

# ENHANCING THE LEGAL ENVIRONMENT FOR AN EFFECTIVE HIV RESPONSE IN KENYA

Best Practices, Success Stories and Lessons Learned

July 2018



Empowered lives.  
Resilient nations.

# **ENHANCING THE LEGAL ENVIRONMENT FOR AN EFFECTIVE HIV RESPONSE IN KENYA**

## **Best Practices, Success Stories and Lessons Learned**

July 2018

Design and Layout by Impact Africa Ltd.

P O Box 13776-00800, Nairobi

Tel: +254 708 484 878/ +254 714 214 303

Nairobi, Kenya

## TABLE OF CONTENTS

ACRONYMS.....	i
ACKNOWLEDGEMENTS.....	ii
EXECUTIVE SUMMARY.....	1
1.0 INTRODUCTION .....	2
2.0 HIV AND THE LEGAL ENVIRONMENT IN KENYA.....	4
3.0 BEST PRACTICES AND LESSONS LEARNED .....	5
3.1. Strengthen the capacity of communities to influence laws and policies and access justice5	
3.1.1. Meaningful involvement of persons living with and affected by HIV .....	5
3.1.2. Civil society organization-monitoring of the right to health.....	6
3.1.3. Empowering health care workers to integrate rights-based approaches .....	7
3.2. Improving Access to Justice and Legal Services.....	8
3.2.1. Strengthening the capacity of attorneys to work on HIV cases .....	8
3.2.2. Sensitizing judicial officers .....	10
3.2.3. Sensitizing senior law enforcement and corrections officers.....	11
3.2.4. Working with informal and traditional justice structures .....	12
3.2.5. Use of Court Users Committees to ensure access to justice.....	12
3.2.6. Public interest litigation .....	13
3.3. Advocacy for changes to law, policy and practices .....	19
3.4. Institutional Strengthening Strategies.....	19
3.4.1. Nurturing and strengthening partnerships .....	19
3.4.2. Institutional governance and leadership .....	19
3.4.3. Strategic planning .....	20
3.4.4. Financial management .....	20
3.4.5. Human resources .....	20
3.4.6. Monitoring and evaluation.....	21
PROJECT VOICES .....	22
MEDIA COVERAGE .....	24
Newspaper Cuttings.....	25
Website Articles .....	27
ENDNOTES .....	27

## ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
CUC	Court Users Committee
CBO	Community Based Organization
CSO	Civil Society Organization
GIPA	Greater and Meaningful Involvement of Persons Living with and affected by HIV and AIDS
HAPCA	HIV and AIDS Prevention and Control Act
HIV	Human Immunodeficiency Virus
IEC	Information, Education and Communication
JTI	Judicial Training Institute
KASF	Kenya AIDS Strategic Framework
KELIN	Kenya Legal and Ethical Issues Network on HIV and AIDS
KMA	Kenya Medical Association
KESWA	Kenya Sex Workers Alliance
MSM	Men who have sex with men
NACC	National AIDS Control Council
NASCOP	National AIDS and STI Control Programme
NEPHA-K	National Empowerment Network of People Living with HIV and AIDS in Kenya
NGO	Non-governmental Organization
PLHIV	People Living with HIV
PSC	Project Steering Committee
PWID	People Who Inject Drugs
TB	Tuberculosis
UN	United Nations
UNDP	United Nations Development Programme
UNAIDS	Joint United Nations Programme on HIV and AIDS
WOFAK	Women Fighting AIDS in Kenya

## ACKNOWLEDGEMENTS



This project was made possible through partnership and collaboration with many institutions and individuals who generously contributed their resources and time. We are grateful to all who supported in various ways the success of this exercise.

First and foremost, we wish to acknowledge United Nations Development Programme (UNDP) for their technical and financial support, without which this project and this document would not have materialised.

Second, we would like to acknowledge the participation and enthusiasm of the various groups of stakeholders who played key roles to create an enabling legal environment in Kenya. To them, our sincere gratitude.

In particular, we would like to thank the many community members who contributed to this publication. We are also grateful for the meaningful involvement of law enforcement officers, judges, magistrates, healthcare workers, people living with HIV, key affected populations (particularly sex workers and men who have sex with men), youth representatives, religious leaders and elders. Your invaluable insights went a long way in giving meaning to this publication.

We are also grateful to Kenya Legal and Ethical Issues Network on HIV and AIDS's project staff, including Tabitha Saoyo, Lucy Ghati, Edgar Makona and Timothy Wafula, for their unrelenting spirit, hard work and valuable contributions towards this resource.

Lastly, we are grateful for the editorial support provided by Impact Africa Limited, Brian Citro of Northwestern University, Pritzker School of Law (Chicago, USA) and our freelance editor, Tezeta Tulloch.

A handwritten signature in black ink, appearing to read 'Allan Maleche'. The signature is stylized and written in cursive.

*Allan Maleche*

KELIN Executive Director

## EXECUTIVE SUMMARY

This booklet documents best practices and lessons learned from KELIN's implementation of a five-year project (2012–2017) entitled **“Enhancing the Legal Environment for an Effective HIV Response in Kenya.”** The project sought to empower communities, strengthen stakeholder capacities and improve legal and policy frameworks to protect human rights in the context of HIV and AIDS. All work was guided by the principle of meaningful participation and was carried out through extensive coordination with a diverse range of implementing partners hailing from all levels of government and civil society. The project was made possible by generous financial and technical support from the United Nations Development Programme.

### **Lessons and good practices are presented in four main sections:**

The first section highlights interventions designed to empower communities to influence laws and policies and to access justice. The importance of involving key affected populations in promoting their own health and rights-related interests is emphasised.

The second section describes KELIN's work with both formal and informal justice structures to realise HIV-related rights. It discusses the use of strategic litigation for legal reforms and documents the engagement of judicial officers, lawyers and elders to ensure access to justice for communities affected by HIV.

The third section showcases advocacy efforts for legal and policy reform, at national and county levels. Also included is a brief overview of work done to train law enforcement officers and other duty bearers to better manage HIV and TB in Kenya. Policies developed and implemented by KELIN in partnership with key government institutions are summarised.

The last section demonstrates the ways in which this project strengthened KELIN as an institution. Management, leadership, and financial and monitoring structures critical to realizing the goals of this project are highlighted.

Our hope is that this booklet serves as both a record of success and a resource for other organizations working toward similar objectives. With this booklet we aim to provide a tool for our colleagues to learn from the challenges we faced and the successes we achieved in our efforts to create an enabling legal environment for people affected by HIV and TB in Kenya.

## 1.0 INTRODUCTION

Legal environments play a powerful role in the wellbeing of people living with and vulnerable to HIV. Good laws, fully resourced and enforced, can improve the reach and quality of HIV services, enhance social support and promote cost-effective practices, all of which are vital to the success of national HIV responses. In Kenya, discrimination against people living with HIV (PLHIV) occurs in families and communities, at the workplace, in schools and in prisons.

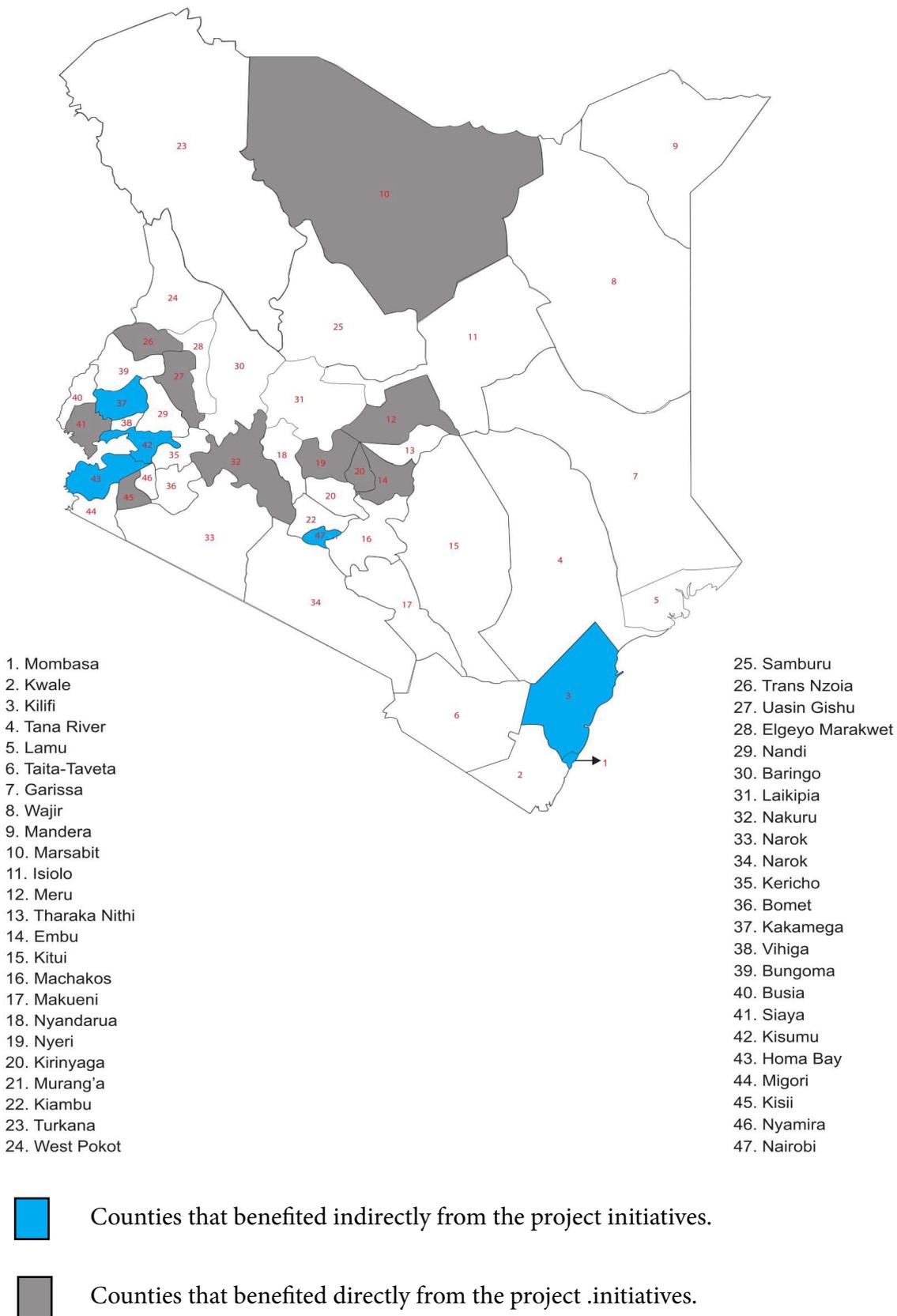
There is some general awareness about the legal institutions and instruments that protect human rights in the context of HIV, however, a majority of people living with the virus fail to report rights violations because they do not believe the authorities will take appropriate and effective action. Moreover, awareness of the channels and mechanisms for seeking redress is low. Civil society organizations can play a major role in building the public's capacity to use legal and human rights frameworks to combat HIV-related stigma and discrimination.

With technical and financial support from UNDP, KELIN implemented a five-year project (2012–2017) to enhance the legal environment for an effective HIV response in Kenya. The project, “Enhancing the Legal Environment for an Effective HIV Response in Kenya,” had four main objectives:

1. **Strengthen the capacity** of communities to access justice and influence laws.
2. **Improve access** to justice and legal services for people living with HIV.
3. **Advocate** for reforms to laws, policies and practices that affect PLHIV and key affected populations.
4. **Document and share** experiences and best practices on how to use the law to create an enabling environment for a robust HIV response.
5. **Institutional strengthening** mechanisms.

The project was implemented directly in six high HIV-prevalence counties – Kilifi, Mombasa, Nairobi, Kakamega, Kisumu and Homa Bay – and indirectly reached at least 24 other counties, thanks to the efforts of partners and other participants. The project's success was made possible through extensive partnerships with a diverse group of stakeholders: the National Empowerment Network of People living with HIV and AIDS in Kenya, Kenya Sex Workers Alliance, Kenya Harm Reduction Network, Kenya AIDS NGOs Consortium, Women Fighting AIDS in Kenya, Joint United Nations Programme on HIV/AIDS, the Judicial Training Institute, the Kenya Police Service, the Kenya Prison Service, the National AIDS Control Council, the National Gender and Equality Commission, the HIV and AIDS Tribunal and the National AIDS and STI Control Programme.

Figure 1: Project sites



## 2.0 HIV AND THE LEGAL ENVIRONMENT IN KENYA

The HIV epidemic remains one of the major public health and development challenges in Kenya. By the end of 2016, an estimated 1,517,707 people were living with HIV. According to the National AIDS Control Council (NACC), Kenya has both a generalised and concentrated epidemic, with higher levels of HIV among certain key affected populations. These include youth between ages 15 and 24, people who inject drugs (PWID, 18.3%), men who have sex with men (MSM, 18.2%), and sex workers (29.3%).

People living with HIV and key affected populations in Kenya continue to experience discrimination in their families and communities, and in structures and institutions where they seek services. A 2013 study suggests that women living with HIV experience higher levels of stigma than men (4.9% versus 2.7%). Employment-related discrimination against PLHIV has also been widely documented.

Kenya has ratified all major international and regional human rights instruments, but implementation and enforcement is incomplete. Article 27 of the Constitution of Kenya 2010 enshrines a progressive bill of rights and prohibits discrimination on the basis of health status. The Health Act 2017, though a promising move, has unconstitutional sections that would require amendment. The courts have adjudicated several cases related to HIV and constitutional rights. Despite these broad constitutional protections, the country still has limited jurisprudence on HIV and human rights. The Legal Aid Act 2015 represents a step toward access to justice, although implementation has so far been limited. The formation of the HIV and AIDS Tribunal is another positive step toward widening access to justice for PLHIV.

Despite this relatively progressive legal framework and justice system, PLHIV and key affected populations in Kenya often do not know their rights or how to claim them. Moreover, the majority of Kenyans lack access to both formal and informal justice systems. Punitive laws still hinder access to HIV services and promote harmful behaviours, especially among key affected populations. For example, those found with needles and syringes can be arrested under the Narcotic Drugs and Psychotropic Substances Control Act 1994, which prohibits possession of drug-related paraphernalia. The Penal Code and county-level laws allow for the arrest of sex workers, which deters them from using condoms, as condom possession may be used as evidence of criminal activity.

The main pieces of legislation addressing HIV in Kenya — the HIV and AIDS Prevention and Control Act 2006 and the Sexual Offences Act 2006 both initially contained provisions criminalizing HIV transmission and non-disclosure. However, High Court of Kenya in Nairobi has since declared the provision in the HIV Act unconstitutional. These laws dissuade people — especially the most vulnerable — from voluntary HIV testing, and infringe on the right to privacy of those already living with the virus.

On the other hand, the policy and regulatory framework for providing health services to key affected populations demonstrates a commitment to evidence-based improvement of the national HIV response. On the basis of this evidence, the government has adopted specific policies, guidelines and strategies to prioritise interventions for key affected populations. These interventions have in part been implemented through the Kenya AIDS Strategic Framework 2014/15–2018/19, with strong leadership and dedicated-resource allocation. The Ministry of Health has also developed a policy framework to guide the HIV response for key affected populations.

As these examples show, the legal framework for responding to HIV in Kenya is not sufficiently harmonised. In some cases there is direct conflict between the Constitution, policies and legislation: the Constitution and various policies guarantee access to services for key affected populations, but legislation and penal provisions undermine the ability to access these services.

Laws often lag behind health sector policies, which are better informed by advances in scientific, medical and social science research. Aligning constitutional guarantees with legislation in a way that supports health sector policies and interventions requires greater coordination among law and policy makers and health stakeholders. This alignment is necessary for strengthening legal frameworks to protect human rights and for promoting universal access to HIV prevention, treatment, care and support in line with international guidelines and human rights commitments.

### **3.0 BEST PRACTICES AND LESSONS LEARNED**

The Enhancing the Legal Environment project had four main objectives: capacity strengthening, improved access to justice, robust advocacy for legal reform and experience sharing. The discussion below is organised according to these four objectives. Each section describes the main approaches and accomplishments within that thematic area and ends with a concise list of best practices, lessons learned and innovations made in the efforts of KELIN and partners to create an enabling environment for responding to HIV and TB in Kenya.

#### **3.1. Objective 1**

Strengthen the capacity of communities to influence laws and policies and access justice

##### **3.1.1. Meaningful involvement of persons living with and affected by HIV**

Greater and Meaningful Involvement of Persons Living with and affected by HIV and AIDS (GIPA). The principle guides global efforts to combat HIV and AIDS. GIPA aims to ensure that PLHIV and their communities are fully involved in the design, implementation, monitoring and evaluation of policies and interventions that directly affect them.

Guided by the GIPA principle, KELIN developed mutually beneficial relationships and built trust with community based organisations and groups that work directly with key affected populations. The primary mechanisms employed were trainings, community dialogue forums and legal aid clinics. KELIN for instance conducted seven trainings on HIV, law and human rights in seven counties: Kilifi, Mombasa, Nairobi, Kakamega, Kisumu, Bungoma and Homa Bay. The goal of these trainings was to empower people (particularly sex workers and men who have sex with men) to advocate for their rights.

As a result of the trainings, affected communities can now recognise, document, report and initiate legal proceedings in response to human rights violations. Community groups and members can also engage directly with national and county governments to influence laws, policies and guidelines on issues that affect them.



Douglas Masinde, Executive Director, Tamba Pwani

*KELIN has made us to be visible and confident as Kenyan citizens. We are now entitled to access health care services, products, information and more, just like any other Kenyan."*



Amina Swaleh, Sex Worker, Kisumu County

*I couldn't identify myself as a person living with HIV. I really appreciate KELIN because after my interaction with them, I no longer feel ashamed of my status. I know my rights [and] have reached out to many of my colleagues for them to come out and take action to reclaim their health rights.*

### 3.1.2. Civil society organization-monitoring of the right to health

KELIN developed a *Training Manual on Monitoring Implementation of the Right to Health under the Kenyan Constitution* to help civil society organizations better understand and appreciate their role in protecting and promoting the right to health. The modules in the manual are designed to build the capacity of CSOs to monitor health governance and hold duty bearers accountable for effective and efficient health service delivery.



*[As a result of the CSO trainings] I could say there's more public participation. Now at least some members of the PLHIV and the community at large engage in oversight processes for projects. They ask questions and demand transparency. When they go to the hospital to undertake monitoring of donor funded projects they know what to look out for. They can flag out inconsistencies.*

Ms Mwanakombo, Activist, Beyond the City Limit Health Care Support

### 3.1.3. Empowering health care workers to integrate rights-based approaches

KELIN strengthened the capacities of health care workers to reduce stigma and human rights barriers to accessing HIV and tuberculosis services. Seven trainings and four sensitization forums benefited 166 health care professionals (doctors, clinical officers, laboratory technicians, nurses and pharmacists) and 43 counsellors and community volunteers. Following on these activities KELIN produced a human rights module that has been integrated into the national health care workers training curriculum for management of adult and paediatric HIV.



*"My attitude was not so good; I had a negative attitude and was thinking that sex workers were undeserving. From the training I came to understand just how important they were in the HIV response. I also came to learn that we have also male sex workers within the society."*

Patrick Wafula, Deputy Nursing Officer, Kakamega County General Hospital

# EMPOWERING COMMUNITIES: Best Practices, Lessons Learned and Innovations

## Best Practices

- **Involve key affected populations in stakeholder forums.** When affected communities participate in stakeholder forums they are able to engage directly with government duty bearers and other rights holders with similar interests. Participation empowers people to act as change agents in their communities and help combat stigma and discrimination.

## Lessons Learned

- **Strong partnerships enhance sustainability.** Partnerships with community based organizations foster idea sharing, increase CBOs' access to financial and other resources, and promote the long-term sustainability of human rights interventions.
- **Knowledge is power.** Equipping members of key affected populations with human rights knowledge and legal skills enables them to effectively address barriers to accessing health services.
- **Involvement should be meaningful.** Engaging communities as partners rather than as recipients or beneficiaries of legal programming enhances programme effectiveness, quality and sustainability.

## Innovations

- Use of rights-based approaches in trainings for key affected populations.
- Use of multisectoral community dialogue forums.

## 3.2. Objective 2

Improving access to justice and legal services

- KELIN sought to improve access to justice for communities of persons living with HIV including key and affected populations. This has been done through creating awareness on rights, developing tools to document rights violations, empowering communities to document the violations, training pro bono lawyers and linking them to communities for legal support. The project also targeted law enforcement officers, judicial officers and elders through dialogues in order to sensitise them on HIV, Human Rights and the Law.

### 3.2.1. Strengthening the capacity of attorneys to work on HIV cases

Creating an enabling environment to respond to HIV depends largely on the quality of service provided by legal professionals. KELIN worked vigorously to increase the legal community's knowledge about the intersection of HIV, the law and human rights through skill building and resource development.

KELIN trained over 200 attorneys from across Kenya to provide legal guidance and handle court cases related to HIV. Lawyers who had received training formed a pool of pro bono attorneys offering specialised services. They litigated at least 16 cases at the HIV and AIDS Tribunal, 2 cases at Magistrates' Courts, 1 case at Employment and Labour Relations Court, and 5 cases at the High Court. They also provided free legal services during legal aid camps and community awareness forums hosted by KELIN and other partners. Altogether KELIN trained 233 attorneys – 54% female and 46% male – from 16 counties across the country.



Figure 2: Lawyers Trained by County (2012–2017)

KELIN also developed a compendium of cases to help lawyers, judges and PLHIV better understand the rulings of the Kenya HIV and AIDS Tribunal, the only body of its kind in the world. *The HIV and AIDS Tribunal Compendium of Cases*, launched in November 2016, is a first-of-its kind resource that documents all cases decided by the tribunal since its inception in 2009. The compendium describes the nature, rationale and outcome of each case and is written in a way that non-experts can understand. One of the main reasons for developing this resource is to raise public awareness of the consequences of violating the rights of PLHIV. It provides guidance, through case summaries, on how to take reasonable precautions to avoid such violations. The majority of cases brought before the tribunal – and therefore documented in the compendium – were litigated pro bono by lawyers trained by KELIN as part of this project.



Launch of the *Compendium of Cases*, 30 November 2016. From Right to Left: Jotham Arwa, Chair, HIV and AIDS Tribunal; Dr. Steve Ouma, Judicial Training Institute; Dr. Nduku Kilonzo, Director, National AIDS Control Council; Ludfine Bunde, UNDP; and Anyumba Nyamwaya, CEO, HIV and AIDS Tribunal.

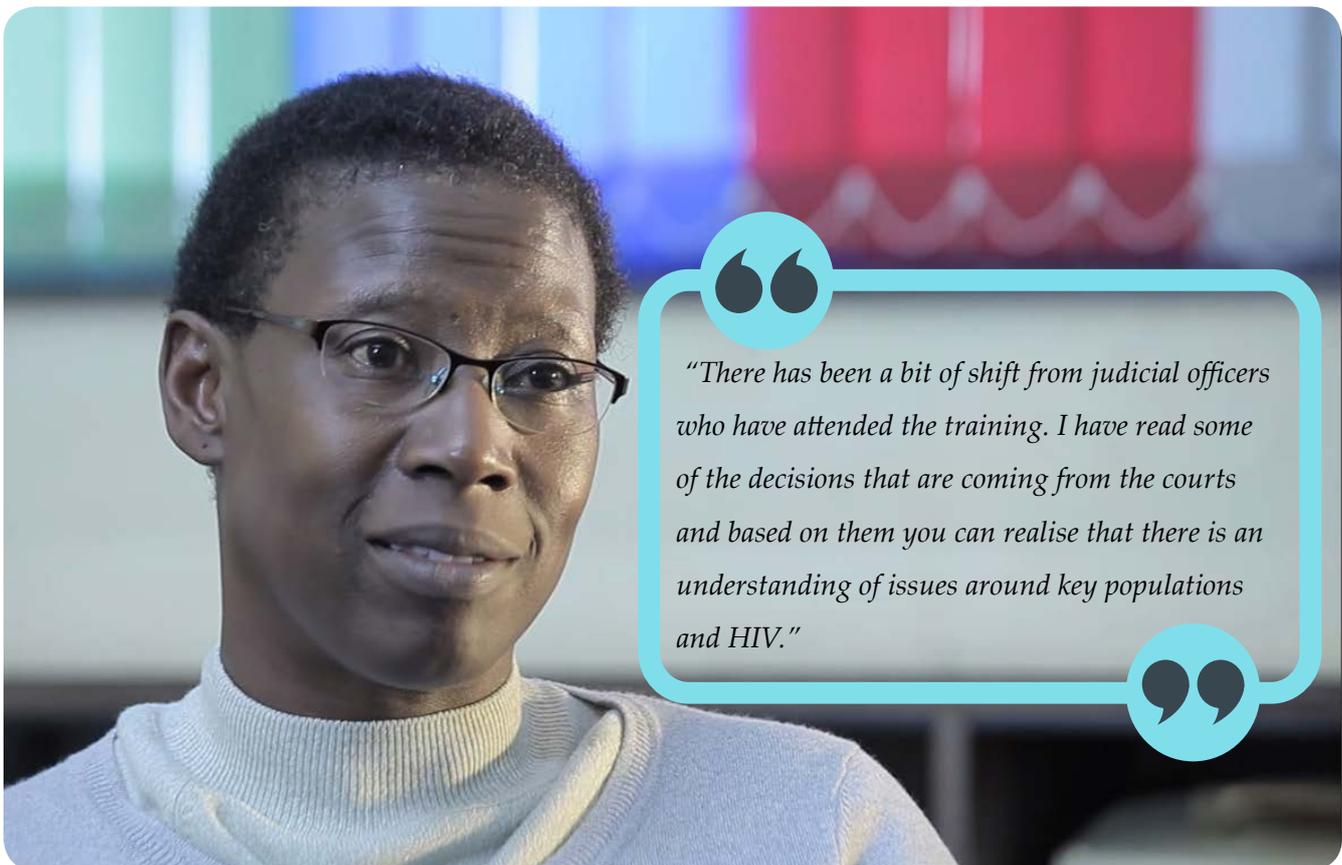
### 3.2.2. Sensitizing judicial officers

KELIN equipped judicial officers with relevant, up-to-date information on HIV-related issues. Judicial dialogues provided a platform for critical discussion, experience sharing and deliberations on the legal and human rights issues posed by the HIV epidemic in Kenya. Just as important, the dialogues provided an opportunity for judges and magistrates to interact and learn directly from people living with HIV, who are invited to speak at dialogues and share their experiences.

Judicial dialogues have contributed to the adoption of a rights-based approach to HIV and TB in some legal decisions. Litigation brought by KELIN resulted in two of the most significant legal decisions on TB and HIV in recent years. These cases are discussed at length below in the section on public interest litigation. Judges and magistrates from 12 countries across Eastern and Southern Africa participated in a regional colloquium conducted by KELIN and facilitated by high profile judicial experts from around the world. KELIN worked closely with the Judicial Training Institute of Kenya (JTI) to encourage judicial officers from around the country to participate. The partnership with JTI has been critical to the sustainability of this project's judicial interventions: the Kenyan judiciary has since taken ownership by initiating their own trainings on HIV-related matters.

**Sensitization exercises reached 91 judges and magistrates and 112 other judicial officers.**

KELIN continues to collaborate with participating judiciary officers in various community interventions, including county dialogue forums where judges interact with diverse stakeholders working to combat HIV.



*“There has been a bit of shift from judicial officers who have attended the training. I have read some of the decisions that are coming from the courts and based on them you can realise that there is an understanding of issues around key populations and HIV.”*

Rt. Lady Justice Violet Mavisi



Justice David Majanja, Resident Judge, Kisumu High Court

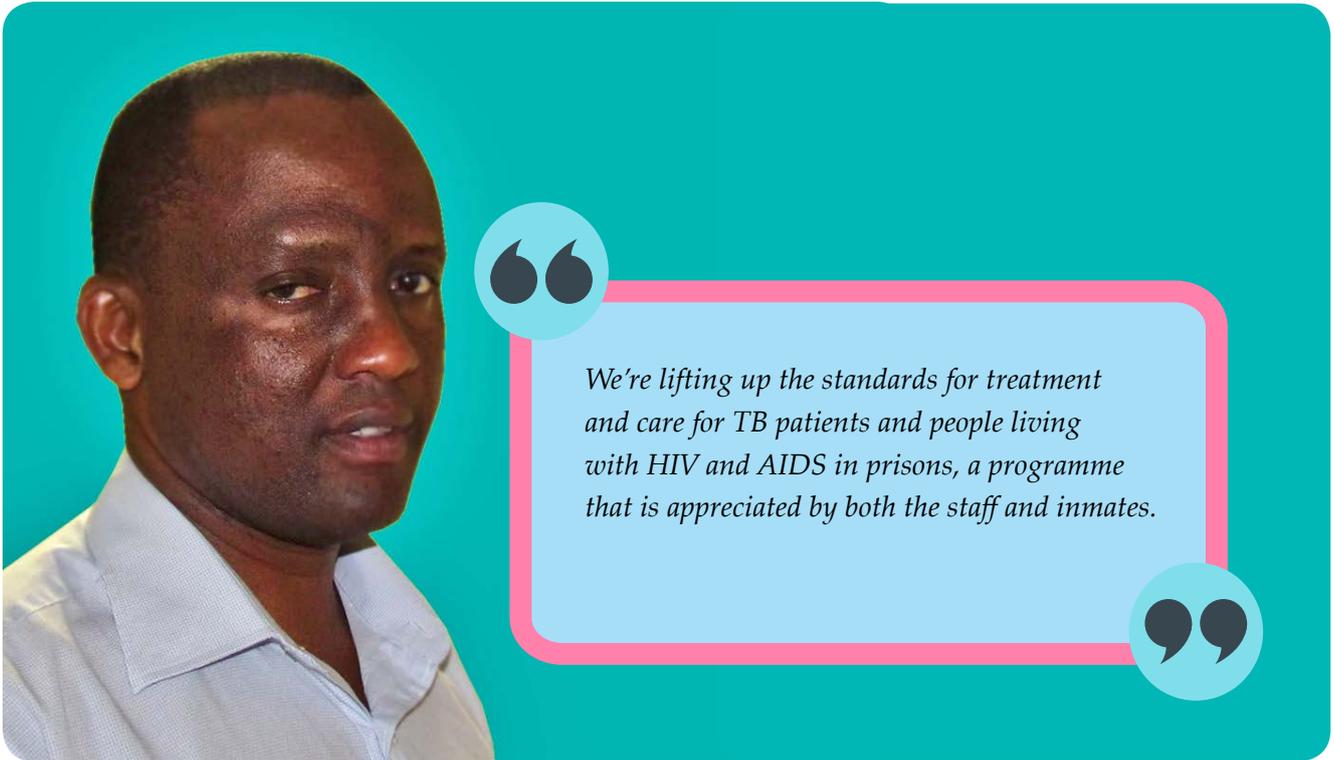
### 3.2.3. Sensitizing senior law enforcement and corrections officers

In July 2013 KELIN convened senior law enforcement officers from six countries in Eastern and Southern Africa — Kenya, Lesotho, Zambia, Malawi, Tanzania and Swaziland — for a regional workshop on HIV, human rights and the law. The workshop provided a platform to strengthen national HIV and TB responses through open dialogue and partnership building among vulnerable communities, police officers, prison wardens and others.

Workshop recommendations informed a high-level meeting the following year with top-ranking prison officials, government institutions working on TB and HIV, and representatives from the UN and civil society organizations.<sup>1</sup> The purpose was to strategise on ways to bring HIV and TB services for prisoners in line with constitutional guarantees. Stakeholders agreed to prioritise evidence building to understand where the current prison system fails and how it can better respect and protect the rights of prisoners and detainees affected by HIV and TB.

Following the KELIN workshops, participants reported a greater overall ability to carry out their mandate. More specific results were:

- The Kenya Prisons Service workplace policy on HIV and TB was revised to align with the Constitution.
- Prisoners report that proactive efforts by prison officers have improved health service delivery, including HIV and TB services.
- Partnerships among law enforcement agencies to support the health and wellbeing of sex workers and other key affected populations have increased.



Angus Masoro, Director, AIDS Control Unit, Kenya Prisons Services

*We're lifting up the standards for treatment and care for TB patients and people living with HIV and AIDS in prisons, a programme that is appreciated by both the staff and inmates.*

### **3.2.4. Working with informal and traditional justice structures**

In traditional communities, women and orphans are often disinherited of property. When it comes to land rights, those living with HIV are doubly vulnerable: HIV is often the first line of excuse for separating people from their property. These obstacles limit women's economic opportunities and further disempower them in families and communities. Throughout the project KELIN sought justice through customary legal structures for widows and orphans facing disinheritance. KELIN developed a step-by-step guide on how to leverage traditional community mechanisms to promote and protect the human rights of women and children affected by HIV.<sup>2</sup>

In Homa Bay and Kisumu counties, KELIN educated 40 elders on the rights of women and orphans to own property and on the discriminatory nature of gender-based inheritance practices. Working with the Luo Council of Elders, KELIN advanced understanding of and respect for HIV-related law and human rights in community-based justice systems. KELIN also referred numerous inheritance cases to the Luo council and to Nyakach elders for adjudication. The vast majority of these cases were resolved in favour of HIV affected women and children.

### **3.2.5. Use of Court Users Committees to ensure access to justice**

The Court Users Committee (CUC) is a unique forum created by the judiciary as part of the Enhancing the Legal Environment project. The CUC provides a platform for users to bring their concerns to justice actors and highlight problems in the system so that the judiciary can develop an informed, coordinated response. The CUC has created new opportunities for participation and inclusion. The presence of PLHIV and key affected populations on CUCs sensitised many justice actors to the difficulty these groups face in attaining justice through the formal court system.

To strengthen the capacity of CUCs to act on HIV-related matters KELIN conducted dialogue forums with judiciary actors and community members in Homa Bay and Kisumu Counties. These forums fostered discussion, experience sharing and partnership building.



*Before the CUC, we had issues with the court. We had cases being compromised, we had cases of defilement and gender-based violence not reaching maturity level. After we joined the CUC now we have a platform to air our views. The court files are not disappearing, the cases are reaching court on time and we also have a relationship with the court and it is like we own the court as a community*

Caren Wambui Omanga, Director, Nyabende Support Programme, and CUC member, Nyando Law Courts

### 3.2.6. Public interest litigation

KELIN used public interest litigation (that is, litigation whose focus is on issues of importance to the public at large and aims to achieve broader impact) to achieve several key objectives:

- ✓ **Establish powerful legal precedents** that will positively impact future HIV- and TB-related litigation in Kenya and Eastern and Southern Africa.
- ✓ **Challenge and reform laws and policies** that violate or threaten to violate the human rights of PLHIV, key affected populations and people with TB.
- ✓ **Advocate for and increase public awareness** on the rights of PLHIV, key affected populations and people with TB.
- ✓ **Promote evidence-based interpretation and application** of HIV and TB-related law and policy in line with human rights law.

## GROUNDBREAKING LITIGATION

During the course of this project, KELIN initiated and won two ground-breaking cases using public interest litigation:

### Case 1: An Unconstitutional Directive

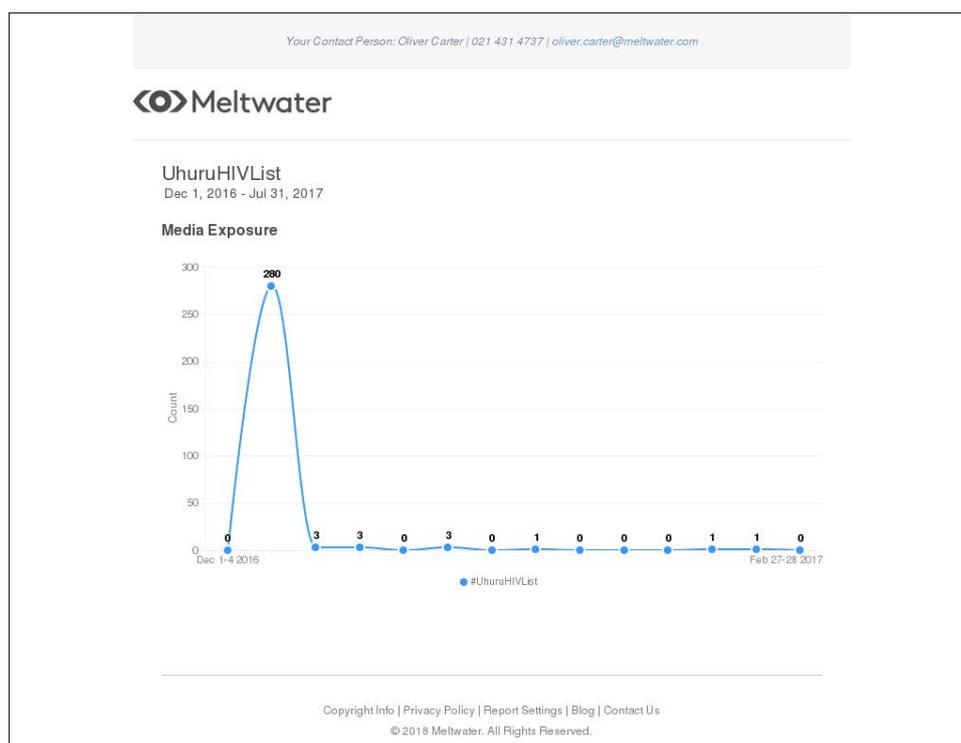
KELIN & Others v. Cabinet Secretary-Ministry of Health & Others (High Court of Nairobi, 2015)

On 23 February 2015, the President of Kenya issued a directive to collect data on children and expectant and breastfeeding mothers living with HIV. The data would directly link specific children and mothers with their HIV status. The list was also to include information that could link children to their home area and school.

KELIN led a court challenge against this measure, arguing that the list would violate fundamental rights.<sup>3</sup> On 7 December 2016, the Nairobi High Court declared that the directive was in breach of Articles 31 and 53(2) of the Constitution, which safeguard the right to privacy and the best interests of the child, respectively. The court ordered the government to anonymise, within 45 days, the names that had been collected and to store this data in a manner that did not link names with HIV status in a public document.

In a key move, KELIN engaged the then UN Special Rapporteur on the right to health, Mr Anand Grover, to file an *amicus curiae* brief that outlined Kenya's obligations under international human rights law. Mr Grover's brief was a powerful intervention in support of KELIN's case and influenced the court's decision to declare the President's HIV list unconstitutional.

KELIN publicised and mobilised popular support for the case through a media campaign driven by the hashtag #UhuruHIVList.



#UhuruHIVList social media statistics – December 2016 to February 2017

## Case 2: TB Is Not A Crime

*Daniel Ng'etich v. Attorney General* (High Court of Nairobi, 2016)<sup>4</sup>

Two men, Daniel Ng'etich, Patrick Kipngetch Kirui, were arrested and imprisoned under Section 27 of the Public Health Act on the basis that they had failed to take their TB medication. They were sentenced to imprisonment for eight months or until they had completed treatment. Ng'etich and Kirui slept on the floor of their cells for over a week without bedding and were only issued a blanket after KELIN intervened on their behalf. They were not provided a balanced diet and, despite court-ordered isolation, were held together for 46 days with fifty other prisoners in a room meant for ten inmates. Prison authorities failed to take precautions to prevent TB transmission.

In its legal challenge KELIN argued that the imprisonment of these men violated their constitutional rights to dignity, liberty and freedom of movement. On 24 March 2016 the High Court in Nairobi agreed, declaring the practice of jailing people with TB both unlawful and unconstitutional. The Court further held that any measure to control tuberculosis by isolation must use “the least restrictive and intrusive” means and be in accordance with the World Health Organization’s Guidance on Ethics of Tuberculosis Prevention, Care, and Control.

KELIN developed and launched a media campaign to support the litigation entitled “[TB is Not a Crime.](#)” The campaign involved mobilizing affected communities and engaging the media to raise awareness about the case and the challenges facing people with TB in Kenya. Following the court victory, KELIN created [a video showcasing the campaign and litigation](#). The video featured powerful interviews with the Ng'etich and Kirui in which they discussed the difficulties they faced in adhering to treatment, difficulties which led to their imprisonment.

## IMPROVING ACCESS TO JUSTICE: Best Practices, Lessons Learned and Innovations

### Best Practices

- Strategic litigation, coupled with community mobilization and media engagement, is an effective tool in the face of gaps in HIV- and TB-related law and policy.

### Lessons Learned

- **Affordable legal services are essential.** Pro bono legal services allow people living with HIV to challenge human rights violations and contest discriminatory laws and practices.
- **Sensitizing the judiciary has a clear return on investment.** Strategic litigation is more effective when judicial officers are aware of and can uphold the rights of PLHIV and people with TB.
- **Community members can be directly involved in realizing legal reforms.** Key affected populations must not only be mobilised but also equipped with the knowledge and skills to affect justice system reforms and conduct strategic litigation campaigns.

## Innovations

- Use of **strategic litigation** for law and policy reforms when other advocacy means fail.
- Use of **Judicial dialogues** on HIV, human rights and the law to sensitise and promote professional interest in these issues.
- Strategic engagement and use of **international legal experts** to intervene strategically in domestic litigation to inform and influence courts to recognise and protect the rights of PLHIV.

### 3.3. Advocacy for changes to law, policy and practices

#### 3.3.1. Strengthening advocacy through community dialogues

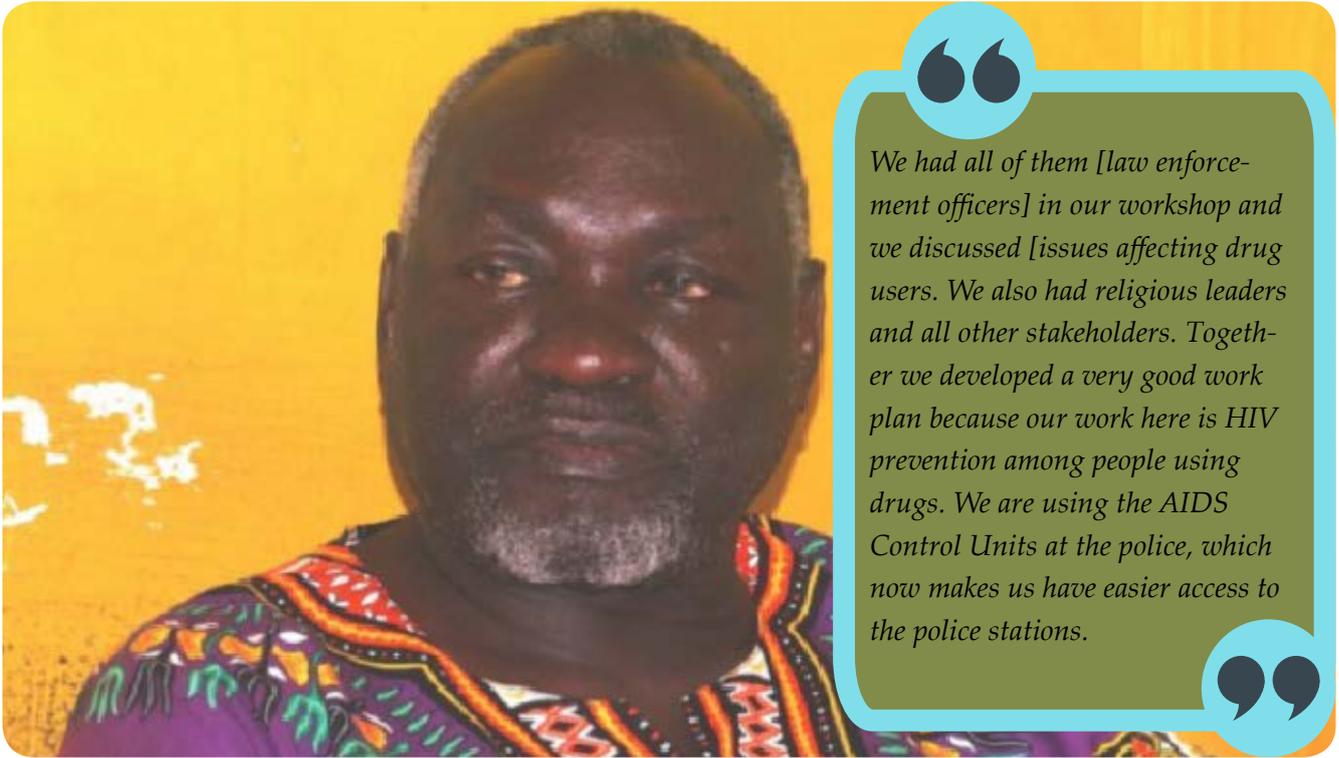
KELIN advocated to empower rights holders and government duty bearers and to reform laws and policies for a better HIV and TB response. KELIN brought together rights holders and duty bearers, along with a diverse range of other stakeholders, in neutral, constructive settings to discuss shared concerns and develop productive relationships. Stakeholders included members of county assemblies, judicial officers, law enforcement officers, health care workers, pro bono lawyers, religious leaders, PLHIV, members of key affected populations and representatives of civil society organizations working on HIV and human rights. The constructive engagement fostered by these community dialogues led to productive working relationships among law enforcement, civil society groups and community members that had not existed before. For example, a network of civil society organizations drawn from six sub-counties in Kakamega was formed to monitor, report and address sexual and gender-based violence. This network now works in collaboration with the National Empowerment Network of People Living with HIV and AIDS in Kenya.

KELIN and project partners also advocated for policy reform at national and county levels. As a result, human rights principles have been incorporated into the Kenya AIDS Strategic Framework (KASF) 2015–2019 and the National Strategic Plan for Tuberculosis, Leprosy and Lung Disease 2015–2018. The KASF now recommends specific interventions for protecting the rights and services of PLHIV and key affected populations. KELIN also worked to ensure that the strategy included human rights indicators to monitor implementation.

The human rights-based reforms to Strategic Direction 3 of the KASF include provisions to:

1. Remove barriers to accessing services for HIV and sexual and reproductive health and rights in public and private entities.
2. Improve the legal and policy environment nationally and in counties.
3. Reduce and monitor stigma and discrimination, social exclusion and gender-based violence.
4. Improve access to justice and protection against stigma and discrimination in the public and private sectors.

KELIN also helped establish a technical working group on human rights within the National AIDS Control Council to provide guidance on programing for key affected populations. KELIN leveraged its participation in the group to advocate for human rights-based approaches in the national HIV response. At the county level, KELIN worked with PLHIV to establish the County Empowerment Network of People Living with HIV and AIDS in Kisumu. The network engages policy makers at the national and county level to influence policies and decisions affecting the community.



Mr. Caleb Angira, Chairman, Kenya Harm Reduction Network

*We had all of them [law enforcement officers] in our workshop and we discussed [issues affecting drug users]. We also had religious leaders and all other stakeholders. Together we developed a very good work plan because our work here is HIV prevention among people using drugs. We are using the AIDS Control Units at the police, which now makes us have easier access to the police stations.*

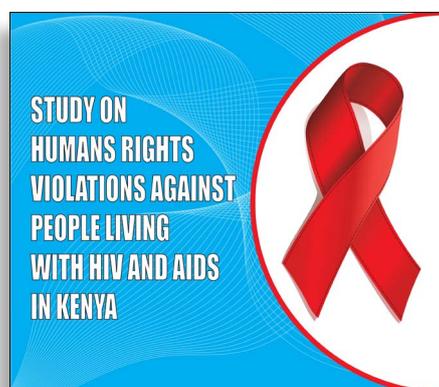
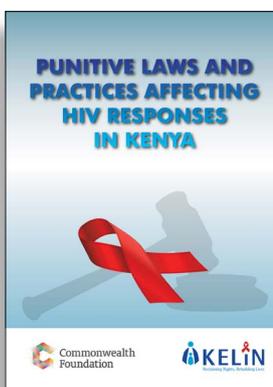
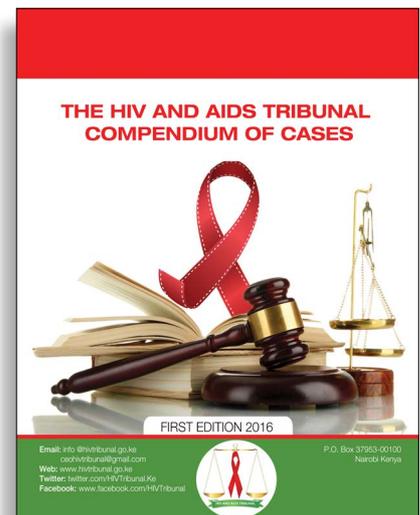
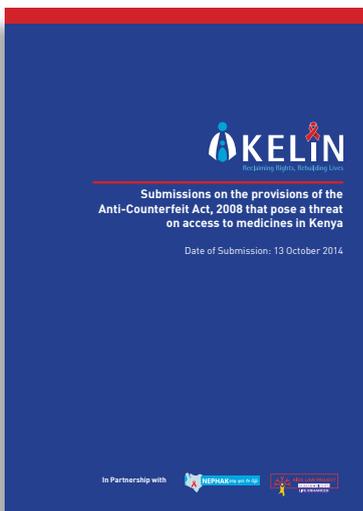
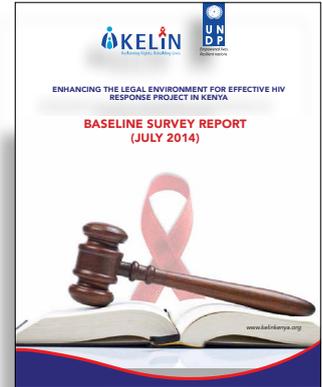
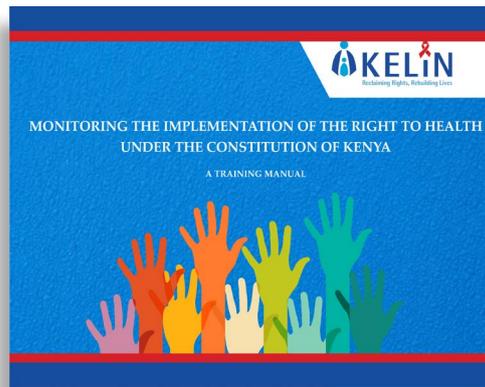
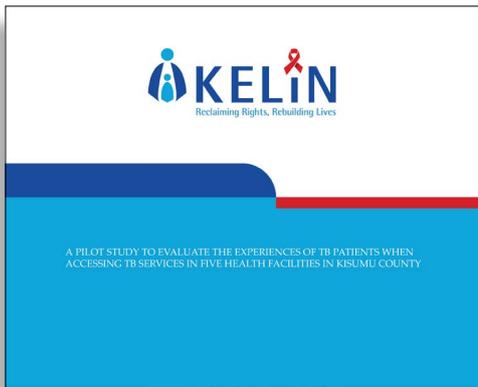
### 3.3.2. Strategic communication for advocacy

Strategic communication plays a vital role in KELIN's advocacy and litigation work. Within the organization, KELIN has leveraged the power of strategic communication to enhance internal coordination and communication structures. KELIN is also using strategic communication to develop and strengthen partnerships for sustainability and growth. The result is increased visibility and influence among communities and among law and policy makers: KELIN is now a primary channel for conducting national and local right-to-health campaigns.

Communication tools and tactics include mainstream media outreach (TV and radio), social media and information and communication materials (IEC), including videos. Some of KELIN's IEC products were developed in multiple languages (English, Kiswahili and Braille) and shared widely within Kenya and around the world.

KELIN used website, social media, print and digital media to generate and share up-to-date information relating to its work on HIV, TB, human rights and the law. Development and use of IEC materials enabled KELIN to share key information widely within Kenya, the region and around the world. For example, KELIN developed brochures in three languages (English, Kiswahili and Braille) and worked with like-minded organizations in other counties to contribute to knowledge access by PLHIV.

## KELIN's IEC materials include:



## ADVOCATING FOR LEGAL AND POLICY CHANGE: Best Practices, Lessons Learned and Innovations

### Lessons Learned

- **Community members can hold governments accountable.** Community-based organizations, PLHIV and members of key affected populations can be empowered to monitor both county and national governments to ensure quality service delivery.
- **The media can be a strong ally.** A good relationship with the media can both raise the public profile of an organization and deepen the impact of its work within communities.
- **Know what you want to say.** Key messages help ensure consistent and accurate public messaging, clarify organizational priorities, crystallise important information and measure and track success.

### Innovations

- **Translation and decoding of key advocacy messages.** People respond best to language that is simple, direct and personal.

## 3.4. Institutional strengthening strategies

### 3.4.1. Nurturing and strengthening partnerships

KELIN has built a strong organization by establishing strong partnerships with like-minded organizations. Our partners in this project include the following:

- Networks of PLHIV in Kenya and the wider region
- Key affected populations and their representatives
- HIV and TB activists
- Civil society organizations working on HIV, health and human rights
- Law and policy makers
- Members of the judiciary
- County and national government officials representing a range of sectors: Health, Justice, Gender, Education, Correctional Services, Social Welfare, Safety and Security, and Trade and Industry
- Statutory bodies: Ombudsperson's Office, Human Rights Commission, Law Commission
- Legal and human rights scholars
- Research institutions
- UN agencies and international organizations

Each partner brought skills, resources and knowledge to the table and shared a common vision for enhancing the legal environment to respond more effectively to HIV.

### 3.4.2. Institutional governance and leadership

From the onset of this project, KELIN had a team of nine employees dedicated to this project. The Executive Director was responsible for overall project implementation and served on the project Board. He developed and executed a strategic plan, provided operational oversight and ensured compliance with laws, local regulations and the KELIN code of conduct. The communications team developed high quality public awareness materials and documented project success stories. Other key team members were responsible for monitoring and evaluation, and financing.

A project steering committee (PSC) oversaw implementation. The committee, established by KELIN with UNDP support, comprised representatives of both organizations as well as UNAIDS, UNDP, the National AIDS Control Council, the National Empowerment Network of People Living with HIV and AIDS in Kenya and the Stop TB Partnership-Kenya. The PSC was critical to continuous monitoring of the project and contributed significantly to its success. Committee meetings provided a space to share implementation updates, flag emerging issues and align project work with regional and international frameworks pertaining to HIV, human rights and the law.

### **3.4.3. Strategic planning**

The Enhancing the Legal Environment project (2012–2017) began during implementation of KELIN's 2009–2014 strategic plan and ended during implementation of the following plan, 2015–2019. Learning from the first stage allowed the organization to clarify its mission and goals and adapt as needed to deliver for stakeholders. Over the five-year project implementation period, KELIN retargeted spending, reshaped its programmes and improved fundraising and other operational aspects.

### **3.4.4. Financial management**

Financial management is a benchmark for measuring project delivery. KELIN's financial reporting is transparent, accurate and evidence based. Financial statements included all relevant accounting information. KELIN closely followed the policies and practices outlined in its finance manual, which outlines a coherent system of authorisations, approvals and verifications.

The organization compared and used financial performance indicators to budget and forecast projects implementation vis-à-vis financial status. Periodic reported results were analysed to measure the extent to which goals and objectives were achieved.

## **Receipts & opening balances from 2012 -2016 (in Kenya Shillings)**

The reporting system ensured that actual costs remained in line with budgeted costs, and prevented material cost overruns. Financial management also included regular programmatic reporting and compliance with donor requirements. The rigor and transparency of KELIN's financial management attracted additional funding from other donors, who recognised the solid financial structure and positive impact of the organisation's work.

### **3.4.5. Human resources**

Throughout the project KELIN invested in building staff capacity to effectively and efficiently deliver on the project mandate. Staff was trained on the following skills:

- Strategic communication
- Academic writing
- Rights-based programming
- Results-based programme management
- Monitoring the implementation of health in a devolved governance system
- Managing performance with balanced score cards and performance management cycles
- Digital social media communication, including photography

### 3.4.6. Monitoring and evaluation

KELIN developed a comprehensive monitoring and evaluation framework to track project performance, outcomes and impacts. The framework included a table for tracking indicator performance that set baseline values (where available) against performance targets for each year of the project. Baseline and midterm reviews, done over the course of the project, generated information that was used to guide project operations.

### **SHARING EXPERIENCES AND DOCUMENTATION: Best Practices, Lessons Learned and Innovations**

#### **Best Practices**

- Strong institutional leadership, participatory governance mechanisms, and transparent monitoring, evaluation and financial systems all contribute to an effective and sustainable project.

#### **Lessons Learned**

- Development of institutional frameworks, for example, a strategic plan, a financial and management strategy, an M & E strategy and a communication strategy is key in ensuring growth of an institution and for effective project implementation.

#### **Innovations**

- Use of a project monitoring and evaluation plan for benchmarking progress and success.
- Improved working procedures for project implementation such as human resource manuals and financial guidelines.

## PROJECT VOICES



*"We need to improve in reaching out to PLHIVs. It's high time we identify leading key populations who are open and who can champion their cause, train them and build their capacity to have them articulate their issues well."*

– Nelson Otuoma, Director, NEPHAK



*HIV comes with very many things around it. You cannot work in isolation. You need all the relevant actors to be with you on legal issues and service delivery for instance.*

– Dorothy Onyango, Executive Director, WOFAK



*"I have seen a holistic transformation in the access of health services to PLHIV and TB patients with KELIN's presence. KELIN now needs to go beyond the current coverage, across the country to curb violation of human rights as far as health is concerned."*

– Evaline Kibuchi, National Co-ordinator, Stop TB Partnership, Kenya Chapter



*"We need to look at the structural interventions, the enabling legal environment of countries, communities, in order to take control to eradicate the HIV epidemic by the year 2030."*

– Ludfune Bunde, Program Analyst, HIV and AIDS, UNDP Kenya Office



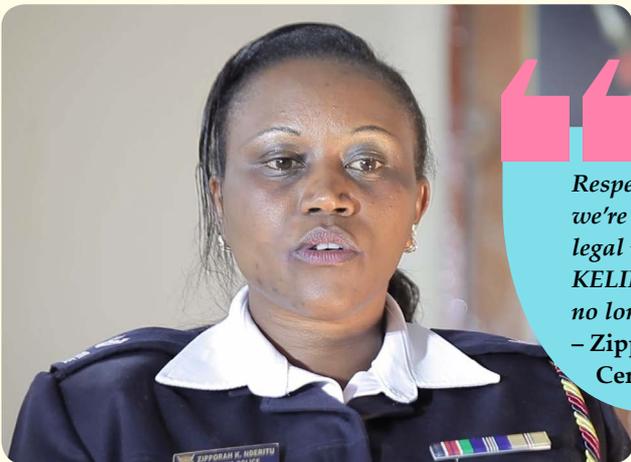
*We've seen KELIN supporting the human rights perspective through this project. In that way, it's been able to change the duty bearers beliefs and mind-sets, which has improved the attitude that they have on sex workers and other key populations."*

**– Braden Njukia, Programme Manager, KESWA**



*We've embarked on sensitization and awareness among the duty bearers. The beautiful thing that has come out with county engagement is the attention being paid to the access of health services and protection of the rights of PLHIVs within the counties, which leads to looping in experts like KELIN, KMA and others to capacity build service providers.*

**– Dr Stella Bosire, MD, Chief Executive Officer, KMA**



*Respect, dignity and provision of the best procedures when we're dealing with PLHIVs as we engage with our clients on legal issues has been a great milestone in my profession after KELIN's training. Above all, it's about attitude change. We no longer labour our clients.*

**– Zipporah Nderitu, In-Charge, Nairobi Regional Training Centre, Kenya Police Service**



*KELIN work has sold Kenya as a trend setter, where we look at it as a go-to country and learn from it on how we've been able to change the environment that we work in for HIV response even when the main legal documents are still prohibiting.*

**- Ruth Laibon Masha, Partnership and Community Mobilisation Advisor, UNAIDS**

## MEDIA COVERAGE

### Website Articles

#### Do not contravene the law on health, lawyer warns assembly

a year ago PRISTONE MAMBILI



A High Court Lawyer has urged the Nakuru County Assembly to look keenly on the Nakuru County Maternal, New Born and Child Health Bill 2014 before passing it so as to amend some of the clauses that might contravene the constitution.

Addressing media in Nakuru on Thursday, advocate Tabitha Griffith commended Nakuru county for coming up with such a bill but warned members of the county assembly against passing the bill before considering amendment to some of the clauses.

"This is a progressive Bill and one of its kind and I must thank the county for coming up with such a bill. However, there must be caution to the members of the County Assembly not to contravene the constitution as well as create a barrier to health services delivery," she said.

*Do not contravene the law on health, lawyer warns assembly*

#### KELIN to Participate In the Global Dialogue of the United Nations High Level Panel on Access to Medicine.

March 17, 2016

By KELIN Kenya

On 17 March, 2016 KELIN will participate in the Global Dialogue of the United Nations High Level Panel on Access to Medicine in Johannesburg. The high level panel was constituted on 19 November 2015, by the United Nations Secretary General, Mr. Ban Ki Moon, to propose solutions that incentivize innovation while facilitating increased access to health technologies. KELIN will be represented at the dialogue by Allan Maleche the Executive Director.

The dialogue is organised by the United Nations Secretary-General's High Level Panel on Access to medicines in partnership with the Department of Health, Republic of South Africa. Building on the dialogue that took place in London last week, it is expected to stimulate an interactive and inclusive conversation among various stakeholders on innovation and access to medicine. The dialogue seeks to provide an opportunity to discuss solutions that would address the delicate balance between the rights of inventors, international human rights law, trade law and public health objectives. Participants include patient groups, civil society, government officials and other stakeholders.

*Level Panel on Access to Medicine*

#### First Edition of the HIV and AIDS Tribunal Compendium of Cases Launched

November 30, 2016

By KELIN Kenya

On 30 November 2016 KELIN in partnership with the United Nations Development Programme (UNDP-Kenya), National AIDS Control Council (NACC), National Empowerment Network of People living with HIV & AIDS in Kenya (NEPHAK) and the HIV and AIDS Tribunal (HAT) hosted the launch of the first edition of the **HIV and AIDS Tribunal Compendium of Cases**.

The launch came on the eve of World AIDS Day 2016 with the compendium hailed as a crucial document to aid in the fight for human rights of persons living with HIV (PLHIV). Ms. Amanda Serumaga, the UNDP-Kenya Country Director noted in her remarks that;

"The Compendium is a collation of progressive jurisprudence and presents user-friendly compilation of judgments on HIV-related matters that highlight how the law has been used to protect individual rights in Kenya. It presents an important reference for actors in the legal sector, development practitioners, members of the public sector in general and other stakeholder to inform their further action in safeguarding and promoting enjoyment of a quality of life by Kenyans infected and affected by HIV"

*First edition of the HIV and AIDS Tribunal Compendium of Cases launched*

In Features, HIV and TB, News

#### KELIN Partners to Host Judicial Workshop on Tuberculosis, Human Rights and the Law

June 23, 2016

By KELIN Kenya

KELIN, in partnership with International Human Rights Clinic at the University of Chicago Law School, Stop TB Partnership and the Judicial Training Institute of Kenya will host a judicial Workshop on Tuberculosis, Human Rights and the Law. The Workshop will be held on 24 and 25 July 2016 at the Sarova Panafric Hotel, Nairobi. Over 70 participants including judges from Kenya, Zimbabwe, Uganda, South Africa, Nigeria, Malawi, India, Botswana, and Australia, as well as TB survivors, and legal, medical and public health experts from across the world, are expected to attend the workshop.

The workshop will provide a forum for the sensitization of the judiciary about the relationship between TB, human rights and the law, with a focus on international law and domestic jurisprudence from the region and around the world. It will also provide an avenue for judges to be informed on the biomedical, social, and economic aspects of the TB epidemic in the region.

Dialogue and development of relationships among judges from the different countries will be promoted in order to foster a human rights-based approach to TB in the courts of the region.

*KELIN partners to host judicial workshop on tuberculosis, human rights and the law*

In Features, News

#### Global Communities united for a Human Rights-based Approach to Tuberculosis

March 14, 2017

By KELIN Kenya

From left to right: Allan Maleche (KELIN, Kenya), Mandeep Dhaliwari (UNDP New York), Justice Oagile Key Dingake (High Court of Botswana), Brian Citro (University of Chicago), Colleen Daniels (Stop TB Partnership, Switzerland), Justice Mumbi Ngugi (High Court of Kenya) and Patrick Eba (UNAIDS, Switzerland).

Commitments on the implementation of the Nairobi Strategy on TB and Human Rights were taken a notch higher with the convening of a two-day TB and Human Rights Strategy Consultation in Geneva, Switzerland.

Participants made a rallying call for the stepping up of efforts to ensure a human rights-based approach is integrated in measures to end TB. The Nairobi Strategy, which places communities of persons affected by TB at the heart of the response, was hailed as an important step in the right direction. Participants were united in their commitment to ensure that the strategy, described as practical and timely, is formalized and impacts on the communities of affected persons.

*Global communities united for a human rights-based approach to tuberculosis*

Page 12

September 1, 2012 / STANDARD ON SATURDAY

FEATURE

**DENIED WOMANHOOD**  
FORCED CONTRACEPTION

Medical procedure: Health workers allegedly pressure HIV-positive women into sterilisation in an attempt to prevent them from passing on the virus to their partners.

# Hospitals face legal action over sterilisation of 13 women

BY STANDARD ON SATURDAY TEAM

“Assure you our records are clear. We want the investigation to be carried out as soon as possible.”

13 HIV-positive women have been sterilised in an attempt to prevent them from passing on the virus to their partners, it has been revealed. The women, who were sterilised in a series of operations, have now taken legal action against the hospitals where the procedures were carried out.

The women, who were sterilised in a series of operations, have now taken legal action against the hospitals where the procedures were carried out.

Hospitals face legal action over sterilisation of 13 women

NATIONAL / Page 21

February 14, 2012 / The Standard

Tuberculosis treatment

# Civil society anger over handling of patient

She suffers from extensively drug resistant TB but still family despite their protest

BY KINROSS WARD

“We demand that the Government recognises the rights to health and provides the necessary medication – at no cost to the patient.”

“The case has been handled as a disciplinary matter. We demand that the Government recognises the rights to health and provides the necessary medication – at no cost to the patient.”

“The case has been handled as a disciplinary matter. We demand that the Government recognises the rights to health and provides the necessary medication – at no cost to the patient.”

Civil Society anger over handling of patient

Page 10 / NATIONAL

WORLD AIDS DAY  
GETTING TO ZERO

February 2, 2012 / The Standard

# Why Kenya won't get zero Aids deaths

Raila calls for alternative funding to HIV

BY MARGO WOSTLA

Kenya may fail to achieve zero Aids deaths if it fails to integrate HIV/TB programmes

BY KINROSS WARD

“We must look back within our country to see if we are doing enough to support people who are suffering in our country.”

“We must look back within our country to see if we are doing enough to support people who are suffering in our country.”

Why Kenya won't get zero Aids deaths

# Women sue over 'sterilisation'

They tell of the pain and trauma they underwent as a condition for getting aid

BY PAUL OGEMBA  
pogemba@standardmedia.com

Several women living with HIV have gone to court seeking compensation over forced sterilisation.

They tell of the pain and trauma they underwent after being forced to undergo tubal ligation at Pumwani Maternity Hospital.

They were referred there by Blue House Mathare Clinic, a medical centre run by Médecins Sans Frontières de France.

They have been identified only as SWK, PAK, KWK and AMM in a case they filed along side Kenya Legal and Ethical Issues Network on HIV/AIDS and the African Gender and Media Initiative Trust.

The two civil society groups said the case of the four women was just a small portion of 40 women living with HIV who confirmed they were forced to accept permanent sterilisation in clinics across the country.

Wheeled into theatre

“The act of coercive and forced sterilisation of women living with HIV by way of bilateral tubal ligation without their informed consent, and the threat of withholding aid if they do not go through the process is degrading and an abuse of their dignity,” lawyer Allan Maleche said.

SWK says that she tested HIV positive in 2003 and conceived in 2009. She attended prenatal care at Blue House Mathare Clinic and went to deliver at Pumwani Maternity Hospital with a warning she would not qualify for aid if she refused to be sterilised.

“A nurse at Pumwani talked to me about family planning and before I was wheeled into the theatre. I was given a form to sign. I did not read the form and do not know its contents to date. I only became aware several months after that it was my consent for the sterilisation,” she stated.

After discharge from Pumwani, SWK says she went back to Blue House Clinic to collect formula milk for her baby and food portions for herself but she was told she would not be given unless she showed proof of having undergone tubal ligation.

She went back to Pumwani Hospital where her clinic card was stamped indicating the patient wishes to undergo “FTL.”

“The nurse at Pumwani informed me that the procedure was performed during the Caesarean operation. I was not informed of any other family planning option and did not get a chance to choose the one most appropriate for me,” SWK said.

PAK, too, talks of undergoing the same procedure, saying, the Blue House Clinic threatened to cut aid to her and her children, after which she was forced to undergo sterilisation at Marie Stopes clinic in Huruma.

“I have sought medical opinion from other doctors who have informed me that the procedure is permanent and cannot be reversed,” PAK said.

GWS and AMM said they suffered the same fate at Pumwani and Marie Stopes, following coercion and threats from Blue House Clinic in Mathare.

Health standards

The petitioners are seeking a declaration that the forced sterilisation and withholding of aid on condition that they be sterilised was unconstitutional and violation of international health standards. They are demanding compensation.

Respondents in the suit are listed as Médecins Sans Frontières - France, Pumwani Maternity Hospital, Marie Stopes International and the Ministry of Health.

Women sue over sterilization

Page 25

COUNTY NEWS

March 20, 2012 / STANDARD ON SATURDAY

# How arrest saved lives of two TB patients

Public Health

“The police in its current role would not in any way address the quantity of quality of medicines but instead has the potential to negatively affect both regional and national institutions in KAC factor states to grant the right to health and as well as improve public health.”

“The police in its current role would not in any way address the quantity of quality of medicines but instead has the potential to negatively affect both regional and national institutions in KAC factor states to grant the right to health and as well as improve public health.”

How arrest saved lives of two TB patients

to medicine in region

It recommends seizure and detention of all suspected counterfeit goods, under which generic drugs have now been categorised

BY FLAVIA LAVVEDO  
Special Correspondent

“The police in its current role would not in any way address the quantity of quality of medicines but instead has the potential to negatively affect both regional and national institutions in KAC factor states to grant the right to health and as well as improve public health.”

“The police in its current role would not in any way address the quantity of quality of medicines but instead has the potential to negatively affect both regional and national institutions in KAC factor states to grant the right to health and as well as improve public health.”

Access to medicine

MAN WATCH

# Human rights lawyer Allan Achesa Maleche has a heart for widows and orphans.

Olive Kalekye Burrows finds out more.

THE GUARDIAN

Allan Maleche is programmes coordinator with Kenya Legal and Ethical Issues Network on HIV & Aids (KELIN). The NGO essentially helps people – mostly widows and orphans – whose rights have been abused.

“One way help is through litigation,” Allan says. “In Ukwela, for instance, we obtained a life imprisonment conviction in a case where a 13-year-old girl who’d lost her parents to Aids was defiled by a 70-year-old man. We’ve fought discrimination in the workplace by going to court to defend a waitress who was sacked because she was HIV positive. With support from the Open Society Foundation and UNAIDS, Kenya, we’ve challenged the arrest of TB patients who were not given clear instruction on their treatment.”

Allan is strongly opposed to the arrest and imprisonment of TB patients who default on their treatment, arguing, “It makes no sense to accuse them of endangering

“Josephine had daughters-in-law and was left cared aged between 3 to in a single room had burned down documents, so we her grandchildren school. Some NGOs because they did. But KELIN did. “When the matter attention, KELIN (Women Fighting Action Aid Inter then a house, g certificates so they got Josephine a n Besides litigation dispute resolution arbitration by eld rights of women has managed to disinherit wid matter of month it would have tak

“We also lobby organising forum by HIV/AIDS can directly to the re says, “Josephine’s and now orphaned

Human Rights Lawyer Allan Achesa Maleche has a heart for Widows and Orphans

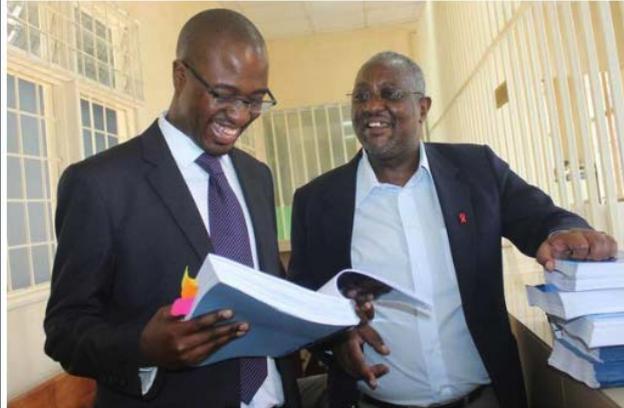
DAILY NATION NEWS BUSINESS COUNTIES SPORTS BLOGS & OPINION LIFE & ST

# Uhuru HIV order illegal, say groups

MONDAY JUNE 15 2015

MONDAY JUNE 15 2015

[t](#)
[f](#)
[g+](#)
[in](#)
[e](#)



Lawyer Allan Maleche (left) with his client, Mr James Kamau, when they filed a petition at the High Court in Nairobi on June 15, 2015 challenging President Kenyatta's directive to ministries to profile HIV-positive schoolchildren. PHOTO | PAUL WAWERU | NATION MEDIA GROUP

### In Summary

- In his February 23 directive, Head of State wanted data on children's guardians and mothers.
- Civil society organisations file petition against decree they say violates rights of children living with virus.

By **PAUL OGEMBA**  
More by this Author

Civil society groups have challenged the government's plan to collect data on schoolchildren living with HIV/Aids.

The Kenya Legal and Ethical Issues Network on HIV and Aids (KELIN) and Children of God Relief Institute have filed a petition in court to stop the profiling of the children, saying it is unconstitutional.

ADVERTISEMENT

Human Rights Lawyer Allan Achesa Maleche with his client James Kamau filling a petition at the High Court

STANDARD Digital

KTN NEWS KTN HOME RADIO MASHA SDE EYEWOMAN THE NAIROBIAN LUREPORT EPAPER

HOME KENYA WORLD BUSINESS OPINIONS HEALTH SPORTS ENTERTAINMENT EDUCATION LIFESTYLE VIDEOS WORLD CUP 2014

THE MADARAKA EXPRESS PRIORITY SERVICE (M-PESA) Available TO DECEMBER 31, 2015

PROMOTIONAL TARIFF EXTENDED TO DECEMBER 31, 2015

You are here: Home > Kenya

## President Uhuru Kenyatta's order on HIV data challenged in court

By Caroline Rweygi | Published Tue, June 16th 2015 at 09:00, Updated June 16th 2015 at 18:47 GMT +3

SHARE THIS ARTICLE

[Share on Facebook](#)
[Share on Twitter](#)
[in](#)

FOLLOW US ON

[f](#)
[t](#)
[g+](#)
[in](#)

ADVERTISEMENT

Ad closed by Google

Stop seeing this ad

Why this ad?

ADVERTISEMENT

Ad closed by Google

Stop seeing this ad

Why this ad?

A directive by President Uhuru Kenyatta requiring the compilation of a report on all school children living with HIV and Aids has been challenged in court.

The petitioners: Kenya Legal and Ethical Issues Network (Kelin), Children of God Relief Institute (Nyumbani) and two other parties, are apprehensive that compiling such a list violates the law and stigmatises the people living with HIV.

High Court judge Mumbi Ngugi certified the matter as urgent and directed that the parties file and serve the relevant documents before the matter is heard tomorrow.

ADVERTISEMENT

Ad closed by Google

Stop seeing this ad

Why this ad?

The directive issued by the President on February 23 requires county commissioners and the ministries of Health, Education and Interior to collect up to date data and prepare a report on all school children living with HIV and information on their guardians.

LATEST NEWS

Human Rights Lawyer Allan Achesa Maleche with his client James Kamau filling a petition at the High Court

KELIN @KELINKenya

Following

Live: @KELINKenya @NEPHAKPLHA @nyumbanichildrenshome discussing implication of #UhuruHivlist

11:41 AM - 9 May 2015

Panel discussion on the Uhuru HIV directive

KELIN @KELINKenya

Following

In the news: @TheStarKenya HIV+ people sue state over invasive data directive [ow.ly/On6Zx](http://ow.ly/On6Zx) #UhuruHIVlist

1:52 AM - 16 Jun 2015

9 Retweets

Twitter status update; HIV+ people sue state over invasive data directive

## Website Articles

Article	Link
Do not contravene the law on health, lawyer warns assembly	<a href="https://hivisasa.com/posts/do-not-contravene-the-law-on-health-lawyer-warns-assembly">https://hivisasa.com/posts/do-not-contravene-the-law-on-health-lawyer-warns-assembly</a>
Judicial workshop drafts strategy on the approach to TB and human rights in Africa	<a href="http://www.kelinkenya.org/judicial-workshop-drafts-strategy-approach-tb-human-rights-africa/">http://www.kelinkenya.org/judicial-workshop-drafts-strategy-approach-tb-human-rights-africa/</a>
KELIN to participate in the global dialogue of the United Nations High Level Panel on Access to Medicine	<a href="http://www.kelinkenya.org/kelin-participate-global-dialogue-united-nations-high-level-panel-access-medicine/">http://www.kelinkenya.org/kelin-participate-global-dialogue-united-nations-high-level-panel-access-medicine/</a>
First edition of the HIV and AIDS Tribunal Compendium of Cases launched	<a href="http://www.kelinkenya.org/first-edition-hiv-aids-tribunal-compendium-cases-launched/">http://www.kelinkenya.org/first-edition-hiv-aids-tribunal-compendium-cases-launched/</a>
KELIN partners to host judicial workshop on tuberculosis, human rights and the law	<a href="http://www.kelinkenya.org/kelin-partners-host-judicial-workshop-tuberculosis-human-rights-law/">http://www.kelinkenya.org/kelin-partners-host-judicial-workshop-tuberculosis-human-rights-law/</a>
Global communities united for a human rights-based approach to tuberculosis	<a href="http://www.kelinkenya.org/2017/03/global-communities-united-human-rights-based-approach-tuberculosis/">http://www.kelinkenya.org/2017/03/global-communities-united-human-rights-based-approach-tuberculosis/</a>

## ENDNOTES

1. Done in partnership with the Kenya Prisons Service AIDS Control Unit.
2. KELIN Training Manual *Providing An Effective Learning Experience For Protecting Women's Property Rights Using Alternative Dispute Resolution Mechanisms: The Place of Traditional Justice Systems* available at [http://www.kelinkenya.org/wp-content/uploads/2015/11/WLPR-TRAINING-MANUAL\\_2015.pdf](http://www.kelinkenya.org/wp-content/uploads/2015/11/WLPR-TRAINING-MANUAL_2015.pdf) (accessed 19.3.2018)
3. See judgment of Petition 250 of 2015 at <http://kenyalaw.org/caselaw/cases/view/132167/> (accessed 14.11.2017)
4. See judgment of Petition 329 of 2014 at <http://www.kelinkenya.org/wp-content/uploads/2016/04/TB-is-not-a-Crime-Judgment-.pdf> (accessed 19.3.2018).
5. Kenya Harm Reduction Network is a group of partner organizations that have an interest in supporting people who inject drugs to reduce harm in regard to HIV and AIDS infection.





Empowered lives.  
Resilient nations.



Nairobi Office  
4th floor Somak House Mombasa Road

-  112 - 00202 Nairobi
-  +254 788 220 300
-  +254 708 389 870
-  [info@kelinkenya.org](mailto:info@kelinkenya.org)
-  [www.kelinkenya.org](http://www.kelinkenya.org)
-  @KELIKenya

Kisumu Office  
Aga Khan Road Opp Jalaram Academy

-  17708 - 40100 Kisumu,
-  +254 (57) 253 2664
-  +254 708 342 197
-  [info@kelinkenya.org](mailto:info@kelinkenya.org)
-  [www.kelinkenya.org](http://www.kelinkenya.org)
-  [Facebook/kelinkenya](https://www.facebook.com/kelinkenya)