

**MEMORANDUM AND POSITION
STATEMENT REGARDING THE EAST
AFRICAN COMMUNITY SEXUAL AND
REPRODUCTIVE HEALTH BILL 2021**

**The
EAC
SRH Bill
2021**

BY

**YOUTH FOCUS ORGANISATIONS, GRASSROOTS
ORGANISATIONS, YOUNG WOMEN LED
ORGANISATIONS, ZAMARA FOUNDATION**

**AND OTHER CIVIL SOCIETY ORGANIZATIONS IN
UGANDA, KENYA AND TANZANIA**

**TO: The Chairperson
Committee on General Purpose
East Africa Legislative Assembly
Afrika Mashariki Road / EAC Close
P. O Box 1096, Arusha, Tanzania.
Email: eala@eachq.org
Cc: Clerk of EALA**



WE, the undersigned feminists, young women and young people in all our diversities representing feminist youth-led, women-led and human rights civil society organizations and initiatives;

AWARE that the current generation of young people especially young women globally and in East Africa is the largest one ever and recognizing that adolescents and youth in all countries are a major resource for development and key agents for social change, economic development and technological innovation;

ACKNOWLEDGING the efforts and the commitment of the East African Community to improve the wellbeing of adolescents and young people through the development and implementation of Article 118 of The Treaty for the Establishment of the East African Community on Health, the East African Community Youth policy, the East African Community Sexual and Reproductive Health Rights Strategic Plan, the HIV and AIDS Prevention and Management Bill 2012, the EAC Gender Policy among others;

RECALLING the East Africa Community States' commitment to advancing gender equality and adolescent and youth rights by signing and ratifying key regional and international instruments including the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on Civil and Political Rights (CCPR), Convention on Economic Social and Cultural Rights (CESCR), Africa Youth Charter, Africa Charter on Human and People's Rights, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol) among others;

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FURTHER RECALLING previous attempts of the East African Community to develop a legal framework for realization of sexual and reproductive health and rights in the region including the development of the East African Community Sexual and Reproductive Health Rights Bill, 2017;

EXPRESSING DEEP CONCERN that adolescents and young people in the East Africa Community are disproportionately affected by sexual and reproductive health and rights challenges including teenage pregnancies, sexual and gender-based violence, high burden of HIV/AIDS, maternal mortalities and morbidities from procuring unsafe abortions among others;

UNDERSCORING that young people and adolescents are not homogenous and have different needs and experiences; and that there are more vulnerable subpopulations within this group including sexual and gender minorities; girls young women; persons with disabilities, refugees, persons living with HIV among others who face multiple, intersecting and compounding challenges;

DISTURBED that these challenges have been exacerbated by emergencies, disasters and pandemics including COVID 19, political disturbances and turmoil and wars among others;

DEEPLY REGRETTING the increased politicization, sensationalization, opposition, misinformation, disinformation and threats by communities, religious leaders, political leaders on young people's sexual and reproductive health and rights including access to comprehensive youth friendly services and comprehensive sexuality education;




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INVOKING Article 127 of the Treaty for the Establishment of the East African Community that mandates the East African Community States to promote an enabling environment for the participation of civil society in the development activities within the Community;

WELCOMES the spirit and letter of the East African Community Sexual and Reproductive Health Bill 2021.

WE CALL UPON the EAC to protect, fulfill and respect SRHR of young people by incorporating the below general recommendations:





GENERAL RECOMMENDATIONS

Align the Bill with existing international and regional instruments on health, SRHR and gender justice including Convention on Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on Economic Social and Cultural Rights (CESCR), Africa Youth Charter, Africa Charter on Human and Peoples' Rights, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol), Article 118 of The Treaty for the Establishment of the East African Community on Health, the East African Community Youth policy, the East African Community Sexual and Reproductive Health Rights Strategic Plan, the HIV and AIDS Prevention and Management Bill 2012, the EAC Gender Policy.

Incorporate sexual health rights and reproductive Rights in the Bill and ensure the right to bodily autonomy and integrity is protected, fulfilled, and respected.

Strengthen meaningful engagement of all young people in their diversity in the Bill development process by utilizing platforms and structures most accessible and acceptable to young people including digital platforms.

MATRIX ON SPECIFIC RECOMMENDATIONS

Title	Proposed Amendments	Reasons
<p>Clause 2. Objects of the Acts</p>	<p>(d) to facilitate and promote reduction and elimination of unsafe abortions, HIV and other sexually transmitted infections, and unintended pregnancies.</p>	<p>The amended provision removes the word “early” as this is a subjective description. A pregnancy could be considered early for someone who is 14 or 20 years of age, depending on the circumstances. “Unintended” is stronger and more encompassing term that also takes into early pregnancies that are many times unintended.</p>
<p>Clause 3. Interpretations</p> <p>Proposed concepts for interpretation that are currently missing in the Bill</p>	<p>“Bodily autonomy” means a person’s right and capacity to make decisions in relation to their own body.</p> <p>“Bodily integrity” means the recognition, respect and non-violation a person’s parameters and boundaries in relation to what can be done to their body.</p>	<p>the definitions of bodily autonomy and integrity are being introduced here to clarify their usage in previously provided for and amended clauses in the Bill. Both these concepts are core tenets of sexual and reproductive health and rights and offer protections for more vulnerable groups such as people with disabilities and the elderly.</p>
<p>Clause 9. Sexual and reproductive health for adolescents and young people.</p>	<p>Include which is regulated by the state making it affordable to all adolescents and young people.</p> <p>Include and expediting cases of sexual exploitation and trafficking,</p>	

MATRIX ON SPECIFIC RECOMMENDATIONS

Title	Proposed Amendments	Reasons
<p>Clause 12: Continuation of education after pregnancy.</p>	<p>A person who becomes pregnant before completing her education shall be allowed to stay in school until such a time as is convenient or medically recommended for maternity leave, and shall be given the opportunity with appropriate facilities to continue with her education during and after pregnancy.</p>	<p>The amendment has removed “adolescent girl or young woman” to widen the scope of protection to cater for other women who may not fall neatly into this categorisation but are penalised for pregnancy out of wedlock when still in school, particularly in tertiary institutions. This amendment should apply everywhere else within this clause. The amendment has also removed the prescription of “within a reasonable period” as this leaves the time of return after pregnancy to the discretion of the school which may be abused. A school could for example decide that a period of absenteeism from school is too long for their standards and deny re-entry. The point of re-entry into school should be determined by the student and should be when they are physically and mentally ready. Lastly, a provision on allowing the person to stay in school while pregnant has been included to cater for instances where women and girls are forced to leave school the moment the pregnancy is discovered, even if some are more than capable of continuing with schoolwork to the 8th or 9th month of the pregnancy. It should be the prerogative of the student to decide when to leave, depending on their health needs. The amendment also now mandates institutions to provide appropriate support “during” and not just after pregnancy.</p>

MATRIX ON SPECIFIC RECOMMENDATIONS

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<p>Clause 13: Menstrual Health</p>	<p>Missing provisions on: Menstrual education and information, Research on menstruation including related conditions e.g., endometriosis, fibroids Expand menstrual health services to include competent health workers, access to medicines for painful cramps, links to mental health.</p>	<p>Menstruation to be a stand-alone clause and not be put together with the clause on reproductive cancers.</p> <p>Addition of a separate clause on reproductive cancers.</p>
<p>Clause 17: Health and life-saving post-abortion care and treatment.</p>	<p>Additional provision under Clause 17: Each Partner State shall undertake efforts to ensure the protection of those seeking post-abortion care including maintaining the highest degree of confidentiality to avoid repercussions due to stigma</p>	<p>Some women, particularly in jurisdictions where abortion is illegal, are hesitant to seek out post-abortion care because of fear of getting arrested or stigmatized by healthcare workers. In order to ensure access to post abortion care and reduce on maternal mortality rates, legal and policy assurances need to be that they will face no penalties.</p>
<p>Clause 18 (3): Family planning and contraceptive services shall include –</p>	<p>(e)To include ovarian cancer to state: measures for detecting, preventing and managing reproductive cancers, including cervical, breast, ovarian, testicular and prostate cancer.</p>	<p>Ovarian cancer which is a reproductive cancer has been added to the list of reproductive cancers under this clause. There is need to mention all the reproductive cancers that states need to have protecting and preventive measures in place.</p>

MATRIX ON SPECIFIC RECOMMENDATIONS

Title	Proposed Amendments	Reasons
<p>Clause 19. Protection from HIV and AIDS and sexually transmitted infections.</p>	<p>HIV tests shall not be conducted without a person's full and informed consent, and one's HIV status shall not be a condition for employment or access to any opportunities, including admission to institutions of learning.</p>	<p>People's HIV status has been weaponized to discriminate against and penalize people living with HIV, with the risk of transmission often cited as the reason why. However, advances in medicine now allow those infected to live full and healthy lives like others, with very low risk of transmission or infection. Therefore people living with HIV should not be excluded from participation in society on an equal basis with others.</p>
<p>Clause 20 (1) Preconception, prenatal, delivery and postnatal health care.</p>	<p>Replace baby with child, and desired outcome of a healthy mother and child. Postnatal care should be comprehensive to include the child. While the draft provides for a desired outcome of a live and healthy baby, it was felt that the same desired outcome should be for the mother.</p> <p>In addition to prevention of basic emergency obstetrical and gynecological conditions, a suggestion to also respond to the same was put across.</p> <p>In addition to making maternal services available and accessible, include quality as a requirement.</p> <p>Review the previous suggestions put forward on mental health. More importantly factor in mental health at the prenatal stage.</p>	<p>Need language for adolescent/youth-friendly maternal health information and service Language for provision of lactation spaces and changing stations in public and private facilities.</p>

MATRIX ON SPECIFIC RECOMMENDATIONS

Title	Proposed Amendments	Reasons
	<p>It was highlighted that the section limits the range of harmful practices to cultural and traditional practices. This has the potential of leaving out harmful practices that are neither mentioned in the earlier provisions nor under the cultural and traditional category.</p>	
<p>Clause 21. Regulation of assisted reproductive technologies.</p>	<p>Surrogacy should not be commercialized, should be regulated and prohibit the sale. The provision combining the issue of commercial surrogacy and sale of children in the same sentence has the effect of indicating a relationship between the two. The two should be separated and amended as follows: Regulating commercial surrogacy and prohibiting the sale of children born out of surrogacy</p>	
<p>Clause 22. Prohibition of harmful practices.</p>	<p>Sexual exploitation or abuse of a child, adolescent or young person by a teacher, parent, guardian, person having parental responsibility over a child or any other person;</p> <p>Sexual exploitation or abuse of any person, Female Genital Mutilation and cutting</p>	<p>Ovarian cancer which is a reproductive cancer has been added to the list of reproductive cancers under this clause. There is need to mention all the reproductive cancers that states need to have protecting and preventive measures in place.</p>

MATRIX ON SPECIFIC RECOMMENDATIONS

Title	Proposed Amendments	Reasons
<p>Missing clause not regulated in the Bill Provision for intersex children</p>	<p>EAC SRH bill should protect intersex children against stigma, discrimination and genital mutilation.</p>	<p>All National Governments shall develop policies, standards and guidelines on the diagnosis, treatment and management of medical conditions affecting intersex persons.</p> <p>In the formulation of policies under this section, the national governments shall be guided by the following principles—</p> <p>(a) the best interests of the child should be the primary consideration in the treatment and management of medical conditions in intersex children;</p> <p>(b) the right of all persons to affordable, accessible and quality health-care without discrimination;</p> <p>(e) the right to privacy and confidentiality and dignified treatment;</p> <p>(f) the right to scientifically accurate, evidence-based reproductive and sexual health information and education;</p> <p>(g) the right to early and correct diagnosis of medical conditions; and</p> <p>(i) the right to the highest attainable standard of mental healthcare including psychosocial support.</p>

ENDORSED BY

