



Eastern Africa National Networks of AIDS Service Organizations

Workshop Report

“Building Partnerships towards Rights Based HIV and AIDS Legislation in East Africa”

Report of the regional Workshop held on the 8th and 9th July 2011 at Whitesands Hotel,

Dar- es- Salaam, Tanzania

EANNASO
Njiro Road, Themi Hill, Plot 41,
PO Box 6187,
Arusha, Tanzania.
Tel: +255 27 2507521
Fax: +255 27 2508224
Email: info@eannaso.org
<http://www.eannaso.org>

Acronyms

ACHPR)	African Charter on Human and Peoples' Rights
AIDS	Acquired Immune Deficiency Syndrome
ART	Anti-retro therapy
ARV	Anti-retrovirus
CSOs	Civil Society Organisations
EAC	East African Community,
EACJ	East African Court of Justice
EALA	East African Legislative Assembly,
EALS	East African Law Society
EANNASO	Eastern Africa National Networks of AIDS Service Organizations
FAAS	Forum of Activists Against HIV/AIDS Scourge
GALCK	Gay and Lesbian Coalition of Kenya
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
IDU	Injecting Drug Users
IP	Intellectual Property
IS	Integrated Services
KELIN	Kenya Legal and Ethical Issues Network on HIV & AIDS
LGBTI	Lesbian Gay Bisexual, Transgender and Intersex
LVCT	Liverpool VCT
MARPS	Most at risk populations
MSMS	Men who have Sex with Men
NACs	National AIDS Councils
NACC	National AIDs Control Council (Kenya)
NACOPHA	National Council for People Living with HIV and AIDS
NASCOP	National AIDS & STI Control Programme
NGOs	Non-Governmental Organisations
PLHIV	Persons living with HIV
RBA	Right Based Approach
RNGOs	Regional Non-Governmental Organisations
SW	Sex Workers
TACAIDS	Tanzania Commission for AIDS
TAF	Tanzania AIDS Forum
TANGO	Tanzania Association of NGO
Taskforce	Regional Task Force on HIV Law and Policy in the East African Community
TRIPS	<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>
UGANET	Uganda Network on Law, Ethics and HIV/AIDS
WONETHA	Women's Organization Network for Human Rights Advocacy
WHO	World Health Organization
VSO	Voluntary Service Organizations
UNAIDS	United Nations Program on HIV/AIDS
UNDP	United Nation Development Program
ZAC	Zanzibar AIDS Commission
ZANGOC	Zanzibar NGO Cluster on HIV/AIDS

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Executive Summary

The regional workshop themed “**Building Partnerships towards Rights-Based HIV and AIDS Legislation in East Africa**” basically sought to appraise EAC Partner States HIV and AIDS legislations, bills and practice in light of the growing pandemic, assess the EAC HIV and AIDS Prevention and Management Bill, 2010 (the EAC HIV and AIDS Bill) in the light of the existing laws and Bills in the countries and devise effective strategies and garner synergy for influencing the enactment of the regional HIV and AIDS law as embodied in the said regional Bill and considered by various stakeholders as incorporating essentials of best practices, including the Right -based Approach. Participants were drawn from various civil society organizations working in the HIV/AIDS field in East Africa. This facilitated rich discussions and sharing of best practices from across the region. EANNASO hosted the workshop with financial support from Trade Mark East Africa (TMEA).

The two-day meeting held at Dar es Salaam, Tanzania, specifically discussed, *inter alia*, the fundamentals of the Rights -based response to HIV and AIDS; reviewed country and regional trends on HIV/AIDS human rights and legislation; explored challenges and opportunities of Most at Risk Populations in the East African legal frameworks Africa and shared case studies of good practices and lessons learnt in rights based advocacy and practice.

Day One had three sessions, namely the Opening session; ‘Country and Regional Trends in Human rights, HIV&AIDS and Legislation’; and ‘an Overview of the Key Thematic Issues and Prospects in the Legal Response to HIV in the Region’.

The First session set the stage for the rest of the 2 -day programme by way of introducing the subject matter of the workshop and its purpose. It provided the participants with a picture of what is to be expected out of the workshop. The session provided space for key partners and Government officials present to grace the activity and briefly share their perspectives and prospects on the subject. The Second session was intended to demonstrate areas in which rights -based responses to the pandemic are fostered, with special emphasis on the work of civil society. It is also intended to elucidate the gaps thereof. The session focused on providing updates to the participants on the current status of the HIV& AIDS and related legislation and their impact or otherwise on the ground both at country and regional levels and highlighting civil society work and other relevant initiatives as well as providing examples of good practices and existing advocacy efforts. The Third session was about the key Issues in the region, the Dynamics and Prospects. It was intended to provide a picture of the situation on key issues as well as the on-going efforts on to address them.

The Second day had two Sessions, namely, ‘the EAC HIV & AIDS Prevention and Management Bill’ and ‘Setting an Advocacy Agenda for the EAC Bill’.

The First session made special focus on the EAC HIV & AIDS Prevention and Management Bill and its inception as a possible tool for addressing some of the prevailing country and regional level issues, as well as providing a framework on the subject in the light of regional integration whereas the Second session focused on charting out way forward for civil society in the region in terms of networking, and collaboration in HIV, Human rights and Legislation

work in the region and pushing forward the campaign for a regional law. It will provide the opportunity for building the framework for collaboration and a roadmap for advocacy for the regional law.

Overall, at the heart of the workshop was the intention to disseminate the EAC HIV and AIDS Bill and charting the way forward in CSO campaigning for its enactment. Pursuant to that, the participants came up with advocacy strategies for fast tracking the passing of the EAC HIV and AIDS Bill and for harmonising the national laws and bills with the regional Bill/ legislation.. This report records the deliberations of the workshop.

Background

Speaking of the magnitude of the HIV and AIDS burden in our area - globally, Sub-Saharan Africa continues to be the most HIV affected region; by the 2008 and 2009 estimates, the region accounted for 67% of persons living with HIV worldwide. About 68% of new HIV infections among adults, 91% among children and 72% of the world's AIDS-related deaths.¹ The countries currently forming the East African Community (EAC) contribute significantly to the Sub-Saharan Africa and global figures. In the EAC region, an estimated 4,450,000 persons were living with HIV in 2009. Likewise, an estimated 338,800 new HIV infections were reported in EAC states in 2009 translating to 18.8% of Sub-Saharan Africa cases and 13.3% globally; an estimated 286,000 deaths were recorded in 2009 which account for 19.1% of the Sub-Saharan Africa and 13% globally. The estimated number of orphans left due to HIV related deaths in EAC in 2009 was put at 4,030,000 amounting to 27.2% of Sub-Saharan Africa and 24.3% globally.²

This puts emphasis on the fact that the EAC is part of the Epicenter of the epidemic and that it is a key region for which concerted efforts in the response are called for,- international and regional cooperation approach being part. Equally important is the holistic approach to HIV and AIDS, not only as a disease but as a complex cross cutting and multi-sectoral issue affecting social, cultural, political and economic aspects of the population in the region. Within the EAC region, the call for regional cooperation and harmonization, for example, is especially imperative, particularly following the signing of the EAC Common Market Protocol on 20th November 2009 which opened up free movement of people and goods across the Partner States. The net effect of the Common Market Protocol is that as people interact across the region, individual states' HIV prevalence and or incidence rates may be influenced. It is, therefore, in the interest of the EAC Partner States to not only prevent HIV transmission and manage AIDS within their respective national borders, but also transcend the borders at the supranational level in sync with regional integration. In addition, and partly to facilitate the trading objects of the Common Market Protocol, it would be in the interest of EAC Partner States to ensure that as their citizens moving freely within the block access the same prevention, treatment, care and support services across borders-until such time when the borders are completely removed in the envisaged political union.

In the recent years, EAC states have separately tackled the HIV and AIDS issues at national levels including through legislations. Kenya, Tanzania and Burundi have enacted specific HIV and AIDS laws; Uganda has a proposed HIV and AIDS specific law while Rwanda has proposed a non-HIV and AIDS specific legislation which is largely intended to govern reproductive health in general and has a HIV and AIDS -related part. All the laws proposed have fallen short of the model requirements of the rights based approach to HIV and AIDS; in particular, provisions on principles of testing and disclosure, and protection of most at risk and vulnerable groups are deficient. Some of the provisions of national laws in fact severely infringe on basic human rights of persons and are ironically constructed in such a way that they have the effect of adversely affecting the HIV and AIDS prevention, control and management that they sought to improve.

¹ AIDS epidemic update: November 2009; Joint United Nations Programme on HIV/AIDS (UNAIDS) and World Health Organization (WHO) 2009 "UNAIDS/09.36E / JCI1700E".

² UNAIDS Report On The Global Aids Epidemic , 2010

An initiative was then launched by EANNASO and other stakeholders on a regional law on HIV/AIDS which would take precedence over national laws. The law would achieve the dual objectives of i) harmonization and cooperation in HIV and AIDS matters in the EAC and ii) introduction of the Rights -based Approach in the response. A draft regional bill - the EAC HIV & AIDS Prevention and Management Bill, 2010, was prepared through a robust consultative process between November 2009 and February 2010. The draft law is presently before the EAC Secretariat's Health Department awaiting presentation to the Council of Ministers in their next sitting anticipated to be in September 2011. In order to create awareness and forge support for the draft law as well as strategise on how it may be fast tracked through the remaining processes, the current workshop was convened.

1.0 Introduction

1.1 Welcome Notes and Preliminary Comments of Key Participants:

The participants were welcomed to the workshop by EANNASO's Mr. Julius Sabuni and Ms. Joyce Kevin Abalo, who then requested them to introduce themselves (The workshop's programme and a full list of the participants and their designations are included herewith as **Annexure 1 and 2 respectively**). In his welcome note on behalf of the EANNASO Secretariat, Mr. Sabuni highlighted milestones in the development of rights based legislative interventions for combating, controlling and managing HIV and AIDS issues especially the contribution made to that discourse by the following instruments: the Abuja Declaration on HIV and AIDS, Tuberculosis and Malaria of 2001 which indentified the need for international cooperation and described HIV and AIDS as no longer merely diseases but human rights issues; which approach was adopted by the United Nations Declaration of Commitments on HIV and AIDS, 2001; and the International Guidelines on HIV and AIDS and Human Rights released in 2006 jointly by the Joint United Nations Program on HIV/AIDS (UNAIDS) and the United Nation High Commissioner for Human Rights which provided a holistic rights based response to HIV and AIDS. Mr. Sabuni observed that following these developments, initiatives were made especially in Africa towards legislating on HIV and AIDS but lamented that the legislative products, although generally laudable in intentions, fell short of upholding basic human rights and generally were inimical to the proper management of HIV and AIDS. He observed that the legislations, including the 2004 AWARE HIV and AIDS Model Law for West Africa, greatly infringed on human rights principles when seeking to control HIV transmissions. He decried the inactivity of Civil Societies Organisations (CSOs) which allowed similar enactments in Partner States and reduced their role to what he termed as "fighting bad legislations". He attributed the CSO's inefficiency to lack of cooperation and networking and called for meaningful partnerships especially within the EAC. (A copy of Mr. Sabuni's welcome speech is included herewith as **annexure 3**) Ms. Joyce Abalo then called upon Ms. Gloria Kyondo, the representative of the UNDP, a committed development partner in this engagement, to make a brief statement. The UNDP representative commended EANNASO for spearheading the EAC HIV/AIDS legislation campaign and all the participants for their commitment to the good cause. She then went on to emphasize UNDP's commitment in supporting and partnering with the HIV and AIDS organizations in a advocating a right based approach in addressing the effects of the HIV and AIDS pandemic.

1.2 Objects and Expected Outputs of the Workshop:

The two days meeting had the following objectives:

- a) To share and review the status and trends in legislation and practices in Partner States relating to HIV & AIDS;
- b) To disseminate, provide insights on and discuss the EAC HIV and AIDS Prevention and Management Bill, 2010 (hereinafter “the EAC HIV and AIDS Bill”);
- c) To share experiences and lessons learnt in advocacy for rights based legislation; and
- d) To explore potential areas for collaboration and identify partners.

The expected outputs of the workshop were:

- a) To identify advocacy groups and strategic partners to campaign for the enactment of a regional HIV and AIDS law;
- b) To come up with framework for collaboration among CSOs in the region;
- c) To design a roadmap for advocacy for the regional law.

2.0 An Overview of the Rights Based Response to HIV/AIDS in East Africa

The presentation was made by Dr. Amitrajit Saha, Senior Advisor, HIV & Human Rights, UNDP Regional Service Centre for Eastern and Southern Africa. Dr. Saha extended his warm welcome to the participants and went on to reiterate UNDP’s commitments in supporting the rights based approach in tackling HIV and AIDS issues and promised to partner with EANNASO in monitoring the development of the EAC HIV and AIDS Bill. He defined the rights based approach as one that on one hand focuses on empowering people, especially the most vulnerable and marginalized, with the knowledge and resources to understand and assert their rights and on the other hand, focusing on capacity building of duty-holders (government) to be able to protect and promote the holders’ human rights. He emphasized that in the context of HIV, all aspects of prevention, testing, treatment, care and support must embrace rights based approach. He asserted that the right based approach is justified by the existing evidence that shows that rights-based approach works best and is compatible with public health good. Further, he noted that HIV disproportionately affects people who are otherwise often socially and legally marginalised and stigmatised like sex workers, men who have sex with men, transgender, injecting drug users, migrant populations, displaced persons, women and girls and young people.

Dr. Saha examined in detail the International Guidelines on HIV/AIDS and Human Rights 2006 (hereafter the “the HIV and AIDS Guidelines”) especially the rights based approach adopted by the HIV and AIDS Guidelines to safeguard human dignity. He emphasized the importance of promoting a supportive environment for groups particularly vulnerable to HIV and persons living with HIV (PLHIV) by governmental institutions through law reform and other means. In this regard, he noted that the UNAIDS Vision, Mission and Strategy Framework 2011-2015 corresponds with the rights based approach proposed by the HIV and AIDS Guidelines. He appreciated the UNAIDS efforts which he stated were aimed at achieving zero new HIV infections, zero AIDS-related deaths and zero discrimination by promoting a participatory sustainable response and to hold national and global partners to account. To achieve this, he said, UNAIDS employs specific strategic directions and goals to advance human rights and gender equality and review of punitive and discriminatory legal environments which limit the capacity of communities to mobilise thereby limiting their ability to claim their rights.

Dr. Saha identified the salient features of creating or assessing a good HIV legislation as both the process and content. Thus; the process of drafting and enacting HIV legislation should be well informed on legal and policy gap and inclusive of all stakeholders including Most at Risk

Populations (hereafter “MARPS”) and that the contents of the legislation should integrate sound human rights principles; build on scientifically accurate facts about HIV, ensure access to HIV-related services for all and create an enabling environment for the response to HIV. He evaluated the current position of the East African region’s laws that support or hinder universal access to HIV prevention, treatment, care and support and found that all EAC Partner States have one or two laws which negatively affect HIV response. He enumerated examples of “bad” provisions in HIV-related legislations and Bills in EAC which go against the applicable principles as provided by the International Covenant on Civil and Political Rights (ICCPR), African Charter on Human and Peoples’ Rights (ACHPR) and the International HIV/AIDs and UNAIDS/World Health Organization (WHO) Policy Statement on HIV Testing, 2004 thus: mandatory pre-marital testing in Rwanda (articles 12 and 14 of the Bill Governing Reproductive Health); testing without consent by physician if deemed necessary in Rwanda (article 15 of Bill Governing Reproductive Health) and Uganda (sections 13 and 7 of the HIV and AIDS Prevention and Control Bill 2008); routine HIV testing for a pregnant woman, survivor of sexual offence and a partner of a pregnant woman in Uganda (section 7 of the HIV and AIDS Prevention and Control Bill 2008); criminalization of HIV Transmission in Kenya (section 24 of the HIV and AIDS Prevention and Control Act, No. 14 of 2006) and Tanzania (section 21 of the HIV and AIDS (Prevention and Control) Act, 2008). He was particularly concerned by the “silences” in HIV legislations in EAC region, that is, the failure to recognise rights of key and vulnerable populations at higher risk of HIV infection such as, women, prisoners, men who have sex with men, injecting drug users and sex workers. Nonetheless, he also appreciated good practices in the HIV related legislations such as the Ugandan Bill which affords special protection for women, the Mauritian law which provides for harm reduction measures for injecting drug users and the Madagascar law which provides for prevention services that include condoms provision in prisons.

In conclusion, he appealed to the participants to adopt a holistic approach to HIV and AIDS and reiterated that a “HIV-specific law” is no “magic bullet” but just one of the critical responses required.

Plenary discussion on matters arising from the presentation on the Overview of the Rights Based Response to HIV/AIDs in East Africa.

Concerns and Deliberations

- a) There were concerns that discussions on the needs of key populations focused mainly on MSMs and sex workers sidelining transgender and intersex who are equally vulnerable to HIV infection.
- b) There was also a general feeling that the HIV/AIDs specific legislations accorded more privileges to the infected persons as opposed to the affected ones. The discord between the law and practice in the EAC states was also criticized. It was found that despite the negative provisions in the HIV legislations, the laws had good provisions but they were not implemented. Some participants were particularly concerned about the testing of pregnant mothers without their consents and counselling in national hospitals which in turn was fuelling gender based violence.

Comments

- c) The issue of disclosure to HIV infected children, particularly the ones on anti-retroviral therapy (ART) did not come out clearly in his presentation and thus attracted discussion at length. It was noted that the practice of many parents and guardians was to hide the truth from the children thus sometimes causing confusion and stigma to the

children especially when their peers enquire about their continuous drug taking. Some participants felt that the existing legal instruments have not addressed the issue properly. It was generally agreed that the best interest of the child in every situation should determine the disclosure process.

- d) Noting that stigma and discrimination is still rampant in the EAC states, a participant sought a clarification of the difference between the two. The presenter explained that stigma is the state of mind while discrimination is the resultant action.

2.0 Country and Regional Trends on HIV/AIDS, Human Rights and Legislation in the Region

2.1 Country Trends

a. Burundi

Mr. Frédéric Hakizimana introduced the Burundi Law 1/018 of 12 May 2005 on the Legal Protection of People Infected with HIV and of People Suffering from AIDS (officially known in French as *Loi no 1/018 du 12 mai 2005 portant protection juridique des personnes infectées par le virus de l'immunodéficience humaine et des personnes atteintes du syndrome de l'immunodéficience acquise*). He highlighted salient features of the law particularly provisions on prevention, testing and diagnosis; medical care, clinical research (article 6 of the law), protection against discrimination and penal provisions (article 4 of the law). He appreciated the listed provisions as positive but took issues with the provision criminalising "deliberate transmission of HIV/AIDS" as retrogressive and a hindrance to universal access to HIV and AIDS related interventions particularly by MARPs. He pointed that the law equated deliberate transmission of HIV to attempted voluntary murder by providing under article 42 thereof that "*anyone who deliberately transmits HIV/AIDS by whatever means will be prosecuted for **attempted voluntary murder** and punished in accordance with the provisions of the Penal Code*".

In summary, he contended that the Burundi HIV/AIDS law is incomplete since it focuses mainly on PLHIV leaving out other aspects of the pandemic including by failing to guarantee universal access to vulnerable key populations. He also lamented that the 2009 amendment to the Burundian Penal Code criminalised MSMs despite better advice and protests from the HIV and AIDS CSOs. Similarly, he noted that the Burundian penal code criminalises sex work. He was concerned of the future of the HIV advocacy in Burundi as the NAC-Burundi (the national HIV and AIDS coordinating institution) is currently faced with instability since its core staff was made redundant by World Bank funding cut. However, he expressed satisfaction of the milestones the HIV and AIDS CSOs and development partners had achieved so far which he outlined to include: the conclusion of the zero-prevalence and Socio-Behavioural Survey on MARPS in June 2011, the Presidential Decree releasing from jail PLHIV and other chronic diseases affected prisoners aged 70 and above and the existence of legal assistance to PLHIV by ODPIA+, RBP+ and other stakeholders.

b. Kenya

Mr. Edga Sichangi commenced by noting that although Kenya has approximately 1.5 million PLHIV, she has made great strides in increasing awareness about HIV and AIDS to halt new infections, to prevent mother to child transmission and to increase access to anti-retroviral (ARV) drugs among PLHIV. He submitted that as a result, the HIV and AIDS prevalence has declined from 13.4 percent in 2000 to 6% as at 2010. He noted however, that about 100, 000 new infections are still recorded annually and that there is increased prevalence amongst specific groups including sex workers, injecting drugs users and homosexuals. He mentioned specific laws that are relevant to HIV and AIDS work including the Constitution 2010, HIV

and AIDS Prevention and Control Act, 2006 and the Employment Act No. 11 of 2007. He emphasized that the provisions of the recently promulgated Constitution are progressive particularly the non-discrimination clause in article 27 thereof which prohibits discrimination on “health status” among other grounds. In addition, he observed that the clause’s open ended fashion of prohibiting discrimination on “grounds specified or contemplated” is progressive. He referred also to article 43 of the Constitution which provides that everyone has the right to the “highest attainable standard of health”.

Mr. Sichangi then briefly highlighted the provisions of the HIV and AIDS Prevention and Control Act, 2006 and identified the positive aspects of the Act to include its provisions on HIV and AIDS education (sections 4-8, inclusive), general prohibition of compulsory HIV testing (sections 13 and 14), right to privacy (sections 18, 20-23, inclusive) and provisions outlawing *de jure* and *de facto* discrimination against persons with or persons perceived or suspected of having HIV and AIDS (sections 31-38, inclusive). Nonetheless, he also pointed out the negative elements particularly the criminalisation of wilful transmission of HIV (section 24) and the long time it took to constitute and operate the HIV and AIDS Tribunal established under section 25 of the Act. He also considered as positive provisions of section 5 of the Employment Act, 2007 which prohibits discrimination on the ground of HIV status.

c. Rwanda

In his brief presentation Dr. Prince Bosco Kanani discussed key features of the Rwandan Reproductive Health Bill. He appreciated the advantages of the provisions in the Bill seeking to protect reproductive health rights especially of women (articles 3-6, inclusive and 11), provisions prohibiting the stigmatising of People living with HIV (PLHIV) and orphans (article 33), as well as provisions on reproductive health education (articles 7, 18 and 23). He criticised the provisions on mandatory pre-marital HIV testing (article 12 and 32), mandatory testing (article 14), suspension of fertility for mentally handicapped persons and other sicknesses without their consent (article 22) and prohibition of voluntary abortion (article 27). He pointed out that this law, if not revised, is likely to impact very negatively on HIV and AIDS advocacy. In conclusion however, he commended the Rwandan CSOs for their solidarity and sustained advocacy which saw the proposed Penal Code amendment to criminalise same sex practices dropped.

d. Tanzania

The presentation was made by Ms. Joan Chamungu and Mr. Benjamin Kalume. Mr. Kalume highlighted the salient features of the Tanzania HIV and AIDS (Prevention and Control) Act, 2008. He provided a brief background of the HIV law in Tanzania and then proceeded to laud the positive aspects of the legislation especially provisions on Public Health which ensures improved care and treatment of PLHIV (section 19-27, inclusive), HIV related education (sections 7-9 inclusive), prohibition of stigma and discrimination (sections 28-32, inclusive); scaling up efforts to meet the needs of orphans and vulnerable children and general prohibition of compulsory HIV Testing (section 15). He also pointed out negative provisions particularly those criminalising wilful transmission of HIV (section 21). Ms. Chamungu emphasized that penalising HIV transmission is retrogressive and has the potential of targeting PLHIV who had publicly disclosed their status since it is hard to establish the prior knowledge requirements. She also alerted the participants to the issues of self infection pointing out that there are gaps in the law. The two presenters took issues with the slow pace of the implementation of the law taking in to consideration lack of dissemination of the same thus denying people a chance to enjoy the rights provided therein. Further, they raised a

concern over the translation of the law to Kiswahili the language of the ordinary Tanzanian for whom the law was enacted.

e. Uganda

Ms. Dorah Musinguzi commenced by noting that Uganda has become notorious for proposing laws infringing on basic human rights which, if passed by parliament, would adversely affect HIV/AIDS advocacy in Uganda particularly the Anti-homosexuality Bill and the HIV and AIDS (Prevention and Control) Bill, 2008 currently before the Ugandan parliament. As regarding the HIV and AIDS (Prevention and Control) Bill, she identified the following provisions as particularly injurious to the course of HIV and AIDS management and control:

- a) Section 7 providing for compulsory testing of persons convicted of the offences of drug abuse or possession of instruments of drugs abuse, of sexual offences or of offences related to prostitution, an expectant woman in her first trimester and in cases where testing is ordered by a court of law or if necessary for purposes of investigating a crime or testing associated with the processes of donation and usage of body organs, tissues, blood, semen and other fluids;
- b) Provisions of sections 15, 16 and 31(2) (b) providing for disclosure of HIV status to third parties including spouse/sexual partners and such persons authorized by a court. The classes of persons to which disclosures may be made are enlarged under section 16(2);
- c) Sections 3 and 4 by which it is made compulsory for persons to disclose their HIV status to their sexual partners or persons who share skin piercing instruments with them; and
- d) Section 41 which criminalize wilful and attempted transmission of HIV and AIDS and prescribe a punishment on conviction to 2 years imprisonment or to a fine not exceeding 50 “currency points” or to both fine and imprisonment.

However, she described the Marriage and Divorce Bill which is in preparation as having positive provisions. Concerning HIV and AIDS related advocacy, she informed the workshop that Ugandan CSOs has formed the Civil Society Coalition on HIV and AIDS Bill 2010 comprising of 30 organisations with support from the academia and the Ugandan Human Rights Commission which has extensively lobbied parliament not to pass the two Bills in their present forms. She reported that towards that objective, members of the CSOs coalition have had over 10 meetings with members of parliament, have sat in the national assembly when debates on the Bill are held and have used media platforms including newspapers and prime televisions programs to engage the public on the subject and expressed optimism that they would be able to convince the newly constituted parliament to revisit the unfavourable provisions in the Bills. She lamented that the efforts of the CSOs Coalition have been challenging because of lack of understanding and animosity from members of parliament as well as a result of weak international and regional support. She was pleased however by the opportunities presented by workshop to craft a collaborative EAC HIV and AIDS initiative in the region especially through the proposed EAC HIV and AIDS Law as well as opportunities presented at the HIV Global Commission- the African Dialogue and hoped that EAC region would present a joint lobby. In conclusion, she hailed the initiative by EANNASO and prayed that it be extended to generally improve the conditions of human rights observance in all spheres in East Africa.

f. Zanzibar

Mr. Haji Khatib Haji drew the attention of participants to the various laws relevant to HIV and AIDS in Zanzibar as being the HIV and AIDS Bill, the Penal Code and the Civil Procedure. He pointed out that the HIV and AIDS Bill had controversial provisions and also that religious leaders are of the opinion that the law should make pre-marital HIV testing mandatory. He also pointed out that Zanzibar being predominantly Muslim, Islamic religious views are strongly reflected in the laws and that the debate about protection of key and vulnerable populations and use of condoms are decidedly against what would be vital HIV and AIDS interventions practices.

Plenary discussions on issues arising from presentations on trends in EAC Partner States Concerns and Deliberations

- a) The participants were concerned by the trend in which EAC Partner States were continuing to pass and propose laws limiting universal access to vulnerable populations, despite the existence of evidence that the fight against HIV and AIDS cannot be won without addressing their specific circumstances. They found that trend was explaining the slow progress the region was making in curbing new infection incidences. Much hope therefore, was put in the proposed EAC HIV and AIDS Bill.
- b) Participants were concerned about the huge discrepancy between the laws and the reality on the ground in all the East African countries. It was noted that there exist good provisions in the various laws but their implementation was not effective. However, progress was noted in Kenya where the recent constitution of the HIV and AIDS tribunal is set to boost access to justice for PLHIV.
- c) Conflicts between the right based approach to HIV and AIDS and the penal code provisions against same sex relations and sex work was observed to be a major challenge in achieving universal access and a HIV free East Africa.

Comments

- d) Attention was drawn to the CSOs to be vigilant of the international trade agreements individual states and EAC was entering into as some could jeopardise all gains in the HIV and AIDS advocacy.
- e) Uganda CSOs were requested to document their long and intensive campaign against the Anti-homosexuality Bill and the HIV and AIDs Bill to serve as a reference point for other East Africans now and in future.
- f) The session was concluded by noting that overall there was commendable progress despite the different challenges faced by individual countries and in common. An appeal was made to all EAC CSOs to join hands and work together in assisting each other during tough times in advocacy, the Ugandan CSOs coalition was hailed as a good example. Further, participants agreed to identify ways in which the proposed EAC HIV and AIDS Bill can be used to seal loopholes in national laws and Bills.
- g) It was agreed that the subsequent sessions would be guided by the question: what more can we do then, particularly using the proposed East African Community HIV and AIDS Prevention and Management Bill?

2.2 Regional Trends

2.2.1 The EAC Anti-Counterfeit Legislation,

Mr. Allan Maleche, Programme Coordinator, made an exposition of the EAC Anti-Counterfeit legislation beginning with a brief background of the current global and regional HIV prevalence and status of treatment. He appreciated that investments in providing access to medicines, particularly ARVs are paying off in many countries across the world, including the Eastern and Southern African Community. For instance, in Sub-Saharan Africa, an estimated 320 000 (or 20%) fewer people died of AIDS-related causes in 2009 than in 2004, courtesy of the antiretroviral therapy. Conversely, he pointed out that these gains can only be tentative as the burden for treatment increases due to people on treatment living longer, a positive part, but also due to continued high levels of new infections. Borrowing from Michel Sidibe's message on World AIDS day 2009, he posed that "for every person put on treatment, there are two new infections."

Mr. Maleche then explained the connection between the TRIPS Agreement and Public Health, particularly access to medicines for all. He pointed out that TRIPS flexibilities enable World Trade Organisation (WTO) members to promote access to medicine mainly through compulsory licenses and parallel importation. He noted that the application of these flexibilities has seen the prices of medicines go down for instance in Kenya, where parallel importation through the use of the Industrial Property Act of 2001, saw the price of ARVs become as low as KES 500 (about USD6) a month, down from KES 6000 (about USD75) a month. He then went on to define counterfeit laws as one which seeks to enforce the intellectual property (IP) rights of manufactures of goods and service with an aim of ensuring public health, safety and product quality concerns by providing criminal and civil sanctions against those who infringe these rights. According to Kenyan Anti Counterfeit Act 2008, "counterfeiting" means *"Taking the following actions without the authority of the owner of intellectual property right subsisting in Kenya or elsewhere in respect of protected goods; ... in relation to medicine, the deliberate and fraudulent mislabeling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging"*.

He summarised the present status of anti-counterfeit laws in EAC Partner States as follows:

- a) Burundi has no law on counterfeiting,
- b) Kenya has the Anti Counterfeit Act 2008 which is in force,
- c) Rwanda has an Intellectual Property Code in force,
- d) Tanzania has the 2008 Merchandise Marks Regulations in Tanzania, which are in force,
- e) Uganda has a draft Bill, the Anti-Counterfeiting Goods Bill 2010 that has been presented to parliament. Initial clauses previously included in the Bill that would have included generic medicines as counterfeits have been deleted; and that,
- f) Zanzibar has no law on counterfeiting.

Regarding the regional position, Mr. Maleche noted that there is the EAC Anti-Counterfeit Bill, 2010 and the EAC Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations" (hereafter the EAC Anti-Counterfeiting Policy). He recalled that the EAC Anti-Counterfeiting Policy was discussed in a regional multi-sectoral, stakeholders meeting on EAC, WTO, TRIPS and pharmaceutical sector promotion in Arusha on 6th December 2010 and that among the things considered in the meeting were: harmonization of the Draft EAC Anti-Counterfeit Bill with the draft EAC Intellectual Property Rights Policy on the utilization of Health Related WTO-TRIPS Flexibilities, approximation of National

Intellectual Property Legislations and the Draft EAC Regional Protocol on Public Health Related WTO-TRIPS Flexibilities.

He made concluding observations regarding the provisions of the national and regional laws and Bills and was of the opinion that some national and EAC draft anti counterfeiting provisions as they stand exceed the TRIPS Agreement and should be amended. He found for instance that the Kenyan Law and the EAC Bill have an overly broad definition of counterfeit i.e. “substantially identical copies” which means that every generic medicine is a counterfeit since generic medicines are usually identical copies of originator products. He recommended that the EAC Bill adopt a definition similar to that provided in the TRIPS Agreement. In particular, the anti-counterfeiting legislation should only apply in cases of wilful infringement of a trademark on a commercial scale and cautioned that current laws will have a negative effect towards universal access to medicines especially generic medicines.

2.2.2 African Dialogue on HIV and the Law

Ms. Olive Mumba, Programme Manager, EANNASO explained that the African Dialogue was part of the Global Commission’s ongoing process of hosting regional dialogues aimed at developing “actionable, evidence-informed, human rights-based recommendations for effective AIDS responses that mitigate the impact of HIV and promote and protect the human rights of people living with and most vulnerable to HIV.” The African Dialogue, she said, is expected to provide a platform for governments and CSOs to share information and experiences on creating enabling legal environments, addressing legal barriers and stigma and discrimination in the context of HIV among other issues raised by the people’s submissions. She observed that in particular, the dialogue will address the impact of HIV related law and policy concerning: the marginalization and criminalisation of PLHIV and vulnerable to HIV; gender-based inequality and violence against women; discrimination in the context of HIV; access to HIV related treatment and HIV and children. She informed the meeting that the Asia-Pacific, Caribbean, Eastern Europe and Central Asia and Latin America dialogues have been completed and Africa’s was scheduled for 3rd and 4th August, 2011 in Pretoria, South Africa. She concluded by appealing to participants to make the most out of the dialogue by following the proceedings and participating in whichever ways possible.

2.2.3 Efforts towards a Regional HIV and AIDS Legislation in East Africa: The EAC Prevention & Management Bill, 2010

Mr. Julius Sabuni, Team leader, Policy & Advocacy, EANNASO discussed an elaborate background to the process which culminated to the current EAC HIV and AIDS Bill 2010. He observed that in recent years, African countries have been developing and adopting HIV and AIDS laws, some of whose provisions contravene human rights obligations. He stated that at the same time, regional bodies began drafting model HIV and AIDS laws that sought to influence and guide municipal legislations on the subject but that no such initiatives existed within the EAC. Mr. Sabuni reported that a desire therefore, arose towards developing a regional initiative with the principal aims of exploring ways that would facilitate enactment or reform of good HIV and AIDS laws in the EAC Partner States which are in tandem with principles of human rights laws as well as harmonisation and alignment of such laws across Partner States. This desire, he said, was met in 2008 when regional organizations acting under their umbrella body, the Eastern Africa National Network of AIDS Service Organizations (EANNASO) worked in partnership with the East African Law Society (EALS) as the technical partner to constitute a multi-stakeholder Regional Task Force on HIV Law and Policy in the East African Community (also known as the AIDS Law Project, hereafter “the Taskforce”). He

pointed out that the main objectives of the Taskforce included firstly; conducting research and consulting existing HIV and AIDS laws in the EAC with a view to influence the development of the regional law including by preparing such regional law, advocating and supporting its enactment in the East African Legislative Assembly (EALA) as well as monitoring its implementation and secondly; working within individual EAC countries to improve the texts of any pending enactments on HIV and AIDS laws and in countries where no such laws exist, to advocate and support initiative for enactment of good laws.

Mr. Sabuni stated that to meet the first said objective of the Taskforce, it prepared the EAC HIV and AIDS Bill 2010, which Bill has been cleared by the EAC Sectoral Council of Health and is presently with the EAC Secretariat, Health Department, awaiting to be presented for consideration to the Council of Ministers (see paragraph 6.2 below for discussions on EALA legislative processes). Mr. Sabuni outlined key historical highlights of the Bill thus far to include:

- a) the creation of the Taskforce in August 2009;
- b) The various meetings by the Taskforce with the Speaker, the Clerk and the General Purpose Committee of EALA resulting in the General Purpose Committee accepting in principle the need for a regional HIV AIDS legislation and mandating the Task Force to prepare a draft Bill;
- c) the legal and policy audit of the Taskforce by Integrated Services (IS), a consultant, done between November 2009 and February 2010 and the regional and country consultations on whether or not there is need for a regional law held between October and December 2009;
- d) the drafting of the proposed draft Bill by IS based on the legal audit and consultations with support from UNAIDS RST -ESA and review of the draft Bill by legal draftsmen from 5 countries including EAC Principal Legal Officer in February 2010, and,
- e) The regional stakeholders meeting and acceptance of Proposed Draft in February 2010.

In addition to the EAC HIV and AIDS Bill, Mr. Sabuni referred to related initiatives including the advocacy on a regional anti-counterfeit legislation, the Regional Dialogue on HIV and the Law (by the Global Commission) and the campaigns for an EAC Bill of Rights and Gender Protocol. Finally, he identified areas that may delay or impede the enactment of the EAC HIV and AIDS Bill including that there are still controversial issues that are unresolved due to differing points of view among the stakeholders as detailed in the notes to the Bill, that the timeframe for enactment is not certain, that there are debates on whether to originate the Bill in EALA as a private member's Bill or a Council of Ministers' Bill and finally, the lack of resources to popularize the Bill before enactment so that it is understood and supported by stakeholders and the communities.

Plenary discussions on matters arising from the presentation on regional trends

Concerns

- a) There were concerns about the length of time the EAC HIV and AIDS Bill has taken at the EAC Secretariat (two years) and queries were raised as to whether there should be a change of plan from the EAC route to a private member's Bill. It was agreed that the debate will continue and a position would be adopted at the end of the conference.
- b) On the same line, participants felt that there is need to fast track the passing of EAC HIV Bill as it is expected to be the focal point for reviewing unfavourable national laws. A participant appealed for patience pointing that it takes even more time in the European Union to harmonize laws. He went on to caution CSOs to brace for tough

time as it is unlikely that the Bill will have a smooth sail amidst opposition by some governments and powerful pharmaceutical companies. Debate about harmonization of laws and practices continued to bring forth the issue of understaffing in the health sector. It was argued that there is a serious and urgent need for countries to increase health care workers so as to ensure effective implementation of the laws, particularly on access to treatment and other health services. A case in point is Tanzania which was said to have approximately 50% deficient of health workers.

Comments

- c) Some participants sought to understand better the anti-counterfeit debate and its relationship with the generic drugs and why generated divergent positions. The discussant explained that the danger with some anti-counter laws and Bills was the way they define the word “counterfeit” in a manner likely to include generics. He gave the example of Kenyan legislations and explained that the same has been challenged in a court case. Regarding the anti-counterfeit laws, he opined that it was safer that protection of Intellectual Property Rights (IP) be left to other existing industrial property laws and institutions while national bureaus of standards can deal with quality issues.
- d) Participants sought to know the substantive lobbying steps EANNASO is employing with the EAC Health Department, Council of Ministers, and EALA to influence the passing of the EAC HIV and AIDS Bill; in order to take part in the same. The discussant reiterated the lobbying initiates as per his presentation and urged participants to identify points of entry. For instance, if one is acquainted to a person in any of the respective EAC institutions, they can use them to lobby others.
- e) At the end of the debate, it was agreed that CSOs will acquaint themselves with IP issues and anti-counterfeit legislations both national and regional so as to be able to participate accordingly; since these laws are equally important to HIV and AIDS advocacy.

3.0 An Overview of the Key Thematic issues and Prospects in the Legal Response to HIV in the EAC Region

3.1 Challenges and Opportunities for Most at Risk Populations in legislation in East Africa

3.1.1 Dr. Nduku Kilonzo, Executive Director, Liverpool VCT

She began by providing a brief background of LVCT as a Kenyan NGO which specializes in providing HIV testing & counselling, linking testing to palliative care, ART and providing services to vulnerable and most at risk populations, particularly MSMs, prisoners and sex workers. She then went on to identify vulnerability and HIV risk as products of complex context specific interacting factors at policy and legal environments and affected by accessibility and affordability of HIV services and interpersonal relations such as gender power relations, ‘cultural’ considerations, notions of masculinity and femininity, ability to negotiate safer sex and gender based violence. Regarding HIV legislations and MARPs she identified weaknesses such as narrow conceptualization of risks, failure to address the factors that produce vulnerability, lack of structured legal and budgeting support to promote girls advancement among other social norms. She advocated for what she termed “re-conceptualizing” of “risk” to be more inclusive of all vulnerabilities in the law. She pointed out that the tensions between public health and human rights can be addressed through

evidence of quantifiable benefits to public health through human rights approaches and vice versa. She found that a friendly legal environment, 100% condom use policy targeting clients of sex workers, routine Sexually Transmitted Infections (STI) screening and treatment and condom negotiation skills is a right based holistic way of addressing MARPS vulnerabilities. In conclusion, she appealed to CSOs to employ a vulnerabilities framework to interpret and challenge legislation through high impact litigation and invest in research and documentation.

3.1.2 Ms. Macklean Kyomya, Executive Director, Women’s Organization Network for Human Rights Advocacy (WONETHA))

Ms. Kyomya began with a brief background of WONETHA, a human rights NGO based in Uganda, specializing in addressing human rights issues of sex workers. She noted that “prostitution” is illegal in all EAC states. She found that the laws outlawing “prostitution” define prostitution as “living wholly or in part on the earnings of prostitution” which targets the sellers (sex workers) and not the buyers (clients). Thus, she lamented that while the client walks away scot free, the sex worker and her dependants who are mostly, children and elderly parents may be sentenced to imprisonment. She argued that in effect, criminalization limits the sex workers’ ability to access sexual and reproductive health rights and that consequently; there is an alarming prevalence of HIV and STIs among sex workers. In Uganda, she said quoting the Crane Survey Report of 2008/2009, it is estimated that the prevalence among sex workers is 33% and 68% with STIs and HIV respectively. She attributed the inordinately high prevalence to, among other reasons, the hostile legal environment, societal and institutional discrimination and stigma and violence against sex workers. She emphasized that the denial of a platform by both government and society to air out their issues was exacerbating the situation and driving the HIV pandemic upwards. Nevertheless, she appreciated the opportunities provided by international human rights instruments which recommend a “rights based” approach to enhance universal access. However, she noted EAC states had ratified these instruments but were reluctant to implement them. In conclusion, she reiterated the call for decriminalization of sex work as essential to improve the health of sex workers.

3.1.3 Mr. Eric Gitau, Executive Director, Gay and Lesbian Coalition of Kenya, GALCK

Mr. Gitau introduced his organization as a coalition of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) groups with a mandate to defend the interests and rights of LGBTI organizations and their members. He discussed the provisions of Kenyan laws which affect LGBTIs. He found that sections of 162, 163 and 165 of the Penal Code and section 11(6) of the Sexual Offences Act, 2006 criminalizes same sex sexual relations. He argued that criminalization of adult consensual same-sex practices done in privacy undermines the fight against HIV and AIDS, entrenches stigma and discrimination affecting service delivery to LGBTI persons, and other human rights violations including deprivation of life, and physical assault. He identified opportunities provided by the newly promulgated Kenyan Constitution to include: article 27 on equality and non-discrimination; article 31 on privacy; article 36 on freedom of association; article 43 on economic and social rights; article 56 on protection of minorities and marginalized groups; article 2(5) and (6) on applicability of rules of international law and treaties and conventions and article 10 on the national values and principles of governance (including rule of law, human dignity, social justice, equity, human rights, inclusiveness, equality, non-discrimination and protection of marginalized communities). Finally, he explained GALCK’s strategic plan to take a proactive role in

initiating appropriate legal reforms as opposed to reacting to human rights abuses and violations and to spearhead national efforts in corroboration with stakeholders, to amend legal provisions criminalizing same sex sexual relations.

Plenary discussions on matters arising from the presentation on Challenges and Opportunities for Most at Risk Populations in legislation in East Africa

Concerns and Deliberations

- a) Participants were greatly disturbed by the high level of HIV and STI prevalence among sex workers in Uganda. In the ensuing debate it was found that the situation is not very different in the other EAC Partner States. Further, it was argued that the issue of sex workers should be addressed carefully taking into account that there are different and “hidden” groups of sex workers. An example of university girls engaging with “sugar daddy” and was provided. Male and trans-sex workers were also said to be pushed to the periphery yet they are a critical group in the HIV/AIDs debate.
- b) Regarding the classification of vulnerable and most at risk persons, concerns were raised that heterosexual sexual married women were being forgotten yet statistics shows they are still the most HIV affected group.
- c) The issue of criminalization of some MARPs and its effects on access to health services was discussed at length. It was agreed that CSOs should work together to lobby for the long term goal of decriminalization and in the meantime use available legal and other resources to ensure access to services and minimize human right violations against the group.

3.2 Case Studies: Good practices and Lessons Learnt in Rights-Based Response Advocacy and Practice

3.2.1 Edga Sichangi, Legal Officer, Aids Law Project, Nairobi, Kenya

Mr. Sichangi began by pointing out that rights based approach to HIV and AIDs offers many advocacy avenues and that his organization principally pursues public interest litigation to enhance access to justice for people infected and affected by HIV and AIDs. He discussed several cases in which Aids Law Project has instituted in this regard. The first was a suit that challenged sections 2, 32 and 34 of the Kenyan Anti Counterfeit Act. In that action, he said, the contention was that under these provisions, antiretroviral medications may fall within the ambit of counterfeit drugs and thus jeopardize access to affordable and essential drugs for PLHIV. The second action he discussed were two separate cases against media houses: one being a case for publishing a homophobic and inflammatory hate speech against the homosexual community in Kenya contrary to hate speech law and the other for arbitrarily purporting to disclose the HIV and AIDS status of an alleged cheating spouse in a manner that was inaccurate, misleading and in breach of the law. The third action he discussed was a case against section 24 of the HIV and AIDS Prevention and Control Act which criminalizes wilful transmission of HIV. He noted that these cases are still ongoing and therefore, could not be subject of much debate. He finalized his presentation by pointing out the opportunities provided by the Constitution favourable for public interest litigation, especially the recognition of social and economic rights.

3.2.2 Dr. Nduku Kilonzo, Executive Director, Liverpool VCT

Dr. Kilonzo highlighted four main areas in which LVCT MSM and Prisons programme focus on: policy advocacy, service delivery, research and piloting and capacity building. She enumerated good practices such as post-test social support and club, capacity building and monetary support for MSM groups/organizations for institutional development and policy entry points with government institutions such as National AIDs Control Council (NACC) and National AIDS & STI Control Programme (NASCO) and recruiting MARPS champions in government. She also advocated the use of evidence-based advocacy and literature, policy briefs, contributing to national studies to ensure they take on MSM and vulnerability issues and technical support for national operational guidance. For instance, LVCT provided technical support for development of a national MARPs Sensitization Training package and a national monitoring and evaluation on MARPs issues. She pointed that as result of strong working relationships and networks with key stakeholders, government and others key milestones have been achieved. She gave an example of the prioritization of MARPs in the Kenya National Aids Survey with specific reference to MSM; increased government commitment to targeted MARPs programming i.e. implementation of NASCO MARPs program, formation of MARPs (MSM, SW, IDU) technical working groups and sub-committees and expanded targeted funding.

Plenary discussions for matters arising from presentations on Case Studies

Concerns and Deliberations

- a) A participant from Tanzania sought to share a case his organization is handling. The case concerns a woman who claims her husband has intentionally infected her with HIV. He explained that his organization was in the process of initiating criminal proceedings against the husband in accordance with the Tanzanian HIV and AIDS law. The meeting was apprehensive that this could be a very dangerous move which could

result in an injurious jurisprudence and scatter all the current efforts against criminalization.

- b) In summary, it was agreed that it is paramount that CSOs continue exploit the opportunities provided by legislations and advocate for a vulnerability framework in decision making with the ultimate goal of extinguishing stigma and discrimination within the society and in institutions.

4.0 The EAC HIV and AIDS Prevention and Management Bill, 2010

4.1 The EAC Prevention and Management Bill, 2010: Salient Features

Mr. Allan Maleche the Programmes Coordinator, KELIN, took the conference through important features of the Bill. He referred extensively to article 4 of the Bill which lists the objects and purposes of the Bill including especially article 4(1) (a) by which the law seeks to promote a rights based approach to dealing with all matters relating to HIV and AIDS and article 4(1)(c) by which the law seeks to extend to every person living with or affected by HIV, the full protection of the person's human rights including by provision of "HIV related services", guaranteeing the right of privacy, prohibiting HIV related discrimination and provision of "quality health care and social services" for PLHIV and their care givers and positively address and seek to eradicate the conditions that aggravate the spread of HIV infection. He called to attention the following provisions of the Bill which may provide for model regional AIDS Law:

- a) article 2 especially definitions of MARPS vulnerable group as read together with articles 34-38 (inclusive) detailing special provisions for protection of children (article 34), women girls (35), persons with disabilities (36), prisoners (article 37) and "other vulnerable groups" (article 38) living with or affected by HIV and AIDs;
- b) article 6 providing for general duties of persons residing within EAC including taking steps to know their HIV status and taking measures to protect themselves and others from HIV infection;
- c) articles de-criminalizing certain conducts;
- d) articles 24 and 26(3)) dealing with disclosure of HIV results to third parties and
- e) article 22(3) prohibiting compulsory testing for purposes of marriage, employment, admission into an educational institution, entry or travel to an EAC country and access to healthcare, insurance cover and the like services and article 27 prohibiting discrimination in employment for PLHIV

Mr. Maleche finalized by examining key basic qualities of the EAC HIV AIDS Law and listed them as follows: that the law should strictly accord with the EAC Treaty, that the law should avoid extremes, that the law should be rights based, that the law should offer uniform rights and services throughout EAC countries, that the law should be broadly accepted to the whole of EAC and that the law should be capable of passing in the EALA and be assented by the Summit of Presidents.

4.2 Law Making Process at the EAC

The presentation was made by Mr. Steve Machage, Senior Public Relation Officer, EALA. Before discussing the legislative process of the EAC, Mr. Machage gave EAC's historical and general background. He presented that the EAC is a regional intergovernmental organization founded by the EAC Treaty signed on 30.11.1999 and entered into force on the 07.07.2000 for

Kenya, Uganda and Tanzania and that presently it includes also Rwanda and Burundi who acceded to the Treaty on the 18.06.2007 and attained full membership on the 01.07.2011. The EAC was stated to have a Customs Union signed into in 2009, a Common Market ratified in 2010, an on-going Monetary Union process and an expected Political Federation. He identified key organs of the EAC as the Summit, Council of Ministers, Coordination Committee of Permanent Secretaries, Sectoral Committee, the East African Court of Justice (EACJ), Secretariat and the East African Legislative Assembly (EALA).

The EALA, Mr. Machage said, is the legislative organ charged with responsibilities to make laws, to discuss EAC matters as its representative, to perform oversight including by considering reports of audit committees, debating and approving budgets and liaison with National Assemblies of Partner States. The EALA has 52 members comprised of 9 members from each Partner State (article 50 of the Treaty), 5 Ex-officio Members of Ministers for EAC Affairs or their Assistant Ministers who sit as Alternates (Article 48), an SG, CTC and the Speaker who is considered a Member of the House. He stated that the laws enacted by the EALA become Acts of the Community and legally take precedent over similar legislations in the Partner States. Thus, Mr. Machage submitted, the law making jurisdiction of EALA as derived strictly from the EAC Treaty and proposals for legislation can be entertained only if they seek to address areas of cooperation identified in the Treaty. For example, the areas of cooperation for purposes of health matters are described under chapter 21 articles 117 and 118 of the EAC Treaty where, among others, Partner States have undertaken to: “take joint action towards the prevention and control of communicable and non-communicable diseases” to control “pandemics and epidemics” of diseases including HIV-AIDS, to “cooperate in facilitating mass immunization and other public health community campaigns”, to promote systems of health management that enhance efficiency in health care service delivery, to develop a common drug policy including by harmonizing drug registration procedures and to harmonize national health policies and regulations so as to “achieve quality health within the Community”.

Mr. Machage discussed the EALA’s legislative process thus: a proposal for legislation meeting the threshold of the Treaty’s applicable provisions for “areas of cooperation” is introduced into the EALA as a Bill and may be initiated as a Private Member’s Bill (by a member of the assembly) or as by Chairpersons of Committees or by the Council of Ministers. A Bill introduced as a Council of Ministers’ Bill is prepared through the following process: a proposal is presented to a Sectoral Committee (SC) for which the proposed law seeks to govern (for example the SC for Health) for technical consideration, then it is forwarded to the Council of Ministers comprising of a Coordination Committee, Senior Officials and Ministers in charge of the areas the Bill relates. If need be, the Bill is then taken to the Sectoral Council on Legal and Judicial Affairs comprising the Attorneys of Partner States, Principal Secretaries and Ministers who ensure that the draft Bill relates to the EAC Treaty. The draft Bill is then returned to the Council of Ministers for approval before it is submitted to EALA. Whatever form it is introduced to the EALA, leave or permission of the House has to be given to accept the Bill before it. The Bill is then introduced in the Assembly as a motion in a stage called First Reading. At the First Reading, the Bill is mentioned in the Assembly where the Bill title, number and name of the mover are read. The effect of the First Reading is to give notice of intention to move a motion for enactment of a certain law. No debate or other considerations are made and a period of 7 days is allowed after the reading, within which time, the Bill is forwarded to a General Purpose Committee where it is examined in detail. The Bill is then returned to the Assembly for the Second Reading. At the Second Reading, debates and public hearings are held and reports are tabled discussing the merits of the Bill, explaining its principles, consideration of amendments to be made and recommitment. The Bill is then

moves to the Third Reading where it is passed as an Act of the Community with such amendments that are agreed upon including those that the Council of Ministers may propose. The Speaker then submits the passed Bill to the Summit of Heads of Partner States for Assent. According to article 63 of the EAC Treaty, the Summit may assent to or withhold assent to a Bill of the Assembly. Where the Bill has not been assented to within three months from the date on which it was passed by the assembly, it shall be referred to the Assembly outlining reasons for the non-assent, with a request that the Bill or a particular provision thereof be reconsidered. If the Assembly discusses and approves the Bill, it is re-submitted to the Head of States for assent. If, after the Bill is re-submitted to the Summit and a Head of State withholds consent, the Bill shall lapse.

In conclusion, Mr. Machage examined the challenges of the EALA legislative processes. He observed that EALA has an increased mandate which may be achieved better especially by utilising Private Members' Bills. However because of the limited resources allocated to such Bills, he observed, there are huge financial implications to prepare them which means that only parties with resources can bring them. In addition, he observed that the sovereignty of Partner States and claims of national interests limited the scope of the EALA legislations and cited the rejection of the Election Bill as an example. Finally, he decried poor implementations of the laws enacted especially laws passed through Private Members' Bill. He cited the Joint Trade Negotiations Act which became dormant after Ascent.

Plenary discussions on matters arising from presentations on EAC HIV and AIDS Bill

Concerns and Deliberations

- a) Some stakeholders were apprehensive over the failure of the Bill to expressly mention LGBTIs, injecting drug users and sex workers in the MARPs. In reply, the discussant explained that the open-ended description of the vulnerable groups and MARPs adopted by article 38 accommodates these groups any other groups which may become vulnerable in future. He referred participants to the notes attached to the draft which provides past debates on the matter with reasons for and against; particularly, the point that matters of the criminal law are not part of the "areas of co-operation" in terms of the EAC Treaty.
- b) Some stakeholders felt that the Bill gives too much power to the health care providers regarding third party notification of the HIV status of a person (24(4)). It was argued that this could become a challenge as medical persons are likely to be opposed to the enormous liability.
- c) There were some concerns that the Bill's use of the words "fake" and "counterfeit" may present challenges to generic drugs (33(d)); it was proposed that the word "quality" be use instead. The discussants advised the meeting that the words "fake" and "counterfeit" were properly used because in reality there are fake and counterfeit drugs and in this case there are no threats to generic drugs.
- d) There was a concern that the EAC HIV and AIDS Bill does not recognize traditional health practitioners and mid wives yet they are the ones who assist many women to deliver in the villages thus necessitating HIV education and ability to administer drugs to them. It was clarified that article 44(c) the EAC HIV and AIDS Bill makes mention of them.

- e) A query about the ability of PLHIV to access credit facilities was raised. A discussant explained that the EAC HIV and AIDS Bill under article 31 prohibit financial institutions from discriminating against PLHIV.
- f) Regarding the obligation of the government to provide treatment for PLHIV, some participants felt that the EAC HIV and AIDS Bill would have been more assertive by stating clearly that national governments are under a duty to provide ARTs and treatment for other opportunistic infections. In reply, the discussant submitted that the EAC HIV and AIDS Bill was a product of a highly participatory process with interviews and several consultative meetings, thus the content as they are a result of a compromise reached by the stakeholders. He went on to reiterate that the content and language is careful to achieve the highest protection and promotion of the rights of the PLHIV while being mindful of the environment at the EAC institutions.

Comments

- g) The Bill was appreciated by the participants for its content and language. One participant commented that it was one of the best regional proposed legislation he has ever read. Among the most progressive provisions it was pointed are the obligation on government to make adequate budgetary provisions for HIV and Aids programmes (5(i); promotion of participatory programming inclusive of all stakeholders regarding HIV and AIDS information, education and communication (7(3); provision for free HIV testing (21); provision on ethical research institution (41); provisions on vulnerable groups and most at risk populations (children, persons with disabilities, prisoners, women and girls).
- h) There was a debate about the human rights jurisdiction of the East African Court of Justice (EACJ) and how this will affect the implementation of the law if the bill was passed. One school of thought was of the opinion that EACJ currently has no human rights jurisdiction as the necessarily protocol is yet to be finalised in accordance with the EAC Treaty. The other school of thought contended that EACJ has jurisdiction to pronounce judgement on any breach of the Treaty provisions, including the human rights related ones, as evidenced by its judgements. A case in point is the East African Law Society and others -v- The Attorney General of Kenya and others.³
- i) A suggestion was made that the Bill should have provided for male circumcision being one of the proven methods of reducing HIV infection rates.
- j) Stakeholders were in agreement that the EAC HIV and AIDS Bill should be translated to Kiswahili and French languages to ensure that all East Africans can read and understand it.
- k) The use of the term “Mother to Child” was found to be outdated and “Parents to Child” was suggested in its place.
- l) A participant wondered whether private health institutions will also be expected to provide free testing facilities and other services. The discussant explained that only public institutions are required to do so but private institutions will be required not to discriminate in service provision but in accordance with their charging system.

³ Reference no. 3 of 2007 available at <http://www.eac.int/eacj.html>

- m) It was observed that although the Bill defines “self testing” the concept has not been elaborated in anywhere else in the context. After a short debate, it was agreed that the issue is still a subject of controversial debate and therefore it is prudent to leave it out for now.
- n) Despite the concerns raised by the stakeholders concerning the content of the proposed law, it was generally agreed that it is good and should be left as it is for now. The stakeholders took cognizance of the fact that not everything can be covered by the regional law and some things can be taken care of by the national laws. Nonetheless, the stakeholders requested EANNASO to be vigilant to ensure that no unfavourable clauses are introduced in the Bill as it moves through the stages.

5.0 Setting the Advocacy Agenda for the Proposed EAC HIV and Aids Bill

The session was facilitated by Olive Mumba, Programme Manager, EANNASO and Jonniah William, Consultant EANNASO. The participants were divided into groups representing EAC Partner States, that is, Burundi, Kenya, Rwanda, Tanzania, Uganda and Zanzibar. All groups were guided by the following questions in their deliberations:

- a) How can participants acting at each Partner State’s country level influence key actors identified to move forward the regional proposed Bill successfully through the remaining processes at EALA?
- b) How can the participants then establish the necessary linkage and therefore influence the individual Partner States’s HIV and AIDS related legislation through the model of EAC HIV and AIDS Law?

In their deliberations, the groups identified lobbying strategies with the contact persons in respect of the: National EAC Ministers, Ministers for Health, Permanent Secretaries in the respective Ministries of EAC and Health, Drafters within the Ministries of Justice/Attorney General office and National AIDS Commissions (NACs/CNLSide). In addition the groups strategized on building coalition with CSO as champions. The following is the summary of discussions of the groups recorded in tabular forms:

a. Burundi

Question 1

Actor / Stage 1	Stage 2: EAC SECRETARIAT
EAC Ministers	<ul style="list-style-type: none"> a) Meeting with the focal point involved in process to set up advocacy plan b) Share Dar Es Salaam EANNASO meeting report c) Brief and advocate on HIV regional Bill process
Ministers of Health	<ul style="list-style-type: none"> a) Meeting with the focal point involved in process to set up advocacy plan b) Share Dar Es Salaam EANNASO meeting report c) Brief and advocate on HIV regional Bill process
Permanent Secretaries (in our respective Ministries of Health and	<ul style="list-style-type: none"> a) Meeting with the focal point involved in process to set up advocacy plan b) Share Dar Es Salaam EANNASO meeting report c) Brief and advocate on HIV regional Bill process

EAC Ministries)	
Drafters within the Ministries of Justice /AG office	<ul style="list-style-type: none"> a) Meeting with the focal point involved in process to set up advocacy plan b) Share Dar Es Salaam EANNASO meeting report c) Brief and advocate on HIV regional Bill process

Actors	Interventions
Relevant Government	Our entry point to reach these actors is through the speaker of EALA, EALA's General Purpose Committee, Rt Hon Abdi, and other members

National AIDS Commissions (NACs /CNLS)	<ul style="list-style-type: none"> a) Meeting with the NAC PES to set up advocacy plan b) Share Dar Es Salaam EANNASO meeting report c) Brief and advocate on HIV regional Bill process
Coalition building with CSO as champions	Organise a CSO meeting on the regional HIV Law

Question 2:

- a) Hold a national stakeholders and the media workshop on the Regional and national HIV laws
- b) Advocate for amendment of the national HIV/ AIDS Law in accordance to EAC model Law

Team Leader: ABS

- b. Kenya
- Question 1**

Ministries	Oyondi, Bonaya, the PS Ministries of EAC, Special Programmes, Public Health and Sanitation, Medical services, Justice and Constitutional Review as well as the Secretary General EAC and Kenya's AG. There shall be send an email showing actual composition of sectoral committee. The strategy is to engage the actors identified above by: a) Speaking to the speaker and the general purpose committee, b) Having a conversation with Nalo and the sectoral committee linked to ministries of health and to inform ministry of public health, ministry of medical services and to bring issues on board. c) It is prudent to deal with the speaker and AG separately.
National AIDS Control Council (NACC)	KANCO and LVCT to include this bill as part of the agenda in the oversight and accountability team
Coalition building with CSO as champions	Have a consultative process.

Question 2:

- a) Continued advocacy for the national bill to follow the EAC bill and guidelines

Team Leader: KELIN

- b) Rwanda

Question 1

N ^o	Steps/Activity	Time Line	Responsible
01	Constituting a small team of about ten people from six umbrellas and other active CSOs to lobby different target audiences (Parliament, Line Ministries and Commissions)	July - August 2011	FAAS, RINGOs FORUM
02	Organize a meeting involving all stakeholders to shade light on the Bill, its importance and the steps it has gone through and what is remaining to become a law.	August-Sept 2011	FAAS, RINGOs FORUM

Question 2

N ^o	Steps/Activity	Time Line	Responsible
01	• Identifying the gaps in the existing policies and laws	October- November 2011	FAAS, RINGOs FORUM
02	• Using the best practices outlined in the Bill and adapting them to the ongoing legislation on Reproductive health bill with HIV components and other laws under the law reform commission.	December 2011	FAAS, RINGOs FORUM

In addition, the Taskforce shall meet to discuss the way forward to facilitate an agreement after the workshop.

Team leader: RANGOS and FAAS

c. Tanzania

Question 1

Actor/Stage	Mainland: EAC Secretariat	Zanzibar: EAC Secretariat
EAC Minister	The proposed Bill to be presented to the Minister of EAC	The proposed Bill to be presented to 2 nd Vice President
Minister of Health	Giving the facts and need for the Bill and their involvement	Giving the facts and need for the Bill and their involvement
Permanent secretaries	Meeting with Permanent Secretary - Ministry of health	Meeting with Permanent Secretaries - Ministry of health and 1 st Vice President Office
Drafters within the Ministries of Justice/AG office	TACAIDS, TAF and TANGO to sell the propose Bill to AG Meeting Permanent Secretary Ministry of Justice & Constitutional Affairs	ZAC, ZANGOC and ZAPHA+ to sell the propose Bill to Attorney General.
Tanzania Commission for AIDS & Zanzibar Commission for AIDS	Steering Committee to consult Legal Aid Unit and Advisory Committee - TACAIDS on the current status of EA Bill	Steering Committee to consult Advisory Board - ZAC on the current status of EA Bill
Coalition building with CSO as champions	Umbrella organizations (TAF, NACOPHA, TANGO) to hold meeting under proposed facilitation of VSO, EANNASO, TACAIDS, and UNAIDS	Umbrella organizations (ZANGOC, ZAPHA+) to hold consultative meeting under proposed facilitation of VSO, ZAC, UNAIDS, and EANNASO

Question 2.

- a) Conduct consultative meetings with Parliament Committees for Constitution, HIV and Health - Mainland;
- b) Conduct consultative meetings with House of representative committees - Health and Social welfare and Constitution and justice - Zanzibar

Team Leader: TANGO.

d. Uganda

Question 1

Actor /Stage	Stage 2: EAC Secretariat
EAC Minister Hon. Kategaya Eriya	Using influential persons or offices as Uganda Human Rights Chair ,Uganda AIDS Commission Director General and Organising a delegation of CSOs to meet the Minister
Minister of Health	CSOs representatives to meet the Minister and use of influential people around her
Permanent Secretaries	Use people at her level e.g. Secretary of UHRC
Drafters within	a) Meet commissioners of Uganda Law Reform Commission

the Ministries of justice and AG office	<ul style="list-style-type: none"> b) Use commissioners who are HR compliant to 'tame' the junior staff c) Present the Bill to ULRC
National AIDS Commission	<ul style="list-style-type: none"> a) Target the new Chair of UAC to introduce the Bill for input b) Target the new Directors before they can be influenced by the system c) Organise for one Self-Coordinating Entity (SCE) – PLHIV/UNASO - to present in the Partnership Committee meeting
Coalition Building with CSO as Champions	<ul style="list-style-type: none"> a) Use the current Ugandan coalition to introduce the regional Bill b) Invite more members for input and ownership c) Organise a CSO meeting for buy-in

NB: As we meet the government stakeholders, the notes should be removed from the Bill or else it will be opposed. They can always be attached after the buy-in.

Question 2:

- a) It is an opportunity for Uganda since the Bill has not been enacted to Law. Lobbies can use article 48 of the EAC HIV and AIDS Law to show that the proposed Ugandan legislation would be superseded to the extent of any inconsistency. The CSOs will capitalize on the EAC regional initiatives and are called to study the text of the EAC HIV and AIDS Bill in order to effectively influence others.

Team leader: UGANET

Plenary discussions of matters arising from the deliberations on setting the advocacy agenda for the proposed EAC HIV and Aids Bill

Comments and Deliberations

- a) The stakeholders debated about the extent to which the media should be involved at the current stage of the Bill. Some people felt that the media should be extensively involved at all stages of the Bill to enhance public support. Other felt that too much media involvement at this stage may negatively influence the identified contact persons, particularly government officials who expect to get the information from the EAC first hand. It was agreed that there would be minimal involvement of the media for now until the Bill gets to EALA.
- b) The suggestion by the Ugandan stakeholders for expunging the notes attached to the Bill while lobbying government officials stimulated a heated debate. A section of the stakeholders argued that the notes should not be removed as they were indicative of the intention of the drafters not to exclude some MARPS, particularly sex workers, LGBTIs and injecting drug users, although not expressively mentioned in the text of the Bill. They opined that removing the notes would be tantamount to rejecting them a platform to agitate for their rights which they do not have at the country level. Other stakeholders explained that the expulsion of the notes from the Bill would not affect the rights of the groups not specifically mentioned as the wording of the Bill is sufficiently inclusive of them. It was further explained that like any other bills, the notes are not part of the Bill but are necessarily for future reference as to the intention

of the drafters of the law in case of any query regarding the place of the aforementioned groups. In conclusion, it was agreed that stakeholders will be free to expunge or keep the notes while lobbying depending on the prevailing situation in their country and the targeted individuals.

c) Stakeholders sought to clarify that in Zanzibar HIV/AIDS matters follow under the 1st vice-president while EAC matters are the mandate of the 2nd vice president; thus, advocacy should be mindful of the division of competences.

d) It was agreed that the Bill would take the Council route as opposed to the private member's Bill for purposes of enhancing governments support and political will necessarily for implementation.

e) It was explained that EANNASO will soon advise stakeholders on the Bill time lines as the advocacy and lobbying continues.

6.0 Closing remarks

The workshop was concluded by a vote of thanks by three participants; Mr. Joe Muriuki, Mr. Patience Kubumwuremyi and Ms. Lucy Ng'ang'a, Executive Director, EANNASO. Mr. Muriuki gave a brief background to the right based response to HIV and AIDS advocacy and urged the stakeholders to keep on the good campaign. Mr. Kubumwuremyi reiterated Mr. Muriuki's appeal and thanked EANNASO for their leadership in the advocacy for a regional HIV/AIDS law. In her closing remarks, Ms. Ng'ang'a thanked the stakeholders for their continued support and contribution towards the realization of the EAC HIV and AIDS legislation. She pledged EANNASO's support in the remaining part of the engagement. Finally, she impressed upon them to be particularly mindful of the interests of the people they represent as they continue advocating for the rights of PLHIV both at the region and country level.

Annexure 1



'Building Partnerships towards Rights-Based HIV & AIDS Legislation in East Africa'

8th -9th July 2011

Whitesands Hotel, Dar-es-Salaam, Tanzania

Workshop Programme

Date /time	Activity	Responsible
Friday 8th July 201		
SESSION I OPENING CEREMONY		
Session Chair - Busingye Kabumba		
8:00 – 8:30 am	Registration	EANNASO
8: 30 – 8:45 am	Welcome and Introductions	Julius Sabuni, Joyce Abalo
8:45 – 9:15 am	Objectives of the Workshop	Julius Sabuni
9:15 –9:35 am	A Word from Partners	UNDP Country Office, TACAIDS
9:35 –10:00 am	Presentation: 'An Overview of the Rights -based Response to HIV/AIDS in East Africa'	Dr. Amitrajit Saha, Senior Advisor, HIV & Human Rights, UNDP Regional Service Centre for Eastern and Southern Africa
10:00 – 10:30	Plenary Discussion with Q & A	All
10:30 – 11:00 am	GROUP PHOTOGRAPH & TEA BREAK	

SESSION 2 COUNTRY AND REGIONAL TRENDS ON HIV/AIDS, HUMAN RIGHTS AND LEGISLATION IN THE REGION		
Session Chair: Roselyn Karugonjo -Segawa		
11:00 – 12:30 am	Country & Regional Trends in HIV& AIDS, Human Rights and Legislation <u>Country</u> Kenya Rwanda Tanzania Burundi Uganda Zanzibar	Edga Sichangi Frank Asimwe AnnMarie Nkelame Hakizimana, Federick Dorah Musinguzi Haji Khatib Haji
	Q & A Session	
12:30 – 1:30	<u>Regional</u>	

pm	EAC Anti -Counterfeit Legislation African Dialogue on HIV & the Law Efforts Towards an EAC HIV & AIDS Legislation	Allan Maleche Olive Mumba Julius Sabuni
1: 30 – 2:30 pm	LUNCH BREAK	
2:30 – 3:30 pm	Plenary Discussions	All
SESSION 3 AN OVERVIEW OF THE KEY THEMATIC ISSUES AND PROSPECTS IN THE LEGAL RESPONSE TO HIV IN THE REGION		
Session Chair: Allan Maleche		
3:30 – 4:00 pm	Challenges and Opportunities of Most at Risk Population in Legislation in East Africa	Nduku Kilonzo -Liverpool VCT Macklean Kyomya, WONETHA- Eric Gitau, GALK
4:00 – 4:15 pm	TEA BREAK	
4:15 – 5:00 pm	Case Studies: Good Practices and Lessons Learnt in Rights -Based Response Advocacy and Practice	Edga Sichangi, AIDS Law Project Scholatica Jullu, (WLAC) Nduku Kilonzo, Liverpool VCT
5:00 – 5:30 pm	Plenary Discussions, Q& A	All

DAY TWO 9th July 2011 SESSION ONE THE EAC HIV & AIDS PREVENTION AND MANAGEMENT BILL		
Session Chair - Dorah Musunguzi		
8:00 – 8:30 am	Registration	EANNASO
8:30 – 8:45 am	Recap of day 1	Rapporteur
8:45 – 9:00 am	Perspectives of People Living with HIV/AIDS on Human Rights & Legislation in East Africa	Joe Muriuki, NAPEAR Joan Chamungu-Discussant
9:00 – 9:30 am	'The EAC Prevention and Management Bill, 2010: Salient Features'	Allan Maleche & Julius Sabuni
9:30 – 10:00	'The Law Making Process at the EAC'	Steve Machage-EALA Mathews Nduma-EAC, Discussant
10:00 – 11:00 am	Plenary Discussions with Q & A	Plenary
11:00 – 11:20 am	TEA BREAK	
SETTING THE ADVOCACY AGENDA FOR THE EAC HIV & AIDS BILL Session Chair - Olive Mumba and Jonniah William		
11:20 – 1:00 pm	Group Work : Road Map for Advocacy a regional Legislation on HIV & AIDS	
1:00 – 2:00 Pm	LUNCH	
2:00 – 3:00 pm	Group Work Plenary Presentation Discussion & Way Forward	ALL
3:00 – 3:15 pm	Closing Remarks	Lucy Ng'ang'a, EANNASO Participant; TACAIDS

Annexure 2

LIST OF PARTICIPANTS FOR THE AIDS BILL ORIENTATION MEETING

DAR ES SALAAM JULY 8-9, 2011

NAME	COUNTRY	ORGANISATION	EMAIL ADDRESS
Allan Maleche	KENYA	KELIN	amaleche@kelinkenya.org
Jane Mwangi		KANCO	kanco@kanco.org kenaids@iconnect.co.ke
Elizabeth Imbo		NEPHAK	nelsonotwoma@gmail.com elizabeth.imbo@yahoo.com
Edga Sichangi		AIDS LAW PROJECT	projectaidslaw@gmail.com s_edga@yahoo.com
Nduku Kilonzo		Liverpool VCT	nduku@liverpoolvct.org
James Kamau		KETAM	kamaunjenga@yahoo.com
Eric Gitau		GALK	maq@galck.org
Macklean Khyoma		UGANDA	WONETHA
Dorah K. Musinguzi	UGANET		kicdor@yahoo.com
Stellah Kentusi	NAFOPHANU		skent41@nafophanu.org
Roselyn Karugonjo	Uganda National Human Rights Commission		roselyn@uhrc.ug rosekarugonjo@yahoo.co.uk
Flavia Kyamukoma	NAPER		flaviakyomukama@yahoo.co.uk
Rev Canon Ruteikara	CICC		revsamkara@gmail.com ruteikarasam@yahoo.in
Heri Uisso	TANZANIA		TAF
Milka Wahu Kuria		CLAN	Kuria2020@gmail.com
Joan Chamungu		Tanzania Network of Positive women	joanchamungu@yahoo.com

		(SR & TAF Board member)	
Simon Malanilo		HDT	hdt@hdt.or.tz programs@hdt.or.tz
Joseph Kalume		TAWLA	tawla_tawla@yahoo.co.uk tawla@raha.com
Josephine Arnold		WOMEN LEGAL AID CENTRE (WLAC)	wlac@raha.com
Julius Kaaya		NACOPHA	j2kaaya@yahoo.com nacopha@nacopha.or.tz
Bernedict Sichinde		Association of Journalist against AIDS (AJAAT)	ajaatz@yahoo.co.uk
Amina T. Ally	ZANZIBAR	Zanzibar Female Lawyers Association	mrsyussuf@hotmail.com
Mbarouk Mrakib		ZANGOC	zangoc@zanlink.com , zangoc29@yahoo.com
Masoud H. Nassor		ZAPHA	zapha_2003@yahoo.co.uk
Bosco Prince Kanani	RWANDA	RNGOF	rwandangoforumrw@gmail.com bosprince@yahoo.fr
Beatrice Kagoyire		RRP+	beakagoyire@yahoo.fr rrp.rwanda@gmail.com
Frank Asiimwe		FAAS	faasrwanda@gmail.com mugufred07@yahoo.com
Viviane KAMANZI.		Human Rights First Association	viviwk87@yahoo.fr
Patience Kubumwuremyi	BURUNDI	ABS	patk28@yahoo.fr allianceburundi@yahoo.fr
Hakizimana Frederick		CNLS Burundi	fredyhakiza@yahoo.fr

	Brenda Dosio	Country, Regional, Global Organizations	EALS	eals@habari.co.tz bdosio@ealawsociety.org
	Joe Muriuki		NAPEAR	joemmuriuki@gmail.com
	Nestory Masswe		EACSOE	eacsof@gmail.com , peter1404@gmail.com
	Rosalia Marandu		VSO	Rosalia.Marandu@vsoint.org
	Busingye Kabumba		East African School on Law, Human Rights and HIV/ AIDS (EASLHRA)	easlhra@developmentlaw.org
	Amitrajit Saha		UNDP Regional Office	amitrajit.saha@undp.org
	Steve Machage		EALA Representative	machage@eachq.org
		Organizers		
	Lucy Ng'an'ga	EANNASO	Lwnganga@gmail.com	
	Olive Mumba	EANNASO	mumba@eannaso.org	
	Julius Sabuni	EANNASO	sabuni@eannaso.org	
	Jonniah Mollel	EANNASO	mollel@eannaso.org	
	Joyce K. Abalo	EANNASO	abalo@eannaso.org	
	Amani Golugwa	EANNASO	golugwa@eannaso.org	
	Esther Mnzava	EANNASO	mnzava@eannaso.org	
	Batul Ibrahima	EANNASO	batulebrahim@yahoo.com	

WELCOME NOTE BY THE EANNASO SECRETARIAT
ON THE OCCASION OF THE OPENING OF THE WORKSHOP ON
'BUILDING PARTNERSHIPS FOR RIGHTS -BASED HIV & AIDS LEGISLATION AND
PRACTICE IN EAST AFRICA'

The Chief Guest,

Invited Guests, Partners, Colleagues,

Ladies and Gentlemen,

On behalf of the EANNASO Executive Director and the EANNASO Secretariat, I warmly welcome you to Dar Es Salaam, Tanzania. We are gathered here, participants from six jurisdictions and five countries Partner States for the East African Community to revisit HIV & AIDS, Human rights and Legislation in the region and how the legal frameworks and right based responses have facilitated or hindered the response to HIV and AIDS. In so doing, let me make a few points and speak of a few things, five things to be precise, which will help put things into perspective as regards our reason for being here, what we should expect out of this gathering as well as assuring ourselves that our time here will be worth the while.

First; to get to understand the HIV and AIDS, Human rights and legislation discourse in East Africa and Sub-Saharan Africa at large, a bit of history is imperative:-

The **Abuja Declaration on HIV and AIDS, Tuberculosis and Malaria, 2001** recognize not only the need for a collective, international response to the pandemic, but also that Human rights lie at the very heart of HIV and AIDS and its response. 'Abuja' was followed suit by the **UN Declaration of Commitment on HIV/AIDS (DoC), 2001**, which wholly adopted the spirit of 'Abuja' and declared that 'the realization of human rights and fundamental freedoms for all is essential to reducing vulnerability to HIV'.

In 2006, UNAIDS and the UN High Commissioner for Human rights jointly issued the **International Guidelines on HIV & AIDS and Human rights** which set standards for a comprehensive and holistic right -based response to HIV and AIDS.

Ladies and Gentlemen,

It is important to note that all these efforts were highly inspired by civil society, activists and communities of PLHIV.

Second; unfortunately for legislation, which is expected to drive the Rights -based response and set the framework thereof, it came to Africa with an inherent contradiction, which from the inception became a challenge in itself. It came with provisions which, on one hand, despite seeking to achieve good public health objectives, including prevention of HIV transmission, on

the other hand, on the other hand, provisions had the effect of violating/the very rights they were intended to protect and promote, which, in effect, has had the effect of giving rights with one hand and taking them away and even violating them with another hand. One major example is the 2004 AWARE- HIV and AIDS Model Law for West Africa, which inspired a number of national laws in West Africa. Further, for legislation which touches the lives of all people, the laws were passed with token or with no meaningful involvement and participation of CSOs, communities and PLHIV and with little regard to the content or the spirit of the International standards.

East Africa has proven to be no exception; beginning 2005, there has been a wave of HIV and AIDS legislation across the region- some already in place and some in the making. The style/format of legislation, the issues and the resulting challenges are similar. As such, little or no lessons have been learnt.

Third, in this whole dispensation, civil society, which has all along advocated for a legal framework for protection of rights and rights -based responses to the pandemic was caught unawares by this and as a result, had to resort to fighting the 'bad legislations' for the reason stated.

Fourth, our experience on this subject over the years has demonstrated that civil society has not utilized its hand on knowledge of the prevailing issues, advantage in numbers and popular support to draw synergies to network, collaborate and campaign for delivery of rights based responses, adoption of good practices as well as law and policy reform. The experience suggests that it is high time we came together as civil society of the region to work at rectifying these anomalies.

Fifth and final, in the wake of regional integration in our region, it is necessary that we not only sit together to think, reflect, and plan, but also take advantage of the economies of scale to forge a regional response that is harmonized and is rights based.

Once again you are most welcome,

Thank you most sincerely.

Julius Sabuni,

Team Leader, Policy & Advocacy

EANNASO