

**Universal Periodic Review of Tanzania
39th Session
October - November 2021
Joint Stakeholder Submission**

An anonymous human rights defender from Tanzania

and



The Southern Africa Litigation Centre
1 Hood Avenue, Rosebank, 2196, Johannesburg, South Africa
PO Box 52250 Saxonwold 2132 South Africa
T: +27 (0) 10 596 8538
www.southernafricalitigationcentre.org
Contact person: amandas@salc.org.za

The Southern Africa Litigation Centre (SALC) is a regional non-governmental organisation which was established in 2009. SALC promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation support.

and



The Sexual Rights Initiative
Rue de Monthoux 25, Geneve, 1201
www.sexualrightsinitiative.com
Contact person: carrie@srigeneva.com

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

Key Words: sex work; sex workers' rights; right to health; criminalization of sex work; sexual and reproductive health and rights

Executive Summary

1. During the last UPR cycle, Tanzania received 65 recommendations related to sexual and reproductive health and rights, out of which only 35 were accepted. The government's disregard towards ensuring and protecting rights of people living in Tanzania is apparent from the rejection of almost half of the recommendations made to the state. These rejected recommendations included the following, and no explanation was provided for the rejection:
 - Combat 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 (137.66, Norway)
 - Adopt specific legislation to ensure equality of women in the family and in social, economic and political spheres (137.34, Spain)
 - Ensure amendment of the relevant laws to adequately address issues of domestic violence and spousal abuse and to ensure prosecution of all alleged perpetrators (137.40; Uganda).
2. For the recommendations that were accepted, Tanzania has failed to fully implement all of them. Tanzania has made little progress in improving people's lived realities in relation to health, violence and sexual and reproductive health and rights, especially for sex workers.
3. The manner in which activities related to sex work is criminalized and regulated in Tanzania, especially for female and LGBTQI persons, is a profound violation of sex workers' human rights including the rights to life health, non-discrimination, self-determination, privacy, freedom of association, to be free from violence, labour protections and access to justice. This submission addresses the following areas of concern: criminalizing laws; treatment by the police; violence and stigma; and access to health services.

Legal Context

4. Tanzania inherited a penal code with colonial "morality" laws to police the bodies of people living in Tanzania, including through vagrancy laws. These laws have remained unchanged and criminalise most aspects of sex work, completely denying sex workers' right to bodily autonomy and the choice to make decisions about their lives, profession and bodies. The Penal Code sections 139, 145 -148 176, 176A and 177 list offences related to sex work including, procuring; keeping a "brothel;" living on earnings of "prostitution;" "loitering or soliciting in a public place for the purposes of prostitution;"¹ Sex workers in Tanzania face significant risks to their safety, health, and human rights as a result of the criminalization of sex work.
5. Recently, there has been a positive development on ambiguous language in legislation used against sex workers. On 24 July 2019, 24 sex workers were arrested overnight. Their photos and charges were subsequently shared by police on social media whilst they were still in custody. After a few court appearances the prosecution withdrew the matter. The sex workers were charged under the idle and disorderly offence of being a "every common prostitute behaving in a disorderly or indecent manner in any public place or loitering or soliciting in any public place for the purpose of prostitution;" and the rogue and vagabond offence of being found without a means of subsistence and unable to give good account of themselves. The first offence is an archaic status-based offence,

¹ See: <https://www.refworld.org/docid/3ae6b5de0.html>

whilst the constitutionality of the latter offence was the subject of the successful decision obtained at the African Court in December 2020.²

6. In an Advisory Opinion delivered by the African Court on Human and Peoples' Rights in December, the Court considered the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa. The African Court considered a range of different offences throughout Africa which criminalize the status of a person as being without a fixed home, employment or means of subsistence; as being a suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of him or herself; or as being idle and who does not have a visible means of subsistence and cannot give a good account of him or herself.³ These offences are loosely described as vagrancy laws.

Section 177 of Tanzania's Penal Code deals with Rogues and vagabonds and criminalises the following persons-

(3) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;

(4) every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is therefore an illegal or disorderly person.

Section 28 of Tanzania's Criminal Procedure Act further provides that Any officer in charge of a police station may in like manner arrest or cause to be arrested:

(b) any person within the limits of such station who has no ostensible means of subsistence or who cannot give satisfactory account of himself.

7. The African Court declared the above provisions contrary to the African Charter and ordered states to immediately take measures to repeal them. The Court noted that these provisions effectively punished the poor, including sex workers⁴ and had a discriminatory effect on marginalised persons in society, violating their right to equal treatment before the law and their right to development in the Maputo Protocol.⁵ The Court further affirmed the principle that any offence which has the effect of criminalising the status of an individual, is contrary to the African Charter. This then also means that the idle and disorderly offence of being a "common prostitute" ought to be repealed.⁶

8. The African Court explained:

² Request for an Advisory Opinion by the Pan African Lawyers Union (PALU) on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa, No 001/2018, Advisory Opinion, African Court on Human and Peoples' Rights, 4 December 2020.

³ Refers to the laws of Central African Republic, Ethiopia, Eritrea, Mauritius, Sierra Leone, Sudan and South Sudan.

⁴ Para 70.

⁵ Para 73. "The Court further recalls that the right to equality before the law requires that 'all persons shall be equal before the courts and tribunals. Equal protection of the law, the Court observes, presupposes that the law protects everyone, without discrimination. Where different treatment is meted to individuals based on their status, as is the case with the application of vagrancy laws, it is clear that individuals are denied the equal protection of the law. The Court, therefore, agrees with the Commission that laws with discriminatory effects towards the marginalized sections of society are not compatible with both Articles 2 and 3 of the Charter."

⁶ Para 75. "In light of the above, the Court holds that vagrancy laws, both in their formulation as well as in their application, by, among other things, criminalizing the status of an individual, enabling the discriminatory treatment of the underprivileged and marginalized, and also by depriving individuals of their equality before the law are not compatible with Articles 2 and 3 of the Charter. The Court also finds that arrests for vagrancy-related offences, where they occur without a warrant, are not only a disproportionate response to socioeconomic challenges but also discriminatory since they target individuals because of their economic status."

“... vagrancy laws effectively punish the poor and underprivileged, including but not limited to the homeless, the disabled, the gender-nonconforming, sex workers, hawkers, street vendors, and individuals who otherwise use public spaces to earn a living. Notably, however, individuals under such difficult circumstances are already challenged in enjoying their other rights, including more specifically their socio-economic rights.”

9. This approach was also adopted by the African Commission on Human and Peoples’ Rights in its Principles on the Decriminalisation of Petty Offences which defines “vulnerable persons” as “persons who are marginalised in society and the criminal justice system because of their status, or an intersection of one or more statuses.”⁷

Treatment by the Police

10. During the previous cycle, despite accepting the following recommendation, Tanzania has failed to harmonize its legislation and the behaviour of public officials with human rights instruments:
 - Undertake a global revision of its national legislation in order to harmonize it with human rights instruments to which Tanzania is party, with a view to guaranteeing gender equality (134.12, Honduras).
11. Police often arbitrarily arrest, extort money, physically and sexually abuse, and return sex workers to the streets. Arbitrary arrests are part and parcel of the life of sex workers in Tanzania. Police create false charges to arrest sex workers, ranging from selling of marijuana, indecent behaviour, loitering, and even insulting a police officer. No official procedure is followed: sex workers are treated completely arbitrarily by different police officers, at different police offices, and even in different encounters with the same police officers. If sex workers were arrested based on proper charges, they would have at least some clarity on the legal process that would follow. Arbitrary arrests and false charges keep sex workers insecure while doing their work and keep them on guard at all times.
12. The practice of police arresting someone solely because they are known as a sex worker or if they have the “look” of one, violates prohibitions on arbitrary arrest in the Constitution of Tanzania, and articles 4 and 6 of the African Charter on Human and People’s Rights.
13. Police officers arrest sex workers to extort money and valuables. They have essentially made sex workers a source of income. After arrest, they demand payment/bribes, and failure to pay them results in detention at the police office. Sex workers use the Swahili slang word “kupasasa” to describe these bribes, meaning to take away money or anything valuable someone has in a moment. Sex workers have reported that the police search everywhere for money and valuables including in their houses and even on their body. Sex workers have no remedy for confiscation of their property or money.
14. Sometimes these bribes are framed as fines associated with criminal activities. However, the amount is arbitrarily decided during arrest, custody and even at city courts. A sex worker reported that she

⁷ Principles at para10. “Vulnerable persons are persons who are marginalised in society and the criminal justice system because of their status, or an intersection of one or more statuses. This includes, but is not limited to, the economically or socially marginalised, including persons living in poverty, homeless persons, street children, beggars, older persons, persons marginalised on the basis of sexual orientation or gender identity, key populations, persons with disabilities, street traders and vendors.”

has been arrested without cause several times, and she has been subjected to payment of bribes and fines each time. During one month, she was arrested 5 times and had to pay a total of 700,000 shillings (~300 USD) in fines. This continues to be a disturbance to her work and her finances – all the money she earns from her work ends up with police officers. Sex workers are also taken to smaller police posts to be extorted for “fines,” instead of police stations where proper legal procedure might be followed. Sex workers’ detention can also range from 5 days to 5 months without being presented to the court. During custody, sex workers are also denied access to necessary health care, including antiretrovirals.

15. Police officers verbally, physically and sexually abuse sex workers. As there are no legal remedies for sex workers to access justice, police officers have free reign to beat sex workers, demand “free” sex in exchange for release after arrest, or rape them. Another sex worker reported that since she has started working, she has faced a lot of humiliation from the police. She has been arbitrary arrested for more than a hundred times, and she has permanent bruises on her body particularly on her neck from police assaults.
16. Police officers also fail to acknowledge and investigate cases of violence inflicted by sex workers’ clients or others. In most cases, police officers even deny access to Police Form No. 3, which they are obligated to issue for purposes of medical examinations following cases of physical or sexual assault. This is alarming as over 30% of sex workers have reported experiencing violence at the hands of their clients.

Violence and Stigma

17. During the previous cycle, Tanzania accepted the following recommendations:
 - Adopt legislative and policy measures to combat all forms of discrimination and violence against women (134.14, Italy)
 - Continue to promote women's rights and integrate the gender dimension in economic and social development programmes (134.122, Senegal)
18. The discrimination and stigma associated with sex work impacts every sphere of sex workers’ life. Not only do they struggle to work safely and consistently, they are also mistreated and not provided proper service at public institutions, including outright rejection for loan applications at banks. Female sex workers are not considered for community-based opportunities provided by the government, including for the 4% of funds available for women in each municipality. Sex worker are rejected directly and indirectly due to their work; one of them shared her experience: “we just see other women are being called in the development meetings and introduced to the available women development opportunities, but we have been neglected in those meetings and opportunities, this really makes us feels as we are not like other women and not part of the general community.”
19. Tanzania is a religious country and churches and mosques have solidified the morality judgement that sex work is sinful. Stereotypes about sex workers are also widely accepted, including sex workers being immoral, spreading HIV, spreading COVID-19, and generally getting blamed for anything that goes wrong in the community. Even in music videos, sex workers are always portrayed in a negative way, with lyrics describing sex work as “poison on their [sex worker’s] body.” Government officials have made public statements condemning sex workers and that they spread HIV and need to be arrested.
20. In a case from 2019, where 22 sex workers were arrested and presented to court, the judge stated that the sentence would be a lesson to the accused and others “who use their bodies to humiliate

[themselves] and humiliate their parents, relatives and friends in the areas where they come from.” They also told the court that all the accused arrested were young people “who were able to work to earn a living but had been wandering around and others were abusing their bodies.”⁸ In various news articles about this case, all of the accused were listed by their names. The media platforms in the country are notorious for sharing pictures and names of sex workers during and after arrests, “outing” sex workers to their communities.

21. Sex workers also aren’t able to access safe and permanent housing. Even if sex workers are good tenants, landlords refuse to accept rent money as it is associated with sex work. Local governments enforce these sentiments through public promises of “cleaning up” their areas by evicting sex workers. Even in local “citizen meetings,” the issue of living around sex workers and members of the LGBTI community is always raised.
22. The children of sex workers are also targeted and shamed in their schools and communities. For instance, if teachers or parents of other children find out about their profession, often through pictures of arrested sex workers shown on the television, they ostracize and bully sex workers’ children. Children also don’t have much stability growing up due to unpredictable housing arrangements.
23. Because of the stigma associated with sex work, sex workers often find themselves alienated and isolated by members of the communities they live in and their own family members. A sex worker reported being in the hospital and having no relatives visit them as relatives didn’t want their children to be impacted by this association. Sex workers are frequently evicted by landlords, harassed by community members, face profound barriers in access to basic services, and they cannot access justice for any of these violations through the criminal and justice system. LGBTI sex workers, especially transwomen, are severely affected as they not only have to deal with double the stigma associated with LGBTI persons and sex work, but also suffer from the criminalization of both.
24. The government only consults sex workers when there are funding requirements to do so. Sex workers are sometimes invited for consultations but never provided with a platform to share their views and concerns. When it comes to implementation of respective programs, the government uses criminalization of sex work as an excuse to take zero action. It is always a superficial performance to tick a box, with no real engagement.

Access to Health Services

25. During the previous UPR cycle, Tanzania accepted the following recommendation:
 - Continue to take active measures to eliminate gender gaps in human development and gender-based inequalities in reproductive health, empowerment and economic activity (134.42, Namibia)
26. In most parts of the country, sex workers are not able to easily access sexual and reproductive health care, services and information. Although the government and civil society organizations have made big changes to make health care systems accessible for all, the stigma associated with sex work often results in discrimination from health care professions. Implementation of good health policies is poor because of the contradiction created by criminalization of sex work. Sex workers report going to hospitals after being assaulted and being asked to first report the incident to the police before

⁸ See:

https://www.bbc.com/swahili/49512253.amp#aoh=16160548029639&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s

treatment and care can be provided. Sex workers also report of not being able to access certain sexual health services as there is a requirement of bringing in their sexual partners for couples-testing.

27. In addition to discrimination, there is a lack of appropriate services for sex workers. The government has also not clarified if sex workers can equitably access SRHR services without being persecuted, so a general fear of health services is always present. In addition to stigma and discrimination, sex workers, especially LGBTI sex workers are often denied services, “outed” to people, and criticized to “be better.”
28. The government also fails to recognize mental health as a compelling issue for health care. This, along with other SRH issues, are a big problem for the population at large including sex workers. Abortion is illegal in Tanzania. Unsafe abortions contribute to Tanzania’s alarmingly high maternal morbidity and mortality. Although Tanzania recently ratified the African Charter’s Protocol on the Rights of Women in Africa (the Maputo Protocol), which requires the government to “protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus,” the government has not incorporated it into its legislation. Courts have also not provided any clarity or interpretation on this clause.
29. Although there are comprehensive policies for family planning, the need for contraception remains unmet for most people. Tanzania has one of the highest adolescent birth rates in the world, and over 40% of the Tanzanian population is under the age of 15. Access to contraception and comprehensive sexuality education is essential. Currently, Tanzanian schools do not offer sexuality education as a stand-alone, human-rights based subject. Instead, it is integrated into other subjects. There have been recent attempts to provide better sexuality education both by the government and civil society organizations, but these programs lack cohesiveness and consistency across the country.
30. In 2018, the former President of Tanzania, John Magufuli, openly criticized family planning organizations, calling women who used contraception “lazy” and asserted that high birth rates are good for the economy. This type of inconsistent and misleading messaging from government officials needs to be condemned. The country cannot improve its health systems with top government officials disparaging important and essential sexual and reproductive health rights.
31. Organizations supporting sex workers do a lot of advocacy for proper health care. Even for registration purposes, registering as a health care organization is one of the only avenues to set up an organization supporting sex workers.
32. Conditions for the overall health for people in Tanzania, especially sex workers, will not improve unless access to family planning is increased, and scientific, human-rights based sexuality education is disseminated in a consistent fashion across the country. Tanzania also needs to fulfill its obligations under regional and international mechanisms by revising its legislation.

Recommendations

1. Fully decriminalize sex work. Repeal the Penal Code provisions criminalizing acts associated with sex work. Ensure that any other legislation proposed to address or regulate sex work is developed in coordination with sex workers.
2. In line with the decision by the African Court, place a moratorium on the arrest and harassment of sex workers under vagrancy laws and repeal section 177(a) from the Penal Code of Tanzania.

3. Revise and harmonize national legislation with regional and international human rights instruments, including the African Charter on Human and People's Rights and the associated Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.
4. Create mechanisms in consultation with sex workers to eliminate and address unlawful arrests and detention; state-sanctioned violence; and impunity for acts of violence against sex workers. Enact strict non-discriminations laws for protection of sex workers and establish an independent inquiry into cases of killing of sex workers.
5. Create mechanisms in meaningful consultation with sex workers to monitor and provide training for health care workers on human rights-based approach to provision of services. Ensure all health services, including sexual and reproductive health services are available in a confidential, respectful and non-judgmental manner.
6. Increase the roll-out of comprehensive, rights-based, community-led SRHR services in areas and venues known to be places of work for sex workers, ensuring the involvement of sex worker organisations in the design, implementation and evaluation of such services and programmes.
7. Implement scientific, human rights based comprehensive sexuality education as a standalone subject in all schools, and mandate provisions of youth-friendly sexual and reproductive health care and information in all healthcare facilities.
8. Ensure accessible and affordable sexual and reproductive health care, services and information is available for all, without discrimination and persecution for their age, gender identity, sexual orientation and profession.
9. Create spaces for consultation, collaboration, evidence-based research and information sharing by groups supporting the rights of sex workers, for better understanding of their challenges and to strengthen advocacy.