

1. Introduction

All the East African Community (EAC) Partner States have adopted the strategy of integrating policies, strategies, resources, programme and their monitoring and evaluation with the aim of improving economy, effectiveness and efficiency in service delivery. One of the leading pathfinder areas for integration of healthcare is the integration of Sexual and Reproductive Health - SRH (women's, children's and adolescent health) and HIV/AIDS and Sexually Transmitted Infections (STIs).

Table 1 below provides a summary of a life cycle based review of the SRH and HIV/AIDS challenges demonstrating intricate linkages between SRH and HIV/AIDS¹. This calls for integrated interventions.

Table 1: SRH and HIV/AIDS Challenges at the different Stages of Development

Developmental Stage	Sexual and Reproductive Health and HIV/AIDS Challenges
Infancy	High mortality rates, Possibility of mother-to child transmission of HIV
Childhood	High mortality rates, Risk of mother-to-child transmission, Sexual violence
Adolescence and Youth	Onset of puberty, Unprotected sexual intercourse, Early pregnancy
Adulthood	High maternal death rates, Risk of SGBV, Low male participation
Old Age	Menopause, SGBV and higher risk of cancers of reproductive system

Strategic and tactical reasons for the continued pursuit of integration of SRH/RMNCAH policies, strategies, services and programmes for East Africa are that;

- Underlying causes and risk factors are common meaning that similar approaches for the prevention and treatment can be used
- Integrated services are more cost-effective and efficient
- Increased opportunities for people to learn their HIV status, and for positive women, men and children facilitates access to care and support, including counselling and support for reproductive choices, specific PMTCT interventions, early diagnosis for children, HAART and OI prophylaxis
- New investment in HIV prevention and care can contribute to improvements in SRH/RMNCAH and the overall health system
- Key populations and young people vulnerable to HIV infection and poor SRH and MNH need access to integrated services
- Saves women, children and families time and travel costs
- Increases opportunities to promote safe and healthy sexuality
- Improved SRH and MNH protects pregnant and breastfeeding women from HIV infection and lowers risk of MTCT when women with HIV infection are unaware of their status

¹ Southern African Development Community. 2015. Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region

- Separate HIV prevention and care services may divert resources and staff from other health services and add to stigma.

2. Background: Milestones Covered

As a result of which, the EAC Secretariat through the EAC Technical Working Group (TWG) on Reproductive, Maternal, Newborn, Child and Adolescent Health and Nutrition (RMNCAH) has convened several meetings for purposes of drafting the EAC Sexual and Reproductive Health and Rights (SRHR) Bill 2016 as detailed below:

1. Meeting of the EAC Technical Working Group on Reproductive Maternal Newborn Child and Adolescent Health and Nutrition held on 3rd – 6th October, 2016 in Mwanza, Tanzania

The EAC Secretariat convened the Third Meeting of the EAC Technical Working Group (TWG) on Reproductive, Maternal, Newborn, Child and Adolescent Health and Nutrition (RMNCAH) was convened in **Mwanza, United Republic of Tanzania** from 3rd to 6th October 2016 in accordance with the EAC Calendar of activities for the period of July-December 2016.

The purpose of the 3rd TWG on RMNCAH meeting was to review the status of implementation of the various EAC RMNCAH and Nutrition Initiatives/Projects and provide technical guidance on sustainability of actions and results in order to help shape maternal, newborn, child and adolescent health outcome for the region.

The specific objectives of the meeting was to:-

- i. Present the draft East African Community Sexual and Reproductive Health Rights Bill 2016 incorporating provisions on child marriage by East African Legislative Assembly Member of Parliament from the Republic of Burundi, Hon. Dr. Odete Nyiramilimo
- ii. Generate inputs for incorporation into the draft East African Community Sexual and Reproductive Health Rights Bill 2016.
- iii. Develop/refine Terms of Reference (TORs) for the drafting of the East African Community Sexual and Reproductive Health Rights Bill 2016 and review country specific RMNCAH Policy and Advocacy briefs.

In conclusion, the EAC Reproductive Maternal Newborn Child Adolescent and Nutrition Technical Working Group recommends to the 22nd Ordinary Meeting of the EAC Sectoral Committee on Health to consider and:

- a) Adopt the proposed framework for the EAC SRHR Bill;
- b) To direct the EAC Secretariat to finalize and share draft bill the SRHR Bill with all relevant stakeholders by June 2017
- c) The EAC Secretariat should involve the Partner States legal drafts men/women from the beginning to assist in drafting the EAC SRHR bill.

2) Third Joint Regional Workshop to Draft the East African Community Sexual, Reproductive, Health and Rights Bill held on 13th to 16th December 2016, Nairobi, Kenya

The EAC Secretariat convened the first Regional Workshop to draft the EAC SRHR in collaboration with other key stakeholders following the review and updating of the draft Bill in Nairobi, Kenya from 24th – 28th October 2016 by subject matter technical and legal Experts drawn from the collaborating Partners.

The aim of the Workshop was to refine the draft EAC Sexual Reproductive Health and Rights Bill in preparation for the elaborate Bill enactment processes in East African Legislative Assembly. Participants interrogated the draft Bill Clause by Clause and Section by Section while making reference to relevant key global, regional and national policy and legal instruments for further enrichment.

The main outcome from the meeting was to have a refined EAC Sexual Reproductive Health and Rights Bill ready for further development through the elaborate enactment processes in East African Legislative Assembly plenary sessions.

3) The East African Legislative Assembly (EALA) Workshop on Sexual and Reproductive Health and Rights in East African Community, Kampala, Uganda on the 23rd January, 2017.

The EALA Workshop on Sexual and Reproductive Health and Rights in East African Community was convened along the side-lines of the 4th Meeting of the 5th Session of the 3rd Assembly (EALA) in preparation for tabling the draft Bill for the First Reading on Tuesday, 24th January 2017.

The Workshop Participants included Hon. Members of the East African Legislative Assembly; Hon. Members of Parliament from the Health Committee of the Parliament of Uganda; staff and technical Experts from the EAC TWG on RMNCAH.

The objective of the workshop was to update the Members of EALA and other stakeholders on the spirit and content of the draft EAC SRHR Bill and generate valuable inputs for its further refinement.

Hon. Dr. Odette Nyiramilimo, the mover of the EAC Sexual and Reproductive Health Bill, presented the draft Bill in collaboration with a team of legal Drafters who participated in the drafting of the Bill. The presentation was thereafter preceded by a status of SRH in the East African Community Partners States, and inputs from Policy Makers on the spirit, context and content of the draft Bill for further refinement.

4. Country validations/ Public hearings of the draft EAC SRHR Bill, 2017 from the 22nd to 23rd February, 2017 in Nairobi, Kenya.

Analysis by Regional CSO Task Force on SRHR, Policies and Legislation on the Draft EAC Sexual and Reproductive Health Rights Bill, 2017



The main objective of the meeting was for East African Legislative Assembly (EALA) Members, Partner States, civil society organisations, Government officials and experts on SRHR to exchange ideas during the consideration of the draft Bill.

Aim: To generate views of a broad spectrum of stakeholders from EAC Partner States on the draft EAC SRHR Bill, 2017.

Methodology: Country positions shall be documented to facilitate consolidation of inputs by a special meeting of EALA General Purpose Committee Members and a team of Drafters and members of EAC TWG on RMNCAH.

Output: Country specific reports detailing country positions on the draft EAC SRHR Bill

Draft Bill updated with Partner States inputs.

5. 5th Session of the 5th Meeting of the 3rd East African Legislative Assembly (EALA), 15th – 16th March, 2017

The General Purpose Committee was scheduled to present their committee report in Parliament with a detailed schedule of amendments to the proposed Bill. However this did not happen as the committee report was yet to be finalized and shall be presented in EALA's last sitting in Arusha, Tanzania on the 22nd May – 3rd June, 2017.

6. Overview of the Regional Task Force on SRHR, Policy and Legislation in the EAC

The Task Force on SRHR, Policy and Legislation (hereinafter referred to as The Task Force) in the EAC was established by EANNASO on 1st March, 2017, voluntarily by organizations having interest on the issues of sexual reproductive and health rights IN East Africa.

Composition of Task Force

The Proposed Task Force is recommended to be a team of multiple expertise drawn on organizational representation by senior officers from organizations of persons living with HIV, National AIDS umbrella CSOs, regional HIV and Health organizations, National CSOs working in the field of Sexual and Reproductive Health, Youth Organisations, international NGOs from all EAC Partner States and technical advisers.

Mandate of the Task Force

The overall goal of the Task Force is to enhance regional as well as national responses to SRHR issues in East Africa that are respectful to human rights in a conducive legal and policy framework in Burundi, Kenya, Rwanda, United Republic of Tanzania and Uganda.

Analysis by Regional CSO Task Force on SRHR, Policies and Legislation on the Draft EAC Sexual and Reproductive Health Rights Bill, 2017



The Task Force shall endeavor to achieve several significant strides in the course of the implementation of its mandate including several successful consultative meetings with the EALA, the EAC secretariat, the Speaker of EALA and the Clerk to the Assembly.

Current Membership

Already on Board as Members:

- Representation of organizations of persons living with HIV/ KP: ZAYEA (Zanzibar), International Community of Women Living with HIV EA (Uganda), Uganda Young Positives (Uganda)
- Representation of the national AIDS umbrella CSOs: ABS (Burundi), RNGOF (Rwanda), UNASO (Uganda)
- Representation of regional organizations: EANNASO, EACSO, EAHP, EALS
- Representation of National CSOs: IMRO (Rwanda), KELIN (Kenya),
- Representation from Youth Organization's: UMATI (Tanzania Mainland), RNJ+ (Burundi)
- Representation from International NGO's: Centre for Reproductive Rights (Kenya), Ipas Africa Alliance (Kenya)
- Representation from sexual and reproductive health rights organisations: HDI (Rwanda)
- Development Partners: SAT
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S/N	Issue	Relevant Section in the Draft EAC SRHR Bill, 2017	Regional CSO Task Force on SRHR, Policy and Legislations in the EAC Propositions
1.	Contradictions in the Title of the Bill found in the Memorandum and Preliminary Clause 1 which lacks the word Rights	<p>The Memorandum reads, “ The East African Community Sexual and Reproductive Health Rights Bill, 2017: whilst in the Preliminary in Clause 1 it reads:</p> <p>This Act may be cited as the East African Community Sexual and Reproductive Health Act, 2017</p>	<p>There needs to be consensus on the correct title to use for the Bill. It is proposed that the Bill should read as, “The East African Community Sexual and Reproductive Health Rights Bill, 2017”, as the object of this Bill is to provide a legal framework for matters relating to sexual and reproductive health rights, to protect children, adolescents and young persons from sexual abuse and other forms of exploitation, to provide for assisted reproductive technology and to provide for other matters related to those matters.</p>
2.	The Bill lacks provisions on Application and Enforcement of this Bill by EAC Partner States, thus leaves the implementation of the Provisions of this Act to the Council.	<p>Clause 31 The Council may make regulations generally for the better carrying into effect the provisions of this Act</p>	<p>It is proposed that the following Clause be added after Clause 3 as follows;</p> <ol style="list-style-type: none"> 1) Member States shall ensure the implementation of this Act at the national and regional level and in particular, they shall <ol style="list-style-type: none"> (a) harmonise existing legislations, policies and programmes with the provisions of the Act; (b) Eliminate all provisions, laws and practices that hinder or compromise the achievement of sexual and reproductive health rights for all citizens of the Community; (c) report periodically on progress made through the relevant organs of the EAC including the Summit; (d) adopt all necessary measures and in particular provide adequate budgetary allocations and other resources for the full and effective implementation of the Act.
3.	The Bill lacks provisions on	Clause 4 The Partner States shall	The Draft Bill should incorporate a clear and prescriptive

	Legal and State Obligations to Protect Human Rights/ General Duty of Partner States	ensure the protection and advancement of sexual and reproductive health rights to all persons	approach on Application of the Bill, specifically Partner State principal roles and obligations to Respect, Protect and Fulfill its role towards the full realization of sexual and reproductive health rights.
4.	<p>The Bill generalizes the SRHR needs of the different segments of the population.</p> <p>Use of the term SRHR in the Bill should be looked at holistically so as to cater for the needs of ALL categories of individuals in our society as opposed to lumping them together.</p>	<p>For example: Clause 18: The Partner States shall provide supportive infrastructure, equipment, educational materials and other services targeting adolescents and persons with disabilities including.....</p>	<p>The rights in the Bill should explicitly provide for the needs of children, adolescents, young persons, youth, men, women and elderly women, persons with disability and young persons living with HIV applying universally and without discrimination on any grounds including but not limited to race, sex, sexual orientation, gender, pregnancy, marital status, health status, ethnic or social origin, age, disability, religion, conscience or belief, culture, dress, language or birth;</p>
5.	<p>Definition/ Interpretation of terms. The Bill makes reference to certain terminologies but fails to define them in accordance to concepts, frameworks and definitions on SRHR as pronounced in these instruments including;</p> <ul style="list-style-type: none"> • International 	<p>Part I- Preliminary, Clause 2 Interpretation in specific: Clause 3(d) risky abortion</p> <p>Memorandum, Clause 3, Clause 8, Clause 28(2)</p> <p>Memorandum, Clause 3, Clause 29</p>	<p>Ensure that the Bill confirms to all relevant international conventions and treaties that the partner states are signatories.</p> <p>Terms that are causing ambiguity and need to be defined properly include:</p> <p>Child Marriage means a statutory or customary union in which one party is a child or both of the parties are children;</p> <p>Female Genital Mutilation means any procedure involving the partial or total removal of the external female genitalia or</p>

	<p>Conference on Population Development (ICPD, 1994);</p> <ul style="list-style-type: none"> • UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, 2000; • Maputo Plan of Action 2006; • Africa Health Strategy 2010; • Eastern and Southern Africa Ministerial Commitment, 2013; • Sustainable Development Goals 2015 (Target Goals: 3.7 and 3.8 and 5.6); • WHO Guidelines on Maternal, Reproductive and Women's Health. 	<p>Clause 3, Clause 29</p> <p>Clause 26</p> <p>Clause 12</p> <p>Clause 18, Clause 26</p> <p>Memorandum, Clause 3</p> <p>Several Clauses in the Bill</p> <p>Not mentioned in the Bill</p>	<p>other injury to the female sexual organs whether for cultural, religious or other non-therapeutic reasons.</p> <p>harmful practices means all behavior, attitudes and/or practices which negatively affect the fundamental rights of women, men, girls and boys, such as their right to life, health, dignity, education and physical integrity;</p> <p>Most at risk populations means any groups or persons who because of their particular personal, behavioural, situational or environmental characteristics are, or perceived to be at an increased level of risk of exposure to infection with HIV;</p> <p>Person living with HIV means a person whose HIV test results reveal the presence of HIV or HIV antibodies;</p> <p>Person with Disability includes those who have long – term physical, mental, intellectual, development or sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.</p> <p>Use of term Risky Abortion should be replaced with Unsafe abortion</p> <p>Sexual and reproductive rights means the universal human rights relating to sexuality and reproduction, including the right to sexual autonomy, sexual integrity and safety of the person, the right to sexual privacy, the right to make free and responsible reproductive choices, the right to sexual information based on scientific enquiry, and the right to sexual and reproductive health care</p> <p>Sexual Health means a state of physical, emotional, mental and</p>
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6.	The Bill explicitly confers on Partner States to go against the spirit and content of the EAC HIV and AIDS Prevention and Management Act on the principle of disclosure of	Clause 19(1) The Partner States shall ensure that every person has- (b) the right to be informed of the health status of their sexual partners including their HIV statuses	This specific clause 19(1)(b) to be paraphrased as follows: Clause 23 (1) of EAC HIV Prevention and Management Act, 2012: The result of a HIV test shall be confidential and directly communicated to the person concerned or if the person is a child or a person with a disability which renders the person incapable of understanding the meaning or consequences of the test result, to the parents or the guardian of that child or of

	one's HIV status which should be done by the person living with HIV on a voluntary basis		<p>that person.</p> <p>(2) A person providing treatment, care or counselling services to a person living with HIV shall encourage that person to inform the persons spouse or spouses or sexual partner or partners or any other third party who is at significant risk of HIV transmission from the person living with HIV, of the person's HIV status.</p> <p>(3) Except where subsection (4) is applicable, a person providing treatment, care or counselling services to a person living with HIV may notify a third party of the HIV status of that person only where the notifying person is requested by the person living with HIV to do so.</p>
7.	The Bill in its entirety makes reference to the right to health is closely related to and dependent upon the realization of other human rights, however excludes the impact and consequences of gender based violence and the rights therein.	—	The Bill should explicitly ensures a systematic integration of health services policies; greater and more effective linkages and increased support for work that connects SRHR, HIV programming, and Gender Based Violence;
8.	Rights to information on sexual and reproductive health	Clause 6(2) The Partner States shall strengthen parents' capacity to provide appropriate information to their children relating to sexual and reproductive health, in a manner consistent with the evolving capacities of their children.	The Bill should conform to the concepts, frameworks and guidelines as prescribed in The Eastern and Southern Ministerial Commitment (ESA Commitment) signed by Ministers of Education and Health from 20 Eastern and Southern Africa countries in December, 2013 in Cape Town, South Africa, committed to scaling up comprehensive sexuality education and sexual reproductive health services for

	<p>The Bill accords some form of stigma and discrimination against adolescent girls who get pregnant whilst in school, by merely stating the need of maintaining records.</p>	<p>Clause 9(5) The Partner States shall introduce measures to protect children from any forms of abuse or related stigma or discrimination in the instances of early pregnancies by affording sexual and reproductive health information and where to access services to prevent early pregnancies.</p> <p>Clause 10(2) Sexual and reproductive health related public education shall include but not limited to (See list from Bill)</p> <p>Clause 9(4) The Partner States shall, for the purposes of this section maintain records of all pregnancies occurring among adolescents in schools.</p>	<p>adolescents and young people in the region.</p> <p>In specific the ESA Commitment provides for 2015 targets as follows:</p> <ul style="list-style-type: none"> • A good quality CSE curriculum framework is in place and being implemented in each of the 20 countries; • Pre and in-service SRH and CSE training for teachers, health and social workers are in place and being implemented in all 20 countries; • By the end of 2015, decrease by 50% the number of adolescents and young people who do not have access to youth-friendly SRH services including HIV that are equitable, accessible, acceptable, appropriate and effective. <p>As it reads, the Draft Bill puts the sole responsibility of sharing information on parents excluding the state responsibility to do so under either the Ministry of Education or Health through enactment of Comprehensive Sexuality Education though a curriculum written in an age-appropriate language which can be utilized in schools by teachers to inform adolescents and young persons on their sexual and reproductive health and rights bracing the issue of Age of Consent so as to curb the social and cultural barriers hindering such access to these services..</p> <p>Clause 9 (4) should move beyond maintaining records but also put in place a mechanism to do due diligence to investigate teenage pregnancies and have perpetrators prosecuted and further a follow up mechanism by the Ministry of Education to ensure they implement a Return to School formula/policy for adolescent girls/young mothers after delivery.</p>
9.	The Bill has not exhausted		

	the list of Harmful Practices	Part VI- listed as Initiation Rites and Genital Mutilation	It is proposed to include but not limited to: Child Marriages, Coerced/ Forced sterilization. Furthermore, the Bill should expressly state the punitive measures
10.	Rights of a Child	Clause 5 The general rights of a child shall be as specified in the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the relevant laws of the Community relating to child	This Clause should explicitly state in addition the rights of a child as they relate to sexual and reproductive health rights and in specific the right to health care
11.	The Boy child is left out in the content of the Bill, only makes reference to voluntary male circumcision	Clause 21 The Partner States shall put in place mechanisms to promote voluntary medical circumcision to protect the welfare of boys	It is proposed that the Bill should also accord rights and needs of the boy child
12.	Access to contraceptives and family planning services:	<p>Clause 12 (1) The Partner States shall ensure that every individual has the right to- (Refer to Bill)</p> <p>Clause 12 (2) The Partner States shall ensure availability and accessibility of quality integrated sexual and reproductive health services including- (b) management of cancers including cervical, breast and prostate cancers</p>	<p>Generally this provision should ensure every citizen of the Community is accorded comprehensive family planning services so as to be able to make an informed decision as an individual and couples such as access to safe abortion services, family planning services, well equipped facilities and trained professionals who shall discharge such services.</p> <p>The Bill needs to broaden the section on both communicable and non-communicable diseases.</p>
13.	Termination of Pregnancy- The Bill needs to take into consideration all circumstances under which the health or life of a woman may be endangered as a result of which a trained health professional may terminate a pregnancy upon consultation with the pregnant woman.	Clause 15(1) The Partner States shall safeguard and give effect to the reproductive rights of a woman by permitting the termination of pregnancy when in the opinion of a trained health professional, the pregnancy endangers the health or life of the woman.	<p>The termination may be effected upon consultation with the pregnant woman by the health trained professional circumstances to be included may read as follows: States shall take measures to protect the reproductive rights of women by authorizing termination of pregnancy in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.</p> <p>The termination of pregnancy may take place-</p> <p>a) Only with consent of the pregnant woman;</p>

	<p>In addition the issue of counselling of a pregnant woman should be undertaken by a trained health professional.</p>	<p>Clause 15(2) The Partner States shall put in place measures to ensure that before termination of pregnancy is undertaken, counseling is provided to the pregnant woman before and after the termination.</p>	<p>b) In the case of a pregnant minor, after consultation with the minor’s parents, guardian or such other persons with parental responsibility over the said minor, provided that the best interest of the minor shall prevail; or</p> <p>c) In case of a mentally unstable person, after consultation with the parents, guardian or such other persons with parental responsibility over the said person.</p> <p>The submission is that such counselling should be undertaken by a trained health professional who shall offer non-mandatory and non-directive counselling, before and after the termination of pregnancy.</p> <p>Further, State obligation to undertake research/ gather information on the health consequences of unsafe termination of pregnancies and tailor interventions to address the same based on the research/information gathered; the information may come from head facilities’ in charge.</p>
<p>14.</p>	<p>Protection from discrimination: The Bill should clearly state what these grounds of discrimination may include, and entitlement to comprehensive sexuality education</p>	<p>Clause 20- The Partner States shall ensure that men, women and the young people have access to sexual and reproductive health services without any form of discrimination.</p>	<p>The grounds for discrimination may include: Should explicitly apply universally and without discrimination on any grounds.</p>
<p>15.</p>	<p>The use of the term Assisted reproductive technology in the</p>	<p>Clause 25 The Partner States shall put in place policies, laws and measures to regulate the right to gestational</p>	<p>Gestational surrogacy means the process by which a woman attempts to carry and give birth to a child created through in vitro fertilization using the gamete or gametes of at least one</p>

	Memorandum and gestational surrogacy in Clause 25 brings about some ambiguity as both terms are not defined	surrogacy	of the intended parents and to which the gestational surrogate has made no genetic contribution
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