



Your Ref: TBA **Our Ref:** C/KELIN/15

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“Advance copy via email”

H.E. Uhuru Muigai Kenyatta, C.G.H
President of the Republic of Kenya
Commander in Chief of the Defence Forces of the Republic of Kenya
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Your Excellency,

RE: ADVISORY NOTE ON YOUR INSTRUCTIONS ON COORDINATION & DELIVERY OF COMPREHENSIVE HIV & AIDS SERVICES TO COUNTIES.

We jointly write to you as the Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN) and the National Empowerment Network of People Living with HIV&AIDS in Kenya (NEPHAK), two civil society organizations working on HIV and health related human rights in regard to the above referenced matter.

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

NEPHAK is a national network that unites over 1,500 groups of people living with HIV and those affected by TB, & AIDS through post-test clubs, support groups, community based organizations, non-governmental organizations and PLHIV networks.

This is to humbly submit our advisory note regarding your Excellency's instruction issued vide a letter of 23 February, 2015 that instructs all County Commissioners to work with County Directors of Education and Medical services, to collect up-to-date data and prepare a report on all school going children who are HIV positive, information on their guardians, information of number of expectant mothers who are HIV positive and number of breastfeeding mothers who are HIV positive. The data is to be collected in a prescribed data matrix that links the names of the groups to their home area and school in the case of children. The information is to be submitted to your Excellency by 15 March 2015.

We note your Excellency's noble intention to overcome the challenges of HIV & AIDS among adolescents, through the launch of a Global ALL IN Initiative Campaign on 17 February, 2015. We however wish to most humbly bring to your attention the fact that your directive will lead to the violation of the right to Privacy and Confidentiality of people living with HIV, contrary to the Constitution of Kenya 2010.

The right to privacy is a fundamental human right recognized in Article 31 of the Constitution of Kenya. In our humble view this incorporates the aspect of confidentiality that relates to the manner in which information an individual has shared is treated by the person collecting it. By virtue of the provisions of Article 2(6) of the Constitution, the following binding international instruments equally protect the right to privacy and confidentiality: The International Covenant on Civil and Political Rights (Article 17), the Convention on the Rights of Children (Article 16), The Convention on the Rights of Persons with Disability (Article 22) and The African Charter on the Rights and Welfare of the Child (Articles 9 and 22).

The right to privacy in the context of HIV is recognized and protected at Sections 20, 21, 22 and 23 of the HIV & AIDS Prevention and Control Act 2006. In the case of children, the right to privacy is enshrined at Section 19 of the Children's Act. The High Court of Kenya and the HIV Tribunal have equally passed judgments reinforcing the right to privacy for persons who are living with HIV in cases where the aforementioned provisions of the law have been breached.

The evidence of the prevailing levels of stigma and discrimination associated with HIV related conditions in Kenya validate the need to uphold the right to privacy and confidentiality. For example people may avoid testing and treatment if they are not confident that information about them will remain private. The exposure of information relating to ones HIV status without their consent exposes them to human rights violations such as dismissal from employment or denial of essential services, including educational opportunities.

From a legal point of view the proposed matrix and nature of information to be collected will violate the Constitution, the above mentioned laws and the rights of Persons Living with HIV for the following reasons:

- I. Your Excellency, for the County commissioners to complete the data matrix in the format required, they will have to test every student, guardian of the students, women infected with HIV, expectant mothers and breastfeeding mothers and disclose their HIV status in a document that amounts to a public document. This is contrary to the provision of Sections 14, 17 18, 19, 20, 21 and 22 of the HIV & AIDS Prevention and Control Act 2006.
- II. There is the possibility that the concerted need for the information required by your Excellency may lead to forced and coerced disclosure of children's, women's and men's HIV status without proper counseling and support.
- III. The completed data matrix will link the identity of the children living with HIV, by school and home area. This, in our view, is not in conformity with the provision of the aforementioned laws.
- IV. The information collected in the specified format poses the risk of exposing the children, their guardians and women living with HIV to further stigma and discrimination, which will result in human rights violations.
- V. The networks of people living with HIV and other key stakeholders have not had a chance to participate or be consulted about this process as envisioned by Article 10 of the Constitution of Kenya.

In view of our submissions above we most humbly request your Excellency to immediately recall the instruction issued vide your letter of 23 February, 2015. We are happy to provide direction on how best the information you require can be captured without infringing on the rights of Persons Living with HIV.

Yours Faithfully,



Allan Maleche
Executive Director –KELIN



Nelson Otwoma
Executive Director – NEPHAK