



**Kilifi County Dialogue Forum on HIV, Human Rights and the Law**  
**Bofa Beach Resort, Kilifi**  
**Friday 30<sup>th</sup> August 2013**



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## Table of Contents

ABBREVIATIONS .....	2
1.0 BACKGROUND .....	3
2.0 EXECUTIVE SUMMARY .....	4
3.0 DELIBERATIONS AT THE FORUM .....	6
3.1 Participants' expectations .....	6
3.2 Objectives of the forum .....	7
3.4 Opening remarks .....	7
3.5 Key issues on HIV, law and human rights in Kilifi County .....	8
The effect of stigma on interventions for key populations .....	8
3.7 Legal and human rights concerns around injecting drug use in Kilifi County .....	9
3.8 Legal and human rights concerns around sex work in Kilifi County .....	11
3.9 Legal and human rights concerns around persons living with HIV .....	11
3.91 Successful Interventions on collaborative efforts within the County .....	12
4.0 METHODOLOGY .....	12
5.0 RECOMMENDATIONS AND WAY FORWARD .....	13
5.1 Way Forward .....	14
6.0 APPENDICES .....	15
6.1 Workshop Program .....	15
6.2 List of Participants .....	16

### Cover page caption

Participants engage in discussions at the forum (Picture 1, 3).

A member of the county assembly makes reference to the National Symposium Report on HIV, Law and Human Rights (Picture 2).

Mr. Evans Mr. Evans Gichuru (R) shares success stories during the forum (Picture 4).



**ABBREVIATIONS**

AIDS	Acquired Immuno-Deficiency Syndrome
CSOs	Civil Society Organizations
HIV	Human Immuno-deficiency Virus
IDUs	Injecting Drug Users
ILO	International Labor Organization
Key Populations	Populations disproportionately impacted by HIV
MSM	Men Having Sex with Men
NACADA	National Authority for Campaign against Alcohol and Drug Abuse
NACC	Kenya National AIDS Control Council
NASCOP	Kenya National AIDS and STI Control Programme
NEPHAK	National Empowerment Network for PLHIV in Kenya
NGO	Non-Governmental Organization
PLHIV	Persons Living with HIV
TB	Tuberculosis
UNAIDS	United Nations Joint Programme on HIV & AIDS
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
VCT	Voluntary Counseling and Testing



## 1.0 BACKGROUND

More than thirty years on, the HIV epidemic remains one of the leading causes of death globally. The Kenyan epidemic is the fourth highest in the world with an estimated 1.6 million Kenyans were living with HIV in 2012. This is approximately 6.2% of the adult population. According to the Commission on Revenue Allocation fact sheet Kilifi County has the 27th highest prevalence among the 47 counties in Kenya with a prevalence of 3.7% against the national prevalence of 6.2%.

Approximately 17% of new HIV infections at the Kenyan coast are linked to intravenous drug use. An anecdotal study of IDUs by the National Authority for Campaign against Alcohol and Drug Abuse (NACADA) revealed a high practice of needle and syringe sharing among IDUs as the main cause of HIV transmission among this group. Malindi Constituency in Kilifi County has the second highest number of injecting drug users in Kenya, after Mombasa. Among IDUs, HIV prevalence rates are extremely high, between 43-49%. The Kenya government; through NASCOP and civil society organizations with support from various development partners, has made great strides in combating the HIV epidemic however, punitive laws threaten to reverse the gains made so far. Some of the existing legal provisions and increasing human rights violations continue to frustrate interventions for key populations thus fueling the incidences of new infections within Kilifi County.

In the 2011 Political Declaration on HIV and AIDS adopted at this meeting, governments including Kenya committed specifically to address laws and policies that “adversely affect the successful, effective and equitable delivery of HIV services and consider their review”. The findings of the Global Commission on HIV and the Law <sup>1</sup>, in its July 2012 report ‘Risks, Rights & Health’ identifies that the legal environment can play a powerful role in the well-being of People Living with HIV (PLHIV) and those affected by HIV. With studies relating to the prevention and treatment of HIV pointing at the law, addressing the legal barriers to effective HIV responses has become more important than ever as evidenced by the study conducted by Global Commission on HIV & the Law. The protection of human rights of PLHIV and key

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<sup>1</sup> [kelinkenya.org/wp-content/uploads/2010/10/FinalReport-RisksRightsHealth-EN.pdf](http://kelinkenya.org/wp-content/uploads/2010/10/FinalReport-RisksRightsHealth-EN.pdf)



populations is now recognized as critical to efforts that ensure access to HIV prevention, treatment, care and support for all.

It is in line with these findings that KELIN in partnership with UNDP is taking forward implementation of the recommendations. They convened a series of dialogue forums in various counties on HIV, human rights and the law. The objective of these forums was to bring together county officials and key stakeholders working on HIV issues, to identify the key issues around HIV human rights and the law affecting their county's HIV response with the aim of exploring opportunities for collaborative action in addressing the same. Kilifi, Mombasa and Kisumu are three counties in Kenya where the county dialogue forums were undertaken.

## **2.0 EXECUTIVE SUMMARY**

As a follow up to the recommendations of the Global Commission on HIV and the Law and in line with the UN HIV and AIDS division of labour on removal of punitive laws and human rights, UNDP in partnership with KELIN took forward implementation of the recommendations. One of the activities within this program is county dialogue forums on HIV, human rights and the law in the counties of Kisumu, Kilifi and Mombasa. The objective of these forums is to bring together county officials and key stakeholders working on HIV issues, to discuss the key issues around HIV human rights and the law affecting the county's HIV response with the aim of exploring opportunities for collaborative action in addressing the same.

The Kilifi County dialogue forum was held on 30<sup>th</sup> August 2013 at the Bofa Beach Resort in Kilifi Constituency. The forum had an overwhelming turnout of 42 participants who included members of the county executive dealing with health and youth matters, members of the county assembly committee on health, judicial officers, law enforcement officers, health care workers, pro-bono lawyers, religious leaders, people living with HIV, members of key populations and civil society organizations with experience in using the law to protect and promote the human rights. The forum also provided a unique opportunity for policy, law makers and enforcers to engage with stakeholders in order to respond effectively to the challenges presented on HIV interventions as a result of the legal environments within the county.



The deliberations were dominated by two major issues; drug use and ways of mitigating its impact on HIV transmission and the punitive legal environment and prohibitive policies that hinder access to HIV prevention and treatment services for key populations. The stakeholders raised concern over the conflict presented by various penal provisions on harm reduction interventions for injecting drug users and enjoyment of the right to health by key populations. Support to strengthen rehabilitation of drug users was recommended as a key area for prioritization within the county as the existing one has minimal bed capacity and serves the whole coastal region.

There was consensus on the need for county officials to work closely with representatives of the key populations in the county to identify, prioritize and find the most effective way of addressing their specific needs. The members of the county assembly committee on health, led by Hon. Kiraga the deputy speaker of the Kilifi County Assembly welcomed sensitization efforts by all stakeholders and relevant resources to facilitate informed evidence based legislation. They undertook to plan a visit by members of the assembly to the rehabilitation center run by the Omari Project in Malindi in order to better understand the needs of for Injecting Drug Users (IDUs) and the gaps that need to be addressed through legislation.

There were also strong recommendations on the need to amend the [Narcotic Drugs and Psychotropic Substances Act](#) to allow harm reduction interventions as needle and syringe programs and access to methadone for substitution therapy without violating the law. Also, alternative sentences rather than harsh prison terms should be a priority for the judiciary and correctional services. All in all, the need for more government resources was proposed to support scaling up of HIV prevention interventions including awareness creation and increased sensitization of all key stakeholders including county officials at all levels on the legal and human rights protections of PLHIV and key populations particularly for the realization of the right to health.



### 3.0 DELIBERATIONS AT THE FORUM



*A participant shares her expectations from the forum*

### 3.1 Participants' expectations

Some of the participants' expectations from the forum were as follows:

- i. Learning and sharing so that we can work better together
- ii. Understanding what laws the county assembly needs to pass supporting HIV interventions in the county
- iii. To understand the needs of key populations in Kilifi County
- iv. To identify new partners to enhance collaboration and advance existing interventions in the county to incorporate human rights and laws
- v. Know about the laws protecting the rights of persons living with HIV
- vi. To explore opportunities on how KELIN can support local organizations in the county to integrate issues around legal and human rights protection in their interventions
- vii. To benefit from information shared at this forum in order to enrich the work of the *Imams* (Islamic religious leaders) with regard to injecting drug use
- viii. To assess the progress so far in the county's HIV responses and identify existing gaps
- ix. To familiarize with the work of other organizations in the county

- x. To discuss how we can advance the rights of key populations without offending the moral views of the community
- xi. Learn more on the rights of drug users and how they can be advanced  
To advocate for involvement and access to services for persons living with HIV and those living with a disability

### **3.2 Objectives of the forum**

The objectives of the Kilifi County dialogue forum were:

- a) To provide a platform for open discussions between county government officials and the relevant stakeholders working on HIV issues relating to key & affected populations in the context of HIV.  
To provide a platform for partnership building among the different stakeholders for promotion of a rights-based multi-sectoral county response to HIV.

### **3.4 Opening remarks**

The forum was officiated by Hon. Kiraga – the Deputy Speaker of the county assembly, Mr. Fauz - a representative of the County Executive and Mr. Maleche - the Executive Director of KELIN. In his opening remarks Hon. Kiraga welcomed this initiative and applauded the organizers for the diverse representation. He pointed out that in its legislative function, the county assembly valued contributions by all stakeholders to inform the process.

He sighted various challenges in the just ended county budget making process and explained that despite the deficit in resources that the county was experiencing, they had allocated about Kshs. 700 million towards health. He observed that there were numerous factors contributing to the county's health budget and acknowledged that the factors contributing to the high burden of HIV in the county needed to be looked into and appropriate solutions identified.







*Hon. Kiraga (L), Mr. Maleche (R) giving opening remarks at the forum*

Mr. Fauz equally welcomed the initiative and expressed his eagerness towards an open and frank deliberation. He explained that the Director of health in the county was supportive and would look into the recommendations that came from deliberations at the forum. Mr. Maleche addressed the Constitutional provisions on the right to health including the right to equality and freedom from discriminations.

He explained that these rights were equally guaranteed to all Kenyans and the government was the main duty bearer obligated to ensure the realization. He reiterated the shared role of both the central and county governments' in the enjoyment of the right to health. Finally, Mr. Maleche echoed the critical need to protect the legal and human rights of people living with HIV and key populations in order to ensure the gains in HIV prevention, treatment, care and support are sustained.

### **3.5 Key issues on HIV, law and human rights in Kilifi County**

#### **The effect of stigma on interventions for key populations**

- The attitude of the community towards drug users was a topic that brought about intense deliberations. The representatives of drug users and organizations working with drug users cautioned against the stigma perpetrated towards suspected/alleged drug users. Due to their restless nature, they were often the first to be suspected of theft even where their innocence was obvious. Such stigma often resulted in verbal abuse and physical violence without any recourse to the law and their rights.

- The high stigmatization of sex work in the county was observed as the main reason driving this trade underground. The downside of this is that the incidences of new HIV infections continue to be on the rise.

### 3.7 Legal & human rights concerns around injecting drug use in Kilifi County

- Despite decline in HIV infection on the general population, a lot of the new infections in the county are linked to the high incidences of injecting drug use within the county especially in Malindi Constituency
- There is only one rehabilitation center in Malindi, which serves recovering drug users in the whole county with a capacity of 24 beds only. Of the 24 beds, only 4 are available for occupancy by recovering addicts who are women. The facility is maintained by the Omari Project with support from OSIEA and serves the larger coastal region including Mombasa and other neighboring counties.
- There ensued a heated debate on whether county priorities should focus on dealing with drug supply or the demand. Some participants felt that once the supply was interrupted then this would automatically result in reduction of drug user. Other participants felt there was need to address the root causes of drug use and focus on helping recovering addicts. During this debate the political will in addressing drug abuse in the coastal region on Kenya came into question.
- Lack of political will to deal with the dealers and peddlers of drugs who continue to avail these drugs to clients was cited as one of the failures in previous supply reduction interventions in the country.
- It was proposed that engaging previous drug users would help prevent increase in new users and support interventions that seek to identify, assist and ultimately reduce potential new HIV infections amongst drug users and their sexual contacts.
- The interest of religious leaders; particularly the *Imams*, in supporting elimination of drug use in the county was deliberated upon. Their involvement in the fight against drug use was commended, however it was observed that some of their efforts were unfairly targeting drug users thus fueling stigma within the community against recovering patients.

“We need to realize and sensitize communities that drug use is a chronic disease that requires specialized medical interventions.” observed a participant during the forum.

- It was observed that majority of the drug users in Malindi are Muslims. This means that the support of the Muslim community and religious leaders is crucial in effectively

addressing stigma towards drug users, understanding the underlying causes and ultimately the reduction of drug use within the county.

- Concerns were raised over the increasing number of female habitual drug users in the county. This fact has impacted on their reproductive rights including their choices with regard to family planning, ability to delivery safely and the health of their infants.

*“My mind was preoccupied by my ability to access drugs and during that period the well-being of my unborn child was the least of my concerns. When the due date arrived and I was admitted, ready for delivery, unfortunately I was unable to push the baby out. I needed to access some drugs in order to get the energy to complete the process!”* narrated one of the participants to the audience in the room.

- The provisions of the Narcotic Drugs and Psychotropic Substances Act, criminalizes the possession of injecting equipment for illegal drug use, thus deterring IDUs from admitting their drug use to social workers and preventing social workers from distributing clean needles even though the country has guidelines on harm reduction interventions including the needle syringe exchange program. The criminal association behind possession of needles for drug use promotes police harassment of clients who may want to access sterile needles for less risk. Sometimes organizations involved in this program also risk being arrested when found in the vicinity of a drug den. Health care workers are reluctant to implement the guidelines in support of the needle syringe program due to the existing criminal components of the law that also put them at risk of prosecution.

*“Injecting drug users are our clients and whilst the Ministry of health is trying to roll out this program, we are reluctant. People may perceive us as promoting immorality and furthermore the law against drug use is still there!”* a participant elaborated on the dilemma faced by the health care workers.

- Relapse was identified as the biggest challenge to ongoing interventions for recovering drug users. There is very limited support towards establishing half way houses and empowerment on income generating activities for them.
- Most of the interventions currently in place are supported by organizations that are 100% donor funded. This raises questions with regard to the long term sustainability and expansion of ongoing interventions and the commitment of the government in ensuring reduction of new infections attributed to injecting drug use.



### 3.8 Legal & human rights concerns around sex work in Kilifi County

- Both male and female sex workers shared experiences of discrimination in the community. As a result they are less likely to come out and access health services whether for HIV, sexually transmitted infections or even sexual assault.

*“Why aren’t our clients suffering as much as we are?”* lamented one of the sex workers participating in the forum.

- Many cases have been reported of the forceful and unlawful eviction of alleged male sex workers by their landlords.
- Although they were aware that the move was not right, they complained that legal services were largely unavailable even to the common mwananchi let alone the violated sex worker.

*“Yes I know that locking my house to restrict my access is wrong, but I even don’t know the legal procedures involved and the appropriate authority to institute such a complaint to defend my rights! Can I afford that lawyer, and who will be willing to hear my case knowing I am a male sex worker?”* expounded a participant.

- Reports over school going boys being expelled from learning institutions on allegations of homosexuality have also been witnessed. An alternative approach needs to be adopted to provide the necessary support for this kind of children. Expulsion is more detrimental than beneficial in most cases where the child is having issues with their sexual orientation and/or identity.

### 3.9 Legal & human rights concerns around persons living with HIV

- Breach of the right to privacy was identified as the big challenge. There are a lot of incidences of unauthorized disclosure of patient’s status and worse still when these are suspected sex workers, IDUs and their children.
- Awareness on the rights of PLHIV was still very limited and the existence let alone the provisions of the HIV and AIDS Prevention and Control Act 2006 (HAPCA) remain unknown to the people and the leaders in the county.





### 3.91 Successful Interventions on collaborative efforts within the County



*Ms. Teresa Nafula Bwire Shares success stories during the forum*

The Omari Project shared the impact on their engagement with judicial and probation officers. As a result of their efforts to increase public awareness on the special needs of drug users, the two government institutions in Kilifi County have begun to support initiatives by organizations. Consideration and reasonable leniency is extended to accused drug users who demonstrate the genuine will and commitment to undergo rehabilitation. Some are given conditional non-custodial sentences that then encourage them to get help from the project with the necessary supervision and support that they need.

#### 4.0 METHODOLOGY

The county forum was a discussion where stakeholders representing various interest-groups were allowed to voice their issues on injecting drug use and punitive laws and probative policies that hinder access to HIV prevention and treatment services for sex workers, preferences and recommendations. The county forum was moderated by two persons who

have good knowledge on matters of HIV and the law.



*Participants make reference to the National Symposium Report on HIV, Law and Human Rights*

## **5.0 RECOMMENDATIONS AND WAY FORWARD**

At the end of the forum, the following were the key recommendations and way forward agreed upon by the participants.

1. Strengthening of existing initiatives to raise awareness on legal provisions and incorporate human rights principles to support.
2. The county assembly and executive should explore avenues to promote harm reduction interventions in Kilifi County to reduce new HIV infections.
3. Promoting and investing in the scale up of evidence based interventions within the county such as collaborative efforts to decongest prisons through alternative interventions supported by various civil society organizations.
4. Developing informed laws and policies that are specific to the needs of key populations in Kilifi County.
5. There is need to ensure sufficient budgetary provision to support HIV services in the county. For example there is need to ensure consistent and regular supply, easier access and availability of the commodities recommended by NASCOP as essential for the prevention of new HIV infections such as condoms, lubricants, sterilized needles, methadone for substitution therapy, etc.

## 5.1 Way Forward

- a) Members of the county assembly welcomed sensitization efforts by all stakeholders and relevant resources to facilitate informed evidence based legislation. KELIN is in discussion with Hon. Kiraga to discuss possible areas of collaboration on HIV related laws and human rights.
- b) County leaders need to work closely with representatives of the key populations in the county to identify, prioritize and find the most effective way of addressing their specific needs. In a promising turn of events, representatives of the county assembly committed to visit the Omari Project in Malindi in order to better understand the gaps in interventions around injecting drug use in Kilifi County.
- c) Representatives of the county assembly at the forum to share the outcomes of the forum with other members and explore opportunities to support work around the rehabilitation of drug users in Kilifi.
- d) KELIN, working closely with local partners, to explore possible avenues for consideration by the county officials to effect the recognition and efficiency of harm reduction interventions in light of existing penal laws.
- e) KELIN to support capacity building of local partners and key stakeholders on the legal and human rights provisions addressing the rights of PLHIV including key populations e.g. on the legal provisions of the Constitution, HAPCA and other related laws.



## 6.0 APPENDICES

### 6.1 Workshop Program



*Empowered lives.  
Resilient nations.*

#### KILIFI COUNTY DIALOGUE FORUM ON HIV, HUMAN RIGHTS AND THE LAW AT BOFA BEACH RESORT, KILIFI ON FRIDAY, 30<sup>TH</sup> AUGUST 2013

TIME	SESSION
8:30-9:00 AM	Arrival and Registration
9:00-9:30 AM	Introduction and Climate Setting
9:30-10:00 AM	Welcome and Opening Speeches: <ul style="list-style-type: none"> <li>➤ Representative-Kilifi County Assembly</li> <li>➤ Representative-Kilifi County Executive</li> <li>➤ KELIN Executive Director</li> </ul>
10:00-10:30 AM	Setting the Scene: Panel discussions on the issues <ul style="list-style-type: none"> <li>➤ Omari Project experience on legal issues around injecting drug use</li> </ul>



10:30-11.00 AM	Tea Break
11:00- 12:30 PM	Plenary discussions <ul style="list-style-type: none"> <li>➤ Identifying the legal and human rights issues affecting the HIV response in Kilifi County</li> <li>➤ Exploring opportunities for collaborative action in addressing the issues</li> </ul>
12:30-1.00 PM	Way forward and commitment by stakeholders
1:00-1:15 PM	Closing remarks by NACC representative
1:15-2:30 PM	Lunch and Departure

## 6.2 List of Participants

No.	Name	SEX	Organization
1.	Wyclife Wathome	M	Probation Malindi
2.	Michael Nabui	M	Omari Project
3.	Habshi Said	M	IMAMS council
4.	John Shiganga	M	MEWA
5.	Stephen M. Kazungu	M	Welfare officer -Prisons
6.	Ali Athman	M	KIKAJU Network
7.	Teresia Nafula Bwire	F	Omari Project
8.	Monica Wanja	F	Omari Project
9.	Umi Khaludi	F	Omari Project
10.	Khajida Yusuf	F	Omari Project
11.	Sifa William	M	House of talent
12.	Rachael Muthoga	F	Moving the Goal Posts

13.	Mary Kifalu	F	Ministry of Health
14.	Walter Opinya	M	KOPE
15.	Rehema Ngumbao	F	Youth of Faith
16.	Lydia Shambi	F	Mtwapa CBOs
17.	Christine Maghanga	F	Youth Of Faith WOFAK
18.	Raymond Katana	M	Kilifi Child Health & social Program
19.	Edgar Kagoni	M	Judiciary
20.	Nixon Mramba	M	Kilifi Country Assembly
21.	Benson Karisa	M	MCA Marata Ward
22.	Josephine Karambu	F	Mtwapa CBO
23.	Isabel Mwangi	F	KESHO
24.	Evans Gichuru	M	KEMRI
25.	Daniel Chai Chirwa	M	Kilifi County Assembly
26.	Lillian Mose Nyiro	F	Ministry of Youth
27.	Awadh Hemed	M	Office of the President
28.	Hamza Hussein	M	Kilifi County
29.	Ibrahim Fauz	M	Ministry of Health
30.	Douglas Masinde	M	Tamba Pwani
31.	Geoffrey Katsoleh	M	Katsoleh & Company & KELIN Probono Lawyer
32.	Enock Kalume Reymond	M	Kilifi County Government
33.	Hon. Teddy Mwambire	M	Deputy Speaker-Kilifi country Assembly
34.	Dennis Kinaro	M	Judiciary
35.	Hon. Anthony Mupe	M	County Representative
36.	Hon. Albert Kiraga	M	Chairman- Committee on health

			Services Kilifi county Assembly
37.	Irene Wali	F	Plan International
38.	Amos Ndenge	M	NACC Ganze
39.	Dorine Mboya	F	House of Talent
40.	Hon. Elina Mbaru	F	Kilifi County Assembly
41	Allan Maleche	M	KELIN
42	Melba Katindi	F	KELIN
43	Manaana Mumma	F	UNDP Kenya

