

**REPORT OF THE TRAINING OF THE STUDENTS' ASSOCIATION FOR LEGAL
AID AND RESEARCH (SALAR) ON HUMAN RIGHTS, LEGAL AND ETHICAL
ISSUES IN RELATION TO HIV & AIDS.**

**HELD AT UNIVERSITY OF NAIROBI, SCHOOL OF LAW, PARKLANDS
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ABBREVIATIONS

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| ACHPR | African Charter on Human and people's rights |
| ARV's | Anti-retrovirals |
| ART | Anti-retroviral Treatment |
| CAT | The Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; |
| CEDAW | The Convention on the Elimination of All forms of Discrimination against Women |
| CERD | The International Convention on the Elimination of Racial Discrimination |
| CRC | The Convention on the Rights of the Child |
| CRDPWD | The Convention on the Rights and Dignity of Persons with Disabilities |
| CRMW | The Convention on the Rights of Migrant Workers |
| GBV | Gender-Based Violence |
| GIPA | The Paris Principles on Greater involvement of Persons Living with HIV and AIDS |
| HIV | Human Immuno deficiency virus |
| ICC | International Criminal Court |
| ICCPR | The International Covenant on Civil and Political Rights |
| ICESCR | The International Covenant on Economic Social and Cultural Rights |
| KAIS | Kenya AIDS Indicator Survey, 2007 |
| KELIN | Kenya Legal & Ethical Issues Network on HIV and AIDS |
| MOT | Modes of Transmission |
| MSM | Men having Sex with Men |
| NASCOP | Kenya National AIDS/STI Control Programme |
| NGOs | Non-Governmental Organizations |
| OVCS | Orphans and Vulnerable Children |
| PLWH | Persons living with HIV |
| SALAR | Students Association for Legal Aid and Research |
| TB | Tuberculosis |
| TOWA | Total War Against HIV and AIDS |
| UDHR | The Universal Declaration on Human Rights |
| UNGASS | United Nations General Assembly |

1.0 EXECUTIVE SUMMARY

Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) is a national network, which was established to address and respond to Legal, Ethical and human rights issues relating to health and HIV. It is one of the few organizations in Kenya and East Africa working in this area. KELIN seeks to fully participate in the processes of formulating and implementation of global and regional health policies and programs, in order to influence them to factor the relevant legal, human rights and ethical perspectives for better delivery of the programmes.

Students Association for Legal Aid and Research (SALAR) is a means by which University of Nairobi students give back to the community for the privilege of being in the noble profession of Law. They do this by providing legal aid and outreach services through the organizations it collaborates with. SALAR also provides an avenue for students to engage in a wide range of research activities with the aim of advancing student intellectual capacity and research prowess. The students carry out these functions under the supervision of Ms. Joy K. Asiema, a Lecturer and Head of the Department of Public Law, University of Nairobi, School of Law and the current Patron of SALAR.

KELIN runs a programme on Capacity Building and Strengthening on rights based approaches relating to key health and human rights issues. This programme involves the education of members of the community, professionals and students on the various human rights components relating to health and HIV. SALAR approached KELIN expressing an interest in capacity building on legal & ethical issues relating to HIV and AIDS. Despite having no budget line to facilitate the activity, KELIN, in a bid to encourage the *pro bono* spirit among the students, agreed to support 2 full-day trainings with a focus on *Legal and Ethical issues in Relation to HIV and AIDS*.

KELIN was able to develop the modules, prepare presentations, provide a laptop and provide soft copies of the presentations. KELIN was equally able to arrange for facilitators and make provisions for food and drinks for all the participants for the full 2 days. Arrangements were made for SALAR to mobilize interested students, secure a hall and provide an LCD- projector for the trainings.

The objective of the trainings was to strengthen the capacities of the Law students on the various human rights components relating to health and HIV in order to complement the legal

aid activities of SALAR. This opportunity would also offer an insight into possible career prospects in this field. The sessions took place on 5th and 19th February at University of Nairobi, School of Law, Parklands Campus.

Besides Allan Maleche – Coordinator and Melba Katindi – Advocacy & Training Officer who are both KELIN staff, the facilitators also drew from a wide range of experts. They included:

- i. **Dr. Pauline Samia**; qualified Pediatrician and a lecturer at the Aga Khan University in Nairobi
- ii. **Commissioner Catherine Mumma** (The Commission for the Implementation of the Constitution, Board Member – KELIN); Advocate of the High court, expert in the field of Law, Gender, Rights of children and Persons with disability and HIV related Human Rights
- iii. **Commissioner Winnie Lichuma** (Kenya National Commission on Human Rights (KNCHR), Board Member - KELIN); Advocate of High Court, expert in mainstreaming human rights, gender and HIV and Aids in development programmes
- iv. **Mr. Ambrose Rachier**; Advocate of the High Court, expert on property rights and human rights and legal & ethical issues relating to health



Participants interact with Mr. Rachier

The target group was of male and female students aged between 18 and 30 years. Forty four (44) students were trained and those who successfully completed all the modules were certified.



Maureen Nyamai – Chairlady, SALAR is presented with a Certificate of participation by Mr. Maleche – Coordinator, KELIN (centre) and Ms. Asiema – Patron, SALAR

The presentations were designed to be very detailed as all the participants were law students of excellent command. The facilitators used a participatory approach with the use of numerous case law examples which the participants easily related to. The students were very inquisitive and engaged in very informed debates on various issues mostly relating their experiences within their institutional environment.

The Patron and the Chair of SALAR worked very hard to follow up on the logistics thus making the sessions a great success. It was impressive to observe that the attendance was gender balanced; out of the average of 44 students who completed the training, 23 were female and 21 were male. During the sessions it became noticeable that the participants were more familiar with general human rights Instruments but not specific legal provisions on human rights related to HIV and AIDS. The sessions occasioned a better comprehension of legal and ethical

issues pertaining to the same. At the end of the sessions the participants requested that KELIN link them to various opportunities suitable for focusing on human rights and HIV & AIDS.

From the feedback, it was alarming that HIV-related information was conspicuously absent in the campus and the optional HIV course offered was ironically examined despite the absence of lectures on the same. The general campus is not appropriate for positive living in relation to HIV as issues are not liberally addressed because HIV-related stigma still remains very high. The training concluded with the participants making very important resolutions towards addressing some major issues raised during the sessions. It is our hope that as a result of this trainings SALAR, with continued technical support from KELIN and other partners, will be the champion in advocating for HIV awareness within the institution.

2.0 SUMMARY OF WORKSHOP MODULES

2.1 Module 1: Overview of HIV and AIDS

The participants were taken through the history of HIV and how it was discovered. It was explained that HIV was a virus that is transmitted from person to person through the exchange of body fluids such as blood, semen, breast milk and vaginal secretions.



Dr. Samia explains the Sub-types of the Virus

Unprotected Sexual contact was explained as the most common way to spread HIV but it can also be transmitted by sharing needles when injecting drugs, or during childbirth and breastfeeding. Acquired immune deficiency syndrome, or AIDS, was described as an advanced state of HIV infection. The participants then learnt how the virus works in the body to suppress the immune system.

Plenary:

- The participants made impressive contributions during the sessions discussing modes of contraction, treatment, control and management of HIV. Finally common myths and misconceptions associated with the epidemic were raised and addressed.
- The participants were also keen on ongoing prevention research and wanted to know the criteria of enrollment as volunteers

2.2 Module 2: Introduction to Human Rights



Commissioner Lichuma clarifies some Human Rights issues

This module was designed to acquaint the participants with the general understanding of Human Rights, the principles relating to human rights and the international and national frameworks on human rights. At the end of the module the participants will be able to articulate the specific rights relating to HIV and AIDS and understand the Linkage between HIV and AIDS, human rights and health. The session specifically discussed the following aspects of human rights: The meaning, characteristics, general principles, underlying principles, history, international and regional human rights regime, human rights abuses and violations, how international human rights norms are created and International Instruments Relevant to HIV e.g. ACHPR, CAT, CEDAW, CERD, CRC, CRDPWD, CRMW, GIPA, ICCPR, ICESCR, etc.

Plenary:

- There were a lot of inquiries with regard to the International Criminal Court (ICC) and its procedure in light of the anticipated prosecutions in relations to the perpetrators of the post election violence in Kenya. It was advantageous that Commissioner Lichuma who facilitated the session was able to respond to the numerous questions.

2.3 Module 3: HIV and Gender Related Rights

This module was designed to impart to the participants knowledge on gender and the gender related principles. It is also designed to visualise the feminisation of the HIV and AIDS scourge in Kenya and the need for all intervention to address the gender aspects of the epidemic. The objective was to enable the participants understand and articulate gender and gender related concepts, understand the factors relevant to the current huge gender disparity relating to HIV and AIDS and for them to be able to adopt strategies that fully address gender concerns within their area of work.

The presentation by Commissioner Mumma highlighted the gender provisions as outlined in the Constitution. She also addressed the increasing feminization of the HIV and AIDS epidemic due to the gender gap between men and women and articulated gender and gender related concepts. This helped the participant appreciate the issues of access and control in relation to the gender roles and further how to address gender discrimination to enhance community development.

Plenary:

- This module generated the most debate among the students. The participants discussed various gender disparities that contributed to vulnerability of the youth generally and

specifically the female population of the campus to HIV. It was interesting to observe that gender disparities still persist even within this generation.

- The participants also looked into cultural practices that they thought contribute to the vulnerability of women.



Commissioner Mumma commands speaks on gender issues

2.4 Module 4: Stigma & Discrimination

This module was designed to impart to the participants knowledge on issues of stigma and discrimination in the context of HIV and AIDS. It is also designed to visualise the effect and impact of stigma on HIV and AIDS treatment and prevention. The objective here was for the participants to understand the meaning of the term stigma and the forms and types of stigma that exist and to distinguish the term stigma from the term discrimination which are often misperceived to mean one and the same thing.

The participatory analysis of the case *Midwa -v- Midwa Case No. 197/2000 [EALR] EA453 (CAK)* followed by the presentation by Mr. Rachier enabled the participants to visualize the

effect and impact of stigma and discrimination on persons living with HIV, on treatment and prevention.

Plenary:

- The participants were able to identify several elements of stigma within the institution and begun to strategize on how to support the student body to cope with HIV related stigma. The participants then discussed various initiatives that could be taken to get the community involved.

2.5 Module 5: Legal and Ethical Issues in the context of HIV & AIDS



Mr. Rachier makes his legal submissions for further deliberations

This session basically encompassed the legal and ethical aspects of HIV and AIDS focusing on Informed Consent, Testing for HIV and the place of confidentiality of HIV results in various fields of life such as medical practice, in the family, at the work place and within the community. The session was a continuation of the previous and extensive reference was made

to the issues raised in the *Midwa V Midwa Case No. 197/2000 [EALR] EA453 (CAK)* case. The following issues were argued out:

- Should HIV be a pre-qualification for an application for divorce
- Property rights of PLHIV especially women and children
- Custody rights of women living with HIV over children of tender years
- Ignorance - Do PLHIV pose a great risk of infection (how is HIV transmitted)
- Criminalization of HIV (intentional infection)
- Disclosure

Mr. Rachier challenged the participants with various legal perspectives touching on issues of criminal law and biomedical research in relation to HIV. The participants had numerous contributions to this session in light of their legal background.

2.6 Module 6: The Legal provisions in relation to HIV & AIDS

The aim of this module is to familiarize the participants with the legal provisions relating to HIV and acquaint them with the various judicial organs and applicable procedures of enforcing the rights of PLWH in the cases of violations. The participants were well vast with the different sources of Law in Kenya and the legal system. Mr. Maleche's presentation looked into the provisions for protection and enforcement of the rights to health as spelt out in The Constitution. He then looked into the HIV and AIDS Prevention and Control Act, 2006 and other HIV related provisions in Employment Act, The Sexual Offences Act 2006 and the Children's Act, 2001.

Plenary:

- The participants were curious as to the mandate of the Equity tribunal in light of The Constitution and the mandate of the High Court in the enforcement of Bill of Rights.
- Allan also pointed out the introduction of Public Interest Litigation in light of the provisions of the Constitution especially in the enforcement of Social and Economic rights.

2.7 Module 7: Vulnerable Populations and Most at Risk Populations (MARPs)

Before introducing the module the prevalence of each of these groups was highlighted as demonstrated by the findings in the KAIS, 2007 and MOT Study, 2008. This module was designed to acquaint the participants with the two terms, the difference between the terms, the use of the terms and the categories and groups referred to under each category. The session provided a general understanding of the legal, ethical and human rights issues among

vulnerable populations and MARPs, and provided knowledge on possibilities of enhancing the protection of these groups.

Plenary:

- The high level of stigma associated with MARPs was evident during this session. The participants were in denial about the existence of the group among its student population and were unable to freely discuss the reality of MSMs even in general.

3.0 TRAINING METHODOLOGY



Ms. Asieme joins the participants in discussions on the front right

The participants received maximum opportunity for learning through a participatory learning process including structured presentations, Question & Answer sessions, case studies, experience sharing and healthy debates among the participants. The presentations were made through PowerPoint and flipcharts. The presentations will be circulated in soft however; a hard copy will be submitted to the Dean faculty of law and the Chairperson of SALAR.

4.0 WAY FORWARD

Upon completion of the modules, the members of SALAR resolved as follows:

- a) To advocate for more effective VCT services on campus to encourage testing and provision of treatment in the institutional infirmary.
- b) To advocate for accessibility of condoms by all students. They agreed to request for the provision of female condoms in addition to the male condoms. KELIN suggested approaching NASCOP too for this.
- c) To advocate and champion the circulation of information on safe sex and effective condom use among the students.
- d) To establish the existence and suitability of School of Law institutional Policy on HIV and submit appropriate recommendations if necessary.
- e) To demand for HIV course reintegration back to the Law syllabus



Mapping the way forward

5.0 CHALLENGES

1. The participants demonstrated poor time management thus delaying most of the sessions. This meant that the sessions begun and ended later than was anticipated.
2. Due to the intense academic schedule of the participants and the unavailability of the facilitators during the week, the training was planned for the weekend. Some of the participants were unable to attend all the sessions and could not be certified. However KELIN has made alternative provisions to allow them to complete the course if desired and receive certification.
3. KELIN's effort to have Mr. Otiende Amollo to facilitate a session on HIV related litigation did not succeed as he was held up in proceedings out of town. Being a guru in this area his expertise would have been invaluable for these young legal minds.

6.0 RECOMENDATIONS

1. SALAR should pursue its partnership with KELIN for technical input into the strategies laid out.
2. University of Nairobi, Faculty of Law, Parklands Campus should consider supporting SALAR in their *probono* Legal Aid work with a focus of inclusion into the National Legal Aid Scheme. The members are ambitious and driven and with guidance from the Patron that require encouragement.