A Policy Document on the Implementation of the HIV & AIDS Law by East African Community Member States

KELIN
Reclaiming Rights, Rebuilding Lives

1.1 INTRODUCTION

On 23rd April 2012 the East African Legislative Assembly passed the EAC HIV and AIDS Prevention and Management Bill. Its prime mover was Ugandan Legislator Hon Lydia Wanyoto-Mutende.[1] It was enacted to:

a. Promote a rights-based approach to dealing with all matters relating to HIV and AIDS;
b. Promote public awareness about the causes, modes of transmission, means of prevention and management and consequences of HIV and AIDS;
c. Extend to every person living with or affected by HIV the full protection of the person's human rights by:
    i. Providing HIV related services as provided for in the Act
    ii. Guaranteeing the right to privacy of the individual
    iii. Prohibiting HIV related discrimination
    iv. Ensuring the provision of quality health care and social services for persons living with HIV and their care givers
d. Promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission, and;
e. Positively address and seek to eradicate the conditions that aggravate the spread of HIV infection[2].

Every East African Community country has enacted a HIV AIDS Act.

[1]East African Legislative Assembly, 'EALA Passes Regional Bill on HIV and Aids' (EALA 23 April 2012) <https://www.eala.org/index.php/media/view/eala-passes-regional-bill-on-hiv-and-aids> accessed 9th September 2022.

[2]EAC HIV and AIDS Prevention and Management Act, 2012, sec 3

1.2 OBJECTIVES OF THE STUDY

The aim behind the EAC HIV and AIDS Prevention and Management Act 2012 (hereinafter the EAC HIV Act) has been to create a common, responsive legal framework for HIV and AIDS in the region applying the rights-based approach and in incorporating good standards and practices in HIV prevention, treatment, care and support.[3] To this extent, its success depends on EAC member States implementing their Act in their legislative, policy and institutional frameworks. To what extent has this been done? This Policy Analysis looks at Kenya, Tanzania, Uganda, Rwanda, Burundi and South Sudan and how they have implemented the provisions of the EAC HIV Act in their local jurisdictions.

1.3 HIV DATA FROM THE SIX COUNTRIES

a) Kenya

According to a 2020 report by the Kenya National HIV Survey, HIV prevalence in Kenya stood at 4.9 per cent, down from a high of 10.5 per cent in 1996. UNICEF reports that the number of children living with HIV in Kenya fell from 180,000 in 2010 to 111,500 in 2020, partly due to improved access to services, for pregnant women and children. However, infection rates among young people (15-24) remain concerning. In 2020, they accounted for 35 per cent of new infections, with two thirds of cases among young women. In Homa Bay, one of the worst-affected counties, gender inequality, difficulties in accessing services, and poverty are fuelling high rates of unintended pregnancies and HIV. These numbers may be impressive considering that donors like The Global Fund, The United Nations Population Fund and the US President's Emergency Plan for Aids Relief (Pepfar) started a gradual withdrawal of their funding for HIV/Aids programmes in 2019 after Kenya was upgraded to a middle-income status.

b) Uganda

Uganda's Joint AIDS Review (by Uganda AIDS Commission) 2018 estimates showed 1.4 million people were living with HIV, 53,000 new HIV cases were registered, and an estimated 23,000 Ugandans died of AIDS-related illnesses (UNAIDS, 2018). This has been coupled with marked progress in some areas in the national HIV prevention response. For instance, the percentage of HIV positive pregnant women who received ART to reduce MTCT of HIV increased from 89% in the previous year to 92% in FY 2018/19 surpassing the target of 85% by 2020. there was a 63.4% reduction in HIV and AIDS related mortality from 63,000 in 2013 to approximately 23,000 in 2018. According to UNICEF preliminary data from the 2016, Uganda Population-based HIV Impact Assessment shows an 18 percent decline in HIV prevalence in the general population (15-49 years) from 7.3 percent in 2011 to 6.0 percent in 2016.

High disparities remain between regions, and HIV continues to affect adolescents, especially girls, disproportionately; HIV Prevalence among AGYW is 4 times higher than boys of the same age group. Two thirds of all new HIV infections are found in adolescent girls (AG) in Uganda and yet only 30 per cent of Adolescent Girls receive HIV testing Services (HTS) at outpatient departments (UNAIDS).

c) Tanzania

UNAIDS reports that HIV prevalence has steadily declined over the past decades from 7% in 2003 to 4.6% in 2018 in adults 15 -49 years. The HIV burden is higher in urban areas than in rural areas - 7.5% versus 4.5% respectively. Tanzania HIV estimates suggest that among 15 – 49 years old in 2019, HIV prevalence was 4.6%, while there were 58,000 new HIV infections for the age bracket. There were 6,500 new infections among children below 15-year-olds. About 100% of pregnant women living with HIV received ART for PMTCT, and 78% of children living with HIV are on ART. Important to note that about 50% all new infections are from the 15 – 29 years old age group.

d) Rwanda

The Rwanda Population-Based HIV Impact Assessment (RPHIA), a national household-based survey, conducted between October 2018 and March 2019 by the Government of Rwanda (GoR) through the Rwanda Biomedical Centre (RBC) and National Institute of Statistics of Rwanda (NISR) showed that prevalence of HIV among adults in Rwanda was 3.0%. This corresponds to approximately 210,200 adults living with HIV in Rwanda with more women (3.7%) than men (2.2%) living with HIV. Prevalence of HIV among young adolescents (those aged 10-14 years) was 0.4%, corresponding to approximately 5,900 young adolescents living with HIV in Rwanda, for a total of 216,000 people living with HIV among those aged 10-64 years. HIV prevalence peaked at 6.5% among men aged 55-59 years and 7.4% among women aged 50-54 years. Among young women aged 20-24 years, HIV prevalence was three times higher (1.8%) than among men in the same age group (0.6%), the most pronounced disparity by sex.

e) Burundi

UNAIDS estimates for 2021 show that the prevalence rates for adults aged 15 to 49 stood at 0.9. That of women aged 15 to 49 stood at 1.2. According to the 2015 United Nations Joint Programme on HIV/AIDS (UNAIDS) report on. Burundi, the HIV prevalence rate among adults age 15-49 years is 1.0%.

f) South Sudan

According to UNAIDS, HIV continues to be a public health priority with estimated prevalence of 2.5% among adults aged 15-49 years (2020 UNAIDS estimates) with 18% of the estimated PLHIV (190,000) on treatment. However, there is concern about the increasing trend in the number of new HIV infections (19,000) with one in every four persons living with HIV knowing their HIV status. Besides HIV situation among general populations, there are concerns of higher HIV prevalence among key populations (recent study among FSW in two cities found prevalence of 13.6 and 6.7 percent).

1.4 HIGHLIGHT OF PROVISIONS OF THE EAC HIV AND AIDS PREVENTION AND CONTROL ACT

The EAC HIV and AIDs Prevention and Management Act is divided into the following main parts: they have implemented the provisions of the EAC HIV Act in their local jurisdictions.

Part 1	covers the objects and purposes of the Act and outlines a number of general duties to governments of EAC member states and persons.
Part 2	covers provision of education on HIV AIDS in learning institutions, at work, as a health care service and in the media.
Part 3	covers prevention measures and procedures during medical procedures such as donation of bodily parts and child deliveries.
Part 4	covers issues of testing including aspects such as counselling before and after such testing and prohibition of compulsory testing, consent to testing and how HIV test results are to be handled.
Part 5	deals with the rights of PLHIV. Protection from discrimination in various forms features prominently.
Part 6	seeks to protect vulnerable groups and persons categorised as most at-risk populations. These include children living with or affected by HIV, women and girls, youth and adolescents, PLWDs, among others.
Part 7	is dedicated to HIV and AIDS related research and it covers issues of consent by patients (sec 40 – 43).
Part 8	covers miscellaneous provisions such as those setting out penalties for acts of commission and omission contravening the Act. It also covers support of community and home-based caregivers and support to organisations of persons living with or affected by HIV among other provisions.

KENYA	UGANDA	TANZANIA	RWANDA	BURUNDI	SOUTH SUDAN
HIV AIDS INFORMATION, EDUCATION AND COMMUNICATION					
HIV & AIDS Prevention and Control Act Sect 4	Constitution Article 21	HIV & AIDS Prevention and Control Act Sec 6(1), 8(2), 10	HIV & AIDS National Strategic Plan 2013 – 2018 Page 25	Constitution Article 17	Constitution Article 31, 32
Health Act Sec 10	HIV & AIDS Act Sec 24(1)e)	National Guidelines for Management of HIV and AIDS April 2012 Pages 37,125, 187, 234, 249, 254,	Vision 2050	Vision 2025,	National Strategic Plan and Sectoral Plans on HIV & AIDS 2004-2009 Page 6, 10
The National Reproductive Health policy 2022-2032 Page 12	Vision 2040	National Health Policy	Health Sector policy	National Health Policy	HIV AIDS Policy 2008 Pages 10, 21
Kenya ARV Guidelines 2018 Page 1, 16, 18, 22, 23, 58, 75	National Policy, Guidelines & Service Standards for SRHR, Management of Sexual and Gender Based Violence	National Strategy for Gender Development, National Strategy for Growth and Reduction of Poverty.	National Reproductive Health policy	National Demographic Policy	
National Family Planning Guidelines for Service Providers 6th Edition 2018 Pages 17, 20, 21, 22, 24, 26, 28, 29, 32, 33	National Health Policy		Family Planning policy	National Health Development Plan	

Public Sector Workplace Policy on HIV and AIDS Rev 2017 Page 21, 24, 25	National AIDS Strategic Plan		Adolescent Sexual and Reproductive Health and Rights Policy and Plan	Strategic Plan for Reproductive Health	
Policy for the Prevention of HIV Infections among key Populations in Kenya 2016	Gender Policy			Youth Policy, HIV & AIDS Strategy	
HIV AIDS Policy 2009 Clause 6.12, 6.18, 7.19, 8.1, 9.2.2,	National Guidelines for the Provision of psychosocial support for Gender based violence Victims/Survivors				
HIV AND AIDS PREVENTION MEASURES, PRACTICES AND PROCEDURES					
KENYA	**UGANDA**	**Tanzania**	**Rwanda**	**Burundi**	**South Sudan**
HIV and AIDS Prevention and Control Act Section 4, Sec 9, Sec 11	Constitution Article 21	Adopted WHO Treat All Policy	Constitution Article 11 HIV AIDS Strategic Plan 2013-2018, page 10.	Constitution Article 3, 22, 17	Constitution Articles 17(1)e), 14, 17(1)e), 139(1)e), 22
Health Act Section 4, 10	HIV & AIDS Act Sections 32, 33, 34, 38, 37	HIV & AIDS Prevention and Control Act Sec 10		Law 1/018 of 12 May 2005 Articles 22, 23, 31, 24, 26, 27, 40	Southern Sudan HIV/AIDS Policy 2008 Page 19
		National Guidelines for Management of HIV AIDS 2012 Page 47, 56			

HIV AND AIDS COUNSELLING AND TESTING					
Kenya	**Uganda**	**Tanzania**	**Rwanda**	**Burundi**	**South Sudan**
Constitution Article 31	Constitution Article 21	National Guidelines for Management of HIV & AIDS 2012 page 56, 249	Constitution Art 11	Constitution Art 3, 22, 17	Southern Sudan HIV AIDS Policy 2008 Page 19
HIV Act Sec 9, 10, 11, 12	HIV Act Sec 19, 37			Law 1/018 of 12 May 2005 Art. 11, 16, 17, 24, 26, 27, 31, 33, 40	National Strategic Plan
Guidelines for Anti-Retroviral Therapy in Kenya Page 11	Health Service Commission Act Sec 30(5), 33(3), 30(6), 25				Constitution Article 31, 22, 32
GENERAL PROTECTION OF THE RIGHTS OF PERSONS LIVING WITH OR AFFECTED BY HIV					
Kenya	**Uganda**	**Tanzania**	**Rwanda**	**Burundi**	**South Sudan**
Constitution of Kenya Article 27, 28, 31, 35, 43, 53, 56	Constitution Article 21	HIV Act Sec 29	Constitution Article 11	Constitution Article 3, 22, 17	Constitution Article 17(1)e) Article 139(1)e), 31, 22, 32
Health Act No. 21 of 2017 Sec 6-11	HIV Act Section 24(1)e), 32, 33, 34, 38, 35,26, 37		HIV AIDS National Strategic Plan 2013 – 2018 Page 10	Law 1/018 of 12 May 2005 Article 23, Article 31, 40, 24, 26, 27	WHO Treat All Policy adopted in 2017

HIV and AIDS Prevention and Control Section 31-38	Health Service Commission Act 2001 Sec 30(5), 33(3), 25				
Guidelines on the Use of Antiretroviral Drugs for Treating and Preventing HIV in Kenya Page 20, 44					
PROTECTION OF VULNERABLE GROUPS AND MOST AT RISK POPULATIONS					
Kenya	**Uganda**	**Tanzania**	**Rwanda**	**Burundi**	**South Sudan**
Constitution Article 27	Constitution Article 21	HIV Act Sec 29	Constitution Article 11	Constitution Article 3, 22, 17	Constitution Article 17(1)e) 14, 17(1)e), 139(1)e), 31, 22 and 32
The Safety and Occupational Health Act 2007	HIV Act Sec 19, 32, 33, 34, 38, 35, 36, 37	National Guidelines for Management of HIV AIDS 2012 Page 252- 253	HIV & AIDS Strategic Plan 2013- 2018	Law 1/018 of 12 May 2005 on the legal protection of people infected with HIV. Article 22, 23, 31, 24, 26, 27, 40	
Childrens Act sec 14	Health Service Commission Act Sec 30(5), 33(3)			The Revised Penal Code 2009 (Law Number 1/05 April 2009)	
				National Strategy to Combat Gender Based Violence 2009	

HIV AND AIDS RELATED RESEARCH					
Kenya	**Uganda**	**Tanzania**	**Rwanda**	**Burundi**	**South Sudan**
Constitution, Article 33, 35	HIV Act sec 24(1)e), 29 - 31	HIV Act sections 36 – 42 National Guidelines for Management of HIV &AIDS 2012 Page 187	National Guidelines for HIV Prevention Interventions among Sex Workers 2011 Page 22, 52 – 53 Health Sector Policy 2015 page 13, 21, 23	Constitution Article 17	Constitution Article 31

1.5 GAPS IN THE IMPLEMENTATION OF THE EAC AND AIDS PREVENTION AND MANAGEMENT ACT IN THE EAC MEMBER STATES

1.	Criminalisation of vulnerable communities e.g. sex workers, LGBTQI e.t.c
2.	Cultural norms and values prohibit the discussion on HIV and AIDS.
3.	Discrimination in accessing treatment (leads to exposure of PLHIV by requiring ID; and violations of rights of PLHIV.
4.	Discussion more on Civil and Political rights rather than health rights.
5.	Forced testing to access services for Post exposure phroloxis.
6.	Lack of alignment of country laws and policies to the EAC Act.
7.	Lack of Effectiveness in school programmes.
8.	Lack of harmonization of HIV and AIDs frameworks at two levels of government.
9.	Lack of provision to protect the right to health.
10.	Lack of specific HIV laws Scattered laws on HIV
11.	Non-signing of the EAC law.
12.	Policies and acts have existed and not adopted and used in S.Sudan; Poor implementation of the law and due to customs and traditions , low knowledge of laws.

1.6. CHALLENGES FACING HARMONIZATION OF THE EAC AND AIDS PREVENTION AND CONTROL ACT

The following part is divided into two parts. The first part outlines challenges facing duty bearers while the second part look at challenges facing right hold right holders.

1.6.1. Challenges facing duty bearers

- Lack of political will and change in leadership;
- Lack of constitutitonal protection on of HIV and AIDS;
- Lack of knowledge on HIV by policy makers;
- Delayed court processes;
- Lack of prioritization of health matters and lack of budgetary allocation; and
- Conflicting and too many laws on HIV.

1.6.2. Challenges facing rights holders

- Lack of identification of key drivers of HIV and AIDS;
- More progressive policies than laws in the managment of HIV and AIDS which cannot be enforced;
- Lack of intersectional approach to the HIV issue, nationally and regionally;
- Unsupprotive social cultural environment;
- Lack of knowledge and understanding on legislative. process and how to influence by community members;
- Social cultural challenges;
- Lack of clear role of CSOs in HIV;
- More discussion on Civil and Political Rights and not Health rights;
- Lack of empowerment of community members and their role.

1.7. RECOMMENDATIONS FOR EAC MEMBER STATES ON HIV & AIDS

The purposes of the EAC HIV Act as set out in part 1.1. of this Policy Document was largely to provide for a rights-based approach towards HIV AIDS, to promote public awareness about HIV AIDS and extend full protection of rights of PLWHIV among others. An analysis of the implementation of the Act by Member States shows that most of these objectives have not been realised. The gaps have been set out in Part 1.6. Part 1.7 has further shown the challenges facing harmonisation of the Act. In order to address the gaps and challenges facing the harmonisation of the EAC HIV Act, the following measures have been recommended:

i. There is need for all African countries to assent to the EAC HIV & AIDS Act. Currently, South Sudan and DRC are yet to do so.
ii. Member States should harmonise all their HIV & AIDS laws through amendment and repealing, to ensure that all their HIV AIDS related laws and policies comply with the EAC HIV & AIDS Act. The above implementation matrix shows several gaps in the national laws that do not address the various provisions of the EAC HIV & AIDS Act
iii. States should increase and commit to a higher budgetary allocation specifically to combat HIV & AIDS.
iv. The EAC HIV & AIDS Act was passed by EALA in 2012. Since then there have been a lot of developments in the field of medicine relating to HIV AIDS. The EAC HIV & AIDS Act and country HIV AIDS Acts therefore needs to be reviewed and updated in light of the developments.The Act further needs to be reviewed in order to:
    - Comply with national constitutions, the EAC Act and treaties;
    - Ensure the EAC HIV Act encompassses a human rights based approach; and
    - Eliminate discrimination

    [See section 1.10 for areas where the Act can be improved]
v. States should place an emphasis on national and regional initiatives for Monitoring and Evaluation, in order to measure country specific and regional performance in combating HIV & AIDS. This will help to identify disparities in access to health services and areas of improvement and enhance national accountability to regional and international rights based reporting and monitoring institutions.
vi. Member States should establish and/or strengthen HIV AIDS specific avenues for addressing human rights and other violations committed against PLHIV.

vii. Member States should encourage public participation in the country level and in the region level. Such initiatives should involve community members like women, girls, LGBTQI and other vulnerable groups. This approach should be broadened to include men and boys in order to have a comprehensive understanding of reproductive rights and to combat harmful cultural behaviors.

viii. Member States should build partnerships with and between CSOs in the region. This would enhance the role of CSOs in:

- Influencing harmonisation and signing of HIV AIDS related laws and policies;
- Monitoring the implementation of HIV AIDS laws and policies;
- Monitoring the actions of health professionals and service providers in terms of their attitutdes and practices towards PLHIV and AIDS; and;
- Protecting the rights of vulnerable persons including but not limited to the right to the highest attainable standard of health, freedom

ix. States should leverage on ICT to create and communicate accurate, relevant information on HIV and AIDS and other HIV/AIDS issues. This could include the use of ICT in distance counselling, providing access to the public, CSOs and other stakeholders to vital information regarding trends, prevalence, emerging issues, policies and legislation relating to HIV AIDS.

1.8. POSSIBLE STRATEGIES GEARED TOWARDS THE HARMONIZATION OF THE EAC HIV AND AIDS PREVENTION AND CONTROL ACT

Informed by the challenges facing the harmonisation of the EAC HIV and AIDS Act as well as the gaps in the harmonisation the following strategies have been recommended by CSOs from the EAC Member States:

Review of laws and policies	Lobby and Advocacy	Strengthen Partnerships	Monitoring and Evaluation
• Review of laws (gaps, weakeness and effect of laws on PLHIV); • Increase awareness and capcity of EAC and regional leaders (MPs, Public servants, Stakeholders and youth on HIV and AIDS; • Development of subsidiary legislation in country laws and enforcment of the same; • Strategic	• All EAC countries to sign the EAC HIV AIDS law and to implement it. • Development of policies and laws on EAC HIV and AIDS within the region. • Amendment of laws and policies on HIV and AIDS to be aligned to the EAC HIV and AIDS laws and Sexual and Reproductive Rights Bill. • Regular reporting on country performance on HIV and AIDS. • Strategic advocacy for legislative reforms for policies and laws in country and within the region.	• Build strategic national and regional partnerships among CSOs including joint planning and implementation with community members. • Strategic collaborations between CSOs in country and within the region. • Medical partnerships. • Strategic community/ grassroot engagment and partnership for movement building. • Strengthen inter sectoral approaches in dealing with HIV issues both at the national and regional level	• Research and Data Collection of vulnerable groups (LGBTQI, sex workers, long distance track drivers and others. • Inclusion of accountability mechanism at the EALA in the EAC Act through the monitoring and evaluation of the regional laws.

litigation in the country and within the region.	• Lobby EALA members within member countries the country and in the region • Engage policy makers in design of national programmes and raising awareness and capacity building of policy makers • Engage the political space both at the EALA and within the country on prioritization in budget allocation • Leveraging on new concepts and opportunities like Self Care that have a lot of political will to seek amendments of laws	including lobbying at the regional and national level to amend and harmonize laws and ensuring country reporting of issues. • Strengthen inter sectoral approaches in dealing with HIV issues both at the national and regional level including lobbying at the regional and national level to amend and harmonize laws and ensuring country reporting of issues.	

1.9 WHAT NEXT FOR THE EAC HIV AND AIDS PREVENTION AND CONTROL ACT

- Part Three of the Act is very general and needs to be improved to cover a requirement for national strategic plans to be implemented.
- The Act needs to introduce provisions that cement the role of CSOs in HIV and AIDS matters.
- The Act needs to prohibit discrimination by prohibiting laws that criminalise infection; and prohibiting the requirement by facilities for patients to provide IDs and birth certificates.
- Act needs to provide elaborate self-care guidelines (taking into account the advances made into account the issue of technology and science around these issues) - digital health.
- Provisions on privacy need to be expounded including through provision of improvement in youth friendly services.
- Act should recommend a percentage of the domestic health Budget that the countries should allocate to HIV programming to lessen dependence on donor funding.
- Act needs to enhance the effective accountability of our leaders especially in the implementation of the laws. Clauses on monitoring and evaluation to be provided for.

KELIN
Reclaiming Rights, Rebuilding Lives

NAIROBI OFFICE
Kuwinda Lane, Off Lang'ata Road, Karen C
P O Box 112 - 00202, KNH Nairobi
Tel: +254 020 2515790
Mobile: +254 710 261 408 / +254 788 220 300
Fax: 020 386 1390

KISUMU OFFICE
Nyalenda Railways Estate, Block 9/220
Off Nairobi Road Opposite YMCA
P.O Box 7708 - 40100, Kisumu - Kenya
Tel: +254 057 204 1001/+254 020 251 5790
Cell: +254 716 978 740/+254 710 261 408