

**EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY**



**COMMITTEE ON GENERAL PURPOSE  
REPORT ON THE PUBLIC HEARINGS ON THE EAC GENDER  
EQUALITY AND DEVELOPMENT BILL, 2016**

**EAC PARTNER STATES**

**6<sup>TH</sup>-10<sup>TH</sup> NOVEMBER 2016**

**Clerk's Chambers  
EALA Headquarters, 3<sup>rd</sup> Floor  
EAC Headquarters  
Arusha – TANZANIA**

**25<sup>th</sup> January 2017**

## **1.0 Introduction**

In accordance with Articles 59 of the Treaty for the Establishment of the East African Community and Rules 61 (1), (2), 64 (1), (2), (3), (4) as well as Rules 65 and 68, of the Rules of Procedure of the East African Legislative Assembly, the Committee on General Purpose undertook Public Hearings and considered the EAC Gender Equality and Development Bill, 2016.

The Treaty for the Establishment of the East African Community in Article 121 recognises the significant contribution that women make towards the process of socio-economic transformation and sustainable growth, and the importance of the full participation of women in the economic and social development of the Partner States. The Partner States in signing and ratifying or acceding to the various instruments such the African Charter on Human and People's Rights demonstrated their commitment to gender equality and their conviction that gender equality is a fundamental human right.

The Partner States committed themselves, in Article 6 (d) of the Treaty for the Establishment of the East African Community, not to discriminate against any person on grounds of sex or gender as one of the cornerstones of good governance, in addition to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities and equality enter.

The Gender Equality and Development Bill, 2016 was introduced to the Assembly on 20<sup>th</sup> August 2016, Kampala, Uganda.

## **2.0 Justification**

The Bill contends that whereas the Partner States recognize the importance of gender equality and have developed programmes and enacted legislation in this pursuit, these efforts are at different levels and contain differences particular to each Partner State. As a result, gender initiatives affect women, men and children differently across the East African Community.

The Bill seeks to consolidate and harmonize the various commitments on gender equality that have been made at regional, continental and international levels in the context of the East African Community, so as to ensure that the rights of women and men are uniformly promoted, realized and protected in order to enable them to equally and fully enjoy all their human rights on an equal basis.

The Committee on General Purpose undertook the Public Hearings on the EAC Gender Equality and Development Bill, 2016 in the Partner states from 6<sup>th</sup> to 10<sup>th</sup> November 2016.

### **3.0 Objectives of the Public Hearings**

The Public Hearings were undertaken with the aim of considering the laws and policies in the Partner States as well as receiving submissions on the Bill from all relevant stakeholders from EALA Members, Partner States, Civil Society Organisations on gender and all stakeholders to input provisional amendments to be considered by the Committee. In effect, the Bill formed a basis for discussion and debate on gender.

### **4.0 Methodology**

The Committee on General Purpose first considered the Bill in Kigali, Rwanda from 14<sup>th</sup> – 18<sup>th</sup> September 2016 whereby the mover exhaustively took the Committee through the Bill by way of presentation, discussions as well as questions and answer sessions. Public Hearings on the Bill were then scheduled. The Committee worked in groups in the Partner States; Presentations were made on the Bill followed by questions and answer sessions as well as proposals for amendment to the bill. Meetings in the United Republic of Tanzania and the Republic of Rwanda were held on 7<sup>th</sup> November 2016; in the Republic of Kenya and the Republic of Burundi, the meetings were held on 8<sup>th</sup> November 2016 and in the Republic of Uganda on 9<sup>th</sup> November 2016. The Committee interacted with a wide range of stakeholders in the Partner States as (shown in **Annex A**). Official written submissions were also received from the Partner States. The Committee finally met with Council of Ministers on the Bill on 9<sup>th</sup> January 2017.

## **5.0 COUNTRY SUBMISSIONS AND RECOMMENDATIONS**

### **5.1 THE REPUBLIC OF BURUNDI**

The stakeholders expressed appreciation for the EAC Gender Equality and Development Bill, 2016. However, the fundamental problem of Gender equality and development is not due to the absence of the legislation to cover that area, but rather existing legislations are not properly implemented. The EAC Partner States have made significant steps towards promoting gender equality and development and recognize the significant contribution of women in the economic and social development transformation of their countries. More still needs to be done.

#### **PRELIMINARY**

1. Interpretation
2. Principles of gender equality
3. Objectives of the Act

#### **OBLIGATIONS**

- As far as Health sector is concerned, this bill once adopted will be helpful to the Government of the Republic of Burundi because its content will strengthen the policies already put in place by the government of the Republic of Burundi even though a law governing gender equality is not yet enacted.
- For instance, regarding to Clause 6, paragraph 6 of the Bill, the Government of the Republic of Burundi, through the Ministry of Public Health and Fight against AIDS has already put in place services to support victims of gender-based violence.
- In addition, with regards to Clause 9, paragraph 2 (g), the Government of the Republic of Burundi has stopped the use of traditional birth attendants to reduce the rate of home birth and to reduce maternal and infant mortality. Instead, the Government of the Republic of Burundi uses Community Health workers who are

trained to do this task and they sensitize women to give birth in Health Centers or in Hospitals as well.

- Conformably to Clause 9, paragraph 2(i), the government of the Republic of Burundi has adopted free health care for pregnant women and children under 5 years.

### **Proposals to include new Clauses or new Concepts on the Bill**

- Page 3: There is a Need to add Part I on interpretation to cover all the definitions.
- Page 4, the meaning of "Council" should be added to the Interpretation Part to read as follows:
- "Council" means the Council of Ministers of the East African Community established by Article 9 of the Treaty.
- Page 16, clause 8 (1) (b): there was a proposal to add the word "technical "in (b); to read as follows:
- (b) Encourage the development of different forms of post primary Education including general, technical and vocational education...
- Page 22, clause 11(2): There was a proposal to add the words "equal opportunities" in (2) to read as follows;
- The Partner States shall adopt policies and enact laws which ensure that women and men have equal opportunities to access to credit...
- Pages 24- 25, clause 14 (2) (g): There was a proposal to add the word "and equally" in (g) to read as follows:
- (g) Institutionalize a gender-aware public private dialogue mechanism that actively and equally involves women and men ...

- Page 26 Clause 14 (4): There was a proposal to add the word “equal” in (4) to read as follows:
- The partner states shall ensure that women and men in the informal sector have equal access to financial resources.
- Page 26 clause 15 (2) (b) there was a proposal to delete the word “especially” to read as follows:

In circumstances where conflicts have occurred, and in times of armed and other conflict, take such steps as are necessary to prevent and eliminate incidences of human rights abuses of women, men and children.

### **5.1.1. Recommendations**

#### **The participants in the meeting made the following recommendations:**

1. There is need of EAC Partner States to carry out sensitization campaigns to the benefit of their citizens from the grass root level to the top level on the importance of the present Bill;
2. It is mandatory for EAC Partner States to support this Bill and in some clauses sentences like “Partner States “shall protect”, shall prohibit,... in this Bill, should be replaced by “the Partner States **must** protect, **must** prohibit,... and strong actions must be taken towards countries which will not comply with the present Bill once it is assented to by Heads of States.
3. To set up independent National Gender Commissions in each EAC Partner State to ensure that various commitments on gender equality are uniformly promoted, fully respected and implemented as specified in the EAC Gender Equality and Development Bill; EAC Partner States need to integrate in their national legislations and sectoral policies special incentives and programmes for young girls and women as a whole to promote gender equality.
4. Partner States **must** take appropriate measures to promote Gender Equality in all communication, information, media policies, programs and laws and shall

ensure that women and men are equally **referred to as resource persons in media programs** so that the voices of women and men are equally heard.

5. Partners States should set up a national gender database to inform a gender situation analysis;
6. Partner States should create a budget line responsible for the Empowerment of Women to help fighting against SGBV and facilitate gender equality;
7. Partner States should build capacity of stakeholders in gender mainstreaming ;
8. Partner states should mobilize resources to address gender mainstreaming.

Official submissions are attached as **Annex I**.

## **5.2 THE REPUBLIC OF KENYA**

The stakeholders made the following comments:

1. Welcomed the East African Community Gender Equality and Development Bill, 2016 as it will give effect to the Treaty for the Establishment of the East African Community and the African Charter on Human and Peoples' Rights.
2. Appreciated the fact that the Bill aims to consolidate and harmonize the various commitments on gender equality that have been made by Heads of States at the regional, continental and international levels in the context of the East African Community.
3. Highlighted the fact that some of the provisions of the Bill seem to reinforce the stereotype that gender focuses primarily on women. These specific provisions will be mentioned below. However, the Bill should be clear that gender equality focuses on both women and men. Gender equality may not be achieved by focusing on one gender.
4. In the spirit of the EAC, the bill should propose programmes and policies that would curb cross border practices of FGM in a bid to eradicate the practice and adopt a mutual assistance strategy.
5. Data collection, analysis and dissemination on gender and development issues should be captured in the Bill.

6. That, throughout the entire Bill there is no mention of bisexual persons living within the East African Community. This is a very important section of the Community that faces major challenges. This being a Gender bill, we recommend the inclusion of this category of persons in the definition of the word "gender" and in other terminologies defined that are, "gender based violence", "gender equality", "gender equity", inter alia other definitions that seek to define the category of persons targeted by the Clauses of the Bill. Illustration:

"Gender Based Violence" to be defined as: "all acts perpetrated by against women, men, girls, boys and bisexual persons..."

The inclusion of bisexual persons in the definition of marginalized groups and vulnerable groups and addition of more Clauses protecting bisexual persons from aspects of discrimination and violence inter alia others, as well as awareness on the existence of such groups.

7. It was recommended that stateless persons living within the East African Community and the Youth be included in the definition of marginalized and vulnerable groups.

8. It was further recommended that children from poor communities and street children alongside orphaned children be included under Clause 9 (4) (d). Additionally, the inclusion of the word "indolent" orphans before the word "orphans" in the same provision, as we have orphans that do not need assistance from the Community. Some orphans are affluent enough to cater for their needs.

9. The Stakeholders recommend the inclusion of a Clause and a schedule elaborating procedure and modalities on State Reporting to ensure compliance and enforcement of this Bill.

10. It was observed that the use of the words "promote", "ensure", "encourage" throughout the Bill. These words do not connote nor create a duty or obligation on Partners States to fulfil Objectives of this Bill. They recommend use of words that create obligations on Partners States to allow persons to be able to move to Court to enforce these obligations.



11. On child participation, the participation of children in developmental issues is not clearly articulated. There are already existing avenues such as peer presentation and advocacy that would allow the participation of children in equality and developmental issues within their countries.

There are a number of important requirements for a project to be truly labelled as participatory:

- a) Children understand the intentions of the project;
  - b) They know who made the decisions concerning their involvement and why;
  - c) They have a meaningful (rather than 'decorative') role;
  - d) They volunteer for the project after the project was made clear to them.
11. For **data**, reference is made to gender as well as sex disaggregated data. Disaggregation of data by gender alone may be misleading;
  12. On issues of **gender based violence**, it is important to bear in mind that a lot of these cases are arbitrated at community levels. It therefore would make sense to mention in the bill that there would be an effort towards sensitization of cultural outfits like Councils of Elders to sieve cases and refer them to formal justice systems as appropriate;
  13. It was noted that the bill is silent on issues of **maternity/paternity** related services. Based on Kenya's Health Bill, it is important to mention the requirement for employers for example to provide lactating rooms for nursing mothers/crèche's in case mothers are to go with children to office, or making provision for flexible working hours;
  14. Under **power and decision making**, the bill mentioned the importance of ensuring that selected bodies of decision making positions are balanced in composition. It should go further to state that the recruitment should also adhere to principles of inclusion in compliance with State laws like the "not more than two thirds gender principle", the 5% for persons with disabilities etc.
  15. There should be a mention on the **monitoring, evaluation and reporting** strategy of the provisions in the bill. This will help hold the States accountable and on their toes to be able to comply with the various requirements in the bill.

16. **Child Friendly Budgeting;** The Bill proposed the putting in place of mechanisms, policies and budgets for the realization of gender equality and equity, there is need for this to be child friendly. It is only when projects/programs for development are child friendly or children sensitive that identified gaps in children's welfare within countries are tackled comprehensively and in a result based approach.
17. **On Widow Inheritance:** Widow Inheritance is a positive tradition that was focused on the protection of widows. The practice only requires safeguarding principles that the Bill should put in place to ensure that widows/widowers are not left destitute and disinherited/and rights of choosing a partner.
18. Youth involvement in leadership and decision making at all levels as is enshrined in the Kenyan Constitution. Youth mainstreaming in the economic empowerment in the aspects of trade. Youth have high potential in the use of ICT and other technologies in promoting agriculture and environmental conservation. Under peace and security youth are affected by radicalization, drugs abuse, gambling organized gangs and militia gangs.
19. Clause 8 (1) On Education: The Partner States recognize the right of the child to quality education and shall-
  - a) Make primary and secondary education compulsory ,**accessible, all inclusive** and available for free to all considering the student pupil **teacher** ratios;
  - b) Encourage the development of different forms of post primary education, including **talent development**, general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering of financial assistance to all those in need;
  - c) Make higher education **affordable** and accessible to all **including minority and marginalized groups** on the basis of capacity by all appropriate means **with a special focus on gender parity;**

- d) Make education and vocational information and guidance available and accessible to all children;
- e) Take measures to encourage regular attendance at school and develop strategies for the reduction of drop-out rates, **enhance retention, transition and completion** especially for the girl child;
- f) Incorporate in the educational curriculum, lessons on gender and rights **with responsibility** at all levels and removes all forms of stereotypes in school curriculum and training programmes at all levels
- g) Take all appropriate measures to ensure that **positive** discipline is administered in a manner consistent with the child's human dignity.
- h) Ensure that adult literacy is strengthened at all levels for empowerment of communities;
- i) Ensure that children with **Special Needs (-including the gifted)** receive access to suitable facilities and quality education and training free of charge; and
- j) **Develop and ensure the operationalization of gender Policy in education at all levels of education including universities.**
- k) The term "**free education**" should be retained even though most of the Partner States are at different levels of development.

The Committee received a submission from a section of the Muslim Community in Kenya that had specific concerns that the Bill needed to have specific principles of the Constitution of Kenya and other Partner States.

The Muslim Community supports the value of providing for gender equity and equality principles in legislative frameworks. This principle should be anchored on the philosophical grounding of the Constitution of Kenya and other Partner States Constitutions.

They hold the view that Acts of the East African Community (EAC) are subordinate to the Constitutions of Partner States.

The Bill should be in harmony with the construction and the provisions of the principles of gender equity and equality as provided for in the Constitution of Kenya.

Some of the issues that require work, re-conceptualisation, refinement, changes, re-consideration etc. are identified below:

The section that deals with interpretations that is Clause 2 of the Bill, needs careful attention to among other things be consistent with other Community laws and in some cases Partner States Constitutions. A deliberate departure from Community laws should only be done after careful consideration and with the intention of expanding rights where possible, updating status or clarifying issues etc. Two examples using the Constitution of Kenya:

The Constitution of Kenya construes – “affirmative action: to include any measures designed to overcome or ameliorate an inequity or systemic denial or infringement of a right or fundamental freedom;

Marginalised group means a group of people who, because of laws or practices before, on, or more of the grounds in Article 27 (4). Article 27 (4) provides that – The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

These two examples when juxtaposed with the definitions in the Bill the differences are easily identifiable. The Muslim Association hold the view that the construction in the Constitution of Kenya is wider in scope.

It was further recommended that, in the process of carrying out efforts to harmonise should consider adopting the higher stand allowing the Partner State with the higher standard to be exempted from the lower Community law standard.

The Bill addresses both the principles of equity and equality as does the Constitution of Kenya. But in some instances the Bill provides for equality where the Constitution of Kenya uses equity principle; a good example is clause 5 (2) (c) provides – observe

respect of gender equality levels in the Partner States by fifty per cent. As formulated this equality clause is contrary to the principle of equity that informs Article 7 (8) that provides -the State shall take legislative and other measures to implement the principle that no more than two thirds of the members of elective or appointive bodies shall be of the same gender.

The formulation is to be found in various places in the Constitution of Kenya.

The Constitution of Kenya recognises and respects diversity and allows for Muslims to practice their faith. On the question of the principle of equality the Constitution qualifies its application to allow for the application of the Muslim Law on matters of personal law and status of Muslims. Specifically, it provides in Article 24 (4) – The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim Law before the Kadhi’s Courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

The Bill does not provide for a similar mechanism; the Muslim Law Consortium requests that such a mechanism should be included to avoid direct conflict with the Constitution of Kenya.

On a general point, it was pointed out that the Committee should reconsider the approach the Bill takes of loading the proposed law with wide thematic concerns including trade, environment, peace and security etc. In our view, a better approach may be to amend Community laws to provide for gender related rights in those laws as well as future ones.

There was also a concern on Clause 9 of the Bill that this may contravene the process of domestication of international instruments as provided for in the Partner States legal frameworks including the roles of Partner States Parliaments.

Official submissions are attached as **Annex II**.

### **5.3 THE UNITED REPUBLIC OF TANZANIA**

The Committee was informed that the Sectoral Council on Gender, Youth and Children, Social Protection and Community Development of the East African Community, the Honourable Ministers responsible for Gender Affairs of the East African Community stated that the thorough situational analysis on gender issues in the Partner States needs to be conducted, before developing a policy on EAC Gender Equality and Development. The situational analysis document for the Gender Equality and Development for Partner States is in place, although the policy document on East African Community Gender Equality and Development is not yet prepared.

The United Republic of Tanzania recommends that the proposed Bill should await the EAC policy document on Gender Equality and Development in order to align/adhere to the decision of the responsible Sectoral Council. The mover of the Bill together with the Committee on General Purpose should inform the Partner States on the existence of urgency to enact a Bill without the stated Policy document.

The United Republic of Tanzania recommends the following:

1. The object of the proposed Bill is to make provision for Gender equality, protection and development in the Community. Therefore, the proposed Bill should stress on the protection of vulnerable groups in the society such as women and children when serving their legal penalties in prisons as a result of illegal acts they have committed;
2. The definition of Affirmative Action in Section 2 of the Bill leaves a ground for racist practices in the Partner States. The inclusion of the race which identify people on basis of skin complexion, and ethnicity that identifying people on ethnic, tribal and ancestral lines will promote a culture of racism, tribalism and ethnicity in the Partner States. This means that contracting parties will be required to identify "races" and ethnic groups, therefore the mover of the Bill should consider to clear ambiguities seen in the affirmative action definition;

3. The definition of “reproductive rights”, “sexuality and reproduction”, “sexual autonomy”, “sexual integrity”, “sexual privacy”, “sexual information” are not clearly defined in Section 2 of the Bill. The mover of the Bill should clearly define each term to clear ambiguity that might bring other types of sexual orientation which is not allowed and against the policies and laws of the EAC Partner States.

Official submissions are attached as **Annex III**.

#### **5.4 THE REPUBLIC OF UGANDA**

Under Clause 2 on the Interpretation section on Affirmative Action, in order for the provision have more meaning, the wording of that interpretation should be improved and made more assertive. We propose the definition as contained in Uganda’s National Equal Opportunities Policy, 2006 which provides:

“All **deliberate actions, and initiatives taken in favour of marginalised** groups in order to redress imbalances caused by reason or attribute of disability, health status, history, culture, gender, ethnicity, religion, opinion, socio-economic or cultural standing.”

**Child:** Has been defined to mean a boy or girl under the age of eighteen. It is our considered opinion that the wording should be amended to “*any person, or any human being*” in order to cater for persons that may not have a clearly defined gender particularly hermaphrodites. This is the definition of the Child provide in the EAC Child Policy 2016.

**Discrimination against women:** It was proposed that what should be defined is not discrimination against women *per se* but discrimination against any gender. This being a Gender Equality and Development Bill, it should not be understood as a bill for women although they may be the most vulnerable gender. Both Men and women can face inequality. Refer to the definition of “gender” which clearly concerns both gender. We hence propose:

"Discrimination" giving different treatment to different persons attributable only to their respective description by sex."

**Gender based violence v. Violence against women:** The stakeholders were of the opinion that since gender based violence has been defined, it is not necessary to define violence against women as this will be a repetition. Also take note of our earlier argument of the bill catering for both genders.

**Under Clause 3, under Principles of Gender Equality,** Section 3(3), it provides that Partner States shall prohibit discrimination and violence on the basis of gender or nationality.

This provision should be split. It is not proper to group discrimination together with violence as both violations are equally serious and require special attention. We even note that the provision later goes silent on violence when it provides that Partner States shall pursue a policy of eliminating gender based discrimination.

Under Clause 4 on the Objectives of the Act, Section 4(2) (e), the objective is to promote the participation of women and men in regional trade and sustainable economic growth by entrenching enabling gender polices and macro-economic frameworks.

We propose that the it should be the "to promote the equitable participation of women and men...". Participation alone is not what we should strive for but equal participation in recognition that equality is what is at stake and that is where affirmative action is needed.

Under Clause 6 (1) on Gender based violence, it provides that Partner States shall protect and uphold the right of every woman and man to life. In the opinion of the Republic of Uganda, the provision should provide "every female and male" in order to cover violence against children to who don't qualify to be called women or men yet the violence they suffer may be due to their gender.



Yet still it could also read “every human being” in order to preserve life at any stage. (Food for thought, it could also protect an unborn child that may be aborted upon realizing they are of an “undesirable” gender).

Under Clause 7 on Media, the following could be taken care of:

- Equal presence and participation in decision making of women and men in structures of media related activities including unions
- Associations of journalists or other media professionals and media self-regulatory bodies.
- Gender parity in Editorial content of news media (written, broadcast and/or posted on -line by private, community and/or public media)
- Balance presence of women and men – reflecting the composition of society and human experiences, actions, views, concerns, in media coverage of news current affairs or otherwise
- Evidence of accurate and holistic understanding of gender based violence in all its forms.

Under Clause 8 on Education, in order to tackle the problem of gender inequality in education, it is necessary to specifically introduce a provision of affirmative action methods that can be used to reduce the inequality of girls v. boys in schools. Since affirmative action was defined at the beginning, this would be the place to invoke mandatory provisions of affirmative action. We note that there is some effort to address the problem of access to Children with disabilities where it is provided that their training should be free of charge. Some affirmative action measures are also necessary of the girl child since they are the ones that drop out of school the most.

Some mandatory affirmative action measures that can be suggested are:

- a) All Partner States to lower cut-off points for girls as opposed to boys at various levels of entry in the education system. That is Ordinary level entry, Advanced level and tertiary institutions.
- b) Partner States should further lower admission requirements for girls in rural schools.

- c) Governments should legislate laws that prohibit dismissal of girls that fall pregnant while in school and penalize any school or institution that is found in breach.
- d) There should be provision of unsecured loans schemes particularly for the girl child at Secondary and Tertiary level in order to assure girls' education at higher levels of education.
- e) Governments should remove taxes from sanitary towels and provide free sanitary towels to girls in schools in order to reduce the dropout rate due to menstrual related complications. Proponents against this could argue that provision of school necessities should be left to the parents, but we should remember that some parents are already very poor and can only rely on free education that is fairly facilitated.
- f) To illustrate, why governments are providing free condoms to offices of persons that can afford them, for example, parliamentary sanitation facilities have free condoms. Can't parliamentarians afford them? In the same vein, sanitary towels should be provided free since they will be for the help of vulnerable girls who need to be kept in school.
- g) Governments should have legislations that make it mandatory for all schools to have facilities that are accessible to disabled persons, and sanitary facilities that are separate for girls and boys. Failure to do so should be met with sanctions.

In Clause 9 on Health, under Clause 9 (2) (d), special attention has been drawn to information for the prevention and care of illnesses such as cancer.

Whereas cancer has become alarming to-date, there are other equally alarming conditions that ought not to be downplayed because they affect a bigger percentage of the population, for example most communicable illness and non-communicable illness such as depression. Singling out cancer may cause a misunderstanding leading to less attention being given to other conditions which affect the most marginalised communities.

Clause 17 on Marginalised groups, Clause 17(1) provides for Partner States to protect and uphold rights of persons in situations of vulnerability due to geographical, physical or mental reasons. The use of the word 'due to', and listing of the circumstances leads to discrimination. What if the vulnerability is not due to any of the parameters mentioned? What if it is due to other factors? The parameters should either be expanded or not listed.

2(d) (ii) protects the rights of widows and widowers to live in the matrimonial house after the death of the other spouse. The right should not only be limited to living in the house, but to own/ have proprietary rights if the house belonged to the deceased spouse, except if specifically bequeathed to a third party by will. Even if bequeathed to a third party, the widow should still have uninterrupted and quiet enjoyment of the house till her demise then property subsequently vests in the third party.

Clause 18 on Financial Provisions, states that Partner States are expected to incorporate gender considerations into the planning and allocation of resources and sub section (2) requires all ministries to state their efforts in achieving gender equality.

This provision should make it mandatory for Partner States to include gender equality considerations in planning, budgeting, implementation and subsequent reporting. In order to make the provision more forceful, sanctions for failure to report in that format should be met with sanctions.

The provisions of Uganda's Public Finance and Management Act of 2015 under Section 9 requires Accounting Officers to prepare Budget Framework Paper (BFP) taking into consideration balanced development and gender and equity responsiveness. The Minister of Finance is then supposed to issue a certificate certifying that the Budget Finance Paper is gender and equity responsive and specifying the measures taken to equalize opportunities for women, men, persons with disabilities and other marginalized groups. Budgets are only passed if such considerations are clear. It was proposed that the same requirement should be included in the Bill.

## **Proposed New Article - Extractive Industries**

The Republic of Uganda proposes the following new Articles to address matters related to Extractive Industries:

- 1) Partner states shall cooperate to ensure proper and beneficial exploitation and use of the proceeds from the extraction of natural resources that exist within the EAC area and the extractive industries shall include mining, quarrying, oil and gas extraction and dredging industries.
- 2) Partner States shall develop and harmonize their laws and policies on the management of extractive industries and ensure that they take into account gender consideration and dimension to secure the right to equally benefit from the opportunities arising from these industries.
- 3) Partner states shall ensure that there are mechanisms to effectively protect the rights of indigenous communities including land and property rights in areas where extractive industries are established.
- 4) Partner states shall ensure the implementation of appropriate measures including affirmative action measures to ensure that women and men equally participate in the decision making structure of different extractive industries and have access to different employment opportunities.
- 5) Partner States shall ensure that men and women have access to education and training opportunities to develop and acquire skills appropriate for engagement in different extractive industries in the Community
- 6) Partner States shall harmonize their labour laws at the national level to ensure that –
  - a. highly skills labour has access to employment opportunities in different extractive industries in the Community area:
  - b. women and men working at different levels in the extractive industries for work of equal value receive equal pay ;
  - c. female and male workers are safe while working in different extractive industries and gender considerations and needs are taken into account to secure the right of personal security at the work place.

- d. persons with disabilities can have access to employment opportunities in different extractive industries and are provided with the necessary training and protective or assistive devices as required under the Convention on the Rights of Persons with Disability.
- 7) Partner States shall ensure that contracts with foreign investors to exploit or process natural resources within the Community area shall take into account gender considerations and shall include clauses that guarantee the protection of the rights of the citizens and where their land is compulsorily acquired, those affected shall be entitled to adequate compensation prior to displacement.
- 8) Partner States shall include in their laws and policies rights of nationals to have priority in the process of awarding contracts within different extractive industries once they fulfil all procedures and pre-qualification requirements and where appropriate foreign investors shall be required to partner with national or regional companies to facilitate training, transfer of skills and building national capacities to engage in the extraction of natural resources within the Community area.
- 9) Partner States shall ensure that the national laws adequately -
- a. protect children from harmful labour and employment in different extractive industries and all contract holders are closely monitored to ensure that these laws are not violated.
  - b. provide for environmental protection and ensure that investors contribute to the development of the communities affected by the work of the extractive industry or where the industry or value addition facilities are established.
  - c. secure the right of access to information and awareness for men and women in the area where an extractive industry is to operate and that men and women equally benefit and are aware of the opportunities for training and employment that exist within the sector.

- d. provide for taxation of the proceeds made from extractive industries and the proceeds are allocated to development programmes and projects that benefit the citizens of the Partner states and the Community as a whole.
- e. cater for specialized training and education of nationals both women and men, to enhance knowledge and skills appropriate for engagement in the extractive industries, the negotiation processing, valuation of bids, and establishment of industries to promote value addition to the minerals and products extracted.
- f. provide for equitable allocation of the proceeds from different extractive industries to meet the differentiated needs and interests for men and women, girls and boys.

Official submissions are attached as **Annex IV**.

## **5.5 THE REPUBLIC OF RWANDA**

The Republic of Rwanda welcomes the proposed Bill which is a significant step forward for Gender equality in East African Community and an example to the rest of the world. They provided the following inputs and recommendations.

**Section 6: Under Gender Based Violence**, the Section contains provisions on protection of human rights for every woman and man including the right to life, dignity, integrity and security of persons at all levels. Towards this end, the Bill expressly prohibits all forms of exploitation, cruel, inhuman or degrading traditional practices etc. However, due to cultural differences, participants indicated that traditional practices known as Female Genital Mutilation (FGM) prohibited under Sub-section (3a) is not necessarily an issue for some communities in EAC.

Rwanda is of the view that FGM practices should be prohibited to protect women rights to Physical integrity.

It was proposed that the harmonization of national laws through a binding legislation, the language of subsection (3e) regarding harmonization of penal laws of Partner States and uniform punishment for sexual and gender based violence, needs to be

stronger. Uniform punishment on this issue may not be feasible because Partner States sovereign rights allow freedom to define sanctions on each criminal offense. Therefore, this should be punished under each Partner State criminal law.

Under this Section, it was also suggested to include the provision on marital rape and judicial cooperation to facilitate the prosecution of GBV offenders across EAC. In addition, the subsection on Human Trafficking should be separated from GBV because they cover different aspects.

**Section 8: Education:** Under Education, Section 8 contains provisions recognizing the right of the child to quality education. Participants requested that this section be revisited as its provisions are not consistent with what Partner States are already implementing especially on matter related to universal education. In addition, Subsection (1e) which suggests developing strategies for the reduction of drop-outs rates especially for the girl child, it was mentioned that all drop-outs matter (boys and girls) but care should be given to factors behind high rates for girls drop-outs.

**Section 13: Land Rights:** This Section provides for equal rights between men and women on land ownership and strictly states that any cultural barriers inhibiting women from ownership of land will be regarded as void.

On the issue of land tenure system in EAC some countries women have no right to land including land acquisition through inheritance. Gender equality and development should ensure that women and men must have equal rights on access to and use of land.

**Section 17: Marginalized Groups:** The Section provides for the protection of rights of persons with disability against any forms of discrimination, but that the generality of this provision does not address the concern of women and girls with disability who face different challenges which need particular attention as per article 6 of the UN Convention on the Rights of Persons with Disabilities.

It was proposed that consideration be made of the particular needs of this specific category as per the aforementioned UN Convention.

Official submissions are attached as **Annex V**.

## **5.6 THE EAC SECRETARIAT OBSERVATIONS (DIRECTORATE OF PRODUCTIVE AND SOCIAL SECTORS)**

Comments were made on principles of gender equality, objectives of the Bill and gender based violence and violence against women for consistency, economic empowerment to enhance the culture of savings, creating gender quotas in all government procurement and trade missions and need for state reporting on ratification and domestication of the Bill.

On access to health facilities, it was proposed that under Health that the recommended distance used by WHO on distance to health facilities to allow easy access is not standard and instead, a fair radius of 10 Kilometres be used in the bill.

Secondly, the use of "traditional birth attendants" be deleted and replaced by "Community Health Workers" since the original roles of the former which gave them their name became controversial and WHO has advised removal of this role.

Official submissions are attached as **Annex VI**.

## **5.7 INTERACTION WITH THE COUNCIL OF MINISTERS**

The Committee held a meeting with the Council of Ministers on 19<sup>th</sup> January 2017. The Council of Ministers reminded the Committee that the Sectoral Council on Gender, Youth and Children, Social Protection and Community Development of the EAC had directed the Secretariat to prepare a Gender Policy but since then, the Sectoral Council had not been able to meet again. The Sectoral Council had also required for a situational analysis on Gender to be made.

The Council further pointed out to the Committee that the Council was concerned about the creation of Institutions as cited in Clause 19 under Institutional Arrangements. It was agreed that since the commencement as cited in Clause 1, was to be determined by the Council of Ministers, the concern about Institutions did not arise since the Council would only create any such institutions when and if the Council deemed it necessary.



The Committee extended appreciation to the Council of Ministers for their concern and in response informed the Council of Ministers that a policy was not necessarily a precondition to the passing of a Bill by the Assembly and in this case was requesting for the support of the Council. Furthermore, several situational analyses had been carried out in the EAC including at Partner States level and these were available and the Committee had considered analyses in its work.

The Council undertook on its part to ensure that the relevant Sectoral Council convenes as soon as possible to resolve the matter of the EAC Gender Policy.

## **6.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**

The Committee makes the following observations:

- 6.1 In many instances the Partner States are in agreement with most aspects of the Bill much as culture was cited as one of the major issues that hinder gender equality and development. Cultural precepts set up discriminatory roles, duties and responsibilities and as a result, they hamper equal enjoyment of rights and access to opportunities whether economically, socially or politically. Stakeholders agreed on issues among others under Health, Education, Affirmative Action in many sectors, marriage, inheritance and land rights, disability and social protection.
- 6.2 Specific proposals made by the Partner States require substantive legislation or in some cases, amendments to existing legislation and constituted too much detail for a regional law. Proposals such as the new Clause on the use and management of Extractive Industry and the inclusion of women is such a proposal.

The Committee reiterates the importance of the Bill and the opportunity it provides to facilitate Gender Equity, Equality and Development and **recommends that the House consider and debate the report of the Committee as well as the proposed amendments herewith attached as Annex VII.**

## **7.0 ACKNOWLEDGMENT**

The Committee would like to extend its appreciation to the Office of the Rt. Hon. Speaker, EALA for granting the Committee resources and the time to perform its legislation role and the Office of the Clerk EALA for ensuring adequate logistical support to the Committee. The Office of the Counsel to the Community is commended for the legal input into the Bill. The Ministries of East African Community Affairs in all the Partner States are commended for coordinating the activities in the Partner States and the hospitality accorded to the Committee and all the stakeholders. Members of the Committee and staff are commended for their dedication and hard work.