

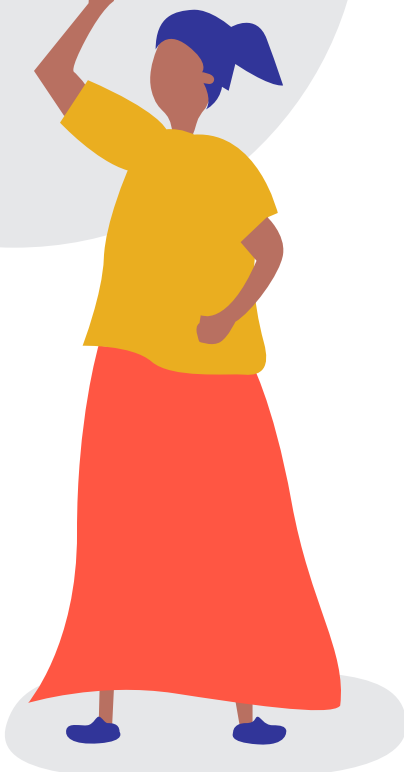
# EAST AFRICAN COMMUNITY SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS BILL FACT SHEET



## 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 totalling 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.



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, new born 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.

## EANNASO

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