¹⁷ Hamisi Kigwangalla, Twitter posts, July 23, 2016, <https://twitter.com/HKigwangalla/status/756724742653087744> and <https://twitter.com/HKigwangalla/status/75672329063608321> (accessed December 19, 2019).

¹¹⁸ The statement was posted on Mwalimu's personal Facebook page at <https://www.facebook.com/Umy-Ally-Mwalimu-1694185450859688/?fref=ts> and was accessed by Human Rights Watch on repeated occasions in July and August 2016. It is no longer available to the public. A screenshot of the post is on file with Human Rights Watch; see Annex IV.

Mwalimu in August 2016 to raise concern about the health impacts of the ban (see Annex I) but did not receive a response.

When Kigwangalla led a police raid on the non-governmental organization CHESA on August 15, discussed further in Section III below, one of the raid's objectives was to search for lubricant, although police did not find any.¹¹⁹

Mwalimu issued a second statement in October 2016 that seems to suggest that not only distribution but even individual use of lubricant as an HIV prevention tool is prohibited:

In the meantime, water based lubricants will no longer be allowed to be employed as an HIV intervention. 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. Should it ultimately be acceptable, the Government will consider integrating its procurement and distribution system along with that for the other health commodities.¹²⁰

Human Rights Watch asked 26 of the gay and bisexual men and trans people we interviewed in 2018 and 2019 whether they had any access to water-based or silica-based lubricant. Sixteen said they did not. 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.¹²¹ Some said they used saliva, which provides inadequate lubrication and can result in condom breakage.¹²² These interviewees said they were aware of the benefits of water-based lubricant for HIV prevention and the risks of using oil-based

¹¹⁹ Human Rights Watch email correspondence with a regional health and rights activist, August 15, 2016.

¹²⁰ 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. Umyy Mwalimu on Key Population HIV Services in Tanzania, 27th October, 2016," on file with Human Rights Watch and available at <https://m.facebook.com/afyatz/posts/1230922863594845>.

¹²¹ For example, Human Rights Watch interviews with Yahya, location withheld, June 9, 2018; Fadil (pseudonym), location withheld, January 24, 2019; King (pseudonym), location withheld, May 21, 2018, and Medard (pseudonym), location withheld, May 18, 2018. See also UNAIDS, "Guidance Note: Condom and Lubricant Programming in High HIV-Prevalence Countries," https://www.unaids.org/sites/default/files/media_asset/condoms_guidancenote_en.pdf, p. 5.

¹²² For example, Human Rights Watch interviews with King (pseudonym), location withheld, May 21, 2018; Medard (pseudonym), location withheld, May 18, 2018; and Suleiman (pseudonym), by telephone, October 2, 2018.

lubricants—mostly as a result of outreach work by LGBT organizations that are no longer permitted to operate—but had no alternative.

Ahmed, a 39-year-old bisexual man who works with an organization focused on health and rights for men who have sex with men, explained: “Now the situation is horrible, [lubricant] is nowhere to be found... I had some lubricant from the office that I kept and was still using and giving others in secret, but now it is not there anymore.”¹²³

Several gay men said they were able to buy water-based or silica-based lubricant in pharmacies. But others could not afford it.¹²⁴ Even for those with means, some pharmacies erected other obstacles. Jephther, a 27-year-old gay man in Dar es Salaam, said “Even getting KY [jelly] is a challenge, because if you go to a pharmacy to buy it, they want a prescription from a doctor, and if you don’t have one, they often won’t sell it to you.”¹²⁵

Victor, a 25-year-old gay man in Dar es Salaam, said that some pharmacies also discriminated based on gender expression:

Before banning of lubricants, I [could] get it from drop-in centers and LGBT NGO health services. But after banning it, I don’t find a place to find it. Sometimes I go to a pharmacy and just buy KY but it’s very complicated, there are so many questions, and the pharmacists don’t give us support because of our appearance.... if we don’t look like straight people, they ask ‘Why do you want to use KY?’¹²⁶

Victor had no better luck getting lubricant in government hospitals, something he chalked up to the influence of Regional Commissioner Paul Makonda’s hostile rhetoric:

When you talk about anything related to LGBT issues, lubricant, condoms, it’s very complicated in a government hospital. Because our regional

¹²³ Human Rights Watch telephone interview with Ahmed (pseudonym), May 22, 2018.

¹²⁴ Human Rights Watch interview with Yahya (pseudonym), location withheld, June 9, 2018. According to one interviewee, prices for a bottle of personal lubricant in a pharmacy in Dar es Salaam range from 3,000 to 12,000 Tanzanian shillings, or US\$1.30 to \$5.20.

¹²⁵ Human Rights Watch interview with Jephther (pseudonym), location withheld, May 25, 2018.

¹²⁶ Human Rights Watch telephone interview with Victor (pseudonym), September 28, 2018.

commissioner says ‘We don’t want to see LGBT people.’ I tried so many times for lubricant but they did not accept me. They ask, ‘For what? are you sick?’ I tried at Mwananyamala, at Amana, and at Kibamba Hospital.¹²⁷

The Ban on Drop-in Centers and Community Outreach for HIV Prevention

A groundbreaking October 2019 *Lancet* study found that hostile legislation was associated with lower levels of HIV testing and awareness of HIV status among men who have sex with men in Africa. It concluded, “Further expansion of community-led services...along with increased treatment support or counselling from LGBT-friendly organisations, will be essential to engage more MSM with HIV testing and treatment.”¹²⁸ UNAIDS has also emphasized that community-based, peer-led initiatives are among the best ways to reach marginalized groups with HIV education.¹²⁹ In countries where same-sex conduct is criminalized, service providers—especially community-based organizations, but sometimes international NGOs as well—may face some level of harassment for providing LGBT-inclusive health services.¹³⁰ But in Tanzania, the government formally prohibits such services, denying LGBT people the right to both HIV prevention and HIV treatment.

In the years leading up to the crackdown, a number of non-governmental organizations, national and international, established drop-in centers targeting key populations for HIV services, as an alternative to public hospitals and clinics where discrimination was rife.

¹²⁷ Ibid.

¹²⁸ James Stannah et al., “HIV Testing and Engagement with the HIV Treatment Cascade Among Men Who Have Sex with Men in Africa: A Systematic Review and Meta-Analysis,” *The Lancet* 6 (2019), accessed December 17, 2019, doi:10.1016/S2352-3018(19)30239-5.

¹²⁹ See, for example, UNAIDS and Stop AIDS Alliance, *Communities Deliver: The Critical Role of Communities in Reaching Global Targets to End the Aids Epidemic*, 2015, https://www.unaids.org/sites/default/files/media_asset/UNAIDS_JC2725_CommunitiesDeliver_en.pdf (accessed December 17, 2019).

¹³⁰ Health providers in many parts of the world have found themselves in conflict with law enforcement for providing services to key populations. For instance, in Uganda in 2014, police raided the Walter Reed Project, a prominent US-based health organization that offered HIV services to men who have sex with men, confiscating files. In Cameroon in 2018, police raided the office of a youth organization that provided HIV services to key populations. Police have manufactured allegations such as “promoting homosexuality” to justify these raids, though no such crime exists in most countries’ penal codes, including Uganda and Cameroon. “Uganda: Anti-Homosexuality Act’s Heavy Toll,” Human Rights Watch news release, May 14, 2014, <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>; “Cameroon: Arrest and Arbitrary Detention of Five Members of the Association Avenir Jeune de l’Ouest (AJO),” International Federation for Human Rights (FIDH) urgent appeal, April 30, 2018, <https://www.fidh.org/en/issues/human-rights-defenders/cameroon-arrest-and-arbitrary-detention-of-five-members-of-the> (accessed December 19, 2019). Human Rights Watch is not aware of any country other than Tanzania that has a formal directive prohibiting community-based organizations from conducting outreach to men who have sex with men or other key populations.

These centers provided voluntary HIV testing and counseling, and information related to HIV and sexual and reproductive health. Some served as anti-retroviral therapy (ART) distribution points. Some drop-in centers provided mental health services and even allowed beneficiaries living on the margins to have a meal and a shower.¹³¹ Drop-in centers became sources of community for LGBT people in Tanzania, in some cases including lesbian and bisexual women who were not directly targeted by the HIV services provided but who found the centers a safe space for health services, meetings, and simply catching up with friends.¹³² Staff were trained in the health needs of LGBT people and key populations and were committed to non-discrimination.

However, following the July 2016 ban on distribution of lubricant, the government subsequently banned HIV outreach to men who have sex with men by community-based organizations. In October, the ministry issued a statement that effectively shut down the activities of civil society organizations that were carrying out the critical, life-saving work of educating men who have sex with men about HIV prevention and treatment.¹³³ The statement also suspended drop-in centers targeting men who have sex with men:

Health facility KP programs will continue to be implemented for all key populations and vulnerable populations. **However, community MSM peer outreach activities and MSM Drop in Centers will await development of a standardized package of HIV services within the community.**¹³⁴

Many of the centers affected were part of the Sauti Project, a PEPFAR-funded project aimed at reducing HIV prevalence among marginalized groups, implemented by USAID and managed directly by the international non-profit organization JHPIEGO, affiliated with Johns Hopkins University. JHPIEGO, one of the largest providers of HIV services to key populations in Tanzania, immediately suspended its outreach work targeting men who have sex with men.¹³⁵ Community-based organizations were also affected. Toni, a trans

¹³¹ Human Rights Watch interview with a representative of a UN agency, Dar es Salaam, March 9, 2017.

¹³² Human Rights Watch interview with Leticia (pseudonym), Naivasha, Kenya, June 16, 2019.

¹³³ 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>.

¹³⁴ Ibid. Emphasis in original.

¹³⁵ Human Rights Watch telephone interview with a representative of JHPIEGO, October 2, 2019.

woman who works with an organization that provides HIV services to trans women and men who have sex with men, told Human Rights Watch “It’s impossible for us to do much work now. Actually, you’re marked.” She added, “We had a meeting with [government health officials] and they said they don’t want to hear anything in terms of issues of LGBT. They claim we are recruiting.”¹³⁶

Makame, a 27-year-old trans activist, described the work that his organization carried out before the ban and how it had been stymied:

Before, we had a program of outreach activities whereby we find transgender people and then we take them to a health clinic whereby they access free service for cervical cancer treatment, and HIV treatment, and treatment for other sexual issues like gonorrhea. We did lots of provision of education on HIV prevention and treatment and also providing counseling to the trans groups. The friendly hospitals that we were using were all backed by the government – the government was aware of what we were doing. The program was stopped and things actually changed. There was increase in dropping out of people who were taking ARVs. The environment wasn’t friendly, we couldn’t do anything. All the funders are also stagnant at some point, looking at the situation, whether they were ready to continue or not.¹³⁷

Many gay men said they relied on civil society outreach as a primary source of health information. King explained the range of benefits he had drawn from civil society outreach:

I used to be able to get education about issues related to HIV and STIs and the correct use of ARVs, healthy eating, and other issues related to health, and I was also able to educate others who didn’t have the opportunity to participate in such activities. Now, this no longer takes place.¹³⁸

¹³⁶ Human Rights Watch telephone interview with Toni (pseudonym), October 9, 2018.

¹³⁷ Human Rights Watch video interview with Makame (pseudonym), July 3, 2018.

¹³⁸ Human Rights Watch interview with King (pseudonym), location withheld, May 21, 2018.

Amy, a gender non-conforming queer person, said that through such outreach activities, “I benefited a lot because I was able to learn life skills which helped me understand myself and my value. I was also educated about HIV and STIs.”¹³⁹ She added:

The Tanzanian government should have sat down with the organizations and some of the representatives from our community and listened to our opinions before deciding to shut down the organizations that do work to reduce the transmission of HIV among LGBT communities. It should know that we are part of Tanzanian society. It’s not fair to take away our right to friendly services. The absence of these organizations is a big challenge for our community, because it will result in an increase in transmission of HIV and STIs among us.

In February 2017, the Health Ministry went further, ordering as many as 40 drop-in centers serving key and vulnerable populations (not just men who have sex with men), 18 of them run by JHPIEGO, to close their doors. Health Minister Mwalimu claimed a “special investigation” by the Ministry of Constitutional Affairs had found that “apart from engaging in HIV and AIDS activities, some implementing partners were promoting homosexuality, contrary to the laws of the land.” She therefore directed: “The use of ‘Drop in Centers’ for provision of health and HIV services to KVPs will not be allowed.”¹⁴⁰

LGBT people interviewed by Human Rights Watch were deeply affected by the closure of drop-in centers. Ronnie, a 28-year-old trans man, felt LGBT people were being uniquely excluded. “There are services for blind people, for deaf people, but they are leaving other groups behind.”¹⁴¹

Victor, a 25-year-old gay man who is HIV-positive, said that drop-in centers had provided him with more thorough treatment than government hospitals:

¹³⁹ Human Rights Watch interview with Amy (pseudonym), location withheld, May 28, 2018.

¹⁴⁰ United Republic of Tanzania, “Statement by the Minister for Health, Community Development, Gender, Elderly and Children Hon. Ummu Ally Mwalimu (MP) Regarding HIV and AIDS Service Delivery to Key and Vulnerable Population Groups and its Implementation: 16th February, 2017,” www.nacp.go.tz/site/download/STATEMENT_ENGLISH.pdf (accessed December 17, 2019) and on file with Human Rights Watch.

¹⁴¹ Human Rights Watch telephone interview with Ronnie (pseudonym), September 7, 2018.

Drop-in centers are the place where they understand us more. If you have a disease, it's easy. The doctor understands you.... If you have HIV you can get nutrition education, adherence education. Do you think in government hospitals we can get five minutes to talk to a doctor about adherence? They have banned all drop-in centers, so we are really dying.¹⁴²

Makame, a trans man, said that doctors at the drop-in centers were aware of gender diversity. He did not have to suffer the indignity of constantly explaining his trans identity.

You get friendly services. You are more free to make conversation with the doctor. You are around people who know who you really are, instead of getting a struggle of going and explaining to people who you really are.¹⁴³

For Leticia, a queer woman, it was well-known that in order to reach key populations, alternatives to government hospitals were necessary:

Some people don't feel like going to government health facilities. This has been a problem for years. So why are we losing our drop-in centers that we thought were friendly, and being forced to go to those that are operated by the government?¹⁴⁴

Jephter, a gay man, described the health workers at the drop-in centers as “really good people.”¹⁴⁵ In contrast, Jephter feared going to government hospitals so much that he had never been to one at all, despite being HIV-positive, because he believed he would be subjected to stigma.

¹⁴² Human Rights Watch telephone interview with Victor (pseudonym), September 28, 2018.

¹⁴³ Human Rights Watch video interview with Makame (pseudonym), July 3, 2018.

¹⁴⁴ Human Rights Watch telephone interview with Leticia (pseudonym), October 4, 2018.

¹⁴⁵ Human Rights Watch interview with Jephter (pseudonym), location withheld, May 25, 2018.

The drop-in centers had provided referrals to other LGBT-friendly practitioners for health issues that they were not equipped to handle themselves. Medard, a 38-year-old gay man, recalled:

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].¹⁴⁶

Medard concluded, “I would like the government of Tanzania to allow *kuchus* [LGBT people] access to health services. If we don't get services, we will die.”¹⁴⁷

Ahmed, 39, said that although he was aware that some organizations continued to provide HIV education to men who have sex with men while maintaining a low profile, he was afraid to seek out such services because of the risk of arrest. “There have been a number of people arrested because they are gathering together, getting education about HIV issues and all that. So I'm afraid to go for that, because I might be arrested as well.”¹⁴⁸

Stigma and Discrimination at Government Health Facilities

Health Minister Umy Mwalimu, in her February 2017 statement banning LGBT-friendly drop-in centers for HIV services, asserted that LGBT people should seek services from government hospital and clinics. She also directed health facilities to “ensure that health and HIV services are being provided to all those in need without any discrimination.”¹⁴⁹ Indeed, under Tanzania's own 2008 HIV Prevention and Control Act, health practitioners

¹⁴⁶ Human Rights Watch interview with Medard (pseudonym), location withheld, May 18, 2018.

¹⁴⁷ Ibid.

¹⁴⁸ Human Rights Watch telephone interview with Ahmed (pseudonym), May 22, 2018.

¹⁴⁹ Statement by the Minister for Health, Community Development, Gender, Elderly and Children Hon. Umy Ally Mwalimu (MP) Regarding HIV and AIDS Service Delivery to Key and Vulnerable Population Groups and its Implementation: 16th February 2017, on file with Human Rights Watch.

who deal with persons living with HIV must provide services “without any kind of stigma or discrimination.”¹⁵⁰

According to the February 2017 Health Ministry statement, if any “KVP individual” (referring to key and vulnerable populations) faces discrimination at a government health center, “he/she should inform the District Medical Officer (DMO), or the Regional Medical Officer (RMO) of the respective Council/Region, and if necessary even the MoHCDGEC [Ministry of Health], through the Communications Unit.”¹⁵¹ None of the people Human Rights Watch interviewed about discrimination in the health sector had registered a complaint with any government office. Criminalization combined with stigma creates obstacles to formally outing oneself as LGBT to a government office in order to allege discrimination.

Despite the lack of reporting, discrimination in the health sector is rife, as detailed below. Human Rights Watch and WASO documented similar accounts of discrimination in health care in 2013.¹⁵² Several LGBT activists told Human Rights Watch that between 2013 and 2016 they were involved in partnerships between government health agencies and international NGOs aimed at sensitizing health professionals on the rights and health needs of key populations. It is possible that such programs improved some health professionals’ treatment of LGBT people, but that they lacked the breadth and depth to foster significant change in discriminatory attitudes over a relatively short period of time.

Osman, a 24-year-old HIV-positive gay man, said that in October 2017, a health worker at a government hospital, Sinza Palestina, where he sought out 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.” Osman 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.” Each time he returned to the hospital, he faced increased harassment, until he left and found an NGO, Pasada, that provided friendly services. Osman said that at times,

¹⁵⁰ United Republic of Tanzania, The HIV and AIDS (Prevention and Control) Act, 2008, [https://www.lrct.go.tz/download/laws_2008/28-2008_The%20HIV%20&%20AIDS%20\(Prevention%20&%20Control\)%20Act,%20Act%20No%2028%20of%202008.pdf](https://www.lrct.go.tz/download/laws_2008/28-2008_The%20HIV%20&%20AIDS%20(Prevention%20&%20Control)%20Act,%20Act%20No%2028%20of%202008.pdf) (accessed December 17, 2019).

¹⁵¹ Statement by the Minister for Health, Community Development, Gender, Elderly and Children Hon. Ummu Ally Mwalimu (MP) Regarding HIV and AIDS Service Delivery to Key and Vulnerable Population Groups and its Implementation: 16th February, 2017, on file with Human Rights Watch.

¹⁵² Human Rights Watch and WASO, “*Treat Us Like Human Beings.*”

before he found Pasada, he refrained from seeking out services altogether: “I didn’t want anything to do with that hospital [Sinza Palestina] because of their cruelty.”¹⁵³

Suleiman, a 25-year-old gay man in Dar es Salaam, went to Mwananyamala Hospital in September 2018 for an HIV test. He recounted his experience:

They didn’t respond well when I told them I was gay. They were talking bad language to me, the receptionist and the doctor and nurse, all of them. I told them I was gay because I needed to be open with them. They told me that I have to find another hospital to take care of my health, not that hospital, but they gave me the test and it was negative. 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.’ They said this in front of other people. I was feeling bad. I just kept quiet and picked up my things and went home.¹⁵⁴

Victor, a gay man, said that when he went to Mwananyamala hospital in 2018 with symptoms of what he thought might be anal gonorrhea, a doctor shouted at him, “Why do you do this?” and called him “evil.” Afraid other people in the vicinity would overhear and attack him, Victor left the consultation and instead self-medicated at a pharmacy.¹⁵⁵

Leila, a trans woman, told Human Rights Watch that in 2016 a health provider at Mwananyamala Hospital told her, “Your actions do not please God.” The provider, who perceived her as a gay man, told her to get married, have children, and have respect for her family and society. On other occasions, Leila said, at Mwananyamala Hospital, “A group of doctors was called in to express shock over me being a *kuchu* [LGBT person].”¹⁵⁶

Ronnie, a 28-year-old trans man, said nurses at Mwananyamala Hospital asked stigmatizing questions about his gender expression:

¹⁵³ Human Rights Watch interview with Osman (pseudonym), location withheld, May 22, 2018.

¹⁵⁴ Human Rights Watch telephone interview with Suleiman (pseudonym), October 2, 2018.

¹⁵⁵ Human Rights Watch telephone interview with Victor (pseudonym), November 19, 2019.

¹⁵⁶ Human Rights Watch interview with Leila (pseudonym), location withheld, May 18, 2019.

[I]f you go to a government hospital, they have a lot of questions, some of them look at you and start laughing. They might ask silly questions. Are you a boy or a girl? Why are you wearing [clothing] like that? The nurses asked me that at Mwanyamala Hospital. I didn't respond that I was a trans man. I had some questions in my head: 'If I say it out, they might call the police and say that this one is doing this and this.' And some, if you respond that you're a trans man, no one will understand you. If you tell them 'I'm doing this and this', they will curse you. So I never told them – never.¹⁵⁷

Hassan, a trans woman from Tanga, affirmed that trans people face particular challenges at government hospitals. "If you let them know [your gender identity]... they see us as freaks, and sometimes they even deny you services. So you just go to the pharmacy and buy medicine and drink it."¹⁵⁸

Many people we interviewed said they did not feel comfortable being open about their sexual orientation or gender identity at government health facilities. Ethan, 22-year-old trans man, had sought out services at government hospitals, but without being open about his gender identity: "I was afraid to tell them about my gender, because I knew they would be shocked."¹⁵⁹ When patients cannot speak frankly to their health care providers, including about their sexual orientation or gender identity, practitioners may not be able to give them the level of care they need.

Stigma and discrimination in health care settings can lead LGBT people not to seek treatment at all. Abdi, 22-year-old gay man, said, "I've faced so much stigma that sometimes I hate going to those government hospitals. Because you go there to get health services, but instead, the nurses or doctors start preaching to you, like, 'What you're doing is not good, try to stop and return to your God,' or sometimes, 'It's demons that make you like this, you need to go to church and pray.'"¹⁶⁰ Abdi said that he had decided many times not to seek treatment rather than put up with this kind of discriminatory treatment.

¹⁵⁷ Human Rights Watch telephone interview with Ronnie (pseudonym), September 7, 2018.

¹⁵⁸ Human Rights Watch interview with Hassan (pseudonym), location withheld, June 28, 2018.

¹⁵⁹ Human Rights Watch interview with Ethan (pseudonym), location withheld, May 25, 2018.

¹⁶⁰ Human Rights Watch interview with Abdi (pseudonym), location withheld, July 4, 2018.

Stanley, a 28-year-old trans man, said he had been afraid to seek out government health services since undergoing chest surgery to remove his breasts outside the country. “I knew they would stigmatize me, because many government health service providers don’t understand trans issues.”¹⁶¹ In the absence of drop-in centers with staff who had undergone specific training on gender identity, he did not know of any health provider where he could be assured of being treated with dignity.

The closure of LGBT-friendly drop-in centers and discrimination at government hospitals means that some LGBT people seek health care at specific private hospitals and clinics which are reputed to be more welcoming. But for many, such services are financially out of reach. Victor, a gay man who said that he used to do sex work, told Human Rights Watch: “I have had sex with doctors two times in order to get services – with two different doctors. This is how I can pay. I don’t have money to pay them. So if they ask me for sex, I have to say yes.”¹⁶²

Limited Access to Anti-Retroviral Therapy (ART)

Access to friendly, non-judgmental HIV services is literally a life-or-death issue, as highlighted by several interviewees above. One of the most disturbing things Human Rights Watch heard from both LGBT activists and UNAIDS officials was that at various points between 2016 and 2018, public hostility to LGBT people and the lack of safe spaces to seek treatment meant that a number of HIV-positive people stopped taking their medication. Some of those who stopped taking anti-retroviral therapy died, although Human Rights Watch could not independently verify that the deaths took place due to inability to access treatment.

The World Health Organization recommends that everyone living with HIV be offered ART, regardless of CD4 (a type of white blood cell) count, and Tanzania follows these guidelines, providing universal free access to ART. According to UNAIDS estimates, 72 percent of HIV-positive adults in Tanzania were on ART in 2018, representing significant progress compared to a decade earlier, although Tanzania remained far from the UNAIDS vision of achieving 90 percent treatment by 2020.¹⁶³

¹⁶¹ Human Rights Watch interview with Stanley (pseudonym), location withheld, May 24, 2018.

¹⁶² Human Rights Watch telephone interview with Victor (pseudonym), September 28, 2018.

¹⁶³ Avert, “HIV and AIDS in Tanzania,” <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania>.

The default first line regimen of treatment in Tanzania involves taking three medications once daily.¹⁶⁴ Most HIV-positive people are dispensed treatment once every month, which they can pick up at pharmacies or specialized clinics. Consistent ART use is critical to suppression of the HIV virus, the health of people living with the virus, and prevention of transmission and drug resistance.¹⁶⁵

Human Rights Watch interviewed several HIV-positive gay and bisexual men who continued to access ART throughout the crackdown with no obstacles. But Victor, an HIV-positive 25-year-old, said:

There were times when I didn't go get my ARVs. Right now it's cool, but at the time of political issues, or when MSM get attacked, I don't go. So I call my doctor, and say I will give him money for soda, and then we can meet at a bar when he finishes his job and that's how I get it. But if we had a drop-in center, we wouldn't have this problem.¹⁶⁶

Makame, a trans activist, said that because of hostile rhetoric from government officials,

Most trans people who were supposed to be taking medicine stopped. They were expecting violence within their area. Trans people are very visible, they are appearing very different, so for them there was insecurity. The ones who had money were sending for doctors to come and treat them at their houses, but others just didn't get services. By now we are trying to call and follow up on those we were referring, and some of them are coming up [for treatment] now. But now they can't get to the same drop-in centers that have been banned, so we are trying to find other places and make them friendly.¹⁶⁷

¹⁶⁴ United Republic of Tanzania, National AIDS Control Programme, "National Guidelines for the Management of HIV and AIDS," October 2017, http://nacp.go.tz/site/download/NATIONAL_DECEMBER_2017.pdf (accessed December 17, 2019), p. 183.

¹⁶⁵ Roger Pebody, "Taking Drugs On Time," *aidsmap*, January 2017, <https://www.aidsmap.com/about-hiv/basics/taking-drugs-time> (accessed December 17, 2019).

¹⁶⁶ Human Rights Watch telephone interview with Victor (pseudonym), September 28, 2018.

¹⁶⁷ Human Rights Watch video interview with Makame (pseudonym), July 3, 2018.

Leticia, a queer woman activist, told Human Rights Watch in an October 2018 interview:

During the short period of time of since the drop-in centers closing, I can name five people who died. These were all role models from MSM and they all died. Afizi had tested himself positive for HIV in 2005 or 2008. But two or three months after the drop-in centers closed, he said there's no privacy anymore, and he stopped going for his meds and got TB and died. He died in June [2018]. Kaoge, the one who did the interview and caused chaos, she died [in November 2017]. Kaoge said, "There's no need of me living, let me go."

Before, all these people were taking their medication. They would come to the drop-in center to say hi and take their medication. [But] we don't have a drop-in center anymore.¹⁶⁸

Human Rights Watch asked two other well-connected gay activists about deaths from HIV within the community. One said he knew of 15 people who had died within two years after the crackdown started in 2016, while the other said he knew of 17 people who had died within 18 months.¹⁶⁹ Human Rights Watch has not been able to verify these statistics.

Mental Health Impacts of the Lack of Access to LGBT-Inclusive Services

Two interviewees described stress from the government's anti-LGBT crackdown leading to mental health issues at the very same time that the closure of drop-in centers, some of which hosted LGBT-friendly counselors, limited safe space to address such concerns.

Toni, an activist, reported psychological trauma after narrowly escaping arrest during two police raids on health and human rights workshops. She said:

I had to go to Google to understand the type of depression I was facing. It felt like everything was dropping like a house of cards – like someone had

¹⁶⁸ Human Rights Watch telephone interview with Leticia (pseudonym), October 4, 2018.

¹⁶⁹ Human Rights Watch telephone interviews with a Tanzanian LGBT rights activist, September 18, 2019, and John Kashiha, November 20, 2018.

just pushed the cards with a stick and everything was falling. I had no guidance on how to get help with issues of mental health.¹⁷⁰

Ronnie, a trans man, also spoke of the mental health impacts he and other trans men in his organization experienced because of not being able to express their identities openly:

I have insurance and I can access any hospital, but I won't tell them that I'm trans – I'll tell them that I'm a woman and they treat me. But there are a lot of other effects – psychological issues for our members. They can't say out loud what they think, what they have inside. They will be keeping quiet. They won't say out loud, "I've been infected by my fellow girl," so it will be eating them inside. It's tough, it's difficult, it's paining, but you can't do anything.¹⁷¹

¹⁷⁰ Human Rights Watch telephone interview with Toni (pseudonym), October 9, 2018.

¹⁷¹ Human Rights Watch telephone interview with Ronnie (pseudonym), September 7, 2018.

III. Attacks on LGBT Civil Society Organizing

According to Tanzania’s constitution, everyone has the right “to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.”¹⁷² But the rights to freedom of association and expression are under attack in Tanzania. Members of the political opposition, media, and civil society have all been targeted.¹⁷³

In a context of overall intolerance toward freedom of association and expression, combined with institutionalized homophobia, it is not surprising that LGBT civil society organizations are under attack. Minister of Justice Harrison Mwakyembe’s statement at a regional government meeting in Mbeya in July 2016 that he would work with the Home Affairs Ministry to prosecute any organizations that were supporting or promoting homosexuality, including those that distributed lubricant, marked the beginning of a drawn-out attack on organizations working on LGBT people’s access to health and rights.¹⁷⁴

Deregistration and Threats to Deregister Non-Governmental Organizations

Civil society organizations in Tanzania must register with the Registrar of Non-Governmental Organizations, which sits within the Ministry of Health, Community Development, the Elderly, Gender and Children. They must provide their name, mission, and a copy of their constitution.¹⁷⁵ Under the NGO Act of 2002, an NGO’s certificate of

¹⁷² The Constitution of the United Republic of Tanzania of 1977, revised 2005, <https://www.wipo.int/edocs/lexdocs/laws/en/tz/tz008en.pdf> (accessed December 17, 2019), art. 20(1).

¹⁷³ Human Rights Watch, “*As Long As I Am Quiet, I Am Safe.*”

¹⁷⁴ “Serikali Kuzifutia Usajili Asasi Zisizokuwa Za Kiserikali Zinazounga Mkono Ushoga Nchini,” *ITV*, originally posted at https://www.itv.co.tz/news/local/1993-33856/Serikali_kuzifutia_usajili_na_kuzishtaki_asasi_zisizokuwa_za_kiserikali_zinazounga_mkono_ushoga_nchini.html?fbclid=IwAR3bJmV27tJd3yQZG4xSe7ggI-IEcoGDtInBjUgUgl7olegkZAFnsIHhF8 (no longer visible) and cited on the Facebook page of Human Life International, <https://www.facebook.com/HumanLifeInternational/posts/10155216627528569>; reprinted by Donatila, post to “Jamii Forums” (blog), <https://www.jamiiforums.com/threads/serikali-kuzifutia-usajili-asasi-zisizokuwa-za-kiserikali-zinazounga-mkono-ushoga-nchini.1088295>. See also Sophie Tremblay, “‘Seeds of Hate’ Sown as Tanzania Starts LGBT Crackdown,” *Guardian*, <https://www.theguardian.com/world/2016/aug/08/seeds-of-hate-sown-as-tanzania-starts-lgbt-crackdown>.

¹⁷⁵ United Republic of Tanzania, “Application for Registration as a Non-Governmental Organization,” http://www.tanzania.go.tz/egov_uploads/documents/application_en.pdf (accessed December 17, 2019).

registration can be suspended if it violates terms of conditions prescribed in the certificate or “operates in variance to its constitution.”¹⁷⁶

On August 1, 2016, the Registrar of NGOs issued a letter indicating his intention to de-register Community Health Education and Advocacy Services (CHESA), a community-based organization working on health and human rights among men who have sex with men and the LGBT population more broadly. CHESA defines its mission as “the promotion of the health welfare and Human Rights with the aim to ensure universal access to health services, including primary health care, HIV and sexual and reproductive rights health services.”¹⁷⁷ Among its activities at the time, CHESA distributed lubricant as part of the Sauti Project, an initiative of the US-based public health non-profit organization JHPIEGO. The registrar’s letter required CHESA to respond to allegations that it was promoting homosexuality.

On August 15, Deputy Health Minister Kigwangalla led a raid on CHESA’s office in Dar es Salaam, accompanied by police and intelligence officials. The raid, documented on Kigwangalla’s Twitter feed, theatrically echoed tactics used by President Magufuli, who was known for unexpected descents on government offices that he suspected of corruption or inadequate work ethic.¹⁷⁸ The law enforcement officials searched the office, seized reports, and interrogated CHESA’s executive director John Kashiha and other staff about their alleged promotion of homosexuality. Kigwangalla asked questions regarding the shadow report that CHESA and other organizations had submitted to the UN Human Rights Council as part of Tanzania’s UPR process, and confiscated copies of the report. Police called Kashiha in for further questioning the following day and interrogated him for approximately eight hours about CHESA’s work before letting him go.¹⁷⁹

On August 30, CHESA filed a constitutional petition claiming the raid had violated its freedom of association and asked for an injunction against any efforts to deregister

¹⁷⁶ United Republic of Tanzania, The Non-Governmental Organizations Act of 2002, <https://www.fiu.go.tz/NGOact.pdf> (accessed December 17, 2019).

¹⁷⁷ Affidavit of John Kashiha, Miscellaneous Civil Application No. 64 of 2016, Tanzanian High Court (Main Registry), Dar es Salaam, para. 6 (on file with Human Rights Watch).

¹⁷⁸ Hamisi Kigwangalla, Twitter post, August 15, 2016, <https://twitter.com/HKigwangalla/status/765265621483450368> (accessed November 20, 2019).

¹⁷⁹ Human Rights Watch email correspondence with a regional health and rights activist, August 16, 2016.

them.¹⁸⁰ Kashiha told Human Rights Watch the High Court ruled in favor of the injunction, and CHESA was able to continue operating while its case against the government remained pending.¹⁸¹

But the organization again came under attack after police raided a strategic litigation meeting that CHESA was co-hosting with the South Africa-based Initiative for Strategic Litigation in Africa (ISLA) in October 2017, arresting participants, as discussed further below. On October 20, the NGO Registrar issued an order suspending the work of CHESA, on accusations that it was promoting same-sex marriage.¹⁸²

Finally, in April 2019, the NGO Registrar revoked CHESA's registration certificate altogether, along with the certificates of another LGBT organization and one that works with female sex workers. The registrar charged the three organizations with "promoting unethical acts" and violating "Tanzanian law, ethics, and culture."¹⁸³

As CHESA has pointed out in an unpublished document shared with Human Rights Watch, given that LGBT people in Tanzania have few allies in government or in mainstream civil society who are willing to take steps to uphold their rights, the failure to ensure LGBT organizations' freedom of association "leads to failure of protecting other human rights and freedoms of the members of these communities. Taking into account their vulnerability and societal prejudices against them, denying them a right to associate is tantamount to denying them their human rights in general."¹⁸⁴

Raids on Health and Rights Workshops and Meetings

Under Magufuli's government, police in both mainland Tanzania and Zanzibar have mounted an unprecedented series of raids on private meetings, workshops and trainings held by LGBT organizations and other groups working on health and rights. Under previous

¹⁸⁰ In the High Court of Tanzania (Main Registry) at Dar es Salaam, Miscellaneous Civil Application No. 64 of 2016, on file with Human Rights Watch.

¹⁸¹ Human Rights Watch telephone interview with John Kashiha, March 9, 2017.

¹⁸² "State Suspends NGO Supporting Gay Marriages," *Daily News*, October 21, 2017, reposted on *AllAfrica.com*, <https://allafrica.com/stories/201710270211.html> (accessed December 17, 2019).

¹⁸³ "Tanzania: Board Revokes Six NGOs' License," *The Citizen* (Dar es Salaam), <https://www.thecitizen.co.tz/news/Tanzania--Board-revokes-six-NGOs--license/1840340-5079110-fhyocl/index.html>.

¹⁸⁴ Draft report by CHESA on LGBTQ and sex workers' rights, on file with Human Rights Watch.

governments, LGBT activists could generally meet without impediment in their offices or in welcoming hotels and other venues.

The first such raid took place on December 13, 2016, when police interrupted a key populations strategy meeting at a Dar es Salaam hotel. The purpose of the meeting, convened by Tanzanian organizations working on harm reduction and on LGBT people's and sex workers' rights and health, was to discuss challenges around key population programming in light of the Tanzanian government's crackdown on marginalized groups. Police arrested eight people, including the facilitators. They were released the same day without formal charges, but police held the participants' IDs and required them to report daily to the police station.¹⁸⁵ Such daily reporting requirements are a form of harassment frequently used in Tanzania when police do not have sufficient evidence to file formal criminal charges.¹⁸⁶

Stanley, a 28-year-old trans man, was one of those arrested. He recalled:

We were about 20 participants and two facilitators from Kenya. I remember it was on the third day, after lunch, when suddenly police invaded the hotel. They ordered all the activities at the hotel to be stopped, and they started searching from room to room, all throughout the hotel. Some of the participants saw what was happening and managed to run away or pretend to be ordinary hotel guests, but the police managed to arrest about eight of us. They took us to Central Police Station. Then they charged us with promoting LGBT issues in Tanzania, with the help of whites...

A lawyer came and got us out, but on the [police] condition that we report back every day. For two months, we kept reporting back. During that time they kept checking our phones, searching our offices and our homes and the hotel, to get evidence to support their accusations, and finally they couldn't find any evidence and they decided to let us go.¹⁸⁷

¹⁸⁵ Human Rights Watch email correspondence with a regional health and rights activist, December 16, 2019.

¹⁸⁶ Human Rights Watch telephone interview with a Tanzanian lawyer, November 21, 2019.

¹⁸⁷ Human Rights Watch telephone interview with Stanley (pseudonym), May 24, 2018.

The next major raid on an LGBT-related meeting was in September 2017, when police in Zanzibar raided a meeting organized by a key population organization that works with LGBT people and sex workers and their families, partners, and friends on HIV prevention and human rights. The meeting was specifically addressing parent involvement in HIV prevention and support for family members from at-risk populations, and many of the 20 people arrested by police were parents.

Abdulkarim, a participant, reported:

We were in the middle of a training about health issues. Police came and arrested us and accused us of teaching people to be gay and promoting same-sex relations.¹⁸⁸

Abdulkarim said police detained them for two days before releasing them on bail. Participants had to continue reporting back to the police for four months until the case was dropped.¹⁸⁹

On October 17, 2017, lawyers and activists representing the Initiative for Strategic Litigation in Africa visited Tanzania to meet with members of CHESA and with other LGBT activists to discuss the possibility of mounting a legal challenge in Tanzanian or regional courts regarding government health policies that amounted to the denial of the right to health for LGBT people.

Amy, a participant who narrowly escaped arrest, described what happened:

We were at a meeting organized by CHESA at a hotel in town, having a tea break, when suddenly we saw someone recording us on their mobile phone... We started to ask ourselves questions, who is this, why are they recording us. We decided to pause the meeting... We were having lunch when suddenly a hotel worker came and told us that about nine police had raided the meeting room and arrested John Kashiha and one of the facilitators called Sibongile... One of my colleagues and I ran to hide in the

¹⁸⁸ Human Rights Watch interview with Abdulkarim (pseudonym), location withheld, January 24, 2019.

¹⁸⁹ Ibid.

bathroom, and we stayed in the bathroom from 1 p.m. until 6 p.m. Then we decided to come out, and the hotel personnel told us that our other colleagues had been arrested and taken to Central Police Station.¹⁹⁰

Sibongile Ndashe, a prominent South African lawyer and the director of ISLA, told Human Rights Watch, “Those who arrested us came carrying our concept note and agenda. Either the group was infiltrated or somehow someone shared that information with them.” At the police station, she said:

They [were] never even able to name the offense. I was saying ‘You’re saying we broke the law, what is the charge? You’re saying we promoted homosexuality, what are the elements of the offense?’... I called the South African High Commissioner and the chair of the Tanzania Human Rights Commission to the police station. After that, [the police] were no longer really interested in us and they knew they needed to let us go, but did this crazy thing of taking our prints, taking pictures. On the bail forms they wrote “—” [a dash] instead of a charge. We were released into custody of our lawyers and told to come back the following day.¹⁹¹

But even after the police who had initially carried out the arrest seemed to give up on pursuing charges, some elements of the police appeared to dig in. The case was transferred to another zone, Ndashe said. On October 20, police took 12 participants back into custody, detaining them at Central Police Station. Dar es Salaam police commissioner Lazaro Mambosasa went to court twice in the following days, on October 23 and 24, seeking authorization to carry out forced anal examinations on the lawyers and activists in an attempt to obtain evidence of homosexual conduct. The magistrate rejected the requests.¹⁹²

On October 26, police again released the 12 detainees on bail. The next day, police took Ndashe and her South African and Ugandan colleagues to immigration for deportation. Ndashe recalled that the chief immigration officer refused to deport the three activists

¹⁹⁰ Human Rights Watch interview with Amy (pseudonym), location withheld, May 28, 2018.

¹⁹¹ Human Rights Watch interview with Sibongile Ndashe, executive director, Initiative for Strategic Litigation in Africa (ISLA), Cape Town, South Africa, July 8, 2019.

¹⁹² Ibid.; Human Rights Watch email correspondence with Sibongile Ndashe, November 20, 2019.

without cause, asking the police to return with a deportation order. Ndashe recalled, “On the deportation letter, it was written ‘promotion of homosexuality.’”¹⁹³ ISLA plans to challenge what it considers an illegal deportation in Tanzania’s High Court.

The Tanzanian participants were required to report to police for several days before police told them they no longer needed to report. It is unclear whether any case remains open.¹⁹⁴

Leticia, a queer woman arrested at the meeting, described how preposterous the arrest was: “We weren’t even talking about our sexuality in that meeting. We just talked about when you want to file a case and you think your rights have been violated, how you do follow up.”¹⁹⁵

For Makame, a trans man caught up in the raid, the arrest had lasting consequences:

Our arrest made headlines, so when we were out, most people knew our identity. So going back to our neighborhoods and our homes, life was very difficult. Some of us had to shift [to a new home]. Some of us who were staying with their parents got chased. I was getting visitations, people who I don’t know coming to my house and asking questions. So I had to move.¹⁹⁶

¹⁹³ Human Rights Watch interview with Sibongile Ndashe, Cape Town, South Africa, July 8, 2019.

¹⁹⁴ Human Rights Watch telephone interview with a lawyer familiar with this case, November 21, 2019.

¹⁹⁵ Human Rights Watch telephone interview with Leticia (pseudonym), October 4, 2018.

¹⁹⁶ Human Rights Watch video interview with Makame (pseudonym), July 3, 2018.

IV. Arbitrary Arrests and Forced Anal Examinations

The Tanzanian government's assault on the right to health takes place in a broader context of abuses against LGBT people, including arrests of ordinary Tanzanians on the basis of their presumed sexual orientation or gender identity. Arrests in mainland Tanzania take place under article 154 of Tanzania's penal code, which criminalizes "carnal knowledge against the order of nature" with up to life imprisonment; article 157, which criminalizes "indecent practices between males;" and article 138A, on "acts of gross indecency between persons."¹⁹⁷ In Zanzibar, the law prohibits "acts of lesbianism" in addition to so-called unnatural offenses and indecent acts.¹⁹⁸

Arrests based on someone's presumed sexual orientation or gender identity are by definition arbitrary and violate rights. They also contribute to an environment in which health-seeking behaviors are undermined. Victor, a 25-year-old gay man who is living with HIV, described one way in which fear of arrest interferes with access to health:

My friend is an MSM. He got arrested [for reasons unrelated to his sexual orientation] and was in the police [custody], but it took one month to get him ARVs. He's still in the police. As activists, we are talking about who can provide ARVs to that guy. Everyone is saying, "If I go to the police, they will arrest me too." So I sacrificed myself and went, but [the police] asked me every day, "Who are you? How do you know him? Are you from an NGO? Are you with those gays?" ... Police identified him as MSM. So that's why LGBT people are afraid to go there to visit him or give him medicine. They will ask, "Who are you?" If you say, "He's my friend," they will ask, "How friendly are you? Are you a gay?"¹⁹⁹

Human Rights Watch and the Wake Up and Step Forward Network (WASO) reported in 2013 on over a dozen cases between 2007 and 2012 in which police arrested LGBT people on the basis of accusations such as "walking like women," walking with a same-sex partner,

¹⁹⁷ Laws of Tanzania, Chapter 16, The Penal Code, http://www.lrct.go.tz/?wpfb_dl=170, arts. 138A, 154, 157.

¹⁹⁸ Zanzibar Penal Decree Act No. 6 of 2004, http://defensewiki.ibj.org/images/9/90/Zanzibar_Penal_Code.pdf, art. 150, 154, 158.

¹⁹⁹ Human Rights Watch telephone interview with Victor (pseudonym), September 28, 2018.

or living with a same-sex partner. In one case, a local official ordered a young gay man's arrest after he tried to organize a seminar on health issues for men who have sex with men. In several cases, police tortured or sexually assaulted people accused of being LGBT. None of these cases, however, resulted in prosecution. Police generally released people after receiving a bribe, or after holding them for several days with no evidence against them.²⁰⁰

That changed, however, under Magufuli's government. Police appeared to proactively seek evidence against people accused of being LGBT, including by subjecting them to forced anal examinations. A number of accused persons were held for periods longer than a few days, and some were brought before a court. Arrests of persons suspected of being LGBT no longer seemed simply a quick route to an easy bribe for unscrupulous police officers, but rather part of an overarching campaign against the existence of LGBT people in Tanzania.

Arrests Accompanied by Forced Anal Examinations

Forced anal examinations are a form of cruel, inhuman and degrading treatment that can in some cases rise to the level of torture, as discussed in Section VI below. In recent years, countries such as Lebanon, Kenya, and Tunisia have taken steps toward banning forced anal examinations in homosexuality prosecutions, recognizing that the exams constitute a grave abuse. Tanzania, on the other hand, has moved toward institutionalizing their use.

In December 2016, over a period of several days, police in Zanzibar picked up 11 men whom they believed to be gay. Police carried out some of these arrests at home, some at a party, and some on the street. Police released two shortly after arrest and took the nine other men to Mnazi Mmoja hospital (Zanzibar's largest public hospital) where doctors subjected them to forced anal examinations, the first known use in Tanzania of such exams. The men were detained for about five days before being released on bail. The case against them has never been closed, to the knowledge of activists in Zanzibar, and the men never saw the results of the anal examinations, which doctors handed over to the police.²⁰¹

²⁰⁰ Human Rights Watch and WASO, *Treat Us Like Human Beings*, section III.

²⁰¹ Human Rights Watch telephone interview with a UN official, March 9, 2017; Human Rights Watch email correspondence with a human rights defender in Zanzibar, October 24, 2019.

In February 2017, Deputy Health Minister Kigwangalla publicly ordered the arrest of three social media personalities, including Kaoge (the transgender woman who provided the 2016 interview to Clouds TV, incorrectly described in media reports as a gay man) and two other young people with vibrant Instagram presences, for allegedly “promoting homosexuality.”²⁰² In March, police from Dar es Salaam’s Oyster Bay Police Post, following Kigwangalla’s orders, arrested one of them, Johnnie D. They detained him for five days and subjected him to a forced anal exam at Mwananyamala Hospital.²⁰³ Johnnie D. told Human Rights Watch:

They took me to hospital and tested me for HIV. Then they told me to get on knees, they stripped me, and put a stick like a spatula inside me. The police told [the doctor] what to do. I don’t think they had a court order. One police was in the room [during the exam]. It was painful. I felt bad.²⁰⁴

Johnnie D. was released on bail but was required to continue reporting to the police for several days, after which he was told to stop reporting, with no explanation as to whether the case was closed.²⁰⁵

Police, at the behest of village leaders, arrested about 17 people in a rural area in northern Tanzania on January 25 and 26, 2019, targeting gay and gender non-conforming people as well as people simply suspected of being gay, and detained them for four to six days. One victim, Kim, told Human Rights Watch:

I was at home and two guys came with a motorbike and they told me the head of the police station in [the village] wanted to speak with me. I thought it was because last week I went to report that someone abused me outside the club, and he threatened that he would beat and kill me if I was near him. But sadly they didn’t arrest the guy and the guy ran away, escaped. So when I went to police I thought it was about that case, and I

²⁰² “Tanzania Orders Arrest of Three Men for Promoting Homosexuality,” *NBC News*, February 8, 2017, <https://www.nbcnews.com/feature/nbc-out/tanzania-orders-arrest-three-men-promoting-homosexuality-n718491>; Sharifa Marira, “Polisi Dar yaanza msako wa mashoga,” post to “Jambo Leo” (blog), <http://jambo-leo.blogspot.com/2017/02/polisi-dar-yaanza-msako-wa-mashoga.html>.

²⁰³ Human Rights Watch telephone interview with Johnnie D. (pseudonym), May 2, 2017.

²⁰⁴ *Ibid.*

²⁰⁵ Human Rights Watch email correspondence with Tanzanian lawyers and activists, March and April 2017.

was shocked that they started mishandling me, pushing me, ‘take off your shoes, give us your phone and keys,’ and then they put me in custody without telling me what is the matter. Then, when I was in the cell. I saw someone queer like me and I knew why I was there but I wasn’t sure. And then as the hours went on, others kept coming in with the same story – ‘I was just picked up at work, I don’t know why.’ We all knew each other. Myself and my friend... are the only ones who are open. [Some of the] other people coming in were still in the closet. And others coming in, there are just rumors they may be gay.... Then we were being picked one by one and went to be interrogated, and they were forcing me to say I was engaging in homosexuality which I denied, and they threatened to beat me, and I said I would complain against them in court.²⁰⁶

Kim was surprised when the police, on January 28, instead of taking the group to court, took them in a police vehicle from the police station where they were being held to a local bar with a rooftop meeting hall, where village leaders were gathered, along with a man known to Kim as a professional photographer, who took pictures of all the accused persons but, as far as Kim knows, did not publish them in the press or social media. Kim added:

They [the village leaders] started to criticize, insult us, abuse us, take pictures... After that one of the village leaders said ‘You people should be deported away from our country and society, you have bad morals, this is against our religion and our law.’²⁰⁷

On January 29, Kim said, the police took them to the district hospital to undergo forced anal examinations, which doctors conducted while police officers watched. He described the procedure and how it was still causing him pain two weeks later when Human Rights Watch interviewed him:

These doctors did the procedure of anal tests. It was by force. The police officers were there with guns, so many of them. ... We went to the maternal

²⁰⁶ Human Rights Watch telephone interview with Kim (pseudonym), February 7, 2019.

²⁰⁷ Ibid.

ward where the women go and give birth. They took this metal instrument and they stick it – they penetrate it in our anal [anus], and it was very, very painful. And then they say “Cough, try to cough” while the steel is inside our anal, and when I coughed they were pressing the metal into me. It was very brutal and painful. They were pressing the testicles, the penis. Everything about that testing was very brutal. And they kept the results – we didn’t see the results or have any representative who could take the results for us. The police were so filled with hate. I am now having some blisters because that metal was really huge. Physically, I’m still not fit, even mental, because of the procedure and how they handled it.²⁰⁸

The detainees were released, some on January 29, others on January 30, Kim said. Kim fled Tanzania to seek asylum, believing he would no longer be safe in his village.²⁰⁹

An activist in Zanzibar told Human Rights Watch that in August 2019, a group of citizens seized two men in Zanzibar whom they suspected of same-sex relations and turned them in to the police. The activist said he spoke to one of the men after his release, who said police had taken him to Mnazi Mmoja Hospital and subjected him to a forced anal exam.²¹⁰

Arrests Related to “Same-Sex Marriage” Fears

Moral panic around rumored same-sex engagements and weddings has fueled some arrests. In Geita, northern Tanzania, police arrested four people in December 2017 after a video circulated of two women kissing at a bar, which some media described as an “engagement ceremony.”²¹¹ Prosecutors brought gross indecency charges against the two women in the video, specifying that they were accused of “exhibiting homosexual activities of doing romance and mouth kissing in public.” They also charged the proprietor of the bar, with acting as the “mistress of ceremony” and “being a part of the commission of act of gross indecency,” as well as the person who filmed the kiss and posted it online,

²⁰⁸ Ibid.

²⁰⁹ Human Rights Watch interview with Kim (pseudonym), Nairobi, July 17, 2019.

²¹⁰ Human Rights Watch telephone interview with a human rights defender in Zanzibar, September 17, 2019.

²¹¹ “Lesbian Kiss Video Posted and Shared Online Lands Tanzanians in Jail,” *Toronto Sun*, December 8, 2017, <https://torontosun.com/news/world/lesbian-kiss-video-posted-and-shared-online-lands-tanzanians-in-jail/wcm/c1676af7-4b79-41a7-8c5d-71b80d14c724> (accessed December 17, 2019); The Guardian Reporter, “Police Launch Manhunt For Second ‘Lesbian’ Engagement Party Suspect,” *IPP Media*, December 3, 2017, <https://www.ippmedia.com/en/news/police-launch-manhunt-second-lesbian-engagement-party-suspect> (accessed December 17, 2019).

with “transmission of unsolicited message” under the Cyber Crimes Act of 2015.²¹² It was the first known case of women being charged for alleged same-sex relations in Tanzania. In May 2019, in the course of trial proceedings in which the court refused to admit confession statements on the grounds that the accused persons had been forced to sign them, the prosecution notified the court that it would not pursue the charges. However, three days later, police rearrested all four accused persons and prosecutors filed identical charges to those that had just been dropped. At the time of writing, their case remained open.²¹³

In Zanzibar, arrests of ten men at what police claimed was a “gay wedding” made international news in November 2018, shortly after Dar es Salaam Regional Commissioner Paul Makonda threatened to round up and arrest all gay men.²¹⁴ According to an activist in Zanzibar, the Regional Commissioner responsible for the Urban West area of Zanzibar that includes Stone Town, Ayoub Mohammed had echoed Makonda’s November 2018 call to round up gays.²¹⁵

Human Rights Watch spoke with Fadil, one of the men arrested in Zanzibar. He recounted:

We were having a day out in the countryside at Chwakwa Beach, just enjoying the weekend. We were 13 people. We were just there, eating, when suddenly police captured us and started to hit us. They said insulting things to us, like that we were faggots (*wasenge*) and that we were there to celebrate a same-sex wedding.²¹⁶

Fadil said a few men managed to flee, but police arrested him and nine others and detained them at Chwakwa Police Station. “When we asked what we had done wrong, they

²¹² United Republic of Tanzania, The Cybercrimes Act (2015),

https://rsf.org/sites/default/files/the_cyber_crime_act_2015.pdf (accessed December 17, 2019), art. 20.

²¹³ Human Rights Watch telephone interview with a lawyer familiar with the case, November 21, 2019. Both charge sheets are on file with Human Rights Watch.

²¹⁴ “Tanzania: 10 Men Arrested in Zanzibar for Being ‘Gay,’” Amnesty International news release, <https://www.amnesty.org/en/latest/news/2018/11/tanzania-10-men-arrested-in-zanzibar-for-being-gay>.

²¹⁵ Human Rights phone interview with a human rights defender in Zanzibar, September 17, 2019; “Wanaohisiwa kuwa mashoga wakamatwa zanzibar,” post to “Shilawata tz” (blog), March 4, 2017, <http://shilawata.blogspot.com/2017/03/wanaohisiwa-kuwa-mashoga-wakamatwa.html> (accessed December 19, 2019).

²¹⁶ Human Rights Watch interview with Fadil (pseudonym), location withheld, January 24, 2019.

said we were suspected of same-sex relations and also that we were at the beach to solemnize a wedding of two men.”²¹⁷

Police held the men incommunicado for five days, Fadil said. He added:

We were denied food and water. We had to drink water from a [plumbing] pipe. After the news of our arrest spread to every corner of Zanzibar, [a community-based organization] came and helped us get out on bail.²¹⁸

The men were required as a condition of bail to report to the police station every week. Fadil said he stopped reporting in January 2019: “The police were just wasting our time and money.” He was unaware whether the case remained open.²¹⁹

“Walking While LGBT”

In addition to these relatively high-profile incidents, Human Rights Watch interviewed eight other LGBT people who were arrested between 2016 and 2018 while going about their daily lives.

Suleiman, a university student, said two police officers arrested him while he was walking to class with a gay male friend and several female friends in Dar es Salaam in March 2018:

I was just walking in the road with my friends, coming back to the college, and I was shocked when a police came into my face and just took me to the police station. The police were complaining about gays in society. I don’t know why they suspected me, but I think it was the way I was walking.... They took me to the car and then to [Magomeni police post]. They slapped me and spoke bad language to me. They also slapped my friend. They said that I’m embarrassing the society, and asked why I am like this, and they told me to stop doing these things and just be a true man.²²⁰

²¹⁷ Human Rights Watch interview with Fadil (pseudonym), location withheld, January 24, 2019.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Human Rights Watch telephone interview with Suleiman (pseudonym), October 2, 2018.

Suleiman said the police called his grandparents, who paid a bribe of 50,000 Tanzanian shillings (US\$22) for his release. He said the police told his grandparents “to protect me from walking with ladies and walking with other gays to avoid me being like that.”²²¹

Others were arbitrarily arrested in bars and in their own homes because police or members of the public suspected they were gay. Victor, a gay man in Dar es Salaam, said he and his partner were arrested at home in March 2017 after neighbors reported them to the police. They were detained for three or four days before paying a bribe of 100,000 Tanzanian shillings (\$43) to be released. While they were in police custody, Victor said, his partner was raped twice by fellow detainees.²²²

Ahmed was arrested in April 2017 along with four gay friends in Dar es Salaam:

I was in the bar drinking with other gays.... All of a sudden we were caught by the police. They told us, “You were drinking late so you have to be taken to the police.” We were taken to Mabatini and then the issues of sexual orientation came up. I heard them talking about us, saying, “They are *kuchus*, they are gays, they were drinking late.”

Ahmed said police detained them overnight without explaining the charges against them. They were released after paying a bribe.²²³

Hassan, a trans woman in Tanga, said that in 2017, police arrested her while she was having a drink at a bar, and took her to Chumbageni police post. When she asked police why she was being arrested, she said, “They replied that I am a homosexual leader here in Tanga region, that I have been promoting homosexuality here in Tanga region, and that this is creating a public nuisance.”

Hassan was taken to Kongwe court and charged with being a “rogue and vagabond.” When the judge realized Hassan was a trans woman, she said, they “forced me to take off the women's clothes I was wearing and gave me male clothes that were there in court, then

²²¹ Ibid.

²²² Human Rights Watch telephone interview with Victor (pseudonym), September 28, 2018.

²²³ Human Rights Watch telephone interview with Ahmed (pseudonym), May 22, 2018.

gave me a warning to immediately stop this same-sex business.” Hassan was released on bail.²²⁴

Medard, 38, said that in March 2018, the local government chairperson in his Dar es Salaam neighborhood came to his door in the middle of the night with five men, two of whom were armed with guns. They interrogated him about his sexual partners and accused him of “promoting homosexuality” in the neighborhood. Medard said, “They beat me on my back with sticks, and took me to Madale police station. When I arrived at the police station, the police beat me with clubs and insulted me.” He was detained for three days before a neighbor paid a bribe to secure his release.²²⁵

Fena, a trans activist, said that the Tanzanian police particularly target trans women for arbitrary arrests. She said that on one occasion in late 2019, police arbitrarily arrested her, forced her to strip, and fondled her breasts before letting her go, and that on previous occasions, police had forced her to have sex with them in exchange for her release. She also said that airport security officials had strip-searched both trans men and women on multiple occasions.²²⁶

²²⁴ Human Rights Watch interview with Hassan (pseudonym), location withheld, June 28, 2018.

²²⁵ Human Rights Watch interview with Medard (pseudonym), location withheld, May 18, 2018.

²²⁶ Human Rights Watch interview with Fena (pseudonym), Nairobi, January 10, 2019.

V. Escalating Attacks and International Responses

Tanzania is heavily dependent on foreign aid, including in its HIV response. Since 2016, donors have expressed concern over the anti-LGBT crackdown, including its impact on the right to health. In December 2016, Ambassador Deborah Birx, the US Global AIDS Coordinator and head of PEPFAR, which supplies a significant portion of Tanzania’s anti-retroviral treatment, said:

We have made it incredibly clear that this [PEPFAR] is a response for 100 percent of the people at risk for HIV/AIDS. And I think if there comes a time when it becomes clear that the government of Tanzania doesn't believe that everyone in their country deserves access to health care, that would be difficult for us to continue that kind of investment in Tanzania.²²⁷

In the face of increasing clarity that government policies and actions are antithetical to the principle of access to health care for all, international responses have varied. Donors face a complex set of considerations. Given the high percentage of aid from donors for the national HIV program, and specifically for HIV treatment medicines, donors have both leverage and reason to fear that cutting or suspending aid will hurt Tanzanians; and if aid cuts are made specifically in response to violations impacting LGBT people, these communities may become scapegoats in the eyes of the broader public. Yet, continuing funding amidst approaches that are contrary to donor agency policies and to global best practices and commitments can be seen as an endorsement of, or indifference to, discriminatory practices that violate human rights.

A series of incidents documented in this report, including the arrests of lawyers from the South Africa-based Initiative for Strategic Litigation in Africa (ISLA) at a meeting in Dar es Salaam in October 2017 and the use of forced anal examinations as a method of seeking proof of homosexual conduct, have contributed to increasingly vocal international condemnation of Tanzania’s anti-LGBT crackdown. Such condemnation had little visible

²²⁷ Jason Beaubien, “Top U.S. AIDS Official Touts Progress, Has Tough Words for Tanzania,” *NPR*, December 1, 2016, <https://www.npr.org/sections/goatsandsoda/2016/12/01/503988997/top-u-s-aids-official-touts-progress-has-tough-words-for-tanzania> (accessed December 17, 2019).

impact, however, until late 2018, when Paul Makonda, the regional commissioner of Dar es Salaam, called for the arrest of “all the gay men” in the city. In a press conference on October 31, Makonda said that victims would be “tested” for homosexuality, a reference to forced anal examinations. He also said those who wanted to “change” would be offered “counseling” —a reference to conversion therapy, a discredited and harmful method of attempting to change a person’s sexual orientation or gender identity—while others would be jailed for life. He declared, “In Dar es Salaam, homosexuality is not a human right.”²²⁸

Makonda urged the public to send him the names of suspected gays, and claimed he had already received 200 names, sending a chill through Dar es Salaam’s LGBT communities. In the following days, a number of LGBT people left the city, some returning to their home villages or seeking refuge with friends in provincial towns, where they thought they might be out of reach of Makonda’s alleged task force, while others fled Tanzania altogether.²²⁹ LGBT activists reported to Human Rights Watch that several people who were HIV-positive chose to stay home for days, neglecting to pick up their anti-retroviral treatment for fear of arrest.²³⁰

Some LGBT people reported an increase in violence by local residents who seemed emboldened to act on their homophobia and transphobia. “It was a shock, and we went through hell,” said Fena, a trans activist, who herself sought refuge in Nairobi, Kenya, for several months, and said that several other trans women faced violence in the days following Makonda’s statement from both members of the public and police.²³¹

The response of the international community was vocal, rapid, and robust. UN High Commissioner for Human Rights Michelle Bachelet condemned the crackdown in harsh terms, describing Makonda’s utterances as “a licence to carry out violence, intimidation, bullying, harassment and discrimination against those perceived to be LGBT.”²³² Ireland’s

²²⁸ “RC Makonda akitangaza kamati itakayotokomeza mashoga,” October 31, 2019, video clip, YouTube, press conference, <https://www.youtube.com/watch?v=ZFzhwL7HggA&feature=youtu.be> (accessed January 23, 2020).

²²⁹ Human Rights Watch telephone interviews with Tanzanian activists, November 2018.

²³⁰ Ibid.

²³¹ Presentation at a regional conference attended by Human Rights Watch, Naivasha, Kenya, June 16, 2019.

²³² “Bachelet: Tanzania Has Duty to Protect – Not Further Endanger – LGBT People,” United Nations Office of the High Commissioner of Human Rights news release, November 2, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23817&LangID=E> (accessed December 17, 2019).

Tánaiste (deputy head of government) sent a letter to Tanzania’s then-foreign affairs minister Augustine Mahiga on November 2, 2018, calling on the government to “disown and put an end to” Makonda’s proposed witch hunt.²³³ At least three diplomatic missions in Dar es Salaam formally demarched the Foreign Ministry to condemn Makonda’s comments.²³⁴

The Tanzanian government took note. On November 4, the Foreign Ministry issued a statement distancing the government from Makonda’s homophobic rhetoric. The statement read, in part:

In his meeting with the press, the honorable regional commissioner announced a campaign to deal with homosexuals in Dar es Salaam. The government of the United Republic of Tanzania would like to clarify that these thoughts are his alone and not those of the government. Moreover, the United Republic of Tanzania would like to take this opportunity to remind and insist that it will continue to respect all international agreements regarding human rights signed and ratified.²³⁵

But the same day the Foreign Ministry issued its conciliatory statement, the news broke that 10 men had been detained in Zanzibar for allegedly participating in a same-sex wedding.²³⁶ Although the arrests themselves preceded the Foreign Affairs statement, senior government officials never acknowledged or condemned the arrests, and the men remained in detention until November 8. Further, on November 9, when interrogated in Parliament by an MP who suggested Tanzania was caving to international pressure to allow same-sex marriage and homosexuality, then-Home Affairs Minister Kangi Lugola stated,

²³³ “Diplomatic Pressure Results in Tanzania Stating Anti-Gay Crackdown is Not Government Policy,” *The Journal* (Ireland), <https://www.thejournal.ie/tanzania-lgbt-arrests-4326426-Nov2018>.

²³⁴ Human Rights Watch email correspondence with a diplomat in Dar es Salaam, December 16, 2019.

²³⁵ Jamhuri ya Muungano wa Tanzania, Wizara ya Mambo ya Nje na Ushirikiano wa Afrika Mashariki, “Taarifa kwa Vyombo vya Habari,” November 4, 2018, on file with Human Rights Watch; “Paul Makonda: Vita dhidi ya ushoga Dar es Salaam si msimamo wa serikali,” *BBC Kiswahili*, November 5, 2018, <https://www.bbc.com/swahili/habari-46093978> (September 19, 2019). See also Pernille Bearendtsen, “Tanzania’s Stance on Homosexuality Points to an Increasingly Repressive Political Agenda,” *PRI*, November 13, 2018, pri.org/stories/2018-11-13/tanzanias-stance-homosexuality-points-increasingly-repressive-political-agenda (accessed December 17, 2019).

²³⁶ “Tanzania: 10 Men Arrested in Zanzibar for Being ‘Gay,’” Amnesty International news release, <https://www.amnesty.org/en/latest/news/2018/11/tanzania-10-men-arrested-in-zanzibar-for-being-gay>.

“Tanzania is not the right place for such acts; we will never allow such things to happen. We have laws that forbid such things.”²³⁷

The US State Department issued a statement on November 9 condemning the overall climate of violence, intimidation and discrimination as well as the arrests of LGBT people.²³⁸ Denmark’s Foreign Minister announced on November 14 that Denmark would withhold \$10 million in aid from Tanzania on the basis of human rights, including discrimination based on sexual orientation, and that other funds would be redirected from the government to civil society.²³⁹ Denmark reinstated the aid several weeks later without making clear the grounds for the reversal.²⁴⁰

The Africa Representatives of the International AIDS Society (IAS), writing on behalf of the IAS as a whole, also condemned the anti-gay initiatives in Tanzania including the arrests in Zanzibar and the closure of drop-in centers. The IAS stated in December 2018: “These actions are contrary to Tanzania’s stated commitment to end the AIDS epidemic by 2030.”²⁴¹

The World Bank Intervention

The World Bank, Tanzania’s largest donor, has rarely engaged client countries on issues of LGBT rights.²⁴² However, after members of the bank’s LGBT staff association/network, GLOBE, learned of Makonda’s inflammatory statements and raised concerns internally, on

²³⁷ “Homosexuality Illegal in Tanzania – Govt Insists,” *Daily News* (Dar es Salaam), reposted on *AllAfrica.com*, November 10, 2019, <https://allafrica.com/stories/201811120100.html> (accessed December 17, 2019); see also Bunge La Tanzania, Majadiliano Ya Bunge, Mkutano wa Kumi na Tatu,” November 9, 2018, <https://www.bunge.go.tz/polis/uploads/documents/1543929886-9%20NOVEMBA,%202018.pdf> (accessed December 17, 2019).

²³⁸ “Deterioration of Civil Liberties and Human Rights in Tanzania,” US State Department press statement, November 9, 2019, <https://www.state.gov/deterioration-of-civil-liberties-and-human-rights-in-tanzania> (accessed December 17, 2019).

²³⁹ “Danmark tilbageholder millioner til Tanzania for homofobi,” *DR* (Denmark), November 14, 2018, <https://www.dr.dk/nyheder/politik/danmark-tilbageholder-millioner-til-tanzania-homofobi>, Unofficial English translation available at <https://www.jamiiforums.com/threads/denmark-withholds-aid-and-cancels-minister-visit-to-tanzania-over-human-rights-situation.1508470> (accessed December 17, 2019).

²⁴⁰ Alex Malanga, “Mahiga: Denmark’s Aid Intact,” *The Citizen* (Dar es Salaam), <https://www.thecitizen.co.tz/News/Mahiga-Denmark-s-aid-intact/1840340-4875198-68ftm2/index.html>; Human Rights Watch email correspondence with Susanne Branner Jespersen, LGBT Denmark, December 4, 2018.

²⁴¹ “IAS Condemns Tanzania’s Anti-Gay Initiatives,” International AIDS Society (IAS) press release, December 12, 2018, <http://i-base.info/htb/35410> (accessed December 17, 2019).

²⁴² Uganda is one notable exception. “World Bank Freezes Aid to Uganda Over Gay Law,” *Al Jazeera*, February 28, 2014, <https://www.aljazeera.com/news/africa/2014/02/world-bank-freezes-aid-uganda-over-gay-law-2014222874410793972.html> (accessed December 17, 2019).

November 7 the Bank issued a memorandum suspending visiting missions to Tanzania on the grounds that it would not be able to protect its LGBT staff from arrest.²⁴³ At around the same time, the bank announced it would withhold a \$300 million education loan due to Tanzania's policy of refusing pregnant students and young mothers access to public secondary education.²⁴⁴

On November 17, the World Bank's vice president for Africa, Hafez Ghanem, and other high-level staff met with President Magufuli to raise concern about both issues, along with Tanzania's Statistics Act, which criminalized publication of statistics that contradict those officially endorsed by the government.²⁴⁵ At the meeting, Ghanem presented the three issues as non-negotiable, suggesting the bank might no longer be able to do business with Tanzania if it continued persecution of LGBT people and refused to shift course on girls' access to education and the Statistics Act.²⁴⁶ Following the meeting, the World Bank published a statement that said:

the President assured the Bank that Tanzania will not pursue any discriminatory actions related to harassment and/or arrest of individuals, based on their sexual orientation.

As a member country of the World Bank Group, Tanzania endorsed the Bank's new Environment and Social Framework (effective October 2018), that strengthens the Bank's commitment to social inclusion of vulnerable and disadvantaged people and non-discrimination on the grounds of their age, gender, ethnicity, religion, physical, mental or other disability, social,

²⁴³ Human Rights Watch meeting with the World Bank's SOGI Task Force, Washington, D.C., April 9, 2019. The announcement was posted at

https://wbappse.worldbank.org/WBG_BPC_1818SOCIETY_RSSFEEDAPPWEB/announcements/announcementresources# but is no longer available at this writing. See also Hillary Orinde, "Unsafe Place? World Bank Cancels Missions to Tanzania," *Standard Digital* (Nairobi), <https://www.standardmedia.co.ke/article/2001302127/world-bank-suspends-funding-to-tanzania>.

²⁴⁴ Karen McVeigh, "World Bank Pulls \$300m Tanzania Loan Over Pregnant Schoolgirl Ban," *Guardian*, November 15, 2018, <https://www.theguardian.com/global-development/2018/nov/15/world-bank-pulls-300m-tanzania-loan-over-pregnant-schoolgirl-ban> (accessed December 17, 2019).

²⁴⁵ Human Rights Watch interview with World Bank Vice-President for Africa Hafez Ghanem, Washington, D.C., February 5, 2019.

²⁴⁶ *Ibid.*

civic or health status, sexual orientation, gender identity, indigenous heritage and economic status.²⁴⁷

The meeting, and the World Bank's significant leverage, appeared to bear some fruit. To date, Tanzania has made no progress in reforming its policies that deny pregnant girls and young mothers access to education. Tanzania did revise its Statistics Act, removing criminal penalties.²⁴⁸ Government officials appeared, for a time, to tone down hostile rhetoric on LGBT rights. When local officials ordered the arrest of 14 men suspected of homosexuality in a small rural town, discussed in Section IV above, diplomats alerted the president's office. The men were soon after released without charge and the matter was dropped by the court at which they appeared.²⁴⁹

But access to LGBT-inclusive health services tailored to their needs has remained out of reach for many LGBT people and key populations, as documented in Section VI.

PEPFAR's Intervention

The major funder of HIV prevention and treatment work in Tanzania is the US President's Emergency Plan for AIDS Relief (PEPFAR), which operates under the US Office of the Global AIDS Coordinator. Each year, PEPFAR issues a new Country Operational Plan for each of the 28 countries and regions that receive support through this program.²⁵⁰

On January 16, 2019, the US Global AIDS Coordinator, Ambassador Deborah Birx, who oversees PEPFAR, wrote to the US Embassy in Tanzania to alert the embassy that her office would be reducing PEPFAR funding to Tanzania from \$512 million in 2018 to \$395 million in 2019. The letter cited "underperformance among implementing partners" and, in particular, highlighted Tanzania's treatment of sexual minorities, as well as women and girls:

²⁴⁷ "World Bank Statement on Lifting the Suspension of Missions to Tanzania," World Bank news release, <https://www.worldbank.org/en/news/statement/2018/11/20/world-bank-statement-on-lifting-the-suspension-of-missions-to-tanzania>.

²⁴⁸ Oryem Nyeko, "Tanzania Drops Threat of Prison Over Publishing Independent Statistics," Human Rights Watch dispatch, July 3, 2019, <https://www.hrw.org/news/2019/07/03/tanzania-drops-threat-prison-over-publishing-independent-statistics>.

²⁴⁹ Human Rights Watch email correspondence with a representative of a diplomatic mission in Tanzania, October 12, 2019.

²⁵⁰ A list of all PEPFAR recipients and links to their "Strategic Direction Summaries" is available at <https://www.state.gov/where-we-work-pepfar> (accessed December 17, 2019).

It is noteworthy that the PEPFAR/Tanzania program faces unique structural impediments to its progress. Formal and informal policy developments in Tanzania undermine efforts to diagnose and treatment persons most vulnerable to HIV infection, including arrests of sexual minorities, anti-contraception messaging, and the expulsion of pregnant adolescent girls and young women from school.²⁵¹

PEPFAR stated that future funding allocations would depend on improvements, including ensuring “that key programs continue to reflect the U.S. government position for addressing the needs of those most vulnerable to HIV infection.”²⁵²

At a PEPFAR Regional Planning Meeting in Johannesburg in March 2019, attended by PEPFAR officials, Tanzanian health ministry representatives, and civil society representatives, PEPFAR officials suggested to the Tanzanian officials that one way to demonstrate such willingness to address vulnerable communities’ needs would be to ban forced anal examinations of persons accused of homosexual conduct. Forced anal examinations had been conducted by health officials on numerous occasions in Tanzania since 2016, on police instructions. In response, the Ministry of Health shared a circular issued in January 2019 that informs health personnel that anal examinations may only be conducted under court order from a magistrate.²⁵³ The circular did not, however, prohibit the exams. Activists objected to its weak language, and the international network MPact, in collaboration with Tanzanian and international organizations, issued a petition calling

²⁵¹ United States Department of State, “Information Memo for Chargé Inmi Patterson,” from S/GAC - Ambassador Deborah Birx, January 16, 2019, <https://www.pepfar.gov/documents/organization/289828.pdf> (accessed December 17, 2019); Andrew Green, “What’s Behind PEPFAR’s Funding Cut Threats?” *Devex*, June 11, 2019, devex.com/news/what-s-behind-pepfar-s-funding-cut-threats-95053 (accessed December 17, 2019).

²⁵² US Department of State, “Information Memo for Chargé Inmi Patterson,” from S/GAC - Ambassador Deborah Birx, <https://www.pepfar.gov/documents/organization/289828.pdf>; Andrew Green, “What’s Behind PEPFAR’s Funding Cut Threats?” *Devex*, devex.com/news/what-s-behind-pepfar-s-funding-cut-threats-95053. In May 2019 PEPFAR ultimately set its COP 2019 funding to Tanzania at \$405 million, reflecting the cuts from \$512 million in 2018 to \$395 million referred to by Ambassador Birx in her January statement of underperformance, but including another \$10 million in central funds designated for two specific initiatives, the Faith and Community Initiative and Stopping Violence Against Children Initiative. US Department of State, “Action Memo for Deborah L. Birx, Ambassador-At-Large; Coordinator of the United States Government Activities to Combat HIV/Aids and U.S. Special Representative For Global Health Diplomacy; Subject: Tanzania Country Operational Plan 2019 Approval,” May 31, 2019, <https://www.state.gov/wp-content/uploads/2019/08/Tanzania-1.pdf> (accessed December 19, 2019); Human Rights Watch email correspondence with a PEPFAR official, January 9, 2020.

²⁵³ Human Rights Watch telephone interview with Stephen Leonelli, MPact, September 19, 2019. The circular is on file with Human Rights Watch. Jamhuri ya Muungano wa Tanzania, Wizara wa Afya, Maendeleo ya Jamii, Jinsia, Wazee no Watoto, Kumb. Na. CGA.16/209/01C, “Yah: Taratibu za Uchunguzi wa Kitabibu kwa Washukiwa wa Makosa ya Kujamiiiana Watu wa Jinsia Moja,” January 14, 2019, signed by Prof. Muhammad B. Kambi, Chief Medical Officer.

for Tanzania to uphold its commitment to PEPFAR and end forced anal exams. Forty-five organizations signed the petition.²⁵⁴

Given the failure to reach common ground, PEPFAR invited Tanzanian government representatives to a follow-up “reboot” meeting in Washington DC in April. At the meeting, the health ministry was hesitant to commit to ending forced anal exams but agreed that it would collaborate with representatives of key populations on improving their access to health and working toward a formal prohibition of forced anal examinations.

A PEPFAR official told Human Rights Watch that at an upcoming meeting in Johannesburg scheduled from March 2-6, 2020, the agency would discuss with the Health Ministry and civil society representatives what progress had been made towards engaging key populations in implementing the HIV/AIDS response in Tanzania and eliminating structural barriers for access to services. The official said PEPFAR would make future funding decisions based on these discussions, and other program considerations.²⁵⁵

²⁵⁴ MPact, “Prohibit Forced Anal Examinations Now! Petition to Government of Tanzania,” <https://mpactglobal.org/civil-society-petition-regarding-forced-anal-exams-in-tanzania>.

²⁵⁵ Human Rights Watch email correspondence with a PEPFAR official, January 9, 2020.

VI. Obligations Under International and Regional Law

Tanzania is party to international and regional human rights treaties under which it is obligated to ensure the right to the highest attainable standard of health, the rights to freedom of association, assembly and expression, the right to privacy, and the right to freedom from discrimination, among other human rights. At a peak moment of international response to Tanzania's anti-LGBT crackdown, the Foreign Ministry pledged to uphold Tanzania's human rights commitments. That pledge has not resulted in meaningful steps to adhere to international and African human rights standards, as shown by the cases documented in this report.

The Right to the Highest Attainable Standard of Health

As this report demonstrates, Tanzanian authorities have rejected evidence-based approaches to preventing HIV among marginalized populations and have failed to ensure freedom from discrimination on the basis of sexual orientation and gender identity at government health facilities. The ban on lubricant denies people who are at high risk of acquiring HIV/AIDS an important, proven means of protecting themselves during sexual intercourse. In these and other respects, Tanzania has failed its obligation to ensure the right to the highest attainable standard of health for all.

Tanzania is party to the African Charter on Human and Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women, all of which guarantee the right to the highest attainable standard of health.²⁵⁶ The Committee on Economic, Social and Cultural Rights, which provides authoritative interpretation of the ICESCR, has concluded that the right to health imposes an obligation on states to take necessary steps for the "prevention, treatment and control of epidemic... and other diseases," which "requires the

²⁵⁶ The African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, acceded to by Tanzania on February 18, 1984, art. 16; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, acceded to by Tanzania on June 11, 1976, art. 12; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Tanzania on August 20, 1985, article 12.

establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health.”²⁵⁷

The committee stresses the obligation to provide health goods and services without discrimination “in law and in fact.”²⁵⁸ The obligation to guarantee all rights under the ICESCR without discrimination renders impermissible any form of discrimination on the basis of sexual orientation and gender identity.²⁵⁹

Tanzania is also party to the Maputo Protocol on the Rights of Women in Africa. It provides that states must ensure the “the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS.”²⁶⁰

Other regional legislative and policy developments also emphasize the obligation to take steps to protect the health of key populations, particularly with regard to HIV. The East African Community HIV and AIDS Prevention and Management Act, enacted in 2016, calls on EAC governments, including Tanzania, to challenge stigma and discrimination against most-at-risk populations; to implement strategies to promote and protect the health of most-at-risk populations; and to ensure that recognized protective methods are available to most-at-risk populations.²⁶¹

²⁵⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4 (2000), para 16.

²⁵⁸ *Ibid.*, para 12(b).

²⁵⁹ See UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, July 2, 2009, para. 32. While article 12 of the ICESCR guarantees the right to health, article 2(2) protects individuals from discrimination in the application of all rights guaranteed by the covenant. General Comment 20 clarifies that discrimination is prohibited on the basis of sexual orientation and gender identity.

²⁶⁰ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, art. 14(1)d.

²⁶¹ East African Community HIV & AIDS Prevention and Management Bill, 2012, enacted 2016, on file with Human Rights Watch, section 39, section 12(b). The latter refers specifically to “quality female and male condoms;” however, water-based and silica-based lubricant would also qualify as recognized protective methods. See, for example, the World Health Organization (WHO) and UNAIDS, *The Male Latex Condom: 10 Condom Programming Fact Sheets*, http://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub01/jcoo3-malecondom-factsheets_en.pdf (accessed December 17, 2019), p. 7.

Regional and International Guidelines on Realizing the Right to Health

There is abundant evidence of best practices and a clear regional consensus on how to uphold the right to health among key populations. Tanzania’s failure to respect, protect, and fulfil the right to the highest attainable standard of health flies in the face of these realities. The authorities are not simply shirking the obligation to provide LGBT-inclusive health services and commodities; they are proactively prohibiting the offering of such services by others who might wish to provide them, including international donors and Tanzanian and international non-governmental organizations.

The Southern African Development Community (SADC), of which Tanzania is a member state, has issued a series of standards on addressing HIV and sexual and reproductive health. As the region hardest hit by the HIV epidemic globally, the SADC region has articulated a firm commitment to evidence-based interventions that reach those most in need, regardless of political or cultural considerations. SADC’s 2015 “Minimum Standards” call for states to uphold “nondiscrimination practices in all situations, regardless of HIV status, age, sex, gender, sexual orientation, religion, and sociocultural and economic status.”²⁶² In addition, the Minimum Standards require states to:

- Develop policies that support access to integrated sexual and reproductive health and HIV services for key populations, including lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.²⁶³
- Review how their legal frameworks impact access to sexual and reproductive health and HIV services and information for key populations, especially men who have sex with men, and if needed, reform their laws accordingly.²⁶⁴
- Enact laws that ensure access to and utilization of sexual and reproductive health and HIV services by key populations.²⁶⁵
- Maintain operational plans on sexual and reproductive health and HIV that include “explicit interventions for key populations.”²⁶⁶

²⁶² SADC, *Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region*, 2015, <http://menengage.org/wp-content/uploads/2016/09/Minimum-Standards-for-Integration-of-HIV-and-SRH-in-SADC-Region.pdf> (accessed December 16, 2019), p. 17.

²⁶³ *Ibid.*, p. 19.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*, p. 20.

²⁶⁶ *Ibid.*

- Put systems in place, including the necessary facility and community service provision modifications and infrastructure, to facilitate access to sexual and reproductive health and HIV services by key populations, especially LGBTI persons.²⁶⁷

In November 2018, SADC approved the Strategy for Sexual and Reproductive Health and Rights in the SADC Region, 2019-2030, signed by health ministers from throughout the region, including Tanzania.²⁶⁸ Echoing the minimum standards, the strategy calls on member states to “ensure that the legal and political environment is conducive to the realization of SRHR [sexual and reproductive health and rights] for all sections of the population,” with particular reference to key populations.²⁶⁹ The principles underlying the strategy include “a gender-responsive, visionary, and transformative approach that... protects and promotes bodily integrity and autonomy of all, and prioritizes service delivery so that no one is left behind” along with a human rights approach to the provision of SRH services, including the right of all persons to the highest attainable standard of health.” The strategy calls for the removal of policy, cultural, and social barriers that impede the realization of sexual and reproductive health and rights in the SADC region.²⁷⁰

Tanzania also publicly supported the 2016 UN Political Declaration on HIV and AIDS. It commits countries to building “people-centered” health systems and policies, in part “by promoting that such policies are based on a non-discriminatory approach that respects, promotes and protects human rights, and by building the capacity of civil society organizations to deliver HIV prevention and treatment services.” UN member states agreed to “[r]ecognize that the AIDS response can be fast-tracked only by protecting and promoting access to appropriate, high-quality, evidence-based HIV information, education and services without stigma and discrimination” and commit to “redoubling non-

²⁶⁷ Ibid., p. 21.

²⁶⁸ SADC, “Statement: SADC Ministers of Health and Ministers Responsible For HIV And Aids Meet In Namibia 8th November 2018,” Windhoek, November 8, 2018, https://www.sadc.int/files/3315/4169/8409/Media_Statement_-_Joint_Meeting_of_SADC_Ministers_of_Health_and_those_responsible_for_HIV_and_AIDS_.pdf (accessed December 19, 2019).

²⁶⁹ SADC, “Strategy for Sexual and Reproductive Health and Rights in the SADC Region, 2019-2030,” Draft 1, October 1, 2018, <http://genderlinks.org.za/wp-content/uploads/2018/11/1-Final-signed-SADC-SRHR-Strategy-2019-2030.pdf> (accessed December 16, 2019), p. 36. This draft was approved in November 2018.

²⁷⁰ Ibid., p. 29, 44.

discriminatory HIV prevention efforts by taking all measures to implement comprehensive, evidence-based prevention approaches to reduce new HIV infections.”²⁷¹

With regard to globally recognized best practices, UNAIDS’ Prevention Gap Report, published in 2016, highlights essential policy shifts to “make the end of the AIDS epidemic a reality by 2030.” The report calls for “easy access to condoms, lubricant and PrEP, as well as efforts to address homophobia.”²⁷²

The Global Commission on HIV and the Law, a commission of experts that the United Nations Development Programme (UNDP) established in 2010, calls for decriminalizing same-sex conduct.²⁷³ It is well-established that stigma, discrimination, criminalization, and enforcement of discriminatory laws undermine the HIV response among key populations.²⁷⁴

Tanzania’s unwillingness to reflect best practices and regional minimum standards in its own approach risks fueling the spread of HIV, undercutting the right to the highest attainable standard of health.

The Rights to Freedom of Association

The African Charter on Human and Peoples’ Rights, under article 11, guarantees everyone the right to freedom of association, “subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”²⁷⁵

²⁷¹ United Nations General Assembly, Resolution adopted by the General Assembly on 8 June 2016, “Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030,” A/RES/70/266, https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf.

²⁷² UNAIDS, *Prevention Gap Report*, 2016, http://www.unaids.org/sites/default/files/media_asset/2016-prevention-gap-report_en.pdf (accessed December 17, 2019).

²⁷³ Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, July 2012, <https://hivlawcommission.org/report> (accessed December 17, 2019).

²⁷⁴ For example, a study in Nigeria found that the passage of the Same Sex Marriage (Prohibition) Act of 2014 in that country was immediately associated with a decrease in HIV-related care seeking among men who have sex with men. Dr. Sheree R. Schwartz et al., “The Immediate Effect of the Same-Sex Marriage Prohibition Act on Stigma, Discrimination, and Engagement on HIV Prevention and Treatment Services in Men Who Have Sex With Men in Nigeria: Analysis of Prospective Data from the TRUST Cohort,” *The Lancet* 2 (2015), accessed December 17, 2019, doi:10.1016/S2352-3018(15)00078-8.

²⁷⁵ The African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21.L.M. 58 (1982), entered into force October 21, 1986, acceded to by Tanzania on February 18, 1984, art. 11.

Similarly, under article 22 of the International Covenant on Civil and Political Rights, to which Tanzania is a party, any restrictions to the right to freedom of association must be “necessary in a democratic society,” and “in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Article 2 of the covenant requires countries to adhere to all the rights in the covenant, including freedom of association, without discrimination.²⁷⁶

Tanzanian authorities’ raids of workshops and meetings, suspension of civil society organizations, and attempts to dictate on what issues they can and cannot work cannot be justified as necessary protections for public safety, public health, morals, or the rights of others.

In addition, these abusive practices compromise the right to health. As the African Commission on Human and Peoples’ Rights in its report on HIV and the law points out:

In the context of HIV, freedom of association is necessary to ensure that civil society organisations that work on HIV or with key populations can form and operate effectively. Civil society organisations perform an important role in implementing and supporting activities such as assisting people with HIV, promoting legal reform, combating discrimination and stigma, and preventing HIV transmission. Any restrictions on the freedom to associate must be necessary, proportionate and for a legitimate reason. Organisations working in the area of HIV through service delivery, education, legal reform, advocacy—or those working with key populations—must be allowed to register, fundraise and operate freely without interference or fear. Restrictions on the ability to form an association can have a significant effect on civil society organizations and, by extension, the HIV epidemic.²⁷⁷

²⁷⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Tanzania on June 11, 1986, arts. 2, 22.

²⁷⁷ African Commission on Human and Peoples’ Rights, *HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses*, https://www.unaids.org/sites/default/files/media_asset/HIV_Law_AfricanHumanRightsSystem_en.pdf, para 87.

The Right to Privacy

The criminalization of same-sex conduct between consenting adults in private violates the right to privacy and the right to freedom from discrimination, both of which are guaranteed under the International Covenant on Civil and Political Rights (ICCPR) to which Tanzania is a party.²⁷⁸ To arrest someone on the basis of consensual same-sex conduct between adults in private is a violation of the prohibition on arbitrary detention.²⁷⁹

Article 16 of Tanzania's Constitution also protects the right to privacy.²⁸⁰ No one has ever brought a case before a Tanzanian court that tests this provisions' applicability to private sexual conduct, but a court could find that laws banning same-sex conduct between consenting adults are unconstitutional.

The Right to Non-Discrimination

The African Commission on Human and People's Rights found as far back as 2006 that discrimination on the basis of sexual orientation violates non-discrimination provisions in the African Charter on Human and People's Rights.²⁸¹ In its Resolution 275 of 2014, the commission further condemned all forms of discrimination on the basis of people's real or imputed sexual orientation and gender identity.²⁸²

Tanzania's constitution also prohibits discrimination. Article 9, "The pursuit of Ujamaa and self-reliance," sets forth:

²⁷⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Tanzania on June 11, 1986. Articles 2 and 26 of the ICCPR affirm the equality of all people before the law and the right to freedom from discrimination. Article 17 protects the right to privacy. See also *Toonen v. Australia*, 50th Sess., Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, April 14, 1994, sec. 8.7.

²⁷⁹ *François Ayissi et al. v. Cameroon*, Working Group on Arbitrary Detention, Opinion No. 22/2006, U.N. Doc. A/HRC/4/40/Add.1 at 91 (2006), para. 20, on file with Human Rights Watch.

²⁸⁰ Constitution of the United Republic of Tanzania, art. 16.

²⁸¹ See the African Commission on Human and People's Rights, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, sec. 169, AHRLR 128 (ACHPR 2006); African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, acceded to by Tanzania on February 18, 1984, art. 2.

²⁸² African Commission on Human and People's Rights, Resolution 275, "Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity," adopted in 2014, <https://www.achpr.org/sessions/resolutions?id=322> (accessed December 17, 2019).

[T]he state authority and all its agencies are obliged to direct their policies and programmes towards ensuring... that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights... [and] that all forms of injustice, Intimidation, Discrimination, corruption, oppression or favoritism are eradicated.²⁸³

Article 13 of the Constitution provides for equal protection before the law and prohibits the government from enacting discriminatory laws.²⁸⁴

The Right to Be Free from Ill-Treatment

Doctors in both Dar es Salaam and Zanzibar have, under orders of police, subjected men and trans women suspected of homosexuality to forced anal examinations. Forced anal exams constitute a form of cruel, inhuman, and degrading treatment that can in some cases rise to the level of torture.²⁸⁵ Some of the people Human Rights Watch interviewed said that they experienced the exams as a form of sexual violence, and in Human Rights Watch's view, they amount to acts of sexual assault.

The UN Committee on Torture first expressed concern about the practice of conducting forced anal examinations with regard to Egypt, in 2002.²⁸⁶ The UN Working Group on Arbitrary Detention maintains that, "forced anal examinations contravene the prohibition of torture

²⁸³ Constitution of the United Republic of Tanzania, art. 9. Use of capitalization in the quoted section follows the original.

²⁸⁴ *Ibid.*, art. 13.

²⁸⁵ Tanzania is among a small minority of countries that have not ratified the Convention against Torture and other Cruel, Inhuman and Degrading Treatment. However, Tanzania is party to other treaties that prohibits torture as well as other cruel, inhuman or degrading treatment or punishment. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Tanzania on June 11, 1976, art. 7; The African Charter on Human and Peoples' Rights also expressly prohibits torture, cruel, inhuman or degrading punishment and treatment. African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, acceded to by Tanzania on February 11, 1984, art. 5.

²⁸⁶ Committee against Torture, "Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and recommendations of the Committee against Torture, Egypt," CAT/C/CR/29/4, December 23, 2002, <http://www.refworld.org/docid/4f213bf92.html> (accessed December 16, 2019, para. 6(k)).

and other cruel, inhumane and degrading treatment, whether ... they are employed with a purpose to punish, to coerce a confession, or to further discrimination.”²⁸⁷

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has called on states to ban forced anal examinations.²⁸⁸ Twelve UN agencies condemned the exams in a September 2015 statement on anti-LGBT violence.²⁸⁹ The UN Special Rapporteur on Torture has described forced anal examinations as “intrusive and degrading”²⁹⁰ and as a “practice that is medically worthless and amounts to torture or ill-treatment.”²⁹¹

The African Commission on Human and Peoples’ Rights, through its Committee on the Prevention of Torture in Africa (CPTA), has called on states parties to:

Ensure that torture or ill-treatment is not perpetrated on individuals on account of sexual orientation or gender identity. In particular, States should forbear from adopting policies or legislation whose effect may be to encourage perpetration of torture or ill-treatment on the basis of such characterisation by State agencies or private individuals or other entities.²⁹²

²⁸⁷ UN Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.1, opinion no. 25/2009 (Egypt), March 2, 2011, p. 20, paras. 24, 28-29, http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.1_AEV.pdf (accessed December 16, 2019).

²⁸⁸ Office of the UN High Commissioner for Human Rights, “Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity,” A/HRC/29/23, May 4, 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc (accessed December 16, 2019).

²⁸⁹ ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UNWOMEN, WFP, WHO, and UNAIDS, “Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People,” September 2015, http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF (accessed December 18, 2019).

²⁹⁰ UN General Assembly, “Report of the Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” A/56/156, July 3, 2001, <https://digitallibrary.un.org/record/446206?ln=en> (accessed December 19, 2019), para. 24.

²⁹¹ 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 December 16, 2019), para. 36.

²⁹² Committee for the Prevention of Torture in Africa, Inter-session Activity Report (November 2013 to April 2014) and Annual Situation of Torture and Ill-treatment in Africa Report, Presented to the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights, Luanda, Angola, 28 April to 12 May 2014, <http://www.achpr.org/sessions/55th/intersession-activity-reports/cpta/> (accessed May 23, 2016), para. 47.

The Commission's General Comment No. 4 delineates forced anal examinations as a form of torture.²⁹³

The prohibition against torture is a fundamental principle of international law codified in the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the UN Convention against Torture, all to which Tanzania is party. The prohibition against torture and cruel, inhuman and degrading treatment is absolute and non-derogable. Torture can never be justified under any circumstances.²⁹⁴

²⁹³ African Commission on Human and Peoples' Rights, General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), (adopted at the Commission's 21st Extra-Ordinary Session, held from February 23 to March 4, 2017), <https://www.achpr.org/legalinstruments/detail?id=60> (accessed December 17, 2019).

²⁹⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 1; International Covenant on Civil and Political Rights, art. 4(2).

VII. Acknowledgments

This report was researched by Neela Ghoshal, senior researcher in the LGBT Rights program at Human Rights Watch, and by a consultant in Tanzania who preferred not to be named for security reasons, and was written by Neela Ghoshal. It was edited by Graeme Reid, LGBT Rights director at Human Rights Watch, and Joe Amon, health and human rights consultant at Human Rights Watch. Jael Akinyi Onyango, intern in the Africa division at Human Rights Watch, also contributed to background research for this report.

The report was reviewed by Joseph Saunders, deputy program director, Michael Garcia Bochenek, acting legal advisor, and Oryem Nyeko, Africa division researcher at Human Rights Watch. Jael Akinyi Onyango, intern in the Africa division at Human Rights Watch, also contributed to background research for this report. Stephen Leonelli and George Ayala of MPact Global Action provided external review, as did several Tanzanian LGBT activists.

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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 [REDACTED]

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).

Acting Director, Health and Human Rights Program

Liesl Gerntholtz
Acting Director, Africa Division

Graeme Reid
Director, LGBT Rights Program

CC:
The President's Office
Via Email: ikulu@ikulu.go.tz

The Prime Minister's Office
Via Email: ps@pmo.go.tz

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
Via Email: srhealth@ohchr.org

UNAIDS
Via Email: aidsinfo@unaids.org

The Global Fund to Fight AIDS, Tuberculosis and Malaria
Via Email: info@theglobalfund.org

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,
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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

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

Via Fax: +255 26 2321679
Via Email: km@sheria.go.tz

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.

Annex IV: Health Ministry Statement, October 27, 2016



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. UMMY
MWALIMU ON KEY POPULATIONS HIV SERVICES IN TANZANIA:

27TH OCTOBER, 2016

The HIV prevalence in Tanzania is estimated at 5.1% among adults aged 15-49 years according to the Tanzania HIV and Malaria Indicator Survey (THMIS) 2011/2012. This means that out of 1000 people, 51 are HIV positive. In Tanzania there are estimated 1,400,000 people living with HIV. Out of these 839,574 are currently receiving treatment from about 4000 health facilities which are providing ART in the country as of June 2016.

Most of us are aware that, the Government of Tanzania through the Ministry of Health, Community Development, Gender, Elderly and Children in collaboration with other partners reacted promptly to the epidemic by successfully instituting national programs ranging from prevention of new infections, providing care, treatment and support services for HIV infected individuals and family to mitigate the HIV and AIDS impact.

Despite these and other aggressive prevention strategies, statistics show that HIV infection is still high among certain sub-populations or geographic regions, and

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especially higher among Key and Vulnerable Populations. Key and vulnerable populations vary according to the local situation based on the social and epidemiological context, In the Tanzanian context for HIV response, they normally include:

Vulnerable adolescent girls and young women, adolescents and young people, Orphans and Vulnerable Children, Men who have Sex with Men (MSM) and women who practice anal sex, People who use drugs and specifically those who Inject Drugs (PWID), Sex Workers (SW) and their partners, prisoners, refugees and migrant workers specifically long truck drivers, miners and mining communities, fisher folk and fishing communities, plantation workers, workers at road construction sites and people with disabilities.

There is a clear epidemiological rationale for HIV programmes to focus on key populations. In sub Saharan Africa adolescents and young people aged 15-24 years account for 35% of new infections. Furthermore in Tanzania high HIV prevalence is seen among key population groups (26% among Female Sex workers, 36% among injecting drug users and 25% among men who have sex with other men).

The Government of Tanzania through the Ministry of Health, Community Development, Gender, Elderly and Children started implementing programmes to address HIV burden among Key Populations since 2010 after presence of enough evidence that indicated a disproportionately higher magnitude of HIV among this sub population. The KP services were being offered through the existing health facilities and among the community.

Recently there emerged reports that some of the NGOs, in the name of anti-HIV activities, have been promoting activities towards same sex relationships which is against the law. As a consequence, Hon. Dr. Harrison G. Mwakymbe (MP) the Minister for Constitution and Legal Affairs issued a Government statement that condemned these activities and warned that serious legal action will be instituted against these organizations or institutions.

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The Ministry of Health, Community Development, Gender, Elderly and Children would therefore like to further clarify that it adheres to the best practices and recommendations as advised by the WHO and other International Organizations, but these have to be adapted to the Tanzanian context through stakeholder's consultation, to ensure that they are in accordance to the countries' laws, customs and traditions. This includes being cognizant to the Penal code (CAP 16 R.E 2002).

It is important to remember that the Health Policy as well as HIV Policy in Tanzania are clear that, quality services should be delivered to all in need without any discrimination in terms of gender, tribe, financial situation, race, religious or political affiliation.

After the emergence of various challenges in the provision of health and HIV services among Key populations, I convened a stakeholders meeting on 13th October 2016 with the aim of clarifying some key and important issues pertaining to the provision of these services considering the Public health Approach. The following therefore are my Ministry's stand and directives on HIV programming among KP's:

1. The Government will effectively continue to collaborate with all stakeholders in the provision of quality health services and interventions against HIV and AIDS which are internationally acceptable but which are in line with the country's laws, traditions and customs.
2. The Government through the Ministry of Health, Community Development, Gender Elderly and Children will continue to provide health and HIV services without any discrimination in terms of gender, tribe, financial status, race, religious or political affiliation.
3. In view of the high HIV prevalence among KP groups, the Government through the Ministry of Health, Community Development, Gender, Elderly and Children will

continue to offer a package of health and HIV services, soon to be reviewed, and incorporated into the Comprehensive HIV services for Key and Vulnerable populations

4. The definition of Key Populations shall remain broad and reflective of the Tanzanian context and this should be reflected in the services/interventions, which will be implemented by partners who support the Government in this area.
5. Each stakeholder should provide the services in accordance to the country's laws, including the Penal code (CAP 16 R.E 2002). Further, all NGOs working in HIV programming for Key populations should adhere to their memorandum of association/constitutions as per the NGO act No. 24 of 2002 and its code of conduct.
6. Health facility KP programs will continue to be implemented for all key populations and vulnerable populations. **However, community MSM peer outreach activities and MSM Drop in Centers will await development of a standardized package of HIV services within the community.** In addition, outreach services conducted by health care workers from a health facility will continue to be provided as stipulated in the HIV guidelines. The MoHCDGEC strongly encourages HIV service linkage and referral to a nearby health facility for continuum of care. Details of implementation procedures for this directive will be availed by the Ministry within a week's time.
7. Due to an increase in the number of partners who provide support in the area of KP HIV services, and the mobile nature of these KP groups, there has been overlapping and duplication of services given to these groups, and as such quality of services may be compromised. In order to bring about efficiency, accountability and transparency, **the Chief Medical Officer will lead the process of reorganizing partners who provide such support in the regions across the**

country.

8. All the CSOs working on HIV and AIDS under the Councils should be accredited by the respective Councils before they can be allowed to work with an international NGO. In other words, the International NGOs will receive the list of accredited local CSOs from the respective councils/districts. An MOU on implementation arrangement shall be drawn among these three parts; that is the International NGO, the local CSO and the respective Councils or Districts. A copy of the MOU should be shared with the MoHCDGEC's (Community Development/NGOs Department) and TACAIDS.

9. In the meantime, water based lubricants will not be allowed to be employed as an HIV intervention. 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. Should it ultimately be acceptable, the Government will consider integrating its procurement and distribution system along with that for the other health commodities.

I THANK YOU VERY MUCH

Annex V: World Bank Statement on Lifting the Suspension of Missions to Tanzania, November 20, 2018



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STATEMENT | NOVEMBER 20, 2018

World Bank Statement on Lifting the Suspension of Missions to Tanzania



WASHINGTON, November 19, 2018 — During a meeting between His Excellency President John Pombe Magufuli and the World Bank's Vice President for Africa, Hafez Ghanem, the President assured the Bank that Tanzania will not pursue any discriminatory actions related to harassment and/or arrest of individuals, based on their sexual orientation.

As a member country of the World Bank Group, Tanzania endorsed the Bank's new Environment and Social Framework (effective October 2018), that strengthens the Bank's commitment to social inclusion of vulnerable and disadvantaged people and non-discrimination on the grounds of their age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, indigenous heritage and economic status.

Given the assurances by the Tanzanian authorities, and following an internal security assessment, the World Bank's management, in consultation with its staff in the country, and other development partners, has decided to lift the suspension on missions to Tanzania, while at the same time carefully monitoring the situation to assess the prevailing circumstances, and take the appropriate actions.

The World Bank believes in empowering all people to participate in, and benefit from, the development process; and that eliminating discrimination, including against lesbian, gay, bisexual, transgender, and intersex (LGBTI) people, is critical to ensuring sustained, balanced and inclusive economic growth in all societies.

“If We Don’t Get Services, We Will Die”

Tanzania’s Anti-LGBT Crackdown and the Right to Health

“If We Don’t Get Services, We Will Die” documents the ongoing attack on the rights of lesbian, gay, bisexual, and transgender (LGBT) people in Tanzania under President John Magufuli. The right to health is particularly at risk.

Authorities in both mainland Tanzania and Zanzibar have raided private meetings, workshops, and trainings held by LGBT organizations and other groups working on health and rights. Police have arrested men on homosexuality charges and subjected them to forced anal examinations, a form of torture.

Since 2016, the Health Ministry in mainland Tanzania has prohibited community-based organizations from conducting outreach on HIV prevention to men who have sex with men. It closed drop-in centers providing HIV testing and other targeted and inclusive services, and banned the distribution of personal lubricant, saying that specialized services promote homosexuality. Claiming that public health centers provide discrimination-free services, it has also argued there is no need for civil society organizations to be involved. Human Rights Watch found, however, that discrimination on the basis of sexual orientation and gender identity in government health centers is common.

The report calls on the Magufuli government to prioritize responsible health measures and end its attacks on the rights of LGBT people. The government should ban forced anal examinations, end arbitrary arrests, and reform health policies so that they are based on evidence, not prejudice.



A gay man with HIV in a clinic in Dar es Salaam, Tanzania, November 16, 2016. Due to the government's crackdown on the gay community, the man had been afraid to pick his medicine up for two weeks in spite of the risks to his health.

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