



SEMINAR FOR LAWYERS ON HIV LAW AND HUMAN RIGHTS IN KENYA

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
ABBREVIATIONS	4
1.0 BACKGROUND	5
2.0 EXECUTIVE SUMMARY	7
3.0 TARGET GROUP	10
4.0 THE WORKSHOP	11
4.1 Introduction and welcome remarks.....	11
4.2 Expectations	12
4.3 The Role of the Law to ensure full enjoyment of HIV-related rights for PLHIV	13
4.4 Video Screening	14
4.5 Overview of HIV and Human Rights and the Relevant Constitutional Provisions	15
4.6 HIV & AIDS Equity Tribunal: How Advocates Can Engage It	17
4.7 Know your Epidemic, Know your Response	18
4.8 HIV related Human Rights Violation: Testimonies	19
4.9 Legal and Ethical Issues Relating to HIV and Provisions that Address	20
4.10: PRACTICAL SESSION - Debate: Is Criminalization of deliberate infection of HIV useful for the reduction of the spread of HIV?	21
4.11 Legal Support in Palliative Care.....	22
4.12 Legislating and Litigating HIV in the Kenyan Context	23
4.13 Video Screening	24



4.14	Developing HIV & AIDS Jurisprudence: Challenges and Prospects.....	25
5.0	TRAINING METHODOLOGY.....	26
6.0	WAY FORWARD	27
7.0	CHALLENGES	27
8.0	RECOMMENDATIONS.....	27
	<i>APPENDIX 1: CALL FOR APPLICATIONS</i>	<i>28</i>
	<i>APPENDIX 2: WORKSHOP PROGRAM.....</i>	<i>32</i>
	<i>APPENDIX 3: LIST OF PARTICIPANTS</i>	<i>38</i>



ABBREVIATIONS

ADR	Alternative Dispute Resolution
CIC	Commission on the Implementation of the Constitution
CSR	Corporate Social Responsibility
KEHPCA	Kenya Hospices and Palliative Care Association
KELIN	Kenya Legal & Ethical Issues Network
KANCO	Kenya AIDS NGOs Consortium
HAPCA	HIV and AIDS Prevention and Control Act
HIV	Human immuno-deficiency virus
IDUs	Injecting Drug Users
IPRs	Intellectual Property Rights
OSF	Open Society Foundation
OSIEA	Open Society Initiative for East Africa
OVCs	Orphans & Vulnerable Children
MTCT	Mother to Child Transmission
NEPHAK	The National Empowerment Network of People Living with HIV and AIDS in Kenya
PLHIV	Persons Living with HIV
TB	Tuberculosis
NACC	National AIDS Control Council
PLHIV	Persons Living with HIV
NGO	Non Governmental Organizations
OVCs	Orphans and Vulnerable Children
LSK	Law Society of Kenya



BACKGROUND

KELIN recently conducted a national study¹ commissioned by Kenya AIDS NGOs Consortium (KANCO) and the National AIDS Control Council (NACC) with technical and financial support from the UNDP and UNAIDS country offices to establish the level of awareness of human rights among Persons Living with HIV (PLHIV), human rights violations against PLHIV and their experiences of discrimination on the basis of their HIV positive status. One of the key findings of this study was high level of human rights violations faced by PLHIV in Kenya. The study further demonstrated that most of those affected are unable to access justice due to various factors including the lack of funds for litigation costs and accessible legal services.

Access to justice is an ongoing challenge in Kenya, as there are only a few organizations that offer free legal aid services and even fewer offering legal services for HIV related violations. The need to protect human rights among key populations at a higher risk of HIV and among vulnerable populations has been identified as crucial in the national efforts on prevention, treatment and mitigation of the socioeconomic impact of HIV. Access to justice is now well articulated in Article 48 of the Constitution. It is also articulated in most of the international human rights treaties² which Kenya has ratified and which now form part of the laws of Kenya. This notwithstanding, accessing justice in Kenya is very difficult especially for the poor and vulnerable who comprise more than 80% of society.

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<file:///C:/Users/saumu%20waziri/AppData/Local/Microsoft/Windows/AppData/Local/Microsoft/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.Outlook/M7DCC78S/kelinkenya.org/wp-content/uploads/2010/10/Human-Violation-book-final.pdf>

² International Covenant on Civil & Political Rights (ICCPR), International Covenant on Economic, Social & Cultural Rights (ICESR), Convention on the Rights of the Child (CRC), Convention on Elimination of all forms of Discrimination against Women (CEDAW), The African Charter on Human and Peoples Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC) among others.

As a result of the rights awareness programs by KELIN and other organizations of PLHIV, and the establishment of the Equity Tribunal in December 2009, KELIN has addressed over 15 cases from PLWHIV network organizations relating to human rights violations in the context of health and HIV. The numbers of referrals are expected to increase as KELIN carries out further trainings for PLWHIV network organizations to enable the identification of human rights abuses and demand for justice.



Participants at the training referring to their hand outs

The training of practicing legal practitioners on HIV related human rights issues will facilitate the availability and accessibility of affordable legal services for HIV related violation. This initiative is also aimed at promoting sound jurisprudence in deciding cases relating to HIV related human rights.

EXECUTIVE SUMMARY

KELIN is a human rights NGO working to protect and promote HIV-related human rights in Kenya. We do this by: providing legal services and support, training professionals on human rights, engaging in advocacy campaigns that promote awareness of human rights issues, conducting research and influencing policy that promotes evidence-based change.

The Law Society of Kenya (LSK) is Kenya's premier bar association, with membership of all practicing advocates, currently numbering in excess of seven thousand. It has the mandate to advise and assist members of the legal profession, the government and the larger public in all matters relating to the administration of justice in Kenya.

The National Empowerment Network of People Living with HIV and AIDS in Kenya (NEPHAK) is an NGO that unites support groups of PLHIV and individual PLHIV into a national and formidable force to counter the impact of HIV and AIDS on their lives and that of their loved ones in Kenya.

KELIN, in partnership with LSK and NEPHAK, collaborated to deliver a workshop for advocates on HIV and the law. Funded by the Open Society Foundation (OSF), the seminar sought to develop a critical understanding among legal practitioners on HIV law and related human rights in order to influence increase in legal services for HIV related violations and influence sound case law on this issue in Kenya.

The three days workshop was held from the 21st to the 23rd November 2012 at the Panafric hotel, Nairobi. The main objectives of the workshop were to:

- i. Share information and knowledge on the basics of HIV, human rights concepts and the link between human rights and HIV
- ii. Develop critical understanding of various challenges raised by legal and ethical issues in HIV
- iii. Promote comprehensive rights based knowledge on HIV related rights to influence increased legal services



- iv. Discuss the legal provisions protecting the rights of PLHIVs and the available redress mechanisms
- v. Discuss the role of lawyers in upholding the rights of PLHIVs and the rights of persons affected by HIV

KELIN executed the workshop through presentations by experts, testimony of a PLHIV, video sessions, recap sessions, a debate forum, participatory dialogues, materials provided in soft copy for the advocates on flash disks, and various booklets, reports and case studies given to the advocates in hard copy.

Besides Allan Maleche and Melba Katindi of KELIN, the facilitators drew from a wide range of experts in the field. They included:

Ambrose Rachier; an advocate of the High Court of Kenya with over 30 years standing, lecturer, writer, chair of the Kenya AIDS Society. He is the chair of the KELIN board and the outgoing chair of the HIV tribunal after championing the development of the law on HIV in KENYA. He has stood up as a sound professional, courageous person widely known for his profoundly recognized work on human rights for People Living with HIV (PLHIV).

Catherine Mumma; a member of the Commission on the Implementation of the Constitution of Kenya, a board member of KELIN and an expert in human rights, gender mainstreaming, children's rights, rights of persons with disability and HIV and AIDS.

Otiende Amollo; a practicing advocate of the High court of Kenya of over 15 years standing, a notary public, a commissioner for oaths and a certified public secretary. Also a KELIN board member, he has served as an official of the International Commission of Jurists Kenya Section, East African Law Society and the Law Society of Kenya.



Anne Gathumbi; a program manager with Open Society Initiative of East Africa (OSIEA) and the Open Society Law and Health Initiative, with more than 13 years' experience working on justice and women's human rights issues in East Africa.



Ms. Anne Gathumbi making her presentation at the training

Nelson Otwoma; is the Executive Director of Network of Persons Living with HIV&AIDS in Kenya and the community representative on the UNITAID Executive board.

Joy Asiema; a member of the HIV tribunal who is an advocate of the high court of Kenya and a lecturer at the Law School at the University of Nairobi.

Jotham Arwa; a practicing advocate of the High court of Kenya and currently a Ph.D. candidate in Law, is also a board member of KELIN. In addition to the practice of law, he has been a lecturer at the Kenya School of Law and has specialized in International Commercial and Trade Law, Public Finance and Financial Services Law, Corporate law, Human Rights and Legislative Drafting.

Dr. Zipporah Ali; she is the executive director of Kenya Hospices and Palliative Care Association (KEHPCA), the national umbrella body for hospices and palliative care. Dr. Ali is a board member of the International Hospice and Palliative Care Association (IAHPC). She was among several others who received the African Palliative Care Association (APCA) award for her contribution to palliative care in Africa and her work on the inaugural board of APCA.

Nineteen advocates attended the entire workshop. During the training sessions the advocates engaged the facilitators through questions and comments. There was also a debate session on day two of the workshop in which the advocates were divided into two teams to debate the pros and cons of criminalization of deliberate transmission of HIV. This session elicited a lot of controversy and there was no agreement as to whether criminalization was a good law or not.

A few advocates shared their experiences handling HIV-related cases and how they had been ill-prepared to go about them. Others confessed to having had stigma against HIV related cases before the training. At the end of the training, the participants commended KELIN for opening their eyes to opportunities of advocating and litigating in HIV rights. Most of them had previously known very little on HIV-related rights and issues.

The training ended with the advocates committing to partnering with KELIN in the provision of pro bono services in the following areas: litigation, legal aid clinics, legal advice, legal research and writing.

TARGET GROUP

The target group was practicing advocates from civil society, in private practice and those working with the government, drawn from Nairobi and its environs; Nakuru, Embu and Kakamega. A call for applications was advertised by the Law Society of Kenya among its members. KELIN received an overwhelming number of applications. There was also interest



from advocates outside of the target area and even a few international applicants. The criteria for selection was as indicated in the call for applications³.

Twenty participants were selected for the workshop, nineteen attended; 10 female and 9 male participants⁴.

THE WORKSHOP

4.1 Introduction and welcome remarks



Mr. Allan Maleche giving the welcoming remarks

Allan Maleche welcomed the participants. There was a brief introductory session where the participants stated their names, where they work and their expectations for the training. Welcome remarks were delivered by Anne Gathumbi of OSIEA. She noted that the issues on

³ See APPENDIX 1 Call for applications


⁴ See APPENDIX 3 List of participants

the law and HIV were diverse and challenging and highlighted the following as possible areas the participants could get involved:

- Strict implementation of Intellectual Property Rights (IPRs) of pharmaceutical companies sometimes compromise access to affordable generic drugs in developing countries especially for the much needed life saving drugs for PLHIV
- Advocacy for provision of clean needles to Injecting Drug Users (IDUs) and condoms and lubricants for male and female sex workers respectively presents the risk of being accused of abetting a crime. How can we effect the right to health for these groups in view of existing hostile legal environment
- Incarceration of TB drug defaulters in prisons without access to information, proper treatment, balanced diet due to lack of appropriate isolation facilities in hospital
- Access to controlled substances to manage pain for life limiting conditions such as cancers are inhibited by stringent anti-drug laws and policies
- The offence of deliberate transmission of HIV and its impact on PLHIV; could the participants defend persons accused of this crime
- Lack of recognition and respect of human rights of sexual minorities that result in numerous human rights violations

4.2 Expectations

The following were the expectations of the advocates at the beginning of the training workshop:

- To learn more about policies on HIV and their implementation
 - To learn more about HIV and the law
 - To learn about HIV and the law with a special focus on women
 - To learn how to represent Kenyans in judicial fora on HIV issues
 - To use the experience of the training to help women
 - To be able to apply HIV law
 - To see if litigation has had any impact on protection of HIV rights and to see how better litigation can have impact
 - To be able to create awareness on HIV rights in the legal sector
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4.3 The Role of the Law as a Mechanism to ensure full enjoyment of HIV-related rights for PLHIV

Presenter: Allan Maleche



Mr. Allan Maleche presenting on role of the law

The objective of the session was mainly to highlight some issues that link the law and HIV. The highlight of this presentation was when the participants were taken through statistics that indicate that only 13% of funds for HIV programmes are provided by the government. The difference of 87% comes from donor funding. The question “what will happen to persons on ARV therapy the day donors pull out” was posed to the participants. In light of the new constitution which obliges the government to progressively realize socio-economic rights (the right to health is one such right), the participants were urged to use this constitutional provision to advocate for increased HIV funding by the government.

Plenary:

- A question as to why African countries such as Kenya, Nigeria and South Africa have such a high HIV burden compared to western countries that are deemed to have liberal morals was asked. Here, the participants were warned of the danger of stigma that lurks in linking HIV transmission to issues of morality. It was emphasized that a rights-based approach required delinking of the two.
- The question of availability of home-based test kits and if these could reduce the transmission of HIV was explored. It was pointed out that the availability of these kits could aggravate domestic conflict where a spouse sneaks and tests the other while asleep.

4.4 Video Screening

This session was followed by a video session where a documentary on forced sterilization of HIV positive women and another on imprisonment of TB patients for defaulting on taking their drugs were played. Participants noted that:

- Getting material evidence against doctors who engaged in forced sterilization and other emerging issues such as misdiagnosis and negligence was a big challenge in Kenya. A suggestion was made that KELIN to engage doctors and build their interest in promoting human rights so that obtaining medical evidence for such cases would be easier.



- There was a conflict between advocacy for non-incarceration of TB drug defaulters and the greater public interest of protecting society from infection. The need for a rights-



Screening of the documentary, *robbed of choice* at the training

based approach was emphasized and it was stressed that incarceration of TB drug defaulters with other inmates and without access to medical treatment and proper diet was not justifiable on grounds of public interest. The government needs to be held accountable in ensuring isolation wards are available in TB high risk areas.

4.5 Overview of HIV and Human Rights and the Relevant Constitutional Provisions

Presenter: Commissioner Catherine Mumma

The overall objective of this session was to link HIV issues with human rights. It was highlighted that HIV first begins with socio-cultural and economic factors. The medical aspect of it comes in only later with regard to treatment and transmission. The social issues with

regard to stigma, discrimination in the work place, poverty, child marriages and wife inheritance link HIV to human rights. The participants were taken through constitutional



Commissioner Catherine Mumma leading discussions

provisions with a bearing to HIV issues. As part of their responsibility on HIV issues, the participants were asked to:

- Audit laws and policies through various forums such as the CIC process and the LSK committees
- Influence review of existing laws to align them with the constitution
- Demand for implementation of laws through quality public interest litigation
- Provide legal aid as a CSR of their law firms
- Collaborate with health practitioners and have sessions where lawyers and doctors work together
- Learn the rights-based approach to service delivery and practice it

KELIN was asked to develop a mailing list for the participants to facilitate sharing of information for quality public interest litigation.

Plenary:

- In line with the constitution obliging the government to progressively realize socio-economic rights, participants wanted to know how one can tell that the government is progressively realizing these rights. It was explained that progressive realization of socio-economic rights is measurable. Participants could ask the government to define minimum attainable units of a right and to demonstrate realization using statistics.
- Questions were raised in light of Article 2(6) of the constitution which moves Kenya from a monist state to a dualist state. Participants wanted to know which law takes precedence in case of a conflict between domestic legislation and international treaties. Article 10 of the constitution on national values and principles was brought to the attention of the participants as being capable of unlocking such a deadlock.

4.6 HIV & AIDS Equity Tribunal: How Advocates Can Engage It**Presenter: Joy Asiema**

The highlight of this session was the elucidation of advantages of choosing the HIV Equity tribunal over other forums: it seeks to adjudicate cases with a humane touch. The hearings are in camera and there is a level of informality allowed in presenting one's case which could hasten dispensation of justice for PLHIV. KELIN was commended for partnering with the tribunal in cases which have other issues attached to them besides HIV stigma and discrimination, such as cases that require Alternative Dispute Resolution (ADR).

KELIN was also urged to convene another workshop and invite other members of the tribunal: to discuss on how to file a case at the tribunal and medical-legal issues relating to HIV.

Plenary:

- Participants wondered why the tribunal has no jurisdiction to deal with cases of HIV stigma and discrimination that arose before commencement of the HAPCA. They were challenged to take this matter up in public interest litigation in light of Article 27(4) of the constitution.

4.7 Know your Epidemic, Know your Response

Presenter: Nelson Otwoma

In this session participants were taken through issues of access to treatment and it was emphasized that to encourage HIV testing, people needed to be assured of support and treatment following positive test results. If harsh repercussions of stigma and discrimination were associated with HIV testing, few people would be willing to get tested. The current policy of HIV testing for expectant women and persons presenting symptoms of TB was brought to the attention of the participants. There was need to make them aware that though the foregoing raises issues of consent, privacy and confidentiality, one could not have legal recourse against health practitioners in such cases because of public policy protection available to them.



Testing for children only with the consent of their legal guardians as stipulated in the HIV and AIDS Prevention and Control Act (HAPCA) was also raised as an issue of concern in HIV management. It was noted that in most family settings in Kenya OVCs are not legally adopted once their parents pass away, hence there is need for law reform to take cognizance of this fact.

4.8 HIV related Human Rights Violation: Testimonies

This session was followed by a testimony session by PLHIV. Here, the participants were given insight into the challenges faced by HIV positive women. Issues of societal stigma for HIV positive women expressing their sexuality came out. The witness testified as to how her doctor expressed surprise at her pregnancy because of her HIV status and advised her to undergo sterilization after delivery. She testified of experiences of HIV positive women being taken through guilt trips by health practitioners to coerce them into consenting to sterilization. Some health workers have even asked them brutal questions such as *“you mean you still have sex even after you got HIV?”*

The session introduced the participants to key populations as potential clients, using an informal values clarification session. Participants were able to explore their personal prejudices and reflect on how this would impact their willingness to represent and work with these groups.

Plenary:

- A question was posed as to the feasibility of using treatment as prevention to curb the spread of HIV. It was brought to the attention of the participants that such a programme has not been rolled out yet in Kenya and is an issue for advocacy as research indicates that the programme can significantly reduce chances of HIV transmission.



4.9 Legal and Ethical Issues Relating to HIV and Provisions that Address

Ambrose Rachier

The objective of this session was to take the participants through the history of the virus, the evolution of policy, law and ethics on the same. Participants were given insights into the early responses to the discovery of the virus in African countries. There was general denial of the existence of the virus and the impact that it could have which hindered development of policy and legal response. Participants were referred to read the 1997 August and September Hansards on parliamentary debates on HIV to assess how much ignorance existed among the top leadership on HIV issues.

The presenter then discussed issues of consent, privacy and confidentiality using numerous case examples. The participants were also informed of efforts at balancing the right to confidentiality with the right to disclose test results to third parties at risk of infection. This method has been used by hospitals in Kericho where by persons who test HIV positive are scheduled for another appointment with the hospital and are encouraged to come with their sexual partners. A counseling session is then arranged for the partners in which the health practitioner reveals the HIV status of the infected partner to the one at risk of infection. This way of implementing section 22 of the HAPCA has been found to be helpful in reducing incidences of domestic violence on HIV positive women that are required to reveal their status to their husbands. It also helps PLHIV generally because most of them do not find it easy to disclose their status to their sexual partners.

Plenary:

- Participants pointed out that the bulk of cases at before the HIV & AIDS Equity tribunal are work related. They questioned the risk of the tribunal overstepping its mandate to that of the industrial court which has jurisdiction over every work-related dispute. The availability of dual jurisdiction was pointed out and it was also noted the



industrial court has on several occasions referred work-related disputes with an HIV-discrimination aspect to the HIV & AIDS Equity tribunal.

- Section 13(2) (b) of the HAPCA brewed controversy. Some participants were of the view that disallowing mandatory pre-marital testing contributed to the spread of HIV. However, it was brought to their attention that PLHIV too have a right to marry and found a family. It was also noted that not allowing people to marry on account of their HIV status was futile as this could not prevent them from engaging in safe sexual behavior.

4.10: PRACTICAL SESSION - Debate: Is Criminalization of deliberate infection of HIV useful for the reduction of the spread of HIV?

Session Facilitator: Melba Katindi



Ms. Melba Katindi leading discussions on criminalization

The participants were divided into two teams to oppose or propose the debate motion. There were passionate submissions from both sides. The opposing side highlighted the following issues:

- Criminalization fuels HIV related stigma and discrimination
- Criminalization is a disincentive to HIV testing as lack of knowledge of one's status is a defense
- Issues of proof of the offence of deliberate infection is difficult: how do you determine intention, prior knowledge of status, reasonable steps taken to prevent transmission, etc
- Criminalization is not a deterrent to socio-economic factors that fuel transmission
- Women living with HIV would be significantly disadvantaged and would possibly form a larger proportion of those targeted by criminalization provisions

The proposing side raised the following issues:

- Deliberate transmission of HIV is a violation of the right to health hence the need to punish those who violate the rights of others
- The law on criminalization serves the general purpose of the law of providing for an orderly outlet for retribution
- The law on criminalization protects vulnerable parties in sexual relationships, mostly women, who do not have the bargaining power to negotiate for safer sex
- Punishing deliberate transmission of HIV does not fuel stigma because it is not the HIV status that is criminalized but the abuse of the status

4.11 Legal Support in Palliative Care

Dr. Ziporrah Ali

The objective of this session was to underscore that the right to health included the right to palliative care. The issue of access to opioids used for pain relief was revisited and participants were informed of the need for continued advocacy to make access to opioids affordable. The following legal aspects of palliative care were highlighted:



- Most patients are denied the right to information on palliative care leading to unbearable suffering and loss of dignity
- There is need to review laws and policies to incorporate palliative care into public health

Legal support in protecting and disposing of property can be used to protect vulnerable dependents from destitution on the death of their breadwinner

- There was also ignorance of the law amongst the patients and their families that resulted in numerous family disputes involving next of keen (numerous spouses), executing power of attorney, inheritance and succession, custody of children, etc.

Participants were informed that KEHPCA was working on a manual on palliative care which would be e-mailed to them through KELIN for their inputs. The same was developed with the objective of creating more awareness on legal issues in this regard.

Plenary:

- Participants were inquisitive as to the practice on palliative care for children with regard to opioids. They were informed that paediatric palliative care had been rolled out and that KEHPCA had trained over forty clinicians in this regard even though use of morphine in paediatric palliative care is still a sensitive issue. But dispensing of opioids for pain relief was still sparingly used by health practitioners.
- Concern was also raised at the lack of express legal and policy backing to facilitate access and availability of opioids for pain relief

4.12 Legislating and Litigating HIV in the Kenyan Context

Otiende Amollo

This module was designed to equip the participants with comprehensive rights based knowledge on HIV related rights to influence increased legal services. Participants were taken through various impediments to HIV litigation, a major one which is stigma. The litigants shy away from seeking justice but legal practitioners shy away from taking up HIV related disputes. They were urged to use pseudonyms while litigating HIV rights to mitigate the impact of stigma on the litigants. The debate on criminalization cropped up here once again.

Divergent views were debated upon. The facilitator pointed out that Section 24 of HAPCA does not criminalize deliberate transmission but non-disclosure of HIV positive status to persons at risk of getting infected. He felt that the HIV legislation was trying to balance rights and responsibilities and the duty to not put others at the risk of infection is one such responsibility.

Plenary:

- In view of the many judicial forums available for litigating HIV rights, the participants sought to know what considerations should inform choice of forum for litigating HIV related human rights violations. It was brought to their attention that tribunals tend to be more inquisitorial as opposed to courts which are adversarial and that the former would be a preferable forum for a case that needs help with further investigations.

4.13 Video Screening

After this session participants had a video session on the Cultural Structures Project, an ADR initiative by KELIN by which it was aimed to illuminate for the benefit of the participants how Article 159 (3) of the constitution can be put to use in resolving customary disputes.



4.14 Developing HIV & AIDS Jurisprudence: Challenges and Prospects

Jotham Okome Arwa



Mr. Okome Arwa presenting a paper on HIV & AIDS Jurisprudence

This module is aimed at helping participants develop knowledge useful for litigating HIV-related human rights. The hierarchy of HIV rights was explained to the participants as obtaining from socio-economic rights and socio-economic rights from general human rights. The participants were then taken through human rights jurisprudence relevant to HIV under the UN, African, South African and Kenyan Human Rights Systems. A distinction was drawn between South African and Kenyan human rights systems and the participants warned of the danger of copying the South African jurisprudence without heeding the distinction. It was also pointed out to the participants that the full opportunities offered by the new constitution for litigating human rights are not being utilized. Article 22 of the constitution which requires

the chief justice to make rules to reduce formalities and scrap away court fees for suits related to enforcement of fundamental human rights was given as an example. The rules have not been made. The challenges of litigating HIV-related cases in Kenyan courts were discussed at length.

It was also pointed out that there is need to define the scope of rights provided by the new constitution through jurisprudence. The need to redesign appropriate remedies for human rights violations was also acknowledged. The participants were challenged to take up the duty of developing the jurisprudence.

Plenary:

- Participants were concerned that the out-of-court settlement of cases; which most clients accepted, was impeding the development of HIV jurisprudence. This concern was acknowledged as putting the duty of the participants' fidelity to their clients against their duty to the profession and society to develop the law. They were reminded that their first duty is to their clients.
- It was noted that the HIV & AIDS Equity tribunal is best suited to develop jurisprudence on HIV but the participants were warned that the tribunal will not develop the jurisprudence if lawyers appearing before it are not sufficiently competent to litigate HIV matters.
- Participants sought to know some of the new innovative remedies that can be employed to enforce human rights. An example was given from the French jurisdiction where there is a remedy called judicial preview that mandates the government to consult stakeholders before a law or policy is developed.

TRAINING METHODOLOGY

The participants received maximum opportunity for learning through a participatory learning process that included structured presentations, question and answer sessions, case studies, experience sharing, a debate forum and video sessions. The presentations were made through PowerPoint and flipcharts. Hard copies of handbooks and reports relevant to the training



were also given to the participants as well as flash disks with voluminous soft copy materials relevant for continuous learning on HIV, the law and human rights.

WAY FORWARD

Upon completion of the training, the participants resolved:

- 1) To provide pro bono services on HIV rights in partnership with KELIN in the following areas: litigation, legal advice, research, legal aid clinics, advocacy and writing of papers.
- 2) To engage proactively in the development, amendments and review of laws and policies touching on health
- 3) To deal with HIV stigma and discrimination


KELIN was urged to:

- 1) To e-mail participants KEHPCA's manual on palliative care once it was completed
- 2) Develop a mailing list for the participants to facilitate information sharing for purposes of aiding quality public interest litigation on HIV rights.

CHALLENGES

- 1) A few facilitators were unable to make it for the training sessions scheduled for them. It was challenging to find suitable substitutes.
- 2) Few participants were unable to attend the workshop for the full three days due to pressing commitments at their work stations.
- 3) The demand for the workshop was overwhelming whereas resource constrains would not allow us to accept some qualified applicant.

RECOMMENDATIONS

- 1) Trained advocates should be engaged in different capacities in the sector activities e.g. community capacity building on legal issues and human rights, policy advocacy, etc.
 - 2) PLHIV organizations and individuals should be informed of the progressive scaling up of legal practitioners who are able and willing to provide affordable services to meet the demand
 - 3) A follow-up meet again later the following year would facilitate review of the impact of the training on the advocates work
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- 4) Creation of an online database for willing advocates who would avail and provide affordable services by potential clients with HIV related disputes and organizations needing support on legal issues

APPENDIX 1: CALL FOR APPLICATIONS



(LSK logo)



CALL FOR APPLICATIONS:

THREE DAYS SEMINAR FOR ADVOCATES ON HIV LAW AND HUMAN RIGHTS IN KENYA

(Nairobi, 21st – 23rd November 2012)

[KELIN](#) is a legal NGO working to promote and protect HIV related human rights in order to achieve the full enjoyment of HIV related rights by all.

We do this by: **Providing free legal services and support** to people who have suffered human rights violations – especially people living with HIV or affected by health issues – using KELIN staff and our network of *pro bono* lawyers; **Strategic and public interest litigation** to help influence laws and policies from a judicial perspectives; **Trainings** for health professionals, lawyers, community workers and people living with HIV about the rights-based approach to providing services and **building capacity** for implementation; **Advocacy** campaigns that promote awareness of human rights issues to governments, organizations and

communities; **Researching** areas relating to human rights, legal issues and health, **influencing new policy** and supporting **evidence-based change**.

KELIN's current main programme areas are around: promoting alternative dispute resolution to secure justice for vulnerable groups such as widows and orphans, campaigning for sustainable funding for health services, ensuring the government effectively supports the rights of TB patients and persuading people in Kenya to know and use their human rights and giving them support where the same have been violated. In undertaking its duties, KELIN utilizes a rights based approach that ensures the communities affected by the issue have their capacity enhanced to enable them engage with the relevant duty bearers who are responsible to ensure these rights are fulfilled.

KELIN, in partnership with the Law Society of Kenya (LSK) and The National Empowerment Network of People Living with HIV and AIDS in Kenya (NEPHAK), is pleased to announce a call for applications to advocates who would like to participate in a forthcoming **three day seminar on HIV, law and related human rights**. Applicants are required to fill the requisite application and share as much details as possible.

Funded by the Open Society Foundation, the seminar seeks to develop a critical understanding among legal practitioners on HIV law and related human rights in order to influence increase in legal services for HIV related violations and influence sound case law on this issue in Kenya. The three day seminar will be held in Nairobi from 21st – 23rd November 2012.

Criteria for eligibility:

- The call for applications is open to advocates, whether in private practice or affiliated to an NGO, who litigate or have an interest to litigate on HIV related human rights issues. It is desirable that advocates have an affiliation to an NGO or a law firm. A total of 20 participants will be selected;



- The advocates must have a demonstrated interest in and/or knowledge on HIV related human rights issues in Kenya;
- The advocates must also have a demonstrated interest in and/or knowledge of international and regional human rights law in relation to HIV
- The lawyers must be resident in and actively engaged in practice in the counties of Nairobi, Kiambu, Machakos and Nakuru;
- Advocates who are already working with OSIEA grantees in terms of provision of legal aid will have an added advantages;
- Advocates who are members of the LSK's Public Interest Committee and the Medical Legal Committee will have an added advantage;
- Must be committed to attending the entire 3 days seminar;
- Must be competent in written and spoken English which will be the working language for the meeting;
- Invitations are welcome only from serious candidates who are agreeable to join the database of the KELIN *pro bono* lawyers and will be available to provide legal services in this regard including participating in legal aid clinics and litigation that will be conducted by KELIN, LSK and NEPHAK in 2013 and thereafter.

Closing date for applications: 9th November 2012

How to apply:

Please complete the attached application form and submit it together with your Curriculum Vitae to Veronica Omunga at info@kelinkenya.org. Only applications in the prescribed format will be accepted.

Should require any further information regarding the workshop and eligibility criteria kindly contact Melba Katindi at mkatindi@kelinkenya.org



Only the shortlisted applicants will be notified by email soon after the closing date and should be available for telephone interviews on **Tuesday, 13th and Wednesday 14th November 2012.**



APPENDIX 2: WORKSHOP PROGRAM



LAW SOCIETY OF KENYA

Three days seminar for lawyers ON HIV LAW AND HUMAN RIGHTS IN KENYA

Objectives

- Share information and knowledge on the basics on HIV, human rights concepts and the link between Human rights and HIV
- Develop critical understanding of various challenges raised by legal and ethical issues in HIV
- Promote comprehensive rights based knowledge on HIV related rights to influence increased legal services
- Discuss the legal provisions protecting the rights of Persons Living with HIV (PLHIV) and the available redress mechanisms
- Discuss the role of lawyers in upholding the rights of persons living with and affected by HIV

<i>Day 1 21st November 2012</i>		
TIME	SESSION	PROPOSED FACILITATOR
7.30 – 8.30 AM	Arrival and Registrations	KELIN
8.30 – 8.45 AM	Introduction	Allan Maleche KELIN
8.45 – 9.00 AM	Welcome remarks and climate setting	Anne Gathumbi OSIEA (Director Learning Evaluation and Achievement Programme) Commissioner Catherine Muyeka Mumma Commission on Implementation of the Constitution (CIC) & KELIN Board Member Apollo Mboya Executive Director LSK

9.00 – 9.15 AM	Official Opening Remarks: The role of the legal profession in dealing with the HIV response using the law.	Hon. Prof Githu Muigai Attorney General of Kenya
9.15 – 10.00 AM	The role of the law as a mechanism to ensure the full enjoyment of HIV related rights for PLHIV in Kenya (refer to Global Commission Report)	Allan Maleche - Executive Director KELIN
10.00 – 10.20 AM	Screening of Videos: <ul style="list-style-type: none"> • TB cases video • Sterilisation cases video 	Melba Katindi - Program Officer KELIN
10.20 – 10.45 AM	Tea Break	
10.45 – 1.00 PM	Overview of human rights law in relation to HIV and the link to Gender	Commissioner Catherine Muyeka Mumma Commissioner on Implementation of the Constitution (CIC) & KELIN Board Member
1.00 – 2.00 PM	Lunch Break	
2.00 – 3.30 PM	Overview of HIV and TB with a focus on new developments in prevention, treatment and management (knowing your epidemic)	Nelson Otwoma Executive Director NEPHAK



3.30 – 4.00 PM	Stigma and Discrimination: Testimony	
4.00 – 4.30 PM	Tea & Departure	
<i>Day 2 22nd November 2012</i>		
7.30 – 8.30 AM	Arrival and Registrations	KELIN
8.30 – 10.30 AM	The legal and ethical issues in the context of HIV and the legal provisions that exist to address them	Ambrose Rachier Chairperson – Equity Tribunal Chairperson KELIN
10.30 – 11.00 AM	Tea Break	
11.00 – 1.00 PM	The legal and ethical issues in the context of HIV and the legal provisions that exist to address them	Ambrose Rachier Chairperson – Equity Tribunal Chairperson KELIN
12:00 – 1:00 PM	The HIV & AIDS Tribunal - how can advocates engage with it?	Ms. Joy Asiema Vice Chairperson HIV & AIDS
1.00 – 2.00 PM	Lunch Break	
2.00 – 3.15 PM	Debate session Is Criminalisation of deliberate infection of HIV useful for the reduction of the spread of	Melba Katindi - Program Officer KELIN

	HIV? Pro (team) and Con (team)	-
3.15– 4.00 PM	Legal Support in Palliative Care	Dr. Zipporah Ali KEPHCA
4.00 – 4.30 PM	Tea & Departure	
Day 3 23rd November 2012		
7.30 – 8.30 AM	Arrival and Registrations	KELIN
8.30 – 10.30 AM	Legislating and Litigating on HIV related human rights in the Kenyan context	Commissioner Otiende Amollo Chairperson Commission on Administrative Justice and KELIN board Member
10.30 – 11.00 AM	Tea Break	
11.00 – 1.00 PM	CASE STUDIES International and Regional Case Studies: <i>(TAC v. Minister of health – South Africa , sterilization case - Namibia,</i>	Jotham Okome Arwa Board Member KELIN
	CASE STUDIES Continued Case Studies in Kenya: e.g. Midwa v. Midwa, J.A.O v. Homepark Caterers, Anti Counterfeit Case, TB case	Jotham Okome Arwa Board Member KELIN
1.00 – 2.00 PM	Lunch Break	



2.00 – 3.00 PM	The opportunities available for Advocates to take forward litigation and legal services in the context of HIV and Human Rights	Jotham Okome Arwa Board Member KELIN
3;00 – 3.20 PM	The opportunities available for Advocates within the structures of LSK to take forward HIV & Human rights issues	Apollo Mobyia Secretary/Executive Director LSK
3;20 -3.40PM	Closing remarks and persentation of Certificates to participants	Eric Mutua Chairperson Law Society of Kenya
3.40 – 4.00 PM	Tea & Departure	
- END -		



APPENDIX 3: LIST OF PARTICIPANTS

NAME	GENDER
1. LailaAbdullatif	F
2. NduruGichamba	M
3. RaberaOsano	M
4. MatundaMontari	M
5. Christine Kathambi	F
6. Anne Mwatha	F
7. Grace Macheru	F
8. Nick Ndeda	M
9. Eunice M'mbone	F
10. Julius Juma	M
11. Joel Kihanga	M
12. UnitaAmulele	F
13. Wilson Rading Outa	M
14. Caroline Oduor	F
15. RahabWakuraya	F
16. Naomi Nyawira	F
17. Jessica Mutegi	F
18. Benson Njiru	M