HUMAN RIGHTS COUNCIL
Universal Periodic Review Working Group
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Review of
UNITED REPUBLIC OF TANZANIA

Submission from: Canadian HIV/AIDS Legal Network and Women's Legal Aid Centre[1]
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Introduction

1. In 2001, the HIV epidemic in Tanzania was declared a "national disaster" by the Tanzanian government at the launch of its first National HIV & AIDS Policy. Since then, the government has taken various steps to address HIV, including with the formulation of a second national policy on HIV.[2] However, as the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) noted in its 2008 Concluding Observations to Tanzania, the country continues to face "a serious epidemic, especially among young women in their childbearing years", and "current policies and legislation do not adequately take into account gender-specific vulnerabilities and do not adequately protect the rights of women and girls affected by HIV/AIDS."[3] Correspondingly, the second draft *National HIV and AIDS Policy* (*Draft Policy*) violates various rights of people living with HIV and does not adequately address the rights of sexual minorities, sex workers, people who inject drugs and prisoners.

Women and girls

2. Among the CEDAW Committee's recommendations were that the government "clearly and visibly" integrate a gender perspective in its policies and programmes on HIV/AIDS.[4] In particular, the CEDAW Committee urged Tanzania to harmonize civil, religious and customary law and engage in law reform in the area of marriage and family relations to ensure consistency with articles 15 and 16 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (*CEDAW*). More specifically, the Committee recommended amendments to Tanzania's *Marriage Act* to ensure that it establishes 18 as the legal minimum age for marriage for both girls and boys.[5] Similarly, the Human Rights Committee has stated its concern about the persistent pattern of discrimination against women in the area of personal and family laws, relating to marriage, succession and inheritance, and recommended law reform specifically with respect to the minimum age of marriage for women.[6]

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[1] Information about these organizations is annexed to this report.
[2] *Combined initial, second and third periodic reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, United Republic of Tanzania, 25 August 2009.
[3] CEDAW Committee, *Report of the Committee on the Elimination of Discrimination against Women on its forty-first session, Chapter IV Consideration of reports submitted by States parties under article 18 of the Convention*, A/63/38 (2008) at para. 138.
[4] Ibid at para. 139.
[5] Ibid at paras. 146-147.
[6] Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations on the United Republic of Tanzania*, CCPR/C/TZA/CO/4, 6 August 2009 at para. 9.

3. While the *Draft Policy* acknowledges the need for law reform in relation to "inheritance, access to property and child custody in the context of HIV and AIDS", it is overly vague with respect to the specific necessary legal amendments.

Recommendation to the Government:

4. Based on consultations involving the meaningful engagement of women and networks of people living with HIV, pass legislation establishing a legal minimum age of 18 for marriage for boys and girls, and amend or repeal all customary, religious and civil laws that permit discrimination towards women with respect to marriage, property (including marital property), inheritance and child custody.

HIV Disclosure

5. The *International Guidelines on HIV/AIDS and Human Rights* ("*International Guidelines*") provide specific criteria for health care professionals to consider prior to disclosing the HIV-positive status of a patient.[7] These criteria are crucial to maintain the privacy of people living with HIV, who continue to suffer stigma and discrimination in Tanzania. However, the *Draft Policy* encourages "shared confidentiality", referring to the disclosure of an individual's HIV status to colleagues, in hospital settings, work places, marriage or partner settings and other settings as "may be deemed appropriate."

6. The notion of shared confidentiality is so permissive that it has the potential to violate HIV-positive people's right to privacy. There have already been anecdotal reports of physicians disclosing their patients' HIV status to prospective employers (without their patients' consent), who make a hiring decision on that basis.[8] Shared disclosure also poses a risk of violence for HIV-positive women, given numerous reports of violence experienced by HIV-positive women after disclosing their health status to their partner. Shared confidentiality should be emphasized as the exception to the rule that the results of an HIV test only be shared with the individual who was tested. Therefore, the *Draft Policy* should provide more direction on when health professionals and other service providers are permitted to disclose one's HIV status.

Recommendations to Government:

7. The *Draft Policy* should provide specific criteria for health professionals to disclose patients' HIV-positive status to others, in line with the criteria provided in the *International Guidelines*, which stipulate that a decision to disclose should be made as follows:

    - The HIV-positive person in question has been thoroughly counseled;
    - Counseling of the HIV-positive person has failed to achieve appropriate behavioral changes;
    - The HIV-positive person has refused to notify, or consent to the notification of his/her partner(s);
    - A real risk of HIV transmission to the partner(s) exists;
    - The HIV-positive person is given reasonable advance notice;
    - The identity of the HIV-positive person is concealed from the partner(s), if this is possible in practice;
    - Follow-up is provided to ensure support to those involved, as necessary.

[7] *International Guidelines on HIV/AIDS and Human Rights* 2006 Consolidated Version, UNAIDS and the Office of the United Nations Commissioner for Human Rights (*International Guidelines*), Guideline 3, s. 20(g).
[8] *Workshop on National HIV/AIDS Policy*, Sea Cliff Hotel, Dar Es Salaam, Tanzania, February 2-3, 2011.

8. The government shall provide training to all health professionals on their obligation to maintain patient confidentiality. At a minimum, the *Draft Policy* should recommend that shared confidentiality is limited to situations where there is a real risk of HIV transmission.

Criminalization of HIV transmission, sex work and sexual minorities

9. The *International Guidelines* recommend that specific laws not be created to address the intentional transmission of HIV and that existing criminal offences be applied to such cases.[9] However, Section 47 of Tanzania' *HIV and AIDS (Prevention and Control) Act, 2008* criminalizes any one who "intentionally transmits HIV to another person" and stipulates a minimum term of five years' imprisonment upon conviction. People living with HIV have expressed concern regarding the potential scope of this section and how it may contribute to their further marginalization or unjust criminalization. Such broad language may also result in the unintended criminalization of some instances of transmission, encompassing for example vertical transmission, in spite of a mother taking precautions to protect her child from infection.

10. The *International Guidelines* also recommend the decriminalization of consensual sex between adults, including "sodomy, fornication and commercial sexual encounters".[10] Moreover, in its Concluding Observations of 2009, the Human Rights Committee recommended that Tanzania "decriminalize same-sex sexual relations of consenting adults and take all necessary actions to protect them from discrimination and harassment."[11] While the *Draft Policy* acknowledges anal sex as a potential route for HIV transmission, it stops short of linking the criminalization of homosexuality with the stigma and discrimination that sexual minorities experience and their resulting vulnerability to HIV. Similarly, the *Draft Policy* notes that sex work poses a risk of HIV transmission and that sex workers' ability to protect themselves from HIV is limited, but does not link the criminalization of sex work with barriers sex workers face in accessing HIV-related education, testing, treatment and support.

Recommendation to the Government:

11. In collaboration with people living with HIV, the government will facilitate discussions on the criminalization of intentional HIV transmission with a view to clarifying and limiting what will be captured by the law. Based on meaningful consultations with individuals and organizations involved in promoting the rights of sexual minorities and of sex workers, the government will repeal laws criminalizing consensual sex between adults, including homosexuality and commercial sex work, and develop policies, laws and campaigns to address stigma and discrimination against sexual minorities and sex workers.

People who inject drugs and prisoners

12. The *Draft Policy* notes a growing population of people who inject drugs in Tanzania, and the fact that injecting with non-sterile equipment can lead to HIV infection, and accordingly

[9] *International Guidelines*, Guideline 4, s. 21(a).
[10] *International Guidelines*, Guideline 4, ss. 21(b) and (c).
[11] Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations on the United Republic of Tanzania*, CCPR/C/TZA/CO/4, 6 August 2009 at para. 22.

recommends programs for the "social integration" of injection drug users, methadone substitution and needle exchange therapy. However, in light of the fact that an estimated 40 percent of people who inject drugs are infected with HIV, and that methadone substitution therapy has already been introduced in Tanzania, such programs should be urgently scaled-up, rather than merely developed.[12]

13. The prevalence of HIV in prisons is also of great concern. According to a report by the Legal and Human Rights Centre in 2009, approximately 9.2 percent of the prison population in Tanzania is infected with HIV, a prevalence rate several times higher than the national average.[13] In spite of this, the *Draft Policy* only recommends "basic HIV and AIDS information" for prisoners, despite the possibility for HIV transmission in prison through sex or injection drug use. This is inconsistent with the *International Guidelines*, which recommend that prison authorities should provide prisoners with access to an array of HIV prevention measures, including condoms, bleach and sterile injection equipment.[14]

Recommendations to Government:

14. In meaningful consultation with health care providers and people who use drugs, the government shall introduce comprehensive harm reduction measures across the country, including needle and syringe programs and opiate substitution therapy, and scale up existing harm reduction initiatives. In addition to condoms, the government shall ensure that prisoners also have access to harm reduction measures that are equivalent to what is available in the community, and that all prisoners living with HIV have access to HIV treatment at no user fee.

[12] D. McNeil Jr., "Addiction: A First in Sub-Saharan Africa: Methadone Maintenance Program," *New York Times*, February 21, 2011.
[13] Legal and Human Rights Centre, *Tanzania Human Rights Report 2009 Incorporating a Specific Part on Zanzibar*, p. 170 accessible at http://www.humanrights.or.tz/wp-content/uploads/2010/10/Tanzania-Human-Rights-Report-2009.pdf
[14] *International Guidelines*, Guideline 4, s. 21(e).

Annex

This submission was prepared by the Canadian HIV/AIDS Legal Network (www.aidslaw.ca), a non-governmental organization with Special Consultative Status with the Economic and Social Council of the United Nations, whose mission is to promote the human rights of people living with and vulnerable to HIV/AIDS through research, legal and policy analysis, education and community mobilization. The Canadian HIV/AIDS Legal Network was founded in 1992 and federally incorporated in 1993 as a not-for-profit organization with charitable registration.

The Women's Legal Aid Centre (www.wlac.co.tz/) is a non-governmental human rights organization striving to promote and protect the rights of women and children by helping to bring about gender equality in Tanzania through legal aid, legal research and networking, publications and outreach programmes. The Women's Legal Aid Centre was registered in 1994, before which it existed as the SUWATA Legal Aid Scheme, a legal aid clinic for women operating under the umbrella of Tanzania's Women Economic Wing.