

SITUATION OF FEMALE SEX WORKERS AND LGBTI PERSONS IN RWANDA

**REPORT SUBMITTED BY THE COALITION OF COMMUNITY
BASED ORGANIZATIONS AND CIVIL SOCIETY ORGANIZATIONS
WORKING ON THE RIGHTS OF FEMALE SEX WORKERS AND
LGBTI PERSONS IN RWANDA TO THE HUMAN RIGHTS COUNCIL
AT THE 37th SESSION OF THE UNIVERSAL PERIODIC REPORT**

JUNE
2020

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ABOUT THE COALITION OF LGBTI AND FEMALE SEX WORKERS LED COMMUNITY BASED ORGANIZATIONS AND NATIONAL CIVIL SOCIETY ORGANIZATIONS WORKING ON THE RIGHTS OF FEMALE SEX WORKERS AND LGBTI PERSONS IN RWANDA

The Coalition of LGBTI and Female Sex Workers led community based organizations and Civil Society Organizations working on the Rights of Female Sex Workers and LGBTI Persons in Rwanda (hereinafter the Coalition) is made up of the following Organizations:

- **Health Development Initiative (HDI)**
- **Ihorere Munyarwanda Organisation (IMRO)**
- **Rwanda NGO Forum on HIV /AIDS and Health Promotion (RNGOF On HIV /AIDS HP)**
- **Strive Foundation Rwanda (SFR)**
- **Amahoro Human Respect Organisation (AHR)**
- **My Rights, Safe Friendly Society (SFS)**
- **Horizon Community Association (HOCA)**
- **Building hope future (BH), RIFA, Bright Future Organization (BFO)**
- **Hope and Care (HAC)**
- **Joint Action for Bright Future (JABFA)**
- **Pride Ark Organization (PAO)**
- **Health and Rights organization (HRI)**
- **ABAHUJUMUGAMBI**
- **One for All**
- **INDATWA**
- **ABISHYZE HAMWE**
- **IGITEGO**

1. INTRODUCTION

This report is submitted to the Working Group on the Universal Periodic Report (UPR) with the main objective of providing information on the situation of human rights in Rwanda with a focus on LGBTI persons (Lesbian, Gay, Bisexual, Transgender and Intersex) and Female Sex Workers.

The term “sex workers” is used throughout this report to refer to prostitutes in some of the national documents of Rwanda including laws and policies. Although the previous UPR recommendations made to the Government of Rwanda did not mention any specific recommendation towards the rights of LGBTI, Gender non-conforming persons, and Female Sex Workers, the Coalition believes that this report provides potential grounds for legal reforms, policy changes and other measures aimed at improving the situation of Female Sexual Workers and rights of members of the LGBT Community Rwanda.

2. METHODOLOGY

The drafting of this report was based on data collected from studies, national reports, national documents (including laws, policies, strategic plans, and interviews with some key informants including public and private institutions), Community based organizations led by Female Sex Workers and LGBTI persons and focus group discussions with LGBTI Gender non-conforming persons and Female Sex Workers.

3. SITUATION OF THE RIGHTS OF FEMALE SEX WORKERS AND LGBTI PERSONS IN RWANDA

3.1.1. POSITIVE DEVELOPMENT

Rwanda has made progress in terms of protection and promotion of the rights of Female Sex Workers, LGBTI and Gender non-conforming persons from both the legal and policy framework.

The Coalition welcomes the decriminalization of sex work in 2018.

3.1.2. LEGAL

The Coalition welcomes the decriminalization of sex work in 2018. The Coalition also positively notes the broad prohibition of discrimination in the Constitution of 2003, as revised in 2015 under its article 16. The Coalition also notes the criminalization of discrimination under article 163 of the Law N°68/2018 of 30/08/2018 determining offenses and penalties in general.

3.2.1. LACK OF LEGAL RECOGNITION FOR TRANSGENDER AND INTERSEX PERSONS

3.2.1.1. LEGAL

Although, article 16 of the Constitution of 2003 as revised in 2015 prohibits discrimination, the legal framework does not recognize gender identity for Intersex persons. In this regard, article 44 of the Law N°32/2016 of 28/08/2016 governing persons and family 1 defines sex as the human physiological state of being male or female and article 45 of Law N°32/2016 of 28/08/2016 provides that the sex of a person is the one recorded in his or her birth record.

The Coalition is concerned with the fact that the Law governing family does not provide for sex re-assignment in the birth record. In addition, the identity of sex on official documents such as birth certificate, identification card to name a few does not represent the diversity of gender identities that exist. The lack of legal recognition in relation to gender identity has negative impacts on other laws, policies and programs as explained further in this report.

POLICY, REPORTS AND STRATEGIES

The Coalition is concerned with the omission of Transgender, Lesbians and Intersex Persons in various policies and strategies as policies, reports and strategies tend to adhere to the binary vision of gender as Men and Women. None of the National strategies and policies mentions Transgender and Intersex Persons.

This is the case of the National Gender Policy. The 4th edition of the National Report on Gender and other national documents including statistical yearbooks all fail to include Transgender and Intersex Persons.

3.2.1.2. PRACTICE

It was revealed during the focus group discussion that Transgender and Intersex Persons are compelled to use documents including National Identity Cards which indicate the sex that is different from their gender identity.

3.2.1.3. RECOMMENDATIONS

The Coalition calls upon the Working Group to recommend to the Government of Rwanda:

- To amend article 44 of the Law N°32/2016 of 28/08/2016 with the view of granting legal recognition to Transgender, Intersex persons and gender non-conforming persons.
- To amend article 45 of Law N°32/2016 of 28/08/2016 with the view of enabling Transgender, Intersex Persons and Gender non-conforming persons being registered in official documents as such.
- To review all gender-related strategies and policies with the view that they include Transgender, Intersex persons and gender non-confirming persons.
- To allow changes in official documents including National Identity Cards

3.2.2. STIGMA AND DISCRIMINATION

3.2.2.1. LEGAL

The Coalition takes note of protection of the right to non-discrimination under article 16 of the Constitution.

3.2.2.2. POLICY

We take note of the adoption of the National Policy against delinquency with the vision of achieving a delinquency-free Rwandan society and with the overall objective of reducing the prevalence of delinquency among children, youth and adults through sustainable, homegrown restorative approaches. The National Policy cites prostitution among delinquent conducts.

The Coalition is of the view that National Policy against delinquency fuels stigma towards Female Sex Workers as it equates prostitution (sex work) with delinquency and particularly defines delinquency as any conduct that is against the laws and/or moral standards of Rwandan society

The policy fails to define what constitutes moral standards of Rwandan society. The National Policy against delinquency further states that “indulgence in reckless acts of delinquency such as prostitution may also lead to sexually transmitted diseases such as HIV/AIDS”. It fails to recognize that HIV infection

3.2.2.3. PRACTICE

Focus group discussions with Female Sex Workers and LGBTI persons revealed that they faced stigma from the local leaders, security officials, community, family and religious leaders. A project run by HDI recorded allegations of discrimination against LGBTI Persons and Female Sex Workers.

3.2.2.4. RECOMMENDATIONS

The Coalition calls upon the Working Group to recommend to the Government of Rwanda the following:

- To review the National policy against delinquency to ensure that Female Sex Workers are not considered delinquent.
- To develop a strategy to eradicate stigma against Female Sex Workers and their children, LGBTI Persons and Gender non-conforming persons.

3.2.3. INADEQUATE LEGAL PROTECTION AGAINST GENDER- BASED VIOLENCE

3.2.3.1. LEGAL

Although article 15 of the Constitution of 2003 as revised in 2015 guarantees the right to equal protection for everyone, the Law N°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence does not provide adequate protection for LGBTI persons in relation to gender-based violence as article of this law defines gender-based violence as an act that results in a bodily, psychological, sexual and economic harm to somebody just because they are female or male.

3.2.3.2. POLICY AND STRATEGIES

The Coalition is concerned with the omission of Transgender, Intersex Persons and gender non-conforming persons in the national gender-based violence indicators.

The Coalition is of the view that the exclusion of Transgender and Intersex persons makes statistical data collection on gender-based violence incomplete and thus hinders any design and implementation of strategies to fight gender-based violence from the broader and inclusive perspective



3.2.3.3. PRACTICE

Females Sex Workers and LGBTI Persons reported during the focus group discussion that the main reason they do not file complaints to the police in cases of gender-based violence is due to the perception by the police that they are deviant and therefore such complaints are unlikely to be reported. In 2019, under the project “Empower, Include, Respect: Making human rights work for LGBTI and Sex Worker communities in Rwanda”, HDI recorded 93 cases of allegation human rights violations committed against FSW and 36 cases against LGBTI persons.

The project recorded allegations of physical abuse amounting to 13.8% against LGBTI persons and to 52% against FSWs of the reported cases.

3.2.2.4. RECOMMENDATIONS

The Coalition calls upon the Working Group to recommend to the Government of Rwanda to:

- Amend the Law on Gender-Based Violence with the view of expanding the definition of gender-based violence that includes violence against gender identity and expression.
- Review the National Policy against Gender-Based Violence with the view of including gender identity and expression

- Include LGBTI related issues in the national efforts to combat gender based violence (law and policy)
- Include Transgender , intersex and Gender non-conforming persons among indicators in data collections for research and programming purposes
- Increase efforts in fighting violence committed against FSW and LGBTI.

3.2.4. INADEQUATE ENFORCEMENT OF THE LAW CRIMINALIZING HATE SPEECH TARGETING FEMALE SEX WORKERS AND LGBTI

3.2.4.1. LEGAL

The Coalition commends the Government of Rwanda for criminalizing discrimination including discrimination based on physical appearance as well as incitement to hatred. The Coalition is concerned with the lack of an explicit inclusion of gender identity among the prohibited grounds in terms of discrimination

3.2.4.2. PRACTICE

In focus group discussions with Female Sex Workers and LGBTI Persons, it was revealed that no one has ever been prosecuted for publicly making homophobic statements and derogatory comments on Female Sex Workers. Findings from a baseline conducted in Rwanda revealed that none of the religious leaders has ever being prosecuted for hate speech targeting Female Sex Workers and LGBTI persons despite making such hate speech in public.

The Coalition is further concerned with the lack of data on prosecution of hate speech targeting female sex workers and LGBT persons. among sex workers is due to the unequal relationship between clients and sex workers and also due to sexual violence. Lastly, the policy suggests among its activities to put in place and enforce punitive measures against people engaged in delinquent activities cards after gender re-assignment

3.2.4.3. RECOMMENDATIONS

The Coalition calls upon the Working Group to recommend to the Government of Rwanda to:

- Sensitize law enforcement agencies and officials on their duties to investigate and prosecute persons fuelling hate speech targeting Female Sex Workers and LGBTI persons.
- Develop a strategy to fight against hate speech targeting Female Sex Workers and LGBTI persons.
- Adopt and implement initiatives to change negative public attitudes towards Female sex workers and LGBTI.

3.2.5. ARBITRARY ARREST AND DETENTION

3.2.5.1. LEGAL

The Coalition positively notes the decriminalization of sex work (prostitution) in the Law N°68/2018 of 30/08/2018 determining offenses and penalties in general. This is a positive legal development as the previous penal code criminalized sex work.

However, the Coalition is concerned with the administrative detention of sex workers as article 2 of the Ministerial order N°001/07.01 of 19/04/2018 determining mission, organization and functioning of transit center cites prostitution among deviant acts or behaviors.

Article 15 of the Ministerial order N°001/07.01 of 19/04/2018 provides that a decision related to selection regarding a person admitted into a transit center is taken within a period not exceeding seventy-two (72) hours counted from the time he/she was admitted into the center.

In case the Screening Committee decides that a person has to be rehabilitated in the center for a short period, he/she cannot exceed a period of two (2) months in the center.

The Coalition calls upon the Working Group to recommend to the Government of Rwanda to:

- Sensitize law enforcement agencies and officials on their duties to investigate and prosecute persons fuelling hate speech targeting Female Sex Workers and LGBTI persons.

- Develop a strategy to fight against hate speech targeting Female Sex Workers and LGBTI persons.
- Adopt and implement initiatives to change negative public attitudes towards Female sex workers and LGBTI.

3.2.5.2. PRACTICE

Though the law uses the neutral language in relation to sex workers, in practice female sex workers are the most likely to be detained in Transit centers. Focus group discussions with female sex workers revealed that they are often arrested on suspicion of being “prostitutes” or being denounced as such by the population or local leaders at the community level. The Coalition is further concerned with the negative impact of detention of female sex workers on the livelihood of their children.

The focus group discussions with female sex workers revealed that their children are left unattended without guidance and support when their mothers are detained. In 2019, HDI under the project “Empower, Include, Respect: Making human rights work for LGBTI and Sex Worker communities in Rwanda” recorded 4 cases of allegation of arbitrary arrest committed against Female Sex Workers and 2 cases for LGBTI Persons. The allegations of arbitrary arrests were mostly leveled against District Administration Security Support Organ (DASSO).

3.2.4.3. RECOMMENDATIONS

The Coalition calls upon the Working Group to recommend to the Government of Rwanda to:

- Amend article 2 of the Ministerial order N°001/07.01 of 19/04/2018 determining mission, organization and functioning of transit centers sites with the view of protecting female sex workers and LGBTI persons from arbitrary arrest and detention.
- Investigate cases of arbitrary arrest and detention of female sex workers and LGBTI persons and subsequently prosecute those responsible for arbitrary arrest and detention.

3.2.6. INEFFECTIVE ACCESS TO HEALTH SERVICES

Despite the existence of a policy and legal framework which supports access to health in general, Female Sex Workers and LGBTI persons face particular barriers due to their perceived behavior and physical appearance.

3.2.6.1. POLICIES AND STRATEGIES

The Coalition acknowledges the relevance of the Fourth Health Sector Strategic Plan 2018-2024 which sets out the national strategic direction for the health sector in order to improve health standards of Rwandans. However, the Fourth Health Sector Strategic Plan does not make any specific mention of LGBTI persons or their health needs.

The Coalition is concerned with the exclusion of members of the Transgender persons from the National Guidelines for Prevention and Management of HIV and STIs as these Guidelines for Prevention and Management of HIV ad STIs recognize only Key Population in the context of HIV stating that key populations are defined as female sex workers and their clients, men who have sex with men, vulnerable youth (young women 15-24 years) and sero-discordant couples as key populations in the context of HIV prevention and response.

Lastly, the National Guidelines for Prevention and Management of HIV and STIs fail to recommend non-judgmental HIV testing for Female Sex Workers as the guidelines suggest that MSM, including those with HIV infection, should routinely undergo non-judgmental STI/HIV

risk assessment and client-centered prevention counseling to reduce the likelihood of acquiring or transmitting HIV or other STIs.

3.2.6.2. PRACTICE

Interviews with key informants and focus group discussions revealed that transgender persons faced the shortage of specialized hormonal treatment including medication as such medication is not available in pharmacies and those with financial means had to buy hormonal medication from abroad.

It was also revealed by Female Sex Workers during a focus group discussion that they are compelled by health professionals to be accompanied by their spouses when attending pre-natal consultations at health centers. They are left with two options, either hire a stranger or obtain a document from the local leaders, which indicates that the pregnant woman is single. Lastly, Female Sex Workers reported during the focus group discussion that they often face stigma from when seeking services at health facilities.

3.2.6.3. RECOMMENDATIONS

- Review the National Guidelines for Prevention and Management of HIV and STIs to ensure that needs of Transgender Persons are included with concrete and measurable actions
- Train personnel at health facilities on human rights with the view of eradicating stigma in health facilities
- Include hormonal treatment medication in the essential list of essential medicines
- Issue a directive prohibiting health officials from compelling female sex workers to be accompanied by their partners or other persons as requirement to have access on pre-natal consultation services

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