TRAINING OF LAWYERS FROM NAKURU AND UASIN GISHU COUNTIES ON HIV, HUMAN RIGHTS AND THE LAW

HELD AT ELDORET,
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<tr>
<td>AG</td>
<td>Attorney General</td>
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<td>ART</td>
<td>Antiretroviral Therapy</td>
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<td>ARV</td>
<td>Antiretroviral</td>
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<tr>
<td>CD4</td>
<td>Also called T-helper cells; a type of white blood cell that fights infection</td>
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<td>CIC</td>
<td>Commission on the Implementation of the Constitution</td>
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<td>HAPCA</td>
<td>HIV &amp; AIDS Prevention and Control Act</td>
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<td>HIV</td>
<td>Human Immuno-deficiency Virus</td>
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<tr>
<td>IDU</td>
<td>Injecting Drug User</td>
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<tr>
<td>Key populations</td>
<td>Populations disproportionately impacted by HIV</td>
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<tr>
<td>LSK</td>
<td>Law Society of Kenya</td>
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<tr>
<td>MSM</td>
<td>Men Having Sex with Men</td>
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<td>NASCOP</td>
<td>Kenya National AIDS and STI Control Programme</td>
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<tr>
<td>NEPHAK</td>
<td>National Empowerment Network for PLHIV in Kenya</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>PLHIV</td>
<td>Persons Living with HIV</td>
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<td>PWD</td>
<td>Persons with Disabilities.</td>
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<td>PMTCT</td>
<td>Prevention of Mother to Child Transmission</td>
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<td>STI</td>
<td>Sexual Transmitted Infection</td>
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<td>TB</td>
<td>Tuberculosis</td>
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<td>TRIPS</td>
<td>1994 Agreement on Trade-related Aspects of Intellectual Property Rights</td>
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<tr>
<td>VCT</td>
<td>Voluntary Counseling and Testing</td>
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<tr>
<td>WHO</td>
<td>World Health Organization</td>
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<td>IDU</td>
<td>Injecting Drug User</td>
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BACKGROUND

KELIN conducted a national study 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 that revealed human rights violations against Persons Living with HIV (PLHIV) in Kenya and their experiences of discrimination on the basis of their HIV positive status. The study further demonstrated that most of those affected are unable to access justice due to lack of funds for litigation costs and inaccessible HIV-oriented legal services. The need to engage various key stakeholders in protecting human rights among PLHIV and key populations at a higher risk of HIV infection was also emphasized by the study as crucial in the national efforts in prevention, treatment and mitigation of the socio-economic impact of HIV.

Last year, taking forward the findings of the study, KELIN in partnership with the Law Society of Kenya (LSK) and NEPHAK, with support from the Open Society Foundation, organized two seminars on HIV, law and related human rights for practicing advocates and human rights lawyers from the counties of Nairobi, and Kisumu. A similar one was organized in Mombasa in May 2013. These seminars were organized with the aim of increasing access to justice for PLHIV by creating a pool of lawyers knowledgeable on HIV rights and willing to offer pro bono services in the enforcement of these rights. KELIN subsequently received a grant from AIDS FOND to scale up its capacity building for various stakeholders on HIV law and human rights in line with the recommendations of the Global Commission on HIV and the Law.

With this support from Aids Fond and in continuous partnership with LSK and NEPHAK, KELIN organized another seminar for lawyers from the counties of Nakuru and Uasin Gishu as a build up to the previous seminar for lawyers in Kisumu, Nairobi and Mombasa. The seminar was conducted between 9 and 11 December 2013 at the Noble Resort in Eldoret, targeting lawyers practising in the counties of Nakuru and Uasin Gishu but also accepted participation from lawyers representing key national institutions. The seminar comprised a three-day intensive course targeting lawyers with interest and/or experience in working with PLHIV, with a view to increasing the pool of legal practitioners available to offer HIV related legal services aimed at facilitating access to justice and law reforms. In particular, the seminar aimed to accomplish the following:

- Share up-to-date information and knowledge on HIV, human rights concepts and the link between HIV, Human rights and the law
- Provide a critical opportunity for discussion and experience-sharing between advocates from Nakuru, Uasin Gishu and neighbouring counties on the complex legal and human rights issues posed by the HIV epidemic in their Counties
- Develop critical understanding of various challenges raised by legal and ethical issues in HIV and the available mechanisms for redress
- Discuss the role of lawyers in upholding the rights of persons living with and affected by HIV with emphasis on members of key and affected populations in line with the recommendations of the Global Commission on Law and HIV
- Provide a platform for those living with, affected by and at risk of HIV to share their testimonies and the challenges presented by various legal provisions, their implementation or lack of implementation.
KELIN is a human rights NGO working to protect and promote HIV-related human rights in Kenya. KELIN does 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.

Supported by a grant from Aids Fond, KELIN trained 25 lawyers from Nakuru and Uasin Gishu Counties from 9 to 11 December, 2013 on HIV Law and Human Rights. The participants' knowledge on the link between HIV and human rights was enhanced and they were enlightened on how they can promote HIV related human rights through provision of legal services. The participants noted that a multisectoral approach is inevitable in order to reduce the human rights violations and other challenges faced by PLHIV.

The first day of the training began with a brief introduction and climate setting led by Ms. Belice Odamna. The day's sessions were intended to give the participants a clear understanding of the HIV updates and statistics and to create a suitable environment to enhance their understanding of HIV and the law. The second session of the day covered a discussion on palliative care giving insights on the key areas where the participants can be engaged to provide input to the patients who need legal services while undergoing palliative care.

This session was followed by a discussion on the role of the law as a mechanism to ensure the full enjoyment of HIV related human rights. Emphasis was laid on the Global Commission report on HIV and the Law and how the participants can take part in the full implementation of the recommendations.

The second session was a discussion on how to litigate on HIV related rights. The third session was a brief discussion on how the lawyers can engage the HIV tribunal which is created under the HAPCA. The lawyers were given the various avenues in which they can work with KELIN through offering pro bono services.

The training ended with participants giving their reflections and sharing their experiences during the training period. Most of the participants thanked KELIN for giving them the opportunity to take part in the training. The participants committed to work with KELIN in promoting access to justice by the PLHIV in Uasin Gishu and Nakuru Counties.
Ms Belice Odamna from KELIN welcomed the participants and set the climate. Participants shared their expectations of the training as follows:

- Learn more about the rule of law in relation to HIV related rights.
- Interact and share experiences in dealing with HIV related human rights issues.
- Know the link between HIV, human rights and the law.
- To know more on the role of the law in relation to HIV and human rights.
- To learn how to uphold the rights of PLHIV.
- To get an in-depth knowledge on the human rights aspect of HIV and the law.
- To learn about the HIV & AIDS Prevention and Control Act and its implementation.
- To be capacitated in order to be able to offer legal services to PLHIV.
- To interact and work together to promote HIV related human rights.
- To learn more in regard to the nexus between PLHIV and the law.
- To learn more on the experiences of PLHIV and the key populations.

The Executive Director of KELIN, Mr. Allan Maleche welcomed the lawyers to the training and urged them to put into context the importance of the training in scaling up access to justice by PLHIV in Uasin Gishu and Nakuru Counties. He noted that this was the fourth training conducted by KELIN for lawyers including the previous ones done for lawyers in Nairobi, Kisumu, and Mombasa.

The key highlights of Mr. Maleche’s speech were:

- The need to have a pool of lawyers who are knowledgeable on HIV human rights and the law and are willing to offer legal services to PLHIV in order to promote access to justice by the PLHIV.
- The multisectoral approach adopted by KELIN in sensitizing all stakeholders to create awareness on HIV related human rights. The major aim is to have a community which knows the rights of PLHIV, a lawyer who knows the law, a doctor who knows the HIV related human rights, and a judge who can easily apply the law while conscious of the rights of the PLHIV.
- Gains made from the lawyers training and the subsequent judicial dialogue in Nairobi was seen in the recent case of VMK v CUEA where a KELIN pro bono advocate was able to litigate the case on behalf of a PLHIV when her rights to employment were violated. The case was also presided over by a judge who was already sensitized on HIV law and human rights during the judge’s dialogue forum. The positive outcome of the case was a step towards enhancing the protection of the rights of PLHIV.
- HIV law and human rights is an area that is still new and can be utilized to build the legal professions and take lawyers to another level and KELIN will do its best to take it forward.
Overview of HIV and TB: Statistics and Updates

Dr. Philip Owiti, AMPATH

The objective of this session was to give the participants an in-depth understanding of the emerging issues and trends in HIV and TB. Dr. Philip Owiti from Ampath Centre in Eldoret took the participants through this session. He led the participants in discussing the various types of HIV and how it affects the body. He explained the relationship between a person’s viral load and the CD4 cell counts- that when the viral load is high the CD4 cell count is low and vice versa.

The stages of HIV infection according to the World Health Organization classification were discussed with special emphasis on the symptomatic stage and how HIV deteriorates into AIDS. He also noted that ARVs first became available to the public sector in 2003, however there is still lack of universal access to ARVs in Kenya, an issue that he challenged the lawyers to take forward through public interest litigation on the right to health.

Dr. Philip discussed the health sector response by outlining key strategies laid down in the sector to deal with HIV. Among the strategies include the voluntary counselling and testing and the provider initiated testing and counselling which elicited a heated debate on whether this was in line with the right of patients to give consent to testing and the provisions of the HAPCA in relation to HIV testing. The mandatory HIV testing of expectant mothers similarly raised human rights issues as to whether it was right to test the mothers without their consent just for the sake of the unborn child. A question arose as to whose rights were superior between the mother and the unborn child.

Despite the excellent trends in the statistics of averted deaths in relation to proper implementation of the PMTCT a question still arose as to whether it was proper to violate the rights of the mothers in an attempt to save the life of the unborn child. According to the statistics presented it was noted that PMTCT averted 60,000 new infections in children by the end of the year 2012 while 24,000 averted children dying as a result of mother to child infection. Cumulatively 240,000 new infections have been averted as a result of ART. Overall there has been 40% reduction in HIV infections and 24% reductions in HIV related deaths since 2007. This is largely attributed to the health sector’s prevention and treatment interventions.

Dr. Philip discussed the link between HIV and TB, he stated that one third of all AIDS related deaths are due to TB. 40 % of TB patients are HIV positive and PLHIV are 24-30 times likely to acquire TB. He noted that the health sector has adopted an overall opt in approach where all HIV patients are tested for TB and vice versa.

Mr. Maleche wrapped up the session by laying emphasis on the key areas discussed eliciting the following reactions from the participants;

- A participant inquired on the issue of anal sex and biological reason as to why it was stated to pose a high risk of HIV exposure and infection. It was explained that the physiological nature of the anus is not suitable for sex due to the weakness of the surface thus it can capture easily exposing one to the high risk of HIV infection. It was also noted that there is an emerging trend of couples in heterosexual relationship engaging in anal sex yet this has not been captured in the statistics relating to HIV prevalence arising from such relationships.
- It was also noted that the bisexuals in stable heterosexual relationship expose their wives to a high risk of HIV infection especially after engaging in unprotected sex with an infected male partner. Serious interventions are needed to address this in order to reduce the prevalence rate among married couples.
- The facilitator explained the HIV testing procedure and why at some point the virus is undetectable. He noted that there is a window period. This is the time when the rapid test is not able to detect the virus from the body system. This is because the rapid test only detects the antibodies, which are produced by the body to pacify the foreign elements, that is, the immune system’s response to the infection. However the immune reaction does not occur immediately. If a DNA test is done during the window period it will be able to detect the virus.
- A participant sought for an explanation as to why women were at a higher risk of HIV infection than men of equivalent age group. It was explained that the anatomical structure of females makes them more susceptible to HIV infection due to the high level of bodily fluids and as recipients of the semen from the male counterparts. In addition, the patriarchal nature of the society exposes them to a high level of vulnerability.
- A participant inquired on the issue of anal sex and biological reason as to why it was stated to pose a high risk of HIV exposure and infection. It was explained that the physiological nature of the anus is not suitable for sex due to the weakness of the surface thus it can capture easily exposing one to the high risk of HIV infection. It was also noted that there is an emerging trend of couples in heterosexual relationship engaging in anal sex yet this has not been captured in the statistics relating to HIV prevalence arising from such relationships.
- A participant asked why discordant couples were able to get children without the other partner who is HIV negative not being infected. It was explained that when a person is on constant and proper ARV adherence the risk of infection is reduced by 90% thus the doctors always monitor the viral load and the CD4 cell count of the partner who is living with HIV and they are always able to advise when it is safe to engage in unprotected sex with their HIV negative partner with minimum or no
risk of infecting them.

- A participant sought clarification as to how the post exposure prophylaxis works yet there is no medication for HIV. It was explained that the underlying principle of the post exposure prophylaxis is that it is administered when the virus is still inactive in the system thus it hinders the replication of the HIV virus in the body system. However the facilitator cautioned against misuse of pre-exposure prophylaxis due to its numerous side effects.

- A participant asked how the PMTCT works to ensure that the virus is not transmitted to the unborn child or during birth. It was explained that when babies are born from an infected mother they are put on ARVS, because in the uterus the unborn child is fed through the placenta, which links the foetus and the mother. It is through the placenta that the virus is able to pass through to the baby. During labour and delivery there is blood exchange, the baby may swallow the blood and thus risk being exposed to infection as well as during breast-feeding. The concept is to reduce the viral load of the mother so as to reduce the risk of infection to the child. A pregnant mother needs to go on full antiretroviral, to help reduce the viral load. Secondly when the child is born he is given Nevirapin which suppresses the HIV virus that may have been acquired through birth or while in the uterus. The child is put on ARVS and monitored for a period of six months after which it is expected that the child’s immune system would have fully developed thus the ARVs are stopped when the child turns negative. (At birth the child may be HIV positive because he still has the blood of the mother in the system, this blood is gotten rid of within the first six months.)

- The question of whether women should be allowed to carry condoms as a strategy to protect themselves from contracting HIV arose. It was established that women are not able to negotiate for safer sex because they are generally the weaker and more vulnerable sex. This often happens even where parties are in a heterosexual formal relationship.

- The other issue discussed during the plenary was the large quantity of drugs and the long duration of treatment for TB especially the Drug resistant TB. It was noted that a drug resistant TB patient takes a total of 4,000 drugs and daily injection for eight months to complete the treatment cycle of the drug resistant TB. The participants called for improvement in TB care and treatment by investing in research to provide alternative medicines that take a shorter time and that are taken in less quantity.

- Finally the facilitator explained how conflict in laws affects the interventions targeted at the key populations. The challenge of balancing between the rights of the individuals vis a vis the public health rights when the health sector provides interventions to reduce the new HIV infections like; the provision of clean syringes to the IDUs, the provision of condoms and lubricants to the inmates in prisons and the provisions of condoms to the sex workers, have been met with utmost hostility from the police who use the law to arrest the IDUs and sex workers and use the condoms as evidence against them in courts of law.

Overview of Palliative Care;

Ms. Jane Nyariki

The major aim of this presentation was to give the participants an in depth understanding of palliative care and provide them with an opportunity to know how they can get involved in identifying and offering legal services to patients under palliative care.

The facilitator, Ms. Jane Nyariki, introduced the session by defining what palliative care entails and the various palliative care centers that exists in Kenya especially within Nakuru and Uasin Gishu counties. It was noted that despite the existence of the KEPHCA there is still minimal knowledge of the existence of palliative care centers within the country. The lack of the government’s commitment to finance palliative care centers was cited as one of the contributory factors that hinder the realization of the right to palliative care by terminally ill patients.

The role of palliative care was also explained to the participants and contrary to the widespread beliefs that palliative care is only for cancer patients, it was explained that palliative care provides care and support to all terminally ill patients by looking at the total person and dealing with the total pain the person is going through. Palliative care involves counselling and providing support to the terminally ill patients to die honorably. The principle of palliative care is to provide relief from pain and other distressing symptoms.

The facilitator also shared the dilemma faced in palliative care of balancing the rights of the patients to live, the duty of the doctors to preserve life and do no harm against the wishes of the relatives of the patient who always put pressure on the doctors to allow the terminally ill patients to die. In this regard the role of palliative care was emphasized as to offer support to the family to cope with the terminal illness until the demise of the patient and to prepare the patient to die peacefully without much pain and stress.

The benefits of palliative care were explained and these included; patients spend more time at home, reducing the number of hospital in-patient days. Palliative care equally addresses the challenges that arise after the death of the...
patient by preparing the patient early enough to address issues like wills, children to benefit from available resources, like scholarships.

The facilitator noted that one of the common human rights violation against patients under palliative care was the denial of the right to access information by the doctors on the diagnosis and prognosis. It was stated that the patients have a right to know the drugs they are taking, the effects of these drugs and why they are taking them. It was also noted that there is need to review laws and policies to incorporate the palliative care component in public health.

The lawyers were urged to consider offering legal services to patients under palliative care on key areas like law of succession through drafting of wills and property inheritance matters and through training of hospice staff on HIV human rights and the law.

**Plenary**

- **What is exactly palliative care and what is the extent of it being for terminal illness?** This is an approach used to improve the quality of life of patients with terminal illness, focusing not only on the disease but on other areas of the patient's life-spiritual, social or psychosocial care. Palliative care looks at the pain the patient is going through and attaches the care to the issues the patient is facing.

- **A participant asked how palliative care deals with children does.** It was explained that when dealing with children under palliative care the parents make decisions on behalf of the child. She emphasized that there should be no conspiracy of silence to deny the children information.

- **A participant sough to know whether palliative care is only for the rich and affluent in the society since it’s not accessible to the common man at the grassroots level at the local dispensaries.** It was explained that palliative care is available at all the County hospitals across the country so as to ensure that everyone in need of palliative care can easily access it. However it was noted that the major challenge is the lack of the government's commitment to finance the palliative care thus they rely basically on goodwill and donations from well wishers. Secondly few people are aware of the existence and role of the palliative care centers available thus they are not able to make use of them. KEPHCA is in the process of sensitizing the public on the existence of such centers in order to make use of them. The lawyers were challenged to come up with strategies to ensure that Article 43(1) a of the Constitution is fully implemented by compelling the government to provide adequate financial resources to palliative care, through training of doctors under palliative care and availability of more palliative care centers.

- **A question was asked on whether patients under palliative care should be left to die when there is completely no hope or chances of survival.** It was noted that euthanasia is illegal in Kenya, secondly the doctors should be able to balance between the patient's rights and his duty to do no harm and save life.

- **An issue arose as to why nurses were advocating to be allowed to prescribe morphine, which should only be prescribed by qualified medical doctors.** It was noted that the major challenge with this regulation is that it hinders the patients right to access medicines as the doctors are not available most of the time yet it's the nurses who spend most of the time with patients thus it’s easier for the nurses to do so and save lives rather than wait for the doctors. It was further noted that other countries like Uganda nurses are allowed to prescribe morphine, Zambia has tabled that proposal for nurses to be allowed to prescribe methadone and Kenya should follow suit.

**Understanding the role of the Law as a mechanism to ensure the full enjoyment of HIV related rights for PLHIV in Kenya;**

**Mr. Allan Maleche**

The aim of this session was to enhance the participants' understanding of the critical role that the law plays in the field of HIV. It was indeed to create a vivid picture of the necessity of having good laws that enhance the protection of the rights of PLHIV as well as laws that help to reduce the high rates of stigma and discrimination and other HIV related human rights which are commonly violated.

The session begun with an introduction of the role of the law in HIV and how the advocates can use the law in protecting the rights of Persons Living with HIV. Mr. Maleche explained that law shapes everything in life, politics, etc. In the field of HIV the law can bring a positive or negative influence, increase vulnerability or reduce it. He emphasized that one thing that remained constant as the greatest human rights violations among the PLHIV is stigma and discrimination.

Reference was made to the Global Commission report on HIV and the law on the role of the law in relation to HIV. Good laws, fully resourced and rigorously enforced, can widen access to prevention and health care services, improve the quality of treatment, enhance social support for people
affected by the epidemic, and protect human rights that are vital to survival and save the public money.

Useful statistics on the modes of transmission of HIV were presented with specific reference to the laws that criminalize certain members of the key populations like sex workers, MSM, and IDUs noted as the contributing factors to the high rate of infection among the key populations by leading them away from accessing HIV related health care services.

The facilitator discussed the HIV prevalence rates in the counties of Nakuru and Uasin Gishu citing the key human rights issues as to why 37% and 71% of children living with HIV in Uasin Gishu and Nakuru counties respectively are not accessing ARVs. The participants were challenged to come up with strategies to compel the government to ensure universal access to medicines by the children living with HIV. Another challenge addressed by the facilitator was how to balance the religious and moral beliefs vis-à-vis the duty of promoting the use of preventive mechanisms like condoms and lubricants to MSM and provisions of clean syringes and needles to the IDUs.

It was noted that the government provides only 13% of the funding for HIV while the other 87% comes from international sources. The lawyers were advised to consider filing public interest cases for the government to comply with The Abuja Declaration by ensuring that both the national and county government allocate at least 15% of their budget to health.

The session ended with a discussion on how to use the TRIPS flexibilities to enhance access to medicines—reference was made to the Anti-counterfeit case. The facilitator then ended with the discussion of the Ten Commandments referring to the legal and ethical issues in HIV and common violations faced by persons living with HIV.

**Plenary**

- The rights of the child to attain the highest standard of health alongside the right of the parent to freedom of worship and engage in religious practices sometimes are at crossroads when parents refuse to allow their children to access basic health care like immunizations on grounds of religious beliefs. It was noted that the best interest of the child is of paramount importance. (Article 53 (4)).

- A question was asked as to how one can strike a balance between morality and the rights of key populations especially the sex workers. The facilitator emphasized that when you bring the aspect of morality into HIV you lose your goal and fail to prevent new infections. He challenged the participants by asking them if given a chance whether they would use their power to stop HIV or rely on morality questions and let the spread of HIV to increase. Does being an MSM stop one from accessing health care services? How can the penal code be interpreted in a manner that promotes the rights of the key populations to access health care services without discrimination?

- A participant asked why in Nakuru County over 70% of children living with HIV are not on ARVs and asked what was being done to address the situation. Within the county report it is proposed that the county of Nakuru should increase access to treatment and do away with the legal obstacles that hinder the children from accessing ARVs. The lawyers were urged to consider doing public interest litigation in this regard.

- A participant asked why clean syringes and needles are provided to the IDUs, and raised a concern that this was encouraging them to continue injecting drugs. It was explained that the IDUs are given clean syringes and needles to reduce the rate of HIV infection from sharp contaminated apparatus, thus it is better to give them clean syringes and needles as an intervention to reduce new infections, further it was discussed that the IDUs convicts are always given non-custodial sentences to help them come out of the prison facilities and attend rehabilitation, a practice that has helped rehabilitate most IDUs and achieved significant gains in reducing the HIV prevalence within the IDUs.

**Video Screening**

**The three brothers TB Documentary**

The aim of the video screening was to bring out the key human rights violations faced by the TB patients who fall prey to the application of Section 27 of the Public Health Act. The video was intended to elicit a discussion on the best practices to adopt in dealing with human rights violations of TB patients and to elicit a debate on the balance between promoting public health and the private rights of the TB patients.

After the video session Ms. Warimu Kiigi led a discussion on the issues arising from the video. The following issues were discussed:

- Is prison the best place for isolation as envisioned under the Public Health Act? It was stated that this was a matter currently under discussion in the Eldoret High Court Constitutional Petition No.3 of 2011. However it was proposed that the intended place of isolation under the Act was a health facility where the patients can get adequate attention, care and support while undergoing...
treatment. When TB patients are locked in prisons it portrayed a picture of criminalizing TB infection and this in turn has a negative effect on the Global response to achieve zero TB.

• The government was challenged to come up with more isolation centers to provide care and attention to TB patients. An issue was raised as to the progress made in the construction of the isolation ward at the Kenyatta National Hospital.

• Another issue that arose from the video was lack of information across all spheres on the link between TB, HIV and human rights. It was noted that most of the human rights violations faced by the three brothers arose due to lack of knowledge on human rights and the need to promote a human rights based approach to TB. Ms. Wairimu explained that after the arrest and successful release of the three brothers KELIN conducted various sensitization workshops on the need to promote a human rights based approach to TB. It was noted that the three brothers despite their earlier predicaments are currently TB champions within the region.

• The use of the law to protect public health concerns was also addressed. The participants noted that the law should be used in a manner that promotes the rights of the TB patients rather than violates their rights. A question was asked as to whether the outcome of the case would have been different had the three brothers gotten legal representation through an advocate. The trial was in gross violation of their rights from the plea taking to the sentencing. The participants were advised to be vigilant in taking up cases of the PLHIV and TB patients to ensure that such avenues are not used to violate their rights based on their health status.

Robbed of choice

The aim of this video screening was to bring out the various human rights violations faced by women who are living with HIV in an attempt to realize their sexual reproductive rights. The facilitator asked the participants if they have ever heard about forced sterilization in public and private hospitals whether they have ever heard about forced sterilization. Six participants confirmed that they have heard about forced/coerced sterilization.

The following were the issues that arose from the video on forced sterilization;

• The act of forced sterilization was condemned for violating the rights of women in sexual reproductive rights. It was stated that women living with HIV have the right to bear children. Ms. Ndirangu noted that KELIN is currently working on the process to file a Constitutional petition regarding the violation of the women’s rights. The major aim of the petition is to get a declaration and the government’s position on forced and coerced sterilization and to have action taken against doctors who performed the forced/coerced sterilizations.

• It was also noted that forced/coerced sterilization violates the rights of the women to make informed decisions on whether they want to have children or not and to determine when and how many children to have. The participants however noted that the filing of the petitions should be fast tracked.

• It was also emphasized that living with HIV does not in any way hinder a person from having children, there is no scientific or medical hindrance that bars the women living with HIV from having children. A participant noted that the women were not given the chance to give informed consent, but however noted that forced sterilization was one of the ways to help the women who are indigent to plan for their families ahead of time rather than leave them to continue giving birth yet they are not able to maintain the children. It was noted that there is no absolute right to sterilize any person based on their economic or perceived health status.

• A participant asked whether in this era and age, it is really proper to forcefully sterilize women just because of their HIV status yet there is PMTCT. It was stated that there is need for more sensitizations especially for women at the grassroots to enhance their understanding on the rights of women living with HIV and how to protect them.

• A participant noted that sterilization should only be done as the last resort but with the informed consent of the women. The Kenya Medical Practitioners and Dentist board was faulted for failing to punish doctors who violate patients’ rights and breach the medical ethics.

• A participant also noted that in dealing with patients the Belmont principles should be strictly applied, especially the three principles on respect for persons, beneficence and justice.

• Miss. Odamna shared the challenges faced in preparing the petition papers for the forced/coerced sterilization case. The challenges included getting a doctor to perform a second medical examination on the women and the tedious process of ensuring that the pleadings are well drafted to bring out all the issues. She however noted that these have since been dealt with and the matter is ready for filing any time soon.
Moderated Panel discussions with representatives of Key Populations;

Mr. Allan Maleche

The major aim of the session was to have the representatives of the key populations share their experiences and challenges that hinder them from accessing health care services and legal representation in case of human rights violations against them. The session had representatives from the sex workers and men who have sex with men. They shared their experiences and key among the challenges they face included;

- Stigma and discrimination.
- Lack of knowledge and understanding on HIV related human rights.
- Balancing conflict between morality and their beliefs and practice.
- Societal expectation.
- Police harassment.
- Clients who don’t want to use condoms and other means of protection.
- Denial of freedom of expression.

The panelists then welcomed questions from the participants and the following were the key issues of concern from the participants;

- When asked whether her children know what she does the sex worker stated that she is a business lady and a peer counselor during the day but does sex work during the night. She doesn’t show her children that she is a sex worker for fear of stigmatization from the society.
- A participant asked the representative of the sex workers what other interventions sex workers use to ensure that they reduce the risk of infection/transmission of HIV virus among the sex workers. She stated that sex workers are actively involved in HIV prevention strategies. She noted that part of her responsibilities include HIV prevention and control peer counselling within Nakuru County. However, she noted that there are many sex workers who are living with HIV and they are always given condoms at various hotspots to use to prevent transmission of HIV.
- A participant asked which offences the sex workers are always charged with when arraigned in court. She stated that in most instances they are arrested based on their mode of dressing. At times even when one is not engaged in soliciting for clients they are arrested merely because the policemen know them and for being at a particular streets at specific hours of the night. When they are arraigned in court they are charged with the offence of loitering. She noted that the police always use the condoms found in their possession as evidence against them in court. Sometimes the police sexually harass them before releasing them.
- Another major challenge noted was the lack of representation in court, in the unlikely event they are arraigned in court. Some of the sex workers cannot afford the legal fees to hire advocates or access legal services relating to the human rights violations against them. This in turn compels them to plead guilty in most of the charges against them in court for fear of being remanded in custody for a long time during the trial process. She noted that if sex workers are able to access legal services and legal representation in court the human rights violations against them will be reduced significantly and sex workers will be able to comfortably use /carry condoms and access the health facilities/moonlight VCTs without fear of being arrested and harassed by the police.
- A participant asked the representative of the MSM why he has not disclosed to his wife his sexual orientation and why he opted to marry despite being an MSM. The representative of the MSM noted that he is happily married with a stable family. However he has not declared his sexual orientation to his wife for fear of stigmatization by the society. He noted that he married to fulfill the societal expectation since the society has blacklisted the MSM. It was noted that this challenge of stigmatization makes the MSM fear accessing health services and other Human rights related legal services. Undisclosed sexual orientations such as in this case are a contributory factor to the high HIV prevalence among couples in heterosexual relationships.
- Asked about how they operate the representative of the MSM stated that In MSM circles there is a lot of sex going on, you do it when you get the opportunity for fear of being arrested and charged in court with other offences, which are not related to the offence committed. Prevalence is also high among the MSMs. In Nakuru the MSMs are also engaged in peer counselling to help them adopt safe practices that reduce the risk of HIV infection and transmission.
- A participant asked the representative of the MSM how they related with men in prisons. He stated that as
counselors they always visit prisons to give counselling services to the male inmates on safe sex practices in order to reduce HIV infection and transmission. However, he noted that the issue of provision of condoms and lubricants to the male inmates is still an emotive issue which they have not tried to deal with for fear of conflict with the prison authorities. He challenged the lawyers to advocate for the policy change in prisons to allow distribution of condoms and lubricants to the male inmates in order to reduce the HIV prevalence within the prison facilities.

- When asked if he will openly declare his sexual orientation in the event he is arrested and given legal representation, the representative of the MSMs noted that he will still fear openly disclosing his sexual orientation for fear of stigma and being charged with the offence of Homosexuality and having sex against the order of nature as per the Penal Code Act.

- In giving her closing remarks the representative of the sex workers noted that they welcome lawyers who are ready to offer them legal services through legal representation and legal advice and even through sensitizations on human rights issues to empower the sex workers within Nakuru and Uasin Gishu counties to stand for their rights and reduce the violations. She noted that apart from the sex work she is also involved in giving advice to women in marriages to help them cement their marriages and help reduce the high HIV prevalence within marriage. She closed by urging the men to encourage them to carry condoms when away from home as one of the key interventions to reduce HIV transmission.

- Mr. Maleche then wrapped up the session by thanking the panelists and the participants for having such a wonderful interactive session. He called upon the participants to continue supporting the key populations through provision of legal services to ensure that their rights are respected and promoted at all times. He underscored the rationale of having the key populations share their experiences to ring out the key human rights violations they face and how the participants can work together to ensure these rights are respected to enhance a reduction in the HIV prevalence among the key populations.

**Overview of Human Rights Law in relation to HIV; The provisions of the Constitution of Kenya 2010 and their relevance to PLHIV in Kenya;**

**Rtd. Justice Violet Mavisi**

The aim of this session was to introduce human rights to the participants with a critical look into the relevant Constitutional provisions that related to PLHIV. This would then inform their decisions in identifying the human rights violations against PLHIV and how to ensure that they are promoted and respected at all times.

The session began with an introduction of human rights, the various classes of human rights and how they relate to PLHIV. The facilitator urged the participants to tackle human rights from the legislative aspect to address the emerging issues with laws and policies to protect the rights of PLHIV and key populations.

She led a discussion on the key human rights principles emphasizing the principles of equality and non-discrimination. She however noted that the cultural and religious beliefs have a great effect in fueling the discrimination against the key populations. The lawyers were then urged to be innovative to ensure that they use the law to protect the rights of the key populations to access HIV related health care services.

The participants were taken through the various categories of human rights. It was noted that the classification of human rights into various categories is merely aesthetic but all human rights are equal. Instead the lawyers were implored to...
take active participation in the legislation process to ensure that they give comments/opinions in all the relevant bills that would have an effect in the full enjoyment of HIV related human rights. They were urged not to rely on the LSK to participate but to take full initiative to give comments in the bills both at the National and the county government level.

The facilitator stated that some of the bills pending legislation include the Family Protection Bills, the Health Bills among others. She noted that lawyers must check the county governments to ensure that they don’t come up with laws that violated the rights of PLHIV and the key population. She challenged the lawyers to come up and give opinions on the current stalemate that has rocked the government in relation to the doctors’ strike over devolution of health services. She asked the lawyers to give a statement to this effect as the strike hinders the full enjoyment of health related rights. The facilitator noted that when the rights of the PLHIV are violated the HIV prevalence is high. When the PLHIV are sensitized about their rights the level of human rights violations is reduced and the HIV prevalence rate is thus reduced.

In terms of enforcing the social economic rights the lawyers were urged to engage in litigation on socio economic rights. She shared the recent judgment in the case of VMK v CUEA where a KELIN pro bono advocate successfully litigated on the rights of PLHIV to employment.

It was noted that despite Kenya having a very robust and progressive Bill of Rights, the international responsibility to comply with the international obligations must be observed. This was in reference to the full implementation of the Abuja Declaration and the Maputo Protocol. She invited the lawyers to monitor the county governments in terms of their budgetary allocation to health noting that at least 15% of the budgetary allocation should be directed to health and health related services. The lawyers must hold the government accountable to ensure that these rights to health are fully implemented.

In terms of fulfillment of the right to access to medicines it was noted that the lawyers must take an active role in addressing the current tension between the national and county government in relation to monopoly of drugs supplies to hospitals. The County government wants to purchase their own drugs from whatever supplies yet the national government insists that all drugs must be purchased and supplied by the Kenya Medical Supplies Authorities. This tension hinders the full enjoyment of the right to access to medicines as there are frequent drug stock outs in most hospitals due to lack of clarity as to who should supply the drugs.

The key components of the right to the highest attainable standard were discussed. The aspects of access to health including availability, accessibility, acceptability, quality, and affordability were also discussed. She addressed the challenges of persons with disabilities in accessing hospital facilities where there are no ramps or special toilet seats.

In explaining the right to human dignity under Article 28 of the Constitution, the facilitator stated that human dignity extends to how far the lawyers are able to ensure that a person’s dignity is respected at all times. When the sex workers and the MSMs are sick are they able to access health services without their dignity being violated? Or when they approach a lawyer for legal services are they able to access such services without their rights to dignity being violated? They should be accorded such respect and dignity on the basis that they are human beings first and not based on their sexual orientation or line of trade. We should adopt an open approach based on being human.

In discussing the right to privacy and confidentiality the facilitator gave an example of the practice of compulsory testing of couples before marriage in some churches. It was noted that this was in gross violation of the right to privacy and that a person should not be tested without his /her consent, this was further in contravention of the HAPCA. Further, in regard to the right to access to information it was discussed that children have a right to access information relating to sex education to help them access HIV related information.

In explaining the right to access to justice under Article 48 the participants were urged to make use of the HIV Tribunal as established under the HAPCA to ensure that PLHIV access justice through filing of cases in the tribunal. The advantages of the tribunal were explained.

Rights of prisoners in accessing health related services and the question as to whether the male prisoners should be provided with condoms and lubricants was revisited. It was discussed that the legal obstacles that hinder the provision of condoms and lubricants to male inmates should be challenged on grounds of being unconstitutional for denying the prisoner’s right to access HIV related health services and interventions.

The case of JAO versus Home Park Caterers and another was discussed in the context of the rights of the petitioners that were violated by the respondent. Based on this case the various violations of the rights of PLHIV committed by the insurance companies were also discussed. It was noted that the Insurance Regulatory Authority should come up with guidelines for the insurance companies to protect the privacy and confidentiality of the health status of the insured. Further the practice of mandatory HIV testing as a precondition to
the provision of insurance policies was condemned as a violation of the human rights of the PLHIV.

The challenges faced by the PLHIV when they seek employment through recruitment in the uniformed forces were also discussed. It was noted that the denial of employment in the uniformed forces based on grounds of one's HIV status was in gross violation of the PLHIV's right to employment. It was further noted that the HIV prevalence among the uniformed forces was high due to this high level of discrimination against the PLHIV in the forces. There are many duties that one can perform even if he/she is living with HIV, therefore it is not proper to deny a person employment on the basis of HIV status. It was further noted that according to the ILO regulations and the HIV work policies, a person who is living with HIV should not be denied the rights to employment but should be given alternative duties which do not interfere or pose a danger to his/her health status.

The other ground of discrimination common in the uniformed forces especially the police is when the PWD are denied employment on ground of disabilities. The situation is even worse when a PWD is openly living with HIV. There are so many duties that PWD can perform in the police forces and therefore the denial of employment on ground of disabilities and HIV status should be challenged on grounds of Unconstitutionality. The lawyers were urged to consider doing advocacy on these areas to change the policies on recruitment in the uniformed forces.

The rights of children living with HIV were discussed with relevance to the common violation of the denial of the right to education. It was noted that most schools do not want to admit children living with HIV in their schools. This stigma and discrimination against children living with HIV was noted as having great effect on HIV prevention and treatment among the children of school going age. The role of lawyers in this regard was reiterated in ensuring that the school administration, especially the head teachers, are sensitized on the need to respect the rights of children living with HIV.

**Video on Criminalization of HIV**

This video was a recording of the debate on criminalization of the willful transmission of HIV, which was done during the judge’s dialogue forum in Nairobi. The video was aimed at bringing out the key arguments advanced by the various experts both in the legal and scientific fields in support or opposition of the motion as to whether laws criminalizing voluntary/willful transmission of HIV should be left in our statute books.

Ms. Belice Odamna introduced the video citing the controversial sections namely section 24 and 26 of the HAPCA and SOA respectively.

Issues arising from the video

- Can a mother be sued under these sections for failing to attend antenatal care to prevent the vertical transmission?
- The law on criminalization of willful transmission must remain in the statute books to deal with the PLHIV who are reckless and malicious by ensuring that they are responsible for their actions.
- Why do we legislate about HIV and not any other disease? HIV is the highest killer because of the seriousness of HIV there is need for a legislation to control its spread and transmission.
- A lot of the time the SOA has been used in sexual offences. There have been cases of willful transmission-the only problem is investigation and proper prosecution.
- HIV is a disease, one day a proper cure will be found, but before then we have to find the solution to stop reckless people from spreading it to the unsuspecting members of the society.
- This law promotes discrimination against women living with HIV, women are the ones who find out first, they are the first who get to know their status, the husbands end up divorcing and even battering them for infecting them. Women are the ones suffering because of this law. Any law that comes up should be able to look at the gender issue.
- Why should we legislate about HIV? We legislate to cover a certain situation, there was a reason why the law to deal with criminalization came up. HIV is the major killer in Kenya and so its transmission by people who do it knowingly has to be criminalized.
- It’s not about criminalization being impossible- we only need one case. We can have the criminalization in other law.
- Assumptions that when you criminalize transmission then automatically you will make people fear to come for testing is a fallacy. In the same line of thought does it mean that if we have robbery with violence attracting a death sentence we don’t have robberies? Those who genuinely want to know their status will know and not transmit it.
When you look at section 24 and section 26 we must ask ourselves the intention of the drafters, they were trying to prevent transmission, if we imprison these people are we achieving our goal? We need to focus more on public health and polices because this person who transmitted it also got it from other parties.

You cannot compare countries because there are different elements regarding the HIV prevalence; countries are different and have different circumstances. There are countries that have these laws but they have never been used. Some of the sections were not functional until recently so we can’t actually tell whether or not the HAPCA has an effect.

You cannot use the criminal justice system to determine the health system policies. What do you do with other punitive laws in the health sector like abortion and medical negligence?

Legislating on a social aspect of life will not solve the problem. Once you put a person in prison it does not solve the problem.

Criminalization curbs the epidemic, unless we want the whole of Kenya to be on ARVs.

There is a place for criminalization but how do you write this law such that it doesn’t affect other people who are not in the spree of infecting others and only touches on those who are reckless?

What is the end goal of the Sexual Offences Act? There is only one prison in the country does counselling for persons who are convicted of sexual offences and that is in Nyeri maximum prison.

In PMTCT how do you deal with women who are living with HIV but cannot access PMTCT services? How do you deal with this in relation to such women?

Criminalization will not help in reducing the HIV prevalence rate, that provision will never be implemented.

What is the essence of criminalization? Does it help, once you have been tested? Criminal law should only be used when other avenues like the public health interventions have failed.

When there is criminalization more people will avoid testing for fear of being criminalized.

Suggestions that you don’t need a specific HIV criminal provision; rather have a provision in the general criminal law that criminalizes willful transmission of any disease. It only points to HIV alone yet we have other life threatening diseases. Let us have provisions that provide for general criminal law.

Although there are other deviant persons whom the law has to deal with, how do you put the burden on the PLHIV to ensure they use protection?

If you put these persons in prisons how do you deal with them in the prison at the risk of others?

What about the other person who would be infected by the PLHIV? What is the essence of us trying to control HIV yet we have a hand in spreading it?

Criminalization basically diverts attention from implementing policies that are meant to reduce HIV infection, we are calling these people criminals by trying to reduce prevalence rate yet this only brings adverse effects in increasing the prevalence rate because for fear of being branded potential criminals, people fear to know their status.

We should normalize HIV instead of criminalizing it. Criminalization increases stigmatization.

Balancing individual rights and the rights of the general public.

It’s impossible to prove that x got the virus, secondly the window period time of three months within which it is presumed that the virus is still inactive hampers the process of proving with the accuracy of time when the virus was actually contracted and from whom.

A time will come when these will be possible, we can’t just use these two impossibilities to decline to criminalize, if there is evidence.

Day Three;
Recap of Day Two;

Ms. Wairimu Kiigi

Ms. Wairimu Kiigi led the participants through an overview of the day’s session. The key issues that arose were;

- Human rights in relation to HIV.
- The debate of criminalization of HIV was revisited.
- The role of lawyers in the legislative process.
Legal and Ethical issues in the context of HIV and Legal provisions that exist to address them;

Mr. Ambrose Rachier

The session gave the participants the historical evolution of the HAPCA right from the guidelines to the current legislation. It also covered the legal and ethical issues in relation to HIV and how to address them. Mr. Rachier led the participants in a discussion of the role of the law and its implications in dealing with legal and ethical issues in HIV.

He shared his experiences in regard to the development of section 24 of the HAPCA. He noted that in order to stop stigma and discrimination it starts with an individual’s responsibility first to be able to offer legal services. The facilitator shared how at one time he was stigmatized for championing for the rights of PLHIV and key populations.

He discussed the evolution of policy and the law relating to HIV and AIDS. In 1992 a task force was formed to look into policy issues established, the task force was mandated to collect and collate stakeholder views and conduct research that would inform national policy on HIV and AIDS. The work on policy was undertaken between 1992 and 1997- five years. This resulted in sessional paper no.4 of 1997.

He emphasized that it’s important to understand the origin of the law in order to appreciate how far the law has evolved in creating an enabling environment for HIV and AIDS to promote a human rights based approach to HIV prevention treatment and management. When you want to deal with laws you have to start with the policy then the law comes to put life into the policies.

HIV was declared a national disaster in 1999 by the president. This culminated in the formation of the NACC in the year 2001 and the development of a taskforce on legal and ethical issues. The taskforce submitted its reports to the Attorney General on the 19th of July 2002. The report captured 14 key issues mainly;

- The question of Testing for HIV
- Privacy and Confidentiality
- HIV & AIDS in the Workplace
- HIV & AIDS in prisons and other places of confinement
- Place (if any) of the Criminal Law
- Issues Of Succession and Inheritance in the context of HIV
- In Biomedical Research
- The rights of the child
- Gender Issues in the context of HIV and AIDS
- Intellectual Property Rights
- Cultural and Religious matters
- The Rights and Responsibilities of People Living With HIV and Other Related Matters
- HIV & AIDS and Other Human Rights Questions
- Insurance

The HIV Prevention and Control Bill was passed into law on 30th December 2006 after receiving presidential assent; however it only became operational on the 27th of February 2009 after it received a commencement date from the Minister of State for Special Programmes.

In discussing the legal and ethical issues raised under the HAPCA the facilitator explained the facts of MIDWA vs. MIDWA leading the participants to identify and discuss the issues raised from the case these were discussed as follows;

- Testing; the legality of routine tests in places of employment.
- Is HIV seropositivity a ground for divorce as evidence for adultery?
- Child custody and maintenance.
- Isolation/discrimination.
- Property rights.
- tConfidentiality; when the doctor tested the woman who has a duty to know the results, does the husband have the legal right to know the status of the spouse?

In discussing Section 14 of the HAPCA on testing the facilitator explained the importance of Section 14 that a person undergoing HIV testing must give informed consent, the importance of counselling and support groups must be underscored to mitigate the effects of the test results.

The facilitator also discussed the rights of minors to give consent leading to a discussion on the rule in RE; Gillicks competence case. The facilitator explained the exceptions under which a minor can give consent for HIV testing on his/her on behalf. He noted that in other circumstances the
express consent of the minor has to be sought first before the guardians’ /parents’ consent.

He noted that there is almost a non-existent law on tissue donation and urged the participants to take the initiative of addressing the existing gaps in medical laws.

The participants then discussed the case of JOA versus Home park Caterers in the context of the legal issues arising from it. These were discussed as follows:

- Denial of employment on grounds of health status.
- Breach of confidentiality
- Disclosure
- Consent to HIV testing.

It was stated that the negative reaction towards HIV is what increases the high level of stigma and discrimination. In establishing the relationship between HIV and employment the participants were asked how many of them would comfortably employ a house help who is openly living with HIV and how many would openly declare their status to their secretaries when they are going for their routine ARVs.

In reply Mr. Rachier noted that;

- Distinguish the case, there is a law against bigamy but it has not been fully implemented since 1897, how many people have been prosecuted for bigamy? Only one case in Kiambu 2007:What is the role of the law that is not being used? There are obsolete laws in the statute books, look at the harm that criminalization causes- it outweighs the benefit, it will influence peoples conduct in a certain way.
- Ask yourself the reaction or likely effect when you prosecute that person and put them in jail. Are they likely to come from jail and react differently?
- The effect of the law on criminalization of HIV on women, women are deserted due to the duty of shared responsibility. How practical is it? It increases GBV, widows are disinherited for being accused of infecting their husbands with HIV.
- During the Global Commission it was resolved that criminal law cannot be ruled out from HIV but it should be merged as part of the other offences that we have, instead of singling out HIV. We should not have HIV of HIV. Other jurisdictions like US which have this offence litigating of HIV rights and development of Jurisprudence;

Mr. Arwa

A video session of Mr. Arwa’s presentation made during last year’s lawyers training on the same subject was screened. This was due to the inability of Mr.Arwa to attend the session due to unavoidable circumstances.

Mr. Allan Maleche introduced the video noting the key areas of emphasis alongside the printed PowerPoint presentations to guide the participants through the session.

The presentation began with a discussion of the role of international law in the development of jurisprudence of domestic human rights jurisprudence. The facilitator then
WORKSHOP SESSIONS

discussed the challenges faced in development of domestic human rights jurisprudence. These were noted as follows;

- Justicibility challenges.
- Lack of awareness on the part of ordinary citizens on the existence, scope and enforceability of rights.
- The facilitator then discussed the right to health in an in depth context to mean
- Right to high quality medical services
- Right of access to drugs
- Right to emergency medical treatment
- Right to equal access to medical facilities
- Right to a safe clean and healthy environment free of disease causing organisms among others.

The facilitator then covered litigation on HIV under the African Regional Human rights systems with a discussion of the decided cases and their impact on the development of jurisprudence in the Kenyan courts. The Kenyan HIV jurisprudence was also discussed with lawyers being urged to take advantage of the Constitution of Kenya 2010 and its new provisions on socio economic rights. Some of the cases discussed include, the Kenya Aids Society versus Arthur Obel (1997), (LLR) (CAK) Midwa versus Midwa (2000) EA 453 among others.

The presentation ended with a critique of the Kenyan jurisprudence, Mr. Arwa noted the following;

- The jurisprudence is not consistent/ haphazard.
- There is no recognized policy or philosophy.
- A tendency to copy South Africa.
- The full opportunities offered by the new constitution are not utilized.

Mr. Arwa however considered the way forward for Kenya in litigating on the socio economic context, he noted:

- The need to redefine the scope of the rights
- The need to redesign appropriate remedies
- The need to enhance enforcement strategies

He finalized the presentation by discussing the role of lawyers in the development of HIV jurisprudence. These included the taking of an active role in litigation on socio economic context.

Plenary

- A participant shared that the other challenge faced in litigating in the socio economic rights is the lack of commitment from the judiciary to grant orders against the Executive. Some judges do not want to bite the fingers that feed them and hence they hide behind the progressive realization principle.
- Another challenge is the issue of settling human rights cases out of court; this was cited as hindering the development of jurisprudence in HIV. However it was noted that even if the matters are settled out of court the parties could always record a consent order that can be adopted as a final order of court.
- A participant asked why we couldn’t have specific provisions like the one under the Sexual Offences Act that prohibits the settling of human rights cases out of court. The participants were advised to make the proposal to the rules committee to consider for amendment to that effect.
- A participant noted that litigation is not the solution to everything, when you go to court you are seeking specific reliefs, when these reliefs are met out of court why insist with the litigation, there is no right that is breached when you deny a person the opportunity to settle a matter out of court. What would be the essence of going to court and coming out with nothing while you can just agree and get your relief or prayers met? This assertion was countered by the argument that in human rights cases we are also seeking precedence, we want something that will deter a particular group from settling human rights cases out of court and build jurisprudence, when you get a declaration it is not for only that person, it is for the whole population where that law applies. There should be a barrier to out of court settlement of human rights cases.
- In dissenting to the assertion that out of court settlements should be discouraged, a participant noted that suppose we get a court that does not see things our way, we can’t say there is no impact if cases are settled out of court. We should not assume that settling out of court does not send a message because it deters the others who could have done the same.
- Mr. Maleche shared the experiences of litigating in the HIV issues when they took the case of JOA versus Home park caterers, which was going to be a landmark case in setting the jurisprudence in HIV and the right to work. The case was filed in 2003, only got a hearing in 2007, went through many challenges, finally opted for a settlement, got a consent judgment and declarations...
that testing without consent amounts to human rights violations, dismissing an employee on grounds of HIV amounts to a violation. The lawyers were later advised to consider going by the wishes of the client.

- The advocate must focus on the interest of the client, and be innovative to get declarations that can be used to set precedence and jurisprudence, though sometimes clients get fatigued and opt for settlement out of court. The advocates must ensure that they are acting in the client's interest and only settle matters where they do not have to lose the ability of losing the jurisprudence, sometimes they are forced to settle and don't get anything at all to show as a good jurisprudence, it is a careful balancing act.

How Lawyers can use the HIV Tribunal;

Miss. Belice Odanna

The aim of the session was to enhance the participants understanding of the various ways within which they can access the HIV tribunal as well as how they can use their acquired knowledge and skills to create an enabling legal environment to protect the rights of PLHIV. She explained the jurisdiction of the tribunal and their physical address in Nairobi. The following were discussed as the ways in which lawyers can work with KELIN;

- Research.
- Litigation support.
- Legal advice.
- Legal aid clinic.
- Advocacy at the community, county, and national levels for change of policies and laws to ensure that they are in line with the Constitution.
- Training of networks of PLHIV, community members, in various parts of the county.
- Giving opinions on laws relating to health.
- Getting involved in the process of legislations. Advocates are the public they are the ones who use these laws in defending clients.
- Engage the CIC, through the CIC websites, and other avenues during their routine visits.
- Engage the Committees especially the health committees both at the county and National levels.

Participants Reflections

At the end of the training the participants were given the opportunity to share their reflections and what they felt about the training.

Most of the participants thanked the KELIN for organizing such a wonderful training, they stated they had learnt so much during the training and would wish to be engaged in future trainings. Here below are some of the participant's reflections;

"It has been quite engaging, I thank KELIN for engaging us in this training.”-Patrick.

"I like the job you are doing we are delighted to be part of this project, the pandemic of HIV is ignored yet these are our relatives we hope we are going to push forward this agenda.”-Nelson

"Bringing the representatives of the key populations really opened my eyes in dealing with their human rights.”-Jessica Oluoch

"I appreciate the chance to come, I thought I knew but found out that I don’t know, it was an interactive forum.”-Kirui

"I thank the organizers, I have learnt so much, we at L.A.C.E. would like to partner with to train health workers and other professional that we work together with in our programmes”-Claire.

"I thank you for coming to us here in Eldoret, the topics were really relevant, thank you for updating us, it’s easier for me to handle cases of MSMS who are living with HIVI am now able to offer legal services to the key populations without any discrimination.”-Juliet.

"To say the truth this was my first time to train on HIV human rights and the law, yesterday I was shocked, I knew there existed the HAPCA, but I first saw it yesterday I hope to put this into practice.”-Mercy Chellangat.
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 cases and other material relevant to the training were also given to the participants as well as flash disks with voluminous soft copy information relevant for continuous learning on HIV, the law and human rights.

WAY FORWARD AND ACTION PLANS

Participants were given consent forms, a tool that KELIN uses to gauge their interest in providing various pro bono legal services. The services range from litigation, writing and publishing papers on health rights, conducting training on HIV and related rights, Legal aid clinics, writing of media opinions and helping in HIV legal issues research. All the participants consented to offer pro bono services in at least two areas. They also committed:

- To take part in the County dialogue forum both in Uasin Gishu and Nakuru Counties planned for the next quarter.
- To take part in the legal aid clinic in Nakuru and Uasin Gishu counties planned for the next quarter.
- Take part in radio talk shows as may occasionally be organized by KELIN.
APPENDICES.

Program.

Aids Fonds

KELiN
Reclaiming Rights, Rebuilding Lives

LAW SOCIETY OF KENYA
SEMINAR FOR LAWYERS/ADVOCATES ON HIV, LAW AND HUMAN RIGHTS
ELDORET, 9TH - 11TH DECEMBER 2013
PROGRAM

Objectives

- Share up-to-date information and knowledge on HIV, human rights concepts and the link between HIV, Human rights and the law.
- Provide a critical opportunity for discussion and experience-sharing between advocates from Nakuru, Uasin Gishu and neighbouring counties on the complex legal and human rights issues posed by the HIV epidemic in their Counties.
- Develop critical understanding of various challenges raised by legal and ethical issues in HIV and the available mechanisms for redress
- Discuss the role of lawyers in upholding the rights of persons living with and affected by HIV with emphasis on members of key and affected populations in line with the recommendations of the Global Commission on Law and HIV
- Provide a platform for those living with, affected by and at risk of HIV to share their testimonies and the challenges presented by various legal provisions, their implementation or lack of

ARRIVAL AND REGISTRATION SUNDAY, 8TH DECEMBER 2013

<table>
<thead>
<tr>
<th>TIME</th>
<th>SESSION</th>
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<tbody>
<tr>
<td>4.00 - 5.30 PM</td>
<td>Arrival</td>
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<tr>
<td>5.30 – 6.30 PM</td>
<td>Registration of participants at the hotel lobby</td>
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<tr>
<td>7.30 PM Onwards</td>
<td>Dinner</td>
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SEMINAR DAY 1 MONDAY, 9TH DECEMBER 2013

<table>
<thead>
<tr>
<th>TIME</th>
<th>SESSION</th>
<th>PROPOSED FACILITATOR</th>
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<tbody>
<tr>
<td>8.30 – 9.00 AM</td>
<td>Preliminaries</td>
<td>Francis Rakewa</td>
</tr>
<tr>
<td></td>
<td>Pre-evaluations, expectations and climate setting</td>
<td>KELIN</td>
</tr>
<tr>
<td>9.00 – 9.10 AM</td>
<td>Opening Remarks:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. Representative, LSK</td>
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<tr>
<td></td>
<td>2. Executive Director, KELIN</td>
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## 10.30 – 11.00 AM  
**Health Break**  

### 11.00 – 12.00 PM  
Understanding the role of the law as a mechanism to ensure the full enjoyment of HIV related rights for PLHIV in Kenya  
Allan Maleche  
Executive Director  
KELIN  

### 12.00 – 12.45 PM  
Screening of Videos:  
- Imprisonment of TB patients  
- Forced and Coerced sterilization  
Plenary session to discuss the issues  
Belice Odamna  
KELIN  

## 1.00 – 2.00 PM  
**Lunch Break**  

### 3.00 – 4.00 PM  
Experiences of human rights violations of PLHIV in Kenya  
Representative  
NEPHAK  

### 5.30 – 6.30 PM  
Moderated panel discussion:  
Experienced of key and affected populations in Kenya  
Allan Maleche  
KELIN  

### 4.00 – 5.30 PM  
Plenary discussions  
Francis Rakewa  
KELIN  

## 4.30 – 5.00 PM  
**Health Break**  

## SEMINAR DAY 2 TUESDAY, 10TH DECEMBER 2013  

### 8.30 – 9.00 AM  
Recap  
Lydia Ndirangu  
KELIN  

### 9.00 – 10.30 AM  
Overview of human rights law in relation to HIV  
Commissioner Catherine Mumma  
Commission on Implementation of the Constitution (CIC)  

The provisions of the Constitution of Kenya 2010, and their relevance to PLHIV in Kenya  

### 10.30 – 10.45 AM  
Plenary discussions  

### 10.45 – 11.00 AM  
**Health Break**  

### 11.00 – 12.45 PM  
The legal and ethical issues in the context of HIV and the legal provisions that exist to address them  
Ambrose Rachier  
Chair Person, KELIN Board  

### 12.45 – 1.00 PM  
Plenary discussions
### APPENDICES

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Presenter/Details</th>
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<tbody>
<tr>
<td><strong>1.00 – 2.00 PM</strong></td>
<td>Lunch Break</td>
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<tr>
<td>2.00 – 4.00 PM</td>
<td>Debate session: Preparation on the debate (Issue: Do prisoners have a right to access condoms for prevention of HIV transmission in Kenyan prisons?)</td>
<td>Allan Maleche KELIN</td>
</tr>
<tr>
<td><strong>4.00 – 4.30 PM</strong></td>
<td>Health Break</td>
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<td><strong>SEMINAR DAY 1 WEDNESDAY, 10TH DECEMBER 2013</strong></td>
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<tr>
<td>8.30 – 9.00 AM</td>
<td>Recap</td>
<td>Wairimu Kiigi KELIN</td>
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<tr>
<td>9.00 – 10.30 AM</td>
<td>Litigating HIV rights and development of Jurisprudence</td>
<td>Jotham Arwa Chairperson, Equity Tribunal</td>
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<tr>
<td>10.30 – 10.45 AM</td>
<td>Plenary discussion</td>
<td></td>
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<tr>
<td><strong>10.30 – 11.00 AM</strong></td>
<td>Health Break</td>
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<tr>
<td>11.00 – 11.30 PM</td>
<td>The Role of the Equity Tribunal and how lawyers can engage with it</td>
<td>Jotham Arwa Chairperson, Equity Tribunal</td>
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<tr>
<td>11.30 - 12.30 PM</td>
<td>Debate session: Does criminalization of deliberate transmission have a role to play in the management of HIV?</td>
<td>Allan Maleche KELIN</td>
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<tr>
<td>12.30 – 1.00 PM</td>
<td>Plenary Discussions</td>
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<tr>
<td><strong>1.00 – 2.00 PM</strong></td>
<td>Lunch Break</td>
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<tr>
<td>2.00 – 2.20 PM</td>
<td>Creating an enabling legal environment: Findings and Recommendations of the report of the Global Commission on HIV and the Law</td>
<td>Allan Maleche KELIN</td>
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<tr>
<td>2.20 – 2.30 PM</td>
<td>How lawyers can engage with KELIN in offering HIV related legal services</td>
<td>Francis Rakewa KELIN</td>
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<tr>
<td>2.30 – 2.40 PM</td>
<td>Opportunities to engage with LSK committees in promotion of HIV related rights</td>
<td>Representative LSK</td>
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</table>
APPENDICES.

2.40 – 3.00 PM  
Plenary discussions: Recommendations and Way Forward  
Belice Odamna  
KELIN

3.00 – 3.30 PM  
Evaluation, Certification and Closing remarks  
Allan Maleche  
KELIN

3.30 – 4.00 PM  
Health Break  
-DEPARTURE -

Participants list.

| Date: | 9th December 2013 |
| Title of Training/ Event: | CAPACITY BUILDING WORKSHOP ON LEGAL RIGHTS |

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<tr>
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<th>PROFESSION</th>
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<tr>
<td>1.  Aim Yoni Jonathan</td>
<td>M</td>
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<tr>
<td>2.  Anne Mbugua</td>
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<td>Onyinka&amp; Co. Advocates</td>
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<tr>
<td>3.  Francis Rakewa</td>
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<td>KELIN</td>
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<td>4.  Catherine Wahome</td>
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<td>Uasin Gishu</td>
<td>Lawyer</td>
<td>Gitonga &amp; Co. advocates</td>
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<tr>
<td>5.  Claire JeropKosgei</td>
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<td>Uasin Gishu</td>
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<td>Legal Aid Centre of Eldoret</td>
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<tr>
<td>6.  Collins Akenga</td>
<td>M</td>
<td>Uasin Gishu</td>
<td>Advocate</td>
<td>NyaundiTuiyoit&amp; Co. Advocate</td>
</tr>
<tr>
<td>7.  Collins OdhiamboOdundo</td>
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<td>Advocate</td>
<td>Odhiambo&amp;Odhiambo Advocates</td>
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<td>R. M Wafula&amp; Co Advocates</td>
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<td>Dr. Philip Owiti</td>
<td>M</td>
<td>Uasin Gishu</td>
<td>Medic</td>
<td>Ampath Kenya</td>
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<td>Nelson W. Osiemo</td>
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<td>Siaya</td>
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<td>Ojiambo&amp; Co Advocates</td>
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# APPENDICES

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<tr>
<th>No.</th>
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<td>Mackton Wekhomba</td>
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<td>Advocate</td>
<td>Mwimi&amp;Ntumia</td>
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<td>27.</td>
<td>Jane Nyariki</td>
<td>F</td>
<td>Uasin Gishu</td>
<td>Nurse</td>
<td>KEHPCA</td>
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<td>KYDESA</td>
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<td>36.</td>
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<td>M</td>
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</table>
Participants feedback analysis.

**PARTICIPANTS’ FEEDBACK REPORT: SEMINAR FOR LAWYERS/ADVOCATES ON HIV, LAW AND HUMAN RIGHTS**

**Section ONE: Quantitative**

1.1 Findings showed that 61.1% of the participants strongly agreed that the training venue met their expectations, while 38.9% agreed that the venue met their expectations. None of the respondents disagreed.

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<td>Agree/ met expectations/ useful</td>
<td>7</td>
<td>38.9%</td>
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<td>Strongly agree/ exceeded expectations/ very useful</td>
<td>11</td>
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<tr>
<td>Total</td>
<td>18</td>
<td>100.0%</td>
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1.2 61.1% (11) of the respondents strongly agreed that the content of the workshop was relevant to their work, while 27.8% (5) agreed, while 11.1% (2) thought the content was somewhat useful.

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<td>11.1%</td>
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<tr>
<td>Agree/ met expectations/ useful</td>
<td>5</td>
<td>38.9%</td>
</tr>
<tr>
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<td>11</td>
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</tr>
<tr>
<td>Total</td>
<td>18</td>
<td>100.0%</td>
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</table>
1.3 The findings illustrates that 66.7% (12) of the respondents found the workshop flash-disk very useful in their work, 27.8% (33.3) termed workshop flash-disk useful, while the remaining 5.6% (1) found the flash-disk somewhat useful.

<table>
<thead>
<tr>
<th>Frequency</th>
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<td>1</td>
<td>5.6%</td>
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<tr>
<td>Agree/ met expectations/ useful</td>
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<td>27.8%</td>
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<td>Strongly agree/ exceeded expectations/ very useful</td>
<td>12</td>
<td>66.7%</td>
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<tr>
<td>Total</td>
<td>18</td>
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1.4 61.1% (11) of the respondents found the practical sessions and activities to be very useful learning experiences, while 33.3% (6) expectations were met; however, 5.6% (1) was undecided.

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<tr>
<td>Agree/ met expectations/ useful</td>
<td>6</td>
<td>33.3%</td>
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<tr>
<td>Strongly agree/ exceeded expectations/ very useful</td>
<td>11</td>
<td>61.1%</td>
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<tr>
<td>Total</td>
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1.5 Majority of the participants, 94.4% (17), strongly agreed that the facilitators were knowledgeable, well-prepared and responsive to participants’ questions.

<table>
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<th>Frequency</th>
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<td>5.6%</td>
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<tr>
<td>Strongly agree/ exceeded expectations/ very useful</td>
<td>17</td>
<td>94.4%</td>
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1.6 77.8\%(14) of the Participants’ expectations on whether the workshop was well organized was exceeded

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<td>5.6%</td>
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<td>Strongly agree/ exceeded expectations/ very useful</td>
<td>14</td>
<td>77.8%</td>
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1.7 The findings showed that 83.3 \%(15) of the participants found the workshop very useful, and would suggest this seminar for other colleagues working in the same or similar fields

<table>
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<tr>
<td>Agree/ met expectations/ useful</td>
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<td>16.7%</td>
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<tr>
<td>Strongly agree/ exceeded expectations/ very useful</td>
<td>15</td>
<td>83.3%</td>
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<tr>
<td>Total</td>
<td>18</td>
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2.0 72.2\%(13) of the participants rated and evaluated the workshop as very good.
APPENDICES.

3.0 Knowledge, skills and confidence rating before and after the Training
Topic 1: Overview of HIV and TB epidemics in Kenya: Updates on the statistics and the scientific developments

<table>
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<td>Very good</td>
<td>13</td>
<td>72.2%</td>
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APPENDICES

Topic 2: Overview of Palliative Care

![Bar chart showing the comparison before and after the training in terms of satisfaction levels on a scale of Poor, Fair, Good, and Excellent.

Topic 3: Understanding the role of the law as a mechanism to ensure the full enjoyment of HIV related rights for PLHIV in Kenya

![Bar chart showing the comparison before and after the training in terms of satisfaction levels on a scale of Poor, Fair, Good, and Excellent.]
APPENDICES.

**Topic 4:** Experiences of human rights violations of PLHIV in Kenya

![Bar chart showing experiences of human rights violations before and after training.](image)

**Topic 5:** Experiences of key and affected populations in Kenya

![Bar chart showing experiences of key and affected populations before and after training.](image)
APPENDICES

Topic 6: Overview of human rights law in relation to HIV

[Bar chart showing comparison before and after training]

Topic 7: The provisions of the Constitution of Kenya 2010, and their relevance to PLHIV in Kenya

[Bar chart showing comparison before and after training]
**APPENDICES.**

**Topic 8:** The legal and ethical issues in the context of HIV and the legal provisions that exist to address them.

![Bar chart showing comparison before and after training](chart1.png)

**Topic 9:** Litigating HIV rights and development of Jurisprudence

![Bar chart showing comparison before and after training](chart2.png)
**Topic 10:** The Role of the Equity Tribunal and how lawyers can engage with it.

![Bar chart showing improvement after training](chart1)

**Topic 11:** How lawyers can engage with KELIN in offering HIV related legal services

![Bar chart showing improvement after training](chart2)
Session 12: Opportunities to engage with LSK committees in promotion of HIV related rights

4. Rating of the topics in relation to Participants interest and usefulness in the line of their duty.


<table>
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### APPENDICES

**Topic 2: Overview of Palliative Care**

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**Topic 3: Understanding the role of the law as a mechanism to ensure the full enjoyment of HIV related rights for PLHIV in Kenya**

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**Topic 4: Experiences of key and affected populations in Kenya**

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### APPENDICES

**Topic 5**: Experiences of key and affected populations in Kenya.

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**Topic 6**: Overview of human rights law in relation to HIV

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**Topic 7**: The provisions of the Constitution of Kenya 2010, and their relevance to PLHIV in Kenya

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Topic 8: The legal and ethical issues in the context of HIV and the legal provisions that exist to address them.

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Topic 9: Litigating HIV rights and development of Jurisprudence.

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Topic 10: The Role of the Equity Tribunal and how lawyers can engage with it.

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### APPENDICES

**Topic 11:** How lawyers can engage with KELIN in offering HIV related legal services.

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**Topic 12:** Opportunities to engage with LSK committees in promotion of HIV related rights

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APPENDICES

Section TWO: Qualitative.

- Propone lawyers to advice on the bills before being ascended into laws in Kenya on matters of HIV and the Law
- Form legal aid to women especially on issue of sterilization
- Avail the developing case law and laws/bills either soft copies or hard copies
- Seek opinions and advice as participants on development of the relevant areas of law, Priscilla Siring Momanyi
- Annual conference inviting all participants to analyze the positive impact by the individual to the society and update on new developments
- More and intensive training in various parts of the country
- Keep in touch with lawyers who have signed up for probono by sending them materials to keep them informed on the developments
- Meeting to evaluate the progress probably in an AGM for all the lawyers from all the country
- Invite us for legal aid clinics in our respective counties
- Support with drafting of the probono services
- Training on treatment literacy of HIV and opportunistic infections
- Set up more branches and networks so as to address this issue in Kenya, Rural areas per county
- Continuous training of advocates on HIV and the Law
- A better breakdown of palliative care how do I access this program
- Role of equity tribunal and access to it
- How do we engage with LSK committee
- Legal aid activities
- Sending the participants new and upcoming materials on the subject area (HIV and Human Rights and the law) so that they can be versed with the changes and more knowledge on this area.
- Kindly inform us on the forums seminars on HIV and the law whenever they are held., Catherine Njoki Wahume
6. Other comments that would help strengthen or improve on.

- Propose lawyers to advice on the bills before being ascended into laws in Kenya on matters of HIV and the Law
- Form legal aid to women especially on issue of sterilization
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- Kindly inform us on the forums seminars on HIV and the law whenever they are held., **Catherine Njoki Wahume**

Now that we have been thoroughly trained, how can we be useful to the society? Moraa Nyaega