

Scaling Up HIV-Related Legal Services

Report of Case Studies: Ukraine, Kenya, and India



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GLOSSARY OF ACRONYMS AND TERMS

AIDS	Acquired Immunodeficiency Syndrome
Global Fund	Global Fund to Fight AIDS, Tuberculosis and Malaria
HIV	Human Immunodeficiency Virus
IDLO	International Development Law Organization
IEC	Information, education and communication
FIDA	Federation of Women Lawyers (Kenya)
GROOTS	Grassroots Organizations Operating Together in Sisterhood (Kenya)
KELIN	Kenya Legal & Ethical Issues Network on HIV/AIDS
Lok Adalat	Pre-litigation dispute resolution process (India)
MARPs	Most-at-risk populations
OSI	Open Society Institute
OST	Opioid Substitution Therapy
Pro bono	Work done without payment for the public good
TANSACS	Tamil Nadu State AIDS Control Society
TNSLSA	Tamil Nadu State Legal Services Authority
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
USD	United States Dollars
WPOIR	Women's Property Ownership and Inheritance Rights project

Alternative dispute resolution (ADR)

Alternative dispute resolution (ADR) refers to methods for resolving legal disputes outside of formal court processes. ADR includes negotiation, mediation, conciliation and arbitration of disputes. These methods are generally cheaper or more expedient options than court action.

Strategic litigation

Strategic litigation (also referred to as 'test cases', 'impact litigation' or 'public interest litigation') refers to use of the court system to achieve legal and social change that benefits more people than the individual involved in a specific court case. Strategic litigation can be used to challenge policies or practices that violate the human rights of people living with HIV or populations most at risk of HIV. Strategic litigation can be used to change laws or policies, to ensure laws and policies are enforced in a manner that is consistent with human rights, or to highlight gaps in the law that need to be addressed by legislators.

Concentrated epidemic

An HIV epidemic is referred to as concentrated if HIV transmission primarily occurs among populations most-at-risk of HIV, such as people who inject drugs and their partners, sex workers and their clients, and men who have sex with men.

Generalized epidemic

An HIV epidemic is referred to as generalized when new HIV transmissions frequently occur among people in the general adult population who are not members of a most-at-risk populations. One indicator that a community may be experiencing a generalized HIV epidemic is HIV prevalence greater than one percent in women attending antenatal clinics.

Hyperendemic

HIV epidemics are referred to as 'hyperendemic' in geographic areas where HIV prevalence exceeds 15 percent of the adult population.

Civil law

Countries with 'civil law' legal systems have legal systems derived from continental Europe that rely on codified collections of legislation. Ukraine is a civil law country.

Common law

Countries with 'common law' legal systems have legal systems derived from England that combine laws made by or under the authority of parliament with laws defined by judges' decisions in court cases. Former British colonies such as Kenya and India are common law countries.

Customary law

'Customary law' refers to traditional village-based legal systems developed in pre-colonial times. Customary law operates alongside the formal legal system in many countries, including Kenya and India.

EXECUTIVE SUMMARY

The objective of this study was to analyse and describe HIV-related legal services in terms of their programmatic components and elements related to quality, monitoring, evaluation, capacity development and expansion of these services. Three services were analysed.

The case studies were selected from Ukraine, Kenya and India. The case studies demonstrate three different models and approaches for delivery of HIV-related legal services in diverse formal and informal legal systems, in countries at different stages of economic development and experiencing different types of HIV epidemics.

The **Ukraine** case study describes a legal service based at a community-based organization of people living with HIV ('Time to Live'). Time to Live provides legal services at a government treatment centre for people living with HIV and at two harm reduction services that provide Opioid Substitution Therapy (OST) to injecting drug users. The legal service operates in a city where the HIV epidemic is largely concentrated among people who inject drugs and their sexual partners. Clients of the legal service are people living with HIV and people who inject drugs. Most of the cases are resolved through administrative procedures and negotiation, rather than by going to court.

The **Kenya** case study describes a legal service operated by KELIN, a national NGO devoted to the legal, ethical and human rights aspects of HIV, in partnership with the Luo Council of Elders. The legal service operates in communities with very high HIV prevalence (hyperendemic settings), where the health and social status of women and children are severely impacted by the epidemic. The case study highlights support to resolution of disputes regarding women's inheritance rights through use of traditional village-based systems in rural districts. KELIN also has a well-established system for use of private sector lawyers working on a pro bono basis to represent clients in the formal legal system.

The **India** case study describes a state-wide programme of 16 legal aid clinics supported by the Tamil Nadu State AIDS Control Society and the State Legal Services Authority. This case study demonstrates how legal services can be integrated into a state-wide government programme, with legal services provided at hospital sites where people living with HIV attend for treatment. Importantly, the case study also demonstrates a model in which community-based organizations of people living with HIV are given a central role in controlling disbursement of programme funds. Some of the legal aid clinics operate in districts where HIV is generalized in the adult population. Legal services in this case study are oriented to the needs of women living with HIV. Most of the cases are resolved through alternative dispute resolution procedures, rather than the formal court system.

Drawing from the three analyses, a costing framework for HIV-related legal services was drafted, which is to be further developed by UNAIDS.

Examples of planning and data reporting tools that may be of interest to other organizations considering funding or implementing similar activities are included in the report.

1.

Introduction

Services relating to HIV prevention, treatment and care are universally recognised as essential elements of a comprehensive national HIV response. However, relatively little attention has been given to the role of legal services in a comprehensive response. As a result, HIV-related legal services often stand outside the mainstream of national HIV responses, and are generally poorly funded, and limited in scale and coverage.

The diversity of approaches to delivery of HIV-related legal services in different social and epidemic settings across the globe and the role of these services in contributing to comprehensive, rights-based HIV responses have not been well documented. This study sought to begin to address this gap in our knowledge, with reference to three case studies.

The objective of this study was to analyse and describe the three selected HIV-related legal services in terms of their programmatic components and elements related to quality, monitoring, evaluation, capacity development and expansion of these services. The purpose was to provide data that may be helpful to officials and community representatives in national HIV programmes, Global Fund Country Coordinating Mechanisms and other agencies who may be interested in options for establishing or expanding HIV-related legal services in their country.

The study included development of a draft costing framework for HIV-related legal services.

The case studies were selected from India, Kenya and Ukraine. The case studies seek to describe different approaches to delivery of HIV-related legal services.

Diverse models of HIV-related legal services were identified in the *Toolkit on Strengthening and Expanding HIV-related Legal Services* (IDLO, UNAIDS, UNDP 2009). HIV-related legal service models differ in terms of the following:

i. Structure

Some legal services are stand-alone, specialist HIV legal services. Other legal services are located within larger organizations, such as an HIV clinic or within an HIV NGO or a human rights NGO. Some are integrated within public sector legal aid or health services, whereas others are located entirely outside government.

ii. Function

Some legal services focus only on delivering legal information, legal advice and legal representation. Some engage in strategic litigation (see Glossary). Some use alternative forms of dispute resolution that do not require use of the formal courts. In addition to case work, many legal services also engage in advocacy for law and policy reform, 'know your rights' campaigns, stigma reduction activities and community mobilization in support of human rights.

iii. Target client populations

Some legal services focus on people living with HIV or specific sub-populations of people living with HIV (e.g. women). Other legal services focus on key populations vulnerable to or at risk of HIV, who may or may not be living with HIV (e.g. injecting drug users, sex workers and men who have sex with men).

The role of this study is not to present a rigid menu of models that can be applied in other countries. It is important that any new legal service is based on a considered analysis of local needs and the specific local social, human rights, epidemic and epidemic response context. Rather, the role of this study is to encourage learning and discussion about the advantages and disadvantages of different models and approaches, and to begin to document the diversity of possible responses to HIV-related legal needs.

2.

Methodology

The research was conducted from January 2010-April 2010.

SERVICE SELECTION

It was intended that the selected services represent a mix of programmes in the following terms:

- i. implemented as part of the government's HIV programme; or
- ii. implemented by civil society outside the mainstream HIV response; and
- iii. implemented in different epidemic scenarios; and
- iv. addressing a mix of target populations, including people living with HIV, key populations at risk, and women and girls in generalized epidemics.

Three services were selected for analysis, one each from Asia, Eastern Europe and sub-Saharan Africa. An effort was made to select services that operate in different epidemic settings (concentrated, generalized and hyperendemic) (see Glossary). Services were selected that make use of alternative methods for dispute resolution or use of traditional village-based legal systems, given that formal court systems are generally unaffordable and inaccessible to most people in low and middle-income countries.

DATA COLLECTION

Staff of the legal services completed a survey in advance of the site visit, providing basic information and copies of recent organizational strategies, annual reports, monitoring and evaluation reports, workplans, budgets and other relevant documents. Consultants from the study team visited the legal services in the week of 20-25 March 2010. Interviews were held with key staff of the service (e.g. Director, legal officer, finance officer), funders of the service, government partners and community stakeholders.

Focus group discussions were held with groups of between 5 and 10 people who were staff, clients, partners or other stakeholders of the service. Where feasible, the study consultants also directly observed the operation of the services.

In addition to the analysis contained in this report, confidential feedback was provided to staff and other stakeholders on the implications of the analysis for future planning and implementation.

ANALYSIS AND REPORTING

After data was collected, the study team attended a two day workshop in March 2010 to discuss the findings and to undertake initial work in drafting a framework for costing HIV-related legal services as a form of human rights structural intervention. The analysis required desk-based review of each service's strategies, plans, budgets, annual reports, spending, monitoring and evaluation data and other relevant documentation. A draft report was provided to the in-country partners for comment prior to finalization.

LIMITATIONS OF THE STUDY

- i. The selected legal services do not have a history of rigorous formal evaluations.

- ii. The selected legal services operate in resource-poor settings and are not well funded. As a result, the services are not operating at levels adequate to meet the potential demand for such services.
- iii. The selected legal services do not represent the full range of models and approaches to delivery of HIV-related legal services. For example, the services do not include examples of:
 - a. provision of information, legal advice and referral through telephone hotlines or use of internet and e-mail;
 - b. outreach to prisoners, or to street-based sites or venues where populations such as sex workers, drug users and men who have sex with men congregate;
 - c. provision of services by University law school clinics; or
 - d. provision of HIV-related legal services as an integrated part of a comprehensive legal aid service for low-income populations.
- iv. The focus was on legal services provided to individual clients through legal information, advice, representation and referral. Less attention was given to other important functions of legal services such as community mobilization in support of strategic litigation, advocacy for law and policy reform, education of judges and the legal profession know your rights and anti-stigma campaigns and documentation of human rights violations that the legal system may be poorly equipped to address. The reason for the primary focus of this study on legal services provided to individual clients is that other human rights programmes (addressing know your rights campaigns, advocacy and stigma reduction) are to be addressed in a separate UNAIDS study.
- v. The study was limited to three legal services. Two of the selected legal services have a strong focus on the rights of widows. One included a focus on injecting drug users. Legal services that have a specific focus on other vulnerable or most-at-risk populations, such as sex workers, men who have sex with men and transgender people, were not considered. It is recommended that further work be conducted to document legal service models addressing the needs of these other populations.

3.

Time to Live, Mykolayiv,
Ukraine: Legal services
provided by an
association of people
living with HIV in a
concentrated epidemic

Figure 1: Location of Mykolayiv Oblast, Ukraine



3.1 CONTEXT

Ukraine is a middle-income country with a civil law tradition.¹ Ukraine is addressing a range of governance challenges, including significant corruption in parts of the police service and legal system.²

The legal service of Time to Live is located in the city of Mykolayiv, which is the administrative centre of Mykolayiv Oblast (province), Ukraine. Mykolayiv Oblast has a population of 1.6 million. Mykolayiv city is an industrial centre and trading port of approximately 500,000 people. Ukraine has a total population of approximately 46 million people. 360,000 people living with HIV aged 15 and over were living in Ukraine at the beginning of 2010.³ Adult HIV prevalence in Ukraine was estimated as 1.63 percent in 2007, which is the highest national HIV prevalence of any country in Europe.⁴

Ukraine has an HIV epidemic concentrated among most-at-risk populations, with particularly high prevalence among injecting drug users and their sexual partners. There is also high HIV prevalence among sex workers and men who have sex with men.

In 2007, HIV prevalence of the adult population of Mykolayiv Oblast was 3.79 percent, which was significantly higher than the national average of 1.76 percent. The HIV epidemic in Mykolayiv is strongly associated with injecting drug use. In 2007, 40 percent of all new registered HIV diagnoses were among injecting drug users. In 2006, HIV prevalence among injecting drug users was 46 percent.⁵

As at 1 April 2009, the Mykolayiv Regional Centre for HIV/AIDS Prevention and Treatment had 5,363 people registered as living with HIV, with 471 of them having AIDS. In 2009, 96 children and 945 adults were attending the Centre to undergo antiretroviral therapy (ART), with 186 adults and two children co-infected with tuberculosis.

¹ See Glossary for explanation of the term 'civil law'.

² See e.g. Human Rights Watch reports at <http://www.hrw.org/en/europecentral-asia/ukraine>.

³ Government of Ukraine, *National Report on Monitoring Progress towards the UNGASS Declaration of Commitment on HIV/AIDS*, 2010.

⁴ Government of Ukraine, *National Report on Monitoring Progress Towards the UNGASS Declaration of Commitment on HIV/AIDS*, January 2006-December 2007, p. 15.

⁵ Ibid.

In 2009, the Mykolayiv Regional Drug Abuse Clinic had 2,384 people who were registered as injecting drug users. 1,089 of them were known to be HIV-positive.

Common problems reported by people living with HIV and injecting drug users in Mykolayiv include:

- i. discrimination in almost every health care institution, such as refusal to provide treatment and support, as a result of high levels of stigma associated with HIV and drug use, and discriminatory attitudes of some medical personnel towards injecting drug users and people living with HIV;
- ii. refusal to admit people in need of care to hospital;
- iii. unauthorised disclosure of medical diagnoses; and
- iv. harassment and persecution of injecting drug users by law enforcement bodies, especially clients of Opioid Substitution Therapy (OST) services.⁶

3.2 STRUCTURE AND STAFFING OF THE LEGAL SERVICE

Time to Live was created in 1996, as a community-based organization (CBO) of HIV positive people. It is also known as Mykolayiv Association of People living with HIV. Time to Live is located at a government AIDS centre, Mykolayiv Regional Centre for HIV/AIDS Prevention and Treatment.

The legal service of Time to Live was established in 2005. The legal service is closely connected with other HIV services provided by Time to Live. In addition to providing legal services, Time to Live provides information, advocacy, care and support to people who use drugs and people living with HIV. This includes information about OST, ART and other HIV treatments, and treatment and care for HIV, drug dependence and tuberculosis (TB). Services include medical and social case management for OST clients, social and psychological case management for ART clients, non-medical and nursing support, and palliative care. It also provides pre and post-test counselling.

Time to Live is an association with approximately 28 members consisting of current and former employees. Overall, there are 13 staff members, including four who work in the legal service. In addition, 36 people work for Time to Live on a contract basis in such areas as social and psychological support, health care and nursing.

The legal service has the following staff members:

- i. project coordinator;
- ii. lawyer;
- iii. social worker; and
- iv. finance officer / accountant.

These staff members also contribute to other projects of Time to Live. For example, the social worker works at the OST site, provides social services, case management and advice, including some elements of legal advice. The accountant is shared across other projects.

The legal service lawyer is not admitted to the Bar. Although the civil law system permits such a lawyer to represent clients in court, the legal service lawyer does not normally represent clients in court. If court appearances are required, a lawyer with expertise in court litigation can be hired for the case.

⁶ See: *Tipping the Balance: Why Legal Services are Essential to Health Care for Drug Users in Ukraine*, OSI, New York, 2008 p.30-38; confirmed by interviews taken during researcher's visit to Ukraine (March 2010).

There are Memoranda of Cooperation between Time to Live and the government AIDS Centre, the Regional Narcological Centre and TB Dispensary. These agreements stipulate that these organizations provide services to each other's clients. Time to Live is a member of the City and Regional Coordinating Councils on HIV/AIDS, TB, and Drug Dependence under the auspices of the governor of the Mykolayiv Oblast. There is support for the organization and the legal service from the head of the Regional Public Health Department and the Assistant of the Minister, Department of Monitoring of Human Rights Observance by the Ministry of Internal Affairs Staff, Ministry of Internal Affairs. This cooperation is very helpful in solving problems on the regional and national level, which was not possible for the organization earlier. Membership in the Regional Coordinating Council helps Time to Live assist in protection of rights of their target populations and advocacy to government.

3.3 FUNDING OF THE LEGAL SERVICE

Although located within a government treatment service, the legal service is not funded as an integral or coordinated part of the national HIV response. The main donor has been a private foundation, International Renaissance Foundation/Open Society Institute (IRF/OSI).

Total funds available to the legal service programme for 2009 are United States Dollars USD43,000. This comes from three donors: International Renaissance Foundation (USD20,000), the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) (USD20,000), and a grant from a Norwegian donor of approximately USD3,000 for 6 months. The Global Fund grant is administered by the All-Ukrainian Network of People Living with HIV/AIDS, and covers the salary of the lawyer.

There is also an additional grant from Open Society Institute (OSI) to Time to Live for advocacy, which includes a legal advocacy component.

The funding is secured until October 2010. Time to Live rents three rooms from the government AIDS centre at a substantial discount, which are used for the legal service and other activities of Time to Live.

Analysis of expenditure for 2009 indicates that total costs were USD27,490. Direct costs comprised staff costs (USD15,980), costs associated with events (USD1,830) and information, education and communication (IEC) materials (USD800). For court cases, a trial lawyer is hired for the cost of USD310 per case/sitting. On average, there are not more than two court cases per year. The balance of costs comprised indirect costs associated with programme coordination, rent, equipment, monitoring and evaluation, and other running costs.

3.4 NATURE OF THE LEGAL SERVICE AND ITS CLIENTS

The main goal of the Time to Live legal service is provision of legal aid to people living with HIV and people who use drugs. The focus is on providing legal information, legal advice and support to individuals to resolve disputes outside of the courts. Although the service has a stated goal of engagement in strategic litigation (test cases) (see Glossary), it currently has limited capacity to pursue strategic litigation in the courts or to engage in advocacy for law reform or changes to government policy. On average, about two strategic litigation cases are supported each year.

The majority of clients are people living with HIV. Common problems are access to health care services, property and housing. The legal service does not ask for details of the clients' HIV status.

People with legal problems relating to their injecting drug use represent a minority of cases. Such cases relate to criminal and administrative matters. The legal service is available to injecting drug users whether or not they are HIV positive. Most cases involve restoration of documents (to confirm personal identity and entitlements), wills, housing issues and other civil and administrative matters.

Criminal cases related to drugs include complaints regarding police practices including corruption. It was reported that police plant drugs on former or current drug users in order to fulfil their quota of arrests. It was also reported that traffic police have a quota for the number of driving licenses that are cancelled, and often target OST clients. Police stop suspected drug users to request urinalysis to detect illicit drugs. However opioid substitutes (such as methadone and buprenorphine) are not detected by urinalysis, and it was reported that police resort to changing the results, or allege that people have refused to give the sample.

Many cases are related to disclosure of HIV status and denial of health care services.

The lawyer also refers cases to the Department of Internal Security of the Ministry of Internal Affairs, which addresses corruption within the police force, and ensures that police do not violate the law. If there is a complaint regarding the police, the lawyer refers clients to this service and accompanies the client to meet the police officers.



Examples of typical Time to Live client cases

The legal service has represented several clients in administrative cases that relate to suspension or cancellation of their driving licences. These cases arise as a result of clients being known to police as OST clients. There has been a pattern of such cases, which have generated fear of police harassment and fear of loss of licence among clients of the OST service.

The legal service has successfully challenged suspension or cancellation of licences in three such cases. This has been significant to the welfare of the clients, who need to drive regularly to earn a living.

In one case, a client was unable to comply with a request for urinalysis because of illness. The police forced him to sign a statement, which stated that he refused to undertake the test. In another case, police claimed to have found traces of illegal drugs through an initial test, but another test was taken which indicated no illegal drugs were present. The legal service argued that the results of the initial test were substituted by police to secure a conviction. The court decision was in the client's favour. However the court decided the case on procedural matters and no conviction against the police was secured.

In another successful case there were two conflicting certificates of medical examination. One result was clean. The other one stated that the client had refused to undergo drug testing. The client won this case.

As a result of these successful challenges by the legal service, OST clients have more trust in the legal system and are more confident about asserting their rights if police request that they undergo a drug test or accompany the police to the station for no reason.

The service is focused on delivery of services to individual clients. The legal services are provided at the AIDS Centre and the drug dependence treatment clinic. The following are the main areas of activity:

i. Legal information

Legal information is provided in person. In exceptional cases, it may be provided by telephone. Information is provided about legal documents, human rights, constitutional rights and various legal provisions.

ii. Legal advice

Legal advice is provided in person on the content of the law and the options for resolving legal problems and disputes and for obtaining legal entitlements such as welfare payments and health services. Legal advice is provided at the AIDS Centre and at two other services where OST is available (Narcological Centre and the TB dispensary).

iii. Legal representation

- a. Outside of the court system: drafting of documents; representation to administrative bodies; use of alternative dispute resolution approaches including mediation and negotiations with health care institutions, youth centres, child support agencies, religious leaders; negotiations with police (e.g. to enable people in detention to access methadone and HIV treatments). In relation to police matters, the service works closely with the Deputy of the Minister of Internal Affairs who has responsibility for addressing police corruption and unlawful police conduct.
- b. In the court system: drafting of appeals, complaints and motions. A lawyer will be hired to appear for clients if a court attendance is required. This may include hiring of trial lawyers for strategic litigation (test cases). The service has a relationship with a good advocate who provides court representation at a low rate or for free. The service is also able to access advice from human rights organizations such as Kharkov Human Rights Group and Ukrainian Helsinki Committee.

iv. Capacity building of key service providers

In addition to its client services, the legal service periodically contributes to education and training on HIV, human rights and the law for health care workers, social workers and police, although this is not a current priority. In the past, Time to Live has conducted seminars in small towns in Mykolayiv Oblast. In 2004-2005, seminars were conducted for police about HIV and the need for ART to treat HIV disease. In 2006-2007, Time to Live implemented a project on responses to stigma and discrimination for health care and social workers, which included a legal component.

v. Know your rights seminars

In 2010, the legal service will carry out a series of one day seminars on "human rights and how to protect them" for injecting drug users who receive OST, supported by Open Society Institute (OSI). Additionally, there will be three seminars for people living with HIV and three seminars for injecting drug users on human rights supported by International Renaissance Foundation. Six seminars were conducted in 2009 supported by the Embassy of Norway.

3.6 MONITORING AND EVALUATION

There is no overarching monitoring and evaluation (M&E) system for Time to Live as an organization. Time to Live reports data to each donor to comply with each donor's different requirements. As part of this process, donors submit recommendations on improvements to quality of services provided.

The service is able to estimate the number of clients, although accurate records of new client are not kept and records of information and advice provided by telephone are not kept.

Where client records are kept, rather than recording full names a coding system is used to protect confidentiality. The system records first and patronymic names and three letters of the surname, date of birth and sex.

The following extract from the Project Summary submitted to International Renaissance Foundation by Time to Live provides a list of proposed indicators that the legal service may use in assessing results and outcomes.



Short-term and long-term project results

The short-term results of the Project will be as follows:

Legal counseling and support as well as involvement in court proceedings. Provision of legal support will ensure access of vulnerable groups to human rights protection programs and relevant services provided by medical establishments and other institutions.

Number of clients who renewed their registration documents and have been decriminalized [sic] – where criminal cases have been stopped or punishment other than imprisonment has been awarded; social welfare benefits received by poor families, social aid for children, registrations of disability, employment, reunifications of families and parental rights renewals.

Number of clients who received social support resulting in higher level of their competence in social and psychological matters, renewed their social ties and broadened their social contacts.

The long-term results of the Project will be as follows:

More active role of injecting drug users and people living with HIV community in protection of their own rights and advocacy of their interests;

Availability of medical assistance at specialized medical and preventive treatment facilities and within the network of general health hospitals;

Participation of injecting drug users and people living with HIV in the decision-making process, work and preparation of materials for the Regional Coordination Council, evaluation of the situation with availability and quality of medical assistance will contribute to changes in practices affecting the lives and health of people;

Information campaigns and seminars will ensure equal access of injecting drug users and people living with HIV to medical assistance and contribute to decrease of stigma and discrimination in the society.

3.7 SCALE-UP AND SUSTAINABILITY CHALLENGES

The legal service accepts clients from all of Mykolayiv Oblast, as people from the entire region travel to visit the AIDS Centre. The legal service provides advice and legal support to between 300 and 400 people per annum. The target is 300 people per annum. Staff of the service estimated that approximately 60 to 70 percent of clients seen per annum are new clients of the service. The lawyer conducts up to five consultations per day. There are approximately two cases per year that could be classified as strategic litigation.

There has been no systematic needs analysis or attempt to estimate levels of unmet legal need among the target populations. The total demand for legal aid services from people living with HIV and injecting drug users in Mykolayiv Oblast is difficult to estimate. There may be significant numbers of people who have legal problems but who are not seeking legal help.

The main scale-up challenge is attracting sustainable funding. The service is fully dependent on donors. Other sources of funds, such as government or private entities, have not been identified. As the service is not part of a formal government HIV or legal aid programme, there is no link to a national strategy or plan to scale up services in the HIV sector or justice sector.

According to International Renaissance Foundation, the legal service would be assisted by hiring another lawyer, but it is hard to find lawyers who are qualified and sensitized to the issues. Time to Live is not currently seeking to increase the scope or coverage of services.

Interviews with other organizations in Mykolayiv and with the donors indicated that there are several other similar legal assistance programmes in Mykolayiv and in other parts of Ukraine. The IRF/OSI provides funds to four similar projects in Ukraine. The IRF/OSI is also providing funding to the Kharkiv Human Rights Protection Group, which provides assistance to HIV-related cases within the context of its broader programme of human rights work.

3.8 LESSONS LEARNT⁷

Management by a community-based organization

A strength of the legal service is its management by the local community organization of people living with HIV. This ensures that the service is responsive to the needs of the local HIV-positive community and that staff are made aware of any emerging new issues affecting this community as they arise. The staff members have the trust of local HIV-affected communities. This ensures that the legal service enjoys the confidence of the community of people who inject drugs, who may otherwise distrust health and legal services because of previous marginalization and mistreatment by authorities and service providers. As it is operated by a CBO, the service may be perceived to be in a better position to legally challenge the conduct of government agencies than a legal service provided by government.

However, staff resources are small. Staff time is spread thinly. The four legal service staff are also engaged in supporting other projects of the organization.

Several other Ukrainian organizations follow a very similar model of provision of legal services to most-at-risk populations, based at community organizations of the key target population. The organizations typically include a small section dedicated to providing legal services. Other examples in Ukraine are Unitus, a community organization with two lawyers who provide legal advice to sex workers and women living with HIV, and New Century, a harm reduction organization which has a staff lawyer who provides services to clients of the programme.

Targeting of legal services to a most-at-risk population

The legal service is not restricted to people living with HIV. Providing legal services through outreach at OST centres enables the legal service to easily reach the target

⁷ See also: *Tipping the balance: Why legal services are essential to health care for drug users in Ukraine*, OSI 2008.

population of injecting drug users. The location of the legal service at such centres may also encourage injecting drug users to access OST and ART.

Provision of legal services to injecting drug users regardless of their HIV status can help to reduce HIV vulnerability of this population, and promotes non-discrimination and social inclusion of both HIV positive and HIV negative injecting drug users.

Location at AIDS Centre

There are advantages and disadvantages of the location of the legal service at the Regional AIDS Centre. The AIDS Centre is the main government health care body that provides HIV-related services in the region. The location of the legal service at the AIDS Centre means that activities of the legal service and other HIV treatment, care and support services are closely interconnected. Additionally, the legal service has access to two OST sites. The legal service is easy to access for people attending the AIDS centre and OST sites. Legal services may complement health promotion services by enabling people to focus more on their health needs, rather than their legal problems.

However, disadvantages of the legal service's location at the AIDS Centre include:

- i. people who do not want to be associated with AIDS or to identify their HIV status may not be willing to come to the office;
- ii. the service may be perceived as being compromised in its ability to represent or mediate complaints against the AIDS centre. The service benefits from reduced rent from the AIDS Centre, which can evict them at short notice. Often patients do not want to aggravate the situation themselves as they do not have anywhere to go. Despite these concerns, the staff of Time to Live described many cases when they mediated situations between patients and AIDS Centre staff.

These advantages and disadvantages need to be balanced in considering whether to use this model of co-location of legal and health services in other settings.

Limitations of the programme

There is no strategic plan of Time to Live as an organization, or of the legal service programme as a section of the organization. There is no unified budget of the organization or of the legal service programme. There are only budgets of particular projects, which makes planning ahead difficult. The organization and the legal programme are entirely dependent on the donors.

The interviews showed that the services provided by the legal service correspond with the needs of the target populations of people living with HIV and injecting drug users. The focus group discussion revealed that there is a need for a lawyer who is admitted to the Bar and can therefore represent clients' interests in court. It could be a second lawyer, working on a part-time basis. The focus group showed that clients were happy with the service provided, but would like to have more support and full representation in court. The discussion also showed that the services that the clients received were timely, with no need to wait for access to legal advice.

4.

Kenya Legal and Ethical
Issues Network on
HIV/AIDS (KELIN) and Luo
Council of Elders:
addressing inheritance
rights through traditional
village systems in high HIV
prevalence communities

Figure 2: Location of Nyanza Province, Kenya



4.1 CONTEXT

Kenya is a low-income country that has been heavily impacted by the HIV epidemic. The legal system comprises common law (based on English law),⁸ customary law and Islamic law. The co-existence of these legal traditions is provided for in the Constitution. The formal court system is based on common law principles. The courts suffer from lengthy delays. Corruption undermines community confidence in the formal legal system.

Kenya's population is 39 million and adult HIV prevalence is approximately 7 percent.⁹ In some districts of Nyanza Province where KELIN works HIV is hyperendemic, with prevalence in excess of 15 percent of the adult population. The primary means of HIV transmission in Kenya is unprotected sex. Young women in the 15-24 year age group have HIV prevalence four times higher than young men. Women and girls are disproportionately affected by HIV. Many are widows, young girls and grandmothers. It has been estimated that there are over 1.2 million children who have been orphaned or made vulnerable by HIV in Kenya, and 75 percent of these are cared for by grandmothers.

KELIN is a national NGO focused on the legal, ethical and human rights dimensions of HIV. KELIN's inheritance rights project works through traditional village-based justice systems in Nyando, Muhoroni and Nyakach Districts of Nyanza Province. These three Districts had a combined population of 300,000 in 1999.¹⁰ Adult HIV prevalence in Nyanza Province was estimated at 13.9 percent in 2007. In Nyakach District, HIV prevalence was over 25 percent. KELIN also supports another NGO, Women Fighting AIDS in Kenya (WOFAK), to implement a project addressing women's rights in Bumala District of neighbouring Western Province where HIV is also at hyperendemic levels.

⁸ See Glossary for explanation of the terms 'common law' and 'customary law'.

⁹ *Kenya AIDS Indicators Survey (2007)* estimated HIV prevalence among the general population aged 15-49 at 7.4 percent. The *Kenya Demographic and Health Survey (2008-09)* estimated prevalence for the same population at 6.3 percent: *UNGASS 2010 Country Report Kenya*.

¹⁰ http://en.wikipedia.org/wiki/Nyando_District, quoting *Kenya 1999 Population and Housing Census*. Ministry of Finance and Planning, Nairobi, 2002.

Most new cases of HIV transmission in Nyanza Province are sexually transmitted, and 23 percent involve sex workers and their clients.¹¹ Nyanza Province is located around the shores of Lake Victoria where the Luo are the largest ethnic community. Fishing is the major commercial activity in the province. Poverty is widespread and many villages rely on subsistence agriculture. Gender inequality and cultural practices (trading in sex for goods and services, polygamy and treatment of women as male property) are significant factors that contribute to the epidemic.

Under Luo custom, land belonged to the community for the benefit of all members including widows and orphans. No person owned land in a personal capacity. However, as western systems of land title were introduced, customary practices have been exploited by men. Land holdings have become individualized and commercialized. In recent decades, there have been many cases of manipulation of custom to the advantage of men, as male family members have registered their ownership of lands to the exclusion of widows and orphans.

'Wife inheritance' is recognised by Luo customary law. After the death of her husband, a widow is regarded as similar to property and is 'inherited' by the husband's brother or other male relative. In this way, the widow and her children remain within the husband's clan. The widow is also required to have sex with a male relative of the deceased. It was reported that the intention of this 'cleansing' ritual is to prevent a curse. Widows who are not cleansed are ostracized from the clan and face discrimination.

With the onset of the HIV epidemic, there are many cases in which the widow is not accepted back into the husband's clan and is disinherited from the husband's property. This is particularly the case when the husband is thought to have died from an HIV-related condition, given the high levels of HIV stigma.

The right of Kenyan women to inherit property from their husbands is protected by legislation. However, many Kenyan women experience violations of their rights to inherit and own property. Women generally prefer disputes to be handled by elders through traditional systems. Luo women are more familiar and comfortable with customary law procedures than the formal courts. The formal legal system is not a realistic alternative for most disinherited Luo wives due to expense, delay and inaccessibility of courts.

Disinheritance has led to some women and children leaving their rural village homes to live in townships. Some women turn to sex work for income, increasing their vulnerability to HIV. Poverty associated with disinheritance also means that women and children who are living with HIV are less able to access treatment, care and support, and are vulnerable to tuberculosis and other HIV-related conditions because of poor diet and inadequate housing.

4.2 STRUCTURE AND STAFFING OF THE LEGAL SERVICE

It is important to distinguish between the two institutional structures involved in addressing disinheritance of widows that are described in this report. These structures are:

- i. KELIN, a national NGO; and
- ii. Luo Councils of Elders.

KELIN

KELIN has existed since 1994 and was established as an independent NGO in 2001. KELIN was based at a law firm until 2007. Since 2007, KELIN has been based at a freestanding office in Nairobi. KELIN's operations are overseen by a governing Board

¹¹ Republic of Kenya (2009) *Kenya HIV Prevention Response and Modes of Transmission Study* p.18.

comprised primarily of lawyers, which provides strategic advice. KELIN staff members are accountable to the Board. KELIN has four full-time staff members:

- i. Project Coordinator (who is also a practising lawyer);
- ii. Regional Coordinator, based in Nyanza Province;
- iii. Finance Officer; and
- iv. Administration Officer.

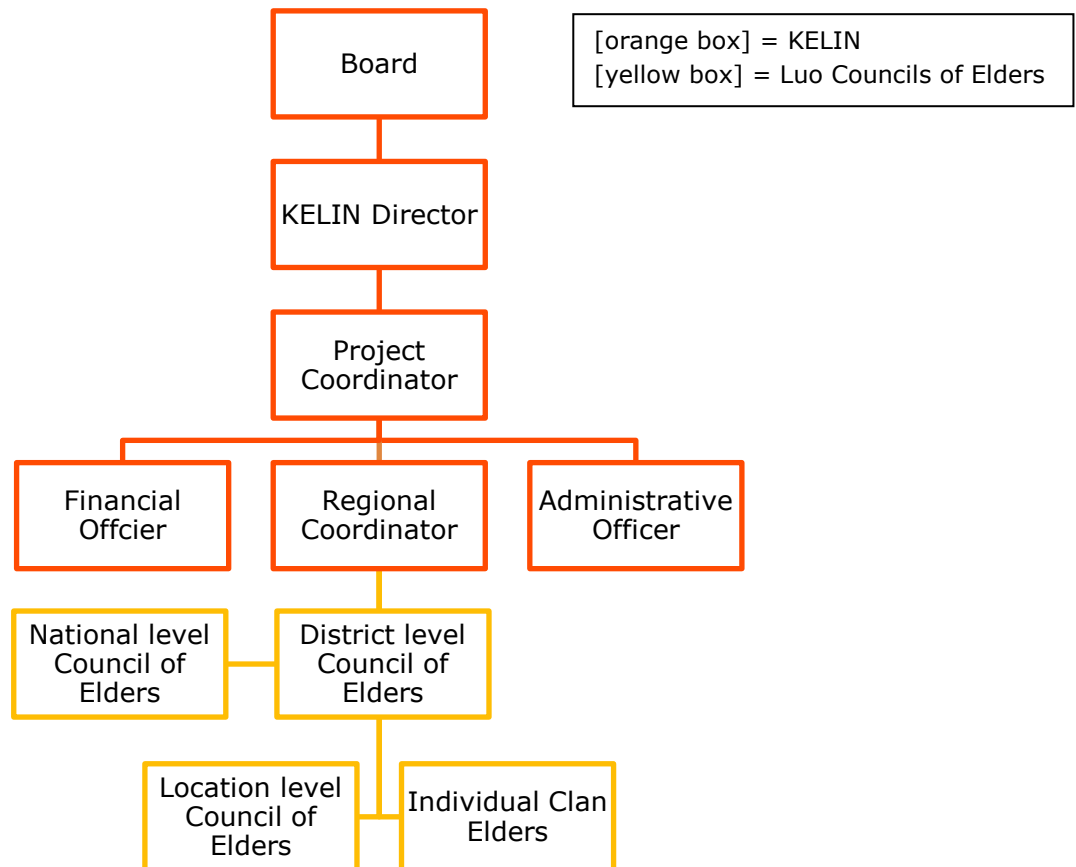


Figure 3: Structure of institutions delivering the Cultural Structures project

A Senior Consultant works for KELIN on a voluntary basis (half time).

Volunteers contribute to KELIN at several levels. Lawyers from the pro bono panel contribute time to individual cases as well as capacity building activities such as training. There are currently seven active pro bono lawyers and a larger panel that can be drawn on if required. There is a part-time volunteer officer (community mobilizer) who is based in Nyanza. A person with media and documentation skills volunteers at KELIN’s national office in Nairobi and has produced a DVD documenting KELIN’s activities in Nyanza. Students also volunteer from time to time. KELIN also hosts an intern from a law firm (Rachier and Amollo Advocates, KELIN’s key partner in the legal profession). At least 40 percent of KELIN’s financial and human resources (including volunteers) are allocated to supporting activities to address disinheritance of widows. Most of the work on disinheritance issues occurs through fieldwork in Nyanza Province, which is several hundred kilometres from Nairobi. KELIN does not yet have an office to house the Regional Coordinator in Nyanza Province, although it would be desirable. The Regional Coordinator works from home, in the field or at the office of the Luo elders.

Luo Councils of Elders

The Councils of Elders are structured according to a customary hierarchy. There is a national Council of Elders led by the *Ker* (Chief), and Councils of Elders at District, Location and Clan levels. The elders are not paid, and are not recognized as part of the formal administration of government.

The management arrangements for the service are agreed between KELIN's regional coordinator and the District Council of Elders. The District Council of Elders refers cases to the Council of Elders at the location of the dispute and recommends the specific elders to take up the arbitration. The District Council of Elders monitors the arbitration process and reports back to the Regional Coordinator on the progress of the cases. The Regional Coordinator receives financial and administrative support from the KELIN Nairobi office as well as legal support and policy directions.

The role of the Council of Elders in resolving disputes according to customary processes is recognised by the formal legal system, provided that the parties both agree to using customary processes and that the process does not result in an outcome inconsistent with Kenya's Constitution.

4.3 FUNDING OF THE LEGAL SERVICE

KELIN relies on two donors for its funding, Open Society Institute (OSI) and ActionAid Kenya. In 2009, KELIN's budget was USD178,225 (USD140,000 OSI + USD38,225 ActionAid). The majority of these funds (at least USD108,000) is used for the two projects that KELIN is implementing addressing inheritance rights issues for women and children. The balance is used to sustain KELIN as an organization, enabling it to continue to engage in other legal service activities.

Appendix III contains an extract from KELIN's two year operational plan budget that provides an estimate of the costs required to be met to fully implement the Cultural Structures project over a two year period. The costs listed are mostly direct costs and do not include indirect costs associated with KELIN's ongoing management of the project. This is not the actual budget for the project. Rather it is the list of proposed budget lines developed by KELIN in 2009 for submission to donors.

4.4 NATURE OF THE LEGAL SERVICE AND ITS CLIENTS

The focus of the study is KELIN's work on inheritance rights, referred to as the Cultural Structures project. This project currently represents approximately 80 percent of KELIN's funded work. The outcome results that KELIN aims to achieve through its overall programme of work are:

- Enhanced protection against health and HIV related human rights violations.
- Increased awareness on health and HIV-related human rights and reduction of HIV related stigma and discrimination against the affected and infected, most-at-risk populations and other vulnerable populations.
- An improved health and HIV service delivery system that is accessible to all and respects and promotes human rights of all including the infected and affected, most-at-risk populations and other vulnerable groups.

The Cultural Structures project focuses on supporting informal systems of arbitration and mediation for addressing widows' inheritance rights issues at the village level. People who benefit from the project include women living with HIV, women vulnerable to HIV, orphans and vulnerable children, and community elders.

Widows are not required to disclose their HIV status when they access dispute resolution by village elders. However, it is understood by KELIN that the majority of widows who

seek arbitration or mediation are HIV positive.

In addition to the Cultural Structures project, KELIN also provides legal information, legal advice, referral of clients to pro bono representation, advocacy for law and policy reform and capacity building activities. These legal services benefit a broad range of clients, with a primary focus on low-income people living with HIV.

Rodah's story

When she was 34, Rodah's husband died from AIDS. Rodah was left with two girls and a pregnancy that gave her two boys. Rodah is also living with HIV.

After her husband's death, the husband's family evicted her from her home, demolished her house and sold the material used in the construction of the house. This was to signify that she was disinherited and no longer part of the family.

Rodah believed that her husband's relatives who had disinherited her may respect the authority of the village elders. She requested KELIN to present her case as a widow who wanted to feel accepted within the home and who wanted to cultivate part of the ancestral land. Her case was presented to the elders who mediated the dispute between her and her in-laws. Since then, her life has been more peaceful and she is able to use her portion of the ancestral land.

4.5 LEGAL SERVICE COMPONENTS

4.5.1 Components of KELIN's overall programme of activities

- i. Engagement with traditional systems on women's inheritance issues.*
This is the main focus of KELIN's current work. The detailed components of this activity are described at 4.5.2 below.
- ii. Legal advice and referral*
KELIN does not currently operate a street-front legal aid advice service. The Project Coordinator is a lawyer and has access to a panel of pro bono lawyers. KELIN's lawyer provides initial legal advice in some cases, primarily through face-to-face interviews at KELIN's office in Nairobi. These clients are usually people with HIV-related legal problems referred to KELIN by other HIV NGOs or by KELIN's Cultural Structures project. If the client requires ongoing legal representation, KELIN refers the client to a private lawyer for representation on a pro bono basis. This represents a small part of KELIN's current role. On average, the lawyer interviews and provides advice to two clients a month.
- iii. Strategic litigation*
Some public interest litigation cases have been referred for pro bono assistance to private lawyers. KELIN maintains an involvement in such cases though providing legal support throughout the court process (e.g. drafting court documents), working in partnership with pro bono lawyers who provide court representation without charging professional fees. In 2007 KELIN conducted a successful national case on workplace discrimination and confidentiality rights, in partnership with Rachier and Amollo Advocates.
- iv. Capacity building for service providers*
KELIN conducts training for:
 - a. health care workers in human rights as part of the national module of the medical school;
 - b. judicial officers in conjunction with the judicial Service Commission; and

- c. law students at university of Nairobi

KELIN draws on its membership of lawyers to assist with training. Partners in this work include Kenya Pediatric Association, Kenya Medical Association, Family Health International, Aga Khan University, Nairobi Hospital and Gold Star Network. KELIN also develops training curricula for other NGOs that are planning to implement human rights training.

- v. *Advocacy, law and policy reform*

KELIN has played a prominent role in advocating for human rights-based national HIV legislation in Kenya and the establishment in 2010 of a specialist HIV Tribunal under the *HIV and AIDS Prevention and Control Act 2006*. KELIN is working with other legal and human rights NGOs from East and Southern Africa on regional and international treatment rights policy issues. In 2009, KELIN convened a National Advocacy Forum on HIV and Issues Affecting Children in Kenya and is developing advocacy tools relating to children's rights.

4.5.2 Components of KELIN's inheritance rights programme

KELIN's work on inheritance rights issues comprises:

- a. The Cultural Structures project with Luo communities in Nyanza Province (funded by OSI)
- b. A project providing technical assistance to WOFAK in Bumala District, Western Province (funded by ActionAid).

Project with Luo communities in Nyanza Province

Components of this activity are:

- i. *Training and sensitization*

In order to respond to disinheritance of Luo women at the clan and district levels, the service has to create a well functioning system of elder mediators/arbitrators who have been trained in human rights-based approaches to resolving inheritance disputes. The service also has to ensure key community stakeholders understand and support the approach of dispute resolution for widows using the Councils of Elders. Training and sensitization is provided to elders, widows, district and provincial administrators, law enforcement officials, community-based organizations of women to create awareness on human rights. The elders are trained on human rights, alternative dispute resolution approaches, succession law and property ownership rights issues. Issues related to Luo culture and customary law are also considered within the training.

- ii. *Arbitration and mediation by elders*

An arbitration or mediation process occurs between the widow and her in-laws, led by the Luo elders. The process aims at reconciliation and is based on customary law, guided by human rights norms and principles. Although it is termed an 'arbitration', the process is usually focused on mediation and conciliation. Discussions occur between the elder and each party separately, and then the two parties are brought together to agree a resolution. Wherever possible, solutions are determined and agreed voluntarily by the parties to the dispute, rather than through a ruling imposed by the elders.

- iii. *Reinstatement*

KELIN provides support to ensure that women resettle on their property. Women that have been disinherited and who are severely disempowered by poverty will receive community and financial support in the construction of a home through the intervention of the elders and KELIN.

The management of activities takes place through the relationship between KELIN's Regional Coordinator and the District Council of Elders. The District Council of Elders refers cases to the Location Council of Elders and also recommends the specific elders to take up the arbitration. It is also the District Council of Elders that monitors the arbitration process and reports back to the Regional Coordinator on the progress of the cases. The Regional Coordinator receives financial and administrative support from KELIN's Nairobi office as well as technical legal and policy support. Partners of KELIN in the Cultural Structures project include:

- Open Society Institute for East Africa (OSIEA), the main funding partner;
- The National Commission on Human Rights, which conducts complementary policy activities and promotes the cultural structures approach within government;
- Futures Group (which implements the Health Policy Initiative), a provider of technical assistance;
- Women Fighting AIDS in Kenya (WOFAK), which refers widows with property inheritance legal issues to KELIN;
- The Councils of Elders at national, district and local community level;
- Federation of Women Lawyers (FIDA-Kenya), which provides a source of legal aid to women seeking to use the formal legal system to resolve disputes.

Project providing technical assistance to WOFAK

ActionAid Kenya funds WOFAK, an NGO that provides prevention and care services to its members who are mostly women living with HIV and their families. WOFAK conducts a range of activities to educate and empower communities to protect the rights of women and children living with or affected by HIV while providing needed services to the most vulnerable.

ActionAid Kenya funds KELIN to provide technical assistance to WOFAK with a focus on its work with women and children in Bumala, Western province. A participatory approach is used by KELIN in the building of the capacity of WOFAK staff and partners in human rights-based approaches to inheritance and other issues affecting women and children. Activities have included preparation of an advocacy strategy, tools and training materials. Training of policy champions, to sensitize them on legal and human rights issues in relation to HIV and the rights-based approach was undertaken in Bumala. One aspect of WOFAK's work is to support village communities to address the needs of disinherited wives, orphans and vulnerable children. KELIN assists with orientation of community cultural leaders in Bumala on rights based approaches and training of paralegals.

4.6 MONITORING AND EVALUATION

KELIN's overarching monitoring and evaluation (M&E) plan is in the process of development. Monitoring and reporting occurs at different levels, but as yet there is no single coherent M&E plan. M&E activities include development of monthly work schedules, monthly reports and weekly meetings. Monitoring of the Cultural Structures project occurred in 2009 guided by an M&E tool and will occur again in 2010.

Comprehensive M&E is anticipated in KELIN's *Strategic Plan 2009-2013*. Specific output indicators are proposed in the *Strategic Plan*, including in relation to the Cultural Structures project (see extract from the *Strategic Plan* in Appendix IV).

Financial and activity reporting is six monthly, and is structured according to donor requirements.

ActionAid has conducted a participatory evaluation of WOFAK's work in Bumala which identified KELIN inputs as highly valued by community members.

There is heavy reliance on anecdotal reports to confirm the outcomes of interventions in Luo communities (rights awareness, reduction in disinheritance etc).

Monitoring mechanisms are mainly focussed on the different actors involved in providing the service, for example, on the functioning of the Regional Coordinator, the district level Council of Elders and the local level of Council of Elders including the individual clan elders where the arbitration takes place.

The monitoring data is generally used to guide the informal governance system of elders in addressing women's inheritance and property ownership issues in the most effective manner. The primary goal is to enable KELIN to meet its reporting obligations to funding organizations.

4.7 SCALE-UP AND SUSTAINABILITY CHALLENGES

Current coverage of Cultural Structures project

In the 12 months since KELIN's project commenced in February 2009, 40 women were assisted to resolve disinheritance issues. 30 cases have been referred to arbitration by the Luo elders. 10 additional cases have been referred to formal legal channels (e.g. land allocation authorities or police if violence was involved). The cases are monitored by the Regional Coordinator, who submits monthly reports. The client registration form is attached at Appendix V.

40 cases may appear to be a low number. However the process compares favourably with use of the formal legal system when considered in terms of the speed of the dispute resolution process and capacity to deliver a solution that is complied with. The limitations of the formal judicial system to effectively address the legal disputes of women can be seen through data from FIDA's legal aid service for women. FIDA estimates that it receives 1,200 legal cases annually, of which approximately 200 reach the court, of which only around 50 are resolved per annum.

Also, there are many more beneficiaries of the project than the individual widows. The project helps to build a human rights culture in the entire community and reaches a range of different community stakeholders through capacity building activities such as training and sensitization meetings. For example, in addition to widows the project also benefits:

- children directly affected by disinheritance and their families;
- elders;
- district officials; and
- local CBOs (grass roots women's groups).

Two training events have been held with elders in 2009. Each of these events were attended by approximately 60 elders.

KELIN estimates that 50 arbitrations per year are needed to address the demand in the three districts where it is currently working, of which 25 cases would need additional housing assistance.

Scale-up challenges for the Cultural Structures project

The Cultural Structures project is a stand-alone NGO project, rather than a part of a national or provincial government programme. KELIN does not have the capacity or

resources to scale-up the approach nationally, but it can demonstrate the effectiveness of the approach in the three districts where the approach is being implemented.

There are some other examples of similar work being conducted by other NGOs, but there is no nationally coordinated effort. A similar approach using cultural structures is implemented in other districts by the NGO GROOTS (a network of women self-help groups and community organizations). FIDA operates a legal aid service for women that includes referral to elders as well as support for women to access the formal legal system.

It is hoped that once KELIN's project is formally evaluated, resources will be provided to support scale-up, including provincial and national government agencies. There is also a possibility of other donors supporting scale-up in future years, such as USAID and the Global Fund. The National Commission on Human Rights is a key partner in advocating for the approach to be scaled-up.

In terms of sustainability, it is hoped that the application of human rights principles by elders to resolve inheritance disputes will be integrated into local norms, enabling the approach to become largely self-sustaining. KELIN's role should reduce as the human rights approach is taken up more broadly in the community. There will be some ongoing need for capacity building support from KELIN and for KELIN and other agencies such as FIDA to act as referral points for cases that require intervention of the formal legal system.

It is important to acknowledge that KELIN's work builds on a pre-existing body of work implemented by the Women's Property Ownership and Inheritance Rights (WPOIR) project. WPOIR was a joint initiative by the Kenya National Commission on Human Rights, the POLICY Project (funded by USAID), and the Luo Council of Elders in the period 2004-2009.¹²

WPOIR laid much of the groundwork for KELIN's project through engaging national and provincial stakeholders on inheritance and human rights policy and legal issues, and arguing the case for use of traditional cultural structures to resolve disputes. This provided a supportive context for KELIN to commence activities to implement the approach at district level.

WPOIR worked with Luo and Meru communities. It was the intention of WPOIR to replicate the approach in other areas of the country, such as Kisii, Maasailand, Kalenjin land, Borana land and in Muslim communities residing on the Coast through the religious-based cultural structures of authority, such as the Council of Imams. However, USAID funding for activities relating to WPOIR ended in December 2009, so it is unclear who will lead efforts to replicate the approach nationally.

¹² See: *From Despair to Hope: Women's Right to Own and Inherit Property*, Policy Project USAID, 2005. http://www.policyproject.com/pubs/countryreports/KEN_InheritanceRights.pdf

4.8 LESSONS LEARNT

KELIN's Cultural Structures project demonstrates an effective approach whereby cultural processes are harnessed to resolve disputes in a manner that promotes human rights, while disregarding those aspects of traditional culture that are inconsistent with human rights and which contribute to HIV risk and vulnerability. The approach has succeeded in identifying positive aspects of Luo culture that can be used to strengthen women's ability to claim their legal rights to own and inherit lands.

Working within cultural structures is effective in ensuring local ownership of the project. This approach could be used for addressing other traditions at village level that may both breach human rights and contribute to HIV risk and vulnerability, such as female genital mutilation, polygamy and child brides.

Initial indications are that the approach is proving to be successful in the Luo community. The Luo community in Nyanza was chosen as the site for the project because it has a strong dominant cultural framework still in existence that is complied with by the majority of community members. The approach would need to be adjusted if applied to communities where customary law and traditions are more fragile or where there are multiple traditional and religious systems operating alongside each other.

The project has met resistance from some people who have argued that the approach does not challenge the fundamental gender inequalities that exist both in customary law and in formal law. Luo culture has many patriarchal aspects and there is a risk that working within cultural structures may perpetuate some gender inequalities. On the other hand, the project is demonstrating that culture is dynamic and that customary law can respond to new developments such as HIV in a way that improves the status of women. In assessing whether to apply an approach of working within traditional cultural structures, consideration needs to be given as to whether the cultural institutions are sufficiently flexible and responsive to accommodate human rights principles and to deliver outcomes that support gender equality and are consistent with human rights.

Strengths of the Cultural Structures model include:

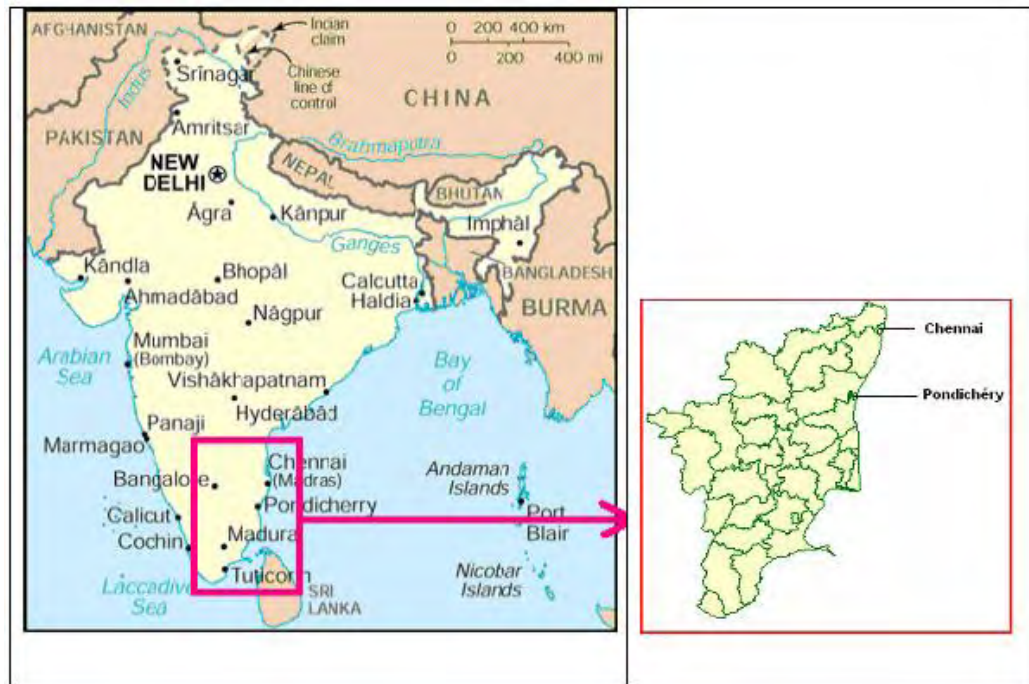
- i. The service is delivered by the Council of Elders, which is a governance mechanism recognized by Luo communities as the authority to intervene in disputes related to the Luo clan. It is more accessible and acceptable to Luo women than the formal courts. The elders' arbitration process is preferred by women who are familiar with the role of elders. The formal court system is clogged and is difficult for rural women to access due to high procedural costs, transportation constraints, and language issues.
- ii. The arbitration process is conciliatory rather than adversarial. This is perceived more beneficial by the widows. WOFAK stated that many of their members facing disinheritance disputes indicated their preference for a Council of Elders intervention, which they perceived as reconciling and therefore more beneficial. Women referred to the formal legal system as a "divorce approach" because of its adversarial nature, which is perceived as inappropriate.
- iii. The service is provided at the location of the dispute. Compliance with the reconciliation agreement is monitored by the elders at the location of the dispute.
- iv. Recognition of women's interests by the clan governance system of elders has an empowering effect as it supports improvements to the status of women. The project is responsive to rights violations and has a preventive effect on rights violations through the increased human rights awareness of the community.
- v. The elders have been cooperative in introducing human rights-based principles into dispute resolution approaches as it has the effect of confirming their moral authority in their communities. The elders are able to demonstrate that they are addressing the trend of the abandonment of community responsibility for the care of the vulnerable.

- vi. The elders are able to integrate HIV prevention messages into resolution of disputes and influence behavioural norms in the community. For example, elders can address reduction of HIV risk in the traditional practice of sexual 'cleansing' of widows.

5.

Tamil Nadu State AIDS Control Society (TANSACS), India: A government programme of legal aid clinics implemented in partnership with community organizations

Figure 4:
Location of
Tamil Nadu
State, India



5.1 CONTEXT

Tamil Nadu state of India has a population of 66 million people. Poverty is widespread, especially in rural areas. India's legal system is largely based on English common law (see Glossary), with customary and personal religious laws also recognised under the Constitution. India has a Lok Adalat (People's Court) system intended as a vehicle for speedy resolution of disputes at a grassroots level through mediation and arbitration in a traditional manner.

Adult HIV prevalence in 2007 was 0.34 percent in Tamil Nadu, with an estimated 184,000 people living with HIV. Tamil Nadu comprises 32 districts. 22 districts of Tamil Nadu are categorized by the National AIDS Control Organization (NACO) as high HIV prevalence districts and 5 districts are categorized as having concentrated HIV epidemics. In the high prevalence districts, HIV is affecting some segments of the general population. In most districts, there is high HIV prevalence among injecting drug users, sex workers, men who have sex with men and transgender people.

There are significant numbers of AIDS widows in Tamil Nadu, most of whom are young. Discrimination, denial of property rights and destitution is high among women living with HIV and AIDS widows. AIDS widows face stigma as women living with HIV and as widows. A United Nations Development Programme (UNDP) study of AIDS widows in India found that 90 percent were forced to leave the marital home, 79 percent were denied a share in their husband's property, and 43 percent live alone and are economically worse off than other HIV-affected households.¹³

¹³ *Gender Impact of HIV and AIDS in India*, UNDP India, 2006.

5.2 STRUCTURE OF THE LEGAL SERVICE

The legal service is implemented in 16 districts by Tamil Nadu State AIDS Control Society (TANSACS) in partnership with the Tamil Nadu State Legal Services Authority (TNSLSA) and district networks of people living with HIV ('Positive Networks').

Role of TANSACS

TANSACS was established to lead the state's HIV response on behalf of government. TANSACS works with NGOs, CBOs, national and international agencies in supporting a comprehensive response to HIV in the state. TANSACS initiated the legal aid clinics for people living with HIV and has an ongoing role in funding, monitoring and supervising the state-wide programme of legal aid clinics. The first five legal aid clinics were established with support from UNDP working in partnership with NACO and TANSACS in 2008. The goal of the pilot intervention was to strengthen human rights by giving free legal aid to HIV positive people. The UNDP-supported pilot phase ended in June 2009, after which TANSACS took over leadership of the programme with financial support from NACO.

In addition to legal services, TANSACS supports the scaling-up of prevention programmes, HIV counselling and testing, access to ART and other treatment, care and support services. TANSACS supports drop-in-centres and community care centres through district networks of people living with HIV. Promotion of the legal aid clinics is done by TANSACS through District AIDS Prevention Coordination Units.

Role of TNSLSA

The TNSLSA is a government agency responsible for legal aid services in Tamil Nadu. TNSLSA's aim is to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The TNSLSA appoints lawyers for each of the 16 TANSACS legal aid clinics and monitors the work of the legal aid clinics at the district level. Each district has a District Legal Services Authority (DLSA, affiliate bodies to the TNSLSA), which assists in implementation of the legal aid clinics at district level. A fee is paid by the TNSLSA/DLSA to the lawyers for their attendances at the legal aid clinics and, if required, for ongoing representation of client cases including court fees. The TNSLSA assigns lawyers who have a commitment to the human rights of people living with HIV and affected communities.

Role of District Level Positive Networks

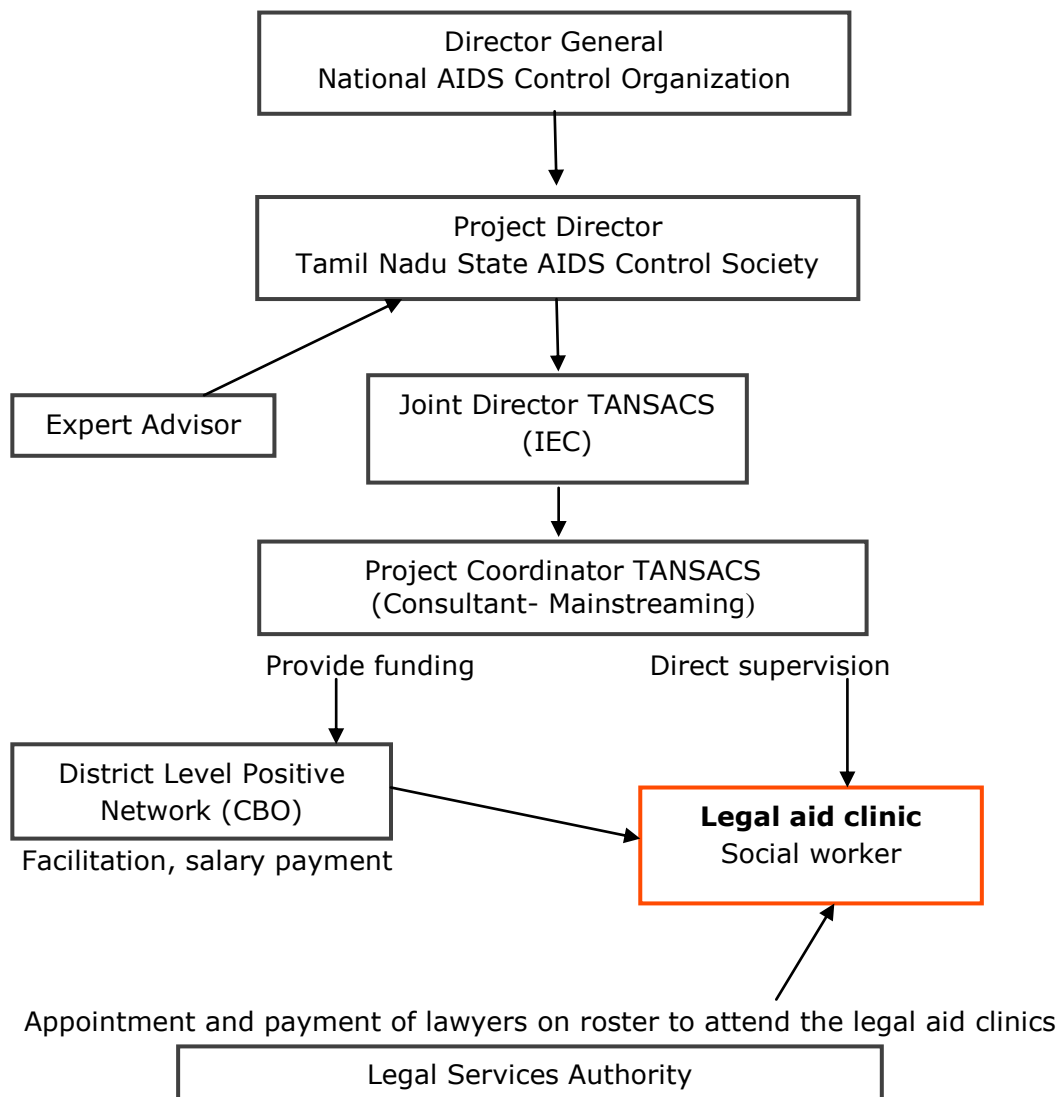
In each of the 16 districts, a local Positive Network co-ordinates with and supports the legal aid clinic. The Positive Network has a funding role as well as a promotion and referral role. The social workers who staff the legal aid clinics are placed by TANSACS at the legal aid clinic and then their salaries are paid by the Positive Network. The Positive Network plays a critical role in identifying clients for the legal aid clinics through promotion and outreach, and in following-up cases. Most districts have more than one Positive Network. TANSACS has decided to choose the network that runs the drop-in-centre as its implementing partner. TANSACS sends funds for the salaries and other expenses of the legal aid clinics to the district Positive Networks. The Positive Networks manage funds and maintain accounts on behalf of TANSACS.

Hosting arrangements: district hospitals

Legal aid clinics have been established within or next to the antiretroviral therapy (ART) centres located in the general hospital of the district. Staff of the ART centre consist of a medical doctor, counselor and other health care staff. During counseling sessions, the counselor identifies whether the client has any legal issues that can be addressed by

referral to the legal aid clinic. As the legal aid clinic is within the ART centre or next to it, ART centre visitors can easily access the service.

Figure 5: Organizational structure of TANSACS Legal Aid Clinics Programme



Staffing

Each legal aid clinic is staffed by a social worker and two or three part-time lawyers, who attend the clinic according to a roster. Lawyers work for the legal aid clinic in monthly rotations (i.e. one lawyer one month and another lawyer the following month). The social worker acts as the office administrator. The role of the social worker is to conduct initial client interviews and consult the lawyer as needed.

During the pilot phase, each legal aid clinic had two outreach workers in addition to the social worker. The programme no longer employs outreach workers. The main role of the outreach workers was to mobilize communities to access the legal aid clinics. The outreach workers also assisted with case management by collecting information on cases filed, verifying information from the neighbourhood and accompanying clients to the courts or police station. The outreach workers also raised awareness about the services available at the legal aid clinics among HIV positive people by conducting community meetings with support from the Positive Networks. Outreach workers were people living

with HIV wherever possible. It would be desirable to retain at least one outreach worker as a part of the team of each legal aid clinic, however funding has been insufficient since UNDP support ended.

5.3 FUNDING OF THE LEGAL SERVICE

The programme is funded by government through the National AIDS Control Organization (NACO) and the TNSLSA.

The total annual budget of the programme in 2009 was USD197,843.

The annual direct costs of implementing the programme were USD161,994 in 2009. This sum was allocated to staff costs (USD70,832), organization of capacity building activities such as training of lawyers and police (USD87,610) and production of information and educational materials (USD3,552).

The balance of USD35,849 is allocated to the indirect costs of managing the programme including project coordination, monitoring and evaluation, rent, furniture and other operational costs.

5.4 NATURE OF THE LEGAL SERVICE AND ITS CLIENTS

Over 95 percent of people who attend the legal aid clinics are women, many of whom are young AIDS widows experiencing destitution and poverty. Common issues that arise are property rights, maintenance, custody of children, divorce and discrimination in access to health care and other services. During the pilot phase, access to a widows' pension was the most sought after service.

Other issues are *patta* (land ownership), ration cards, application for death certificates and other forms of certification. These types of issues are referred to the relevant government department for action i.e. government collectors office. The social worker conducts follow-up with the relevant department once the case is referred.

The legal service refers most legal disputes to alternative dispute resolution (ADR), such as Lok Adalat. If the case cannot be resolved through ADR, a claim is filed in the courts.

The legal aid clinics primarily offer three kinds of services, which are provided free of charge:

1. Resolving disputes through non-legal interventions such as counselling and mediation.
2. Resolving disputes through legal interventions: using the Lok Adalat to settle disputes through pre-litigation processes. If the case is not resolved by the Lok Adalat process, a court claim may be filed.
3. Facilitating access to government schemes (e.g. widows' pension, distress relief).

Generally, clients of the legal aid clinics prefer to avoid the courts as they are costly, time-consuming and complex. Clients are also concerned that court procedures may require their HIV status to be made public.

5.5 LEGAL SERVICE COMPONENTS

i. Legal information and referral

The social workers of the Legal Aid Clinics are the first point of contact for clients and provide basic legal information to clients. The social worker may refer the client for an appointment with the Legal Aid Clinic's lawyer, police or to other sources of legal support. The referral process requires the Social Worker to submit a petition about the legal issue faced by the person. Issues are categorized as legal and non-legal. Once the petition is submitted (signed by the petitioner) the client is referred to the advocate for legal advice and, if required, ongoing representation.

ii. Legal advice

The lawyers provide legal advice, including options for resolving disputes through ADR, Lok Adalat and court processes.

iii. Legal representation

If required, the legal aid clinic will provide ongoing representation to clients to resolve disputes, usually through representation at ADR or Lok Adalat procedure. The legal aid clinics mainly refer cases to ADR rather than formal court procedures. This helps to maintain confidentiality and saves time and money.

Many cases are referred to government departments to take action as the first step. The legal aid clinic brings the client's situation to the attention of the relevant department and requests that the department takes necessary actions. The social worker plays a role in following up these cases through regular communication with the department to ensure a satisfactory response.

iv. Capacity building of service providers

Police

TANSACS conducts training for police in different districts on legal and social issues faced by people living with HIV and most-at-risk populations. This one-day training is offered through several training programs per district, reaching 35 to 50 police officers in each district.

TANSACS has trained master trainers from different HIV-affected communities to be used as trainers in police training programmes. These have included trainers who are people living with HIV, injecting drug users, sex workers, men who have sex with men and transgender people. These communities have previously had a poor relationship with police. A history of police harassment has been reported by these communities, due to their association with illegal behaviours.

TANSACS has hired a former Deputy Police Commissioner, who is in charge of police advocacy and training programmes. The police training programme is being undertaken on a very large scale.

Lawyers

Training has been held for lawyers who participate in delivering legal services as part of the programme. TANSACS conducted a training (one day) for lawyers from 30 districts including the 16 project districts on human rights and HIV-related legal issues. 58 lawyers have participated (roughly 2 per district).

v. Community legal education of people living with HIV and most-at-risk populations

Positive Networks conduct community mobilization to promote awareness of legal rights and the legal aid clinics to affected communities. IEC materials have been developed that are to be translated into local languages.

Unfunded activities

There are a number of activities that appear in TANSACS plans that have not yet been funded. These include:

- Legal literacy workshops at sub-district level;
- District level meetings to disseminate findings to legal cases;
- A user-friendly legal aid manual for people living with HIV to be produced and disseminated;
- Implementation of the communication strategy by TV spots, a multimedia tool, street news paper, TANSACS news letter etc;
- Capacity building for selected people living with HIV on legal issues to work as paralegal volunteers; and
- Workshops/ meetings with district level judiciary on HIV-related ethics and entitlements with special reference to HIV and gender related issues

5.6 MONITORING AND EVALUATION

TANSACS has a central Monitoring and Evaluation (M&E) Unit at its Chennai office which collects data from the field.

A system for monthly reporting the activities of each legal aid clinic is in place. Each legal aid clinic's social worker sends a progress report to TANSACS every month through the district Positive Network. This report includes number of cases, disaggregated by types of cases and status of cases. The report includes information about petitions received, cases solved and cases pending. Qualitative information is not included in the report. Information is recorded in a central data base, so that data can be analyzed and reported to management for decision making.

The monthly report template is reproduced in Appendix VI. The template enables reporting of the client's gender as male, female or transgender.

In addition to the data reported to TANSACS, each legal aid clinic maintains different types of registries, including a client information registry and case registry.

Improvement of the reporting system is underway. The M&E unit of TANSACS is developing a web based reporting and analysis system for all its HIV programmes, including the legal aid clinics.

The TANSACS Consultant who is in charge of the legal aid clinic programme conducts supervision and monitoring of the clinics through monthly reports and field visits. An assessment of the pilot phase was conducted by UNDP in 2009, which considered the success of the pilot intervention, gaps, lessons, and potential to scale-up. This involved field research in three of the five UNDP-supported districts (Namakkal, Tirunelveli and Dindigul). TANSACS also conducted an evaluation in 2009. However, this only went as far as auditing quantitative data that had been collected. There is yet to be a more systematic, overarching evaluation of relevance, effectiveness, efficiency, sustainability or issues relating to the quality of the legal services.

5.7 SCALE-UP AND SUSTAINABILITY

In the 16 districts where the legal aid clinics are operating, it is anticipated that each legal aid clinic will reach approximately 300 clients per annum. Scale-up may involve increasing the reach of the legal aid clinics within the 16 districts, and/or expanding to new districts.

The provision of legal aid services for people living with HIV within existing government structures supports sustainability of the initiative. The service is integrated into public

service delivery systems using a mainstreaming approach. This has led to apparent efficiencies, for example, use of district hospitals to house the legal aid clinics. The legal service makes use of mainstream public infrastructure, facilities, staff, work procedures, finance and administrative procedures.

Working together with important stake-holders such as ART Centre, the Positive Networks, State and District Legal Services Authorities is of great value to the program in terms of reach of the services, community support for the programme and potential for scale-up.



TANSACS programme framework for expansion of legal aid clinics to 11 new districts (2009)

Goal

Creating mechanisms for access to free legal services for people living with HIV in the proposed districts

Objectives

- Addressing the social and legal issues of people living with HIV
- Preventing stigma and discrimination faced by people living with HIV
- Ensuring rights for livelihood opportunities for people living with HIV

Activities

- Training lawyers on the issues of people living with HIV
- Training legal aid clinic staff on the roles and functions of legal aid clinics
- Training outreach workers to take the services to people living with HIV in need
- Inter-sectoral approach to solve the issues of people living with HIV
- Preparation and dissemination of IEC materials on legal aid clinics

Deliverables

- Operational free legal clinics in eleven districts
- Familiarizing advocates on HIV-related ethics and entitlements with special reference to HIV and gender-related issues
- Number of people living with HIV approaching legal aid clinics for their issues
- Number of vulnerable people living with HIV provided with legal aid opportunities
- Identifying the claim holders and motivating them to access the legal aid clinic services
- Creating awareness among people living with HIV on legal rights

Expected outputs

- Formal multi-sectoral, multi-level mechanisms set up in the respective districts to respond to social and legal rights of people living with HIV
- Increased social and legal rights literacy among people living with HIV, particularly those who are destitute.

5.8 LESSONS LEARNT

The TANSACS legal aid programme is still in its early stages, with most legal aid clinics established less than a year prior to the date of this study. Although evidence of longer term programme outcomes or impact is not yet available, some observations can be made about the approach adopted.

Centrality of Positive Networks

A strong feature of the model is the centrality of Positive Networks in managing funds for the clinics. Implementers say that strong community networks are proving to be critical to the success of the programme by ensuring community ownership and engagement. The Positive Networks facilitate the operation of the legal aid clinics and mobilize the communities of people living with HIV to access legal services. The programme structure is consistent with the principle of Greater Involvement of People Living with HIV and AIDS (GIPA).

Accessibility to people living with HIV

A feature of the model that would require careful consideration in adapting it to other contexts is the location of the legal aid clinic at the district hospital ART Centre. This is a highly convenient location for the many people living with HIV who need to travel to the hospital for treatment. It also enables women to access legal advice without drawing attention to that fact.

However, there may also be disadvantage for some clients, who may prefer to access legal services in a non-hospital environment. This is particularly the case for people who do not require treatment or who may not be living with HIV, and yet have a legal problem that is HIV-related. People may be concerned about the stigma that may be associated with attending an ART Centre. If the aim is to reach populations who are at risk of HIV but are not diagnosed with HIV, it may be preferable to provide legal services in other community locations such as drop-in-centres or through outreach to places where populations such as sex workers, injecting drug users or men who have sex with men are known to frequent.

Holistic and comprehensive response to medical, legal and social needs

TANSACS implements a comprehensive response to the HIV epidemic including prevention, care and support, treatment, advocacy and legal services. This is an holistic state-wide approach that enables linkages to be made between the different components of the comprehensive response. In addition, at district level the legal aid clinics are well connected with community-based organizations, and health and other government services. The legal aid clinics have partnerships with the police, local district authorities and government departments such as revenue office and the Village Administrative Officer.

Promoting a rights-based culture

Introducing legal aid clinics increases the confidence of marginalized people to assert their rights. The impact is likely to be wider than the specific individuals who access the legal service. Success in restoring the property of one AIDS widow can have an empowering effect on other women living with HIV. When one woman's property is restored, the confidence levels of other women increases and they are encouraged to assert their rights.

Capacity building of police

A unique aspect of the programme is the investment in a large scale programme of police training on HIV and the law, which has already reached 35,000 police. The mass training of police is understood to have had immediate positive results in terms of improving the relations between the police and most-at-risk populations such as sex workers, injecting drug users and men who have sex with men. This may assist in

reducing stigma associated with HIV. There is anecdotal evidence that people from the community feel that police harassment has reduced since the training commenced and police are considered to be more likely to offer support when a person living with HIV attends the police station. It will be important that a systematic approach is used in gathering evidence of the outcomes of police training in terms of improving the legal environment for people living with HIV and most-at-risk populations.

6.

Costing of HIV-related legal services

Appendix II is a draft costing framework for structural interventions in the area of human rights related to HIV/AIDS, which was developed by the study team. The draft costing framework is a work in progress, and will be further developed by UNAIDS.

A costing framework helps programme planners to understand the different direct and indirect costs that are associated with implementing a legal services programme. The framework also enables planners to allocate costs to the different areas of activity of the programme.

The draft costing framework distinguishes direct costs involved in programme implementation from indirect costs. Indirect costs are costs that are not directly associated with a single activity or event. Indirect costs include operational costs such as overheads that relate to managing the programme, including rent of premises, salary of the programme coordinator, monitoring and evaluation of the organization as a whole etc. Costs that can be directly related to providing specific services (such as costs of programme staff and educational materials) are referred to as direct costs.

Unit costs are the total costs divided by the output measured. For example if USD100,000 are spent in one year on legal advice to clients and 1,000 clients are reached with legal advice in that year, the unit costs are USD100 (per client, per year). Unit costing estimates the costs needed per intervention and is for planning purposes only. Unit costs are average figures, based on assumptions of coverage, and do not replace a project budget.

The approach used in preparing this draft costing framework was to situate legal services provided to individuals (such as legal information, legal advice and representation) in the context of a broader menu of other HIV-related human rights interventions. Legal services can be considered as providing core legal services (legal information, advice and representation) and a range of additional services which may include activities such as capacity building of the legal profession, advocacy for law and policy reform, 'know your rights' community education and empowerment activities, and stigma reduction campaigns. Often an organization that provides legal advice and representation services will also be involved in these other additional activities, either by itself or in partnership with other HIV and human rights organizations. Providing a costing framework that includes a broad range of human rights activities may assist planners to conceptualize the required components of a comprehensive response to HIV, the law and human rights in programmatic terms.

UNAIDS recommends a typology of programs to reduce stigma and discrimination and programs to increase access to justice for those vulnerable to or living with HIV that is divided into the following categories:

1. Stigma and discrimination reduction programs.
2. Legal services for people living with HIV and members of affected and/or marginalized groups (women, young people, care-givers, survivors of sexual violence, orphans and vulnerable children, injecting drug users, sex workers, men who have sex with men, migrants, refugees).
3. Programs to reform and monitor laws relating to HIV.

4. "Know your rights and laws" campaigns that empower those affected by HIV to know their rights in the context of the epidemic and draw them down into concrete demands in terms of access to services, non-discrimination on the basis of HIV and other social status, etc.
5. Human rights training for health care workers that focuses on informed consent, confidentiality, non-discrimination and duty to treat.
6. Training and sensitization of law enforcement agents, judges and lawyers on HIV and the human rights of women, children, men who have sex with men, people who use drugs, sex workers, prisoners and migrants, particularly in terms of supporting access to services, non-discrimination, non-violence, and freedom from harassment and arbitrary arrest and detention.
7. Programs to promote the rights of women in the context of HIV.

Further work is required in developing costing options to position work with traditional village systems within the costing framework. As the KELIN case study identified, in using traditional legal systems it is the village elders who provide the arbitration service on an unpaid basis, rather than the NGO's lawyers or legally trained paralegals. Rather, the NGO promotes use of traditional dispute resolution mechanisms and trains village elders and other stakeholders in the application of human rights principles and approaches in the context of customary law. The NGO may also provide resources to women to build a new house as part of the reinstatement process.

Options to reflect these costs in the framework would be either to include these costs under capacity building of key service providers (i.e. village elders) or to include a separate area (additional Table 2 column) relating to 'support to informal traditional systems of dispute resolution'.

UNAIDS intends to invest in further work to develop recommendations and tools on approaches to costing of HIV-related legal services and other programs to reduce stigma and discrimination and to increase access to justice, including developing costing frameworks specific to different contexts and regions.

APPENDIX I: PEOPLE AND ORGANIZATIONS CONSULTED

Ukraine

Interviews were conducted with 12 people. These comprised eight representatives of partner organizations (including two representatives of government and two donor representatives) and four staff members.

Eugeniy Lukovenko	Project Coordinator, Time to Live
Igor Skalko	Lawyer, Time to Live
Irina Parakhon'ko	Head of the organization, Time to Live
Volodimir Pyzhik	Social Worker
Valentina Grigorievna Olabina	Deputy Chief Doctor, Regional AIDS Centre
Igor Konovalov	Director, regional branch of the All-Ukrainian Network of People Living with HIV
Petro Polyantsev	Senior Officer, Program Grant Management Team, All-Ukrainian Network of People Living with HIV/AIDS
Olena Kucheruk	Harm Reduction Program Manager, Public Health Program, International Renaissance Foundation
Sergey Petrovich Shvets	Assistant to the Minister, Department of Monitoring of Human Rights Observance by the Ministry of Internal Affairs, Ministry of Internal Affairs
Igor Spinul	Director, Podalannya (organization of ex-prisoners)
Marina Gudym	Lawyer, New Century (harm reduction organization)
Loudmila Sotnikova	Direction, Charity Foundation Unitus (works with sex workers)

The focus group included a social worker and nine OST clients of the legal service: Andrey, Irina, Zurab, Yury, Eugeniy, Dmitry, Sasha, Christina, Sergei.

Kenya

Ambrose Rachier	Chair, KELIN Board and partner, Rachier and Amollo Associates
Allan Maleche	Project Coordinator, KELIN
Catherine Mumma	Consultant, KELIN
Nancy Ondeng	Regional Coordinator, KELIN
Pollicap Odoyo	Finance Officer, KELIN
Veronica Omunga	Administration officer, KELIN
Joy Obuya	Volunteer, communications officer KELIN
Anne Gathumbi	Programme Manager, OSI East Africa and OSI Law and Health Initiative
Ruth Laibon-Masaha	National Coordinator, Action Aid Kenya
James Mwenda	Human Rights officer, Kenya National Commission on Human Rights
Maureen Murenga	Women Fighting AIDS in Kenya (WOFAK)
Zedekia Sidha	National Empowerment of People Living with HIV and AIDS
Asunta Wagura	Kenya Network of Women Living with HIV
Dr Dan Wendo	Country Director, Futures Group
Melba Katindi	Lawyer, Rachier and Amollo Associates

The focus group discussion was attended by 11 people.

India

Shambu Kallollikar	Project Director, TANSACS
A. Sathiyarayanan	Consultant (Police advocacy), TANSACS
V. Palani	Consultant (Mainstreaming), TANSACS
Dr. Revathi	Expert, TANSACS
R. Ratnathara	Legal Advisor, TANSACS
R. Selvam	District Supervisor, DAPCU - Cuddalore, TANSACS
S. Rajeshwari	Secretary, Cuddalore district positive society
Venkatesan	Social Worker, Legal Aid Clinic, Cuddalore
Sridharan	ART Centre Counsellor, Master Trainer for police advocacy training
Karthik	Social Worker, Legal Aid Clinic, Namakkal
Kaveetha	Advocate, Legal Aid Clinic, Namakkal
S. Mumtaz Begam	In-charge, All Women Police Station – Namakkal
Vengadesh	DAPCU, TANSACS
Thamilselvi	District Supervisor, DAPCU - Namakkal, TANSACS
Kaushalya	President of the PLHIV Network which is running Community Care Centre (CCC) in Namakkal
S. Vidya	Project Coordinator, CCC - Namakkal
Mahesh Ramadurai	Associate, M&E, TANSACS

Others:

- District Judge and Secretary-in-Charge of State Legal Services Authority
- Four people living with HIV who have received legal services from legal aid clinics - Cuddalore
- Eleven people living with HIV who have received legal services from legal aid clinics - Namakkal
- Namakkal District Positive Network – six staff members joined the focus group meeting

APPENDIX II: DRAFT COSTING FRAMEWORK

Structural interventions in the area of human rights related to HIV/AIDS – analytical costing framework

TABLE 1: Total economic costs related to human rights interventions, before allocating to intervention areas 1 to 7					TABLE 2: Allocation of costs to intervention areas 1 to 7						
DIRECT COSTS					1 Legal info., referral	2 Legal advice, representation, ADR, arbitration, pro bono services	3 Strategic litigation	4 Know your rights community education and empowerment	5 Capacity building for key service providers on HIV, human rights and law	6 Community programs for stigma reduction	7 Advocacy, law reform, community mobilization, human rights monitoring
A.1 Staff	Quantity	Unit	Yearly gross wage per FTE	Total yearly cost	Unit of Analysis: clients	UOA: clients	UOA: cases	UOA: persons (vulnerable population)	UOA: persons (police, health care workers, elders)	UOA: population (thousands)	UOA: jurisdictions
					Quantity of Unit of Analysis (UOA) reached						
A.1.1 Lawyer											
A.1.2 Social worker/paralegal											
A.1.3 Community educator/legal educator											
A.1.4 Outreach worker/peer educator											
A.1.5 Other (please specify)											
SUBTOTAL OF A1											
A.2 Hiring extra short term staff (except for organization of events, research and monitoring)											
	Quantity	Unit	Per unit costs	Total yearly costs							
A.2.1 Senior lawyer											
A.2.2 Human rights consultant/advisor											
A.2.3 Arbitrator											
A.2.4 Foreign technical assistance											
A.2.5 Other staff											
A.2.6 Travels and per diems of extra short term staff											
A.2.7 other miscellaneous costs (please specify)											
SUBTOTAL OF A.2											

A.3 Organization of events (workshops, conferences etc)					Allocation to intervention areas 1-7						
	X days of events		With total of Y participants		1 Legal info., referral	2 Legal advice, representation, ADR / arbitration, pro bono services	3 Strategic litigation	4 Know your rights community education and empowerment	5 Capacity building for key service providers on HIV, human rights and law	6 Community programs for stigma reduction	7 Advocacy, law reform, community mobilization, human rights monitoring
	quantity	unit	Per unit cost	Total yearly cost							
A.3.1 Space rent											
A.3.2 Food refreshments											
A.3.3 Materials for the participants											
A.3.4 Hiring trainers											
A.3.5 Trips, meals and hotel for trainers											
A.3.6 Hiring other services for the event (specify)											
SUBTOTAL OF A3											
A.4 Mass media involvement and advertising											
A.4.1 TV campaign preparation costs											
A.4.2 TV broadcasting costs											
A.4.3 Writing up media release / press kit											
A.4.4 Billboard advertising production											
A.4.5 Billboard rental											
A.4.6 other costs of mass media (please specify)											
SUBTOTAL OF A.4											
A.5 Research, human rights monitoring (not duplicate with A1 A2)											
A.5.1 Hiring short term consultant											
A.5.2 Travel costs, per diems											
A.5.3 Other costs (specify)											
SUBTOTAL OF A.5											
A.6 Commodities (except for event organization and mass media)											
A.6.1 IEC materials for public											
A.6.2 Posters											
A.6.3 Guidelines, manuals											
A.6.4 Website development											
A.6.5 Other materials (specify)											
SUBTOTAL OF A.6											

INDIRECT COSTS					Allocation to intervention areas 1-7						
					1 Legal info., referral	2 Legal advice, representation, ADR/ arbitration, pro bono services	3 Strategic litigation	4 Know your rights community education and empowerment	5 Capacity building for key service providers on HIV, human rights and law	6 Community programs for stigma reduction	7 Advocacy, law reform, community mobilization, human rights monitoring
	Quantity	Unit	Per unit cost	Total yearly cost							
B.1 Staff (to not duplicate with staff allocated as direct costs or M&E)											
B.1.1 Director											
B.1.2 Programme coordinator											
B.1.3 Accounts clerk											
B.1.4 Administrative assistant											
B.1.5 Other (specify)											
B.2 Other operational costs of the organization											
B.2.1 Office rent											
B.2.2 Utilities (gas, electricity, water)											
B.2.3 Office supplies (paper, toner, stationery)											
B.2.4 Communication (internet, phone, fax)											
B.2.5 Ancillary services (IT services, building maintenance, cleaning)											
B.2.6 Website hosting and maintenance											
B.2.7 Transport											
B.2.8 Other operational costs											
Yearly amortization of capital goods (investments)											
B.2.9 Office furniture											
B.2.10 Desktop computers											
B.2.11 Laptops											
B.2.12 Printer /scanner											
B.2.13 Other capital goods (specify)											
B.3 Programme monitoring and evaluation											
B.3.1 Staff											
B.3.2 Other costs related to M&E											
SUBTOTAL OF B3											
GRAND TOTAL											

APPENDIX III: PROPOSED 2 YEAR BUDGET KELIN CULTURAL STRUCTURES PROJECT

(extract from proposed operational budget to support Strategic Plan – example only – actual costs deleted)

ACTIVITY 2.1.3.6	Number	Unit cost	Frequency	Total local currency	Total USD
Experience sharing workshop for 50 participants (6 widows, 3 orphans, 3 elders, 3 paralegals per district & 5 Luo Council of Elders (LCE) representatives					
Accommodation (2 staff & 1 facilitator @ Ksx per day * 2 days)					
Dinner (2 staff, 1 facilitator @ Ksx * 2 nights)					
Local transport					
Travel by air to kisumu (2 staff @ Ksx per pax)					
Transport reimbursement @ Ksx * 50 pax *1 day					
Stationery @ Ksx per pax * 50					
Facilitation @ Ksx *1 facilitator *1 day					
Venue & meals @ Ksx * 60 pax * 1 day					
Rapporteur & workshop report preparation 1 rapporteur @ Ksx * 2 days					
Sub Total					
ACTIVITY 2.1.4.1					
1 two day regional training for 40 elders					
Accommodation 2 staff @ Ksx * 4 nights					
Accommodation (2 facilitators, 40 elders @ Ksx * 3 nights					
Dinner (40 elders, 2 facilitators@ Ksx per night * 3 nights					
Dinner (2 staffs@ Ksx per night*4 nights					
Travel by Air (2 staff, 2 facilitators @ Ksx					
Hired field visit transport at 5000 * 4 days					
Venue & meals @ Ksx per day * 45 pax * 2 days					
Transport reimbursement for LCE & Secretary General @ at Ksx * 2 pax					
Transport reimbursement @ at Ksx * 38 elders					
Stationery @ Ksx per pax *40					
Facilitation fee @ Ksx * 3days *2					

Rapporteur & workshop report preparation-1 @ Ksx * 3 days					
Sub Total					
ACTIVITY 2.1.4.2					
1 two day regional training for 35 elders					
Accommodation (2 Staff @ Ksx per day x 3 days)					
Accommodation (2 Facilitators @ Ksx per day x 3 days)					
Dinner @ Ksx for 4 pax for 3days					
Travel by air to/from Kisumu (2 Staff, 2 Facilitators @ Ksx per person)					
Hired field transport @ Ksx x 4 days					
Venue and Meals @ Ksx x 35 pax x 2 days					
Transport reimbursement @ Ksx x 31 participants x 2 days					
Stationery @ Ksx per participant x 30 pax					
Facilitation @ Ksx x 2 Facilitators per day for 3 days					
Rapporteur and workshop report preparation - 1 Rapporteur @ Ksx x 3days					
Sub Total					
OUTPUT RESULT 2.2					
ACTIVITY 2.2.2.1					
Mobilization meetings in Kisumu, Nyakach, Nyando, Muhoroni and Bumala					
Communication @ Ksx for 5 Districts *3 meetings					
meetings related expenses (refreshments and meals)					
Transport costs for regional coordinator Ksx for 5 Districts *3 meetings					
Coordination visits (4) from h/q					
Air transport					
Accommodation					
Local transportation					
Meals					
Sub Total					

ACTIVITY 2.2.3.1					
Facilitate Consultative meetings with support groups, elders and affected individuals					
Communication @ Ksx for 5 Districts *3 meetings					
meeting related expenses (refreshments)					
Transport costs for regional coordinator Ksx for 5 Districts *2 meetings					
Sub Total					
ACTIVITY 2.2.3.2					
Dialogue & arbitration forums with elders					
Communication					
Refreshments at meetings					
Travel for Ker and 2 elder representatives for 3 meetings					
Accommodation for 3 elder representatives for 3 visits					
Dinner for 3 elders					
Transport for Regional coordinator					
Coordination visits (3) from h/q					
Air transport					
Accommodation					
Local transportation					
Meals					
Sub Total					
ACTIVITY 2.2.3.3					
Resettlement of Disinherited women& children fund					
Construction of 10 semi permanent settlements					
Transport for 5 elder representatives					
Accommodation for 5 elder representatives					
Dinner for elders					
Transport for Regional Coordinator					
Representatives from GQ					

Airfare					
Accommodation					
Local transport					
Meals					
Sub Total					
ACTIVITY 2.2.3.4					
Develop tool on working with cultural structures-TA at 40 days@ Ksx					
Transport cost for TA to collect information at Ksx					
Printing of 1000 copies of the tool @ at Ksx					
TA fee at Ksx * 40 days					
Sub Total					
ACTIVITY 2.2.3.5					
Filing succession causes in court and acquiring of title deeds in the names of affected widows / Orphans or in joint names after successful arbitrations-10 cases					
Filing succession causes in court @ Ksx					
Follow up on title deeds & related documents					
Transport					
Reimbursement to advocate costs					
Sub Total					
ACTIVITY 2.2.3.6					
Creation of strategic linkage-Nil					
Sub Total					
ACTIVITY 2.2.3.7					
Facilitate empowerment exchange					
Flat figure					
Sub Total					
ACTIVITY 2.2.3.8					
Documentation of widows/ orphan cases					

TA 20 days @ Ksx					
Administrative costs					
Sub Total					
ACTIVITY 2.2.4.1					
TA to do documentary on cultural structures					
TA at Ksx * 15 days					
Administrative costs					
Sub Total					

APPENDIX IV: KELIN RESULT AREAS AND INDICATORS

(Extract from KELIN *Strategic Plan 2009-2013* relating to first two outcome areas including indicators of relevance to client services and Cultural Structures activities)

OUTCOME 1: Enhanced protection against health and HIV related human rights violations.

Outcome Indicator: Reduction in health and HIV related human rights violations

OUTPUTS

1.1 A legal and policy framework that promotes, protects and provides for health and HIV related human rights.

Laws and policies that protect and provide for health and HIV related human rights. This will be tracked by the number of laws and policies hindering access to services by SWs, MSMs and IDUs that are reviewed.

National laws mainstreamed and are implementing international and regional human rights instruments.

In this regard, KELIN expects to ensure that:

(i) a comprehensive and rights compliant HIV Law is in place - based on the reviewed HIV Prevention and Control Act; and

(ii) the HIV Prevention and Control Act 2006 is informing the practices of health and HIV programme implementers in all sectors.

- Number of sectoral policies and operational guidelines and regulations (health, employment, education, research, insurance, and Justice Sectors) that have included the relevant provisions of the HIV Prevention and Control Act 2006.

1.2 Legal practitioners with knowledge on health and HIV related human rights available in all regions of the country.

- Number of legal practitioners (advocates) from all regions trained on Health and HIV related human rights.
- Number of judicial officers trained on health and HIV related human rights.
- Number of legal education institutions training in HIV and human rights.
- Number of legal aid organizations trained on integration of health and HIV related human rights.
- Number of competent legal practitioners available to provide pro-bono services for vulnerable and poor citizens needing representation in cases challenging the violation of their rights.

1.3 Health and HIV related human rights violations effectively redressed within the justice system.

- Number of cases filed in courts against health and HIV related human rights violations
- Number of public interest cases litigated to set judicial precedents on HIV and health related human rights concerns.
- Number of court rulings and judgments upholding the protection of Health and HIV related human rights.

1.4 Most-at-risk and vulnerable populations accessing legal services and justice for health and HIV related human rights violations within the formal legal system.

- Number of legal aid cases addressing health and HIV related human rights violations.
- Number of cases/ arbitration interventions on behalf of MARPs and vulnerable groups.

1.5 Regional and international HIV policies promote respect and protect health and HIV related human rights.

- Number of regional and international policies that promote respect and protection of health and HIV related human rights.
- Number of regional and international collaborative initiatives advocating for respect and protection of the rights relating to health and HIV.

OUTCOME 2: Increased demand by communities and vulnerable populations for respect and protection of their Health and HIV related human rights.

Indicator: Reported reduction in HIV related stigma and discrimination within communities.

OUTPUTS

2.1 Community support groups, MARPs and vulnerable groups have adequate knowledge of their health and HIV related human rights.

- Number of community support groups and organisations of MARPs and vulnerable groups trained on health and HIV related human rights.
- Number of national and sub- national advocacy initiatives demanding the protection and respect of health and HIV related human rights.
- Number of national networks of PLHIV, women, youth, MARPs and other vulnerable groups demanding inclusive policies and protection of their health and HIV related rights.

2.2 Individuals within communities that are demanding justice and redress for health and HIV related human rights violations.

- Number of paralegals from all regions trained on and providing community-based paralegal services on health and HIV related human rights.
- Number of individuals accessing health and HIV related human rights information and services.
- Number of individuals reporting health and HIV related discrimination in the workplace.
- Number of people living with HIV, women, children, widows, orphans, youth, sex workers, MSMs, IDUs, prisoners, elderly and others reporting violations of their rights and seeking redress.
- Number of community-based dispute resolution initiatives, including working with cultural structures established and intervening on behalf of violated vulnerable individuals especially widows and orphans

2.3 Communities initiating dialogue on the effects of cultural and traditional practices and customs that are harmful to their health and/or violate human rights.

- Number of community-based organizations and cultural structures advocating for elimination of customs and practices that are harmful to health and violate human rights
- Number of communities accepting to modify or eliminate harmful cultural and traditional practices.
- Number of health and HIV programme implementers trained to work with communities and cultural structures in advocating for protection of health and HIV-related rights and elimination of customs and practices that violate human rights.

APPENDIX V: KELIN WIDOWS REGISTRATION DATA FORM

REFERENCE NUMBER: -----

DATE: -----

PERSONAL DETAILS:

Name:
Age :
Address:
Telephone:
Level of education:
Type of marriage with late husband
Customary Christian Civil Cohabitation (how many years)
Current Place of Residence:
Sub-location
District
Town
Late husband's Home (if different)
Sub-location
District
Number of children and their ages
Sons
Daughters
Levels of schooling children
Occupation:
Income per month:

Name of the deceased husband -----
 Residence at the time of death-----
 Occupation -----
 Place of work -----
 Name of employer -----
 Income -----
 Pensionable or otherwise -----
 Date of death-----
 Was he polygamous? ----- If yes, how many wives -----

LIST OF SURVIVING BENEFICIARIES:

	FULL NAMES	DATE OF BIRTH/ AGE	RELATION TO THE DECEASED
18.1			

LIST OF THE DECEASED'S ASSETS [e.g. cars ,Shares ,Land etc]

	Asset / Property	Estimated Value [Ksh]
19.1		
19.2		
19.3		

LIST OF THE DECEASED'S LIABILITIES [e.g. Loans, Depts. ,Rent arrears ,etc]

	Liabilities	Estimated Value [Ksh]
20.1		
20.2		
20.3		

Did the deceased die Testate [with a will]? ----- Or Intestate? -----

What is the nature of dispute and with which member of the deceased husband's family.

Has the widow been required to undergo certain customary rituals?----- If Yes which?-----
 -----Has the matter been presented anywhere for assistance? ----- If yes where and what is the progress-----

Has the late husband's property been taken and by who? -----
 Is the widow willing to have her case presented before the Elders? ----- If No why ?-----

Does the widow have any of the following documents?

Proof of marriage Deceased husband's death certificate Any proof of assets Late husband's employers letters on any benefits

Other [Specify]

FOLLOW UP:

CONSENT

I-----

have willingly given the information in this form which is true to the best of my knowledge. I hereby authorize KELIN to use it for purposes of intervening and negotiating my case and agree that my case should be presented before the elders for arbitration.

Signed -----

Date -----

I further authorize KELIN to use the information in and facts of my case in the wider analysis and publications on the project on working with cultural structures for the protection of the right to inherit property so long as the use of such information does not adversely expose me , my children and all others affected.

Signed -----

Date -----

KELIN official [Name and Signature] -----

APPENDIX VI: TANSACS MONTHLY REPORT TEMPLATE

Monthly Report PLHIV																													
SL No	ISSUES	In this Reporting Month																								Cummulative Pending Cases upto the Month	Remarks/Comments		
		No of People Approached LAC		No. of Petitions Received		No of Cases																		No of Cases Withdrawn				No of Cases Abandoned	
						Settled									Pending														
						LAC			Court			Govt. Depts			LAC			Court			Govt. Depts								
Legal Cases		M	F	TG	M	F	TG	M	F	TG	M	F	TG	M	F	TG	M	F	TG	M	F	TG	M	F	TG	M	F	TG	
1 Family																													
1.1	Dowry																												
1.2	Maintenance																												
1.3	Coustody																												
1.4	Divorce																												
1.5	Property Dispute - Partition																												
1.6	Property dispute - Encroachment																												
1.7	Declaration Suit (Legally Wedded Wife)																												
1.8	Bigomy																												
1.9	Birth/Death Cerificates																												
1.1	Others(Specify)																												
2 Stigma																													
2.1	Health																												
2.2	Education																												
2.3	Employment																												
2.4	Landlord																												
2.5	Social																												
2.6	Workplace																												
2.7	Others(Specify)																												
3 Financial																													
3.1	Insurance																												
3.2	Accident																												
3.3	Debts																												
3.4	Savings / Investment																												
3.5	Others(Specify)																												
Legal Cases Total																													
4 Non Legal																													
4.1	Old Age Pention																												
4.2	Widow Pention																												
4.3	House Patta																												
4.4	Ration Card																												
4.5	Education																												
4.6	Medical																												
4.7	Birth Certificate																												
4.8	Death Certificate																												
4.9	Funeral Assistance																												
4.10	Travel																												
4.11	Distress Relief																												
4.12	Marriage																												
4.13	Others(Specify)																												
Non Legal Cases Total																													