



**SUBMISSIONS ON THE EAST AFRICAN COMMUNITY SEXUAL AND
REPRODUCTIVE HEALTH RIGHTS BILL, 2017 TO THE EAST AFRICAN
LEGISLATIVE ASSEMBLY**

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1. INTRODUCTION

Human Rights Awareness and Promotion Forum is a voluntary, not for profit, and non-partisan Non-Governmental Organisation. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established in 2008 with a vision of improving the observance of human rights of marginalised persons in Uganda. The organisation’s activities target sexual minorities, women and girls living with HIV/AIDS, indigent women, children and the elderly facing land justice challenges, People Who Inject Drugs (PWIDs) and women and health workers who are in conflict with the law on abortion.

HRAPF is making submissions on the East African Community Sexual and Reproductive Health Bill, 2017 because it is of the view that once enacted, it will have meaningful implications for the target populations that HRAPF works with.

2. SUBMISSIONS ON PROVISIONS AFFECTING VULNERABLE GROUPS

HRAPF wishes to commend EALA for introducing such a progressive Bill. The Bill has many positive aspects and could go a long way in ensuring access to sexual and reproductive health services; especially in Uganda where the right to health is not explicitly protected in the Bill of Rights in the Constitution.

HRAPF views as commendable provisions Clause 4 of the Bill, which requires of states to ensure the protection and advancement of sexual and reproductive health rights to *all* persons; Clause 9(2) and (3) which provide that a child shall not be expelled from a learning institution due to pregnancy and that they are to be given the opportunity and facilities to continue education during and after pregnancy; Clause 9(5) which requires of Partner States

to introduce measures to protect children from stigma and discrimination in instances of early pregnancy; the provision of family planning services in terms of Clause 12 and the promotion of data collection, research and the use of indicators in respect of SRH (Clause 30) as well as many others.

There are, however, particular provisions which are likely to have a negative impact on marginalised groups in particular. These are discussed in the remainder of this section:

i) Reference to ‘risky’ abortions

Clause 3(d): *The objectives of this Act are–*

...

(d) to prevent unwanted pregnancies and risky abortions;

The word ‘risky abortions’ is not a common term used in the current discourse on Sexual and Reproductive Health Rights. Instead, the word ‘unsafe abortions’ is used. The World Health Organization defines an unsafe abortion as ‘a procedure for terminating a pregnancy performed by persons lacking the necessary skills or in an environment not in conformity with minimal medical standards, or both’.¹ While it can be assumed that a ‘risky’ abortion may have a meaning similar to ‘unsafe’ abortion, it may provide clearer instructions to states to use the standardised international terminology.

Recommendation

Replace the word ‘risky’ in Clause 3(d) with ‘unsafe’.

ii) Targeted SRH education

Clause 10(3): *Sexual and reproductive health packages shall be targeted to those most vulnerable to ill-health with strategies and in the locations that are most accessible to them including in refugee camps, cross-border areas, truck corridors, mining and fishing communities and workplaces.*

The clause does not mention locations like slum areas, where many populations that are vulnerable to ‘ill-health’ are found. These groups include: sex workers, injecting drug users, and men who have sex with men, and their conduct is largely criminalised which makes them hard to reach and more vulnerable to HIV and other sexually transmitted diseases.

¹ World Health Organization ‘Sexual and reproductive health’ available at http://www.who.int/reproductivehealth/topics/unsafe_abortion/hrpwork/en/ (accessed 22 February 2017).

Recommendation

Locations where many marginalised persons like sex workers, injecting drug users and men who have sex with men are commonly found should be included among the targeted locations for the provision of SRH packages.

iii) Termination of pregnancy

Clause 15(1): *The Partner States shall safeguard and give effect to the reproductive rights of a woman by permitting the termination of pregnancy when in the opinion of a trained health professional, the pregnancy endangers the health or life of the woman.*

This provision is progressive and commendable in preventing unsafe abortions, however it does not make it clear that the termination of a pregnancy would be permitted if it is the *mental* and not necessarily just the physical health of the woman that is at stake or when the pregnancy is due to rape or incest. The provision also does not permit an abortion where the survival of the unborn child outside of the womb is unlikely. Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa explicitly provides that medical abortion should be authorised '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.'² The regional framework thus provides for a much broader exception to the prohibition against abortion than the EAC SRH Bill does.

Recommendation

It is suggested that the parameters in which the termination of pregnancy is permitted should be extended to explicitly recognise all the grounds listed in the Maputo Protocol. This will include the mental as well as the physical health of the mother; cases where the pregnancy is due to sexual assault, rape or incest and cases where the survival of the foetus outside of the mother's womb is unlikely.

iv) Disclosure of HIV status

Clause 19(1): *The Partner States shall ensure that every person has—*

...

(b) the right to be informed of the health status of their sexual partners, including their HIV status.

² Art 14(2)(c).

This provision poses an infringement of the right to privacy and could potentially expose women in particular to violence and discrimination. Such a provision could make people reluctant to test for HIV since they will know that the health worker may have a duty to disclose their status to their sexual partner.

Recommendation

It is suggested that Clause 19(1)(b) should be removed from the Bill.

v) Populations at risk and vulnerable groups

Clause 26: *The Partner States shall put in place policies, laws and measures for availing sexual and reproductive health services to vulnerable groups, including victims of child marriages, orphans, widows, persons with disabilities, and other populations at risk.*

Clause 27: *The Partner States shall establish and strengthen referral systems and linkages between education, health, legal, psychological, rehabilitation and social support services for adolescents and young persons with special provisions for the vulnerable groups.*

Both Clause 26 and 27 make mention of vulnerable groups and populations at risk in respect of the provision of measures, laws and policies for availing SRH services as well as referral systems between different services. A number of vulnerable groups are mentioned, namely victims of child marriages, orphans, widows, persons with disabilities *and other populations at risk*. HRAPF commends this inclusive language which can be extended to a wide variety of vulnerable populations. However, considering that sex workers, transgender persons, men who have sex with men and PWIDs are key population groups in the fight against HIV/AIDS and are internationally recognised as such by UNAIDS and the World Health Organization,³ it would be a step forward to explicitly make mention of these groups as vulnerable groups in need of SRH services and referrals. East African governments like that of Uganda recognise these key populations groups and is developing targeted interventions aimed at reaching them.⁴

It would be fitting for the regional law to be progressive and forward-thinking, and to incorporate steps already engaged in by Partner States. If the provision expressly leaves out key populations that have been recognised in some states, such a provision poses the risk of stalling the progression of targeted SRH service delivery in such states. Having them

³ UNAIDS and World Health Organization Inter-Agency Working Group on Key Populations *HIV and young people who inject drugs: A policy brief* (2013) 4.

⁴ Republic of Uganda Ministry of Health *Addendum to the National Antiretroviral Treatment Guidelines* (2013) 18.

included would also serve to encourage progressive legislation among Partner States that have not engaged in interventions for these key populations.

Recommendations

Include sex workers, men who have sex with men, transgender persons and PWIDs among the listed vulnerable groups in Clause 26. Include a definition of 'populations at risk' in the definitions clause and make specific mention of these groups.

3. CONCLUSION

The EAC SRH Bill has many positive provisions, which will improve access to sexual and reproductive healthcare services to all Ugandans. However, the provisions as highlighted have to be addressed in order to ensure that the Bill optimally provides for the protection of sexual and reproductive health of marginalised persons as well.