

A review of Kenyan, Ugandan and Tanzanian public health law relevant to equity in health

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Executive summary

Public health functions cover assessment and monitoring of the health of communities and populations at risk to identify health problems and priorities; and the formulation of public policies designed to promote health, prevent disease, provide access to appropriate and cost-effective care, and evaluation of the effectiveness of that care. Equity in health implies addressing differences in health status that are unnecessary, avoidable and unfair, to ensure the redistribution of societal resources towards these outcomes and to promote the power and means people have to influence this redistribution.

This report presents a review of the public health laws in Kenya, Uganda and Tanzania that impact on equity in health to assess the extent to which the current legal framework addresses public health and health equity, recognising the changing challenges, contexts and policies in all three countries. It has been carried out within the Regional network for Equity in Health in East and Southern Africa (EQUINET) by the Law Faculty, Makerere University and Training and Research Support Centre to present the current status of public health laws in these three countries and make recommendations on how public health laws can be strengthened to promote public health and equity in health.

The study carried out a desk review and analysis of the public health laws of Kenya, Uganda and Tanzania and publicly available background documents, supported by liaison with different stakeholders in the three countries. As a desk review, there were constraints in accessing all relevant documents from the countries, with a bias against grey literature, materials not electronically available and de facto implementation of laws that is not well documented. Recognising this, feedback on and updating of this document will be done after public circulation to strengthen its inclusiveness.

The review presents a range of regional and international instruments that provide for basic public health obligations, which have been useful at regional level for securing rights for particular vulnerable groups. East African countries have ratified most them, signalling policy commitment to these instruments, and attention could now be given to ensuring that national laws cover their provisions, such as Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) and relevant provisions of the African Banjul Charter on Human and Peoples' Rights and of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/5).

Various areas of law are provided for in all countries, and it is more in their application that there may be deficits. The areas where constraints exist in application are in relation to:

- poverty, and differential access to services affecting the exercise of the right to life;
- laws on sexual and reproductive health rights in vulnerable groups;
- ensuring gender equity in application of laws;
- provisions for compulsory licensing and parallel importation of essential drugs; and
- exercise in disadvantaged communities of rights to information and participation in health.

Opportunities for strengthening the institutional interactions and capacities to support implementation are outlined in the paper.

Some areas of law are provided for in some laws but not in all relevant laws, or not in all countries. This calls for measures to harmonise the legal frameworks within countries to ensure consistency, and across the three countries to protect health across the region as a whole. These include:

- harmonising constitutional provisions to set a fundamental platform of rights, obligations and responsibilities for health and access to health care;
- ensuring explicit legal provision of the *precautionary principle*;
- updating environmental health rights, standards, authorities and obligations, including of private providers and developers and consumer rights from national to local level;
- harmonising provisions dealing with hazardous food, drugs and substances, and trade in services affecting public health;
- strengthening laws governing private health providers including traditional health services; and
- updating provisions for public information, awareness and participation in health services and for public accountability of health services.

In some cases there are policy commitments but omissions or gaps in law to reflect these policy commitments and ensure their application at national level across all sectors. This includes:

- provisions for food security, beyond the current focus on food safety, including in trade related aspects of food security;
- rights to shelter including on housing standards, public information and obligations for shelter and housing security for specific vulnerable groups;
- provisions regulating public and private financing of health services to ensure equity, adequate financial protection, inclusiveness and cross subsidies;
- laws governing trade in health and health related services, to ensure adequate protection of public health principles; and
- rights and obligations in relation to health worker migration, including of authorities and agencies financing, managing and negotiating such issues.

The authors suggest that these areas be reviewed by health authorities, parliamentary committees, health professional associations and health civil society to identify an agenda to:

- widen public awareness on existing laws;
- unambiguously secure public health rights, obligations and roles in all areas of economic and social activity; and
- address deficits and knowledge gaps where they exist, particularly in gaps between policy and law.

Public health law has perhaps not had adequate profile in academic and professional practice, but is a critical area of work if countries in east and southern Africa are to protect public health and health equity in an environment increasingly influenced by global challenges and policies.

1. Introduction

This report, carried out within the Regional network for Equity in Health in East and Southern Africa (EQUINET), presents the current public health law in Kenya, Uganda and Tanzania, and identifies areas for legal review to better promote equity in health.

Public health is based the notion that ‘the truths of science will be used to benefit everyone’ (Foege, 2004). It addresses health at population level. Public health includes:

- assessment and monitoring of the health of communities and populations at risk; and
- formulation of public policies to promote health, prevent disease, provide access to appropriate and cost-effective care, and evaluate the effectiveness of care.

The scope of public health has shifted from a traditional focus on disease eradication, surveillance, screening, sanitation and treatment. It now covers new social and environmental determinants of health, as well as risks across national borders, including preparedness for global pandemics, health effects of trade, bioterrorism and trans-border movement of hazardous substances. Public health draws on four principles and approaches:

- Prevention is prioritised. This includes:
 - primary prevention of disease and disability (e.g. immunisation);
 - secondary prevention for early detection of problems (e.g. screening for sexually transmitted diseases or tuberculosis); and
 - tertiary prevention to limit disease impacts (e.g. investigating food-borne outbreaks).
- Direct involvement of communities in health action is promoted, such as in the promotion of youth reproductive health.
- Actions are chosen that have widest collective gain. Hence, measures that reduce collective exposure to water borne disease through provision of safe water are preferred to treating individuals for water borne diseases.
- Methods for investigating the distribution and determinants of disease at community level (i.e. epidemiology) are used to identify causes and plan intervention.

Public health law is that branch of jurisprudence which deals with application of common and statutory law to the principles and practice of public health, to safeguard the population from harm. Public health law applies legal tools - legislation, regulation, litigation and international law - as instruments of public health.

Equity in health includes concepts of fairness and justice. It implies that everyone should have a fair opportunity to attain their full health potential (Whitehead, 1990), and that the primary determinant in access to health inputs should be health needs, and not factors such as status, gender, ethnicity, insurance, housing and disability (Berman et al, 1989). Access to health care is equitable if there are no information, financial, or supply barriers that prevent access to a reasonable level of health care (EQUINET SC 2007).

According to EQUINET, equity in health implies addressing differences in health status that are unnecessary, avoidable and unfair (EQUINET SC 2007). In east and southern Africa, these typically relate to disparities across racial groups, rural/urban status, socio-economic status, gender, age and geographical region. EQUINET is primarily concerned with equity motivated interventions that seek to allocate resources preferentially to those with the worst health status (vertical equity). Laws and policies are amongst the possible tools that exist to ensure the redistribution of societal resources towards these outcomes. Gaps in the laws protecting public health can leave people with inadequate information to promote health, undermine their power and means to manage risks to health, or to ensure a fair distribution of resources for health according to need. This means that strengthening public health law can contribute to health equity.

2. Review of public health laws

The study reviewed public health laws and policies in Kenya, Uganda and Tanzania in relation to equity in health. Specifically it:

- analysed major international and regional instruments relevant to public health;
- reviewed relevant laws to identify scope and coverage, as well as inconsistencies, redundancies and gaps;
- examined institutional mechanisms for enforcing public health laws; and
- made recommendations on areas to strengthen public health law to better promote health equity.

We conducted a desk review of public health laws, policies and relevant background documents. Information was obtained on National Plans, Policies, Acts of Parliament, reports, and papers through internet, consultation of stakeholders and libraries. The analysis was based on areas of health equity identified in international and regional treaties and protocols and outlined by EQUINET in its regional analysis of equity in health (EQUINET SC, 2007). Constraints in accessing all relevant documents, particularly from Kenya and Tanzania, and particularly those not available on internet, may bring a bias against grey literature not electronically available and against reporting of de facto implementation of laws that is not well documented. We recognise this and the changing legal situation in all countries. EQUINET will provide mechanisms for feedback and update this document after public circulation to strengthen its inclusiveness. This bias was mitigated to some extent by useful inputs from peer reviewers from the region.

3. International and regional instruments

International and regional instruments include both legally binding and non-legally binding instruments. This section summarises provisions of principal legally binding international and regional instruments with implications for public health and examines their incorporation into the domestic laws of Kenya, Tanzania and Uganda. There are several regional and international instruments affecting public health (see *Table 1*). East African countries have ratified most them, but have not fully included their provisions into their national laws.

These regional and international instruments have been applied and interpreted in other parts of Africa. For example in the case of *Media Rights Agenda and Others v Nigeria (2000) AHRLR 200 (ACHPR) 1998*, a communication submitted by the Constitutional Rights Project stated that on 23 December 1995, Mr Nosa Igiebor, the Editor in Chief of *TELL* magazine was arrested and detained. It was alleged that he had been denied access to his family, doctors and lawyers and received no medical help even though his health was deteriorating. Referring to Article 16 of the African Charter, the Commission held that there was a violation of Article 6, 7(1), 7(1)(c), 7(2), 9(1), 9(2), 14 and 16 and asked the Nigerian government to take necessary steps to make law and practice conform with the Charter.

In *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998)* the Commission held that the protection of the right to life in Article 4 also includes a state duty not to purposefully let a person die while in its custody. In this case, victims' lives were seriously endangered by the denial of medication during detention. The Commission considered that there was violation of Article 4 and Article 16 of ACHPR.

In another case of *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)* the complaint concerned consequences of environmental degradation in Ogoniland (in the Niger Delta) caused by Shell Corporation in

collusion with the Nigerian government. In its decision, the Commission referred to state obligations to ensure realisation of rights to a clean and healthy environment and to health.

These cases demonstrate the usefulness of international and regional instruments in the protecting health rights, even outside national legal systems. There is a possible bias against poor people in the benefit from these provisions as they may find it difficult to take cases to regional and international levels.

Table 1: International and regional instruments and their ratification and inclusion in domestic law

Instrument	Health Related clauses	Uganda ratification and inclusion in domestic law	Kenya ratification and inclusion in domestic law	Tanzania ratification and inclusion in domestic law
International				
International Covenant on Economic, Social and Cultural Rights (1966)	Article 12: Recognises the right of everyone to enjoy the highest attainable standard of physical and mental health. It requires states to: provide for the reduction of the stillbirth-rate and of infant mortality; and for the healthy development of the child; improve all aspects of environmental and industrial hygiene; prevent, treat and control epidemic, endemic, occupational and other diseases; and create conditions which would assure access to all medical service and medical attention in the event of sickness.	Ratified January 1987 The Constitution sets out the state's duty to ensure all Ugandans enjoy access to health services (Objective XIV(b). The Constitution (Art 39) and The National Environment Act (Section 3(1)) confers a right to a clean and healthy environment. The Constitution expresses the state's commitment to take all practical measures to ensure the provision of basic medical services to the population (Objective XX).	Ratified May 1972 The Children Act gives every child a right to health and medical care, which is the responsibility of parents and govt (Section 9). Environmental Management and Co-ordination Act gives every Kenyan right to a clean and healthy environment and a duty to safeguard and enhance the environment (Section 3). The Public Health Act empowers the minister to regulate to prevent spread of infectious diseases, by medical examination, detention, vaccination, isolation and medical surveillance (Section 71).	Ratified June 1976 Not available The Environment Management Act, 2004 provides that every person living in Tanzania has a right to clean, safe and healthy environment (Section 4).
Convention on the Elimination of All Forms of Discrimination against Women	Requires state parties to take all appropriate measures to ensure on a basis of equality of men and women the right to protection of health (Article 11.1(f)); eliminate discrimination against women in health care (Article 12), particularly rural women (Article 14); and ensure women have appropriate services for	Ratified July 1981 The Constitution states no one should be discriminated against on the ground of sex (Article 21(2)); the state should protect women and their rights, taking into account their unique status and natural maternal functions (Article 33(3)); and women should have the right to affirmative action to	Ratified March 1984 The Constitution prohibits discrimination of any nature (Sec 82).	Ratified August 1981 The Constitution provides that all persons are equal before the law and are entitled, without any discrimination, to protection and equality before

Instrument	Health Related clauses	Uganda ratification and inclusion in domestic law	Kenya ratification and inclusion in domestic law	Tanzania ratification and inclusion in domestic law
	pregnancy, confinement and post-natal care (Article12).	redress imbalances created by history, tradition, or custom (Article 33(5)).		the law (Article13).
International Convention on the Elimination of all forms of Racial Discrimination	State Parties undertake to prohibit and eliminate racial discrimination in all forms in the enjoyment of the right to public health, medical care, social security /services (Article 5).	Accessed November 1980 The Constitution provides that a person should not be discriminated against on the ground of race among other things (Article 21(2)).	Accessed Sept 2001 The Constitution prohibits discrimination of any nature (Sec 82).	Accessed Oct 1972 The Constitution prohibits discrimination, but does not expressly mention racial discrimination (Article 13(4) and (5)).
The Convention on the Rights of the Child	Recognises the right of the child to enjoy the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24.1). It requires state parties to: strive to ensure that no child is deprived of his or her right to access to such health care services (Article 24.1); and take measures to combat disease and malnutrition, through provision of adequately nutritious foods and clean drinking-water (Article 24.2.c). Guarantees the right to the best attainable state of physical and mental health (Article 16) and requires state parties to take necessary measures to protect the health of their people and ensure they receive medical attention when they are sick (Article 16) Places restrictions on the enjoyment of certain rights in the interest of public health (Article 11 and Article 12(2)).	Ratified August 1986 The Constitution provides that no child should be deprived by any person of medical treatment (Article 34(3)); and children are entitled to protection from social or economic exploitation and should not be employed in or required to do work that is likely to be harmful to their health (Article 34(4)). The Children Act requires the government to make medical arrangements for children (Section 10); and empowers any community member with evidence that a child's right to adequate food is being infringed to report the matter to the local government council of the area. The Constitution sets out the state's duty to ensure that all Ugandans enjoy access to health services (Objective XIV(b). It expresses the state's commitment to take all practical measures to ensure the provision of basic medical services to the population (Objective XX). It provides that a person	Ratified July 1986 The Children Act provides that every child has a right to health and medical care, which is the responsibility of the parents and government (Section 9). It imposes a responsibility on government and the family to ensure the survival and development of the child (Section 4), and confers a right on a disabled child to be treated with dignity and accorded appropriate medical treatment (Section 12).	Ratified June 1987 Not accessed The Constitution requires enactment of laws to defend public health (30(2) b) and obliges states to direct policies and programmes to use national resources for development, especially poverty and disease eradication (Article 9i)

Instrument	Health Related clauses	Uganda ratification and inclusion in domestic law	Kenya ratification and inclusion in domestic law	Tanzania ratification and inclusion in domestic law
		can be deprived of property in the interest of Public health (Article 26 (2)); and of personal liberty to prevent spread of an infectious or contagious disease (Article 23(1)d).		
Regional				
African Banjul Charter on Human and Peoples' Rights	Requires state parties to enact and implement laws to prohibit discrimination and harmful practices that endanger women's' health (Article 2); respect women's' right to health (Article 14(1)); provide adequate, affordable and accessible health services to women (Article 14 (2)); establish and strengthen pre-natal, delivery and post-natal health and nutrition services for pregnant and breast-feeding women (Article 14(2)).	The Constitution prohibits Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status (Article 33(6)). No express provision for other clauses.	Not accessed	The Constitution prohibits the enactment of any law which is discriminatory in itself or by its effect. (Article 13(2)) No Express provision for other clauses.
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/2005)	Requires member states to: protect women's reproductive rights by authorising medical abortion in cases of sexual assault, rape and incest (Article 14(2)); take measures designed to protect human health against pollutants and water-borne diseases (Article 7); co-ordinate and harmonise general policies on health, sanitation and nutritional co-operation (Article 2(2)(e)); and work with international partners to eradicate preventable diseases and promote good health on the continent (Article 3). The Executive Council must also co-ordinate and take decisions on policies in areas of common interest to the member states, including health (Article 13).	The Constitution requires the State to take all possible measures to prevent or minimise damage and destruction to water resources resulting from pollution or other causes (Objective XXVII); and to endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development, and in particular, ensure to that all enjoy rights and opportunities and access to clean and safe water. (Objective XIV) No provision for other clauses.	Not accessed	No express provision

The wider protection of health equity would come from including these provisions in domestic law. It is thus important to draw attention to the deficits in application shown in *Table 1*. Particular attention could be given to ensuring national laws cover the relevant provisions in Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966); the relevant provisions of the African Banjul Charter on Human and Peoples' Rights and relevant provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/5). The right to enjoy the highest attainable standard of physical and mental health as outlined in Article 12 of the ICESCR, for example, is generally expressed in a more limited manner in national laws.

4. Review of the legal framework for public health

This section explores the legal frameworks for equity and public health within major themes. Constitutional provisions for these areas of legal rights are explicitly separated, as they signal a hierarchy of protection of health rights in all areas of economic and social activity. Where public health is given explicit protection in areas of economic and social activity in law this is noted in the analysis.

4.1 Right to life

The right to life is central to humanity. It is enshrined in Article 3 of the UN Universal Declaration of Human Rights and in Article 6 of the International Covenant on Civil and Political Rights, making it legally enforceable in every UN member state. These instruments emphasise that every human being has the inherent right to life which ought to be protected by law and therefore no one shall be arbitrarily deprived of his/her life. All three countries recognise this right in their policies. In Kenya, Vision 2030 requires government to lower infant and maternal mortality. In Tanzania, the Poverty Reduction Strategy Paper sets goals to arrest AIDS related declines in life expectancy, and the Tanzanian Development Vision 2025 aims to reduce infant and maternal mortality rates. In Uganda, the National Health Policy requires government to develop mechanisms to ensure equity in access to basic services to avert pregnancy and birth related deaths and the childhood killer diseases.

The right to life is protected in law in all three countries, particularly in terms of protection of life and the provision of offences that undermine this right (see *Table 2*). Legal protection of this right is adequate across all three countries, but the application of this right is constrained by poverty and poor access to medical services.

Table 2: Legal protection of the right to life in the three East African countries

Kenya	Tanzania	Uganda
The Constitution provides that no person can be deprived of his/her life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted (Article 71(1)).	The Constitution provides that every person has the right to live and to the protection of his life by the society in accordance with law (Article 14).	The Constitution (1995) provides that no person should be deprived of life intentionally except under the law in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence and the conviction and sentence have been confirmed by the highest appellate court (Article 22(1)). It also provides that no person has the right to terminate the life of an unborn child except as may be authorised by law (Article 22(2)).
The Children Act 8 of 2001 provides an inherent right to life to a child (Section 4) and puts a responsibility on government and family to ensure child survival and		

Kenya	Tanzania	Uganda
development (Section 4).		
Penal Code, Chapter 63 provides for anyone who: unlawfully or negligently does any act which is, and which he knows or can reasonably believe to be, likely to spread the infection of any disease dangerous to life (Section 186); commits unlawful acts or omits to act and causes the death of another person (Section 202); of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder (Section 206); prevent a child from being born alive by any act or omission (Section 228); and administers poison to another which endangers or causes grievous harm (Section 236).	The Penal Code Act makes is an offence to spread infections or any disease dangerous to life (Section 179). The Criminal Procedure Act 9 of 1985 creates the offence of murder (Section 196).	The Penal Code Act provides for offences by any person who: by an unlawful act or omission causes the death of another person (Section 187); with malice aforethought causes the death of another person by an unlawful act or omission commits murder (Section 188); commits manslaughter when acting in pursuance of a suicide pact between him/her and another he kills the other (section 95(1)); kills an unborn child (sections 212 and 213); maliciously administers poison or a noxious thing with intent to harm or endanger the life of any person (section 221).

Life expectancy at birth ranged widely in the east and southern African region in 2003, from 32.5 years in Swaziland to 72.2 years in Mauritius, a range of 40 years. The rate of mothers dying due to pregnancy or child birth ranged in 2004 from 22/100 000 to 1300/100 000, with highest Maternal Mortality Rates (MMR) *fifty nine* times greater than the lowest (EQUINET SC, 2007). *Table 3* shows such differentials within the three study countries.

Table 3: Inequalities in nutrition across income groups in Kenya, Uganda, Tanzania

	Survey year	Ratio bottom quintile to top quintile		
		<5 year child stunting (using height for age)	Infant mortality rate	Under 5 mortality rate
Kenya	1998	2.6	2.4	2.2
Tanzania	1999	1.8	1.3	1.2
Uganda	2000	1.4	1.8	1.8

Source: UNDP, 2005.

Torture is defined under United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 as an act '*by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person...by or at the instigation of or with acquiescence of a public official or other person acting in an official capacity*' (Article 1(1)). While policies and laws reviewed do not specifically protect against torture, the constitutions of all three countries do. Lack of legal provision to operationalise this constitutional commitment, poor investigation of torture cases, limited access to courts, and poor enforcement in conditions of political conflict constrains enforcement of this right.

4.2 Food safety and security

Table 3 shows inequalities in nutrition across socio-economic groups exist in the three countries, particularly in Kenya. This makes food security an important dimension of health equity. The right to food refers to rights for regular access to sufficient, nutritionally adequate and culturally acceptable food for an active, healthy life (FAO, 2007). Articles 11(1) and (2) of the International Covenant on Economic, Social and Cultural Rights recognise the '*fundamental right of every-one to be free from hunger*', and link this to achieving the right to health. The Convention on the Rights of the Child Article 24(2)(c) obliges states '*to combat disease and malnutrition, including within the framework of primary health care, through,*

*inter alia, the application of readily available technology and through the provision of adequate nutritious food.*¹

The three countries recognise the right to food in policy. In Tanzania the Poverty Reduction Strategy Paper (PRSP) 2000 aims to halve the proportion of people who are food poor and improve access to food supplies. The National Strategy for Growth and Reduction of Poverty (2005) recognises the need to promote, processing and utilisation of nutrient rich foods in rural areas in the context of AIDS, while the Food and Nutrition Policy (year?) makes the link between nutrition and health and targets improving the nutritional situation of Tanzanians, especially in children and women and people with health needs.

In Uganda, the National Health Policy (1999) requires government to review and update the national food and nutrition policy in collaboration with other sectors, and proposes improving nutrition through programmes that address micronutrient deficiencies, obesity and other nutrition related diseases. The Food and Nutrition Policy 2003 promotes household to national level food reserves and use of appropriate technology to enhance agricultural production and food supply. Government must also provide mechanisms to ensure food is accessible to those who cannot feed themselves. The Plan for Modernisation of Agriculture (year?) promotes agricultural production, productivity and farm use storage to reduce post-harvest losses.

In Kenya, the Ministry of Agriculture Strategic Plan 2006-2010 mandates the Ministry of Agriculture as the lead agency to achieve food security. The Strategy aims to create an enabling environment for agricultural development through review of law and policy. The plan calls on government to facilitate increased productivity and agricultural outputs through improved extension, advisory support services, and technology application. These policies are to some extent backed by law, although more so in respect of food safety than food security (see *Table 4*). In the three East African Countries, only the Ugandan Constitution has explicit provisions for food security, with some legal provisions to support this for children and in employment and prisons settings. In all three countries, the provisions of law are more explicitly geared towards the protection of food safety.

Table 4: Legal protection of the right to food

Kenya	Tanzania	Uganda
No express provision in the constitution.	No express provision in the constitution.	The Constitution requires government to take appropriate steps to encourage people to grow and store adequate food; establish national food reserves; and encourage and promote proper nutrition through mass education and other appropriate means to build a healthy nation (Objective XXII). It also requires government to endeavour to fulfil fundamental rights to social justice and economic development and, in particular, food security (Objective XIV).
Food safety		
The Public Health Act requires all warehouses or buildings for storage of food stuffs to be built rat proof (Section 127). It prohibits: any person from residing or sleeping in any room in which foodstuffs are prepared or stored for sale (Section 128); sale or expose for sale or import or bring into any market or have in his possession without reasonable excuse any tainted, adulterated, diseased or unwholesome food, or which is unfit	The Public Health Act not accessed. The Food, Drugs and Cosmetics Act, 2003 restricts manufacture, import, distribution, sale or exposure for sale, pre-packaged food not registered by Tanzania	The Public Health Act requires all warehouses or buildings used for regular storage of foodstuffs for trade to construct with materials to make them rat proof (Section 101). It is an offence for anyone to reside or sleep in a room in which foodstuffs are stored (Section 102). The Act empowers: the minister to make rules regarding supply, import and inspecting

Kenya	Tanzania	Uganda
<p>for use, or any food for any animal which is in an unwholesome state or unfit for their use (Section 131(1)); and any person to collect, prepare, manufacture, keep, transmit or expose for sale any foodstuffs without taking adequate measures to guard against or prevent any infection or contamination thereof (Section 131(2)). It also empowers any medical officer to inspect any building to examine whether the food is fit for human consumption (Section 132).</p> <p>Food, Drugs and Chemical Substances Act, Cap 254 makes it an offence for any person to sell any poisonous, adulterated or unfit food for consumption (Section 3); to advertise any food in a manner that is false, misleading or deceptive as regards the safety of the food (Section 4); and to sell or store food under unsanitary conditions (Section 7).</p> <p>The Meat Control Act, Cap 356 empowers minister to regulate slaughterhouses and premises where meat is processed for human consumption (Section 3).</p> <p>The Occupational Health and Safety Act prohibits permitting any persons from taking food or drink where a poisonous or otherwise injurious substance is used (Section 100).</p> <p>The Dairy Industry Act, Cap 336 empowers the minister to regulate grades for any form of dairy produce and minimum standards to which dairy produce should conform and requires people who produce milk for sale to register with the Kenya Dairy Board and provides offences for failure to register (Sections 31, 32 and 33).</p> <p>The Fisheries Act, Cap 378 makes it an offence for any person to use any explosives, poisonous or noxious substances or electric shock device for the purpose of killing fish (Section 15).</p> <p>Agricultural Produce Marketing Act, Cap 320 empowers an administrative officer, police officer, officer of the Agriculture Dept or of a Marketing Board to enter upon the premises occupied by, a producer, dealer or other person, to examine all stocks of any regulated produce (Section 15).</p>	<p>Food and Drugs Authority (TFDA) (Section 28); makes it an offence to sell food not of the nature, substance or quality demanded by purchaser (Section 31) and manufacture, distribute, or sell not fit for human consumption (Section 32). A person must have TFDA licence to import food; and TFDA must keep a register on kind of food, chemical composition, microbiological and physical status of imported food (Section 37). Only premises registered by TFDA may be used to slaughter animals with intent to supply or sell, offer or expose for sale meat for human consumption (Section 41). No person suffering from diseases such as diarrhoea, chronic cough, typhoid, dysentery may have direct contact with food in food processing or handling operations (Section 45).</p>	<p>food in stores, shops, factories, hotels, restaurants, cafés, and other eating houses (Section 104); medical officer to examine anyone in any premises where milk or other food intended for sale is kept, sold or exposed for sale (Section 105); and the minister to make statutory orders requiring closure of any stock liable to any infectious disease (Section 106).</p> <p>The Food and Drugs Act: prohibits adding any substance to food, using any substance as an ingredient in food preparation, abstracting any constituent from food or subjecting food to any other process or treatment to render food injurious to health (section 2(1)); makes it an offence for a person to sell to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser (Section 3 (1)); to falsely label or advertise food (Section 5); to sell food unfit for human consumption (Section 6). It also requires medical practitioners to notify the medical officer of health of the district or area of the cases of food poisoning (section 13) and to inspect and control infected food (Section 14). It prohibits the sale of milk from diseased cows (Section 15) and any form of adulteration of milk (Section 16).</p>
Food security		
<p>The Employment Act 2007 requires employers to provide food where they have expressly agreed to in or at the time of entering into a contract of service (Section 33).</p>	<p>No provision</p>	<p>The Occupational Safety and Health Act 2006 requires every employer to provide and maintain adequate facilities for taking meals (section 54).</p> <p>The Children Act Cap 59 empowers any member of the community with evidence that a child's right to adequate food is being infringed to report the matter to the local government council of the area.</p> <p>The Penal Code Act Cap 120 makes it an offence for any person to neglect providing sufficient food to children (Section 157); or to adulterate any article of food or drink (section 172); or to sell noxious food or drink (Section 173).</p>

Weak mechanisms limit enforcement of these laws: i.e. collaborative mechanisms for diverse stakeholders, and constraints in capacities, equipment and numbers of food inspectors, laboratory analysts and standards enforcement bodies. New health challenges from genetically modified foods, protection of biodiversity of seed stock and other trade related aspects of food security appear to be less well protected in law, together with consumer rights or supplier obligations to providing information on prohibitions and standards applying to their products in source countries.

4.3 Promoting healthy environments

Healthy environments include access to health promoting shelter, water, sanitation, working conditions and community environments. Analysis of evidence from the ESA region shows that socio-economic differentials in access to healthy environments are a determinant of inequalities in health, with particular disadvantage for poor communities (EQUINET SC, 2007). The right to housing is viewed as one of the most basic of human needs and is perhaps the most integrating of the socio-economic rights (Onoria, 2007).

Of the policies in the three countries, Tanzanian makes most explicit provision for the right to housing. The Tanzania National Strategy for Growth and Reduction of Poverty (2005) calls for reduction of households living in slums without adequate basic essential utilities and proposes planned and serviced urban settlements with functioning town planning procedures in place. It requires government to take measures to ensure improved access and quality of services such as surveying and titling to ensure access to plots by the poor and vulnerable groups. The Tanzania Food and Nutrition Policy recognises the need for shelter and the relationship between nutrition and shelter due to the vulnerability to tuberculosis, pneumonia, and respiratory infections from poor shelter.

Few laws in the three East African countries provide for the right to housing (see *Table 5*). While the Uganda constitution does provide for the right to decent shelter, there are no laws operationalising this and laws in Kenya and Tanzania provide for shelter only for employees and disabled persons respectively. Public health laws do provide for collection of information on sub-standard housing and obligations to deal with these, although not uniformly across all three countries. There is scope for strengthening each national law to:

- set and monitor housing standards;
- prohibit the construction of sub-standard shelter and oblige remedy or upgrade to substandard shelter;
- inspect and provide public information on areas of sub-standard housing and plans to address these; and
- provide for requirements and obligations for shelter and housing security for vulnerable groups, including lodgers, children and people with disabilities and terminal illness.

Some of these issues are not dependent on housing law alone. For example, the rights to shelter in women and children surviving deaths of male adult spouses and parents has been noted to be linked to the provisions and ability to exercise rights in inheritance law (Loewenson, 2007).

Policies in the three countries provide for environmental protection and provision of safe environments. These include:

- the Poverty Reduction Strategy Paper in Tanzania
- the National Strategy for Growth and Reduction of Poverty (2005) which targets reduction of water related environmental pollution and proposes an initiative to raise the proportion of rural people who can access safe and clean water;
- the Food and Nutrition Policy for Tanzania which promotes environmental sanitation and safe water to improve health and nutrition, and requires enhanced programs to supply people with sufficient clean and safe water close to their residences; and

- the National Culture Policy requires cultural artists to mobilise the public to preserve and safeguard the environment.

Relevant policy documents on this in Kenya were not accessed. In Uganda, the National Health Policy (1999) expresses the government's commitment to address the increasing burden of disease resulting from poor environmental health, including through enforcing appropriate legislation and placing greater emphasis on rural areas where the population has low access to safe water and poor latrine coverage. This Policy requires District Health Care to ensure provision of safe water and environmental sanitation.

Table 5: Legal protection of the right to housing

Kenya	Tanzania	Uganda
The Constitution has no express provision.	The Constitution has no express provision.	The Constitution requires the government to endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and, in particular, ensure that Ugandans have a decent shelter (Objective XIVb).
Public health laws		
<p>The Public Health Act imposes a duty on every Health Authority to prevent erection or occupation of unhealthy buildings or unhealthy sites (Section 117) and on the Medical Department to collect information and publish it regarding bad or insufficient housing in the various districts of Kenya (section 125).</p> <p>It also empowers health authority, medical officer, sanitary inspector, police officer or on the order of court to enter any building to determine the extent of a nuisance (Section 123) and prohibits occupation of basements that are not habitable (Section 151).</p>	Not accessed	<p>The Public Health Act prohibits any person from causing a nuisance or other condition dangerous to health to exist on any land or premises owned or occupied by him or her (Section 54); and requires local authorities to take all lawful, necessary and reasonable practical measure to maintain their areas clean and in good sanitary conditions (Section 55).</p> <p>It creates a duty on local authorities to prevent or remedy danger to health arising from unsuitable dwellings (Section 56); and empowers the Minister to, by statutory order, prohibit within any area the erection of any premises intended for use as a dwelling constructed on the back-to-back system (Section 67(1)).</p> <p>It also empowers a local authority or a medical officer of health to enter any building or premises for the purpose of examining as to the existence of any nuisance at all reasonable times (Section 69); and empowers the local authority to give notice to the owner of the building requiring him or her to provide the building with such latrines or additional latrines (Section 88).</p> <p>Occupation of basements without permission of the local authority on the advice of the medical officer is prohibited (Section 114); and a permit must be obtained from the chief medical officer who must approve any nursing homes, maternity homes, convalescent homes, private hospitals, infirmary or any institution where invalids or convalescents are treated or received (Section 116).</p>
Other laws		
<p>The Employment Act 2007 requires employer to provide reasonable housing at his own expense (Section 31).</p> <p>The Housing Act, Chapter 117 provides for loans and grants of public moneys to build dwellings; to establish housing fund and housing board for these purposes (Preamble).</p>	<p>The Disabled Persons (Care and Maintenance) Act 1982 requires establishment and maintenance of settlements and other institutions for disabled persons (Section 19).</p>	

Table 6 indicates that only Uganda explicitly recognises the right to a clean and healthy environment in the constitution right, although in Kenya and Tanzania the right to life is interpreted to include this. The right to clean and healthy environment was emphasised in *The Environmental Action Network Ltd V The Attorney- General National Environment Management Authority (NEMA) (Misc. Application No. 39 of 2001)*; which granted, on behalf of non-smokers, that smoking in public places was a violation of the right to a clean and healthy environment. In Tanzania, the court equated the right to clean and healthy environment to the right to life in the case of *Festo Balegele and 749 Others V Dar es Salaam City Council Civil Cause No 90 of 1991* - an application by the residents of Kunduchi Mtongani to quash the decision of Dar es salaam City Council to dump the city's waste and refuse in their area,. Similar interpretation is reported in Kenya. A challenge to realising this right is that it is not yet appreciated by the law enforcement officers in the three countries.

Table 6: Legal protection of right to clean and healthy environment

Kenya	Tanzania	Uganda
No express provision, except that as earlier noted the courts have interpreted the constitutional right to life to include the right to a clean and healthy environment.	No express provision	The Constitution confers a right on every Ugandan to a clean and healthy environment (Article 39) and requires government to protect important natural resources including water (Objective XII). It also requires government to ensure all Ugandans access clean and safe water (Objective XIVb); and to take all practical measures to promote a good water management system at all levels (Objective XXI).
Public health law		
The Public Health Act prohibits causation of nuisance by any person on land or premises injurious or dangerous to health (Section 115); and imposes an obligation or duty on the local authority to maintain the district clean and in good sanitary conditions (Section 118). It also creates a duty on all local authorities to take all lawful, necessary and reasonably practicable measures to prevent any pollution dangerous to supply of water (Section 129); and empowers the minister to make regulations for local authorities and others the duty to enforce rules regarding among other things water supply (Section 130).	Not accessed	The Public Health Act prohibits causing a nuisance which is dangerous to health (Section 54); and empowers every local authority to take all lawful, necessary and reasonably practicable measures to prevent any pollution dangerous to health of any supply of water which the public within its district has a right to use and does use for drinking or domestic purposes (Section 103(a)).
Other laws		
The Environmental Management and Co-ordination Act 8 of 1999 confers the right to clean and healthy environment and a duty to safeguard and enhance the environment (Section 3). It is an offence for anyone to discharge or apply poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants or to permit anyone to dump or discharge such matter into the aquatic environment (Section 72). The Environmental Management And Co-Ordination (Water Quality) Regulations, 2006 requires that everyone should refrain from any act which directly or indirectly causes, or may cause immediate or subsequent water pollution	The Environment Management Act, 2004 gives every person a right to clean, safe and healthy environment (Section 4). It imposes a duty to everyone to safeguard and enhance the environment (Section 6); and makes it an offence for anyone to pollute or permit	The National Environment Act Cap 153 confers on every person a right to a healthy environment (section 3(1)) and imposes a duty on every person to maintain and enhance the environment (section 3(2)). The Penal Code Act makes it an offence for anyone to voluntarily vitiate the atmosphere in any place to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way (Section 177); or to voluntarily corrupt or foul water in any

Kenya	Tanzania	Uganda
<p>(Regulation 4); and every trade or industrial undertaking must install at its premises anti-pollution equipment for the treatment of waste emanating from such trade or industrial undertaking (Regulation 14).</p> <p>The Penal Code, Cap 63 makes it an offence for anyone to voluntarily vitiate the atmosphere in any place, to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way (Section 192); and to corrupt or foul the water of any public spring or reservoir, to render it less fit for the purpose for which it is ordinarily used (section 191).</p> <p>The Tobacco Control Act 4 of 2007 confers on all a right to a clean and healthy environment and to be protected from exposure to second-hand smoke (Section 32); and prohibits smoking in any public place (Section 33).</p> <p>The Occupational Health and Safety Act requires every occupier to provide and maintain - an adequate supply of wholesome drinking water at suitable points conveniently accessible to all persons employed (Section 91); and for use of employees, adequate and suitable facilities for washing, which should be conveniently accessible and kept in a clean and orderly condition (Section 92).</p> <p>The Employment Act 2007 requires employer to provide a sufficient supply of wholesome water for the use of his employees at the place of employment (Section 32).</p> <p>The Water Act 8 of 2002 vests all water resources in the state and the right to the use of water from any water resource subject to the regulation of the Minister (sections 3 and 5).</p> <p>Radiations Protection Act, Cap 243 prohibits manufacturing, possessing, selling, disposing, importing and exporting any irradiating device or radioactive material except under and in accordance with a licence issued (Section 8).</p> <p>The Environmental Management and Coordination (Waste Management) Regulations and Environmental Management and Coordination (Water Quality) Regulations (Rule 4) provide that persons shall refrain from any act which directly or indirectly causes, or may cause immediate or subsequent water pollution.</p>	<p>another person to pollute the environment in violation of established standards (Section 106). It is an offence to put or permit another to put into a stream rubbish, solid refuse of any manufactory or manufacturing process that would interfere with flow.</p> <p>The Penal Code creates offences in relation to nuisance (Chapter XVII).</p> <p>The Occupational Health and Safety Act 2003 requires employers to ensure supply and make readily accessible adequate, clean, safe and wholesome drinking water to all employed on the premises (Section 54).</p>	<p>public spring or reservoir, so as to render it less fit for purpose it is ordinarily used.</p> <p>The National Environment (Prohibition of Smoking in Public Places) Regulations, 2003 confers on every person the right to a clean, healthy and smoke free environment (Regulation 3); imposes a duty on everyone to implement measures to safeguard the health of non-smokers (Regulation 3); and prohibits smoking in public places (Regulation 4).</p> <p>The Occupational Safety and Health Act 2006 requires adequate supply of wholesome drinking water and suitable points in a work place conveniently accessible to all workers.</p> <p>The Water Act aims to promote the provision of a clean, safe and sufficient water supply for domestic purposes (Section 4); vests all rights to investigate, control, protect and manage water in government (Section 5); and requires a waste discharge permit for any one who wants to discharge or deposit wastes into water bodies (Section 29).</p> <p>The Water (Waste Discharge) Regulations, No. 32/1998 require a permit for any person to discharge effluent or waste into water bodies (Regulation 4); and requires every industry establishment or holder of a waste discharge permit to install anti-pollution equipment for the treatment of effluent and waste discharge emanating from the industry (Regulation 15).</p> <p>The National Water and Sewerage Corporation Act requires the Corporation to manage water resources in ways which are most beneficial to the people to develop the water and sewerage systems in urban centres and big national institutions throughout (Section 4(2)).</p>

Public health law provides for protection against 'nuisance' and other laws deal with specific forms of health related nuisance, like tobacco smoke, poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants. This leaves relatively unaddressed in law obligations of private providers and developers, particularly given the growth of informal settlements and privatisation of supplies. It does not provide for consumer rights or supplier obligations to free basic levels of provisioning of water as necessary for protection of public health. New global challenges and obligations to environments due to climate change, cross border and global trade are not adequately addressed, including obligations for health

impact assessment prior to introducing new technologies or processes with potential environmental impacts, or obligations to inform of environmental provisions applying in source countries on these provisions or provisions for public information on environmental hazards. Finally, enforcement of laws that do protect communities is weakened by constraints to enforcement and limited elaboration of local roles and responsibilities.

4.4 Specific areas of public health

Safe working environments protect the safety, health and welfare of people engaged in work or employment, and where work is carried out in or hazards spill into community may also protect co-workers, family members, employers, customers, suppliers, nearby communities, and other members of the public who are impacted by the workplace environment. There is a substantial literature on the principles governing occupational health consolidated in conventions of the International Labour Organization (ILO) that promote the physical, mental and social well-being of workers in all occupations; prevention of health problems caused by working conditions; and placing and maintaining the workers in occupational environments adapted to their physiological and psychological capabilities. There are moral, economic and legal reasons for ensuring safe working conditions.

Only in Uganda does the Public Health Act provide for safe working environments, empowering the Minister to make rules for provision by employers of non domestic labour of hospital accommodation and medical attention, specifying the medicines, equipment and other requirements necessary (Section 118). In all countries, work environments are more specifically regulated through occupational health and safety acts (see *Table 7*). In Uganda, the Penal Code Act also makes it an offence for any employer to fail to provide to an employee necessities such as food, clothing or lodging, wilfully or negligently and without lawful excuse which endangers his or her health or cause permanent injury (Section 158). It creates an obligation on every employer who has contracted to provide food, clothing or lodging for any employee under the age of sixteen years to provide this and that omission of this duty is deemed to cause adverse effect on the worker's life or health (Section 201).

Table 7: Legal protection of healthy work environments

Kenya	Tanzania	Uganda
<p>The Occupational Safety and Health Act 2007 requires every occupier to ensure the safety, health and welfare at work of all persons working in his workplace (Section 6); and creates an obligation on employers to prepare and revise a written statement of general policy regarding the safety and health at work of employees (Section 7).</p> <p>It also requires: every employee to report to the immediate supervisor any situation which the employee has reasonable grounds to believe presents an imminent or serious danger to the safety or health of that employee or of other employee in the same premises (Section 14); every workplace be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance (Section 47); an occupier to ensure effective and suitable provision is made to secure and maintain adequate ventilation, by the circulation of fresh air in each workroom (Section 49); and to secure</p>	<p>The Occupational Health and Safety Act 2003 provides for safety, health and welfare of persons working in factories and other places of work; protection of persons other than persons at work against hazards to health and safety arising out or in connection with activities of persons at work (Preamble).</p> <p>It empowers inspector to enter, inspect and examine any place which s/he reasonably believes to be a workplace where s/he believes explosives or highly inflammable materials are stored or used (Section 6(1)(b)); and requires appointment of safety and health representatives whose functions include to review effectiveness of health and safety measures, identify potential hazards and major incidents at a factory or workplace and examining the causes</p>	<p>The Occupational Safety and Health Act imposes a duty on an employer to take all measures to protect workers and the general public from the dangerous aspects of the employer's undertaking at his or her own cost (Section 13).</p> <p>It also requires employers to ensure the working environment is kept free from any hazard to pollution by employing technical measures applied to new plants or</p>

Kenya	Tanzania	Uganda
<p>and maintain sufficient and suitable lighting, whether natural or artificial, in every part of the workplace where persons work or pass (Section 50).</p> <p>Draining off wet floors where the process carried on renders the floor liable to be wet (Section 51); and provision of clean and maintained sanitary conveniences for persons employed in the work place (Section 52) are also required. The minister is empowered to make regulations related to medical conditions surveillance and medical examination where he believes conditions of work have changed due to introduction of new process or substance or there is a risk or injury to the health of a worker engaged in the process (Section 103).</p>	<p>of incidents at the factory or workplace (Section 12). It requires thorough pre-placement and periodic occupational medical examination for fitness for employment to be carried out by qualified occupational health physician or where necessary qualified medical practitioner as may be authorised by the chief inspector (Section 24); and imposes a duty on every employer to securely fence prime movers, turbines, electric generators, motor or rotary converter, fry wheels of transmission machinery. (Section 25).</p> <p>Also required are: provision and maintenance of efficient devices and appliances (Section 27); and protective equipment for workers exposed to any injurious or offensive substance or environment (Section 62). The factory or work place must have safe means of access and safe working place (Section 43); and employer must ensure preventive, administrative and technical measures to prevent or reduce contamination of work and environment against chemicals (Section 73).</p> <p>An annual assessment must be carried out where there are activities in every factory or workplace that involve hazardous processes, hazardous equipments or use of hazardous chemicals likely to result in adverse health effects to people or serious damage to property or environment in case of accidents (Section 60).</p>	<p>processes and employing supplementary organizational measures (Section 13); and those with at least 20 workers at a workplace to prepare and often revise a written statement of policy with respect to the safety and health of the employees while at work (Section 14).</p> <p>Every workplace must be kept in a clean state, free from effluvia arising from any drain, sanitary convenience and other nuisance (Section 46); and must be in a healthy and safe working environment (section 47). Adequate sanitary conveniences must be provided at workplaces (Section 49).</p>
Other laws		
<p>The Employment Act, 2007 entitles a female employee to a maternity leave of three months with full pay (Section 29(1)); and a male employee to a paternity leave of two weeks with full pay (Section 29(8)). It also entitles an employee to a sick leave with full pay (Section 30).</p> <p>The Radiations Protection Act, Cap 243 provides for the protection of the public and radiation workers from the dangers arising from the use of devices or material capable of producing ionizing radiation. (Preamble)</p> <p>The Work Injury Benefits, Cap 13 entitles an employee involved in an accident resulting into the employee's disablement or death to compensation (Section 10).</p>	<p>The Protection from Radiation Act 1983 imposes a duty on the Commission and on every person using radiation to ensure provisions are made and systems of operation established whereby the health and the person of workers, students and members of the public generally are secured against all foreseeable harm resulting from ionizing radiation (Section 23).</p> <p>The Workers Compensation Ordinance, Cap 263 provides for compensation to workmen for injuries suffered in the course of employment.</p>	<p>No provision</p>

The laws on occupational health conditions are still new in the East African countries. Implementation is limited by lack of knowledge about them, the limited technical capacity for enforcement, and the economic signals that make securing a job more important than the conditions of work, and weaken workers willingness to challenge unsafe work.

Laws in the three countries regulate and set standards on the safety, use, and handling of hazardous materials (see *Table 8*).

Table 8: Legal protection against trade in hazardous goods, substances and services

Kenya	Tanzania	Uganda
Public health laws		
Nil	Nil	Nil
Other laws		
<p>The Food, Drugs and Chemical Substances Act, Cap 254 makes it an offence for anyone to sell any adulterated drug or which consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased substance or foreign matter; label, package, treat, process or sell or advertise in a manner that is false, misleading or deceptive as regards its character, constitution, value, potency, quality, composition, merit or safety (Section 254); sell to the prejudice of purchaser any drug not of the nature, substance, quality demanded by purchaser (Section 11); sell, prepare, preserve, package, store or convey for sale any drug under unsanitary conditions (Section 12); or any cosmetic that has in or upon it any substance that may cause injury to the user when used; sell or advertise any cosmetic in a manner likely to be mistaken (Section 14); or any cosmetic under unsanitary conditions (Section 15). It is also an offence to sell any chemical substance that is adulterated or consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased substance or foreign matter (Section 16); and to use or dispose of any chemical substance in a manner likely to cause contamination of food or water for human consumption or in a manner liable to be injurious or dangerous to health (Section 24).</p> <p>The Dangerous Drugs Act, Chapter 245 provides that no person should trade in raw opium or coca leaves, phenanthrene alkaloids of opium, ecgonine alkaloids of the coca leaf, except under licence and into or from prescribed ports or places (Sections 3-5).</p> <p>The Environmental Management and Co-ordination Act 8 of 1999 makes it an offence for any person to discharge any hazardous substance, chemical, oil or mixture containing oil into any waters or any other segments of the environment (Section 93).</p>	<p>The Tanzania Foods, Drugs and Cosmetics Act restricts pharmacy business to pharmacists and prevents manufacturing for sale, supply or dispensing of any drug except under the supervision of a pharmacist (Section 47). It provides that a person can only import or export into mainland Tanzania drugs, medical devices, herbal drugs or poisons with a license issued by TDFA; and prohibits sale of adulterated or unfit drugs, medical devices and herbal drugs (Section 75); and cosmetics given or manufactured, imported, stored or exhibited for sale unless cosmetics conform to requirements prescribed by TFDA (Section 86). It empowers the Minister of Health to prohibit importation of any cosmetics likely to involve any risk to human being or containing ingredients of such a type and quantity which there is no justification in the public interest that it is necessary. (Section 90); and prohibits counterfeit cosmetics (Section 91).</p> <p>The Protection from Radiation Act 1983 establishes National Radiation Commission to control use radioactive material and protect persons from harm resulting from ionizing radiation (Preamble). It prohibits: use of any radioactive material or other facility by any person not registered (Section 10); installation of atomic energy plants unless compliant with provisions of the Act (Section 11); import of nuclear installation unless compliant with provisions under the Act for importers and import of nuclear installations (Section 12).</p> <p>The Tobacco Products (Regulations) Act, 2003 prohibits any person from manufacturing or importing any tobacco</p>	<p>No provision on food and drugs.</p> <p>The National Environment (Waste Management) Regulations, SI No 52/1999 requires: a person who generates domestic waste to separate hazardous waste from non-hazardous waste (Regulation 4(4)); and every container or package used to store hazardous waste be labelled (Regulation 10(3)) It prohibits transportation of hazardous waste on water, except hazardous wastes generated from islands within the territorial jurisdiction of Uganda (Regulation 21(2)).</p> <p>The Occupational Safety and Health Act 2006 requires: all stocks of highly inflammable substances be kept in a fire resistant store or in a safe place outside any occupied buildings (section 59); and practical steps to be taken to prevent explosion of hazardous substances. It prohibits use of toxic materials except where it is</p>

Kenya	Tanzania	Uganda
<p>The Explosives Act, Chapter 115 prohibits manufacturing any unauthorised explosive (Section 41); makes it an offence for anyone to keep, store or be in possession of unauthorised explosive (Section 6); and prohibits import or export, or causing import or export, any explosive, unless one has obtained a permit (Section 10).</p> <p>The Narcotic Drugs and Psychotropic Substances Control Act 4 of 1994 makes it an offence for any person to possess any narcotic drug or psychotropic substance (Section 2).</p> <p>The Tobacco Control Act 4 of 2007 provides a legal framework to control production, manufacture, sale, labelling, advertising, promotion, sponsorship and use of tobacco products (Section 3). It provides that no person should promote tobacco or a tobacco product by any means, including by packaging, that are false, misleading or deceptive or likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the tobacco product or its emissions (Section 23).</p> <p>The Use of Poisonous Substances Act, Cap 247 provides for protection of persons against risk of poisoning by certain substances (Preamble).</p>	<p>product that does not conform with Tanzanian Bureau of Standards Act, 1975 (Section 4) standards. It also requires: every tobacco manufacturer to provide Minister of Information any information about the tobacco product and its emissions (Section 5); tobacco products on sale to contain health messages about dangers of tobacco products in Kiswahili and English (Section 6). It forbids: furnishing tobacco products to anyone under the age of 18 and requires sellers to place a sign indicating that sale or giving such products to persons under the age of 18 is prohibited (Sections 7 and 8); and selling and promoting tobacco products within grounds or premises of a school, social service institution and places set aside for persons under eighteen (Section 11 and 17).</p> <p>Promotion of tobacco products by any means including packaging that is likely to create an erroneous impression about the characteristics or health hazards of the tobacco products or its emissions (Section 27) is also prohibited. The Tobacco Products (Regulation) Committee created by the Act shall prepare and submit to the minister guidelines for regular and progressive implementation of matters relating to manufacture, sale, advertising, promotion and sponsoring of tobacco products (Section 31).</p> <p>The Tobacco Industry Act, 2001 prohibits export of unprocessed tobacco except with authorisation of the Minister (Section 16).</p> <p>The Anti-Dumping and Countervailing Measures Act, 2004 makes it an offence to provide misleading information to the Committee on anti-dumping (Section 75).</p>	<p>practicable not to use non-toxic materials. Hazardous substances at a workplace must be isolated from the premises to reduce the number of people exposed (section 95); and employers must label packages of hazardous chemicals delivered to the workplace.</p>

There are various provisions across different laws in all countries dealing with hazardous food, drugs, narcotics, tobacco, wastes and other hazardous substances. The law, however, is relatively biased towards substances and goods, and provides less protection in relation to trade in services, which is a more recent phenomenon. This deficit in law becomes important in relation to areas that affect public health, such as in financial services, advertising, transport services, particularly given the wider pressures to liberalise these areas. Hence, for example, unless laws specifically state requirements that such services shall be compliant with public health standards, minimise health risks and provide for health impact assessments where impacts are not clear, the possibilities of primary prevention of ill health may not be adequately protected in law. This is more so when there is lack of capacity to inspect premises and determine hazardous materials and lack of information provided to the public.

Policies exist to promote sexual and reproductive health in all countries, including for provision of sexual and reproductive health services. Policies to promote responses to HIV and AIDS have raised a greater level of attention towards sexual and reproductive health issues that are more specifically relevant to AIDS. For example in Tanzania, the National AIDS Policy requires accessibility and affordability of pre-marital HIV testing all over the country. It further requires the promotion of voluntary HIV counselling and testing for pregnant mothers. *Table 9* outlines the legal provisions in the three countries:

Table 9: Legal protection of sexual and reproductive health rights

Kenya	Tanzania	Uganda
Public health law		
<p>The Public Health Act requires: every person suffering from venereal diseases to seek medical treatment from medical practitioner (Section 43); parent or guardian to seek treatment for child believed to be suffering from venereal disease (Section 46). It is an offence to fail to have the child treated (Section 46 (2)) and persons suffering from communicable venereal diseases should not work in employment entailing care of children or handling food intended for consumption (Section 47). All medical officers with knowledge of a person suffering from a communicable venereal disease must give such person notice to attend medical treatment (Section 48). It is an offence for anyone with venereal disease to wilfully or negligently infect another (Section 49). Examination of female patients should be done by female medical practitioner (Section 52). Advertising or sale of medicines, appliances or articles to alleviate or cure venereal disease, disease affecting generative organs or sexual impotence is prohibited (Section 55).</p>	<p>The Infectious Diseases Ordinance, 1921, Cap 96 aims to prevent spread of infectious diseases (Preamble) and empowers authorities to quarantine areas and regulate entry into and exit from such areas.</p>	<p>The Public Health Act makes it an offence for anyone: who while suffering from any venereal disease in a communicable form, accepts or continues in employment either as an employee or on their own account in or about any factory, shop, hotel, restaurant, house, or any place in any capacity entailing the care of children, or the handling of food intended for consumption, or food utensils for use by any other person (Section 50(1)); to employ or continue to employ any person suffering from any venereal disease in a communicable form (Section 50(2)); and to publish, exhibit or circulate any advertisement or statement intended to promote sale of any medicine, appliance or article to alleviate or cure any venereal disease or disease affecting the generative organs or functions, or sexual impotence, or any complaint or infirmity arising from or relating to sexual intercourse (Section 51). It provides that no person should for reward either directly or indirectly, unless he or she is a duly registered or licensed medical practitioner, treat any person for venereal disease or suspected venereal disease or prescribe any remedy for venereal disease, or give any advice in connection with the treatment of it, whether the advice is given to the person to be treated or to any other person (Section 52).</p>
Other laws		
<p>The Children Act of 2001 provides that children should be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure</p>	<p>The Sexual Offences Special Provisions Act, 1998 makes it an offence for: a male to rape a girl under the age of 18; a woman (Section 5) to sexually</p>	<p>The Penal Code (Amendment) Act, 2007 makes it an offence to defile a girl below the age of 18 years (Section 129) and requires that offences of child sex be handled by the Children Act (Section 129(a)). It is an offence for anyone to have unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if consent is obtained by force, by means of</p>

Kenya	Tanzania	Uganda
<p>to obscene materials (Section 15). The Employment Act, 2006 prohibits sexual harassment in employment (Section 6). The Sexual Offences Act 3 of 2006 makes provision for sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts (Preamble). It is also an offence for any person to rape (Section 3); to defile a child (Section 8); or sexually harass (Section 23); and for any person with actual knowledge that s/he infected with HIV or any other life threatening sexually transmitted disease intentionally, knowingly and wilfully infects another person (Section 26).</p>	<p>assault any person by use of gestures or exhibiting any word or object intending that such a work is heard or seen (Section 9); to sexually exploit a child (Section 12); commit grave sexual abuse for sexual gratification any act using genitals or other body part or instrument on any artifice or body part of any other person (Section 12); sexually harass a person (Section 12); to procure defilement. (Section 15) for a person to attempt to commit unnatural offences (Section 17); and for any person to cause female genital mutilation (Section 21).</p> <p>The Prisons Act, 1967 creates the offences of sexual violence and rape in prison (Section 32).</p>	<p>threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by impersonating her husband (Section 123). It is an offence to: attempt to commit rape (Section 125); indecently assault any woman or girl (Section 128); or commit aggravated defilement where: a person against whom the offence in committed is below the age of 14 years; the offender is infected with HIV; the offender is a parent or guardian; the victim of the offence is a person with disability; and the offender is a serial offender.</p> <p>The Act makes it an offence for any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape (Section 130) It is also an offence to, by threat or intimidation, procure or attempt to procure any woman or girl to have any unlawful carnal connection (Section 132). It is also an offence for an owner, occupier of premises, or who acts or assists in managing or control of premises, to induce or knowingly suffer any girl under the age of 18 years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally (Section 133). No person may: unlawfully detain another person for the purpose of sexual intercourse (Section 134); knowingly live wholly or in part on the earnings of prostitution (Section 136); practice or engage in prostitution (Section 139); conspire to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her (Sec 140). No person may with intent to procure the miscarriage of a woman whether she is or is not with child, unlawfully administer to her or cause her to take any poison or other noxious thing, or use any force of any kind, or use any other means (Section 141) for a woman to procure a miscarriage (Section 142). The Act creates unnatural offences for persons who: have or attempt to have carnal knowledge of any person against the order of nature, of an animal, or permits a male person to have carnal knowledge of him or her against the order of nature (Sections 145, 146); unlawfully and indecently assault a boy under the age of 18 (Section 147); wilfully and by fraud cause any woman not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief (Sec152).</p>

The laws across the countries focus primarily on the control of sexually transmitted infections (through relatively old legal provisions on notification, treatment and control) and on the nature of sexual offences against vulnerable groups (through more recent laws linked to HIV). While these laws provide some level of public health intervention, vulnerable groups such women and children do not know or exercise their rights, fear to report sexual abuse cases, face taboos and norms about sexuality and reproduction that undermine their

reproductive health, with child marriage, female genital mutilation and early sexual initiation still being practiced notwithstanding their prohibition under the law. There are still weak mechanisms for investigating and prosecution of sexual abuse cases, particularly through 'victim friendly legal and court processes'.

4.5 Social rights in public health

While health information and education is fundamental for people to promote and protect health, it is poorly embodied in law, with weak provision for rights to sufficient health education and information to ensure that health decisions are informed (see *Table 10*).

All countries recognise in social policy the importance of community participation and social awareness and information. For example in Kenya, the Adolescent Reproductive Health and Development Policy 2005–2015 aims at increasing the demand for and use of condoms through effective publicity as well as multi-sectoral and targeted public education/ advocacy campaigns, while in Tanzania, the National AIDS Policy requires the provision of public education to ensure that users or consumers of health services, home care and cosmetic services know about and demand use of sterile skin-piercing equipment and other materials like gloves. Not surprisingly information and awareness is more strongly reflected in more recent laws such as those around AIDS, than in earlier laws where publicly health was implemented through more centrally decided and managed disease control strategies.

Table 10: Legal protection of the right to health education

Kenya	Tanzania	Uganda
No provision.	The Constitution requires government to make provisions for realisation of the right to education (Article 11).	The Constitution provides that all persons have a right to education (Article 30) and every child is entitled to basic education which is the responsibility of the State and child's parents (Article 34).
The HIV and AIDS Prevention and Control Act of 2006 requires: government to promote public awareness about causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign (Section 4); and every local authority, in collaboration with Ministry of Health to conduct educational and information campaigns on HIV and AIDS within its area of jurisdiction (Section 8).	The HIV and AIDS (Prevention and Control) Bill, 2007 requires the Ministry in consultation with the respective local government authority and other relevant stakeholders to formulate education programmes on HIV and AIDS.	No provision

There is policy sensitivity to the issue of discrimination on grounds of racial, ethnic, religious belief, disability, age or sexual orientation affects access to and uptake of services, through barriers to access or poor treatment. The National AIDS policy in Tanzania, for example, explicitly refers to minimising stigma, discouraging discrimination of PLWHAS in relation to education, employment, health and any other social services. *Table 11* summarises the non-discrimination laws in the East African countries.

Table 11: Legal protection of the freedom from discrimination

Kenya	Tanzania	Uganda
<p>The Constitution prohibits discrimination of any nature (Section 82).</p>	<p>The Constitution provides that all persons are equal before the law and entitled, without discrimination, to protection and equality before the law (Article 13).</p>	<p>The Constitution provides that: all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law (Article 21(1)); and a person should not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability (Article 21(2)). It empowers Parliament to make laws to implement policies and programmes to redress social, economic, educational or other imbalance in society (Article 21(4)).</p>
Other laws		
<p>The Occupational Safety and Health Act, Cap 15 prohibits employers' discrimination regarding employee's employment (Section 8(1)).</p> <p>The Children Act 8 of 2001 provides that no child may be discriminated against based origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection (Section 5).</p> <p>The Employment Act 11 of 2007 imposes a duty on the Minister, labour officers and Industrial Court to promote equal opportunity in employment to eliminate discrimination in employment (Section 5)</p> <p>The HIV and AIDS Prevention and Control Act 14 of 2006 provides that no one should be denied access to employment for which he is qualified or transferred, denied promotion or have employment terminated because of his actual, perceived or suspected HIV status (Section 31); and no educational institution should deny admission or expel, discipline, segregate, deny participation in any event or activity, or deny any benefits or services to a person because of the person's actual, perceived or suspected HIV status (Section 32).</p>	<p>The HIV and AIDS (Prevention and Control) Bill, 2007 prohibits discrimination in laws, policies and practice.</p>	<p>The Children Act requires any person having custody of a child to protect the child from discrimination.</p> <p>The Penal Code, Cap 120 makes it an offence for a person to make a statement against another on account of religion, tribe or ethnic or regional origin (Section 41).</p>

Freedom of assembly and movement are important for people to exercise social participation in health, but can also be constrained in the interests of public health. For example movement of people across borders may be limited during epidemics where this may lead to epidemic spread. The balance between reasonable limits on these rights for public health and infringement of wider civil freedoms is not always clear and can be a matter for public debate, especially where legal provisions do not clearly set criteria to be used in judging what is reasonable.

The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights require that when a government limits the exercise or enjoyment of a right, this action must be taken only as a last resort and will only be considered legitimate:

- if the restriction is provided for and carried out in accordance with the law;
- if the restriction is in the interest of a legitimate objective of general interest;
- if the restriction is strictly necessary in a democratic society to achieve the objective;

- if there are no less intrusive and restrictive means available to reach the same goal; and
- if the restriction is not imposed arbitrarily, i.e. in an unreasonable or otherwise discriminatory manner.

Principle 25 expressly provides that Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. It requires that these measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

Table 12 highlights that all three countries provide for freedoms of association, assembly and movement in their constitution, but also have acts that restrict these freedoms.

Table 12: Legal protection of the freedoms of association, assembly and movement

Kenya	Tanzania	Uganda
The Constitution guarantees freedom of: expression or freedom to hold opinions without interference, freedom to receive ideas and information without interference and freedom from interference with his correspondence unless it is reasonably required in the interests of public health among other things (Section 79); and movement including a right to enter and leave Kenya (Section 81).	The Constitution gives every citizen the right to freedom of movement and to live in any part of Tanzania, to leave and enter the country, and not be forced to leave or be expelled.	The Constitution guarantees freedom of speech and expression which should include freedom of the press and other media (Article 29(1a)). It provides that every person should have the freedom of thought, conscience and belief which shall include academic freedom in institutions of learning (Article 29(1b)); and confers freedom to every person to practice any religion and manifest such practice which should include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution (Article 29(1c)). It requires government to ensure every person has the freedom to assemble and demonstrate together with others peacefully and unarmed and petition (Article 29(1d)). The Constitution also recognises that freedom of association should include the freedom to form and join associations or unions, including trade unions and political and other civic organisations (Article 29(1e)). It confers on every Ugandan a right to move freely throughout Uganda and reside and settle in any part of Uganda; to enter, leave and return to, Uganda; and to a passport or other travel document (Article 29(2)).
The Penal Code, Cap 63 provides that anyone who takes part in an unlawful assembly is guilty of a misdemeanour and is liable to imprisonment for one year (Section 79).	Not accessed	The Police Act, Cap 303 empowers the inspector general to prohibit the convening of an assembly if it likely to cause a breach of the peace (Section 32(2)).

While cultural practices and beliefs may promote beneficial health practices, such as traditional medicines, there are also those that are harmful to specific groups, such as female genital mutilation (FGM); early marriage; taboos and dowry price. The Uganda constitution explicitly recognizes the dual impact of cultural practice, although the constitutions in other countries do not (see *Table 13*). In general there is little explicit legal control of cultural practices that may be harmful to health outside of laws protecting children (in Kenya and Uganda) and regulating traditional medical practice (in Tanzania). Cultural issues are sensitive, and various beliefs and norms wide spread in the East African countries with health consequences. There appears to be scope to ensure that current laws adequately deal with cultural practices with public health impact, and particularly those that affect women, to ensure that gender sensitive policies such as the Tanzania National AIDS Policy are equally provided for in law.

Table 13: Legal provisions for cultural practices related to health

Kenya	Tanzania	Uganda
No provision	No provision	<p>The Constitution requires development of cultural and customary values consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution (Objective XXIV); and the State to promote and preserve cultural values and practices which enhance the dignity and well-being of Ugandans (Objective XXIV).</p> <p>It invalidates customs inconsistent with any of the provisions of the Constitution (Article 2), as well as cultures, customs or traditions against the dignity, welfare or interest of women or which undermine their status (Article 33(6)).</p> <p>It confers on every person a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others (Article 37); and preserves the institution of traditional leader or cultural leader in any area in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies (Article 246(1)).</p>
Other laws		
<p>The Children Act 8 of 2001 provides that no person should subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development. (Section 14).</p>	<p>The Traditional and Alternative Medicines Act, 2002 makes provision for promotion, control and regulation of traditional and alternative medicines practice and establishes the Traditional and Alternative Health Practice Council (Preamble).</p>	<p>The Children Act, Cap 59 outlaws subjecting a child to social or customary practices harmful to the child's health (Section 7).</p>

4.6 Applying the precautionary principle in public health

As shown in the earlier sections, changing social and economic policies and processes make it difficult to have a sufficiently dynamic and comprehensive legal framework for protecting against all public health risks. It is thus important to assess the extent to which the precautionary principle is applied to provide more general protection to the response to hazards for which specific provisions may not exist. The precautionary principle asserts that the burden of proof for potentially harmful actions by any party in public health rests on the party to prove that the process is safe/ not harmful to health and that when there are threats of serious damage, scientific uncertainty must be resolved in favour of prevention.

While this is a generally accepted approach, in practice it confronts economic and social interests to expand new technologies and processes, power imbalances between communities and companies, health and economic ministries, and the weakness of legal provisions for health impact assessment. The priority for prevention is present in policy, for example in the Kenya Vision 2030, which pledges to revitalise Community Health Centres to promote preventive health care (as opposed to curative intervention) and promotion of healthy individual lifestyles. The laws of the East African countries apply the precautionary principle in the health sector under the Public Health Acts, empowering medical officers to

prevent practices that lead to health risk, as shown in the prior tables and in *Table 14*. The Environment Management Act (2004) of Tanzania is the only law that explicitly provides the precautionary principle. It would seem relevant for all countries to embody clauses in their public health law to similarly provide for *'the precautionary principle to be applied, requiring that where there is risk of serious, irreversible advance effects to health occurring the lack of scientific certainty should not prevent or impair the taking of precautionary measures to protect public health'*.

Table 14: Legal provisions for the precautionary principle

Kenya	Tanzania	Uganda
Public health law		
<p>The Public Health Act requires the port health officer to take precautionary measures at the port of entry (Section 64); and empowers the minister to make regulations to prevent introduction of infectious diseases in Kenya including medical examination, detention, vaccination, isolation and medical surveillance (Section 71).</p>	<p>Not accessed</p>	<p>The Public Health Act empowers: if medical officer is of opinion that cleansing and disinfecting any building would tend to prevent infectious disease, to give notice to owner/occupier specifying steps to be taken to cleanse and disinfect building (Section 13(1)); and the local authority to direct destruction of any building, bedding, clothing or other articles exposed to infection (Section 14(1)). It also requires: parent/guardian of every child born in Uganda, within twelve months from birth, to cause child to be successfully vaccinated by public vaccinator or medical practitioner (Section 39(1)); and a superintendent or person in charge of a leper asylum, mental hospital, chronic sick hospital, gaol, prison, reformatory or other similar institution to cause to be vaccinated every inmate (Section 44).</p>
Other laws		
<p>The Occupational Health Safety Act requires: employers or self-employed person to notify area occupational safety and health officers of any accident, dangerous occurrence, or occupational poisoning at workplace (Section 21); medical practitioner must send detailed contacts to the Director of a patient who he believes to be suffering from any specified disease (Section 22). It also requires: all stock of highly inflammable substances to be kept in fire-resisting store or safe place outside any occupied building (Section 78); safety measures where work is done in a chamber, tank, vat, pit or other confined space, where there are dangerous fumes (Section 79); practical measures to prevent explosion in an enclosed plant (Section 80); installation of readily accessible, easy-to-use fire extinguishers</p>	<p>The Occupational Health and Safety Act 2003 requires precautionary measures to be taken for explosive or inflammable gas, vapour or substance (Section 45). The Environment Management Act, 2004 provides precautionary principle: where there is risk of serious, irreversible advance effects occurring, lack of scientific certainty should not prevent or impair taking precautionary measures to protect the environment (Section 7(3)(c)).</p>	<p>The Occupational Safety and Health Act 2006 requires an employer to take general protective measures including administrative and technical measures to prevent or reduce the contamination of the working environment (Section 95).</p>

Kenya	Tanzania	Uganda
<p>(Section 81). The Births and Deaths Registration Act, Cap 149 prohibits burying, cremating or otherwise disposing of body of deceased person without a permit (Section 21). The Environmental Management and Co-ordination Act, Cap 8 provides that everyone is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment (Section 3(1)). The High Court can prevent, stop or discontinue any act or omission deleterious to the environment (Section 3(3)a). The HIV and AIDS Prevention and Control Act 14 of 2006 requires a person who is aware of being infected with HIV or is carrying and is aware of carrying the HIV virus to take all reasonable measures and precautions to prevent the transmission of HIV to others (Section 24). The Malaria Prevention Act, Cap 246 prohibits: anyone from building or maintaining a dam or other construction to obstruct the flow of water into or out of a drain (Section 5); plant trees or otherwise cultivate land in a way likely, in the opinion of the health authority, to obstruct the flow of water into or out of or in a drain or culvert (Section 6); and anyone without the written consent of a health authority to make or connect or cause to be made or connected any drain into another drain or into a canal or stream (Section 7).</p>	<p>The Prisons Act, 1967 requires prevention of the spread of disease in prisons (Section 20(3)). The Internationally Notifiable Diseases Act, 1963 empowers the minister to declare a country, region, or place as endemic or infected if there is reasonable cause to believe disease exists. It provides for restriction to leave or enter infected area without proper permission; and detention/isolation of infected person subject to further medical observation and surveillance. The HIV and AIDS (Prevention and Control) Bill, 2007 requires any person living with HIV and AIDS to protect others from infection.</p>	

5. Review of the legal framework for equitable health services

5.1 Access to health services

In East African Countries, right of access to health services is not recognised as a fundamental human right guaranteed by the constitutions (Diaz, 2005), although it is recognised in policy. The three countries face a challenge in expanding basic health care inputs and allocating scarce resources to close wide gaps in access between rural and urban areas and across income related differentials. Income differentials appear to be associated with differential access to a range of health care inputs (see *Table 15*).

Table 15: Inequalities in access to health care, 1990-2002

Country	Rich-poor ratio	
	Vaccinated children (12 -23 months)	Delivery assisted by doctor, nurse or midwife
Tanzania 1996	1.4	3.0
Tanzania 1999	1.5	2.9
Uganda 1995	1.8	3.1
Uganda 2000/1	1.6	3.9

Adapted from: Carr, 2004.

Using data from the Tanzania Demographic and Health Survey, for example, Smithson (2006) found large differences in Tanzania between women from richer households than the poorest women in contraceptive use, skilled assistance at delivery, caesarean section, post-natal care and use of treated bed nets. Even services believed to be near universal like measles immunisation showed such differences between wealth groups.

Access to health care is noted in health and poverty reduction policies across all three countries, particularly in relation to national and essential health care packages. Uganda's National Health Policy (NHP) for example, requires equitable distribution of health services throughout the country and requires government to develop mechanisms to ensure equity in access to basic services for the most important life-threatening health problems, particularly, to avert pregnancy and birth related deaths and the childhood killer diseases. The public health laws in Kenya and Uganda outline some of the basic provisions for primary health care, although the provisions are somewhat narrowly focused on primary medical care and infectious disease control (see *Table 16*).

Table 16: Legal provisions for the promotion of primary health care

Kenya	Tanzania	Uganda
<p>The Public Health Act imposes a duty on every health authority to take all lawful, necessary and, under its special circumstances, reasonably practicable measures to prevent occurrence of any outbreak of any infectious, communicable or preventable disease (Section 13). It also requires: health authorities to safeguard and promote public health, exercise powers and perform duties regarding public health (Section 13); inmates suffering from any notifiable infectious disease to go to the nearest medical officer of health (Section 18); parents and guardians to vaccinate every child by a public vaccinator or medical practitioner against small pox (Section 104); and every unvaccinated person to be vaccinated at entry port of Kenya (Section 105). The Act empowers: any health authority to direct destruction of any building, bedding, clothing or other articles exposed to infection from any infectious disease (Section 23); port health officer to inspect and medically examine anyone on board to ascertain whether or not an infection exists (Section 60); a minister to declare any place beyond or within Kenya infected with a formidable epidemic disease (Section 63); and the Minister to erect and establish from time to time asylums for detaining persons suspected of having infectious diseases (Section 77). It also makes it an offence for anyone to wilfully expose themselves without precautions against spreading disease (Section 28).</p>	<p>Not accessed</p>	<p>The Public Health Act empowers: the minister by statutory order to declare a disease a notifiable disease (Section 10); medical officer to inspect and medically examine any premises where there is reason to believe that anyone suffering or who has recently suffered from an infectious disease is or has recently been present, or any inmate of which has recently been exposed to the infection of any infectious disease (Section 12); medical officer to give notice ordering any premises to be disinfected to prevent or check infectious diseases (Section 13); and any local authority to direct destruction of any building, bedding, clothing or other articles which have been exposed to infection from any infectious disease (Section 14). It declares breeding places of mosquitoes to be nuisances, including water collection in any well, pool, gutter, channel, depression, excavation, barrel, tub, bucket or any other article, found to contain any immature stages of mosquito (Section 93). It also requires: any occupier or owner of any premises to keep premises free from all bottles, whole or broken, whether fixed on walls or not, tins, boxes, calabashes, earthenware vessels, shells or any other articles, and trees, standing or fallen, which are likely to retain water (Section 94, 96, 97); destruction by local authority or medical officer any immature stages of the mosquito found on any premises in any collection of water in any cesspit, well, pool, channel, barrel, tub, bucket, tank or any other vessel. (Section 98). The Act prohibits anyone in a municipality or town to permit premises or land owned or occupied by them or which they control to become so overgrown with bush or long grass which in the opinion of a medical officer of health is likely to harbour mosquitoes (Section 95).</p>

Table 17 summarises the provisions of the laws with implications for access to health services in the three countries.

Table 17: Legal protection of the right of access to health services

Kenya	Tanzania	Uganda
No provision in the Constitution .	No provision in the Constitution .	The Constitution sets out state duty to ensure Ugandans have access to health services (Objective XIV(b)) and commits to take all practical measures to ensure provision of basic medical care (Objective XX).
Public health law		
The Public Health Act empowers municipal council to provide temporary supply of medicine and medical assistance for poorer inhabitants of their district, but may at their discretion charge for them (Section 34).	Not accessed	The Public Health Act, Cap 281 empowers the minister to make rules for proper control of clinics or institutions open or kept open for the welfare and care of children or care of expectant or nursing mothers (Section 117).
Other laws		
<p>The Children Act 8 of 2001 provides that every child has a right to health and medical care, which is the responsibility of parents and government (Section 9). It confers a right on disabled children to be treated with dignity and accorded appropriate medical treatment (Section 12).</p> <p>The Employment Act, 2007 requires employers to ensure provision of sufficient and proper medicine for employees during illness and if possible, medical attendance during serious illness (Section 34).</p> <p>The HIV and AIDS Prevention and Control Act 14 of 2006 requires: every health institution, whether public or private and every health management organisation or medical insurance provider to facilitate access to healthcare services to persons with HIV (Section 19(1)); and government to provide essential medicines at affordable prices to persons with HIV or AIDS and those exposed to the risk of HIV infection (Section 19(2)). It also prohibits denying access to healthcare services in any health institution or charging a higher fee for any such services, based only on person's actual, perceived or suspected HIV status (Section 36).</p> <p>The Mental Health Act, Chapter 248 makes provisions for law relating to care of persons who are suffering from mental disorder or mental abnormality with mental disorder (Preamble).</p>	<p>The HIV And AIDS (Prevention and Control) Bill, 2007 requires government where resources allow to ensure everyone living with HIV and AIDS and orphans are accorded basic health services.</p> <p>The Foods, Drugs and Cosmetics Act permits TFDA to approve registration of a drug, medical device or herbal drug if it considers availability in public interest and is safe, efficacious and of acceptable quality. (Section 51). It also requires labels on containers and directions of drugs to be put in English or Kiswahili or both. (Section 56)</p> <p>The Prisons Act, 1967 requires medical examination for all prisoners (Section 20).</p> <p>The Disabled Persons (Care and Maintenance) Act 1982 provides for Care and Maintenance of disabled persons (Preamble) and requires every relative of a disabled person to care and provide for the maintenance of that disabled person (Section 14(1)): where there are more than one relative, all relatives have obligation to care and provide for maintenance of disabled person (Section 14(2)). It also imposes an obligation on every local authority either alone or in collaboration to establish, operate, manage and maintain facilities for care of persons who are disabled (Section 16).</p>	<p>The Occupational Safety and Health Act 2006 requires employers to provide first-aid room to administer first-aid (section 55).</p> <p>The Penal Code Act, Cap 120 makes it an offence to adulterate a drug to lessen its efficacy or change its operation (Section 174); and sell any drug knowing it is adulterated (Section 175).</p> <p>The National Drug Policy and Authority Act, Cap 206 requires every medical practitioner or dentist to keep a record of all persons who are addicted to drugs (section 29).</p>

Only Uganda has constitutional provisions to provide for access to health services. Public health law in Kenya and Uganda provide for services for vulnerable groups, while laws in the three countries make specific provisions for orphans, people with disability, employees, prisoners and people with mental health disorders. The legal provisions in the three countries (see *Table 18*) highlight the dimensions of health services that are subject to regulation, including the licensing and standards of conduct of health professionals, including traditional practitioners, the regulation of medicines and of private health practice.

Table 18: Legal protections in relation to health services

Kenya	Tanzania	Uganda
<p>The Medical and Dental Practitioners Act requires every person eligible to practice as a medical practitioner or dentist to register (Section 6); infamous or disgraceful conduct in respect of a registered medical practitioner or dentist to be punished (Sections 20, 22).</p> <p>The Nurses Act, Chapter 257 requires nurses to acquire a licence to practice (Section 17); and makes it an offence for a person not licensed or enrolled to act practice as a nurse (Section 20).</p> <p>The Nutritionist and Dieticians Act 18 of 2007 prohibits anyone from engaging in private practice unless issued with a valid licence to practice (Section 22).</p> <p>The Pharmacy and Poisons Act, Cap 244 requires those engaged in business of pharmacy to be licensed (Section 7).</p> <p>The Pharmacy Act 2002 requires Pharmacists, Pharmaceutical Technicians and Pharmaceutical Assistants to register and enrol with the Pharmacy Council (Section 13); and makes it an offence for a registered, enrolled or enlisted person to commit professional misconduct (Section 34).</p> <p>The Traditional and Alternative Medicines Bill, 2003 (<i>this is a bill and not yet in law</i>) requires that for a person to practice as a traditional health practitioner or aide must present identification document and a written statement from local government authority to registrar under the Act (Section 14). It is an offence to practice as a traditional health practitioner or aide without being</p>	<p>The Nurses and Midwives Registration Act, 1997 requires nurses and midwives to register (Sections 6 and 7).</p> <p>The Pharmaceutical and Poisons Act, 1978 protects consumers from purchasing substandard pharmaceutical products; and requires vendors of pharmaceutical equipment to sell only safe, quality products and equipment.</p> <p>The Opticians Act, 1966 provides for opticians to register ad bodies corporate carrying on business as opticians to enrol (Preamble).</p> <p>The Health Laboratory Technologists Registration Act 11 (1997) provides for health laboratory technologists to register (Preamble), and establishes Health Laboratory Technologists Council, mandated to regulate standards of conduct and activities.</p> <p>The Private Hospitals (Regulation) Act, 1977 makes provision to restrict private hospital management to approved organisations, and control fees and other charges payable for medical treatment and other services (Preamble). Organisations approved to provide medical services must be published yearly in the gazette and national</p>	<p>The Medical and Dental Practitioners Act requires those engaged in private practice to have a private practicing licence. Private health units must register (Section 29) and can only operate if attended by medical or dental practitioner (Section 31); they must be inspected by the registrar or authorised medical or dental practitioner (Section 32). The medical council may inquire into allegations of professional misconduct by a registered practitioner (Section 33). It is an offence to falsely use a name or title implying a qualification to practice medicine, surgery or dentistry (Section 47).</p> <p>Under the Nurses and Midwives Act registered midwives may go into private practice after five years service in a hospital or health unit (Section 30(1)); and registered nurses can only apply to engage in private practice after ten years' service in a hospital or health unit (Section 30(2)). Nurses and midwives need a special licence or permission to stockpile, retail or wholesale drugs (Section 34(1)). Nurses and midwives may not carry out procedures beyond common conditions and health problems but must refer all cases beyond their ability to a medical practitioner (Section 34(2)). The Act establishes a disciplinary committee with powers to inquire into the conduct of a registered nurse or midwife (Sections 36, 37) and makes it an offence for a person to use any title of a nurse or midwife unless registered under the Act (Section 53).</p> <p>The Pharmacy and Drugs Act requires pharmacists carrying on or employed in a pharmacy business to comply with requests of valid prescriptions (Section 28).</p> <p>The National Drug Policy and Authority Act makes it an offence for anyone to sell any drug, medical appliance or similar article which is not of the nature, substance and quality laid down in the authorised pharmacopoeia (Section 30). A licence is needed for a person to carry out business of a pharmacist or engage in the business of selling drugs (Section 14 and 15).</p>

Kenya	Tanzania	Uganda
registered or (Section 45). The Act imposes duty on every registered traditional or alternative health practitioner registered to attend and treat their patients with clear knowledge, skills and right attitudes (Section 35). It empowers the registrar to receive complaints against any traditional or alternative health practitioner or aide and present such complaints to the council (Section 37).	newspapers.	A certificate must be issued to certify the suitability of premises for drug supply (Section 17). No person or body may import or export any drugs without a licence from the drug authority (Section 44 and 45). The Public Health Act empowers the Minister to: inspect, sample and examine vaccines, vaccine lymphs, sera and similar substances imported or manufactured in Uganda and intended for use in preventing or treating human diseases; and prohibit import, manufacture or use of any such substance considered unsafe or liable to be harmful or deleterious (Section 121).

While all three countries regulate health of workers, only Kenya regulates traditional medicine and only Tanzania has a specific law regulating private health providers. The latter is particularly important, as private practice is a potential determinant of inequalities in health, in terms of bias in access and use of resources.

5.2 Fair financing of health services

The way a health system is financed is a key determinant of population health and well-being. In the East African countries, the level of health financing is still insufficient to ensure equitable access to basic and essential health services and interventions, making adequacy and equity of resource mobilisation and allocation for health important. Fundamental to equitable health financing is the principle of **financial protection**, that no one in need of health services should be denied access due to inability to pay and that households' livelihoods should not be threatened by the costs of health care.

According to EQUINET, progressive health care financing implies that contributions should be distributed according to ability-to-pay, and those with greater ability-to-pay should contribute a higher *proportion* of their income than those with lower incomes. Cross-subsidies (from the healthy to the ill and from the wealthy to the poor) should be promoted in the overall health system. Fragmentation between and within individual financing mechanisms should be reduced and mechanisms put in place to allow cross-subsidies across all financing mechanisms. Individuals should not be prejudiced in their access to essential health care due to their place of residence, income or other factors. Government allocations are a critical way of offsetting disparities arising from other factors, and should take these disparities into account when allocating resources across areas and levels of the health system (EQUINET SC, 2007).

National policies pay some attention to these issues. In Kenya, under Vision 2030 government pledges to provide resources to those who are excluded from health care by financial reasons. The National Condom Policy and Strategy 2001-2005 aims to ensure that user charges and revolving funds in public service delivery points are established, bearing in mind equity considerations. It further aims to implement a financing plan that involves the government, donors and other stakeholders. In Tanzania, the Poverty Reduction Strategy Paper provides for financing of poverty alleviation efforts including primary health care and water while policies for specific areas (AIDS, elderly) include provisions to mobilise resources for services for these vulnerable groups, including protection against inability to pay. In Uganda, the National Health Policy (NHP) recognises the role of public expenditure in protecting the most vulnerable population. It provides that the government should continue to allocate and spend an increasing proportion of its annual health budget (both domestic and external resources) to provide a minimum health care package in the medium term.

Government spending at central level and on referral and tertiary hospitals should be held constant in real terms and any additional resources for the health sector should be allocated preferentially to financing the Minimum Health Care Package. The Policy states that efforts to secure supplementary sources of public health sector finance will be intensified, including capturing a greater share of the very significant private expenditure on health. It requires subsidy provision to designated public health and essential clinical services that have visible externalities for the community.

In Kenya, various acts provide for funding of services, for example:

- The **Public Health Act** provides that expenses incurred by the municipal council in maintaining a person in a hospital or in a temporary place for the reception of the sick can be recovered from him/her after discharge from the hospital (Section 33).
- The **Children Act 8 of 2001** requires government to use the maximum available resources to achieve progressively full realisation of the rights of the child (Section 3).
- The **National Hospital Insurance Fund Act 9 of 1998** establishes a National Hospital Insurance Fund and makes provision for contributions to and the payment of benefits out of the Fund (Preamble).
- The **Factories Act, Chapter 514** requires the establishment of the Occupational Health and Safety Fund to be administered by the chief inspector (Section 70A).
- The **Work Injury Benefits Act, 2007** requires every employer to obtain and maintain an insurance policy, with an insurer approved by the Minister in respect of any liability that the employer may incur to any of his employees (Section 7).

Specific vulnerable groups are provided for in law. For example in Tanzania The Disabled Persons (Care and Maintenance) Act 1982 establishes a National Fund for the Disabled Persons whose objectives include: providing assistance to any disabled persons (Section 19), and providing financial assistance to voluntary or charitable organisations engaged in providing for the welfare of disabled persons (Section 19). Less well provided for are provisions covering tax funding of health services or the allocation of health resources to mobilise resources from the private sector or regulate insurance to ensure equity and cross subsidies in schemes. No comprehensive laws regulate parallel public and private health systems, co-payment for health services or subsidised payment or health insurance.

5.3 Equitable inputs to health services

Demand for and challenges to adequacy and equitable distribution of the personnel, drugs and other resources for health services is more fully discussed in other texts (EQUINET SC, 2007). While a range of policy measures are being applied to manage the challenges, limited or no specific legal provisions support these measures. Hence, legal provisions do not support measures to ensure an appropriately sized, structured, skilled, well balanced, distributed, resourced, committed and effectively performing health workforce; to provide retention incentives; or to manage migration. Migration is managed through bilateral agreements and international codes, but no law has been put in place in any of the three countries to regulate trade in health services, including health workers.

According to the World Health Organization (WHO), essential drugs are those that satisfy the priority health needs of the population, chosen with regard to disease prevalence, evidence of efficacy and safety, and comparative cost-effectiveness. In the context of functioning health systems, essential drugs are intended to be available at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and community can afford. Implementation of the concept of essential drugs is intended to be flexible and adaptable to many different situations, with the list of essential drugs a national responsibility. All three countries have adopted this concept. Uganda's National Drug Policy and Authority Act, Cap 206 requires that there should be a list of

essential drugs, revised from time-to-time (Section 8(1)). A national formulary should be made of the national list of essential drugs and other drugs as the National Drug Authority (NDA) may approve from time-to-time (Section 8(2)). It further requires the NDA to receive from the committee on essential drugs proposals of the revised list, made in accordance with available resources and existing diagnostic and therapeutic capacity (Section 9).

International law, particularly the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) on access to drugs, increasingly affects drug provision. There are concerns about the effects of TRIPS on access to drugs due to increased patent protection and reduced access to generic quality drugs at affordable price. Recognising the necessity of generic competition in developing countries to allow access to treatment, in 2001 the Doha Declaration provided that the TRIPS Agreement '*can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, access to medicines for all*' (Article 4). (quoted in (Mabika et al, 2007).

In particular this gave countries the authority to use TRIPS flexibilities in the interest of public health, including:

- transition periods for laws to be TRIPS-compliant;
- *compulsory licensing* or the right to grant a license, without permission from the license holder, on various grounds including public health;
- *parallel importation* or the right to import products patented in one country from another country where the price is less;
- exceptions from patentability and limits on data protection; and
- early working, known as the *Bolar Provision*, allowing generic producers to conduct tests and obtain health authority approvals before a patent expires, making cheaper generic drugs available more quickly at that time (Mabika et al, 2007).

The first step is to provide these flexibilities in national laws. All three countries provide for compulsory licensing and parallel importation in their national laws (see *Table 19* and *20*)

Table 19: Legal inclusion of TRIPS flexibilities

Country	LDC, i.e. option for law to be TRIPS compliant by 2016	Law provides for compulsory license	Law provides for parallel importation
Kenya	No	Yes	Yes
Tanzania	Yes	Yes	Yes
Uganda	Yes	Yes	Yes

Source: EQUINET SC, 2007

Table 20: Legal provisions on patenting

Kenya	Tanzania	Uganda
The Industrial Property Act 3 of 2001 provides: for promoting inventive and innovative activities to facilitate technology acquisition through grant and regulation of patents, utility models, technovations and industrial designs (Preamble); plant varieties in the Seeds and Plant Varieties Act but not parts thereof or products of biotechnological processes are not patentable (Section 26(a)); inventions contrary to public health and safety among others are not patentable (Section (b)); for compulsory licensing (Sections 72 and 75).	The Patent Act, 1987 empowers the minister to declare an order published in a gazette granting a licence for patented inventions of vital importance for defence of, among other things, public health (Section 54).	The Patents Act provides that where the Minister is of the opinion that it is in the vital public interest, and in consultation with the registrar, without the authority of patent owner, s/he may direct that a patented invention be exploited by a government agent or other person (Section 28(1)). It also makes provisions for compulsory licensing (Section 30).

5.4 Participation and accountability in health services

Addressing equity implies strengthening the power and ability people (and social groups) have to direct resources to their health needs, particularly for those with worst health (EQUINET SC, 2007). Studies demonstrate that interventions that strengthen empowerment generate health equity gains (Gilson et al, 2007). As a first step, *social mobilisation* strategies aim to increase social awareness of health and health systems, strengthen information flow from health services, improve health literacy, and enhance social capacities to take health actions. For improved equity, such strategies need to go beyond information sharing. They need to provide information, capabilities, resources and processes for more direct forms of participation in decision-making, and greater control over the resources for health, particularly by relatively disadvantaged and marginalised groups (Loewenson, 2007).

The right to access information refers to the right of interested parties to receive information held by health authorities. National policies in all three countries reflect this right (Tanzania AIDS Policy, Uganda National Health Policy, Kenya National AIDS Control Council and Policy), as do international and national laws. In Uganda, for example, the National Health Policy requires government to facilitate establishment and operation of a community-based health information system and dissemination of information to other stakeholders to improve management, share experience, and uphold transparency. Most laws require that official documents should be generally available to those interested in them and that any exceptions should be limited and specific. Access to information increases health authorities' accountability to patients (see *Table 21*). While some laws provide generally for the right to access information in the East African Countries, few provisions specifically provide access to health information. Together with lack of data and the unwillingness of health officials to provide information, absence of specific legal provision of rights to health information can undermine effective participation in health.

Table 21: Legal provisions on access health information

Kenya	Tanzania	Uganda
No provision in constitution.	The Constitution confers a right on all to be kept informed of community, national and international developments of concern to the life of people and their work (Article 18).	The Constitution confers a right on citizens to access information in possession of the State and its agencies if it does not prejudice the security or sovereignty or interfere with the right to privacy of any other person (Article 41(1)). It also empowers Parliament to make laws prescribing the classes of information and the procedure for obtaining access to that information (Article 41(2)).
The Access To Information Bill 2000 defines access to include the right to examine, look at, peruse, inspect, obtain, copy or procure any record, document or information (Section 2). It confers a right on every Kenyan to access official records held by a public authority (Section 4).	Not accessed	The Access to Information Act 6 of 2005 empowers an information officer to refuse access to health records, if disclosure would constitute an invasion of privacy (Section 21). An information officer is obliged to grant a request for access to a record of the public body otherwise prohibited if disclosure of the record would reveal evidence of an imminent or serious public health risk (Section 34). The Occupational Safety and Health Act 2006 requires employers to keep and maintain records of medical examination and information. The Public Health (Notifiable Diseases) Rules, S-I 281—21 requires: every owner or occupier of land, and every manager of a mine, employer of labour and householder to notify the local authority of any notifiable diseases (Rule 3); and every medical practitioner attending on, or called in to visit, a patient suffering from any notifiable disease to send a certificate indicating the disease, to the nearest medical officer (Rule 4).

While access to information is vital to participation in public health and health services, at individual level, protecting patient privacy is an important part of medical conduct. With medical information accessed by individuals not subject to medical ethics codes, such as employers, insurers, program administrators, lawyers and others, the right to privacy is important. In Tanzania, the National AIDS Policy requires HIV Testing to be confidential. In Uganda the Integrated Code of Conduct and Ethics for Health Workers requires health workers to respect the confidentiality of information relating to a patient and his or her family. The regulatory regime for protecting privacy of health information is complex and fragmented. Some protections apply only to information held by government agencies. Some protections apply to specific groups, such as government employees or school children. Some protections apply to specific medical conditions or types of information, such as information related to HIV or substance abuse treatment (see *Table 22*).

Table 22: Legal protection of the right to privacy

Kenya	Tanzania	Uganda
The Constitution provides that no person should be subjected to unlawful search (Article 76(1)).	The Constitution gives every person the right to respect, privacy and protection of their person, family and matrimonial life, and respect and protection of their residence and private communications (Article 16).	The Constitution provides that no one should be subjected to unlawful search (Article 27(1)) or interference with the privacy of their home, correspondence, communication or other property (Article 27 (2)).
The Public Health Act requires inquiries and proceedings concerning venereal diseases to be held in camera (Section 54).	Not accessed	No provision
The Children Act 8 of 2001 provides that every child should have right to privacy subject to parental guidance (Section 19). The HIV and AIDS Prevention and Control Act 14 of 2006 requires the Minister to regulate and prescribe privacy guidelines, including using an identifying code, relating to recording, collecting, storing and security of information, records or forms used in HIV test and related medical assessments (Section 20). It prohibits anyone disclosing any information concerning results of HIV tests or any related assessments to another (Section 22). The Employment Act, 2007 also has provisions on privacy.	The HIV and AIDS (Prevention and Control) Bill, 2007 requires all health practitioners, workers, employers, recruitment agencies, insurance companies, data recorders and other custodians of medical records, files, data or test results to observe confidentiality in handling all medical information and documents, especially the identity and status of persons living with HIV and AIDS (Section 17).	The Children Act requires that the child's right to privacy be respected throughout court proceedings.

As *Table 22* shows, some provisions for rights to privacy are found in the constitutions of the three countries and also in developing legislation on HIV and AIDS. Shortfalls may occur in the more detailed legal provisions setting out specific obligations and in exercising this right, due to unequal power relations or weak capacities of communities to claim respectful relations from health workers. Efforts to develop patient charters in some countries aim to enhance ethical practice, but need to be complemented by social actions and health system investments to realise this for more vulnerable social groups (EQUINET SC, 2007).

Policies in all three countries explicitly refer to capacity building in communities for participation in health (e.g. Kenyan Adolescent Reproductive Health and Development Policy; Tanzania National AIDS Policy; Uganda National Health Policy). These policies provide for mechanisms for accountability of services, to co-ordinate stakeholders, monitor performance of services and disseminate information on performance. In Uganda, a Draft National Policy on Public/Private Partnership in Health aims to create an enabling environment to effectively coordinate efforts among all partners in health, to increase effective resource allocation and equitable distribution of resources for health, and provide effective access by all Ugandans to essential health care. It recognises that private-not-for-profit institutions and non government organisations (NGOs), have significantly contributed to the health sector, and have a rapidly increasing, proportion of the health workforce.

This policy commitment calls for legal provisions to set out the roles, authorities and mechanisms for such participation and for accountability of health services in relation to these policies. As *Table 23* shows, while some laws provide for various boards and professional bodies, few laws provide mechanisms for community participation in health services in the three countries.

Table 23: Legal provisions for participation and accountability

Kenya	Tanzania	Uganda
No provision	No provision	The Constitution provides that government is responsible for developing Health Policy (Article 189, Schedule 6) and establishes Health Service Commission (Article 169) to review terms and conditions of service, standing orders, training and qualifications of members of health service and matters connected with their management and welfare; and make recommendations on them to government (Article 170(1)c). It introduces Inspectorate responsible for promoting and fostering strict adherence to rule of law and principles of natural justice in administration, and eliminating and fostering elimination of corruption, abuse of authority and of public office (Article 223 and 225).
The Public Health Act establishes a Central Board of Health (Section 3) to advise the Minister on all matters affecting public health (Section 8).	Not accessed	No provision
The National Commission of Human Rights Act 9 of 2002 establishes National	The Tanzania Commission for AIDS Act, 2001 establishes Commission for AIDS to provide AIDS prevention and	The Medical and Dental Practitioners Act, Cap 272 establishes Medical and

Kenya	Tanzania	Uganda
<p>Commission on Human Rights (Section 3) to investigate, on its own initiative or on complaint made by anyone or any group, violation of any human right (Section 16).</p> <p>The Medical and Dental Practitioner’s Act establishes the Medical Practitioners and Dentists Board (Section 4) to register and issue private practice licences for medical practitioners and dentists (Section 15).</p> <p>The Nurses Act, Chapter 257 establishes Nursing Council (Section 3) to establish and improve standards of all branches of nursing profession in all aspects and safeguard interests of nurses (Section 9).</p> <p>The Clinical Officers (Training, Registration and Licensing) Act, Chapter 260 establishes the Clinical Officers Council to ensure maintenance and improvement of standards of practice by clinical officers and supervise professional conduct and practice of clinical officers (Sections 3 and 5).</p> <p>The Medical Laboratory Technicians and Technologists Act 10 of 1999 establishes Kenya Medical Laboratory Technicians and Technologists Board (Section 3) to exercise general supervision and control over training, business practice and employment of laboratory technicians and technologists (Section 4). It regulates professional conduct of registered laboratory technicians and technologists and takes disciplinary measures to maintain proper professional standards (Section 4).</p> <p>The Nutritionist and Dieticians 18 of 2007 establishes Nutritionists and Dieticians Institute to determine and set framework for professional practice of nutritionists and dieticians.</p> <p>The HIV and AIDS Prevention and Control Act 14 of 2006</p>	<p>control (Preamble); formulate policy to respond to HIV and AIDS, manage consequences; mobilise, disburse and monitor resources; supervise HIV and AIDS prevention and control, especially welfare of orphans and other survivors of people infected and ensure equitable distribution, monitoring and evaluation of ongoing HIV and AIDS activities (Section 5).</p> <p>The Nurses And Midwives Registration Act, 1997 establishes Nurses and Midwives Council (Section 3) to scrutinise, regulate, approve, monitor and evaluate implementation of nurse education curricular and discipline nurses and midwives for professional misconduct (Section 5).</p> <p>The Pharmacy Act 2002 establishes Pharmacy Council with right to register, enrol and list Pharmacists, Pharmaceutical Technicians and Pharmaceutical Assistants to regulate standards and practice of the profession (Section 4).</p> <p>The Traditional and Alternative Medicines Act, 2003 establishes Traditional and Alternative Health Practice Council (Section 4) to: supervise and control practice of traditional/alternative health practitioners; co-ordinate efforts to develop traditional/alternative health science; promote maintenance and enforcement of traditional/alternative health care; protect society from abuse by traditional/alternative health practitioners and research on human beings (Section 6); and caution, censure, suspend or remove from roll aides or de-register traditional/alternative health practitioners found guilty of professional misconduct (Section 7).</p> <p>The Tanzania Food, Drugs and Cosmetics Act establishes Tanzania Food and Drugs Authority (TFDA) to regulate food and drug (Section 4) matters relating to quality, safety of food, drugs, herbal drugs, medical devices poisons and cosmetics, manufacturing, labelling, marking or identification, storage promotion, sale and distribution of food, herbal drugs and medical devices or any materials or substances used in manufacture of products and ensure clinical trials on drugs, medical devices and herbal drugs are conducted in accordance with prescribed standards (Section 5).</p> <p>The Anti-Dumping and Countervailing</p>	<p>Dental Practitioners Council (Section 2) to: monitor, supervise and control maintenance of professional medical and dental educational standards, including continuing education (Section 3).</p> <p>The Nurses and Midwives Act, Cap 274 establishes the Nurses and Midwives Council (Section 2) to regulate standards of nursing and midwifery, including disciplinary control (Section 3).</p> <p>The National Drug Policy and Authority Act establishes the NDA to develop and regulate pharmacies and drugs, approve the national list of essential drugs and supervise the revision of the list (Section 3).</p>

Kenya	Tanzania	Uganda
<p>establishes HIV and AIDS Tribunal (Section 25). The Pharmacy and Poisons Act, Cap 244 establishes the Pharmacy and Poisons Board (Section 3). The Water Act 8 of 2002 establishes the Water Resources Management Authority (Section 7) to develop principles, guidelines and procedures to allocate water resources (Section 8).</p>	<p>Measures Act, 2004 establishes Anti-Dumping and Countervailing Measures Advisory Committee (Section 4) to advise on urgent measures necessary to protect domestic industries from dumping or subsidy and investing that could cause or threaten material injury to industry or producer (Section 6). The Tobacco Industry Act, 2001 establishes Tanzania Tobacco Board (Section 3) to: make rules and regulations on tobacco farming, processing, marketing, transport, export and storage; and regulate and enforce tobacco quality standards (Section 5). The Protection from Radiation Act, 1983 establishes the National Radiation Commission (Section 5) to: ensure protection of workers, students and the public from harm resulting from ionizing radiation and formulation of Policy regarding safe and peaceful use of atomic energy and other radioactive materials and substances in factories, mines hospitals and military and other establishments or undertakings (Section 7).</p>	

The laws set generally provide for establishing boards to regulate and monitor the practice of authorities, with some provision for stakeholder involvement. This assists to make public performance more accountable, particularly in relation to the conduct of health workers and performance of statutory bodies. The law appears to provide less well for: direct participation of communities in running of health services, public participation in decision-making, feedback mechanisms for private sector services, inter-sectoral co-operation and co-ordination, monitoring and evaluating services and data, reporting obligations, or accountability of private health services. As all these aspects are relevant to responsiveness of services to poor communities and are generally referred to in policy, this appears to be a gap to address to enhance equity in public and private health services.

6. Conclusions and recommendations

The review presents a range regional and international instruments that provide basic public health obligations that have been useful at regional level for securing rights for particular vulnerable groups. East African countries have ratified most of them, signalling policy commitment to these instruments, but have not yet fully included their provisions in their national laws. In this respect, particular attention could be given to ensuring national laws cover the relevant provisions in Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966), the African Banjul Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/2005).

Various areas of law are provided for in all countries, and it is more in their application that there may be deficits. In some instances, laws are not implemented because specific regulations to enforce provisions of the parent Acts are not made, especially where new laws are made which save the regulations made under the old Act. For example, most regulations

required to be made under the Uganda Public Health Act have not been made. This greatly affects the operation of the Act. These include:

- the right to life, with poverty, access to medical services leading to differentials in the exercise of this right;
- overcoming barriers to application of laws on sexual and reproductive health rights in vulnerable groups such as women and children relating knowledge, taboos and norms about sexuality and reproduction, provision of victim-friendly mechanisms for reporting, investigating and prosecution of abuses, and services for rehabilitation of offenders;
- constitutional provisions for non-discrimination on grounds of gender, ensuring gender equity is adequately protected in all laws, and overcoming gender inequalities in decision making for and access to services;
- applying provisions for compulsory licensing and parallel importation of essential drugs, to ensure adequacy and affordability; and
- supporting disadvantaged communities to exercise rights to information and participation in health, including in relation to ethical practice of health workers.

In terms of implementing the law, there are opportunities for improved interaction across institutions, such as:

- strengthening interaction between health and education services and stimulating shared mandates, such as in promotion of Primary Health Care;
- strengthening coordination between central and local government and other institutions, including private sector and non governmental entities working in health;
- strengthening the capacity of regulatory agencies and professional regulatory bodies established under the law in terms of their operations, technical knowledge and expertise, reporting and accountability, infrastructure and equipment, financial resources, number and skills of staff;
- providing public information on existing policies and laws;
- strengthening access to courts by vulnerable groups by creating more awareness of the existence of the rights and the available avenues for redress in case of breach; and
- legal training in public health to increase competencies in the courts to manage public health cases.

Improved practice could also be stimulated by ensuring wider public debate and input to laws when they are under development, adequate operational guidelines for laws and regulations after they are enacted, and improved health literacy on legal provisions for the public through mass media and civil society.

Some areas of law are provided for in some laws but not all relevant laws, or not in all countries. This signals policy commitment to these areas, and calls for measures to harmonise legal frameworks within countries to ensure consistency, and across the three countries at East African level, make reference to examples from existing law. Such harmonisation not only facilitates consistency in and cross border management of health issues, but also ensures health is protected across sectors, across the region as a whole, and in wider international and global engagement in an increasingly liberalised environment.

This would include:

- Harmonise health provisions in constitutions to set a fundamental platform of rights, obligations and responsibilities for health and access to health care that guide specific national policies and laws. Each country has important specific provisions that would usefully contribute to such a harmonised set of provisions, particularly given the degree of social, cultural and legal interaction between the three countries.
- Ensure explicit legal provision of the *precautionary principle*, 'requiring that where there is risk of serious, irreversible adverse effects to health occurring the lack of scientific

certainty should not prevent or impair the taking of precautionary measures to protect public health’.

- Harmonise and update public health law to add to existing provisions dealing with specific forms of health related nuisance in the environment, to more comprehensively provide for environmental health (water, sanitation, pollution etc) rights, standards, authorities and obligations, including of private providers and developers, given the growth of informal settlements and privatisation of supplies. This includes consumer rights and supplier obligations to basic levels of provisioning for protection of public health, to health impact assessment prior to introduction of new technologies or processes with potential environmental impacts, to provision of public information and reporting, and elaboration of roles, powers and responsibilities in environmental health from national to local level.
- Harmonise provisions dealing with hazardous food, drugs and substances, and developing laws to cover obligations arising in trade in services affecting public health, (e.g. financial services, advertising) to comply with public health standards, minimise health risks and provide for health impact assessments and public information where impacts are not clear.
- Widen the current focus in public health laws on primary *medical* care and infectious disease control to cover primary health care and its elements.
- Strengthen laws governing private health providers in terms of their co-ordination, requirements for service provisioning, principles covering practice, reporting obligations and the government authorities and public rights to information, consultation and participation in relation to these services. This includes traditional health practice.
- Updating public health law to include provisions for public information, awareness and participation such as those in more recent laws such as those around HIV and AIDS.
- Setting out roles, authorities and mechanisms for public participation in health services and for public accountability of health services. This includes providing mechanisms for direct community participation in running health services and for inter-sectoral co-operation and co-ordination, and data and reporting obligations of public and private health services.

In some cases, policy commitments exist but omissions or gaps in law do not reflect these policy commitments and ensure they are applied at national level across all sectors. Many public health laws were made decades ago, some during the colonial periods, and have not since then been comprehensively reviewed. Changing socio-economic conditions call for laws to be updated, and often strengthened. In these cases, it would be important to open dialogue on legal review under the relevant enabling acts to address gaps between policy and law. This includes:

- legal provisions to provide for food security, including food vulnerable groups, with current laws more focused on food safety;
- legal provisions to set out public health requirements in trade related aspects of food security, together with consumer rights or supplier obligations to provide information on prohibitions and standards applying to their products in source countries; and
- laws specifically providing for rights to shelter beyond provisions specifically for employees and disabled persons, with scope for strengthening national law to:
 - set and monitor housing standards;
 - prohibit the construction of substandard shelter and provide the obligations to remedy or upgrade this;
 - inspect and provide public information on areas of substandard housing and plans to address these;
 - provide for requirements and obligations for shelter and housing security for specific vulnerable groups, including lodgers, children, disabled people, and people with terminal illness;

- provisions regulating the financing of health services to ensure equity, adequate financial protection, inclusiveness and cross subsidies in public and private health financing arrangements and their reporting on these matters;
- laws governing trade in health and health related services, to ensure adequate protection of public health principles, equity and access within these areas of market activity in the health sector. In this respect such provisions would need to give widest policy latitude for government authorities to protect public health, and avoid irreversible commitments and other policy concerns arising in relation to the WTO General Agreement on Trade in Services (GATS); and
- rights and obligations in relation to health worker migration, including of authorities and agencies financing, managing and negotiating such issues.

The authors suggest that these areas be reviewed by health authorities, parliamentary committees, health professional associations and health civil society to identify an agenda to widen public awareness on existing laws, unambiguously secure public health rights, obligations and roles in all areas of economic and social activity, and address deficits where they exist, particularly in gaps between policy and law. Finally, we identified knowledge gaps. These exist, for example, in relation to legal provisions that reflect social norms in new areas of public health, such as in relation to organ transplants, DNA tests, cloning, euthanasia, human trafficking, and emerging international epidemics such as bird flu virus and Ebola. Research is also needed in how to more effectively and equitably provide for law and its implementation in areas such as health financing, decentralisation of health systems, trade in health services, health worker migration, forensics, and governance of health systems at local, national and international level. This calls for further research in these areas, guided by policy and a research agenda on emerging public health law issues. Public health law has perhaps not had adequate profile in academic and professional practice, but is a critical area of work if countries in east and southern Africa are to protect public health and health equity in an environment increasingly influenced by global challenges and policies.

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Equity in health implies addressing differences in health status that are unnecessary, avoidable and unfair. In southern Africa, these typically relate to disparities across racial groups, rural/urban status, socio-economic status, gender, age and geographical region. EQUINET is primarily concerned with equity motivated interventions that seek to allocate resources preferentially to those with the worst health status (vertical equity). EQUINET seeks to understand and influence the redistribution of social and economic resources for equity oriented interventions, EQUINET also seeks to understand and inform the power and ability people (and social groups) have to make choices over health inputs and their capacity to use these choices towards health.

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