

What is the East African Community HIV & AIDS Prevention and Management Bill, 2012?

The EAC HIV & AIDS Prevention and Management Bill 2012 proposes the adoption of a regional HIV law to regulate effective responses to HIV across all of the five countries of the East African Community (EAC), namely Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania. It was passed by the East African Legislative Assembly (EALA) on the 23rd April 2012.

What is the role of law in the HIV epidemic?

The law matters. It is essential that we use every tool possible to prevent new HIV infections and prevent AIDS-related deaths. Globally, changes in the legal and policy environment, along with other interventions, could lower new adult HIV infections to an estimated 1.2 million by 2031, compared to 2.1 million if current efforts continue without these broader structural changes.¹ Further, to turn the tide of the epidemic in Africa, we need to ensure an effective, sustainable response to HIV that is consistent with human rights obligations. To outlaw all forms of discrimination and violence directed against those who are vulnerable to or living with HIV or are perceived to be HIV-positive, and to ensure that existing human rights commitments and constitutional guarantees are enforced, it is important to review current laws, and to repeal punitive laws. Additionally, it is important to enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them.

Why is a regional HIV law important?

There are over 5 million people infected with HIV in Eastern Africa, with 230 000 people having died of AIDS in 2010.² The EAC Common Market Protocol, which came into effect in July 2010, fosters co-operative, integrated approaches to regional social and economic challenges such as HIV and AIDS. A regional HIV law will replace any gaps, discrepancies and inconsistencies in current national legal and regulatory approaches to HIV with clear, consistent and internationally recognised principles and standards to apply across the region for the protection of rights and the provision of information, goods and services.

A harmonised, rights-based regional law will help to provide a uniform framework within which synergistic HIV programming can take place across countries in the region. It will encourage joint planning, advocacy and programming, as well as joint accountability to address common priorities between countries, helping to strengthen national, cross-border and regional responses to HIV. It will furthermore encourage cost-effective collaborative regional strategies to respond to issues such as increasing access to treatment.

Finally, it will guide rights-based responses to HIV, providing all people affected by HIV across the partner states, including displaced populations travelling between states, with enforceable rights to equality, non-discrimination and universal access to HIV prevention, treatment, care and support.

How was the EAC HIV and AIDS Prevention & Management Bill, 2012 developed?

The EAC HIV Bill originated in the East Africa region in response to the need for guidance in the region and across the continent in developing protective HIV laws. It was developed over a period of four years through a lengthy, consultative process across all five countries involving a range of stakeholders from government, civil society and international partners. The process began with a regional audit of HIV and AIDS laws and policies in the Partner States to determine commonalities, gaps and challenges in national responses to HIV. This was followed by country stakeholder consultations, regional stakeholder consultations and consultations with parliamentary draftspersons from across the region as well as various additional initiatives to raise awareness around and share the draft legislation.

In 2012 the East African Legislative Assembly (EALA) General Purpose committee reviewed the HIV and AIDS Prevention and Management Bill and received input from East Africans in all five countries during public hearings on the Bill. It then reported to EALA on the Bill, who then passed the Bill in April 2012.

¹ The Global Commission on HIV and the Law, 2012.

² UNAIDS (2011) *Getting to Zero: HIV in Eastern and Southern Africa* Available at www.unaidsrstes.org

What are the key elements of the HIV & AIDS Prevention and Management Bill, 2012?

The EAC HIV and AIDS Prevention and Management Bill, 2012 proposes a rights-based response to HIV and AIDS to achieve universal access to HIV prevention, treatment, care and support. It provides for a range of measures to protect rights and promote access to HIV-related health care for all populations, including those at higher risk of HIV exposure, through:

- **Access to appropriate and accessible HIV information, education and communication.** HIV information should be accessible to all affected populations in communities and in specific sectors such as health care, education, prisons and the workplace. It should go beyond health care issues to also address issues relating to stigma, discrimination, gender inequality and harmful cultural practices.
- **Access to HIV prevention:** HIV prevention measures, services and equipment to prevent or reduce the risk of HIV transmission shall be accessible to all populations, including for those at higher risk of HIV exposure and for prevention of mother-to-child transmission, and in all environments including within the working environment and health care sector.
- **Access to HIV testing with voluntary, informed consent and pre- and post-test counselling:** HIV testing shall be provided by approved health care providers, on the basis of the voluntary and informed consent of the individual or, in the case of individuals incapable of providing consent, with the consent of a parent or guardian. Compulsory HIV testing is prohibited, including as a requirement for employment, marriage, education, travel between partner states or the provision of health care. HIV test results are confidential and may only be disclosed to the individual having provided consent to the test or, in exceptional circumstances and following strict procedures, to a third party at significant risk of HIV transmission.
- **Access to treatment, care and support:** Measures shall be taken by and in cooperation with other Partner States to provide access to sustainable treatment, care and support, including access to anti-retroviral treatment and other essential medicines and prophylaxis for all affected populations, and to provide protection from untested medicines.
- **Protection of equality and prohibition against discrimination:** The rights of people living with and affected by HIV to equality, non-discrimination and confidentiality are protected. Specific protection from discrimination in employment, education, travel, the public service, access to credit and insurance and in the health care sector is provided. The rights of populations especially vulnerable in the context of HIV and populations at higher risk of HIV exposure are also specifically protected.
- **Ethical and lawful research:** HIV-related biomedical research shall only take place where it has been approved by an ethical review body to ensure that it is lawful, ethical and protects the rights of research participants to participation only with informed consent.

What is particularly significant about the EAC HIV & AIDS Prevention and Management Bill, 2012?

Protection for a range of populations: The HIV Bill provides protection to a range of populations at higher risk of HIV exposure and particularly vulnerable to the impact of HIV, rather than simply protecting people living with HIV. This significant advancement reflects the EAC Bill's deeper understanding of the role of human rights in relation to HIV. Protecting human rights not only reduces HIV-related stigma and discrimination. It also reduces the risk of HIV exposure and also reduces the impact of HIV on people's lives for affected populations.

For this reason, the Bill protects the rights to equality, non-discrimination, access to appropriate HIV-related information and health care services, participation as well as protection from violence for a range of populations including children, women, people with disabilities, prisoners, older people and other populations at higher risk of HIV exposure for various reasons such as poverty, livelihood, sexual practices, disrupted social structures or population movements.

Exclusion of criminalisation of intentional HIV transmission: The Bill excludes a specific offence for the criminalisation of intentional transmission of HIV, preferring to allow Partner States to use existing criminal laws to respond to individual cases of malicious and intentional HIV transmission. It recognises that creating a specific offence for HIV is neither a practical, enforceable response in our courts, nor a response that serves a public health or HIV prevention

function. Instead, it undermines HIV prevention efforts by discouraging people from testing and disclosing their HIV status and contradicting the prevention messages that encourage individual responsibility for HIV prevention. It exacerbates HIV-related stigma and discrimination and may be used to target marginalised and vulnerable populations perceived to be at higher risk of infection. It may disproportionately impact upon women who often test for HIV during antenatal care.

What still needs to be done to make the Bill into Law?

The HIV and AIDS Bill needs to be assented to by the EAC Heads of State before it can become an Act of the East African Community. Once an Act, Partner States will reap the benefits of a uniform and rights based regional framework to guide regional collaboration on HIV and to strengthen their own national responses to achieve universal access to HIV prevention, treatment, care and support. We can support this process by increasing awareness and understanding of HIV Bill – its importance for the region, its key provisions and their importance for fostering effective national and regional responses to HIV – and by encouraging leaders and decision-makers to support the Bill and to review national laws in keeping with the purpose and spirit of the EAC HIV & AIDS Prevention and Management Bill.

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For further information on the EAC HIV Bill visit www.eannaso.org