

THE EAST AFRICAN COMMUNITY
SEXUAL AND REPRODUCTIVE HEALTH BILL, 2021

MEMORANDUM

The object of this Bill is to protect and facilitate the attainment of the life-course sexual and reproductive health and rights of all persons in the Community; to provide for the progressive realization of integrated sexual and reproductive health information and services as part of the universal health coverage of each Partner State; to prohibit harmful practices from the Community and provide for related matters.

The Bill is anchored on Article 118 of the Treaty, in accordance with which Partner States committed to cooperate generally in health and specifically in the development of reproductive health and to harmonise national health policies and regulations in order to achieve quality health within the Community.

The Bill recognises the obligation of Partner States under several international, continental and Community frameworks, to respect, protect and fulfil the right to health by facilitating, providing and promoting the highest attainable standard of health and providing measures towards the full realization of the right to health.

The Bill further seeks to strengthen the mechanisms to facilitate attainment by the Community of the goal to ensure universal access to sexual and reproductive health-care services, including family planning, information and education, and the integration of reproductive health into national strategies and programmes by 2030 as enshrined in the EAC Integrated Reproductive Maternal, Newborn Child and Adolescent Health Policy Guidelines, 2016-2030 and the EAC Sexual and Reproductive Health Rights Strategic Plan.

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THE EAST AFRICAN COMMUNITY
SEXUAL AND REPRODUCTIVE HEALTH BILL, 2021

ARRANGEMENT OF CLAUSES

Clause

PART I- PRELIMINARY

1. Short title and commencement.
2. Objects of the Act
3. Interpretation.
4. Non-discrimination
5. Respect for dignity and integrity

PART II – SEXUAL AND REPRODUCTIVE HEALTH
SERVICES

6. Integration of sexual and reproductive health services in Partner States universal health coverage.

Sexual and Reproductive Health for Adolescents and young people

7. Age and culturally appropriate comprehensive sexuality education.
8. Collaborative and inclusive development of age-appropriate sexuality education.
9. Sexual and reproductive health for adolescents and young people.
10. Duty of parents and guardians to provide age-appropriate sexual and reproductive information
11. Access to sexual and reproductive health services.
12. Continuation of education after pregnancy.

Other Sexual and Reproductive Health Services and related services

13. Menstrual health.
14. Sexual reproductive healthcare for men.

15. Sexual and reproductive health for people with disabilities.
16. Termination of pregnancy.
17. Health and life-saving post-abortion care and treatment.
18. Family planning and contraceptives education and services.
19. Protection from HIV/ AIDS and sexually transmitted infections.
20. Pre-conception, pre-natal, delivery and post-natal health care.
21. Regulation of assisted reproductive technologies

PART III - HARMFUL PRACTICES

22. Prohibition of harmful practices.
23. Child or parent not to consent to child marriage.
24. Duty of marriage officer to establish age of parties.
25. Protection of children in subsisting child marriages.
26. Detecting and preventing sexual and gender-based violence.

PART IV- GENERAL PROVISIONS

27. Reporting and monitoring of provision of sexual and reproductive health services
28. Public awareness of sexual and reproductive health and rights
29. Regulations

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY SEXUAL AND
REPRODUCTIVE HEALTH ACT, 2021**

An Act of the Community to protect and facilitate the attainment of the life-course sexual and reproductive health and rights of all persons in the Community; to provide for the progressive realization of integrated sexual and reproductive health information and services as part of the universal health coverage of each Partner State; to prohibit harmful practices from the Community and provide for related matters.

ENACTED by the East African Community and assented to by the Heads of State.

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the East African Community Sexual and Reproductive Health Act, 2021.
- (2) This Act shall come into force on a date appointed by the Council by notice published in the *Gazette*.

2. Objects of the Act.

The objects of this Act are:

- (a) to protect and facilitate the fulfilment of the life-course sexual and reproductive health and rights of all persons in the Community;
- (b) to promote and provide for age-appropriate sexual and reproductive health information and services of all persons, including adolescents and young people as part of the universal health coverage in each Partner State and promote responsible sexual and reproductive health behaviour among adolescents and young people in accordance with their evolving capacities;

- (c) to facilitate and promote the prevention of new-born, child mortality, maternal mortality and morbidity from preventable causes;
- (d) to facilitate and promote reduction and elimination of unsafe abortions, HIV and other sexually transmitted infections, early and unintended pregnancies; and
- (e) to prohibit and facilitate the elimination of harmful practices from the Community.

3. Interpretation.

In this Act, unless the context otherwise requires –

“abortion” means the separation and expulsion, by medical or surgical means, of the contents of the uterus of a pregnant woman before the foetus has become capable of sustaining an independent life outside the uterus;

“adolescent” means any person aged between ten and nineteen years;

“assisted reproductive technology” means fertilization in a laboratory dish of sperm with egg obtained from an ovary whether or not the process of fertilization is completed in the laboratory dish, test tube or a surrogate;

“betroth” means to promise in marriage or to be engaged for the purpose of marriage and includes any traditional or customary rite, ritual or arrangement or pact signifying betrothal or an impending marriage;

“child” means a person below the age of eighteen years;

“child marriage” means a statutory or customary union recognised by a Partner State in which at least one of the parties is a child;

“commercial surrogacy” means any arrangement where the surrogate mother agrees to provide gestational services and to legally and physically transfer the child, in exchange for remuneration or other consideration;

“Community” means the East African Community established by Article 2 of the Treaty;

“Council” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“female genital mutilation” includes any procedure that involves partial or total removal of the external female genitalia or other injury caused to the female organ on a non-medical basis;

“gender-based violence” means all acts perpetrated against women, men, girls or boys on the basis of their sex which cause or could cause them physical, sexual, psychological, or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on, or deprivation of fundamental freedoms in private or public life during peaceful time and in situations of armed or other forms of conflict;

“harmful practice” means any behaviour, attitude or practice which negatively affects the fundamental rights of women and girls, boys as well as men, such as their right to life, health, privacy, dignity, education and physical integrity, free from violence, fear, torture or coercion;

“health” means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

“health care provider” means a person registered, licensed, authorised or otherwise recognised by a Partner State to provide health care services;

“health professional” means a medical practitioner duly registered or licensed as such under any law of a Partner State applicable to medical practitioners;

“Minister” in relation to a Partner State, means a person appointed as Minister or Cabinet Secretary of the Government of that Partner State and includes any person however entitled who in accordance with the law of a Partner State, acts or performs the functions of a Minister or Cabinet Secretary in that Partner State;

“Partner State” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda, and the United Republic of Tanzania, or any other country granted membership to the Community under Article 3 of the Treaty;

“post-abortion care” means a set of clinical services, that includes emergency treatment for complications caused by spontaneous or induced abortion, counselling for gender-based violence services,

contraception, treatment for sexually transmitted infections and HIV services;

“reproductive health” means a state of complete physical, mental and social wellbeing in all matters relating to the reproductive system and to its functions and processes;

“Secretary General” means the Secretary General of the Community provided for under Article 67 of the Treaty;

“sexual health” means a state of physical, emotional, mental and social well-being in relation to sexuality;

“Treaty” means the Treaty for the Establishment of the East African Community;

“universal health coverage” means the state where all people have access to the health services they need, when and where they need them, without financial hardship and includes the full range of essential health services, from health promotion to prevention, treatment, rehabilitation, and palliative care;

“unsafe abortion” means an abortion that is carried out by a person lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.

4. Non-discrimination

Every person shall enjoy their sexual and reproductive health rights and the services provided for by this Act without discrimination on the basis of their nationality, race, ethnic group, color, sex, age, language, religion, political or any other opinion, national and social origin, fortune, birth or other status recognised by the Constitution of a Partner State or the Community.

5. Respect for dignity and integrity.

Every health care provider or health professional shall respect the dignity, privacy, confidentiality and integrity of every person accessing sexual and reproductive health services.

PART II – SEXUAL AND REPRODUCTIVE HEALTH SERVICES

6. Integration of sexual and reproductive health services in Partner States universal health coverage.

- (1) Each Partner State shall integrate sexual and reproductive health services in the universal health coverage of the Partner State.
- (2) Every Partner State shall provide adequate, quality, accessible and where they are not free, affordable, sexual and reproductive health services to facilitate the realisation of the highest attainable standard of health by every person.
- (3) The sexual and reproductive health services shall include –
 - (a) accurate information on sexual and reproductive health;
 - (b) evidence-based, age and culturally appropriate comprehensive sexuality education;
 - (c) voluntary testing, prevention and treatment for HIV;
 - (d) prevention, screening and treatment for sexually transmitted infections;
 - (e) prevention, screening and treatment for reproductive cancers including cervical cancer, breast cancer, testicular and prostate cancer;
 - (f) prevention, detection and treatment of reproductive tract infections;
 - (g) family planning and contraceptives information, education and services;
 - (h) accessibility, availability and education on contraceptives;
 - (i) counselling relating to sexual and reproductive health;
 - (j) pre-conception, pre-natal, delivery and post-natal health care including, emergency obstetric and new born care and nutritional services for women during pregnancy and while they are breast-feeding;
 - (k) exclusive breastfeeding for at least 6 months and immunization and treatment of early childhood diseases for infants;
 - (l) recommended nutrition to support growth, access to early childhood education for toddlers and protection from physical, social and sexual abuse;
 - (m) access to information and services for prevention, management, and treatment of infertility for persons with

- biological and medical issues affecting their fertility and assisted reproductive technologies;
- (n) access to permitted, safe and effective abortion services;
 - (o) access to sexual and reproductive health services for people living with disabilities;
 - (p) sexual and reproductive health services for older persons and the elderly, including physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons;
 - (q) information on prevention, detection and management of sexual and gender-based violence.

Sexual and Reproductive Health for Adolescents and young people

7. Age and culturally appropriate comprehensive sexuality education.

- (1) Every Partner State shall provide and include in the curriculum scientifically based age, gender and culturally appropriate sexuality education for the health and wellbeing of adolescents and young people.
- (2) The comprehensive sexuality education shall include in-school and out of school programmes designed to cover the life-cycle of an individual.
- (3) Sexuality education shall be accurate, science and evidence-based and shall take into account –
 - (a) the age, evolving capacity, needs and understanding of individuals at each stage of the life cycle;
 - (b) the national, cultural and social values of the individuals at each stage of the life cycle;
 - (c) the rights and needs of different genders;
 - (d) the need to equip each individual with age-appropriate knowledge to experience their sexuality responsibly as part of their evolving human capacity, level of maturity and overall development;
 - (e) measures to promote delaying sexual activity and preventing unintended pregnancies, sexually transmitted infections and HIV among adolescents, by promoting abstinence and consistent usage of contraceptives;
 - (f) the need to protect children and adolescents from sexual exploitation and abuse including abuse on online platforms;

- (g) information on menstrual health, hygiene and sanitation awareness;
- (h) information on sexual and gender-based violence, prevention, management and mechanisms of redress;
- (i) availability, accessibility, acceptability and quality services for older persons, including counselling, screening and treatment of reproductive health complexities related to advanced age such as including chronic conditions such as vaginal atrophy, reproductive cancers, erectile dysfunction, genitourinary conditions, and gynaecological malignancies; and
- (j) the need to equip every individual with age-appropriate skills and knowledge to reduce sexual and reproductive health risks including sexually transmitted infections and HIV, unintended pregnancy and reproductive health cancers, including cervical, breast, testicular and prostate cancer and information and skills to deal with subfertility and infertility, menopause, andropause and sexual dysfunction.

8. Collaborative and inclusive development of age-appropriate sexuality education.

Each Partner State shall collaborate and involve education institutions, adolescents, youth, teachers, parents and guardians, health professionals, the private sector, civil society organisations, community, cultural, religious and faith-based organisations and leaders in designing and implementing age-appropriate comprehensive sexuality education programmes.

9. Sexual and reproductive health for adolescents and young people.

- (1) Every adolescent or young person shall have access to safe, effective, non-judgemental and acceptable age-appropriate sexual and reproductive health information, education and services.
- (2) The Council shall by directives published in the Gazette, issue common mechanisms that shall be applied by Partner States to facilitate adolescents and young people to access age-appropriate sexual and reproductive health information, education and services.
- (3) The mechanisms referred to in subsection (2) shall include the role of religious or community leaders and civil society in providing sexual and reproductive health information and services.

- (4) The information, education or services referred to in subsection (1) shall be confidential, adolescent and youth-friendly, and non-discriminatory.
- (5) Where the sexual and reproductive health services are not free, they shall be provided at a cost which is affordable to adolescents and young people.
- (6) The information, education and services shall include -
 - (a) the right of every adolescent or young person to exercise sexuality independently, free of violence and coercion;
 - (b) the right of every adolescent girl or young women to protection against female genital mutilation;
 - (c) access to methods for the prevention, diagnosis and treatment of sexually transmitted infections and HIV;
 - (d) information and age-appropriate access to contraceptives and contraceptive services;
 - (e) access to free, sufficient and quality sanitary towels and menstrual health products for every adolescent girl and young women;
 - (f) access to free post-sexual and gender-based violence treatment, including emergency contraceptives and post-exposure prophylaxis;
 - (g) availability of safe spaces and shelters designed to host survivors of sexual exploitation and abuse;
 - (h) access to justice and mechanisms for reporting cases of sexual exploitation, sexual abuse and violence or infringement and violation of sexual and reproductive rights.

10. Duty of parents and guardians to provide age appropriate sexual and reproductive health information.

Every parent, guardian or person with parental responsibility over an adolescent or young person has a duty to provide age and culturally appropriate sexual and reproductive health information to an adolescent or young person under their care.

11. Access to sexual and reproductive health services.

- (1) An adolescent or young person has a right to access age appropriate sexual and reproductive health services.
- (2) A health care provider or health professional providing sexual or reproductive health services shall before providing the required

services, explain to the adolescent or young person the nature and consequences of the specific sexual or reproductive health services.

12. Continuation of education after pregnancy.

- (1) An adolescent girl or young woman who becomes pregnant, before completing her education, shall be given the opportunity with appropriate facilities, within a reasonable period after delivery, to continue with her education.
- (2) For the purposes of this section every Partner State shall design and implement their education programmes and facilities and require every provider of education to ensure that adolescent girls or young women who become pregnant before completing their education are given the opportunity to complete their education.
- (3) Every Partner State shall develop and implement mechanisms to provide vocational, skills and career development and training for adolescent girls and young women who are unable to continue with their education after pregnancy.
- (4) Every Partner State shall through the Secretary General, provide an annual report to the Assembly on the number of adolescent girls who become pregnant and the specific measures established by the Partner State for the adolescent girls to continue their education.
- (5) The information required by subsection (4) shall be disaggregated by age and socio-economic grouping.

Other Sexual and Reproductive Health Services and Related Services

13. Menstrual health.

- (1) Each Partner State shall establish menstrual health spaces that are clean, safe and dignified in all health facilities, schools and other public facilities.
- (2) Menstrual health services shall include –
 - (a) access by all persons to clean disposable or re-usable sanitary towels or other menstrual health products;
 - (b) access to clean and private facilities to change sanitary towels as often as necessary for the duration of the menstrual period;
 - (c) access to soap and water for hygiene and sanitation in the public spaces; and

- (d) availability of dignified, safe and environmentally sound facilities for disposal of sanitary towels and other menstrual health products.

14. Sexual reproductive healthcare for men.

Each Partner State shall offer provider-initiated information and develop programs that include reproductive health care services for men, including –

- (a) screening and treatment of disorders of the male reproductive system including sexual dysfunctions, infertility, urological diseases and other common sexual and reproductive health diseases and disorders;
- (b) information and counselling on managing andropause
- (c) pre-conception information and services.

15. Sexual and reproductive health for people with disabilities.

- (1) Each Partner State shall provide appropriate facilities to ensure that people with disabilities realise their sexual and reproductive health.
- (2) Facilities provided under this section shall include appropriate infrastructure, equipment and services to meet the special needs of persons with disabilities, including –
 - (a) customised information on sexual and reproductive health needs of people with disabilities;
 - (b) healthcare personnel trained to effectively communicate with people with disabilities; and
 - (c) health care facilities suited or modified to the special needs of people with disabilities.

16. Termination of pregnancy.

A woman may terminate a pregnancy if in the opinion of a health professional, there is need for emergency treatment, the pregnancy endangers the mental or physical health or life of the woman, in the case of sexual assault, rape, incest or as may be permitted by the law of a Partner State.

17. Health and life-saving post-abortion care and treatment.

- (1) Every person is entitled and shall receive post-abortion care and treatment as a health and life-saving medical intervention, notwithstanding the legality of the abortion or attempted abortion.
- (2) Notwithstanding any other law, a health professional who provides post-abortion care or treatment shall not be prosecuted for the service provided.
- (3) A health care provider or health professional who does not, refuses or neglects to provide post abortion care or treatment to a woman or an adolescent girl commits an offence and is liable, on conviction, to a fine not exceeding ten thousand United States dollars.

18. Family planning and contraceptives education and services.

- (1) A person may freely and responsibly determine whether to have children or not, the number, timing and the spacing of the children.
- (2) Each Partner State shall facilitate and promote the right of every person to make the determination referred to in subsection (1) by making family planning education, services and contraceptives available and accessible to every individual as part of the integrated health services provided in that Partner State.
- (3) Family planning and contraceptive services shall include –
 - (a) information on the available family planning methods and commodities for both men and women;
 - (b) counselling, screening and treatment of sexually transmitted infections;
 - (c) HIV prevention, testing and treatment;
 - (d) counselling and services for subfertility and infertility; and
 - (e) measures for detecting, preventing and managing reproductive cancers, including cervical, breast, testicular and prostate cancer.

19. Protection from HIV and AIDS and sexually transmitted infections.

- (1) Each Partner State shall facilitate and promote the right of every person to self-protection and to be protected against sexually transmitted infections, including HIV and AIDS.
- (2) For purposes of subsection (1) every person is entitled to information relating to their health status, including their HIV and AIDS status.

- (3) Disclosure of the health status of an individual shall be made in accordance with internationally recognised standards and best practices, including the counselling required before disclosure.
- (4) A person living with HIV shall have access to integrated services and treatment for opportunistic infections including contraceptives, reproductive cancers and services that promote safe conception, child birth and postnatal care services.

20. Pre-conception, pre-natal, delivery and post-natal health care.

- (1) Every Partner State shall promote the right of every woman to safe motherhood including the right to access information and quality services throughout pregnancy, child-birth and post-partum period with the desired outcome of a live and healthy baby.
- (2) For purposes of subsection (1), every Partner State shall integrate and include pre-conception, pre-natal, delivery and post-natal health care services in their universal health coverage programmes, including –
 - (a) providing maternal services as part of primary health care;
 - (b) making maternal services available and accessible;
 - (c) increasing access to skilled birth attendants and midwives;
 - (d) prevention of basic emergency obstetrical and gynaecological conditions;
 - (e) vaccination for preventable diseases;
 - (f) information, education, screening, behavioural counselling, treatment and management of diseases and conditions that lead to complications, may put women at risk or lower chances of successful fertility;
 - (g) services relating to mental health and post-partum complications associated with child birth.

21. Regulation of assisted reproductive technologies.

- (1) Every Partner State shall regulate the use of assisted reproductive technologies to ensure that assisted reproductive services provided in the public and private sector are lawful, safe and effective.
- (2) The regulation under subsection (1) shall include -

- (a) restricting assisted reproductive technologies to persons who are certified by a health professional as –
 - (i) medically unable to bear children; or
 - (ii) to carry a pregnancy to term;
- (b) prohibiting commercial surrogacy and the sale of children born through surrogacy or other assisted reproductive technology;
- (c) requiring assisted reproductive technologies to only be provided by designated health care providers specifically licensed by each Partner State to provide such services;
- (d) access and availability of information on surrogacy;
- (e) ensuring that surrogacy is provided on the basis of altruistic agreements entered into with full disclosure and registered with a designated authority in each Partner State;
- (f) provisions safeguarding women from exploitation through surrogacy agreements;
- (g) ensuring that the registration of children born through surrogacy required by the laws on registration recognises the genetic heritage and parentage of each child instead of the surrogate mother.

PART III – HARMFUL PRACTICES

22. Prohibition of harmful practices.

- (1) The following harmful practices are prohibited within the Community –
 - (a) child marriage;
 - (b) solemnising, conducting or presiding over the betrothal of a child;
 - (c) forcing or coercing a child to enter into a child marriage or betrothal;
 - (d) any initiation rite or ritual that requires an adolescent or young person to engage in sexual activity or perform a sexual act as part of or immediately after the ritual;
 - (e) any cultural or traditional practice that is harmful to the health of a child, woman, adolescent or young person;

(f) 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;

(g) female genital mutilation;

(h) forced or coerced sterilisation.

(2) A person who engages in a prohibited harmful practice in contravention of subsection (1) commits an offence and is liable, on conviction, to imprisonment not exceeding ten years or to a fine not exceeding thirty thousand United States Dollars.

23. Child or parent not to consent to child marriage.

(1) A person under the age of eighteen years does not have capacity to consent to a marriage or contract a marriage.

(2) Any child marriage purportedly entered into or solemnised is void.

(3) A parent guardian or any person with parental responsibility over a child shall not have authority to consent to a child marriage.

(4) A parent, guardian or person with parental responsibility who consents to or purports to give consent to a child marriage commits an offence and is liable, on conviction, to imprisonment not exceeding ten years or to a fine not exceeding thirty thousand United States Dollars.

24. Duty of marriage officer to establish age of parties

(1) Every person authorised by the laws of a Partner State to solemnise a marriage or conduct a marriage ceremony, shall establish, verify and record the age of the parties to an intended marriage before solemnising, conducting or performing the marriage ceremony.

(2) For the purposes of this section a person authorised to conduct a marriage may require the parties to an intended marriage to produce a birth certificate, national identification document or other document issued by the Partner State as evidence of the age of a party to an intended marriage.

25. Protection of children in subsisting child marriages.

(1) The Minister responsible for social protection or children affairs in each Partner State shall design, publish and implement measures to

protect children who at the commencement of this Act are already victims of child marriages.

- (2) The measures developed under subsection (1) shall include -
 - (a) identifying and recording children in child marriages and the specific communities where they are found;
 - (b) reporting persons engaged in solemnising or conducting child marriages;
 - (c) protecting victims of child marriages from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and exploitation;
 - (d) opportunities for a victim of child marriage to opt out of the marriage;
 - (e) rehabilitation and psychosocial support to victims of child marriages.

26. Detecting and preventing sexual and gender-based violence.

- (1) The Partner States shall develop and implement common strategies for detecting and preventing sexual and gender-based violence within the Community.
- (2) The common strategies shall include -
 - (a) mechanisms for detecting and reporting sexual and gender-based violence;
 - (b) empowering girls and women to report sexual and gender-based violence;
 - (c) engaging traditional, religious and community leaders as partners in detecting and preventing violence;
 - (d) engaging boys and men as partners in eliminating sexual and gender-based violence;
 - (e) training health care providers and law enforcement officers to identify and handle victims of sexual and gender-based violence;
 - (f) provision of legal and psychosocial services to persons affected by sexual and gender-based violence;
 - (g) access to emergency contraceptives, HIV testing and prevention, screening and prevention of sexually transmitted infections;
 - (h) psycho-social support for victims of sexual and gender-based violence;

- (i) measures for addressing social and cultural norms and values that promote and perpetuate sexual and gender-based violence;
- (j) access to justice for victims and persons affected by sexual and gender-based violence.

PART IV- GENERAL PROVISIONS

27. Reporting and monitoring of provision of sexual and reproductive health services.

- (1) Each partner State shall every two years, report to the Secretary General the sexual and reproductive health services provided by that Partner State and the status of implementation of the provisions of this Act.
- (2) The Secretary shall record, compile and submit a report to the Assembly on the sexual and reproductive health services provided by each Partner State and the status of implementation of the provisions of this Act.

28. Public awareness of sexual and reproductive health and rights

- (1) The Community shall develop and implement appropriate common public awareness strategies sensitive to age, gender, religion and culture which shall be mainstreamed in the major languages used in each Partner State relating to sexual and reproductive health rights and services.
- (2) The Secretary General shall ensure that a participatory and collaborative all-inclusive approach is adopted in developing public awareness programmes, including the participation of youth, the private sector, civil society, non-governmental organizations, the media, traditional faith-based and community leaders.
- (3) Specific sensitisation programmes shall be developed to target teachers, parents, health professionals, judicial officers, law enforcement officers, religious, cultural and community leaders and other specific groups engaged in providing or implementing or providing sexual and reproductive health services.
- (4) Public awareness programmes developed under this section shall include programmes -
 - (a) to modify the social and cultural patterns of conduct of women and men aimed at achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the

- idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men;
- (b) aimed at encouraging children and adolescents not marry early or until the age of eighteen, including programmes relating to availability and accessibility of vocational and other skills training as an alternative to early marriage;
 - (c) relating to the consequences of early and child marriages;
 - (d) relating to affirmative action for girls to encourage them to complete their education;
 - (e) addressing social, cultural and religious limitations on realisation of sexual and reproductive health;
 - (f) addressing stigma and discrimination against victims of child marriage, gender-based violence, sexual abuse and exploitation and other harmful practices;
 - (g) highlighting the role of men and boys in prevention of HIV/ AIDS, sexually transmitted infections, early and child marriages, sexual exploitation, sexual abuse and gender-based violence.

29.Regulations.

The Council may make regulations for better carrying into effect the provisions of this Act.