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THE EAST AFRICAN COMMUNITY

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*Paper tabled by
Sen. Dulla on 19.10.2016
[Signature]*

THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY PROHIBITION OF FEMALE
GENITAL MUTILATION BILL, 2016.

MEMORANDUM

The object of this Bill is to prohibit the practice of female genital mutilation in the East African Community, promote cooperation in the prosecution of perpetrators of female genital mutilation and develop common measures, strategies and programmes for the effective implementation of this Act and other related matters.

Female genital mutilation is defined by the World Health Organization as “comprising of all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”

This Bill is premised on Article 121 of the Treaty for The Establishment of the East African Community, under which “The Partner States recognize that women make a significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective programmes for the economic and social development of the Partner States without the full participation of women.



This Bill proposes harmonization of laws, policies and strategies to eliminate female genital mutilation recognizing that it's practiced for different reasons including cultural and religious beliefs by several communities including immigrants. Collection of statistics on the practice is complicated by the fact that it's done in secrecy and in some communities it has gone underground for fear of laws that prohibit and criminalize it. In this instance, provision of resources and mechanisms to assist victims of female genital mutilation by the Partner States will also provide an avenue to collect data and monitor and evaluate the impact of different strategies.

In a nutshell, this Bill seeks to promote establishment of a regional coordination mechanism to coordinate and catalyze efforts of the Partner States to eliminate female genital mutilation in one generation. This regional mechanism will provide space for harmonization of policies and laws, sharing of information, conduct research, collect data and information and document findings; and foster the development of common measures, strategies and programmes that promote universal education, equal opportunities for all; education and creation of awareness about the dangers of female genital mutilation; provision of resources for the protection of girls at risk and provision for victim support and facilitate implementation of this law.

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Member East African Legislative Assembly.

East African Community
Prohibition of Female Genital Mutilation Bill, 2016

THE EAST AFRICAN COMMUNITY PROHIBITION OF
FEMALE GENITAL MUTILATION BILL, 2016.

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THE EAST AFRICAN COMMUNITY PROHIBITION OF
FEMALE GENITAL MUTILATION BILL, 2016

A Bill for an Act

ENTITLED

THE EAST AFRICAN COMMUNITY PROHIBITION OF
FEMALE GENITAL MUTILATION ACT, 2016

An Act to prohibit the practice of female genital mutilation in the Community, to provide for the establishment an East African Community institutional mechanism to foster regional cooperation for the prosecution of offenders, and to provide for other related matters.

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the East African Community Prohibition of Female Genital Mutilation Act, 2016 and shall come into force on such date the Council may, by notice published in the Gazette appoint.

Short title
and
commence-
ment

2. In this Act, unless the context otherwise requires—

Inter-
pretation

“Assembly” means the East African Legislative Assembly established by Article 9 of the Treaty;

- “child” means a person below the age of 18 years;
- “Community” means the East African Community established by Article 2 of the Treaty;
- “Council” means the East African Community established by Article 9 of the Treaty;
- “female genital mutilation” comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female organ for non-medical reasons;
- “joint operations” means the operations, which involve multi-sectoral agencies of the Partner States engaged in peace support, disaster management, search and rescue, counter-terrorism, transnational and cross border crimes and any other operations which may be mutually determined by the Partner States;
- “Partner States” means the Republic of Uganda, the Republic of Kenya, the United Republic of Tanzania, the Republic of Burundi, the Republic of Rwanda, the Republic of South Sudan and any other country granted membership to the Community under Article 3 of the Treaty;
- “Secretariat” means the Secretariat of the Community established by Article 9 of the Treaty;
- “trans national crime” means a crime committed across the border of Partner States who do not share a common border;
- “Treaty” means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto;

“victim” means a person who has undergone the process of female genital mutilation;

“victim support services” refers to basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make the victims self supporting.

3. The objective of this of this Act is to—

Objective

(a) prohibit the practice of female genital mutilation in the Community and as a transnational crime;

(b) provide for a minimum penalty for the offence of female genital mutilation;

(c) establish institutions to foster cooperation in the prosecution of offenders, prevention of female of genital mutilation and provisions of services of victims and girls at risk of female genital mutilation; and

(d) develop and harmonize policies, laws, strategies and programmes to prevent female genital mutilation; prosecute perpetrators of female genital mutilation and provide services to victims and girls at risk of female genital mutilation.

PART II—FEMALE GENITAL MUTILATION AND RELATED
OFFENCES

4. (1) A person who performs any operation or procedure that involves partial or total removal of the external female genitalia, or other injury to the female organ for non-medical reasons on another person commits an offence known as female genital mutilation and is liable on conviction to imprisonment for a term not less than three years.

Offence of
female
genital
mutilation

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(2) A person commits the offence of aggravated female genital mutilation where—

- (a) death occurs as a result of female genital mutilation;
- (b) the offender is a parent, guardian or person having authority or control over the victim;
- (c) the victim suffers disability as a result of the mutilation;
- (d) the victim is infected with HIV as a result of the act of female genital mutilation; or
- (e) the female genital mutilation is done by a health worker.

(3) A person who commits the offence of aggravated female genital mutilation is liable on conviction to imprisonment for life.

Aiding and abetting female genital mutilation

5. A person who aids, abets, counsels or procures—

- (a) a person to perform female genital mutilation; or
- (b) another person to perform female genital mutilation on that other person,

commits an offence.

Procuring a person to perform female genital mutilation in another Partner State

6. A person commits an offence if the person takes another person from a Partner State to another Partner State or another country, or arranges for another person to be brought into a Partner State from another country with the intention of having that other person subjected to female genital mutilation.

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7. A person who knowingly allows any premises, for which that person is in control of, or responsible for, to be used for purposes of performing female genital mutilation commits an offence.

Use of premises to perform female genital mutilation

8. A person who is found in possession of a tool or equipment for a purpose connected with the performance of female genital mutilation commits an offence.

Possession of tools or equipment

9. A person commits an offence if the person, being aware that an offence of female genital mutilation has been, is in the process of being, or intends to be committed, fails to report accordingly to a law enforcement officer of that respective Partner State.

Failure to report commission of offence

10. Any person who uses derogatory or abusive language that is intended to ridicule, embarrass or otherwise harm a woman for having undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation, commits an offence and shall be liable upon conviction, to imprisonment for a term not less than six months.

Use of derogatory or abusive language

11. A person who commits an offence under this Act, whose penalty is not specifically prescribed, is liable, on conviction to imprisonment for a term of not less than three years or a fine of not less than one thousand dollars, or both.

Penalty for offences

12. Where a person is convicted of an offence under this Act, a respective court in a Partner State may, in addition to the punishment provided, order such a person to pay by way of compensation to the victim such sum as in the opinion of the court is just, having regard to the injuries suffered by the victim and the medical and other expenses incurred.

Compensation

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Protection
order

13. A court in a Partner State may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.

PART III—INSTITUTIONAL ARRANGEMENTS

Establishment of
institutions

14. (1) The Council shall designate and establish such institutions as the Council may consider necessary for the effective implementation of this Act.

(2) Without prejudice to the generality of subsection (1), the institutions designated and established under that subsection shall—

- (a) facilitate the implementation of this Act;
- (b) conduct research, document, share information, and co-ordinate public awareness programmes in the Community, in co-operation with the relevant agencies in the Partner States against the practice of female genital mutilation;
- (c) advise and provide technical advice to the Community on planning, financing and co-ordinating activities relating to female genital mutilation;
- (d) compile annual reports on the status of elimination of female genital mutilation in the Community, which reports shall be forward to Council for onward transmission to the Assembly for debate and consideration; and
- (e) perform such other functions as may be assigned by the Community.

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PART IV—MISCELLANEOUS PROVISIONS

15. (1) The Partner States shall adopt comprehensive laws that prohibit female genital mutilation, facilitate the prosecution of perpetrators, protect victims and girls and women at risk.

Measures
by Partner
States

(2) The Partner States shall within their national budgets avail resources to—

- (a) protect women and girls from female genital mutilation;
- (b) provide support services to victims of female genital mutilation; and
- (c) undertake public education and sensitize the people of the Community on the dangers and adverse effects of female genital mutilation.

(3) The Partner States shall develop appropriate mechanisms, policies, measures, strategies and programmes to combat female genital mutilation including the—

- (a) establishment of regional data bases on cross border female genital mutilation;
- (b) enhancement of technical capacity for criminal intelligence;
- (c) enhancement of the exchange of criminal intelligence and other security information between the Partner States criminal intelligence information centers;
- (d) strengthening of cross border security;

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- (e) training of personnel and sharing information on the modus operandi being used by criminals;
- (f) enactment of laws on mutual legal assistance in criminal matters; and
- (g) establishment of cross border and inter-state communication.

Compliance
with the Act

16. This Act shall take precedence over other Partner State laws to which its provisions relate.

Regulations

17. The Council may make regulations for giving effect to the purposes of this Act.

to this end, the Partner States shall through appropriate legislative and other measures

abolish legislation and discourage customs that are discriminatory against women and

promote effective education awareness programmes aimed at changing negative attitudes towards women..."

In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa enjoins States Parties, which include all EAC Partner States, to prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. Article 5 of this Protocol specifically states that:

"States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

...(b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them."

Operational Principles of the East African Community under Article 7 of the Treaty obliges the Partner States to abide by principles of social justice and the maintenance of universally accepted standards of human rights.

The increasing levels of integration, free movement of persons within the Community under the Common Market and facilitated by the recent adoption of an East African International E-Passport provides further justification for enactment of a regional law that prohibits female genital mutilation in order to ensure that increased levels of integration are used positively to fight cross border and transnational crimes. It is envisaged that the enactment of this law will enhance cooperation in efforts to prosecute perpetrators of the crime.