PRIVACY & CONFIDENTIALITY FOR PLHIV ACCESSING HEALTH SERVICES
Stigma, discrimination and other human rights violations against Persons Living with HIV (PLHIV) limit their access to services. The right to privacy and confidentiality is a human rights concern for PLHIV because disclosing ones status without their consent exposes them to suffer stigma and discrimination.

**What is stigma?**
Stigma refers to negative attitudes, fear or rejection directed at people associated with a certain condition such as HIV or TB. People who are stigmatized are viewed differently, usually with negative consequences.

**What is discrimination?**
Discrimination is the action of treating one person differently from another in a way that is unfair. This contributes to human rights violations. Stigma often results in rejection or a person being treated unfairly or unjustly on the basis of their HIV status. This is discrimination.

### UNDERSTANDING THE SCOPE OF THE RIGHT TO PRIVACY AND CONFIDENTIALITY.

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<th>Nature of Right</th>
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| Privacy         | Refers to the freedom from intrusion into one’s personal matters and information. | • Testing a person without their express consent  
• Demanding the HIV results of a third party e.g. by employer, pastor, etc. |
|                 | Involves control over one’s personal matters and circumstances of sharing the same. | This is a legal right. |
| Confidentiality | Concerns the manner in which information that an individual has disclosed in a relationship of trust with the expectation that it will not be disclosed to others without permission. This is an ethical obligation based on a relationship of trust such as doctor-patient, lawyer-client, etc. | • Disclosing someone’s HIV status without their consent  
• Leaving client files where other persons can easily access them. |
WHY PRIVACY AND CONFIDENTIALITY ARE IMPORTANT IN HIV SERVICE DELIVERY

Impact of violation of Privacy and Confidentiality

Disclosure of information relating to one’s HIV status without their consent:

1. Exposes PLHIV to other human rights violations
   For example:
   • Discrimination at home, work and school
   • Verbal, physical and sexual abuse

2. Impacts negatively on health seeking behavior
   For example:
   • PLHIV may avoid treatment if they are not confident that information about them will remain private.

• Patients who seek treatment may also withhold important information out of concern for their privacy, or the fear that confidentiality will be breached.
• In addition, this concern may prevent patients from receiving full and appropriate treatment; including taking up life-enhancing and life-saving treatments if they fear that someone may see them.

Benefits Of Promoting Privacy And Confidentiality

Where the right to privacy and confidentiality is upheld, people are willing to get tested to know their HIV status. They are also able to go to health centers to receive treatment for HIV related illnesses. This improves adherence and mitigates new infections.

WHAT DOES THE LAW IN KENYA SAY ABOUT PRIVACY AND CONFIDENTIALITY

Privacy and Confidentiality are recognized in the Constitution of Kenya 2010 and in several national and international laws.

The Constitution of Kenya 2010

Article 31
This provision ensures that information about a person’s HIV status is kept confidential and is not released without his/her consent. This avoids testing of a person without consent and the disclosure of their HIV status without their free will.

Article 2(6)
International instruments that Kenya has approved form part of the laws of Kenya. This ensures we meet international standards including respect and protection of privacy and confidentiality of PLHIV.

The HIV and AIDS Prevention and Control Act 2006

Section 13
Provides that no person can be forced to undergo mandatory HIV testing for purposes of: For purpose of marriage, employment, admission to educational institution, the provision of healthcare, insurance cover, etc.

Section 18
Provides that the results of an HIV test shall be confidential. They can only be released to the tested person, or if a child, to the parent or legal guardian of that child. If the child is capable of consenting directly to the HIV test as a result of being pregnant, married, a parent or is engaged in sexually risky behaviour, the results of the HIV test shall be disclosed to the child themselves.

Section 21
Provides that the records or the forms used in a procedure for HIV testing shall not include any information that directly or indirectly identifies the person to whom the HIV test relates.

Section 22
Provides that a person must give written consent before the results of their HIV test can be shared with anyone. The permission of parents is required for children and for persons with mental disability, the permission of their legal guardian.
When a person’s right to privacy and confidentiality is violated, they have the following options for redress:

A) COURTS
Cases of human rights violations can be filed in the High Court. Violations relating to employment can be filed in the Industrial Court.

Judiciary Contact:
Number - (020) 2221 221
Email - info@judiciary.go.ke

B) THE EQUITY (HIV AND AIDS) TRIBUNAL
This tribunal hears cases resulting from breach of the rights of PLHIV in the HIV and AIDS Prevention and Control Act, including those touching on the right to privacy and confidentiality.

Tribunal Contact:
Email - hivtribunal@gmail.com

C) CONSTITUTIONAL COMMISSIONS
Violations that may particularly affect women, children and persons with disability can be referred to the Kenya National Commission on Human Rights (KNCHR) or the National Gender and Equality Commission (NGEC).

These commissions promote and protect human rights, and the gender and equality mandate, respectively.

• KNCHR Contact:
  Telephone (020) 2717908/00/28
  Email complaint@knchr.org

• NGEC Contact:
  Telephone (020) 2727778
  Email info@gendercommission.org

D) REGULATORY BODIES
For violations involving health care professionals, patients can lodge complaints with the relevant regulatory authorities such as the Medical Practitioners and Dentists Board (MPDB), the Nursing council of Kenya, Clinical officers’ council among others provided in law.

• MPDB Contact:
  Telephone (020) 2728752/271478/2724994
  Email info@kenyamedicalboard.org

• Nursing Council Contact:
  Telephone (020) 387556
  Email info@nckenya.org

• Clinical Officers Council Contact:
  Telephone 0725 705 144
  Email info@clinicalofficerscouncil.org

The Commission on Administrative Justice (CAJ) also the Office of Ombudsman investigates complaints of abuse of power unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector.

• CAJ Contact:
  Telephone: (020)2270000/2303000/2603765/2441211
  Email info@ombudsman.go.ke

KELIN works to enhance protection against HIV related human rights violations. We are able to provide you with relevant legal and human rights information and advice to enable you claim your rights and pursue justice for violations.
KELIN is a human rights NGO working to promote and protect HIV related human rights in Kenya. We do this by providing legal services and litigation, conducting trainings on Human rights, engaging in advocacy campaigns to influence policies that guarantee right to health and undertaking research that promotes evidence-based change.