

SEXUAL AND REPRODUCTIVE HEALTH RIGHTS

LEGAL AND POLICY AUDIT WITHIN
THE EAST AFRICAN COMMUNITY

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1. INTRODUCTION

1.1. ABOUT THE EAC

The East African Community (EAC) is a regional intergovernmental organisation comprising of Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda. Initially established in 1967 it became defunct in 1977 and was re-established in 1999 via the adoption of a new treaty: The Treaty for the Establishment of the East African Community, 2000 (EAC Treaty or the Treaty).



The main mandate of the EAC is that of economic and social integration the achievement of which should take into cognisance human rights and gender equality. Article 6(2) of the EAC Treaty accordingly provides that the fundamental principles include: 'good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.' The EAC's operational principles in article 7(2) of the Treaty equally require states 'to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.'

More specifically, the entry point for women's rights promotion within the EAC is found among the objectives of the community in article 5(3)(e) of the EAC Treaty which requires the EAC to ensure: 'the mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic, and technological development'. Further the Treaty in article 121 calls upon states to recognise and enhance the role of women in socio-economic development through legislative and other measures that in-

clude: participation in decision-making; addressing harmful practices and discrimination against women; and awareness creation aimed at countering prejudices against women among other measures. Article 122 makes a similar call with regard to the role of women in business. Clearly the EAC Treaty provides a strong normative basis for the promotion of women's rights and consequently sexual and reproductive health rights. Further to this, the EAC has made initial steps to put in place various strategies and standards that can be utilised for women's rights promotion.

1.2. SRHR IN THE EAC

Globally, sexual and reproductive health rights remain a class of rights that is often marred with political, moral, religious and personal biases and dimensions. Within the African continent, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is celebrated as a trend setting and progressive normative framework that strengthens the protection and promotion of women's rights in Africa. Its provisions guarantee women freedom from discrimination and harmful practices, guards a woman's ability to control their fertility and the freedom to choose any method of contraception.

At the sub-regional scope, there is an increasingly growing appreciation and use of Regional Economic Communities (RECs) as tools for the implementation of the Maputo Protocol. Whereas these sub-regional bodies are primarily aimed at enhancing regional economic conversations, the East African Community, Southern African Development Corporation, COMESA and the Economic Community of West Africa have all proved a desire to protect women's rights either through precedent setting substantive court decisions, enactment of protocols or policies, and implementation of programmes that have advanced the protection or promotion of women's rights. The EAC SRHR Strategic Plan (2008-2013), for instance, was developed to promote regional collaboration in addressing key SRHR issues in the region and facilitate the attainment of Universal Access to Comprehensive SRHR for all women, men and youth in the EAC region in line with the MDGs and the Maputo Plan of Action.

The average maternal mortality ratio in the East Africa Community is estimated at 477 per 100,000 live births; adult HIV prevalence is as high as 7.1% in Uganda yet only 1.3% in Burundi and the proportion of family planning demand satisfied by modern methods is only about 40%. Only half of pregnant mothers in the region attend the

recommended 4 Antenatal Care visits and deliver under skilled care. Furthermore, EAC reproductive, maternal and adolescent statistics indicate that young people are the largest age group with the highest incidence of HIV, with low empowerment and intimate partner violence among young girls are key drivers of new infections and 37% of young women aged 20-24 years were married as children.

As a result of these glaring gaps, the EAC Secretariat through the EAC Technical Working Group (TWG) on Reproductive, Maternal, Newborn, Child and Adolescent Health and Nutrition (RMNCAH) convened several meetings for purposes of drafting the EAC Sexual and Reproductive Health and Rights (SRHR) Bill, 2016. The bill, whilst thereafter introduced to the EAC Legislative Assembly, was negated as the term of the parliamentarians came to an end in June 2017.

It is noteworthy that throughout the East African Community, where-as there are similarities in violations against women and girls such as deaths through unsafe abortion, female genital mutilation and child marriage, the characterization and manifestations of certain violations differ within the various countries in the EAC region. Through this research, the Consultants aim to interrogate the similarities, differences and or absence in legal frameworks on matters such as HIV, early marriage, maternal mortality, female genital mutilation, in-vitro fertilization, sexual and gender-based violence.

This research furthermore identifies and highlights key areas of contestation within the previous EAC SRHR bill, and in particular, on priority areas such as unsafe abortion, surrogacy, gender-based violence against women, harmful traditional practices, HIV/AIDS and adolescent sexual health. The assignment summarizes the findings, gaps, variance and regional challenges in the legal frameworks of different EAC countries in the regulation of sexual and reproductive rights while exploring areas of collaboration among civil society organizations. Additionally, beyond the legal environment assessment, the research aims to strengthen current and emerging advocacy on women's rights to sexual and reproductive health in East Africa by mapping and identifying like-minded civil societies and champions that can assist to revive the EAC SRHR bill.

1.3. ABOUT THE EAC SRHR BILL

In January 2017, the East Africa Legislative Assembly introduced the EAC Sexual and Reproductive Health Rights Bill, 2017 (EAC SRHR Bill). The Bill, which was introduced by Hon Member Dr Nyiramilimo Odette, was premised on the provisions of Article 118 of the Treaty establishing the East Africa Community which calls for the harmonization of natural health policies and regulations on order to achieve quality health. In particular, the bill's preamble described its objectives as three pronged. First, as providing a legal framework for matters relating to sexual and reproductive health, second, protecting adolescents and young people from sexual abuse and lastly, to regulate assisted reproductive technologies and other related matters thereto.

The bill's content drew inspiration from and was anchored on regional and international obligations including the Maputo Plan of Action for the Operationalization of the Continental Policy Framework for Universal Access to Sexual and Reproductive Health Services. The Bill also referred to the United Nations Commission on Population & Development 2013 Resolution as well as the EAC SRHR Strategic Plan. In a nutshell, the provisions of the bill aimed to:

- a. Promote safe motherhood by substantially reducing maternal mortality;
- b. Promote adolescent and youth access to sexual and reproductive health services, information and commodities;
- c. Regulate harmful practices such as child marriage and female genital mutilation;
- d. Ensure re-integration and access to education for pregnant girls;
- e. Safeguard the rights of vulnerable and marginalized groups;
- f. Promote male sexual health through circumcision;
- g. Protect against sexually transmitted diseases including HIV;
- h. Collect accurate data and invest in SRHR research; and
- i. Accredite, supervise and regulate Assisted Reproductive Technologies.

Whereas the bill was generally lauded as a good attempt to regulate SRHR matters within the East Africa Community, the bill however faced political, religious and legal challenges. Human Life International, for instance, through their various offices in Tanzania and Uganda

submitted a petition which called upon the Speaker and the respective country representatives to EALA to drop support to the Bill. The petition cited a variety of reasons including: First, that EALA had no mandate to pursue such matters as the Bill, second, that the Bill contained provisions and values that were alien to Africa and seemed to be promoting a western population control agenda and lastly that the Bill overly referred to UN documents such as International Conference on Population and Development (ICPD) whose contents are not entirely acceptable to in the five EAC Countries. They therefore demanded deeper introspections and further stakeholder consultations.

The above protests had been informed by the public participation forums that had been conducted by the EALA General Purpose Committee between 21st -25th February 2017 in Rwanda, Burundi, Kenya, Uganda and Tanzania. The Committee had, in accordance with Article 59 of the Treaty for the Establishment of the East African Community and Rules 61(1), (2), 64 (1), (2), (3), (4) as well as Rules 65 and 68 of the Rules of Procedure of the East African Legislative Assembly, invited civil society, religious leaders, representatives from various ministries including Gender, Education and Health, Members of Parliament and other government officials to give feedback to the bill.

As captured in the final report of the Committee, select key concerns raised against the EAC SRHR bill were as follows:

- a. Lack of recognition of other international instruments and in particular the lack of reference to the ICPD platform of action, the African Youth Charter and the Convention on the Elimination of all forms of discrimination against Women (CEDAW);
- b. Definitions in the Bill did not entirely conform to World Health Organization definitions e.g. unsafe abortion rather than 'risky abortion';
- c. Additional clarity was needed on certain words including but not limited to 'vulnerable' 'marginalized', 'youth friendly, pornographic materials' etc.
- d. The wording of the bill was so broad as to allow an expanded meaning of words to include culturally unacceptable terms such as 'transsexuals' and 'homosexuals'

- e. Critical diseases like cervical, breast and prostate cancers had been left out as well as SRHR needs for other populations including the elderly women post menopause; and
- f. Conflicting national laws that may have already set different standards in criminal procedures. This was demonstrated using the provision of safe abortion in Kenya versus Burundi.

In line with the provisions of the EALA Rules of Procedure, the bill was however negated in June 2017. This was in the wake of the Third Assembly's mandate coming to an end and the house proceeding on recess for fresh set of elections. Notably though, On the 13th of May 2019, the Steering committee (SC) of the Regional Task Force (RTF) on EAC SRH Bill, led by EANASSO had a courtesy call with the Rt Hon. Martin Ngoga, EALA speaker and Hon. Abdikadir Aden, the Chair of the General Purpose Committee. The objective of the meeting was to seek stewardship, leadership and support of Hon. EALA Speaker during the ascension of the Bill and second, to work with the Committee on General Purpose on the EAC SRH Bill to orient members on the same. The bill has however not yet been moved in the fourth Assembly.

2. SRHR IN THE EAC: CONSTITUTIONAL, LEGAL AND POLICY FRAMEWORKS

This section undertakes a comprehensive audit of the constitutional, legal and policy frameworks in the six EAC member states. The audit begins with a country profile in order to contextualise the subsequent legal findings.

The indicators guiding the legal audit are as follows:¹

- Constitutional provisions on: health, reproductive health/ rights
- SRHR related laws on:
 - SRHR in general
 - Health law that includes SRHR component
 - Termination of pregnancies (CAC & PAC)
 - Access to contraception & FP
 - Comprehensive sex education
 - Maternal & new born health care
 - Harmful practices: FGM; child marriage; child retention post pregnancy
 - SRHR rights of vulnerable groups such as: children; adolescents; pregnant women; married women; PWDs; young persons with HIV etc
 - IVF and surrogacy
- SRHR related policies/ strategies/ roadmaps/ action plans etc on
 - SRHR in general
 - Health law that includes SRHR component
 - Termination of pregnancies (CAC & PAC)
 - Access to contraception & FP
 - Comprehensive sex education
 - Maternal & new-born health care
 - Harmful practices: FGM; child marriage; child retention post pregnancy
 - SRHR rights of vulnerable groups such as: children; adolescents; pregnant women; married women; PWDs; young persons with HIV etc
 - IVF and surrogacy

BURUNDI



¹ The indicators are indicative and not exhaustive.

1.1. BURUNDI

Country background

Burundi has an estimated population of 11.7 million, with a total fertility rate of 5.5, and a life expectancy at birth is 57.1.² The Constitution of Burundi was adopted by referendum on February 28, 2005 and promulgated on March 18, 2005. In 2018, Voters in Burundi overwhelmingly voted for a referendum that saw amendments extending the presidential term from five to seven years and allowing President Pierre Nkurunziza to seek two more terms. Article 55 of the Constitution guarantees everyone the right to health care. Article 22 further prohibits against discrimination, particularly discrimination against one's HIV/AIDS infection or any other incurable malady. The Constitution further mandates each Burundi citizen to guard, in his relations with the society, the preservation and the reinforcement of the country's cultural values and contribute to the establishment of a morally healthy society. Currently, Resolution on the Human Rights Situation in the Republic of Burundi - ACHPR/Res. 412 (LXIII) 2018 by the African Commission is telling of the status of human rights violations in the country, including violation of women's sexual and reproductive rights through reported cases of multiple sexual violations.³

In Accordance with the World Health Organization, Maternal mortality ratio of Burundi has gradually fallen from 1,160 deaths per 100,000 live births in 1996 to 712 deaths per 100,000 live births in 2015⁴ perhaps due, among other factors, to the policy of free health care provision for pregnant and delivering women, initiated by the President. The percentage of births attended by skilled health personnel (doctors, nurses or midwives) was at 61% by 2015 and the general fertility rate per 1000 women (aged between 15-49) was 186. By 2017, infant mortality rate for Burundi was 42.5 deaths per 1,000 live births. Infant mortality rate of Burundi fell gradually from 145.7 deaths per 1,000 live births in 1968 to 42.5 deaths per 1,000 live births in 2017.⁵

The UNFPA 2014 state of midwifery dashboard recognises an average of 622,000 pregnancies in Burundi each year. Legislation exists recognizing midwifery as an autonomous profession and 85% of the births are attended by skilled health personnel. Adolescent birth rate per 1,000 women aged 15 to 19 stood at 58% by 2017.⁶ Contraceptive prevalence rate of women currently married or in union, aged 15-49 using the modern method is 28% while 31% of the Burundi Population is aged 10-24.⁷

In Burundi, the HIV/AIDS program (PNLS) is implemented under the leadership of the Ministry of Public Health and Fight against AIDS (MSPLS) and the National AIDS Council (CNLS). According to UNAIDS, in 2016, Burundi had 2200 new HIV infections and 2900 AIDS-related deaths. There were 84 000 people living with HIV in 2016, among whom 61% were accessing antiretroviral therapy. Among pregnant women living with HIV, 84% were accessing treatment or prophylaxis to prevent transmission of HIV to their children. The key populations most affected by HIV in Burundi are: Sex workers, with an HIV prevalence of 21.3%, gay men and other men who have sex with men, with an HIV prevalence of 4.8%.⁸ In its 2018 Country Operation Plan (COP), PEPFAR aims to refine evidence-based key populations interventions targeting female sex workers (FSW), men who have sex with men (MSM), and transgender individuals by enhancing community based organizations (CBOs) targeted outreach strategies. The 2018 COP aimed to have activities that were directed to high risk key populations (via social and sexual networks) for testing and linkage-to-treatment, scale-up of

2 Burundi Demographic and Health Survey 2016-2017, available at <https://dhsprogram.com/pubs/pdf/FR335/FR335.pdf>

3 <http://www.makeeverywomancount.org/index.php/gender-issues/violence-against-women/9817-burundi-gang-rapes-by-ruling-party-youth>

4 According to WHO, UNICEF, UNFPA, World Bank Group, and United Nations Population Division Maternal Mortality Estimation Inter-Agency Group data, the Maternal Mortality rate was 970 in 2008, 808 in 2010 and 712 by 2015.

5 Infant mortality rate is the number of infants dying before reaching one year of age, per 1,000 live <https://knoema.com/atlas/Burundi/Infant-mortality-rate>

6 <https://www.unfpa.org/data/world-population/BI>

7 Burundi 2012 Country Implementation Profile available on https://www.unfpa.org/sites/default/files/resource-pdf/FINAL_Burundi.pdf

8 Notably, Since 2010, new HIV infections have decreased by 54% and AIDS-related deaths have decreased by 49%. <https://www.unaids.org/en/regionscountries/countries/burundi>

SRHR RELATED LEGAL AND POLICY PROVISIONS

COUNTRY	INTERNATIONAL & REGIONAL PROVISIONS	CONSTITUTIONAL PROVISIONS
BURUNDI	<p>Article 19 of the Constitution of Burundi recognizes International human rights treaties. It states that the rights and duties proclaimed and guaranteed, between others, by the Universal Declaration of Human Rights, the International Pacts related to human rights, the African Charter of human and community rights, the Convention on the elimination of all forms of discrimination at towards women and the Convention related to children's rights are an integral part of the Constitution of the Republic of Burundi.</p> <p>International Conference on Population Development (ICPD) Programme of Action adopted by 179 governments, including Burundi, recognizes that reproductive health, as well as women's empowerment and gender equality, are the pathway to sustainable development.</p> <p>A Statement from 22 September 2014 by the Republic of Burundi to the twenty-ninth Special Session of the General Assembly of the United Nations on the adoption of the Programme of Action of the International Conference on Population and Development (ICPD+2014) verifies Burundi's commitment to ICPD.¹⁰</p> <p>Burundi ratified the ICESCR on 9th May 1990 and is therefore bound by Article 12 of the International Covenant on Economic, Social and Cultural Rights¹¹</p> <p>Burundi ratified the Convention on Elimination of All Forms of Discrimination Against Women on 8th January 1992 and is thus bound by Article 12 of CEDAW</p> <p>Burundi ratified the Convention on the Rights of the Child on 19th October 1990 and thus bound by the provisions of Article 24</p> <p>Burundi ratified the Convention of the Rights of Persons with Disability on 22nd May 2014 and is thus bound by Article 25</p> <p>Burundi ratified the African Charter on Human and Peoples' Rights on 28th July 1989 and is thus bound by Article 16 of the same</p> <p>Burundi ratified the African Charter on the Rights and Welfare of the Child on 28th June 2004 and is thus bound by Article 14 of the same</p> <p>Burundi signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on 3rd December 2003 but has not ratified the same. As such, Burundi is not bound by the provisions of Article 14</p> <p>Burundi assented to the EAC HIV Prevention and Management Act on 6th February 2013 and thus bound by its entire provisions and more specifically Article 35 on access to SRHR information to adolescents and young people</p> <p>The International Conference on the Great Lakes Region (ICGLR) adopted a protocol and model legislation in the areas of Prevention and Suppression of Sexual Violence against Women and Children. With the entry into force of the Pact on Security, Stability and Development in the Great Lakes Region, the Protocol on Sexual Violence has the force of law, meaning that there is a strong legal basis for full implementation of the Programme of Action for Eradicating Sexual Violence.</p> <p>East African Community Integrated Reproductive Maternal Newborn Child And Adolescent Health Policy Guidelines (2016-2030) The Integrated East African Community Reproductive Maternal Newborn Child and Adolescent Health (RMNCAH) Policy Guidelines seek to build on the momentum for women's and children's health. It articulates regional policy positions that will potentially accelerate elimination of preventable maternal, under-five and adolescent deaths in the EAC Partner States by 2030 in line with the Sustainable Development Goals and the Global Strategy for women's, children's and adolescent's health (2016-2030).</p> <p>Ministerial Commitment on Comprehensive Sexuality Education and SRH Services for Adolescents and Young People in Eastern and Southern Africa (ESA, 2013)</p>	<p>Article 21 acknowledges that Human dignity is respected and protected.</p> <p>Article 22 recognizes that citizens are equal before the law, which assures them equal protection. No one may be the object of discrimination, particularly discrimination against HIV/AIDS infection or any other incurable malady.</p> <p>Articles 14 stipulates that « All Burundians are equal in merit and in dignity, enjoy the same rights and have a right to the same protection by the law. No Burundian shall be excluded from the Nation's social, economic or political activities for reasons of his race, his language, religion, gender or his ethnic origin.</p> <p>Article 29 clarifies that Marriage between two people of the same sex is prohibited.</p> <p>Article 44 All children have the right to particular measures to assure or ameliorate the care necessary to their wellbeing, health, physical security protection against abuse, violence or exploitation.</p> <p>Article 55 All persons have the right to access healthcare.</p>



10 https://www.unfpa.org/sites/default/files/resource-pdf/burundi_english.pdf
 11 https://tbinetnet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=28&Lang=EN
 12 http://www.achpr.org/files/sessions/50th/state-reports/2nd-achpr50_staterep_burundi_2010_eng.pdf
 13 https://www.uhc2030.org/fileadmin/uploads/ihp/Documents/Country_Pages/Burundi/Burundi_Politique_nationale_de_la_Sante_2005-2015.pdf
 14 Available at https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/burundi_cslip_ii.pdf

LEGAL PROVISIONS

a) Act No. 1/13 of 22 September 2016, on the protection of victims and the prevention and punishment of sexual and gender-based violence

(b) Act No. 1/28 of 29 October 2014, on the prevention and the repression of trafficking in persons and the protection of victims;

(c) Act No. 1/04 of 5 January 2011, on the creation of the Independent National Human Rights Commission;

(d) Act No. 1/05 of 22 April 2009, amended the Criminal Code and the Code of Civil Procedure to strengthen sanctions for acts of violence against women, provide a clearer definition of rape and criminalize sexual harassment. The 2009 revisions to the Burundian Penal Code (Law Number 1/05 April 2009) further establish rape, sexually slavery, forced prostitution, forced pregnancy, forced sterilization, and other generalized and systematic acts of Sexual Violence against civilians as crimes against humanity.

Burundian Penal Code further in its Article 505 penalizes abortion by specifying that « any person who, through food, potions, or medication has the intent to cause a woman to abort outside the cases set out by law, shall be punished with imprisonment of one to two years and a fine of twenty to fifty thousand Burundian Francs.

Pertaining to co-habitation, it is a practice which is considered immoral by Burundian tradition. Thus, in its Penal Code the State of Burundi protects the family from this practice and more specifically in its Article 351. The State compels illegal families to regularize their marriage to enable them enjoy social benefits.¹²

Articles 242 and 243 of Burundi's criminal code prohibit human trafficking and smuggling, and prescribe sentences of five to 20 years' imprisonment; the code does not, however, provide a definition of human trafficking.

POLICY PROVISIONS

Burundi Vision 2025 aims at providing a better quality of life for Burundians, with a skilled population that enjoys good health. The policy places as a priority, the fight to improve infant mortality, maternal health and the fight against the HIV scourge.

The Government's priorities for SRHR were spelt out in the National Demographic Policy Statement (October 2011) as Strengthening Family Planning interventions; Promoting behaviour change communication through innovative IEC activities, in order to increase the demand for modern contraception including by youth and adolescents;

National health policy 2005-2015¹³

articulates the commitments made by Burundi (1) at national level through the Burundi Vision 2025 and the Strategic framework for poverty reduction, and (2) at international level through its adherence to the MDG targets. The key areas of the national health plan included: (i) decentralization through the establishment of health districts, since 2009; (ii) universal access to health care through the free health-care policy for children under 5 and pregnant women, and the introduction of the health insurance card for the informal sector.

National health Development plan 2005-2010, The NHDP I, had a specific focus on the following objectives: Reduction of the maternal mortality rate and the neonatal mortality rate; reduction of infant-juvenile mortality; controlling morbidity linked to communicable and non-communicable diseases and strengthening the performance of the health system.

Roadmap to accelerate the reduction of maternal and neonatal mortality adopted in 2005. Developed in collaboration with UNICEF, the UN Population Fund, the World Food Programme and the World Health Organization, the plan aimed for a 75 per cent reduction in maternal deaths and a 50 per cent reduction in neonatal mortality by 2015.

The second National health Development plan 2011-2015 in which the priority areas were identified for the next five years, as i) Improving the health of mothers and children; ii) Fighting communicable and non-communicable diseases; iii) Strengthening the fight against HIV/AIDS using a multi-sector approach; iv) Strengthening actions to fight malnutrition; v) Increasing demand for health care; vi) Strengthening the health system; vii) Strengthening and ensuring the continuation of performance-based financing related to free care; viii) Controlling demographic growth.

Burundi's Strategic Plan for Reproductive Health 2013-2015, and National Reproductive Health Policy which includes newborn care as a critical strategy in reducing child mortality. A central feature of this policy includes scaling up services to prevent mother-to-child transmission of HIV.

National youth policy 2008, which was formulated in 2008 in partnership with UNDP, while not specifying a specific age range, describes youth as between 15-26 years. It aimed to contribute to peace and security, reconciliation and national reconstruction of Burundi. The youth policy seeks to extend services and vocational education to young people to improve their physical and mental status. It notes the importance of completing education and entering productive employment

May 2006 Presidential Decree establishing free health care for pregnant women and children under five years. The policy was put in place to grant free health care to all children under five years old and to pregnant women, aimed to improve access to health care and reduce maternal and infant mortality.

Burundian Cadre Strategique De Croissance Et De Lutte Contre La Pauvrete- CSLP¹⁴ The CSLP addresses Gender Based Violence largely through the window of improved HIV services, in particular with a focus on access to Post Exposure Prophylaxis for survivors of sexual violence. National Gender Policy, 2011-2025, The primary purpose of the National Gender Policy is to combat the different types of discrimination and inequality affecting women in order to achieve equality between the sexes. The Policy was initially adopted by the Council of Ministers in December 2003 and amended in 2011. To implement the Policy, the Government drew up and adopted a plan of action. The National Gender Policy provides for a number of follow-up mechanisms, such as the National Gender Council, the Technical Committee on Gender and the Permanent Executive Secretariat of the National Gender Council, among others.

National Strategy to Fight Gender Based Violence, January 2009, The Government of Burundi developed a 2009 National Strategy to Combat Gender-Based Violence. One of the key achievements of the strategy is its identification of the major challenges to preventing and responding to gender-based violence in several key sectors (health, justice, education, security, health, and social rights). Moreover, the strategy also enumerates key actions necessary to address those challenges.

Burundi's 2002-2006 National HIV/AIDS Strategy (NHAS) and Burundi's third HIV strategic plan (2012-2016) aims to reduce sexual transmission of HIV among young people and populations most at risk, Eliminate new HIV infections in children, Increase access to HIV treatment, Eliminate stigma, discrimination and gender inequalities including gender-based violence

1.2. KENYA

Country background

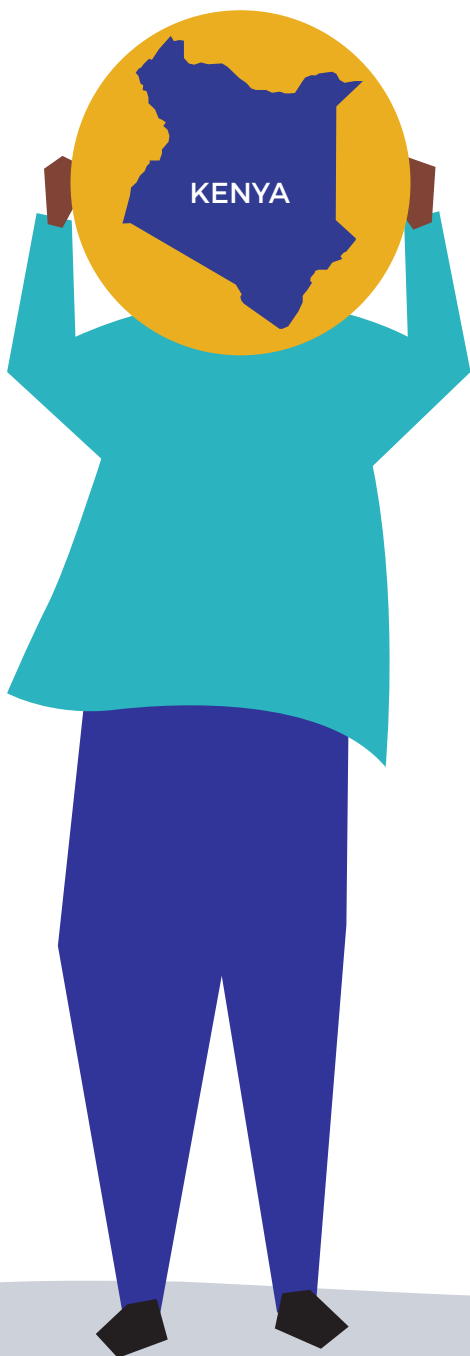
The Republic of Kenya is a two tiered bi-cameral democracy that is governed by the Constitution of 2010. Pursuant to Article 6 of the Constitution, the governments at the national and county levels are distinct and inter-dependent and conduct their mutual relations on the basis of consultation and cooperation. In accordance with the fourth schedule of the Constitution, the national government is charged with the responsibility of formulating health related policies while county governments are responsible for promoting primary health care, regulating ambulances, veterinary services and supervision of county health facilities.

Kenya's health policy after independence was founded on the country's socio-economic development blueprint, the Sessional Paper No. 10 on African Socialism and its application to Kenya of 1965, which emphasized the elimination of disease, poverty, and illiteracy. Several transformations have happened since 1963 and today, the Constitution of Kenya, 2010, forms the basis for all laws, practices and conduct that apply in the country. In this regard, Article 43(1) (a) not only guarantees the right to health but more specifically anchors sexual and reproductive health rights as justiciable rights. It states: "Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care." The Constitution further regulates emergency medical treatment as well as access to safe abortion under Articles 43 (2) and 26(4) respectively.

With an estimated population of 44.3 Million, Kenya's Maternal mortality ratio has gradually fallen from 717 deaths per 100,000 live births in 1996 to 510 deaths per 100,000 live births in 2015. By 2018, this has reduced significantly to 362 deaths per 100,000 live births.¹⁵ According to Kenya's third periodic report to the United Nations Committee against Torture, between 2015-2016, there were 156 cases newly prosecuted for offences related to human trafficking with 77 convictions being secured. In the same time frame, there were 4,299 cases of sexual violence prosecuted with 871 convictions. Among these cases were 491 cases of rape, 2827 cases of defilement and 75 cases of gang rape that were prosecuted.

Additionally, the Ministry of Health's 2013 nationwide study on the incidence of abortion in Kenya conducted jointly with the African Population and Health Research Center (APHRC) revealed about 465,000 induced abortions occurred in the country annually. Most of these abortions were unsafe and resulted in various complications. The 2018 costing study on the financial implications of treating unsafe abortion in public facilities, conducted by again by APHRC and the Ministry of Health also revealed that most women with complications from unsafe abortion are treated in public health facilities, exerting pressure on scarce health system resources. The costs of this treatment were averaged to be Kshs 533,000,000.

15 Sources of above statistics include Population Reference Bureau 2015, World Population Data Sheet; Kenya Demographic Health Survey 2014; UNAIDS Report on the Global AIDS Epidemic; UNICEF State of the World's Children 2015 and Adolescents & Young Adults Health Brief | PMA2015/Kenya-R4



Coupled with the above statistics, the Kenya Demographic Health Survey indicates that the average sexual debut in Kenya is 15 years. Teen pregnancy and motherhood rates in Kenya stand at 18%. About 1 in every 5 adolescent girls has either had a live birth, or is pregnant with her first child. Rates increase rapidly with age: from 3% among girls at 15 yrs old to 40% among girls at 19 yrs old. The situation varies across counties; with some counties seeing higher rates than others. The April 2017 Guttmacher study titled *Sexuality Education in Kenya: New Evidence from Three Counties* in fact revealed that twenty-six percent of the students in the sample (mostly aged 15–17) had already had sex—42% males and 15% females.

There is a general acknowledgment that whereas Kenya has a large adolescent and youth population, the majority of young women live in rural areas with little access to information on HIV, Contraception and other SRHR related rights. The National AIDS Control Council (NACC) 2018 HIV Estimates Report reveals that new HIV infections among all ages declined from 77,200 in 2010 to 52,800 in 2017, indicating a 32% decline in the number of new annual HIV infections at national level. The National adult HIV prevalence rate was estimated at 4.9% with prevalence higher among women (5.2%) than men (4.5%). National HIV prevalence among males and females aged 15-24 years was estimated at 1.34% and 2.61% in 2017 respectively, with 184,718 young adults living with HIV in 2017.

SRHR RELATED LEGAL AND POLICY PROVISIONS

COUNTRY	INTERNATIONAL & REGIONAL PROVISIONS	CONSTITUTIONAL PROVISIONS
KENYA	<p>It is important to acknowledge that Article 2 (6) of the Constitution of Kenya states that any treaty or convention ratified by Kenya shall form part of the laws of Kenya. Admitted to the United Nations on 16th December 1963, Kenya ascribes to the provisions of the Universal Declaration of Human Rights.</p> <p>International Conference on Population Development (ICPD) Programme of Action adopted by 179 governments, including Kenya, recognizes that reproductive health, as well as women's empowerment and gender equality, are the pathway to sustainable development.</p> <p>Kenya ratified the ICESCR on 1 May 1972 and is therefore bound by Article 12 of the International Covenant on Economic, Social and Cultural Rights</p> <p>Kenya ratified the Convention on Elimination of All Forms of Discrimination Against Women on 9th March 1984 and is thus bound by Article 12 of CEDAW</p> <p>Kenya ratified the Convention on the Rights of the Child on 30th July 1990 and thus bound by the provisions of Article 24</p> <p>Kenya ratified the Convention of the Rights of Persons with Disability on 18th May 2008 and is thus bound by Article 25</p> <p>Kenya ratified the African Charter on Human and Peoples' Rights on 23rd January 1992 and is thus bound by Article 16 of the same</p> <p>Kenya ratified the African Charter on the Rights and Welfare of the Child on 25th July 2000 and is thus bound by Article 14 of the same</p> <p>Kenya ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on 6th October 2010 and is thus bound by the provisions of Article 14</p> <p>Kenya assented to the EAC HIV Prevention and Management Act on 23rd August 2012 and thus bound by its entire provisions and more specifically Article 35 on access to SRHR information to adolescents and young people</p> <p>East African Community Integrated Reproductive Maternal Newborn Child And Adolescent Health Policy Guidelines (2016-2030) The Integrated East African Community Reproductive Maternal Newborn Child and Adolescent Health (RMNCAH) Policy Guidelines seek to build on the momentum for women's and children's health. It articulates regional policy positions that will potentially accelerate elimination of preventable maternal, under-five and adolescent deaths in the EAC Partner States by 2030 in line with the Sustainable Development Goals and the Global Strategy for women's, children's and adolescent's health (2016-2030).</p> <p>Ministerial Commitment on Comprehensive Sexuality Education and SRH Services for Adolescents and Young People in Eastern and Southern Africa (ESA, 2013)</p>	<p>Article 43 (1) (a) recognises that every person has a right to the highest attainable standard of Health including reproductive health</p> <p>Article 43 (2) recognises that a person shall not be denied emergency medical treatment.</p> <p>Article 26(4) places a duty on the trained medical providers to offer abortion services in emergency situations or when the life or health of the mother is in danger of if permitted by any other written law</p> <p>Article 27 guarantees the right to equality before the law and demands that the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, age, disability, religion, Conscience, belief, culture, or dress</p> <p>Article 28 guarantees every person inherent dignity and the right to have that dignity respected and protected</p> <p>Article 29 (c) protects all persons against being subjected to any form of violence from either public or private sources</p> <p>Article 31 protects an individual's privacy and information relating to their family or private affairs from unnecessarily being required or revealed</p> <p>Article 45 (2) guarantees the right to marry and found a family and recognises civil monogamous unions between a man and a woman as the only recognised marital union</p> <p>Article 35(1) protects the Citizen's right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom.</p> <p>Article 24 provides for the limitations of rights and freedoms only as provided by law</p>

LEGAL PROVISIONS

Abortion: Regulated under a variety of laws and policies including Article 26(4) of the Constitution. It is criminalized under Sections 158-160 of the Penal Code. The National Guidelines for Quality Obstetrics and Perinatal Care recognize Post Abortion as a vital component of the six pillars of Maternal and Newborn Health.

Section 6 of the Health Act 2017 also regulates abortion by defining the cadres of medical professionals who can offer safe abortion. The section also requires 'notification' of certain conditions including ectopic, abdominal and molar pregnancies

Domestic Violence - Regulated by the Protection Against Domestic Violence Act of 2015, An Act of Parliament that provides for protection and relief of victims of domestic violence particularly for a spouse and any children or other dependent Persons. The Act is widely acclaimed for its expanded definition of violence to include stalking, widow cleansing and virginity testing.

Female Genital Mutilation – Regulated by the Prohibition Against Female Genital Mutilation Act of 2011 which criminalizes the various forms of FGM as well as persons aiding or abetting FGM. The act establishes an Anti-FGM board whose function is to design programmes aimed at eradication of female genital mutilation. The Act proposes penalties including a three-year jail term or fine of Kshs 200,000

Human Trafficking – Regulated by the Counter trafficking in Persons Act of 2010, aimed at protection and repatriation of victims of human trafficking, resettlement and re-integration back into the community.

Sexual offences – Prior to 2006, these were largely regulated by the Penal Code. This was however amended with the introduction of the Sexual Offences Act, 200. The passing of the Act was a culmination of years of agitation and activism within civil society which was geared towards raising the alarm over the increase in sexual offences. The Act was a manifest improvement from the existing laws on sexual offences which were mainly contained in the Penal code. The offences regulated under the Act include Rape, Sexual Assault, gang rape, attempted rape

Offences against morality – Regulated within the Penal Code and in particular Sections 162 and 165.

Section 162 states that any person who -
 (a) has carnal knowledge of any person against the order of nature; or
 (b) has carnal knowledge of an animal; or
 (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years:

Section 165 states Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

Marriage: Marriage is regulated under Article 45 of the Kenyan Constitution and further enabling legislation provided under the Marriage Act of 2014. This is an Act of Parliament to amend and consolidate the various laws relating to marriage and divorce including civil, Christian, Muslim Hindu and Customary Marriages. The minimum age for marriage is stipulated under the Kenyan Marriage Act is 18.

HIV – Regulated by the HIV Prevention and Control Act of 2006. The Act establishes the first ever HIV Tribunal in the world as an adjudication platform to determine matters of discrimination and stigma resulting from HIV. The Act prohibits disclosure of one's HIV status without consent, demands for privacy and confidentiality and also allows for HIV testing of minors in certain circumstances.

POLICY PROVISIONS

Kenya Vision 2030

Vision 2030's Social Pillar's quest is the basis of transformation in eight key social sectors, namely; Education & Training, Health, Water & Sanitation, Environment, Housing & Urbanization and Gender, Youth, Sports & Culture.

This pillar also makes special provisions for Kenyans with various disabilities and previously marginalized communities. Vision 2030's Health Sector aims to achieve several sub-projects including rehabilitation of facilities, establishment of model level 4 facilities, and strengthening community health information systems. Interestingly the vision is unclear on sexual and reproductive rights but interestingly, the Gender Sector indicates some of the targeted achievements include

Establishment of integrated one stop sexual and gender based violence response centers in all healthcare facilities in Kenya. The proposed centers will offer medical, legal and psychosocial support to victims of SGBV;

The Gender and youth sector also aims to establish Public awareness campaigns against FGM, early and forced marriages. The sub-sector is meant to work closely with the National Gender and Equality commission to issue sanctions and recommend prosecution on gender discrimination cases.

National Reproductive Health Policy (2007) – A revised most up to date version of this Policy could not be accessed. This Policy in 2007 was aimed at enhancing the reproductive health status of all Kenyans by increasing equitable access to reproductive health services and by improving quality, efficiency and effectiveness of services provided at all levels. The National Reproductive Health Strategy, 1997-2010 was for a long time the guiding implementation of the reproductive health programme, but faced a number of challenges, leading to the deterioration in the quality of health service delivery, resulting in negative health indicators.

National Reproductive Health Strategy 2009- 2015, Although outdated, the overall goal of the Strategy was to implement the National Reproductive Health Policy 2007. As part of financial sustainability of reproductive health, the Strategy proposed: i. Engagement of parliamentarians and other policymakers (e.g. local authority policy makers) for higher budgetary allocation for reproductive health services
 ii. Designing ways to facilitate access to services by adolescents, poor people and other disadvantaged groups; and
 iii. Monitoring the effects of policies and programs on the underserved, poor and hard to reach populations

National Family Planning Guidelines for Service Providers (2010)

These guidelines provide the most current and up-to-date information on the methods of contraception currently approved by the Ministry. This information covers the advantages and limitations of contraceptive methods, management of common side effects, and how to obtain contraception services. The guidelines also discuss the scope of Family Planning service delivery: quality of care; infection prevention; counselling; client assessment; the effectiveness and safety of Family Planning methods; and the integration of services, including HIV/AIDS and cancers of reproductive organs. The guidelines are designed to help service providers maintain comprehensive care for clients who are seeking Family Planning.

National Guidelines on Management of Sexual Violence 2014

Designed to give general information about management of sexual violence in Kenya and focus on the necessity to avail quality services that address all the medical, psychosocial, legal needs of a survivor of sexual violence in both stable and humanitarian contexts.

National Guidelines on Quality Obstetric and Perinatal Care, 2012

Recognises that the six pillars of Maternal and Newborn Health in Kenya include pre-conceptual care and family planning, focused antenatal care, essential obstetric care, essential newborn care, targeted post-partum care, and lastly post-abortion care. These services are underpinned by the foundation of skilled attendants and a supportive & functional health system

Adolescent Sexual Reproductive Health Policy (2015) – The National Adolescent Sexual and Reproductive Health Policy aims to enhance SRH status of adolescents in Kenya and contribute towards realization of their full potential in national development. The Policy intends to bring adolescent sexual and reproductive health and rights issues into the country's mainstream health and development agenda.

1.3. RWANDA

Country background

The Republic of Rwanda is a constitutional democracy with two spheres of government (executive), national and local.¹⁶ The Constitution of Rwanda is the supreme law of the country.¹⁷ Chapter One of the Constitution enshrines the local administration which is structured into 4 tiers: 30 district (akarere), 416 sectors (imerenge), 2,148 cells (utugari) and 14,837 villages (imudungu).¹⁸ The national government is headed by the President who is also the head of state.¹⁹ There are also four governors, appointed by the president, who head and coordinate administration in the four provinces (intara) and the capital city.²⁰ These governors act as intermediaries between the national government and the local government. Rwanda has a bicameral parliament which consists of two houses – Chamber of Deputies and Senate.²¹ The highest court in Rwanda is the supreme court and it has a unified judicial system.²² Rwanda can be described as a constitutional democracy with a decentralised executive arm of government.

The Constitution of Rwanda in Article 21 recognises that all Rwandans have the right to good health and Article 22 recognises the right to a healthy environment. Article 45 places a duty on the State to mobilise the population for activities aimed at good health and to assist them in the realisation of those activities. Every Rwandan has a corresponding duty to participate in these activities.

Rwanda's 2014/15 Demographic and Health Survey indicated the fertility rate at 4.2, with a significant delay in childbearing with only 7% of women giving birth by age 18 and 43% by age 22.²³ Knowledge of at least one contraceptive method is nearly universal in Rwanda with figures ranging from between 93 – 100%. 31% of all women and 53% of married women use a contraceptive method, and 19% of married women reported having unmet contraceptive needs.²⁴ Despite improvements in contraceptive coverage nearly half of all pregnancies are unintended with more than one third of births being unplanned.²⁵ An estimated 60,000 induced abortions were performed in Rwanda and only half of these were by trained health professionals with the other half being performed by untrained persons.²⁶ 47% of women having an abortion are subject to medical complications.²⁷

16 Chapter One, Article 6 of the Constitution of the Republic of Rwanda (O.G No. Special of June 04, 2003).

17 Article 3 of the Constitution of Rwanda.

18 CLGF "The Local Government System in Rwanda – Country Profile 2017-2018" available at http://www.clgf.org.uk/default/assets/File/Country_profiles/Rwanda.pdf <accessed on 28 May 2019>

19 Chepkemai J "What type of Government does Rwanda have" (1 August 2017) available at <https://www.worldatlas.com/articles/what-type-of-government-does-rwanda-have.html> <accessed on 1 May 2019>

20 Supra at note 2.

21 Supra at note 2.

22 Supra at note 3.

23 National Institute of Statistics of Rwanda et al "Rwanda Demographic and Health Survey 2014-2015" (March 2016) available at <https://dhsprogram.com/pubs/pdf/FR316/FR316.pdf> at page 61-62 <accessed on 1 May 2019>.

24 Supra note 8 at p 83-89.

25 Guttmacher Institute "Abortion in Rwanda" (April 2013) available at <https://www.guttmacher.org/sites/default/files/factsheet/fb-abortion-in-rwanda.pdf> <accessed on 1 May 2019>

26 Ibid.

27 Ibid.



Rwanda's infant mortality ratio is 32 per 1,000 live births and the under-five mortality is 50 per 1,000 live births.²⁸ With regard to maternal health 95% of women reported receiving ante-natal care from a skilled provider at least once and 91% of women reported having delivered at a healthcare facility.²⁹ As a result of this the maternal mortality ratio in Rwanda is significantly lower than its sub-regional counterparts and is 210 maternal deaths per 100,000 live births, lower than the global average.³⁰ In Rwanda, 35% of women and 39% of men have experienced physical violence at least once since they were 15, when this is narrowed to sexual violence the figures for women increase with 22% of women and 5% of men having experiences sexual violence at least once in their lifetime.³¹ The most common perpetrators of physical and sexual violence for married women was their husband and among men it was their current or former girlfriend.³²

28 Supra note 8 at p 103-104.

29 Supra note 8 at p 113-115.

30 Supra note 8 at p 261.

31 Supra note 8 at p 267.

32 Ibid.

SRHR RELATED LEGAL AND POLICY PROVISIONS

COUNTRY	INTERNATIONAL & REGIONAL PROVISIONS	CONSTITUTIONAL PROVISION
RWANDA	Article 25(1) of the Universal Declaration of Human Rights	Article 21 recognises that all Rwandans have the right to good health
	Article 5(e) (iv) of the International Convention on Elimination of Racial Discrimination	Article 22 recognises the right to a healthy environment
	Article 12 of the International Covenant on Economic, Social and Cultural Rights	Article 45 places a duty on the State to mobilise the population for activities aimed at good health and to assist them in the realisation of those activities. Every Rwandan has a corresponding duty to participate in these activities.
	Article 12 Convention on Elimination of All Forms of Discrimination Against Women	Article 14 guarantees the right to physical and mental integrity
	Article 24 of the Convention on the Rights of the Child	Article 15 guarantees the right to equality before the law while Article 16 protects Rwandans from discrimination on a number of prohibited grounds
	Article 25 Convention of the Rights of Persons with Disability	Article 17 guarantees the right to marry and found a family and recognises civil monogamous unions between a man and a woman as the only recognised marital union
	Article 16 of the African Charter on Human and Peoples' Rights	Article 36 guarantees the right to participate in activities promoting national culture
	Article 14 of the African Charter on the Rights and Welfare of the Child	Article 40 provides for the limitations of rights and freedoms only as provided by law
Article 14 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	Article 42 places the obligation to promote human rights on the State and the obligation to protect rights and freedoms is placed on the Judiciary	

33 This is stipulated in Ministerial Order No. 002/MoH/2019 of 08/04/2019. This Order provides a framework under which an abortion under the grounds provided for in Law No 68/2018 of 30/08/2018 may be provided. It governs the gestational period under which termination is allowable which is stipulated at 22 weeks unless health of the pregnant woman or the foetus is threatened; it stipulates facilities eligible to perform an abortion; the procedure by which an application for an abortion for a child is made (by the parents or guardians but in the case of conflict the wishes of the child prevail); procedure for an abortion; consent; access; confidentiality; and the requirements to be met if a procedure is on the grounds of risk to health of the pregnant person or foetus (this procedure is slightly restrictive as it requires a confirmation of risk by at least two medical doctors one being a specialist in obstetrics and gynaecology; and a written report by the recognised medical practitioner, the pregnant person or their legal representative). This Order is available at <https://rwandalii.africanlii.org/sites/default/files/gazette/Official%2BGazette%2Bno%2B14%2Bof%2B08.04.2019.pdf>.

34 Law No. 42 of 1988 of 27 October 1988, Civil Code

35 Republic of Rwanda "Rwanda Vision 2020" (July 2000) available at <https://www.sida.se/globalassets/global/countries-and-regions/africa/rwanda/d402331a.pdf>

<accessed on 1 May 2019>

36 Republic of Rwanda "Health Sector Policy" (February 2005) available at https://www.uhc2030.org/fileadmin/uploads/ihp/Documents/Country_Pages/Rwanda/HealthSectorPolicy.pdf

<accessed on 1 May 2019>

37 Ministry of Health "National Reproductive Health Policy" (July 2003) available at <https://www.gfmer.ch/SRH-Course-2010/national-guidelines/pdf/National-RH-policy-MOH-Rwanda-2003.pdf> <accessed on 1 May 2019>

38 Ministry of Health "Family Planning Policy" (December 2012) available at <http://www.moh.gov.rw/fileadmin/templates/Docs/Rwanda-Family-Planning-Policy.pdf>

<accessed on 1 May 2019>

39 Supra note 23 at p 8.

40 USAID et al "Mobile for Reproductive Health Project -Rwanda" (March 2013) available at <https://www.fhi360.org/sites/default/files/media/documents/m4rh-rwanda-brief.pdf> <accessed on 6 May 2019>

LEGAL PROVISION

Abortion: Law No 68/2018 of 30/08/2018 Determining Offences and Penalties in General Section 6 governs abortion and Article 123 creates an offence for any person who self-induces an abortion that carries a penalty of not less than one year but not more than three years.

Article 124 penalises a person who performs an abortion in the following categories:

- a) Any person who performs an abortion on another person is liable to imprisonment of not less than three years and no more than five years. The term of imprisonment is less severe if the conduct that caused the abortion is negligent or careless.
- b) If an abortion results in disability that is certified by a medical doctor, the offender shall be liable to imprisonment for not less than 20 and no more than 25 years.
- c) If abortion results in death the offender shall be liable to life imprisonment regardless of having received consent to perform the abortion.

The exemptions from criminal liability for abortion are:

- a) the pregnant person is a child;
- b) the person having an abortion has become pregnant as a result of rape;
- c) the person having abortion had become pregnant after being subjected to a forced marriage;
- d) the person having abortion had become pregnant as a result of incest up to the second degree;
- e) the pregnancy puts at risk the health of the pregnant person or of the foetus.

Abortion shall be performed by a recognised medical doctor after conditions set by the Minister of Health have been met.³³

If after an abortion it is evident that there was no legal basis for an abortion, the person who the abortion was performed on shall be punished as a person who performed a self-induced abortion.

Sexual offences: Law No 68/2018 of 30/08/2018 criminalises child defilement (Article 133) and frames the offence as:

“Any person who commits any of the sex related acts listed below on a child, commits an offence:

- 1) insertion of a sexual organ into the sexual organ, anus or mouth of the child;
- 2) insertion of any organ of the human body into a sexual organ or anus of a child;
- 3) performing any other act on the body of a child for the purpose of bodily pleasure.”

The provision goes further and states that: “If child defilement is followed by cohabitation as husband and wife, the penalty is life imprisonment that cannot be mitigated by any circumstances.”

Rape is criminalised and defined as follows (Article 134): “A person who causes another person to perform any of the following acts without consent by use of force, threats, trickery or by use of authority over that person or who does so on grounds of vulnerability of the victim, commits an offence:

- 1) insertion of a sexual organ of a person into a sexual organ, anus or mouth of another person;
- 2) insertion of any organ of a person or any other object into a sexual organ or anus of another person.”

The penalty for rape is stiffer if it is committed against a person over 65 years of age; a person living with disability or an illness that renders them incapable of defending themselves; or if the rape resulted in the transmission of an incurable illness.

If rape is committed by more than one person, results in death of the victim, was committed by a relative of up to the second level or was committed with the intention to infect the victim with an incurable illness, the penalty is life imprisonment.

Offences against morality –

Adultery - any spouse who has sexual intercourse with a person other than their spouse commits an offence and is liable to imprisonment (Article 136 of Law No 68/2018 of 30/08/2018)

Marital rape and domestic violence - Law No 68/2018 of 30/08/2018 recognises that spouses can commit physical and sexual violence against their spouse and be found guilty of an offence (Article 137)

Concubinage - A person who lives as a husband and wife with a person other than his/her spouse while one or both of them are married, commits an offence (Article 138 of Law No 68/2018 of 30/08/2018)

Other offences against morality include: Desertion of marital home (Article 139) Bigamy or officiating bigamy (Article 141), Bestiality (Article 142) and Public Indecency (Article 143).

Sexual torture: Any person who causes damage to genital organs of another person commits an offence. (Article 114 of Law No 68/2018 of 30/08/2018)

Marriage: The minimum age for marriage is stipulated under the Civil Code which fixes it at 21 years of age for both sexes or genders.³⁴

POLICY PROVISION

Rwanda Vision 2020 (2000)³⁵ underscores the objectives to be attained in health by 2020 including: a reduction in the infant mortality rate from 107 to 50 per 1,000 and the maternal mortality rate from 1070 to 200 per 100,000.

Health Sector Policy (2004)³⁶ highlights reproductive health as a priority area and seeks to contribute positively to the health status of the family, by reducing maternal and infant mortality and morbidity; this was the highest priority and it translated into the adoption of a national reproductive health policy by the Government of Rwanda.

National Reproductive Health Policy (2003)³⁷ – the overall goal of this policy is to contribute to improved reproductive health, in order to enable efficient participation from all groups of the population in the social and economic development of their county.

The policy focuses on 6 priority areas: safe motherhood; family planning; prevention and treatment of genital infections (STIs, HIV and AIDS); adolescent reproductive health; prevention of sexual violence; and social changes to increase women's decision-making power.

Rwanda Family Planning Policy (2012)³⁸ - This policy's goal is to increase the use of family planning (FP) by Rwandan women of reproductive age group (15–49 years) and increase their male counterparts' involvement in FP programs. To this end, the policy's general objective is to increase modern contraceptive use among women to 70% by 2016. The policy provides for a minimum FP service package highlighting both clinical and non-clinical services (this includes post-abortion counseling and care). The key intervention areas are sustainable FP service delivery systems in public and private sector; knowledge; acceptability and use of FP services; create a supportive socio-cultural, political and resource environment; and innovation.

Adolescent Sexual and Reproductive Health and Rights (ASRH&R) Policy(2011)³⁹ – this policy emphasises the importance of providing information, counseling and access to FP methods to adolescents, as well as availing necessary information and creating referral systems with other health facilities and the community to increase follow-up of adolescent clients.

Adolescent Sexual and Reproductive Health and Rights (ASRH&R) Strategic Plan (2011)⁴⁰ - The strategy prioritizes access to information related to the male and female reproductive systems, sexuality and the stages of sexual development, family planning, sexually transmitted infections, sex, gender, prevention of gender-based violence, risky behavior of adolescents, alcohol and substance abuse, and post-abortion care.

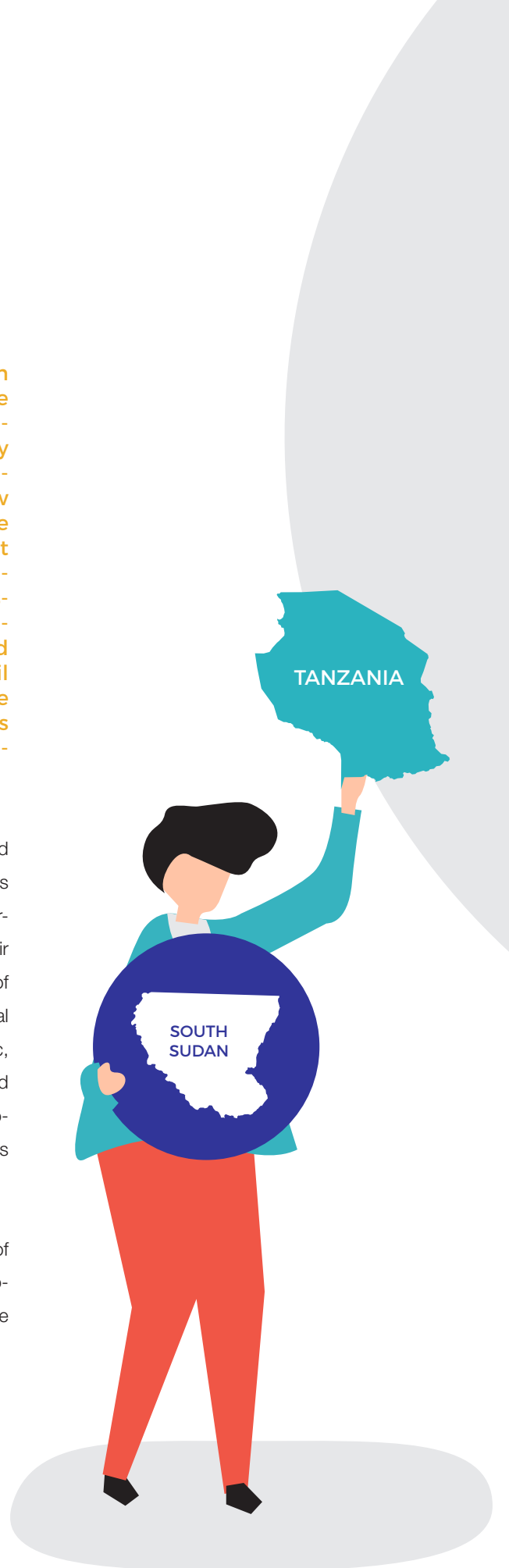
1.4. SOUTH SUDAN

Country background

The Republic of South Sudan gained its independence from Sudan in 2011. The now-defunct Southern Sudan Legislative Assembly ratified a transitional constitution shortly before independence on 9 July 2011. The constitution was signed by the then President of South Sudan, John Garang' on Independence Day and thereby came into force. It is now the supreme law of the land, superseding the Interim Constitution of 2005. The constitution establishes a presidential system of government headed by a president who is head of state, head of government, and commander-in-chief of the armed forces. It also establishes the National Legislature comprising two houses: a directly elected assembly, the National Legislative Assembly, and a second chamber of representatives of the states, the Council of States. Legislative power is vested in the government and the bicameral National Legislature. The constitution also provides for an independent judiciary, the highest organ being the Supreme Court.

A fragile democracy, South Sudan has fallen back into civil war with the United Nations referring to the ongoing situation as one of the worst and most horrendous human rights situations in the world. They have accused the Sudan People's Liberation Army and other militia of using the rape of women as a weapon of fear in their armed conflict.⁴¹ In South Sudan, women disproportionately bear the burden of morbidity and mortality related to sexual and reproductive health, with a maternal mortality ratio of 789 deaths per 100,000 live births. Inequalities in the domestic, social, and economic spheres intersect to create a situation where women and girls are at the control of their male family members. This is aggravated by the political instability of the country where the growth of women in the aforementioned is stifled and as such patriarchy is the order of the day.⁴²

Additionally, the instability and civil strife has halted an elaborate development of the legal and policy frameworks that would generally contribute to the promotion and protection of human rights and quite specifically sexual and reproductive health and rights, as per the context of this study.



41 "Sudan: Transcending tribe". Al Jazeera English 30 April, 2011

42 G Sumit Kane, Matilda Rial, Anthony Matere, Marjolein Dieleman, Jacqueline E.W. Broerse & Maryse Kokender, Gender Relations and Women's Reproductive Health in South Sudan, Taylor Francis, 2016.

1.5. TANZANIA

Country background

The United Republic of Tanzania consists of the mainland Tanganyika and the Island of Zanzibar. The territories merged in 1964 to form a unified territory after Zanzibar became independent in 1963. Tanzania has a lengthy constitutional history and is currently governed by the Constitution of the United Republic of Tanzania, 1977.⁴³ This Constitution creates a strong presidential system with a two-tier government: a Zanzibar and Union Government.⁴⁴ Legislative powers are vested in two houses the Parliament of the United Republic and the House of Representatives of Zanzibar.⁴⁵ The Judiciary is similarly divided. The Constitution creates two semi-autonomous governments however the Union Government is primarily responsible for the governance of the State and the Zanzibar president is limited to the governance of non-union matters.⁴⁶ Tanzania, has been in the process of constitutional reform and in 2011 the government launched a process to draft a new constitution.⁴⁷

The Constitution, 1977 contains a Bill of rights that stipulates the rights and duties of the citizens of Tanzania. Similar to many Lancaster House Constitution, the rights focused on are civil and political (first generation) and not socio-economic rights. The only reference to health is made in Article 30 of the Constitution which seeks to limit the application of fundamental rights to the application of existing legislation, including legislation on public health. Tanzania's legal system is pluralistic and includes statutory law, Islamic Law and customary law which is codified under the Customary Law Declaration Order of 1963.⁴⁸

exploited and under-discussed in Tanzania where the average fertility rate is twice the global average at 5.2 in the mainland and 5.1 in Zanzibar.⁴⁹ Teenage pregnancy is a major concern with 27% of adolescents (15-19), becoming pregnant and one in four adolescents beginning the process childbearing. Many women have more children than they would like because of limited access to their preferred contraceptive method resulting in unintended pregnancies. The contraceptive prevalence rate is 32% among married women aged between 15-49 but there are significant regional disparities.⁵⁰

There is a significantly high rate of early or child marriages with 36% of women in Tanzania aged between 25-49 reportedly getting married before their 18th birthday.⁵¹ Tanzania has encouraging statistics on maternal care with 98% of women receiving ante-natal care and 63% of births being delivered in health facilities.⁵² Despite this the maternal mortality ratio is 556 maternal deaths per 100,000 live births which is more than double the global average.⁵³ The under-five mortality ratio is 67 per 1,000 live births while the infant mortality rate is 43 deaths per 1,000 live births.⁵⁴ Unsafe abortion accounts for more than one third of hospitalisations for complications related to pregnancy and accounts for roughly one quarter of maternal deaths, in 2013 an estimated 405,000 abortions were performed in Tanzania.⁵⁵

Tanzania, still has a relatively high prevalence of female genital mutilation or cutting with 10% of women having undergone FGM (a decline from 18% in 1996). 35% of women having undergone FGM reported being circumcised before age one while 25% report having undergone FGM when they were 13 or older.⁵⁶

Sexual and reproductive health and rights remain largely under

43 The Constitution of the United Republic of Tanzania, Chapter 2 of the Laws of Tanzania, 1977 available at <https://rsf.org/sites/default/files/constitution.pdf>.

44 Constitutionet "Constitutional History of Tanzania" available at <http://constitutionnet.org/country/tanzania-country-constitutional-profile> <accessed on 1 May 2019>

45 Ibid.

46 The First Schedule of the Constitution stipulates Union Matters which are within the exclusive jurisdiction of the Union Government.

47 Supra at note 2.

48 Tanzanian Women Lawyers Association (TAWLA) "Review of Laws and Policies Related to Gender Based Violence of Tanzania Mainland" (September 2014), available at <http://www.svri.org/sites/default/files/attachments/2016-0705/Tanzanian%20review%20GBV%20report%202014%20by%20TAWLA%20TAMWA%20CRC%20TGNP%20AFELA.pdf> at p 11 <accessed on 28 April 2019>

49 UNFPA "Fact Sheet on Family Planning" (March 2019) <accessed on 29 April 2019> available at <https://tanzania.unfpa.org/en/publications/fact-sheet-family-planning-0>

50 Ibid.

51 Ministry of Health, Community Development, Gender, Elderly and Children et al "Tanzania Demographic and Health Survey and Malaria Indicator Survey" (December 2016) available at <https://dhsprogram.com/pubs/pdf/FR321/FR321.pdf> on p 87 <accessed on 28 April 2019>

52 Ibid at 167

53 The Global average is 216 deaths per 100,000 live births (data by UNICEF available at <https://data.unicef.org/topic/maternal-health/maternal-mortality/>)

54 Supra note 8 at 157

55 Guttmacher Institute "Factsheet: Induced abortion and post abortion care in Tanzania" (March 2016) available at https://www.guttmacher.org/sites/default/files/factsheet/induced-abortion-and-post-abortion-care-tanzania_0.pdf <accessed on 1 May 2019>.

56 UNFPA "Fact Sheet on Family Planning" (March 2019) <accessed on 29 April 2019> available at <https://tanzania.unfpa.org/en/publications/fact-sheet-family-planning-0>

SRHR RELATED LEGAL AND POLICY PROVISIONS

SOUTH SUDAN

INTERNATIONAL AND LEGAL PROVISIONS

Declarations of Acceptance of the Obligations contained in the Charter of the United Nations - Admission of States to Membership in the United Nations in accordance with Article 4 of the Charter

Convention on the Rights of the child (and the Optional Protocol) (Signed in 2015)

Convention on the Elimination of all forms of Discrimination against Women (Signed in 2015)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents

South Sudan therein Committed to end child marriage by 2020.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol

Constitution of the World Health Organization (Accepted 2011)

Convention relating to the Status of Refugees (and its relevant Protocol)

African Charter on the Rights and Welfare of the Child

Convention Governing Specific Aspects of Refugee Problems in Africa

CONSTITUTIONAL PROVISIONS

SRHR IN GENERAL

Transitional Constitution, 2011
Part two: Bill of Rights
Part three: Guiding principles and objectives

HEALTH LAW THAT INCLUDES SRHR COMPONENT

TERMINATION OF PREGNANCIES (CAC & PAC)

LEGAL PROVISIONS

POLICY PROVISIONS

Penal Code Act, 2008

Penal Code Act, 2008

247. Rape.

(1) Whoever, has sexual intercourse or carnal intercourse with Another person, against his or her will or without his or her consent, commits the offence of rape, and upon conviction, shall be sentenced to imprisonment for a term not exceeding fourteen years and may also be liable to a fine.

(2) A consent given by a man or woman below the age of eighteen years shall not be deemed to be consent within the meaning of subsection (1), above.

(3) Sexual intercourse by a married couple is not rape, within the meaning of this section.

Strategic National Action Plan (SNAP)
2017-2030.

Southern Sudan Essential Medicine List

Penal Code Act, 2008

Unlawful Termination of Pregnancy

216. The Causing of Miscarriage, Injuries to Unborn Children, Exposure of Infants, Cruelty to Children and Concealment of Birth Causing Miscarriage.

(1) Whoever, voluntarily causes or attempts to cause a pregnant woman to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, commits an offence, and upon conviction shall be sentenced to imprisonment for a term not exceeding three years or with a fine or with both.

217. Causing Miscarriage Without Woman's Consent. Whoever, voluntarily causes or attempts to cause a pregnant woman to miscarry, without the consent of the woman, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine.

218. Death Caused by act done with Intent to Cause Miscarriage. (1) Whoever, with the intention to cause miscarriage of a pregnant woman, does an act which causes the death of such a woman, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine.

(2) If the act referred to in subsection (1), above, is committed without the consent of the woman, the person committing such act, upon conviction, shall be sentenced to imprisonment for life or a lesser term.

Explanation— It is not essential to this offence that the offender should know that the act is likely to cause death.

219. Causing Miscarriage Unintentionally. (1) Whoever uses force upon any woman, and thereby unintentionally causes her to miscarry, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding three years or with a fine or with both. (2) If the offender knew that the woman referred to in subsection (1), above, was pregnant, he or she, upon conviction, shall be sentenced to imprisonment for a term not exceeding five years or with a fine or with both.

220. Act Done with the Intent to Prevent a Child being Born Alive or to Cause it to Die after Birth. Whoever before the birth of any child does any act with the intention of preventing that child from being born alive or causing it to die after its birth, and as a result of the act, the child is not born alive or dies after its birth, and, if such act was not done in good faith for the purpose of saving the life of the mother, he or she commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both.

221. Causing Death of Quick Unborn Child by an Act Amounting to Culpable Homicide.

Whoever does any act under such circumstances that, if he or she thereby causes death he or she shall be guilty of culpable homicide, and in the commission of such act causes the death of a quick unborn child, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine.

Illustration—

“A”, knowing that he or she is likely to cause the death of a pregnant woman, commits an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of a quick unborn child with which she is pregnant is thereby caused. “A” is guilty of an offence under this section.

222. Concealment of Birth by Secret Disposal of a Child or Dead Body.

Whoever, by secretly burying or otherwise disposing of a child or dead body of a child, whether such a child dies before, during or after its birth, intentionally conceals or endeavours to conceal the birth of such child, commits an offence, and upon conviction, shall be sentenced to imprisonment

SRHR RELATED LEGAL AND POLICY PROVISIONS

COUNTRY	INTERNATIONAL & REGIONAL PROVISIONS	CONSTITUTIONAL PROVISION	LEGAL PROVISION
TANZANIA	<p>Article 25(1) of the Universal Declaration of Human Rights</p> <p>Article 5(e) (iv) of the International Convention on Elimination of Racial Discrimination</p> <p>Article 2 of the International Covenant on Civil and Political Rights</p> <p>Article 12 of the International Covenant on Economic, Social and Cultural Rights</p> <p>Article 12 Convention on Elimination of All Forms of Discrimination Against Women</p> <p>Article 24 of the Convention on the Rights of the Child</p> <p>Article 25 Convention of the Rights of Persons with Disability</p> <p>Article 16 of the African Charter on Human and Peoples' Rights</p> <p>Article 14 of the African Charter on the Rights and Welfare of the Child</p> <p>Article 14 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)</p>	<p>Article 9 of the Constitution obliges the state authority and all its agents to direct their policies and programmes towards ensuring: (a) human dignity and other human rights are respected and cherished; (f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights; (g) that the government and its agent accord equal opportunities to all citizens, men and women alike without regard to their colour, tribe, religion or station in life; (h) that all forms of injustice, intimidation, discrimination, and corruption are eradicated.</p> <p>Article 12 (1) All human beings are born free, and are all equal. (2) Every person is entitled to recognition and respect for his dignity.</p> <p>13 (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law. (4) No person shall be discriminated against by any person or any authority acting under any law (5) For the purposes of this Article the expression "discriminate" means to satisfy the needs, rights or other requirements of different persons on the basis of, inter alia, their sex. (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely: (a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned. 6. (e) No person shall be subjected to torture or inhuman or degrading punishment or treatment.</p> <p>Article 14 – Every person has the right to live and to the protection of his life in accordance with the law.</p> <p>Article 16(1) - Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.</p>	<p>Abortion: In terms of the Penal Code⁵⁷ Sections 150-153 criminalises unlawful abortions penalising: (1) A person who unlawfully administers a noxious substance or uses any other means with the intent to procure a miscarriage is guilty of a felony and liable for imprisonment to 14 years (Section 150) (2) A woman who unlawfully administers a noxious or poisonous thing or uses any other means with the intent to procure a miscarriage is guilty of a felony and liable to seven years of imprisonment (Section 151) (3) A person who unlawfully supplies or procures for any person anything, knowing that it is intended to unlawfully procure the miscarriage of a woman, is guilty of a felony and is liable to three years imprisonment (Section 152).</p> <p>Section 230 of the Penal Code creates a proviso to the above sections and negates criminal liability in the performance of a surgical operation in good faith and with reasonable skill and care on the unborn child to preserve the life of the mother, or if the performance of the surgery is reasonable having regard to the patient's state at the time, and to all the circumstances of the case.</p> <p>Female Genital Mutilation: Section 169A of the Penal Code (Included by the Sexual Offences Special Provisions Act, 1998) – creates an offence termed cruelty to children for any person who causes female genital mutilation to a child (under 18).</p> <p>Child Marriage: The Law of Marriage Act⁵⁸ allows for child marriages for girls stipulating the minimum age for marriage at 15 for girls and 18 for boys (Section 13(1)). Consent is required from the parents or guardians of a girl under 18 (if the girl is an orphan such consent is not required). The courts have a discretion to allow the marriage of a girl who is 14 (Article 13(2)). The Penal Code makes it an offence to have or attempt to have carnal knowledge with a girl of less than 15 years even if married to them. Additionally, the marriage of Muslim and Hindu girls at the age of 12 is not an offence if the marriage is not consummated until the girl reaches the age of 15 (Penal Code, Art 138 (6)).</p> <p>Marriage: Polygamy is allowed in Tanzania and is authorised by Section 10 of the Law of Marriage Act.</p> <p>Violence: No person has a right to inflict corporal punishment on his or her spouse (Section 66 of the Law of Marriage Act).</p> <p>Sexual Violence: The Penal Code Section 130 governs rape (included by the Sexual Offences Special Provisions Act) – makes it an offence to rape a girl and states: "A male person commits the offence of rape if he has sexual intercourse with a girl or woman under circumstances falling, under any of the following descriptions: a) not, being his wife, or being his wife who is separated from him without her consent at the time of the sexual intercourse; b) with her consent where, the consent has been obtained by the use of force, threats or intimidation by putting her in fear of death or hurt while she is in unlawful detention; c) with her consent when her consent has been obtained at a time 'when she was of unsound state of intoxication induced by any drugs, matter or thing, administered to her by the man or any other person unless proved that there was prior consent between the two' d) with her consent with a man that he is not her husband, and that her consent is given because she has been made to believe that he is another man to whom she is, or believes herself to be lawfully married; e) with or without her consent when she is under eighteen unless the woman is his wife who is more than fifteen years of age and is not separated from the man"</p> <p>The provision goes further and criminalises the use of official authority to commit rape including by persons in a remand home and place of custody; hospital staff; traditional healers and religious leaders.</p> <p>The Act goes further in Section 130(4) and states that evidence of resistance such as physical injury is not necessary to prove the offence of rape. Gang rape (Section 131A) and attempted rape (Section 132) are also offences.</p> <p>The Penal Code in Section 154 criminalises carnal knowledge against the order of nature of any person; of an animal; or if a man permits another man to have carnal knowledge of him against the order of nature.</p> <p>Section 156 of the Penal Code prohibits the indecent assault of a boy. Section 157 prohibits gross indecency among two males.</p> <p>Section 158 prohibits carnal knowledge of incest by a male person against a female person who is (to his knowledge) his daughter, grand-daughter, sister or mother.</p> <p>Children: The Law of the Child Act, 2009 defines a child a person below the age of 18.</p> <p>In accordance with Section 9 every child has a right to health from their parents.</p> <p>Section 8 stipulates the duty of parents, guardians or persons in custody of children to ensure the child's right to medical care and immunisation; and the right to health.</p> <p>Immunisation of children and pregnant women: Section 19 of the Public Health Act, 2009 obliges parents to ensure the vaccination of their children within 12 months of their birth (this applies to children born in Tanganyika) and for pregnant women to undertake immunisation against tetanus and other diseases in the course of the pregnancies.</p> <p>HIV and AIDS: The HIV and AIDS (Prevention and Control) Act, 2008 prohibits discrimination against a person who is HIV positive and establishes medical standards for confidentiality to protect persons living with HIV/AIDS (Part VII). It also criminalizes the intentional transmission of HIV to another person. The transmitter may be sentenced to imprisonment from five to 10 years.</p>

57 Chapter 16 of the Laws of Tanzania.

58 Chapter 29 of the Laws of Tanzania

59 Ministry of Health "National Health Policy" (October 2003) available at <http://apps.who.int/medicinedocs/documents/s18419en/s18419en.pdf> <accessed on 4 May 2019>.60 Ministry of Community Development, Gender and Children "National Strategy for Gender Development" (2005) available at <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/tanzania%20-%20national%20strategy%20for%20gender%20development.pdf?vs=5534> <accessed on 4 May 2019>.61 Also see the Women and Gender Development Policy (2000) available at <http://www.tzonline.org/pdf/policyonwomenindevelopment.pdf>.62 United Republic of Tanzania (2010) "National Strategy for Growth and Reduction of Poverty II" available at <https://www.international.gc.ca/development-developpement/assets/pdfs/countries-pays/NATIONAL-STRATEGY-FOR-GROWTH-AND-REDUCTION-OF-POVERTY-TANZANIA.PDF> <accessed on 1 May 2019>

1.6. UGANDA

Country background

POLICY PROVISION

National Health Policy (2003)⁶⁰ – includes as one of its health services goals – access to quality reproductive health services for individuals of appropriate ages; reduction of infant and maternal mortality rates by three quarters; and the promotion of access to reproductive health information and services by the Ministry of Youth.

National Strategy for Gender Development (2005)^{60,61} – This strategy highlights 19 policy concerns and develops policy statements to address those concerns of significance are: institutional framework; decision making and power; legal and human rights; general reproductive rights; HIV and AIDS; and customs and traditions.

On general reproductive health the policy statement is to increase the number of women accessing health and reproductive healthcare services. The strategy is through increased awareness, coverage and capacity.

On legal and human rights the policy objective is to repeal discriminatory laws: Section 21 of the Sexual Offences (Special Provisions) Act, be amended so as to have no age limitation regarding Female Genital mutilation; and the Law of Marriage Act.No.5 of 1971 sections 13, 23(1), 114(2), 160 and 66 be amended to raise the age of marriage to 18, as well as to ensure that the rights of women and children are further protected especially regarding property rights during marriage, property laws on the death of a spouse, and property rights on divorce.

On customs and tradition the policy objective is to have a society that is sensitised and free of harmful practices and traditions and the strategy is to sensitise men and women on abandoning harmful cultural practices.

National Strategy for Growth and Reduction of Poverty II (2010)⁶² – This policy highlights improving survival, health and nutrition and well-being, especially for women and children and vulnerable groups. The intervention packages emphasise sensitisation and awareness creation; reproductive health services (including family planning) with a focus on an increase in contraceptive use to 60% by 2015 and the provision of HIV and Aids and sexual and reproductive health services including youth friendly services.

The policy also seeks to address sexual abuse, harassment and violence through: the provision of safe education environments free of abuse, stigma and discrimination; supporting children's right to be free from sexual abuse; and combatting domestic violence.

Additional policies to be considered are the:

National Plan of Action to combat FGM 2001-2015

National Plan of Action for the Prevention and Eradication of Violence Against Women (2001-2015)

The Republic of Uganda is a land locked country that is located in East Africa. Former British Colony, its official languages are English and Swahili. The president of Uganda is Yoweri Kaguta Museveni, who came to power in January 1986 after a six-year guerrilla war. He has since supported the elimination the presidential term limit and the presidential age limit. The president is both the head of state and government and is aided by a Vice President and Prime Minister. Under the Legislature there is the National Assembly consisting of 449 members with the power to create legislature and a judiciary for interpretation of the laws of the land. The country in its Northern part continues to experience conflict and thus reports backed by the UN of human rights violations by both state forces and rebel group, the Lord's Resistance Army. In addition, child labour and exploitation are persistent violations in Uganda.

The right to sexual and reproductive health continues to face significant obstacles in Uganda. There is no explicit provision that enshrines the right to health let alone reproductive health care compared to neighbouring countries such as Kenya. However, these rights can be identified and reaffirmed through the collective reading of various provisions in the constitution, penal and criminal code and a comprehensive bundle of national policies, guidelines and strategies that specifically address different components of sexual and reproductive health and rights. For example, Article 33 of the constitution can be read as providing for the right of health specifically for women. When read together, Articles 33(3) and 33(5), work to ensure the protection of women's right to health in Uganda, a right which inevitably encompasses family planning, antenatal, post-natal, and arguably abortion rights of women.⁶³ It is pertinent to note that the Republic of Uganda has had a fairly tumultuous record with due regard to promoting, protecting and fulfilling contentious human rights issues notwithstanding their legal obligations entrenched both in their constitution and international legal instruments adopted by the state.

The UNFPA reaffirms SRHR as a core component of the right to health and reflects the holistic definition of health adopted and enunciated in the WHO Constitution. It defines it as, "a state of complete physical, mental and social well-being in all matters relating to the reproductive system. It implies that people are able to have a satisfying and safe sex life, the capability to reproduce, and the freedom to decide if, when, and how often to do so." In addition, both the Committee on Economic, Social and Cultural Rights and that on the Elimination of all forms of Discrimination against women reaffirm that the right to health includes sexual and reproductive health.⁶⁴



⁶³ Sexual and Reproductive Health Rights in Uganda: Overcoming Barriers in the Pursuit of Justice, Equity and Prosperity, Andre Moreau Vol 6 no.10, Spring 2017, p.10
⁶⁴ Ibid n3, p. 12

SRHR RELATED LEGAL AND POLICY PROVISIONS

COUNTRY	INTERNATIONAL AND LEGAL PROVISIONS	CONSTITUTION
UGANDA	<p>The African Charter on Human and Peoples Rights (ACHPR)⁶⁵</p> <p>Article 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>Article 16 1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p>Protocol to the African Charter on Human And Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)</p> <p>Article 14 Health and Reproductive Rights 1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes: a) the right to control their fertility; b) the right to decide whether to have children, the number of children and the spacing of children; c) the right to choose any method of contraception; d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices; g) the right to have family planning education. 2. States Parties shall take all appropriate measures to: a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas; b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.</p> <p>Treaty for the Establishment of the East African Community (EAC)</p> <p>Article 117 Scope of Co-operation In order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty, the Partner States undertake to co-operate in health, cultural and sports and social welfare activities within the Community.</p> <p>Article 118, 127, 128 and 129 Establishment of the East Africa Health Platform⁶⁶</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>International Covenant on Economic, Social and Cultural Rights Committee on Economic Social and Cultural Rights (General Comment No.9) It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competencies of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have resource implications. The adoption of a rigid classification of economic, social and cultural rights [such as the right to health] which puts them by way of definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society (para. 10).</p> <ul style="list-style-type: none"> • International Covenant on Civil and Political Rights (and its Optional Protocol) • Convention on the Elimination of All Forms of Discrimination against Women • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • Convention on the Rights of the Child • Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict • Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography • Convention on the Rights of Persons with Disabilities (and its Optional Protocol) • Convention relating to the Status of Refugees (and its Optional Protocol) • Constitution of the World Health Organization (and subsequent amendments) • Convention on the Nationality of Married Women 	<p>Constitution of the Republic of Uganda, 1995</p> <p>SRHR IN GENERAL</p> <p>Article 22 Protection of Right to Life (1) No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court. (2) No person has the right to terminate the life of an unborn child except as may be authorised by law.</p> <p>Article 24 Respect for human dignity and protection from inhuman treatment No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.</p> <p>Article 33 (1) Women shall be accorded full and equal dignity of the person with men. (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. (5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom. (6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status. are prohibited by this Constitution.</p> <p>Article 39 Every Ugandan has a right to a clean and healthy environment.</p> <p>Article 43 General limitation on fundamental and other human rights and freedoms (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. (2) Public interest under this article shall not permit- (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.</p> <p>Article 41 Right of access to information (1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. (2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.</p> <p>Article 45 Human rights and freedoms additional to other rights⁶⁷ The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.</p> <p>HEALTH LAW THAT INCLUDES SRHR COMPONENT</p> <p>TERMINATION OF PREGNANCIES (CAC & PAC)</p> <p>Constitution of the Republic of Uganda, 1995</p> <p>Article 22(2) “...No person has the right to terminate the life of an unborn child except as may be authorized by law.</p> <p>Article 212 Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission or such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable to imprisonment for life</p> <p>Article 224 A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of his mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.</p>

⁶⁵ An example of the application of these rights is present in the case Egyptian Initiative for Personal Rights and Interights v Egypt, where the African Commission found that when Egypt failed to protect four female journalists from state violence and failed to provide them with medical attention and forensic examinations during the interrogations related to the Taba Bombings, it violated their human rights to equality, non-discrimination, dignity and freedom from cruel, inhuman and degrading treatment (OAU, 1982).

⁶⁶ A collaborative space for representatives of Private Sector Organizations (PSOs), Civil Society Organizations (CSOs), Faith Based Organizations (FBOs) and other interest groups of East Africa to effectively drive sustainable health and development in the region.

⁶⁷Centre for Health and Human Rights and 3 Others v. The Attorney General Constitutional Petition No. 16 of 2011 (pp.25-26).

“Much as it may be true that government has not allocated enough resources to the health sector and in particular the maternal health care services, this

LEGISLATION	POLICY
<p>Penal Code Amendment) Act 2007</p> <p>Section 192 – 193} Defence for SGBV – Crimes of passion and the definition of provocation</p>	<ul style="list-style-type: none"> • National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2006 • Management of Sexual and Gender Based Violence Survivors 2007 • National health policy • Health Sector Strategic Plan III 2010/11-2014-15 (HSSP III) • Reproductive Health Policy
<p>The Public Health Act of 1935 (amended in 2000)</p> <p>Anti – Homosexuality Act</p>	<ul style="list-style-type: none"> • National Guidelines for the provision of Psychosocial Support for Gender Based Violence Victims/Survivors • Uganda Vision 2040 • National Development Policy (Section 246, 319, 352 429,433,570) • Uganda Gender policy • Domestic Violence Act, 2010 • National AIDS strategic plan 2015-202
<p>Penal Code of Uganda</p> <p>Sections 141 – 144} Termination of Pregnancy</p> <p>141. Attempts to procure abortion. Any person who, with intent to procure the miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means, commits a felony and is liable to imprisonment for fourteen years.</p> <p>Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means, or permits any such things or means to be administered to used on her, commits a felony and is liable to imprisonment for seven years.</p> <p>Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means, or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years.</p> <p>143. Any person who unlawfully supplies to or procures for any person anything, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, commits a felony and is liable to imprisonment for three years.</p> <p>144. Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.</p>	<p>National Standards and Guidelines for reducing maternal mortality and morbidity due to unsafe abortion (p. 3)</p>

court is...reluctant to determine the questions raised in this petition. The Executive has the political and legal responsibility to determine, formulate and implement policies of government, for inter alia, the good governance of Uganda.....This court has no power to determine or enforce its jurisdiction on matters that require analysis of the health sector government policies, make a review of some and let on, their implementation. If this Court determines the issues raised in the petition, it will be substituting its discretion for that of the Executive granted by law.... From the foregoing, the issues raised by the petitioners concern the matter in which the Executive and the Legislature conduct public business/issues, affairs which is their discretion and not of this court. This court is bound to leave certain constitutional questions of a political nature to the Executive and the Legislature to determine"

ACCESS TO CONTRACEPTION & FAMILY PLANNING

Article 31
Rights of the family

- (1) Men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.
 - (2) Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.
 - (3) Marriage shall be entered into with the free consent of the man and woman intending to marry.
 - (4) It is the right and duty of parents to care for and bring up their children.
 - (5) Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law.
- Affirmative action in favour of marginalised groups.

COMPREHENSIVE SEX EDUCATION

MATERNAL & NEWBORN HEALTH CARE

HARMFUL PRACTICES: FGM; CHILD MARRIAGE; CHILD RETENTION POST PREGNANCY

Article 34
Rights of children

- (1) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.
- (2) A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.
- (3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.
- (4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental spiritual, moral or social development.
- (5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.
- (6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.
- (7) The law shall accord special protection to orphans and other vulnerable children.

	<p>National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2006</p> <p>'Full access to high-quality, affordable, acceptable, and sustainable contraception and family planning for all women who desire it regardless of age or marital status, improves the socio-economic development of the country and reduces unintended and risky pregnancies and unsafe abortion.'</p> <p>National Standards and Guidelines for reducing maternal mortality and morbidity due to unsafe abortion</p> <p>A woman must give her free and informed consent to abortion care; the consent of the spouse is not mentioned as a requirement. The standards also say that abortion and contraceptive care must be provided regardless of marital status. (p 15 - 17).</p>
	<p>The Ministry of Health's National Training Curriculum for Health Workers on Adolescent Health and Development, 2001</p> <p>Adolescent health policy guidelines and service standards</p> <p>Ministry of Education and Sports, National Strategy for Girls' Education in Uganda, 2015-2019, p. 27-31)</p> <p>The Ugandan Ministry of Education and Sports states that one of its goals, for entry level and secondary education, is to train teachers on how to teach students about "sexual maturation," "gender awareness," deconstructing gender stereotypes, and how to address sexual harassment</p> <p>National Sexuality Education Framework ,2018</p> <p>Definition of Terms Sexuality education: A lifelong process of acquiring information and forming attitudes, beliefs, and values about vital issues such as sexual development, reproductive health, interpersonal relationships, affection, intimacy, body image, and gender roles. It addresses the socio-cultural, biological, psychological, and spiritual dimensions of sexuality by providing information; exploring feelings, values, and attitudes; and developing communication skills, decision-making, and critical-thinking skills in accordance with the laws and policies of Uganda.</p> <p>The National Adolescent Health Policy 2004</p>
	<p>National Standards and Guidelines for reducing maternal mortality and morbidity due to unsafe abortion (p. 3)</p> <p>Young people who are empowered with information and skills on sexuality and reproductive health have the capacity to make their own decisions on sexuality and reproductive health including the right to consent to a full range of contraceptive services and abortion care which reduces the risk of unintended pregnancy and unsafe abortion.</p> <p>Abortion is restricted but is permissible where it is necessary to save the life and health of the pregnant person</p>
<p>Prohibition of Female Genital Mutilation Act 2010 Sets out the offences and punishments for FGM in Uganda</p> <p>Ugandan Customary Marriage Act, Chapter 248</p> <p>Section 11 A customary marriage shall be void if—</p> <ol style="list-style-type: none"> 1. the female party to it has not attained the age of sixteen years; 2. the male party to it has not attained the age of eighteen years; 3. one of the parties to it is of unsound mind; 4. the parties to it are within the prohibited degrees of kinship specified in the Second Schedule to this Act or the marriage is prohibited by the custom of one of the parties to the marriage; or 5. one of the parties has previously contracted a monogamous marriage which is still subsisting 	

SRHR RIGHTS OF VULNERABLE GROUPS SUCH AS: CHILDREN; ADOLESCENTS; PREGNANT WOMEN; MARRIED WOMEN; PWDS; YOUNG PERSONS WITH HIV, KEY POPS ETC

Article 35

Rights of persons with disabilities

- (1) Persons with disabilities have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.
- (2) Parliament shall enact laws appropriate for the protection of persons with disabilities.

<p>Penal Code of Uganda</p> <p>Section 129) Defilement</p> <p>Section 140) Conspiracy to defile</p> <p>Section 138 – 139) Criminalization of Prostitution</p> <p>Penal Code Amendment) Act 2007</p> <p>129 A. (1) Where the offender in the case of any offence under section 129 is a child under the age of twelve years, the matter shall be dealt with as required by Part V of the Children Act.</p> <p>1. Where an offence under section 129 is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by Part X of the Children Act.</p> <p>Payment of compensation to victims of defilement.</p> <p>129B. (1) Where a person is convicted of defilement or aggravated defilement under section 129, the court may, in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence.</p> <p>Uganda Criminal Code</p> <p>Article 145</p> <p>Any person who—(a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.</p> <p>Article 146</p> <p>Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.</p> <p>The HIV and AIDS Prevention and Control Act of 2014</p>	<p>National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2006</p> <p>Chapter 3 - Parental consent to HIV and STI testing sections.</p> <p>s. 3.6, 3.7, 3-4, 13.4</p> <p>No verbal or written consent is required” from a parent or spouse before family planning services shall be provided. These services are described as “counseling and screening” for contraceptive use, which includes HIV/STD counseling and treatment</p> <p>Adolescent health policy guidelines and service standards</p> <p>National AIDS strategic plan 2015-2020</p> <p>National Standards and Guidelines for reducing maternal mortality and morbidity due to unsafe abortion (p. 3)</p> <p>The National Adolescent Health Policy 2004</p>
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3. SRHR IN THE EAC: LEGAL, POLICY & ENVIRONMENTAL ANALYSIS

Drawing from the undertaken legal audit, this section provides a gender responsive analysis of the collected data through the identification of strengths, weaknesses and possible contestations in the reviewed laws and policies.

SRHR LEGAL AND POLICY ANALYSIS

COUNTRY	STRENGTHS	GAPS/ WEAKNESSES	CONTESTATIONS
BURUNDI	<p>Burundi has ratified a wide variety of international and regional provisions that recognize the right to health generally and also the right to sexual and reproductive health more specifically. This is also reinforced through Burundi's ratification and commitment expressed in several non-binding documents such as the Universal Declaration of Human Rights, and the ESA commitment to comprehensive sexuality education.</p> <p>The Constitution of Burundi is further recognized as a strength in its deliberate, express regulation of health under Article 55</p> <p>Its legislative and policy framework recognizes a wide range and meaning of violence including sterilization of women</p>	<p>Burundi's SRHR legal framework is silent on Female Genital Mutilation and also does not regulate Assisted Reproductive Technologies including In-vitro fertilization, surrogacy etc and as such, this field of SRHR has largely been left unguarded.</p> <p>The Strategic Plan for HIV/AIDS 2011-2015, includes very little mention, if any at all, on sexual violence and the linkages between HIV and violence. The isolation of public health interventions makes it difficult to protect women living with HIV who face different forms of violence at the home or community setting.</p> <p>Equally the Constitution of Burundi, only recognizes marriage between a man and a woman. This framing discriminates against people who do not identify as heterosexual and may inform heightened stigma and violence against such populations.</p> <p>Burundi's Penal Code penalizes co-habitation. Couples cohabiting without being married risked prosecution under the law which banned "free unions" or cohabitation and carried a prison sentence of one to three months, and a fine of up to 200,000 francs.⁶⁸</p> <p>The 2010-2014 National Reproductive Health Strategy focuses specifically on developing educational programs to prevent sexual violence, making available rape kits, and on reinforcing care for survivors of sexual violence. It is not clear, however, to what extent this strategy has been implemented particularly considering recent reports on the ground of multiple rapes and use of violence as a tool for intimidation of opposition groups.</p>	<p>Article 28 of the 2005 Constitution protects the right to privacy yet the amendments to the Penal Code Loi N°1 / 05 du 22 Avril 2009 portant Revision du Code Penal criminalize same sex relations. The enforcement of a prohibition of homosexual conduct is likely to undermine attempts to combat the spread of HIV/AIDS</p> <p>Articles 242 and 243 of Burundi's criminal code prohibit human trafficking and smuggling, and prescribe sentences of five to 20 years' imprisonment; the code does not, however, provide a definition of human trafficking, limiting its utility.</p> <p>Under the Code des Personnes et de la Famille 1993, the legal age of marriage is 21 years for boys and 18 year for girls. However they may marry below 18 years with a waiver from the provincial governor and with parental consent. Yet, Burundi ratified the Convention on the Rights of the Child in 1990, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1992, which obligates states to ensure free and full consent to marriage</p>

68 In May 2018, following President Nkurunziza's call for a nationwide "moralization" campaign, the Interior ministry spokesperson gave cohabiting couples until 31 December to "regularize" their situation. <https://www.refworld.org/docid/5a993934a.html>

SRHR LEGAL AND POLICY ANALYSIS

COUNTRY	STRENGTHS	GAPS/ WEAKNESSES	CONTESTATIONS
KENYA	<p>Kenya has ratified a wide variety of international and regional provisions that recognize the right to health generally and also the right to sexual and reproductive health more specifically. This is also reinforced through Kenya's ratification and commitment expressed in several non-binding documents such as the Universal Declaration of Human Rights, and the ESA commitment to comprehensive sexuality education.</p> <p>The Constitution of Kenya is further recognized as a strength in its deliberate, express regulation of SRHR under Article 43(1) (a)</p> <p>The country also has an extensive legal and policy framework for the realisation of reproductive health and rights centered on key priority areas with corresponding strategies and targets to measure the realization of the policies. The enabling legislation and policies regulate a wide variety of SRHR issues including domestic violence, HIV related violations, rape, human trafficking, FGM etc</p> <p>Kenya remains the only country in the world that has established an HIV Tribunal to deliberate on HIV related violations including breach of privacy, confidentiality and mandatory HIV testing.</p>	<p>Kenya's SRHR legal framework does not regulate Assisted Reproductive Technologies including In-vitro fertilization, surrogacy etc and as such, this field of SRHR has largely been left unguarded but rather guided by court precedence rather than the law.</p> <p>By a court judgment dated 24th May 2019, the High Court of Kenya refused to decriminalize same sex conduct which is currently criminalized under sections 162 and 165 of the Penal Code. This is considered a big barrier towards advancing the sexual rights sexual minorities or persons who are of a different sexual orientation beyond heterosexual relations. The consolidated cases, Petitions 150 and 243 of 2016 had challenged the above provisions as being vague, and a violation of the rights to health, privacy and freedom from discrimination.</p> <p>Equally, Article 45 (2) of the Constitution of Kenya, only recognises marriage between a man and a woman. This framing discriminates against people who do not identify as heterosexual and may inform heightened stigma and violence against such populations.</p> <p>Kenya's Sexual Offences Act does not criminalize marital rape. The Act in fact excludes sexual relations within marriage from regulation under Article 43 (5) which states that 'this section shall not apply in respect of persons who are lawfully married to each other'</p> <p>The HIV Prevention and Control, as compared to its EAC counterpart, is comparatively weak. This is informed by the better framing of rights as enshrined in the EAC HIV prevention and Management Act which places a wide variety of duties on the state to ensure the protection of women and vulnerable children from HIV. Section 34 of the EAC HIV Act needs to be replicated in the Kenyan HIV laws that were not fashioned to address gender sensitive aspects of HIV such as women being prone to violence as a result of their status.</p> <p>There has been discussion on reviewing the Kenyan Sexual Offences Act 2006 to align to the Constitution of 2010 but in addition review is needed to align to the existing emerging needs and current SRHR violation trends in the country. Pursuant to Miscellaneous Amendment No. 1 in 2017, the parliamentary Leader of Majority proposed to reduce the age of sexual consent from 18years to 16years in order to decriminalize consenting adolescent sexual relations. This was however thwarted. MP Florence Mutua subsequently proposed amendments to the Sexual Offences Act in 2017 which also failed. Key among the gaps proposed to be included were:</p> <ol style="list-style-type: none"> 1. Criminalization of out of court settlement of sexual offences 2. Establishment of a specific police unit to investigate SGBV 3. Duty placed on teaching institutions to conduct due diligence of all staff to ensure sexual perpetrators are not hired in schools 	<p>Section 6 of the Health Act guarantees women access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened.</p> <p>It is noteworthy that Section 6(1) demands that All the above cases shall be regarded as comprising notifiable conditions. The Public Health Act defines notifiable conditions as communicable diseases such as Ebola, Typhoid, Cholera etc that demand quarantine of the patient for prevention of infection to the public. This clause has called for meaningful interpretation of the intention of the legislature as abortion is not an infectious disease.</p> <p>Kenya's SRHR legal framework does not regulate Assisted Reproductive Technologies including In-vitro fertilization, surrogacy etc and as such, this field of SRHR has largely been left unguarded but rather guided by court precedence rather than the law. Petition 78 of 2014, JLN & others versus Director of Children Services raised several issues including Whose name should appear in the birth notification card? The surrogate or the commissioning parents? 2. Did the hospital breach the petitioner's right to privacy by disclosing the surrogacy agreement to the Director of Children services? In this matter, the Court held that the children be registered in names of commissioning parents. The second case, Petition 443 of 2014, AMN versus the AG, the Court held opposition of the first case that the surrogate remains the mother of the children until legal transfer of status to the Commissioning parents. Notably, the court also recognized that the genetic father of the children needed not adopt them and that rights accrued to him automatically. The two High Court positions have thus led to two conflicting opinions on who is the entitled to legal status of the children after birth.</p>

COUNTRY	STRENGTHS	GAPS/ WEAKNESSES	CONTESTATIONS
RWANDA	<p>Rwanda has adopted a number of international and regional provisions that recognise the right to Health. It has strengthened its obligations in some instances e.g. when Rwanda ratified the Maputo Protocol it contained a reservation to Article 14(2) (c) but has since lifted this reservation.⁶⁹ In accordance with the Constitution of Rwanda international treaties and agreements that have been ratified or approved have the force of law.⁷⁰</p> <p>The Constitution of Rwanda recognises the right to good health for Rwandans.</p> <p>There is an extensive policy framework for the realisation of reproductive health and rights centered on key priority areas with corresponding strategies and targets to measure the realisation of the policies</p> <p>Rwanda recognises marital rape and domestic violence within a marital relationship</p> <p>Rwanda is one of the few countries within the region that does not criminalise same sex relationships or same-sex acts and guarantees the right to equality before the law.⁷¹</p>	<p>The definition of rape requires that “force, threats, trickery or abuse of authority” is proven to establish absence of consent. This limitation may conceivably exclude acts when consent is not present but does not fall within the definition given. Consent based laws often do not limit how absence of consent is formulated.</p> <p>The provisions in Law No 68/2018 of 30/08/2018 that criminalise acts against morality, in some instances amount to the criminalisation of consensual adult sexual relationships such as adultery and co-habitation. This framing of morality may be limitation on the right to autonomy and the right to choose a sexual partner. Additionally, it is unclear what government purpose is served by criminalising consensual adult sexual relationships.</p> <p>The Constitution of Rwanda, only recognises marriage between a man and a woman and only recognises monogamous civil unions. This framing discriminates against people who does not identify as heterosexual and may inform heightened stigma and violence against such populations. Additionally, while polygamy is not very common in Rwanda, 7% of women are in polygamous unions and the constitutional provision is detrimental to them in that it fails to recognise their unions and their cultures.</p>	<p>Rwanda does not have any legislation regulating harmful cultural practices and female genital mutilation (FGM). This may not be problematic because the provisions within the Maputo Protocol and CEDAW are applicable within Rwanda, however the failure to define some of these practices may lead to undesirable results. Elongation of the labia minora, is a practice in Rwanda which is aimed at increasing male and female pleasure and is looked at as a positive force by women who practice it.⁷² However, elongation of the labia minora does classify as type IV FGM in accordance with the World Health Organization.⁷³ Thus the failure to classify or recognise FGM within Rwandan law may result in the criminalisation of a practice widely thought to be positive or the non-regulation of a practice believed to be harmful in international law – this gap is potentially problematic.</p> <p>The Penal Code of Rwanda has been subject to significant reform particularly with regard to abortion. The 1977 Penal Code highly restricted abortion, permitting it only to preserve the physical or mental health of a woman.⁷⁴ The 2012 Penal Code expanded access to abortion, adding more exceptions. In addition to therapeutic reasons, abortion is also allowed when a woman is pregnant as a result of rape, forced marriage, or due to incest in the second degree.⁷⁵ This expansion was however, limited by a cumbersome process that required court certification in the case of rape, incest and forced marriage; and the permission of two medical doctors if the health of woman is at risk (the doctors were required to submit a report in triplicate). While, the 2012 provisions relaxed the expectations in the 1977 Act, it remained problematic for a number of reasons: firstly, the definition of exceptions did not include defilement and many survivors of sexual violence were minors;⁷⁶ secondly, the requirement of court certificate to access a legal abortion as a result of rape, incest and forced marriage was so cumbersome that between July 2012 and December 2014 only one such order was granted;⁷⁷ and finally, the requirement of permission for two doctors when the health of the mother is at risk was impractical in a country where the doctor to patient ratio is 1 to 16,046 people.⁷⁸ As a result of this the provisions of the 2012 Act were replaced by Law No 68/2018 of 30/08/2018.</p> <p>This Law has significantly relaxed the provisions and made clear the aspect of children that are pregnant. The requirement of a medical doctor has been maintained, although now limited to one, but given the doctor patient ratio this may still act as a barrier.</p> <p>Following the revision of the Penal Code, President Paul Kagame pardoned 367 women and girls who had been convicted of abortion offences under the previous regimes.⁷⁹ While a number remain incarcerated this serves as a progressive step from Rwanda.</p>

69 This was lifted in Presidential Order No 05/01 of 03/05/2012, Lifting the Reservation Issued by the Republic of Rwanda on Article 14(2) (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, available at http://www.rlrc.gov.rw/fileadmin/user_upload/Laws/Laws/RWA%20LAWS%20PUBLISHED%20IN%202012/RWA%202012%20%20PO%20N0%2005-01-2012%20%20%20LIFTING%20RESERVATION%20ON%20AFRICAN%20CHARTER%20ON%20HUMAN%20RIGHTS%20AND%20WOMEN%20IN%20AFRICA-%20%20OG%20N0%20SP%20OF%2004%20MAY%202012.pdf. Also see Centre for Reproductive Rights “Rwandan Government takes critical step in recognizing women’s fundamental rights” (14 August 2012), available at <https://www.reproductiverights.org/press-room/rwandan-government-takes-critical-step-in-recognizing-women%E2%80%99s-fundamental-human-rights>, <accessed on 6 May 2019>.

70 Article 168 of the Constitution of Rwanda.

71 SIDA “The rights of LGBTI People in Rwanda” (December 2014) available at <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-rwanda.pdf> <accessed on 1 May 2019>

72 Koster M and Leimar Price L (4 February 2008) “Rwandan female genital modification: Elongation of the Labia Minora and use of botanical species” Culture, Health and Sexuality, Volume 10, Issue 2 pages 191-204.

73 The World Health Organization (WHO), “Key facts on Female Genital Mutilation” (31 January 2018) available at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> classifies FGM into 4 major categories which are:

Type 1: Often referred to as clitoridectomy, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).

Type 2: Often referred to as excision, this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora (the outer folds of skin of the vulva).

Type 3: Often referred to as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris (clitoridectomy).

Type 4: This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.

74 Kane G (2015) “When abortion is a crime: Rwanda”, Chapel Hill: Ipas at p 5.

75 Ibid.

76 Hodoglugil NN et al “Making abortion safer in Rwanda: Operationalisation of the Penal Code 2012 to Expand Legal Exemptions and Challenges” Africa Journal of Reproductive Health (2017); 21 (1) 82 at 90.

77 Ibid at 85-86.

78 Ministry of Health “Health Sector Policy” (January 2015) available at http://www.moh.gov.rw/fileadmin/templates/policies/Health_Sector_Policy__19th_January_2015.pdf <accessed on 6 May 2019>.

79 Okiror S “Paul Kagame orders release of women jailed over abortion in Rwanda” The Guardian, (5 April 2019) available at <https://www.theguardian.com/global-development/2019/apr/05/paul-kagame-orders-release-of-women-and-girls-jailed-over-abortion-in-rwanda>, <accessed on 6 May 2019>.

COUNTRY	STRENGTHS	GAPS/ WEAKNESSES	CONTESTATIONS
SOUTH-SUDAN	<p>South Sudan at the very least has legislation and policies that could be interpreted to cater for sexual and reproductive health.</p> <p>The Children's Act caters towards protecting a child's best interests and as such acts as an indirect push for adolescent SRH.</p>	<p>However, the flaw that emanates from human perception and subsequent interpretation of legal and policy provisions may not necessarily promote or protect SRHR.</p> <p>Due to civil strife, much activity with due regard to social end economic growth has been stifled. This situation continues to be a great impediment to developing laws and policies that would realize the right to reproductive health care for the citizens of South Sudan.</p>	<p>S. Sudan has ratified a number of international human rights law instruments that could possibly work to protect and promote SRH such as CEDAW and ACRWC.</p>

COUNTRY	STRENGTHS	GAPS/ WEAKNESSES	CONTESTATIONS
TANZANIA	<p>Tanzania has ratified a number of significant international and regional human rights instruments</p> <p>The Constitution recognises the right to human dignity and obliges the protection of that right</p> <p>The Constitution recognises the right to equality</p> <p>The revisions of the Penal Code have led to a meaningful inclusion on sexual violence and a consent-based regime for rape</p> <p>The Law of Marriage Act amended the Penal Code, which only criminalised carnal knowledge with a girl under 12 and this has been increased to 15</p> <p>The minimum age for marriage has been increased by the Law of Marriage Act to 15 for girls (it was 12) and 18 for boys</p> <p>The law recognises the harmful nature of FGM and there has been a national plan to combat FGM</p> <p>The policy framework recognises the need to address harmful cultural practices that affect the spread of HIV such as wife inheritance</p> <p>There is a recognition of youth and adolescent friendly services in Tanzania</p> <p>The exception on abortion is not only limited to the life of the mother and informed by jurisprudence can be interpreted to include mental and physical health⁸⁰</p>	<p>Tanzania is a dualist state so absent domestication these international law obligations may have little meaning within the United Republic⁸¹</p> <p>The right to health is only quantified for children in the Law of the Child Act and only as against their parents. The international law obligations on the right to health have not been domesticated</p> <p>The revision of the Penal Code on rape frames rape as a crime by a man/boy against a woman/girl – this implies that boys are not capable of being raped (limited to the framing on indecent assault).⁸² A male person under 12 is presumed to be incapable of having sexual intercourse.⁸³ However a male person over 12 can be found guilty of rape and seemingly cannot be the victim of rape. The provision also does not recognise marital rape and seemingly suggests that sex with an unmarried woman can be framed as an offence.</p> <p>Despite the recognition of the right to equality there is still inequitable treatment between boys and girls - with the minimum age for marriage of girls being lower than that of boys. The Penal Code provision on FGM is limited to children and thus adult women subjected to FGM are not protected</p> <p>The law is largely silent on domestic violence and the only mention is the Law of Marriage Act which prohibits corporal punishment between spouses. Outside of the Penal Code abortion is not regulated by any other instrument and the Maputo Protocol has not been domesticated.</p>	<p>The provision of the Law of Marriage Act which allows for child marriages is contrary to the Law of the Child Act and international and regional law seeking to protect children. This provision has also been found unconstitutional in <i>Rebecca Z. Gyumi v The Attorney General Civil Cause No. 5 of 2016</i> which found that the distinction of the minimum age for marriage between boys and girls amounted to discrimination. The Court directed the Government to correct the unconstitutionality within a year of the judgment.⁸⁴</p> <p>Despite the high number of adolescent and teenage (15-19) pregnancies in Tanzania, the State policy has been to punish and ostracize girls by limiting their right to education which is both discriminatory and counter-productive.⁸⁵</p>

COUNTRY	STRENGTHS	GAPS/ WEAKNESSES	CONTESTATIONS
UGANDA	<p>The right to health generally and maternal health rights in particular are recognized in international human rights instruments, which are binding on Uganda vide ratification.</p> <p>Uganda has a wide array laws and policies that form an elaborate framework for the implementation of Sexual Reproductive Health Rights.</p> <p>Pertinent SRHR related provisions are entrenched in the Constitution of Uganda. These include the right to non-discrimination which is in turn fortified by providing quite specifically that women shall be treated equally as men.⁸⁶</p> <p>Its policies and strategy documents cover considerable ground in providing for and regulation SRH provision. For example; the National Development Plan recognizes the vital role played by good health in socio-economic development and the advancement of the well-being of individuals and populations in the country. It also lists down maternal health indicators to guide in the realization of the right of health with due regard to reproductive health and services whilst the National Health Policy aims at promoting access to education, health services, and clean and safe water. The policy recognizes the critical role played by a healthy population in the socioeconomic development of the country.⁸⁷</p>	<p>It is indeed possible to conclude that the application of the constitutional provisions which pertain to the right to health did not translate into the delivery of efficient health services.</p> <p>The Constitution whilst entrenching relevant human rights and freedoms for the realization of SRHR counters a holistic realization by providing restrictions. For example; the banning of abortion.⁸⁸ Although the only exception is if by any other written law. However, the Penal Code has expounded in detail the provision of the Constitution and criminalized abortion.</p> <p>In addition, vital SRHR components such as Comprehensive Sexuality Education and maternal health lack comprehensive legislation to hold culpable any failure to realize these rights/</p>	<p>It is evident that Uganda's legal and policy framework, similar to most African countries, is antagonistic towards the contentious issues relevant to SRHR such as safe access to abortion and equal access to health care for all its citizens with the passing of the Anti-Homosexuality Act.</p> <p>However, one may argue that article 45 on human rights and freedoms additional to other rights in the Constitution provides a scenario where all SRHR related provisions may be construed to reach and apply, as guided by international treaties and conventions ratified by Uganda, and thus stand a chance to promote access to sexual and reproductive health care and services.</p>

80 *Mehar Singh Bansel v Republic* [1959] E. Afr. L. Rep. 813 (East African Court of Appeal, Kenya) in this case defined an "illegal operation" as one "which is intended to terminate pregnancy for some reason other than what can, perhaps be best called a good medical reason," which the Court interpreted to be "the genuine belief that the operation is necessary for the purpose of saving the patient's life or preventing severe prejudice to her health. The East African Court of Appeal affirmed this decision and this is binding on Tanzania.

81 Magoke-Mhoja, M. E. (2008). "Child Widows Silenced and Unheard: Human Rights Suffers in Tanzania". Author House, pg. 131.

82 *Supra* at note 6, describes an absurd situation where a boy of fourteen was sentenced to life imprisonment because he passed the threshold of 12 years.

83 Section 15 of the Penal Code.

84 Will check with TAWLA how far the amendment is.

85 Makoye K "Tanzania's ban on pregnant girls in schools violated basic rights: campaigners", (26 June 2017), Reuters, available at <https://www.reuters.com/article/us-tanzania-girls/tanzania-ban-on-pregnant-girls-in-school-violates-basic-rights-campaigners-idUSKBN19H1FE> <accessed on 1 May 2019>

86 Article 33 Constitution of Uganda

87 *Litigating Maternal Health Rights in Uganda: What Civil Society Needs to Know*, Center for Health Human Rights and Development (CEHURD), September 2013

88 Article 22 Constitution of Uganda

4. SRHR BILL FACT SHEET

EAST AFRICAN COMMUNITY SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS BILL FACT SHEET

BACKGROUND

The East African Community (EAC) is one of the eight regional economic communities recognised by the African Union. This community was established in 1999 by three of its original-founding members, which are Kenya, Tanzania and Uganda. The regional intergovernmental organisation now consists of six partner states, the original three and Burundi, Rwanda and South Sudan. The EAC has various organs and one of them is the East African Legislative Assembly (EALA). EALA is established in terms of Article 9 of the Treaty for the Establishment of the East African Community (the Treaty) and its core functions are legislating, oversight and representation. EALA has 54 elected members and eight ex officio members totaling to a membership of 62. The Treaty requires that members of EALA represent the diversity of views existing in the national assemblies, and that there should be a gender balance.

In accordance with Chapter 21, Article 118 of the Treaty, the Partner States are required to ensure harmonization of national health policies and regulations and the promotion of exchange of information on health issues in order to achieve quality health within the Community. In response to this EALA passed the East African Community HIV and AIDS Prevention and Management Act in 2012. This Act seeks to create a uniform rights-based approach to HIV in the region and sets out the obligations on States to ensure a rights-based approach to the prevention and management of HIV.

THE EAC SEXUAL AND REPRODUCTIVE HEALTH BILL

In January 2017 the 3rd East African Legislative Assembly introduced the EAC Sexual and Reproductive Health and Rights (SRH) Bill seeking to provide a legal framework for SRH related matters; 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.

While the term of the 3rd Assembly lapsed without the passing of the EAC SRH Bill, the 4th Assembly in a Resolution of the assembly to Save, Retain and Continue in the Assembly Bills that were Introduced in the 3rd Assembly.

KEY CLAUSES

The Act seeks to provide a framework for the protection and advancement of sexual and reproductive health and rights:

1. It recognises and is framed on the Maputo Plan for Action for the operationalisation of the African Continental Policy Framework for universal access to comprehensive sexual and reproductive health services; the UN Commission on Population Development's 2013 Resolution on Sexual and Reproductive Health; the Convention on the Rights of the Child; and the African Charter on the Rights and Welfare of the Child.
2. Frames State obligation within the partner countries to protect the sexual and reproductive health and rights of all.

3. Prohibition of sexual exploitation of children and obliges states to put in place policy measures to provide support for victims of sexual abuse and exploitation.
4. Guarantees the right to education for school going girls that become pregnant by necessitating the development of 'back to school' policies.
5. States must design, implement and evaluate sexual and reproductive health education packages to promote positive healthy behaviours. This extends to parental obligation to provide comprehensive sexuality education to their children.
6. Access to contraceptives, family planning services and reproductive health technologies that shall ensure persons can control their fertility.
7. Guarantees access to maternal, newborn and child health services and this includes skilled care during deliveries.
8. Guarantees the right to terminate a pregnancy if it endangers the life of a woman
9. Obliges partner states to design and implement programmes to address the SRH needs of adolescents living with HIV. Goes further and guarantees the right to self-protection against STIs including HIV and this includes the right to be informed of the health status of their partners.
10. Underscores the need to protect persons with special needs including persons living with disability.
11. Prohibits harmful cultural practices (including child marriage and FGM) and obliges states to design and implement programmes to rehabilitate victims of FGM.

CONTESTATIONS

The following aspects of the Bill may cause some contestations that should guide civil society discourse as they engage in discussions on the Bill:

1. The duty of the State is four-pronged in accordance with General Comment No. 14 of the Committee for Economic, Social and Cultural Rights. The clause must therefore read that partner states have a duty to protect, respect, promote and fulfil sexual and reproductive health and rights
2. The suggestion that partner states strengthen parents' capacity to provide Comprehensive sexuality education will be difficult to enforce and the focus should be on capacitating learning institutions through the Ministry of Health and the Ministry of Education to include compulsory CSE programmes in school through a curriculum that is tailored to suit age appropriate information for the students.
3. The duty of partner states in reduction of early teenage pregnancies must go beyond maintaining records. The States must investigate the root causes of such pregnancies and their correlation to gender-based violence and teacher-student relations. Further if there is a correlation to sexual exploitation and GBV, the states must prosecute the identified perpetrators as a measure to curb early and teenage pregnancies
4. Overall, there is need to establish a follow up mechanism by the partner states on the return to school policy. A good working formula, which ensures that there is mandatory reporting back and children officers tracking the girls.
5. The Clause on termination of pregnancy is restrictive and contrary to the legal frameworks of Kenya and Uganda as well as the Maputo Protocol. The clause is retrogressive and claws back on the wide array of grounds allowed for safe abortion in Article 14(2) (c) of the Maputo Protocol.
6. There Bill does not address the stigma and discrimination faced by adolescents living with HIV.
7. The right to be informed of your partners health status is contrary to paragraph 19 of General Comment No. 1 of the African Commission – disclosure of health status must be free and non-coerced and should not result in harassment, violence and abandonment.

5. KEY SRHR STAKEHOLDERS AND CHAMPIONS

KEY SRHR STAKEHOLDERS

NAME OF ORGANISATION	COUNTRY	FOCUS AREA	CONTACT
KATIBA Institute	Kenya	Civil and Political Rights	info@katibainstitute.org +254 (0)704594962/3
Society for Family health Rwanda (SFH)	Rwanda	Affiliate of Population Services International Working in partnership with the public and private sector and harnessing the power of the markets, SFH provides lifesaving products, clinical services and social behavior and behavioral change communications.	+250788312174
The International Community of Women living with HIV Eastern Africa (ICWEA)	Uganda	Regional advocacy network and membership based organisation. ICW Eastern Africa exists to give visibility to women living with HIV in Eastern Africa. ICW Eastern Africa believes that gender inequalities and the lack of sexual & reproductive health & rights for women are at the heart of the HIV epidemic.	+256 41 4531913
Rwanda NGO, Forum on HIV/AIDS	Rwanda	National network of National NGOs intervening in the Health and Human Right Sector. The Forum has decentralized structures up to District level. This Forum gathers 127 National NGO members intervening in different areas such as HIV, TB, Malaria, Social Protection, Human Right, RMNCAH and Research targeting general population including key and priority populations (MSMs, FSWs, PWUDs/PWIDs...), adolescent girls and young women.	(+250) 0783699602
UMATI – Chama cha uzazi na malezi bora Tanzania	Tanzania	An autonomous, not for profit, non-political national NGO providing Sexual and Reproductive Health (SRH) information, education and services in Tanzania	+25522-2150156
(Ihorere Munyarwanda)IMRO Ihorere Munyarwanda	Rwanda	IMRO has 16 years' experience implementing interventions in the context of Poverty Alleviation, Gender Equality, Nutrition, GBV, HIV, Education, Environment ,Peace Building ,Health Promotion, accountability, Advocacy and Networking in order to improve lives of IMRO's beneficiaries at individual, family and, community levels for sustainable social economic development. This is achieved through broad consultation, partnership and transparent management with different Stakeholders.	+250 788 304 999 info@imrorwanda.org
Health Development Initiative (HDI)	Rwanda	HDI strives to improve both the quality and accessibility of healthcare for all Rwandans regardless of their socio-economic status. This is spearheaded under three thematic areas: Sexual and Reproductive Health and Rights; Community Health and Development and; Human Rights and the Right to Health.	+250788309262 info@hdirwanda.org
African Youth and Adolescents Network on Population and Development in East and Southern Africa (Afriyan) Rwanda	Rwanda	AfriYAN is a consultative, coordinating, and action-oriented network for youth and adolescent national organizations, and a vehicle for collaboration on: <ul style="list-style-type: none"> • HIV & AIDS • The promotion of sexual and reproductive health and rights (SRHR) • Population and youth development • Issues related to public health and/or sustainable development • Child marriage and gender-based violence (GBV) 	
Center for Reproductive Rights	Kenya	The Center for Reproductive Rights uses the power of law to advance reproductive rights as fundamental human rights around the world. CRR are legal innovators seeking to fundamentally transform the landscape of reproductive health and rights worldwide, and have already strengthened laws and policies in more than 50 countries in a bid every woman's right to reproductive health and autonomy.	kenyaoffice@reprorights.org

KEY SRHR STAKEHOLDERS

NAME OF ORGANISATION	COUNTRY	FOCUS AREA	CONTACT
Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)	Kenya	<p>KELIN's goal is to advocate for a holistic and rights-based system of service delivery in health and for the full enjoyment of the right to health by all, including the vulnerable, marginalized, and excluded populations in four thematic areas – Sexual Reproductive Health Rights, HIV and TB, Key Populations and Women, Land and Property Rights. KELIN does this by:</p> <ul style="list-style-type: none"> • Advocating for the integration of constitutional and other human rights in policies, laws and operational frameworks/regulations relating to the right to health and the application of the constitutional values and principles and the rights-based approaches in the implementation of health services. • Developing the capacities of PBOs and CBOs working on health and human rights issues. • Facilitating access to justice in respect of violations of health-related human rights. • Initiating and participating in strategic partnerships at the national, sub-regional and regional and global levels for the strengthening of the rights-based approach to the in the delivery of health services. • Building an organization that operates in an effective, efficient, professional and accountable manner. <p>In the implementation of our programs and related activities, we utilize a rights-based approach; prioritizing the key principles of people-centeredness, accountability, equality, and non-discrimination. By taking this approach we ensure the involvement of both the rights holders, who are not experiencing full rights, and the duty bearers who are duty bound to protect the holders' rights.</p>	+254 710 261408
Reproductive Health Uganda (RHU)	Uganda	RHU is a non-governmental organization that champions and enables universal access to rights based SRHR information and services. RHU has a network of over 4000 SRH volunteers across Uganda and was previously known as The Uganda Family Planning Association.	+256 31 2207100
Uganda Youth and Adolescents Youth Forum (UYAHF)	Uganda	Working to provide young people (10-30) years in Uganda with high quality, high impact and gender sensitive sexual reproductive health information.	+256 (0) 700 385818 info@uyahf.com
Youth Association for Change Network (YAC)	Tanzania	YAC is a voluntary youth led organization formed by a young social entrepreneur responding to social-economic youth challenges through implementation of community based integrated projects targeting the youth and children. Youth association for change network, its a initiative that was born from the interest of young people, motivated by being generators of change.	+255788076474 youthorg.network@gmail.com
Réseau National des jeunes vivant avec le VIH (RNJ+)	Burundi	The RNJ + has the mission to effectively and directly involve HIV-positive young people / adolescents in the fight against new infections and to promote their rights and comprehensive care.	+257 22 27 65 38 info@rnjplusburundi.org
Mouvement pour les Libertés Individuelles (MOLI)	Burundi	To build African communities free of all forms of discrimination through research and advocacy to inform laws and policies, commitment and support communities to foster social change and empower effective partnerships at local, national and regional levels.	iiradukunda@moliburundi.org
Tanzania Women Lawyers' Association (TAWLA)	Tanzania	Association founded in 1989 and officially registered in 1990. The founding members comprised a professional group of women lawyers who felt the need for an organization that could promote an environment guaranteeing equal rights and access to all by focusing on vulnerable and marginalised groups especially women and children. The founding members also recognised the need for women lawyers to foster mutual support for each other in professional advancement and social responsibility. TAWLA has more than 570 members.	office@tawla.or.tz +255 (0) 222 862865

SRHR CHAMPIONS

NAME OF CHAMPION	DESIGNATION	COUNTRY	REASON FOR RECOMMENDATION
Jean D'arc Kabanga	Executive Director kabangejeannedarc@yahoo.fr; abs@cbinf.com	Burundi	The Burundian Alliance against AIDS and Health Promotion. Working to support communities across Burundi take action against the HIV epidemic.
Star Rugori	Executive Director srugori@moliburundi.org	Burundi	Heads MOLI which uses evidence-based advocacy to advance the rights of marginalized people in African society through advocacy, documentation, research and capacity building with stakeholders in human rights.
Fabien Ndikuriyo	Chairman of Young +ve (National Network of Young People Living with HIV/AIDS) ndikuriyofabien@gmail.com	Burundi	He is a young and passionate youth heading advocacy work on HIV prevention, care and treatment for young persons across Burundi.
Cedric Nininahazwe	Program Manager, Global Network of Young People Living with HIV. nizecedou@yahoo.fr	Burundi	In 2012, Cedric produced a report on the challenges around care for young people living with HIV in Burundi, which was the country's first document to inform issues of young people living with HIV. He continues to spearhead HIV related projects as a program manager at Global Network of Young People Living with HIV.
Jedidah Maina	Executive Director of Trust for Indigenous Culture and Health (TICAH) jmaina@ticahealth.org	Kenya	Jedidah Maina—holds a Masters of Arts in Project Planning and Management and a Bachelors of Arts degree (Economics and Sociology) from the University of Nairobi. She has over eight years' experience as an activist, researcher, program manager and organizer concerning sexual and reproductive health and rights.
Dr. Aflodis Kagaba	Executive Director Health Development Initiative Rwanda (HDI) kagaba@hdirwanda.org	Rwanda	Dr. Aflodis Kagaba is a physician and human rights advocate with over ten years of experience working in the non-profitsector. Dr. Kagaba has extensive knowledge of public health, health policy and advocacy, project management, HIV/AIDS,TB, Malaria, sexual and reproductive health and rights, and water and sanitation.
Manasseh Wandera	Society for Family Health Rwanda info@sfrwanda.org	Rwanda	
Mary Balikungeri	Director and Founder Rwanda Women Network rwawnet@rwanda1.com	Rwanda	Mary is a robust and experienced women's rights activist in Rwanda. She has worked tirelessly to protect women's labour rights and provide them with economic empowerment through projects that harness skills and talents.
Annah Kukundakwe	Uganda Youth & Adolescent Health Forum kukundakweanna@gmail.com	Uganda	Outspoken Youth SRHR advocate in Uganda.
Robert Ocaya	National Co-ordinator, Right Here Right Now Uganda rocaya@rhu.or.ug	Uganda	Robert has over 10 years' experience in SRHR service delivery and advocacy, Research, Community mobilisation, Health Systems Strengthening and leadership coaching.
Irene Ovonji-Odida	Executive Director, FIDA – Uganda iovonjioidida@yahoo.com fida@fidauganda.org	Uganda	Irene is a Ugandan lawyer, politician, and women's rights activist. A member of the Uganda Law Reform Commission, she contributed to the writing of the 1995 Ugandan Constitution and helped to shape the East African Community. She has worked for various charities including ActionAid and carried out election monitoring in Uganda and Tanzania. She was an elected member of the East African Legislative Assembly from 2001 to 2006.
Marygoreth Richard	Journalist, BBC Media Action	Tanzania	Ardent journalist on women's rights issues. She is an experienced, energetic, creative and informed Radio Producer Journalist, mentor, Presenter with a very good voice, and Community debates moderator from Tanzania who is currently in charge of producing and presenting content for a weekly radio program called "Haba na Haba" .

6.APPENDIX: CATALOGUE OF REVIEWED LAWS & POLICIES

SRHR RELATED LEGAL AND POLICY PROVISIONS

COUNTRY	CONSTITUTION	LEGISLATION	POLICY
BURUNDI	The Constitution of the Republic of Burundi, 2005 (as revised per the referendum of 2015)	<ul style="list-style-type: none"> Burundian Penal Code (Law Number 1/05 April 2009) Code des Personnes et de la Famille Burundi Criminal Code 	<ul style="list-style-type: none"> The Strategic Plan for HIV/AIDS 2011-2015 Roadmap to accelerate the reduction of maternal and neonatal mortality adopted in 2005. Burundi Vision 2025 National Demographic Policy Statement 2011 National Health Policy 2005-2015 National Youth Policy Strategic Plan for Reproductive Health 2013-2015 National Health Development Plan National Strategy to fight Gender based violence National Gender Policy 2011-2025 Burundian Cadre Strategique De Croissance Et De Lutte Contre La Pauvrete- CSLP
KENYA	The Constitution of the Republic of Kenya, 2010	<ul style="list-style-type: none"> Sexual Offences Act: 2006 The Protection Against Domestic Violence Act, 2015 Counter Trafficking in Persons Act 2010 Prohibition Against Female Genital Mutilation Act 2011 Persons with Disability Act 2003 Victim Protection Act Penal Code Marriage Act 2014 HIV Prevention and Control Act 2006 Health Act, 2017 	<ul style="list-style-type: none"> Kenya Health Sector Strategic and Investment Plan 2013-2017 National School Health Policy 2009 National Gender Based Violence Policy 2014 National Condom Policy and Strategy Contraceptive Policy and Strategy National Guidelines on the Management of Sexual Violence Kenya Vision 2030 National Reproductive Health Policy, National Reproductive Health Strategy; National Condom Policy and Strategy Contraceptive Policy and Strategy Contraceptive Commodities Procurement Plan National Adolescent Sexual And Reproductive Health Policy 2015 National Guidelines For Provision Of Adolescent Youth-Friendly Services (Yfs) In Kenya National Guidelines on Quality Obstetrics and Perinatal Care National Guidelines on Management of Sexual Violence
RWANDA	The Constitution of the Republic of Rwanda (O.G No. Special of June 04, 2003)	<ul style="list-style-type: none"> Law No 68/2018 of 30/08/2018 Determining Offences and Penalties in General Law No. 42 of 1988 of 27 October 1988, Civil Code Presidential Order No 05/01 of 03/05/2012, Lifting the Reservation Issued by the Republic of Rwanda on Article 14(2) (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 	<ul style="list-style-type: none"> Rwanda Vision 2020 (2000) Health Sector Policy (2004) National Reproductive Health Policy (2003) Rwanda Family Planning Policy (2012) Adolescent Sexual and Reproductive Health and Rights (ASRH&R) Policy (2011) Adolescent Sexual and Reproductive Health and Rights (ASRH&R) Strategic Plan (2011)
SOUTH SUDAN	Transitional Constitution, 2011	<ul style="list-style-type: none"> Penal Code Act, 2008 Children Act 2018 	<ul style="list-style-type: none"> Southern Sudan Essential Medicine List Strategic National Action Plan (SNAP) 2017-2030
TANZANIA	The Constitution of the United Republic of Tanzania, Chapter 2 of the Laws of Tanzania, 1977	<ul style="list-style-type: none"> The Penal Code Chapter 16 of the Laws of Tanzania The Law of Marriage Act Chapter 29 of the Laws of Tanzania The Sexual Offences Special Provisions Act, 1998 The Law of the Child Act, 2009 The Public Health Act, 2009 HIV and AIDS Prevention and Control Act, 2008 	<ul style="list-style-type: none"> National Strategy for Gender Development (2005) Women and Gender Development Policy (2000) National Strategy for Growth and Reduction of Poverty II (2010) National Plan of Action to combat FGM 2001-2015 National Plan of Action for the Prevention and Eradication of Violence Against Women (2001-2015)

COUNTRY	CONSTITUTION	LEGISLATION	POLICY
UGANDA	<ul style="list-style-type: none"> Constitution of the Republic of Uganda, 1995 	<ul style="list-style-type: none"> Penal Code of Uganda The HIV and AIDS Prevention and Control Act of 2014 Uganda Criminal Code Penal Code Amendment) Act 2007 Prohibition of Female Genital Mutilation Act 2010 Ugandan Customary Marriage Act, Chapter 248 Anti – Homosexuality Act The Public Health Act of 1935 (amended in 2000) 	<ul style="list-style-type: none"> National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2006 Management of Sexual and Gender Based Violence Survivors 2007 National Health policy II Health Sector Strategic Plan III 2010/11-2014-15 (HSSP III) Reproductive Health Policy National Guidelines for the provision of Psychosocial Support for Gender Based Violence Victims/ Survivors Uganda Vision 2040 National Development Policy (Section 246, 319, 352 429,433,570) Uganda Gender policy Domestic Violence Act, 2010 National AIDS strategic plan 2015-2020 National Standards and Guidelines for reducing maternal mortality and morbidity due to unsafe abortion (p. 3) National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2006 National Standards and Guidelines for reducing maternal mortality and morbidity due to unsafe abortion The Ministry of Health's National Training Curriculum for Health Workers on Adolescent Health and Development, 2001 Adolescent health policy guidelines and service standards Ministry of Education and Sports, National Strategy for Girls' Education in Uganda, 2015-2019, p. 27-31) National Sexuality Education Framework ,2018 National AIDS strategic plan 2015-2020

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