

**STUDY ON  
HUMANS RIGHTS  
VIOLATIONS AGAINST  
PEOPLE LIVING  
WITH HIV AND AIDS  
IN KENYA**



# STUDY ON HUMAN RIGHTS VIOLATIONS AGAINST PEOPLE LIVING WITH HIV AND AIDS IN KENYA

July , 2012



## ***Disclaimer***

*The analysis and policy recommendations of this Report do not necessarily reflect the views of the United Nations Development Programme, its Executive Board Members or UN Member States.*

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**Kenya AIDS NGOs Consortium**

***Allan Ragi***  
**Executive Director**

## Foreword

Human rights are inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. While the United Nations Office on Human Rights observes that we are all equally entitled to our human rights without discrimination, this is not the case for people living with HIV (PLHIV) who are faced with various forms of human rights violations. Greater Involvement of People Living with HIV (GIPA) is a principle that aims to realize the rights and responsibilities of people living with HIV, including their rights to self-determination and participation in decision-making processes that affect their lives. Though the Paris AIDS Summit Declaration of 1984 acknowledged the key role of PLHIV in prevention, care and in the implementation of the policies and programs towards successful response to HIV and AIDS, to date the outcomes of GIPA are yet to be realized and violations of human rights against PLHIV go unaddressed.

It is against this background that, Kenya AIDS NGOs Consortium (KANCO) in partnership with the National Empowerment of People Living with HIV in Kenya (NEPHAK) and the National AIDS Control Council (NACC) and with technical and financial support from UNDP and UNAIDS embarked on an assessment on the Human Rights Violations against People Living with HIV in Kenya. KANCO commissioned Kenya Legal and Ethical Issues Network (KELIN) to carry out the study as part of a broader project by KANCO on Enhancing Greater Involvement of PLHIV and building partnership among civil society organizations.

This study was conducted to specifically establish awareness levels of human rights, human rights violations and legal instruments by PLHIV as well as determine the experiences of discrimination of PLHIV and also investigate the denial of human rights as experienced by PLHIV. The study established that human rights violations and discrimination against PLHIV occur in the family, community, at the workplace, in schools and in prisons. The family environment creates the context within which most human rights violations occur. Health and medical centers routinely also fail to recognize the right to privacy of PLWHIV, and neither are staff well oriented to issues of Human Rights.

This is a worrying state in our country today given the progress we have made in the response to the HIV epidemic, given the understanding amongst the study respondents regarding the human rights legislation related to PLWHIV, there is urgent need for more investment in community education on human rights and as well as developing a National Human Rights Strategy to respond to this challenge. It is also important to orientate PLHIV and other key stakeholders on the content of the constitution of Kenya on the bill of rights as well as the content of the HIV & AIDS Prevention & Control Act 2006.

Health Service providers and state officers too should be engaged and equipped with the knowledge to identify and address Human Rights violations and discriminations suffered by PLWHIV.

**Kenya AIDS NGOs Consortium (KANCO)**



**Allan Ragi**

*Executive Director*

## Abbreviations

CAJ	-	Commission on Administrative Justice
CSOs	-	Civil Society Organizations
FGD	-	Focus Group Discussion
GEC	-	Gender and Equality Commission
HIV	-	Human Immuno-deficiency Virus
ID	-	Identity Card
KANCO	-	Kenya AIDS NGO Consortium
KELIN	-	Kenya Legal and Ethical Issues Network on HIV and AIDS
NACC	-	National AIDS Control Council
NEPHAK	-	National Empowerment Network of People Living with HIV in Kenya
PLHIV	-	People Living with HIV
UNDP	-	United Nations Development Program

## Executive Summary

This is a report commissioned by the Kenya AIDS NGO Consortium (KANCO) as part of a project entitled Enhancing Greater Involvement of People Living with HIV & AIDS and building partnerships among Civil Society Organisations, with funding from the United Nations Development Program (UNDP). The research was carried out by the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), on the human rights violations experienced by people living with HIV (PLHIV). The National Empowerment Network of People Living with HIV in Kenya (NEPHAK) identified the participants for the research, arranged access to them for the researchers. The study investigates the awareness levels of PLHIV on the concepts of human rights violations and discrimination. It also investigates their awareness of human rights legal instruments and institutions amongst PLHIV. The study seeks to determine the rights that PLHIV consider important and experiences of discrimination and violations of human rights within different contexts based on HIV Status. Finally, the study looks at the channels of redress followed by PLHIV when they face human rights violations.

The study was conducted in 15 counties by a team of eight research assistants. A questionnaire was administered to 105 PLHIV who also participated in 17 focus group discussions (FGDs). The FGDs were aimed at generating in depth information on human rights related issues to complement the data gathered quantitatively. The FGDs allowed for further deliberations in an interactive setting.

Some of the major findings of the study are:

- There is a general understanding of the concepts of human rights violations and discrimination amongst the survey participants. However, this knowledge remains basic.
- There is awareness of legal institutions and instruments dealing with rights violations and HIV and AIDS issues however, this is not accompanied by knowledge on their provisions or functions.
- Human rights violations and discrimination against PLHIV occur in the family, community, and at the workplace, in schools, and in prisons. The family is the context within which most human rights violations occur, and health and medical centres routinely fail to recognise the right to privacy of PLHIV.
- The majority of PLHIV fail to report cases of human rights violations because they do not believe that proper action will be taken.
- There is poor awareness of the channels of redress when individual's rights are violated.

These and other findings form the basis of analysis and discussion of this report.

In summary, chapter 1 contains an analysis of the research methodology used, and gives an overview of the demographics of the

participants who took part in the surveys and focus group discussions. The research was based on a structured questionnaire administered to 105 respondents in the survey areas, as well as focus group discussions with the same participants.

Chapter 2 gives an overview of the legal framework on HIV and AIDS in Kenya, including the HIV Prevention and Control Act 2006, The Constitution of Kenya 2010, the National Gender and Equality Commission, and the Equity Tribunal.

The research findings are analysed in chapters 3 and 4, including an assessment of to what degree people know about and understand the relevant legal framework related to HIV and AIDS, and an analysis of their own experiences of discrimination. Participants had only a very general understanding about the meaning of human rights violations and of the content of the legal framework on HIV and AIDS. They had a stronger understanding of the meaning of discrimination, which was a common experience for the participants in all contexts including the family, community, the workplace, and when accessing public services.

The participants were asked for examples of their own experiences of human rights violations, and these are documented in Chapter 5. The three major rights respondents stated they had been denied were the right to privacy and confidentiality about their HIV status, right to inherit property, and the right to work. Very few of the respondents sought redress for human rights violations through the courts of law, and most of them preferred to seek redress through the church, or via alternative forms of dispute resolution such as chiefs and councils of elders.

The final recommendations addressing the findings are provided in Chapter Six of the study report. The recommendations include community legal education; training of service providers and state officers; channels or mediums of communication; policy work; and access to justice.



# 1 CHAPTER ONE: The Survey and Focus Group Discussions

## 1.1 Introduction

This report presents and discusses the findings of a study to investigate the HIV and health related human rights violations that are experienced by people living with HIV (PLHIV) in Kenya. The study was commissioned by the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) as part of a broader project by Kenya AIDS NGO Consortium (KANCO) entitled Enhancing Greater Involvement of PLHIV and Building Partnerships among Civil Society Organizations. The survey is intended to inform strategies and programmes which focus on advocacy for increased access to justice and legal redress for PLHIV.

The study was conducted between November 2011 and January 2012. Field data was collected from 105 participants taken from 15 counties across the country. The counties include: Nairobi City, Busia, Kakamega, Nakuru, Samburu, Uasin-Gishu, Mombasa, Kwale, Meru, Machakos, Garissa, Muranga, Kisumu, Kisii, and Kiambu counties.

## 1.2 Objectives of the Survey

The survey was guided by specific objectives which were investigated along a thematic framework as follows:

- a) Establish awareness levels of human rights, human rights violations, and legal instruments by PLHIV.
- b) Determine the experiences of discrimination of PLHIV.
- c) Investigate the denial of human rights as experienced by PLHIV.
- d) Establish awareness of redress mechanisms and the extent of their usage by PLHIV.

## 1.3 Methodology

The survey employed both quantitative and qualitative methods of data collection. Quantitative data was derived through the administration of a structured questionnaire to 105 respondents in the survey areas. The respondents were purposively sampled through their connection with the National Empowerment Network of People Living with HIV in Kenya (NEPHAK) who assisted in their mobilization.

The respondents were further involved in focus group discussions for in depth deliberation of the thematic issues within an interactive setting. Thus whilst the quantitative data measures the frequency of occurrences and knowledge of human rights, the qualitative data goes further in capturing the intricacies of the experiences to enrich the quantitatively derived information.

## 1.4 Data Management

The quantitative data was coded and entered into a spreadsheet to allow for analysis using the Scientific Package for Social Scientists. Qualitative data was collated to allow for inferences and judgments to be made.

## 1.5 Sample Demographics

### 1.5.1 Age of respondents

The majority of the respondents who participated in this study were aged between 36 and 45 years (43 percent), followed by those aged between 26 and 35 years (26 percent). Young people aged between 18 and 25 made up seven percent of the sample. The entire age distribution is presented in Figure 1.

### 1.5.2 Male-female ratio

A higher percentage of females (63 percent) were interviewed in the study compared to men (37 percent). The skewed gender representation in favour of women does not necessarily reflect that there is a higher representation of women with HIV than men or that the study was biased towards selecting females. It is likely indicative that HIV positive women may be more open towards discussing HIV related issues as opposed to men.

### 1.5.3 Level of education

The majority of the respondents (39.4 percent) had completed their high school education as shown in Figure 2. Another 33 percent had completed their primary education, and only 14 percent had completed college, with two percent of those being university graduates. This information is particularly relevant for decision making on how to create awareness amongst the population.

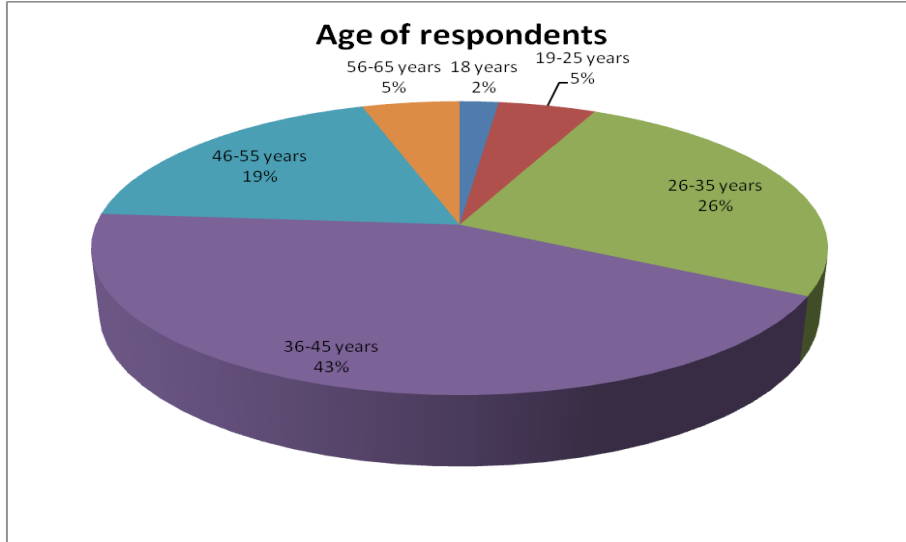


Figure 1: Representation by age

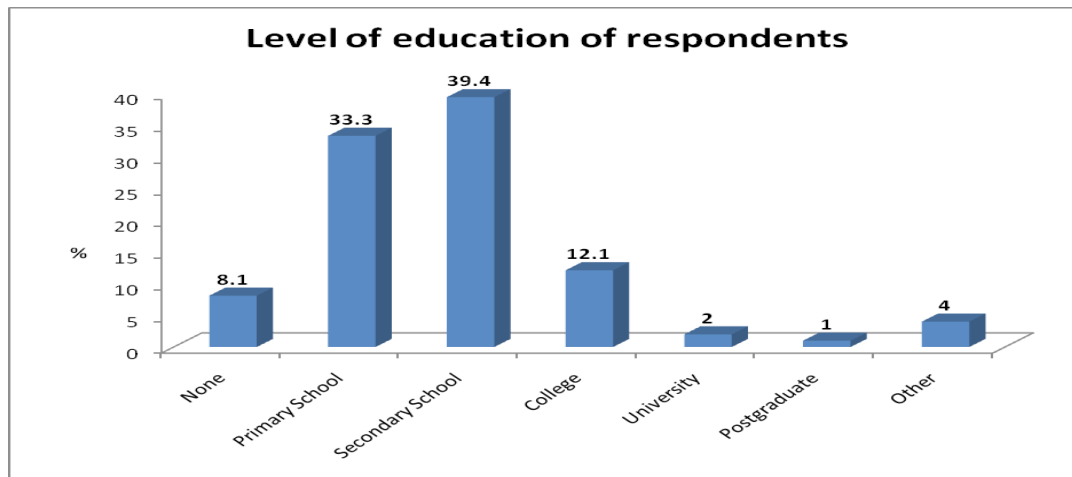


Figure 2: Level of education

### 1.5.4 Occupation

As presented in Table 1a, the majority of the respondents are traders (19.1 percent). This is followed by those engaged in the informal sector (13.4 percent) and farmers (10.5 percent).

**Table 1a: Occupation**

Profession	(%) of respondents	Number of respondents
Trader/business person	19.1	19
Manual worker/Jua kali artisan	13.4	14
Agricultural worker/Farmer	10.5	11
Community health/social worker	9.7	10
Professional	7.6	9
Homemaker	6.7	7
Peer counsellor/educator	4.9	6
Office employee	3.9	4
None	3	3
Hairdresser/Salonist	2	2
Sex worker	1.9	2
Pupil/student	1.9	2
Other	4	4
No response given	11.4	12

Further investigation on employment status reveals that the majority of the respondents (28.6 percent) are self-employed as shown in Table 1b. A significant percentage (18 percent) are volunteers.

**Table 1b: Employment status**

Employment Status	(%) of respondents
Self employed	28.6
Unemployed	26.7
Volunteer	18
Community based worker	4.9
Employed in Private company	4.8
Employed in public company	4.8
Other	2.6
Part time worker	1.9
Domestic worker	1
Supported person	1
No response	5.7

### 1.5.5 Income level

A significant proportion of the respondents (32.4 percent) earn only up to Kshs 6,000, whilst another 8.6 percent lack any income. The income levels of the respondents make it likely that they would face difficulty in accessing quality healthcare for treating minor ailments and opportunistic infections. Only 3.8 percent of the sample earn above KShs 25,000.

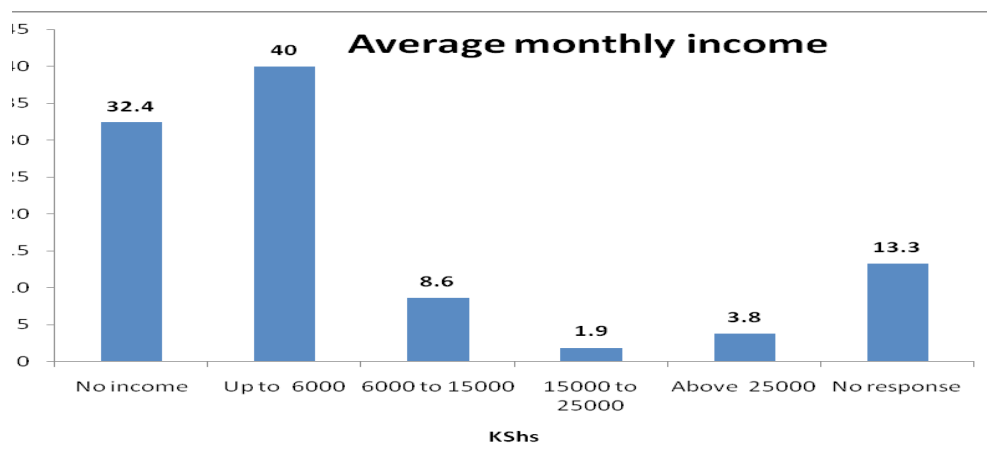


Figure 3: Monthly income

### 1.5.6 Marital status

Nearly half the respondents were married (45 percent). Those who were widowed constituted 26 percent of the sample, followed by single people (20 percent), divorced (seven percent) and those who were cohabiting (two percent). Some respondents revealed that their spouses had deserted them when they discovered their HIV positive status. The findings also reveal that HIV is mostly prevalent amongst married couples and not singles.

### 1.5.7 Religion

The majority of the respondents interviewed said they were Christian (79 percent). Muslims comprised 16 percent of the sample and five percent did not give a response to the question. The sample demographics are consistent with the religious composition of the nation which is 80 percent Christian. The researchers were not able to engage with the Asian community for the purposes of this study.

Figure 4: Marital status

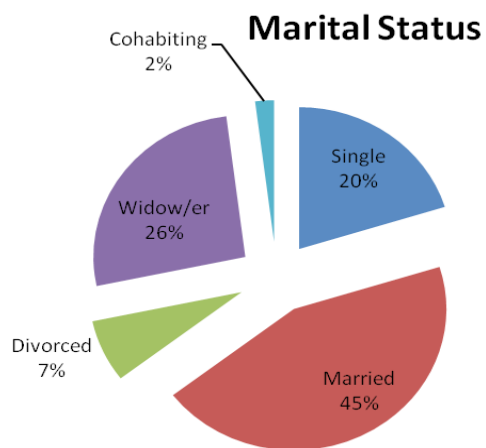
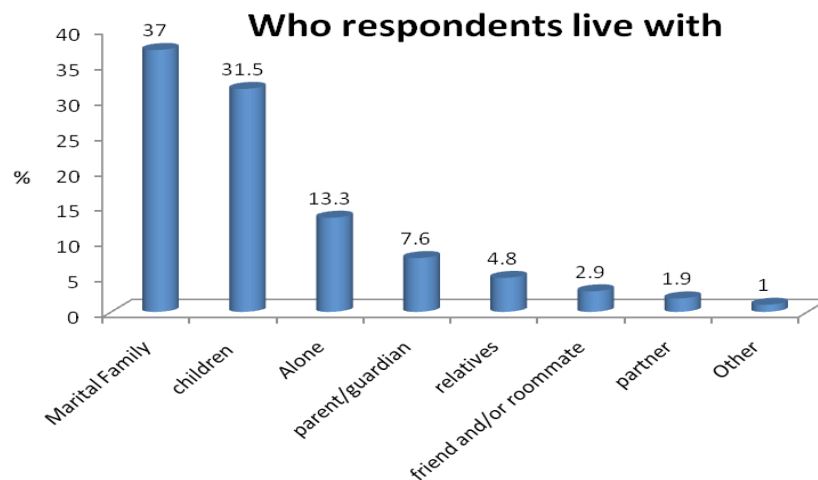


Figure 5: Who respondents live with



### 1.5.8 Living arrangements

The majority of the respondents (37 percent) reside with their marital family (spouses). A significant 31.5% live with their children, and a small proportion of these include grandchildren and orphaned children of relatives (five percent). Only 13.3 percent live alone, while a minority live with relatives other than their immediate family.

## 2 CHAPTER TWO: The Legal Framework on HIV and AIDS in Kenya

### 2.1 Human Rights

Human rights are universal legal guarantees protecting individuals and groups against actions by governments and other third parties which interfere with fundamental freedoms and human dignity.

Any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, HIV status or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of any human rights constitutes a violation of human rights. The Government and every State organ has a fundamental duty to observe, respect, protect, promote and fulfill human rights (Article 21 of the Constitution of Kenya 2010).

#### 2.1.1 Examples of common forms of HIV-related human rights abuses

Nature of Right	Example of Common Abuse
Breach of right to privacy	<ul style="list-style-type: none"> <li>• Testing a person for HIV without their informed consent.</li> <li>• Disclosure of a person's HIV status without consent.</li> </ul>
Breach of right to the highest attainable standard of healthcare	<ul style="list-style-type: none"> <li>• Denial of treatment to PLHIV.</li> <li>• Failure to take progressive steps to ensure access to anti-retroviral drugs, treatment for opportunist infections for PLHIV.</li> <li>• Discrimination by health insurance companies against PLHIV</li> <li>• Requirement by government or private entities for compulsory HIV tests before provision of essential medical services.</li> </ul>
Breach of right to a family life	<ul style="list-style-type: none"> <li>• Forced sterilisation of women living with HIV.</li> <li>• Denying HIV+ people the right to marry solely because of their HIV status.</li> </ul>
Breach of right to work	<ul style="list-style-type: none"> <li>• Refusal of employment due to HIV status.</li> <li>• Dismissal from employment due to HIV Status.</li> </ul>
Breach of right to property	<ul style="list-style-type: none"> <li>• Disinheritance of widows following the death of their husbands due to AIDS.</li> </ul>
Breach of right to integrity of the person	<ul style="list-style-type: none"> <li>• Verbal, physical or sexual abuse as a response to HIV status.</li> </ul>

## 2.2 The Constitution of Kenya 2010

The Constitution of Kenya 2010 brought about far reaching changes to Kenya's legal framework, and it contains an advanced Bill of Rights which reinforces and expands upon the protections offered by the HIV & AIDS Prevention and Control Act 2006.

### 2.2.1 Non-discrimination

The Constitution provides protection against discrimination, including on the grounds of health status (Article 27). Discrimination relevant to PLHIV is addressed in a number of different contexts, including discrimination against HIV positive spouses, widows and orphans, whose rights to land, to marry and found a family, and to inheritance are recognized. Health insurance companies are no longer allowed to discriminate on the basis of health status, and where they do so for example by classifying HIV as a pre-existing condition, this must be 'justifiable' (Article 24). Gender discrimination is also explicitly addressed in several sections of the Constitution (Articles 26, 27(4), 40, and foundational principles at Article 10, Chapter 2) which forms an important basis for redress for the women who are frequently blamed for their husband or children's HIV infection on the grounds of presumed infidelity or sex work. In employment settings discrimination has been expressly prohibited in all areas including choice of candidate, promotion, transfer and dismissal of employees (Articles 27(4) and 41).

### 2.2.2 The right to the highest attainable standard of health

Article 43 of the Constitution provides for economic and social rights, including rights to accessible and adequate housing and sanitation; adequate food; social security; education; and the highest attainable standard of health, and nobody is to be denied emergency medical treatment;. For PLHIV the highest attainable standard of health can generally be achieved through access to ARVs, treatment of opportunistic infections, as well as the fulfillment of all of the other social economic rights which form the underlying determinants of health. Whether or not this is 'attainable' given the resource restrictions of the Kenyan Government is a matter for judicial interpretation. Similarly, what constitutes 'emergency' medical care remains to be defined more clearly in the context of HIV.

### 2.2.3 Mandatory testing

The previously widespread practice of mandatory testing for HIV without informed consent is no longer constitutional, as it violates rights to privacy and confidentiality (Article 31 (c)), and rights to protection of security of the person and freedom from degrading treatment and psychological torture (Articles 29(a), (d) and (f)), as well as rights to respect for the inherent dignity of all human beings (Article 28).

### 2.2.4 Customary practices

The Constitution allows for customary practices, and for alternative forms of dispute resolution, but only insofar as they do not contravene the Bill of Rights (Article 159) and the Constitution. This means that traditional customary practices which exacerbate the spread of HIV such as female genital mutilation, wife inheritance, and disinheritance of widows, can be challenged under the Constitution insofar as they conflict with the rights enshrined in the Bill of Rights.



### **2.2.5 Incorporation of international laws**

Kenya has ratified a number of international treaties and conventions, and further to Articles 2(6) and 2(5) of the Constitution of Kenya 2010 these now form part of Kenyan law, alongside the general rules of international law. This means that the provisions in all Kenyan laws must be interpreted with regard to key international standards, the key ones in the context of HIV being: the Universal Declaration on Human Rights (UDHR); the International Covenant on Economic Social and Cultural Rights; the UN Convention on the Rights of the Child; the Convention on the Elimination of all forms of Discrimination Against Women; the African Charter on Human and People's Rights; the African Charter on the Rights and Welfare of the Child. These treaties were incorporated into Kenyan law by the Constitution of Kenya 2010. In addition, although not legally binding, the Government must have regard to several international declarations and commitments it has signed up to including the Paris Principles on Greater Involvement of Persons Living with HIV and AIDS (GIPA) 1994; the United Nations General Assembly (UNGASS) Declaration of Commitment on HIV and AIDS 2001; the Abuja Declaration on HIV, TB and other opportunistic infections 2001; The United Nations General Assembly (UNGASS) Declaration of Commitment on HIV and AIDS 2006; and the Political Declaration on HIV & AIDS 2011.

### **2.2.6 Access to redress**

Prior to the Constitution of Kenya 2010, human rights cases could only be taken to the High Court which was costly and extremely time consuming. The Constitution of Kenya 2010 now allows human rights cases to be heard by magistrate's courts in certain circumstances, and provides that there should be no filing fees for such cases, as well as minimal procedural requirements. Interested parties such as the National AIDS Control Council (NACC) or other CSOs may also now join in human rights cases, to assist appellants with their case and to promote the wider public interest of such cases.

## **2.3 The Kenya National Commission on Human Rights Act, 2011, the National Gender and Equality Commission Act, 2011 and the Commission on Administrative Justice Act, 2011.**

The Constitution allows for the creation of the Kenya National Human Rights and The National Gender & Equality Commission (Article 59) which promotes both human rights, and the gender and equality mandate. Specifically Article 59(4) provides for restructuring of the Commission and the three stated commissions are successors to the Kenya National Commission on Human Rights Commission established by Article 59 of the Constitution and Public Complaints standing committee in the case of the Commission on Administrative Justice (CAJ). The majority of PLHIV who bear the brunt of discrimination and human rights abuses have been found to be women, and it is hoped that the three commissions and especially the National Gender and Equality Commission will promote programs that help build the capacity of networks of women living with HIV, and provide information about legal remedies available for HIV-related human rights abuses. Some of the violations faced by PLHIV have been occasioned by government organs and state officials in the delay of provision of services. The Commission on Administrative Justice has been given a wide mandate both by the Constitution and the Act, perhaps arising from the pressing need to address the rampant rise in maladministration and promote good governance and efficient public service delivery by enforcing the right to fair administrative action which is a fundamental right under Article 47 of the Constitution. The CAJ thus remains an important Commission that can be utilised by PLHIV.

## 2.4 The HIV & AIDS Prevention and Control Act 2006

The Constitution of Kenya 2010 adds value to the provisions of the HIV & AIDS Prevention and Control Act 2006. The 2006 Act came out of the work of the Taskforce on Legal Issues relating to HIV and AIDS which was established by the Attorney General in June 2001, following the declaration of HIV as a national disaster. The Taskforce was established to examine the legal and ethical issues related to HIV and AIDS, and the major issues identified by the taskforce formed the basis of the 2006 Act as follows:

- *HIV and AIDS Education and Information*: the Government has a duty to promote public awareness about the causes, modes of transmission, consequences, and means of prevention and control of HIV and AIDS through national education and information policies.
- *Safe Practices and Procedures*: blood and tissue donors must be screened for HIV, and all necessary precautions for the prevention of HIV must be taken in medical settings.
- *Testing, Screening & Access to Healthcare Services*: nobody should be compelled to undergo an HIV test as a precondition for employment, marriage, education, travel, or health insurance. Further, the results of any HIV test must be kept confidential.
- *Confidentiality*: privacy guidelines ensure that patients' records related to their HIV status are kept confidential and HIV status must not be disclosed without consent.
- *Transmission of HIV*: anyone who is aware of being infected with HIV has a duty to take precautions not to infect others, and knowingly or recklessly infecting another person is a criminal offence.
- *Discrimination*: nobody should be discriminated against on account of their HIV status in employment, education, travel, or choice of lodging.
- *Research*: researchers must adhere to guidelines for carrying out research involving PLHIV and must respect patient confidentiality and obtain proper consent.

The 2006 Act now comprehensively deals with HIV issues in Kenya and addresses all of the issues outlined above. The section on transmission of HIV is currently subject to a Constitutional case at the High Court of Kenya in Nairobi.

## 2.5 The Equity Tribunal

The 2006 HIV Prevention and Control Act also established the Equity Tribunal in Kenya, which was set up to hear complaints related to any breach of the rights provided for in the Act. The intention of the Tribunal is to speed up the judicial process for HIV related complaints which can take years to resolve through the Court process in Kenya. The Tribunal was designed to be accessible by PLHIV, and the panel were chosen for their expertise in matters related to HIV, health, and human rights, including at least one member who is openly living with HIV. After a long delay in becoming operational, the Tribunal first sat in January 2012. The Tribunal has great potential to bring about changes in the lives of PLHIV, although it currently remains under-resourced. However the Tribunal does not hear criminal matters as envisaged in section 24 of the HIV Prevention and control Act and section 26 of the Sexual Offences Act.

# 3 CHAPTER THREE: The Research Findings; Human Rights Violations & Discrimination against PLHIV

## 3.1 Level of Understanding of the Concept of Human Rights

The survey participants have a very general understanding of the concept of human rights as shown in Table 3a. Over half of the respondents (57 percent) had a general view of human rights as having to do with one’s entitlement, with 28.6 percent qualifying that the entitlement comes about by virtue of being a human being. A number of respondents (13.5 percent) equated human rights with basic needs such as the right to life, property, food, shelter and other necessities as shown in the table. A significant 8.6 percent of the respondents said that human rights are individual and thus unique to a person. Others equated human rights with freedom, and as synonymous with advocacy or fighting for rights. The remaining responses are as captured in the table below.

**Table 3a: Understanding of the term human rights**

	%
The fundamental rights one is entitled to by virtue of being a human being	28.6
What a person is entitled to	28.6
Basic issues like right to life, property, food, shelter, dignity, education, health	13.5
Individual rights in a society, unique to one person to the exclusion of others	8.6
Freedom or right to live as one would want to	7.7
Advocacy or fighting and defending the right of a person	5.8
Things that enable the enjoyment of life and dignity	4.8
Individual rights that determine humane treatment of persons	2.9
Respecting the rights of persons	2.9
Equality or non-discrimination	2.9
Laws that protect human beings	1.9
God given rights	1.9
Freedom of expression or opinion	1

Because the participants’ understanding of human rights was only very general, after questioning the participants on their understanding of the concept of human rights, the researchers explained in detail what different human rights were using examples. They then gave examples of human rights violations using the same examples. The researchers also explained the concept of discrimination from a layman’s perspective as well as its legal meaning, through the use of examples. The participants

were then invited to share what they now understood discrimination to mean and whether they had experienced the same in their own capacity or heard of others who had experienced discrimination.

There was a common and general understanding across the board amongst the focus group participants of what human rights are. In essence the discussants agreed that they are the fundamental rights which a person is entitled to because they are a human being.

Further, there was also a generally good understanding of what rights respondents were entitled to both as Kenyans and PLHIV. In clarifying why the right to health, work and life are important the discussants gave the following reasons:

**Right to health:** For PLHIV it is so important to have available medicines and related services to enable them to stay healthy and alive. When the government fails to avail medicines PLHIV suffer as they cannot easily access and afford private health care.

**Right to Work:** When PLHIV are taken care of medically they will be able to work and effectively contribute to the economy of the country as they are quite a large population. PLHIV are able to work and do any job. They should be allowed to perform to their maximum capacity

**Right to marry and found a family:** They need to associate and feel loved. This will reduce self-stigma and enable them continue with a healthy life. They also have a right to continuity of lineage. You will have people named after you and your family name will continue.

**Right to Life:** If you give PLHIV the knowledge that they too have a right to life then they will be discouraged from taking their lives. Others will also respect this right and discourage denial of other rights.

**Right to education:** Children living with HIV can live a full long life. With education they can have the knowledge to fend for themselves and later take care of themselves and others. They will then have equal opportunities like other children.

### 3.2 Rights Respondents Considered Important to PLHIV

Respondents were asked to state the rights they considered important for PLHIV. The rights that prominently featured as most important were the right to highest attainable standard of health including reproductive health care, which was cited by 55.3 percent of the respondents, right to equality and non-discrimination (41.9 percent) and the right to work (27.7 percent). Other rights considered important were the right to life, to marry and found a family and to adequate food. Other rights mentioned are as captured in Table 3b.

**Table 3b: Rights that are important to PLHIV**

	%
The right to the highest attainable standard of health including reproductive health	55.3
Right to equality and non- discrimination	41.9
Right to work	27.7
Right to life	20
Right to marry and found a family	19.2
Right to adequate food	15.4
Right to freedom of association	14.4
Right to education	13.4
Right to property	11.5
Right to Privacy	8.7
Right to housing and reasonable standards for sanitation,	7.8
Right to emergency medical care	6.7
Right to human dignity	6.7
Right to freedom of expression	6.7
No Answer/Don't know	4.9
Right to access information	3.9
Right to access justice	3
Right to freedom and security of the person	2.9
Right to access public services	2
Right to freedom of movement	1
Right to social security	1
Right to goods and services of reasonable quality	1
Right to protection from abuse, neglect and harmful cultural practices	1
Freedom of conscience, religion, belief and opinion	1
Freedom from slavery, servitude and forced labour	1
Right to clean and safe water	1

### 3.3 Understanding of the Concept of Human Rights Violations

There was a comparatively lower understanding of the meaning of human rights violations vis a vis the concept of human rights as shown in Table 3c. Thirty eight percent of respondents said human rights violations mean the denial of basic necessities or entitlements or rights. A significant 14.4 percent did not have any understanding of the concept. Others equated human rights violations with neglect or mistreatment (7.7 percent each), whilst others said they were simply going against one's rights (6.7 percent). A proportion of the respondents identified human rights violations as denial of rights because of their HIV status which suggests that they have personal experience of human rights violations as a result of being HIV positive.

**Table 3c: Understanding of the term human rights violation**

	%
Being denied basic necessities or entitlement or rights	38.1
Don't know	14.4
Neglect or mistreatment	7.7
Discrimination	7.7
Going against one's rights	6.7
Being denied medicine or health services	6.7
Denied rights because of your HIV status	5.8
Abuse or trampling on rights of people	5.8
Going against what the law provides for human rights	4.8
Stigmatization	3.9
Not recognizing one's rights	3.9
Depriving one of the right to a dignified life	3
Denial of access to services rightfully deserved	2.9
Discrimination at the work place and unfavourable working conditions due to HIV status	2.9
Being denied freedom to express yourself	2.9
Degrading treatment	2
Violence against a person	2
Action taken without my consent	1
Advancing one's rights without due consideration to others	1

### 3.4 Rights that are Violated at Different Levels of Society

Respondents were further asked to identify rights that are often violated at the four different levels of family, community, the workplace, and while accessing basic services. Their responses are below.

#### 3.4.1 Family setting

At family level, the rights most likely to be violated are rights to equality and non-discrimination (31.7 percent), right to property (17.8 percent) and the right to freedom of association (9.9 percent).

**Table 3d: Rights violated at family level**

	%
Right to equality and non-discrimination	31.7
Right to property	17.8
Right to freedom of association	9.9
Right to human dignity	7.4
Right to marry and found a family	5.9
Right to education	5
Right to adequate food	4.5
Right to freedom and security of the person	3.5
Right to privacy	3
Right to freedom of expression	2
The right to the highest attainable standard of health	2

Other rights that were mentioned by at least one percent of the respondents included: the right to protection from abuse, neglect and harmful cultural practices; right to life; the right to freedom of conscience, religion, belief and opinion; the right to housing and reasonable standards for sanitation; the right to clean and safe water; the right to social security; and the right to parental care.

Amongst the focus group participants, with regard to the types of violations that happen at the family level rejection by family members was high on the list. One respondent said this:

*"I was told by my brother that I am not supposed to play or carry his kids and my daughter who isn't HIV positive is not allowed to associate with them. My own husband left me and refused to give his I.D. so that our daughter could get a birth certificate, so I had to ask someone else who isn't her father to assist me."*

Among discordant couples, if the HIV positive person happened to be female the reaction would be life threatening as they are sent away from their homes and have to carry the burden of raising children single-handedly. On the other hand amongst men the violations were initiated by the in-laws rather than the woman. Some men experienced violation by their in-laws, by their wives being taken away and being prevented from returning to their matrimonial homes. Some had this to say.

*“I have even experienced it from my mother who wouldn’t enter my house because she thought I was infectious. She would come and stand at my door and not enter my house at all. I came to realise that it was because she didn’t have the right information about HIV and I have tried to educate her on it but because she is elderly changing her way of thinking is difficult.”*

*“When I wash dishes people will not eat on them, even my own family, and if I give anyone food they will not eat, they gossip about me, and I am always the topic of conversation at all meetings.”*

### 3.4.2 Community level

At community level, the right to equality and non-discrimination featured again as a right that is often violated (33.3 percent), followed by the right to freedom of association (22 percent) and right to human dignity (8.5 percent).

**Table 3e: Rights violated at community level**

	%
Right to equality and Non- discrimination	33.3
Right to freedom of association	22
Right to human dignity	8.5
Don’t know	7.3
Right to privacy	5.1
Right to freedom of expression	5
Right to property	2.8
Right to work	2.8
Right to housing and reasonable standards for sanitation	2.8
Right to adequate food	2.8
Right to freedom and security of the person	2.3
Right to access to information	1.7
Right to clean and safe water	1.1
Right to life	1
Freedom of conscience, religion, belief and opinion	1
Right to freedom of assembly, demonstration picketing and Petition	1
Right to education	1
Right to marry and found a family	1



In the focus group discussions, women reported experiencing violations firstly from their husbands and in-laws and then spreading to the wider community. For example women cited acts such as not being allowed to milk the family cows because they would infect them with HIV. One woman reported to have milked one cow before the ban was imposed, after that, the particular cow was branded to belong to a HIV positive person and therefore was kept away from the rest of the animals. Another woman whose husband had died of HIV reported to be experiencing harassment from the brother-in-law and the father-in-law. The two were repeatedly demanding food from her without giving her any money and she had to go out and do menial jobs to buy food for the father-in-law and brother-in-law. If she didn't do that there would be no peace in the home. The brother-in-law had also attempted to rape her eldest daughter who was HIV negative but they beat him and sent him away. Upon reporting the matter to the children's department there was no legal action taken allegedly because he said he had been drunk at the time. He was only warned and told not to repeat the acts but naturally he went home and started threatening the woman and her children.

*"My neighbour and I were fighting over the boundary to our shambas, and he physically assaulted me; he wanted to move to barrier because I had been sick and I think he thought I was at my death bed and so he could do anything he wanted; but when I went to report to the police, they were unwilling to help, and they were very rude to me, one even went as far as telling me that I will soon die, so I shouldn't be getting into such disputes since I have no one to leave the property to."*

A further issue that came out strongly in nearly all the counties during the FGDs was that there was a grave infringement on women's rights to property or inheritance. The most common was the element of stigma which eventually led to their being ostracised from their homes and families leaving a majority with nowhere to go. Others reported being denied the right to property through land grabbing by their neighbours who claimed they were going to die anyway. They said this:

*"When I was widowed I was chased away from my marital home and thrown out with only the clothes on my back, my in-laws alleged that I had brought HIV into their family and killed their son and so they refused to let me stay in my matrimonial home and despite the intervention of the chief nothing much was resolved."*

*"In church they deny our membership and our contribution to the church. This is because as a church they do not bury any person who has died as a result of HIV related ailments. So to safeguard themselves they excommunicate you so that you cannot claim burial rights. You are a sinner."*

### 3.4.3 The workplace

At the work place, most survey respondents said the right to work was often violated (27.5 percent), equality and non-discrimination came in a close second at (25.5 percent) and the right to privacy ranked high (8.5 percent). It is notable that a significant 13.8 percent of respondents were not aware that human rights could be violated at the workplace which means they could easily be prone to having their rights violated without their knowledge. However, these respondents may be amongst those who have not been formally employed and are therefore not familiar with the work environment. Other rights mentioned by at least one percent of the respondents were the right to goods and services of reasonable quality; the right to access to information; the right to freedom of movement; the right to own property; and the right to adequate food.

**Table 3f: Rights violated in the work place**

Right to work	27.5
Right to equality and non-discrimination	25.5
No Answer/Don't know	13.8
Right to privacy	8.5
Right to freedom of association	7.8
Right to human dignity	4.6
Right to informed consent during a HIV test	3.3
Right to freedom of expression	2.6
The right to the highest attainable standard of health including reproductive health	2.6

With regard to the workplace setting one focus group discussant in Samburu described how he had been dismissed from his place of work. He informed his employer one day that he had to collect drugs and thereafter problems started, culminating in his dismissal. In Naivasha, a respondent was dismissed upon her return to work from medical leave.

### 3.4.4 Accessing public services

The findings reveal the rights that are violated when PLHIV seek to access public services. Whilst the majority of respondents (21.6 percent) were unaware of the rights that can be violated when accessing public services, the right to equality and non-discrimination continues to be the major right cited (19 percent). The right to the highest attainable standard of health also ranks highly as a public service that is often violated for PLHIV (16.7 percent). PLHIV also state that their right to dignity is often violated when accessing services (7.6 percent) as well as their right to privacy (7.6 percent).

**Table 3g: Rights violated when accessing public services**

No Answer or don't know	21.6
Right to equality and non-discrimination	19
The right to the highest attainable standard of health including reproductive health	16.7
Right to human dignity	7.6
Right to privacy	7.6
Right to access to information	6.9
Right to access public services	5.6
Right to emergency medical care	4.2
Right to freedom of association	2.1
Right to freedom of conscience, religion, belief and opinion	1.4
Right to informed consent during an HIV test	1.4
Right to life	1
Right to freedom and security of the person	1
Right to adequate food	1
Right to education	1
Right to marry and found a family	1
Right to goods and services of reasonable quality	1
Right to fair administrative action	1
Right to access justice	1
Right to a fair hearing	1

Focus group participants in Samburu stated that access to food and non-food materials provided by the numerous state and non-state agencies working in the area intended for PLHIV did not benefit the PLHIV. For example only two out of 69 community health workers are HIV positive. Since the community health workers are the ones that forward the names of HIV positive persons to the state and non-state agencies, there was a tendency for them to receive bribes from HIV negative persons in exchange for their names being listed as beneficiaries.

The violation of rights of PLHIV at health centres is common and discussants stressed the importance of the need for sensitization on the rights of PLHIV within the health centres. Violation of the right to privacy was the most commonly cited, for instance in central province where the medical files of PLHIV were of a different colour than those of other patients. Further, they also claimed that they

were segregated from other patients at the health centres and the staff at the centres were blatantly rude and treated them with a lot of contempt. They unanimously agreed that this treatment was discriminatory, unfair and generally propagated stigmatization in the community.

*“Because of my disability, I get discriminated, on two fronts. I have always been treated differently because of my disability and now as I am HIV positive it is even worse. When you go to hospital getting someone to attend to you is difficult and since the doctor doesn’t understand sign language I have no way of communicating to them and they never write down things so that I can read, they treat me as though I am blind as well. I think that facilities for disabled people should be there in the hospital particularly for people like me who are poor and cannot afford to pay for interpreters.”*

Discussants in Eldoret cited long hours of waiting, being turned away from collecting their drugs and being told to stay away for as much as a week if they defaulted by even a day. In Naivasha, the respondents stated that the clinic from where they collect their drugs is clearly marked as soon as you enter the hospital premises and therefore everyone would know about your status just by having gone towards that direction. They also stated that the district hospital has designated a particular ward for PLHIV and they would test a patient without their consent or knowledge and a patient would only know of their status when they got admitted to that ward. They also stated that though they had access to ARVs at the public hospital in Naivasha, they did not get the correct information from the health providers nor was the proper medical regime followed and therefore some PLHIV would transfer and attend the Kijabe Hospital which was stricter and took care of the PLHIV more seriously.

*“I went for ARVs and I was abused by a medic. I am always made to wait for hours before I can get my medication and sometimes I don’t have the fare to come get the drugs and they still keep giving me the medicine in bits, which means that I forgo taking the medication on some occasions. The nurses who attend to me also continuously lecture me when giving me the drugs, and the services I receive at Teso district hospital are very poor, the medics are slow in serving and instead of offering prompt medical help they keep us waiting for long hours, during which if you are in critical condition you can die as a result of their negligence.”*

In Muranga County there was a case whereby a participant upon getting tested was misadvised of his status and lived for over five years believing that he was HIV positive. He only came to learn of the misdiagnosis after he was retested at a seminar he attended in Uganda which confirmed that he had been negative throughout and subsequent tests have confirmed this. He however harbours no hard feelings and has been a pillar of support to PLHIV in the area as they embraced him during his trying times after everyone else had deserted him.

### 3.4.5 The educational setting

Focus group participants cited that their children were being turned away from getting registered in schools on account of their status or experiencing taunting by other pupils on account of their parent or guardian’s HIV status.

### 3.4.6 The prison setting

In the focus group discussions, various rights were also reported to be violated within the prison setting. This was reported in Eldoret where the discussant said that the prison authorities usually carry around the prisoners` cards announcing loudly in public the names of the people who are supposed to take their drugs. The prison guards further usually force the prisoners to take the drugs at the same time telling them to shut up when they attempt to indicate that it is not yet their time to take drugs. One discussant in Samburu also reported having been denied the opportunity to call home and ask her people to bring her the drugs when she was arrested and thrown in a police cell after another woman had maliciously reported her for knowingly infecting her husband with HIV.

### 3.5 Denial of Rights Due to HIV Status

Respondents were asked whether they had ever faced denial of certain rights based on their HIV status and the responses are as captured in Table 3h. The three major rights respondents stated they had been denied were the right to privacy and confidentiality about their HIV status (60.4 percent), right to inherit property (50.5 percent) and the right to work (48 percent).

**Table 3h: Have you ever been denied any of the following rights based on your HIV Status?**

	Yes	No
a) Right to vote?	2	98
b) Right to inherit property?	50.5	49.5
c) Right to marry and found a family?	26	74
d) Right to informed consent during a HIV test?	23.5	76.5
e) Right to privacy and confidentiality about your HIV status?	60.4	39.6
f) Right to work?	48	52
g) Right to access medical services?	23.3	76.7
h) Right to access emergency medical treatment?	6.8	93.2
i) Right to access information relating to HIV matters?	19.4	80.6
j) Right to access remedial action	29.8	70.2
k) Other - right to fair hearing at the workplace	2	98

### 3.6 Exposure to Violence Due to HIV Status

Respondents were questioned on whether they have been exposed to any form of violence as a result of their HIV status. The majority (62 percent) said they had experienced some form of violence as opposed to those who had not (38 percent).

The main form of violence experienced by the respondents was psychological violence which was cited by 56.2 percent of respondents as shown in Table 3i. Sexual assault (one percent) and abuse or harassment (two percent) are also forms of violence that are experienced by PLHIV, but to a lesser extent than the other forms of violence.

**Exposure to violence due to HIV Status**

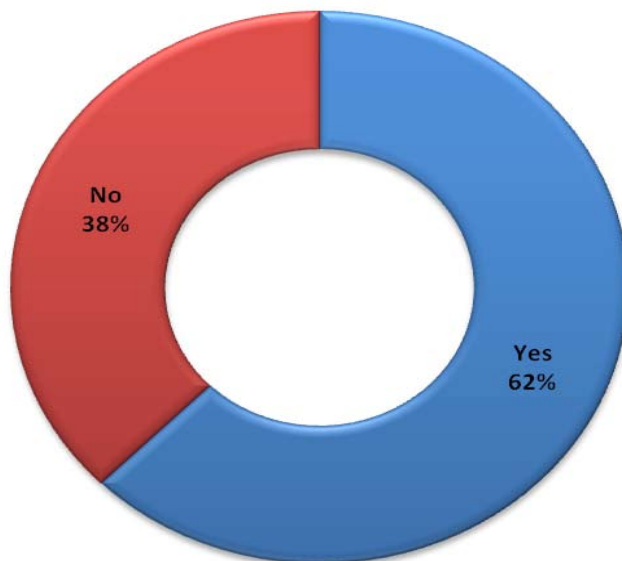


Figure 6

**Table 3i: Form of violence experienced**

	%
Psychological violence: insults, spitting, continuous humiliation, ignoring	56.2
Beating, hitting with objects, kicking	21
Dispossessing / destruction / damaging of personal property	18.1
Threats or blackmails	14.3
Throwing objects on you	5
Rape or an attempt for rape	4
Sexual abuse (harassment)	2
Sexual (physical) assault	1

### 3.7 Awareness Levels on Discrimination

The survey respondents had a general knowledge of what the term discrimination means as shown in Table 3j. The majority (29.3 percent) viewed it as the denial of the right to association and isolation. Another (28.6 percent) viewed it as unfair, differential or prejudicial treatment and denial of equal opportunity. A further 15.8 percent equated it with degrading or negative treatment.

**Table 3j: Understanding of the term discrimination**

Denial of right to association/isolation	29.3
Unfair/differential/prejudicial treatment/ denial of equal opportunity	28.6
Degrading treatment/negative treatment	15.8
No Answer/don't know	8.3
Neglect	5.3
Stigmatization due to one's status	4.5
Inaccessibility of resources/services	3
Failing to recognize and meet the needs of vulnerable groups	1.5
Denial of basic rights	1.5
Disrespect	1.5
Where a person is oppressed and nothing he needs is done on time	1

The focus group discussants stressed the need to be treated equally and not be stigmatized and isolated. They expressed the desire to be treated the same as those who are not HIV positive or rather not to be treated differently after declaring their status. The discussants were also of the opinion that it is important for HIV negative persons to understand that the positive persons are not different from them and that the only difference is the HIV status.

The level of awareness from the general public on issues surrounding HIV and AIDS was considered to be dangerously low which translated into stigmatization and ostracisation of PLHIV.

The level of economic empowerment among PLHIV was felt to be quite low which contributed to stigmatization within the community.

### 3.8 Experiences of Discrimination

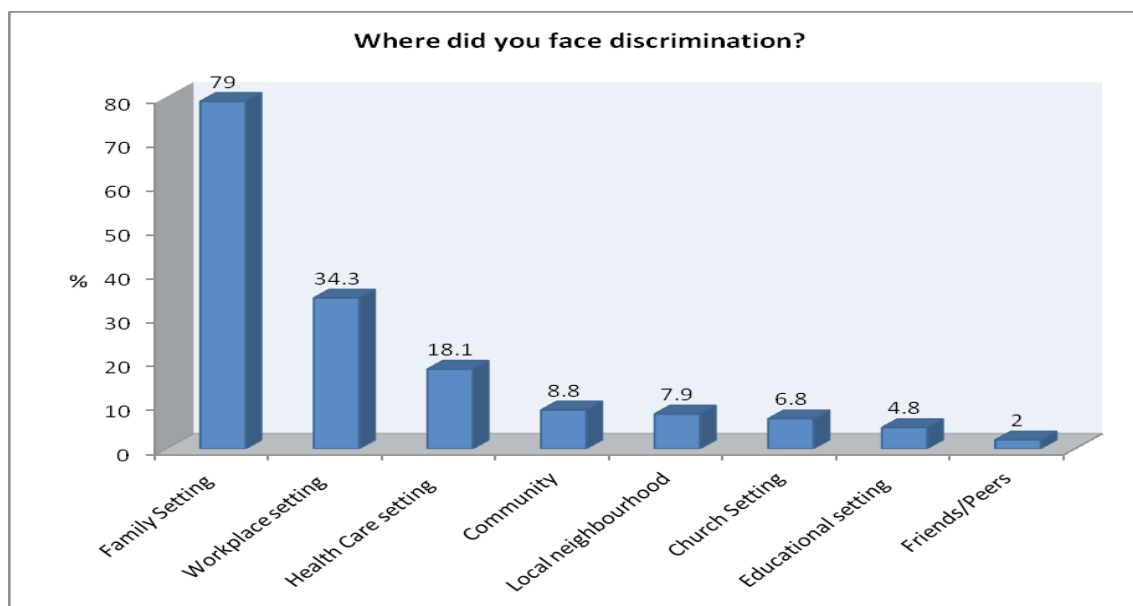
The study established that cases of discrimination against PLHIV based on their perceived or real positive status are very high. Nearly all the respondents (94.3% percent) said they had experienced discrimination in one form or another

### 3.9 Environmental Context of the Discrimination

The findings reveal that PLHIV are most likely to experience discrimination within the family setting (79 percent) as shown in Figure 7. The workplace comes in second at (34.3 percent) and third is health care institutions (18.8 percent).

Few respondents had experienced discrimination in educational settings (4.8 percent) although there is need to eliminate discrimination in the school environment. Churches were cited by 6.8 percent of respondents as practicing discrimination against PLHIV. Workshop settings were a problem for a minority (one percent), and research contexts did not receive any mentions.

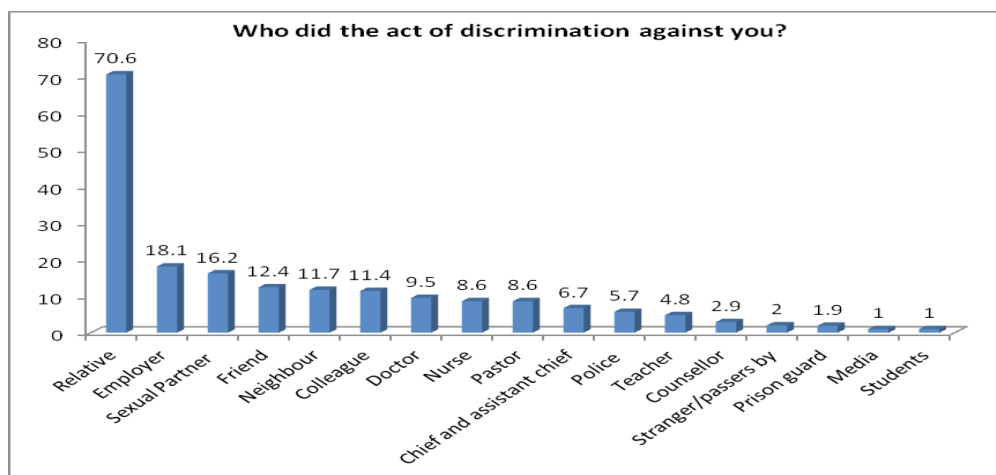
Figure 7



The study probed respondents further to identify the actors that had practiced discrimination against them and the findings are as captured in Figure 8.



Figure 8



Relatives of PLHIV were the most culpable actors (70.6 percent), followed by employers (18.1 percent) and sexual partners (16.2 percent).

### 3.10 Nature of the Discrimination

The cases of discrimination were numerous and varied. The most notable cases experienced by several persons are captured in Table 3k.

Table 3k: Discriminatory action

	%
Stigmatization, disassociation and isolation by extended family members	13.1
Denial of the right to inherit property	10.9
Termination from employment	8.6
Isolation from nuclear family	7.4
Desertion/divorce by spouse when they discovered my HIV status	6.9
Abuse, insults, victimization, ill-treatment by family members	6.9
Stigma by relatives denying the use of same soap or utensils as them	5.1

Customers shunning my business due to HIV status	4
Neglect and denial of love and care by spouse	3.5
Name calling from the community members	2.9
Discrimination at the church after sharing experience as a PLHIV	2.9
Eviction from family property by relatives and neighbours	2.9
Degrading treatment: rudeness and ill-treatment by health care workers	2.9
Denial of access to education for HIV positive child	2.3
Denial of involvement in community activities e.g. burials	1.7
Denial of equal rights at work; denied promotion on the basis of HIV status	1.7
Breach of confidentiality; status disclosed to others without my consent	1.7
Denial of access to healthcare/ARVs & medicine by health care workers	1.7
Stigmatization by health workers	1.7

Other cases mentioned unique to single individuals were varied and include:

- Forceful separation from spouse/children by extended family.
- Denial of basic necessities such as food, and denial of relief food by provincial administration – chief & headmen.
- Denial of job opportunity because of HIV status.
- Parents refusing to allow PLHIV to stay in their house.
- Breach of confidentiality: health facility disclosed HIV status to employer.
- Marital violence.
- A woman's partner not allowing her to attend HIV awareness programme.
- Denial of retirement benefits.
- Division of assets amongst family members whilst the PLHIV was still alive.
- Refusal of police officers and chief to take up case involving verbal abuse of PLHIV.
- Denial by landlord to allow HIV+ person to enter her rental house/ insults by landlord.
- Denial of right to marry or remarry.
- Denial of Medicare by family members.
- Stigma and isolation by co-workers.
- Discrimination and isolation at school.
- Denial of access to medicine for inmates.

### 3.11 Discrimination Amongst Peers and Society

The survey results show that cases of discrimination against PLHIV remain high as attested to by the high percentage (78 percent) of respondents who said they know people who have faced discrimination on account of their status. Only 22 percent did not know PLHIV who had faced discrimination, as shown in Figure 9.

The study sought to further investigate who the people that had experienced the discrimination were and their relation to the respondents. As seen in Figure 9, most of the people were friends to the respondents (40 percent), immediate family members (14.3 percent) or local community members (13.3 percent).

The findings also consistently show that discrimination is experienced at the family level as shown in Table 3I and involves denial of the right to inherit property and eviction from the property by family members (22.6 percent). In some cases disinheritance of children of deceased parents' property was cited. Specifically, rejection by family members was common and cited by 20 percent of respondents, and stigma from immediate family members was cited by 14.8 percent of respondents. The stigma included isolation from activities of the home such as burials, and being forced to use separate utensils and even toilet. Discrimination at the work place was also cited by nine percent of respondents.

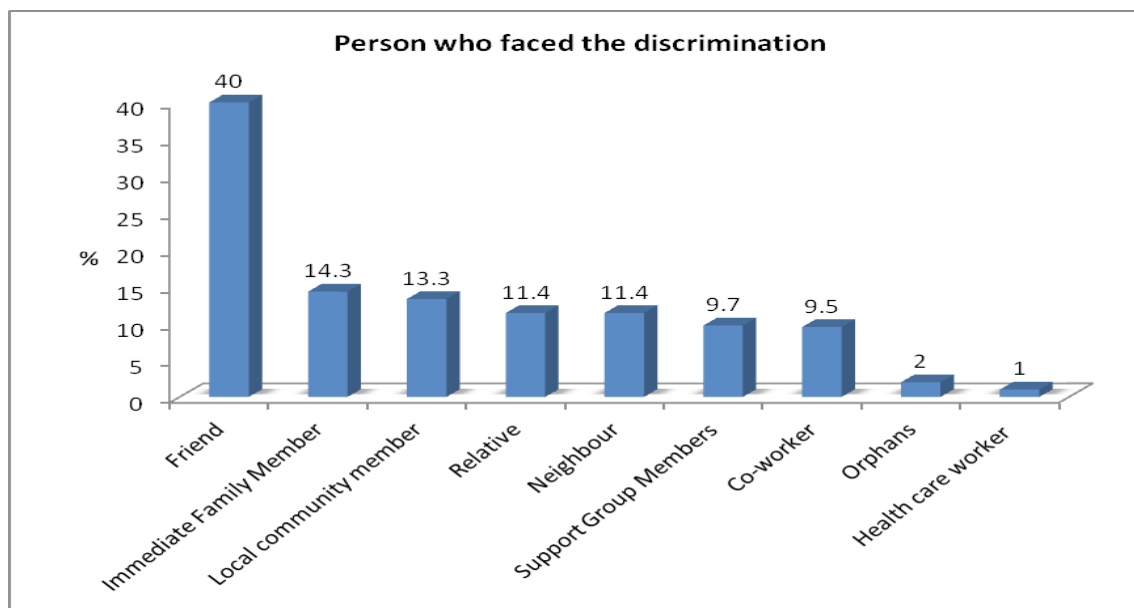


Figure 9

**Table 31: Type of discrimination experienced**

	%
Denial of right to property/eviction by family members	22.6
Rejection by family members	20
Stigma from immediate family (being isolated to eat alone or use a separate toilet, isolation from activities of the home e.g. burials)	14.8
Discrimination at work e.g. unfair transfers & dismissal from employment	9
Denial of basic necessities such as food, clothes, utensils by family members	4.3
Desertion of wife by husband while she was still pregnant	2.6
Stigmatization of PLHIV by health workers	2.6
Violence in the home	2
Subjected to verbal abuse/stigmatizing language e.g. collector of HIV	2
Denied right to use condoms	2
Neglected orphans	2
Segregation/stigmatization within the hospital setting	2
Denial of basic amenities	1
Failure to pay school fees for children	1
Stigmatization by co-workers refusing to eat food that she had prepared	1
Eviction from rental property by landlord	1
Breach of confidentiality	1
Denial of access to medicine in family context	1
Discrimination and segregation at school	1
Denial of access to ARVs in prison context	1

## 4 CHAPTER FOUR: Access to Justice for PLHIV

### 4.1 Levels of Awareness of the Legal Framework and Institutions Governing Human Rights and HIV & AIDS.

The study sought to investigate the awareness levels of the respondents of the following legal instruments and institutions:

- The Bill of Rights in the Constitution of Kenya 2010
- The HIV and AIDS Prevention and Control Act 2006
- The Equity Tribunal.
- The National Gender & Equality Commission

#### 4.1.1 The Bill of Rights

The majority of respondents (72.4 percent) were familiar with the Bill of Rights as shown in Figure 10 below. However only 29 percent of the respondents were acquainted with its contents as shown in Figure 10. The majority (71 percent) have not read the Bill of Rights.

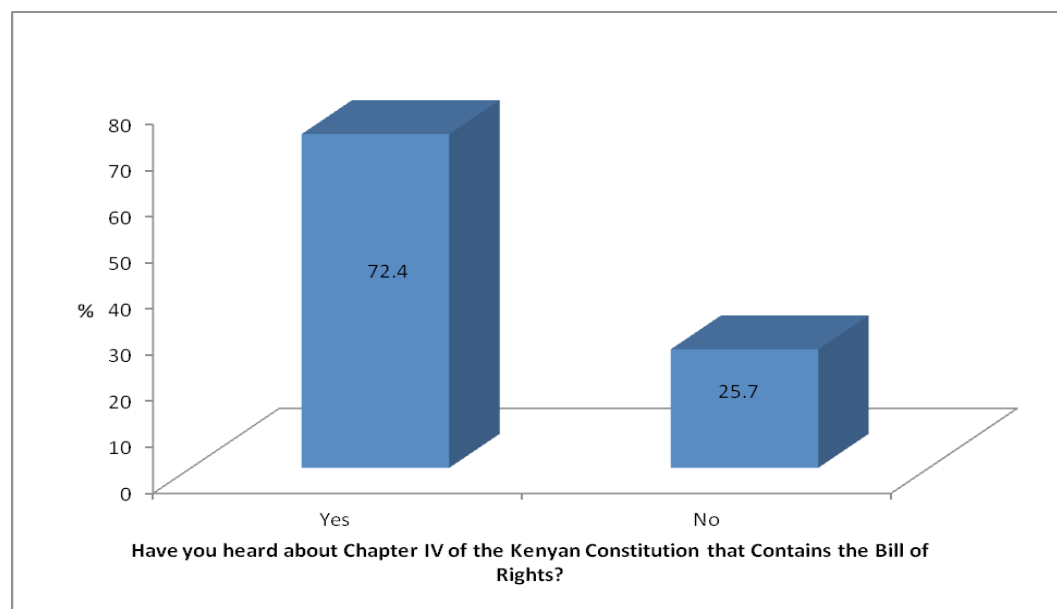
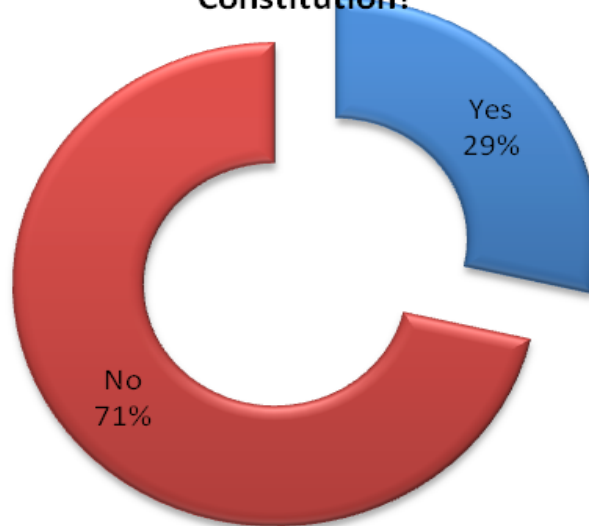


Figure 11: Have you read the Bill of Rights in the Constitution 2010?

Figure 10: Awareness of the Bill of rights as contained in the Constitution of Kenya 2010

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### Have you read the Bill of rights in the new Constitution?



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#### 4.1.2 The HIV and AIDS Prevention and Control Act 2006

The majority of the respondents (68.3 percent) were familiar with the HIV and AIDS Prevention and Control Act 2006, but only 21.2 percent had read the Act as shown in Figure 12.

#### 4.1.3 The Equity Tribunal

The majority (67.5 percent) of PLHIV are unaware of the Equity Tribunal, which indicates that most PLHIV do not know where to seek legal redress of issues specific to HIV&AIDs.

The majority of the respondents (30.5 percent) who knew of the Tribunal mostly thought that it would address issues of HIV and AIDs effectively (95.8 percent), whilst only 4.2 percent expressed doubts as to whether it would do so effectively. The reasons given for its ability to ensure effective redress of issues facing PLHIV were as follows:

Figure 12: Awareness and knowledge of the provisions of the HIV and AIDS Prevention and Control Act 2006

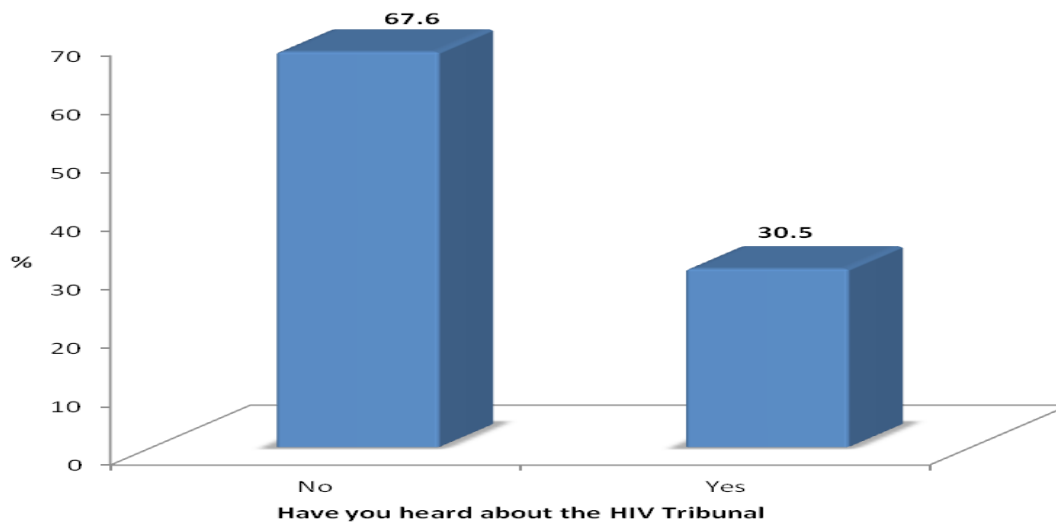
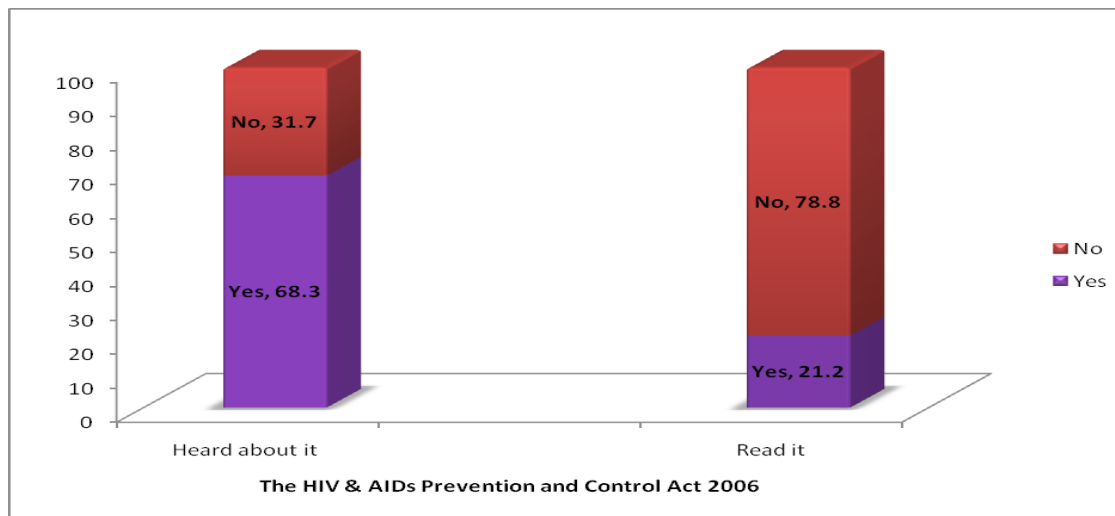


Figure 13: Awareness of the Equity Tribunal

**Table 4a: The Equity Tribunal as a forum to settle cases involving human rights violations**

	%
It provides forum for PLHIV to raise their issues/redress to seek justice	22.3
It will address unique violations faced by PLHIV/ specialize	14.3
If they punish people, it will serve as an example to others	10.7
Empower PLHIV about human rights	8
There will be no fear of stigmatization before the tribunal/ Sympathetic and approachable	6.3
Better understanding among members of issues faced by PLHIV	5.4
Less formal than courts/simplified procedure easier to lodge	5.4
Faster processing of cases	4.5
It will be accessible to PLHIV	3.6
If membership is well constituted and representative	2.7
If it establishes offices in all counties	2.7
Lessen burden on PLHIV and make them feel part of the society	2
It will act like an advocate because we don't have money to pay a lawyer	2
Provide advocates/lawyers knowledgeable on HIV	1.8
Privacy and confidentiality of cases handled will be observed	1.8
Disinherited women will be able to access justice	1.8
But there must be a public awareness campaign on its roles	1
If there is commitment by members to discharge	1
Will mete out harsh punishment to violators/punishment	1
Everything will be explained so that we can understand	1
Fair and non-partisan	1
It will address willful infection and lead to reduction of infections	1



#### 4.1.4 The National Gender and Equality Commission

A slight majority of the respondents (53 percent) were unaware of the Gender and Equality Commission. Of the 47 percent who said they were aware of the Commission, the majority (80 percent) felt it would address issues of PLHIV effectively. The reasons cited are as captured in Table 4b below:

**Table 4b: Will the GEC address discrimination issues of PLHIV effectively?**

	%
Will address equality issues of women	11.4
Will ensure human rights of all including PLHIV are upheld	10
Will ensure discrimination ends	10
It will create awareness amongst the public on equality & violations against PLHIV	8.6
Will bring about equality in the socio-political set up	8.6
Provide a forum for PLHIV to discuss their issues & fair hearing for them	7.1
Will assist children affected by HIV	7.1
Will give people an equal chance of accessing opportunities	5.7
HIV & AIDs affects all cadres of persons hence the Commission is the right body to address issues of equality	4.3
Yes they shall	4.3
Will enable access to information that will enable rights of PLHIV to be upheld	4.3
Provide avenue for redress when rights are violated	4
Will address gender violence	3
Will enable access to justice	2.9
The set up involved consultations with PLHIVs hence will be effective	1.4
Only if well-funded	1.4
Only if they make follow up of cases	1.4
Will give men an audience to raise their issues	1
Only if they understand issues of PLHIV well	1
Only if there is no corruption within it	1

The 19 percent who felt that the GEC would not effectively address the issues of PLHIV gave the following reasons:

- Discrimination is widespread and GEC does not have offices nationwide
- Cases of discrimination are too many and cannot all be addressed
- They never seem to do so

- Only a few benefit
- There have been many commissions in the country that have had no effect
- It will not prioritize HIV as they have many issues to combat
- Do not know much about the commission
- Because you cannot take people to court everyday

#### 4.2 The Guided Focus Group Discussions

The FGD moderators did take time during the discussions to explain and elaborate the legislation and human rights institutions covered in the survey. Thereafter, discussants were able to articulate from an informed perspective how they felt they would benefit from the instruments. Some of the sentiments that were expressed were as follows:

##### 4.2.1 On the Bill of Rights:

- We will be able to have access to medicine and health care, and be treated equally within the health facilities and our data and information kept confidential. We will be able to get medical insurance irrespective of our HIV status.
- Children living with HIV will receive care they ought to and not be neglected.
- When we have food and clean water we will be able to take medicine and stay healthy.
- We will have the right to litigate to protect our rights which shall lead to a reduction in discrimination as people will fear being prosecuted for this.

##### 4.2.2 On the HIV and AIDS Prevention and Control Act 2006

The focus group participants hoped that full implementation of the Act can be carried out so that they can realize the benefits. They especially felt that those benefiting from the Act are donor organizations and NGOs who in their opinion have been receiving assistance at the expense of PLHIV. On how they would benefit they said:

- We now know how we can go about preventing ourselves from transmitting the disease to other people, and it creates awareness in the community as to the rights of PLHIV leading to the reduction in discrimination against us. In this regard it should help PLHIV to:
- Disclose their status without fear of suffering severely adverse reactions from people and being ostracised from the community.
- Access information on documentation dealing with HIV without hiding and this is readily available in most areas.
- Inherit property or access to their matrimonial homes particularly for women and children.

##### 4.2.3 On the National Gender and Equality Commission and the Equity Tribunal

Amongst the focus group participants there was minimal knowledge of the National Gender and Equality Commission and the Equity Tribunal. Participants however stated that a tribunal would be welcome as it would give them an avenue through which they could air their grievances and would maintain their privacy. They stated that there is need for awareness to be created as most PLHIV were not aware that they could access some of these institutions.

“The Tribunal is supposed to listen to cases of people living with HIV, but we don’t know the people who are on the panel or how it will benefit us because it is not yet in our area. Perhaps after election if the Tribunal has offices in our region we can take our cases there instead of worrying about going to court.”

### 4.3 Sources of Awareness

**Table 4c: Sources of awareness of the legal instruments and institutions**

Source of Awareness	Bill of Rights (%)	HIV and AIDS Prevention and Control Act 2006 (%)	Equity Tribunal
Conference/Seminar	13.2	22.9	12.7
Media	23.7	12.8	6.4
Civil society organizations (KENWA, NEPHAK, KANCO, KENEPOTE)	5.3	13.8	7.3
Civic Education	11.4	1	1
Barazas	4.4	1.8	-
Have a copy of the law/ Constitution	3.5	1	1
Read the law	2.6	1.8	
Clinic/Hospital	-	4.6	-
Post-test club/VCT centres	1.8	1.8	1.8
Place of work	1	1	

The three main sources of information regarding rights and other legal instruments and institutions related to PLHIV are from conferences, media and CSOs. It could also be that the CSOs are key players in holding the seminars and also disseminating information through the media. Civic education was cited as a key source of information on the Bill of Rights by 11.4 percent of the respondents. Barazas were also cited as a key source of information on the Bill of Rights; however, rarely do they disseminate information on HIV and AIDS laws and the Tribunal. Most respondents had learnt about the HIV and AIDS prevention and Control Act 2006 from Conferences (22.9 percent) and CSOs (13.8 percent). A small percentage said they had learnt about the legislation and Tribunal from the VCT centres.

Amongst the focus group participants, awareness of the legal framework and institutions pertaining to human rights and HIV was very general even though a considerable majority knew of the existence of the instruments. The majority of the participants were unaware of the detailed provisions of the Bill of Rights, the HIV & AIDS Prevention and Control Act 2006, the Equity Tribunal, and the Gender and Equality Commission. The knowledge of those who had heard about the laws was not accurate or detailed as they had never read the Constitution nor perused the 2006 Act. Most of their knowledge was basic and based on what they had been informed either through

a friend, through forums or trainings, baraza meetings, political campaign trails which reference the Constitution and/or through the media including newspapers, radio and TV. This was particularly common in Central, Eastern and Rift Valley. Discussants in Western were however able to enumerate the various rights found in the Bill of Rights, but expressed uncertainty on how to go about enforcing their rights.

#### 4.4 How PLHIV have Benefited from the Legislation and Institutions

##### 4.4.1 The Bill of Rights

A significant proportion (33.9 percent) of the respondents are unaware of how they have benefited from the Bill of Rights, with another 10.4 percent saying they await to see how PLHIV will benefit from it. Some respondents said it had helped educate people about their rights (7.8 percent), whilst 5.2 percent recognized its impact in improving access and delivery of health services.

**Table 4d: How PLHIV have benefited from The Bill of Rights**

No answer/don't know	33.9
It's just on paper I await to see if it will benefit us	10.4
It has helped educate people about their rights	7.8
Improve access and delivery of health services	5.2
It provides for non-discrimination on basis of health status or equal treatment of PLHIV	5.2
Protects rights of PLHIV	5.2
Can access justice/seek legal redress in court based on your constitutional right	5.2
Enables access to emergency medical treatment	2.6
It will uphold the fundamental rights of all Kenyans which includes PLHIV	2.6
If full implementation is carried out it will guarantee benefits	2.6
Clearly outlaws the violation of human rights	1.7
It recognizes numerous rights which PLHIV have not been enjoying	1.7
Assists vulnerable groups with HIV especially the disabled	1.7
It has helped reduce stigma	1.7
Less discrimination at the workplace	1.7
Government has now recognized our rights	1.7
Has helped PLHIV to recover property	1.7
Will enable PLHIV to live dignified, productive and fulfilled lives	1
Increased access to information	1

#### 4.4.2 The HIV and AIDS Prevention and Control Act 2006

Whilst a high percentage of the respondents lacked knowledge on how the Act had benefited them (44.7 percent), a significant proportion of the respondents were able to articulate the benefits they saw in the 2006 Act. Several (6.1 percent) of the respondents said that it had put in place measures for control of the spread of HIV and AIDS, and had improved the lives of PLHIV (5.3 percent). A few respondents said that it had reduced and controlled stigma associated with HIV & AIDS, limits discrimination and enhances equality, and creates awareness even amongst the uninfected (4.4 percent each). Other responses are as captured in Table 4e.

**Table 4e: How PLHIV have benefited from the HIV and AIDS Prevention and Control Act 2006**

	%
No answer/don't know	35.1
We have not yet benefited	9.6
It helps PLHIV to protect themselves and to also protect others who are not positive/ help prevent the spread of HIV	6.1
Improving lives of people living with HIV/alleviates their suffering	5.3
Its reduced and controlled stigma associated with HIV & AIDS	4.4
Creates public awareness of HIV related issues even amongst uninfected & improves their relations with PLHIV	4.4
Helps stop discrimination and enhance equality	4.4
Enables them to seek redress in a court of law	3.5
Reinforces many rights that people with HIV are denied	3.5
Employers more accommodative of the needs of PLHIV	3.5
It spells out the right to privacy and confidentiality for PLHIV	2.6
Reduced discrimination at workplace	2.6
Full implementation of the Act will lead to reduced prevalence of HIV & AIDS	1.8
Enables PLHIV understand their rights so they can better defend them	1.8
PLHIV have their rights advocated for by some organizations	1
It has educated PLHIV that AIDS can be controlled	1

#### 4.4.3 The Equity Tribunal

The few respondents who said that they knew about the Equity Tribunal said that it had mostly benefited PLHIV by providing a channel to seek redress or lodge a complaint where rights are violated (5.7 percent).

**Table 4f: How PLHIV have benefited from the Tribunal**

	%
No answer/ don't know	53.4
Not yet benefited	7.6
To seek redress/lodge a complaint in-case of violation	5.7
Emphasis on human rights of PLHIV will be highlighted and upheld	2.9
Will only deal with HIV related issues	1.9
To provide assistance in case of discrimination/inhuman treatment	1
They will approach HIV issues with sympathy and understanding	1
People with HIV will not be afraid to take their cases to this tribunal	1
It has given us an option to avoid lengthy court process	1
Yes but need more awareness of the Tribunal in rural areas	1

When asked whether they felt that instruments and institutions as explained to them adequately represented the interests of PLHIV, the focus group discussants observed that although there are laws and institutions that safeguard and regulate the rights of PLHIV, the main impediment is that most of the people are not aware of them. Consequently, they see it as pointless to have laws that the people they are supposed to safeguard do not know about. They also cited problems in the implementation of the laws. The authorities such as the police who are supposed to assist in their implementation do not do so and so the majority of PLHIV have yet to benefit from any laws in place.

“When you take a case to the police, you are often told that they do not deal with domestic disputes and if you go to the chief they are not of much help especially where they are related to the person you have a complaint against so it is better to not bother at all”

#### 4.5 Redress for Violence Experienced as a Result of HIV Status

Respondents mainly sought redress for the violation of their human rights through the church (26.7 percent), alternative dispute resolution (ADR) mechanisms such as elders and chiefs (16.2 percent), and the police (5.7 percent). Other means of redress are as captured in Figure 13. A very small percentage (3.8 percent) sought redress through the courts of law. This may again be due to their financial capabilities because taking a case to court is an expensive process including filing fees and lawyers' fees which people in the income bracket of most of the respondents (see Figure 3 above) are unlikely to be able to afford. Court cases are also lengthy, technical and adversarial which again puts people off taking court action.

It was evident during the study that in as much as the focus group participants were aware of the violations, a majority sought not to seek redress as they were unacquainted with the redress mechanisms and further were not sure of where to lodge their grievances.

The Constitutional provision that one whose human rights have been violated can go to court without paying filing fees was a welcome idea by the respondents. The reason given was the fact that most of these cases are never reported by them or followed up on due to the fact that they are not sufficiently economically empowered.

The majority of the respondents who had sought redress for the violation they suffered said that the violation was still ongoing (5.7 percent). Another 4.8 percent said the process had taken two to five years, whilst three percent claimed it had taken too long. Only two percent said it had taken a short time.

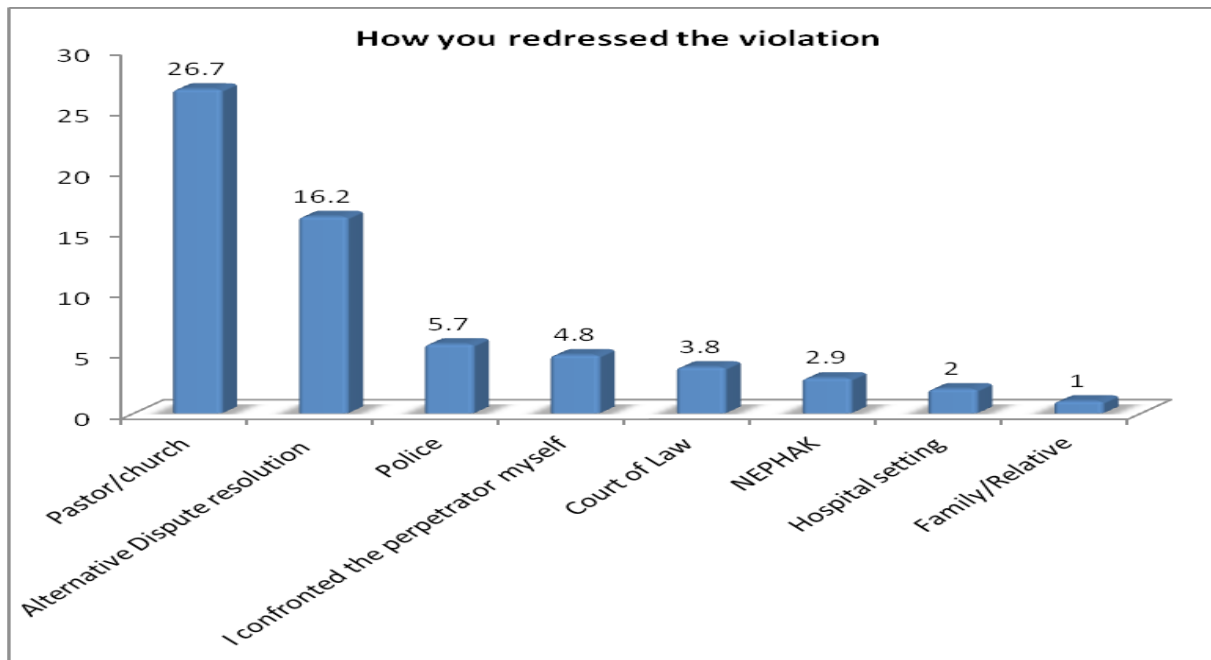


Figure 14 How you redress the violation

#### 4.6 Challenges Experienced in Seeking Redress

Respondents also cited the challenges they experienced when seeking redress as shown in Table 4g. The main challenge for most PLHIV is lack of financial resources to effectively pursue their grievances (10.4 percent).

**Table 4g: Challenges experienced in seeking redress**

	%
Lack of financial resources	10.4
Process too slow	6.3
Stigma	6.3
Minimal assistance/authorities not keen to assist	6.3
None	6.3
Lost my property	6.3
Was threatened and blackmailed	6.3
No action taken	6.3
Summons ignored by perpetrator /Perpetrator did not take the action recommended by the authorities	6.3
Police also discriminated against me because of my status	4.2
Lack of awareness/sensitivity on the issues by the concerned authorities	4.2
The charges against perpetrator were dropped	4.2
Many court adjournments	4
Have a disability which affected my proper involvement & understanding of the resolution process	4
Would have liked the due process followed but matter was settled out of court	2.1
Information not properly recorded by the official involved	2.1

Other challenges cited by individual respondents were the problem of unwilling witnesses, emotional distress, failure to arrest the concerned perpetrator even after warrant was issued, family interference in the case and demands for bribes from the authorities concerned.

Out of the 36 percent of respondents who said they had reported the violation, only ten percent said they were satisfied with the outcome, while the majority (25.7 percent) were not.

Those who said they were satisfied with the outcome reported that the violations came to an end, appropriate action was taken against the perpetrator and they succeeded in having the matter resolved (three percent each). Only one percent said they were happy with the legal representation.

Those who were unhappy with the outcome said that nothing was done and they were still facing the problems (3.8 percent), or that the pace of redress was too slow (3.8 percent). Another 3.8 percent also said they were simply not happy with the outcome. Three



percent said that authorities were unwilling to assist, with two percent saying the authorities demanded bribes, while another three percent said their cases were still ongoing.

Other reasons given were unique to specific individuals and included:

Family interference in resolving the dispute; others had to leave the home to allow for peace to prevail; one individual faced denial of allowances; in another instance the case was dropped and finally no punitive measures were taken against the perpetrator. None of the respondents who were unhappy with the outcome opted to seek further redress with the majority saying they opted not to pursue the matter further.

#### 4.7 Reasons for Failure to Seek Redress

Individuals who did not seek any redress at all when the violation first occurred gave the following reasons:

**Table 4h: Why I did not seek any redress**

	%
Did not think it would help/did not see the need	8
Too expensive/lacked the financial resources	6.7
I was afraid and did not want trouble	5.7
Did not know the right channels of redress	5
The process of seeking redress is complex/bureaucratic/tedious	3
My poor health condition did not allow me to pursue redress	2
I am a Christian and chose to forgive/peace loving	2
Did not know my rights	2
Seeking redress demands disclosure of my status, not comfortable with that	1
Would lead only to further discrimination and abuse	1
Powerless to take up cases against local leaders	1
Law enforcement officers attitude of ridiculing discourages	1
Was trying to save my marriage and chose to forgive spouse	1
Not sure of procedure to follow against my employer	1
I felt if I ignored it, it would not continue	1
Distance involved to seek redress too long	1
Wanted a fresh start and to forget the past	1
Destruction of legal documents by perpetrator	1

#### 4.8 Reporting Cases of Discrimination

A slightly higher majority of the respondents did not report the discrimination (53 percent), compared to those who took steps to report (47 percent).

Table 4i shows the persons to whom the report was made. Chiefs (14.8 percent) were the persons to whom most reports were made because they generally deal with issues related to family conflict. The police were the second group most PLHIV made their reports to. Medical personnel were also cited but it is noteworthy that in most cases the person reported to was a friend or known to the victim.

A large majority did not specify to whom they reported (18.3 percent).

**Table 4i: To whom did you report?**

	%
Chief/Sub chief/elders	14.8
The police	5.5
Family member	4.6
Provincial administration - District Commissioner/District officer	2.8
Children's department/children's officer/child protection officer	2.8
Medical doctor/personnel	2
Workers union	2
Civil Society Organization e. g NEPHAK	2
Close friends	2
PLHIV support group	1
Lawyer	1
Pastor /local church	1
Area councillor	1
District labour officer	1
Community based human rights monitor	1

#### 4.9 Action Taken Against the Reports

Despite reports being made to the relevant office or person, action taken against the reports were reportedly very low with 15.2 percent stating that no action was taken. Counselling, issuing of summons and mediation of the conflict were the key actions taken as captured in Table 4j. The poor action taken against reported cases shows the importance of the Equity Tribunal in redressing cases or conflict related to PLHIV and therefore the need to publicize its existence and functions.

**Table 4j: Action taken on report**

	%
No action taken	15.2
Counselling	2.9
Summons issued	2.9
Summons issued but disobeyed/ignored/	2.9
Mediation/ reconciliation	2.9
I was released on bond on the same day	1.9
Warrant of arrest issued	1
Legal demand letter issued	1
Order of cessation of discriminatory acts	1
Police advised that we temporarily vacate the home	1
Authorities promised to take action	1
Chief spoke to the neighbours but I wasn't able to get back	1
Medical officer transferred from the ward	1
Followed up with KELIN to get an advocate	1
Paid part of terminal dues	1
Letters written	1
Compensation	1

#### 4.10 Reasons Given for Not Reporting

As shown in Table 4k, the main reason given for not reporting the act of discrimination was due to the lack of knowledge on where to report and the process to be followed (8.6 percent). Some of the respondents (4.9 percent) also felt that they would not succeed because reported cases are usually not resolved. They had no confidence that any action would be taken against the perpetrators. Another 4.8 percent said they lacked the financial resources to pursue redress, whilst 3.9 percent did not report because the discrimination involved family members and it is not the African norm and practice to report them. Many respondents also felt that they would not get a hearing or be understood (3.8 percent), or that they were not aware at the time of their rights or which ones had been violated (3.8 percent).

**Table 4k: Reasons given for not reporting the discrimination**

	%
Lack of knowledge on where to report or the process to follow	8.6
I did not feel that I would succeed	4.9
Lack of financial resources	4.8
Against African culture to report against your family	3.9
No one would listen or understand me	3.8
Not aware of my rights/ which rights were violated	3.8
Not keen on pursuing the case	2.9
Fear of stigma from the family/high levels of stigma	2
Bureaucratic and tedious processes	1.9
I was too sick, weak and unable to move	1.9
Fear of further disclosure of one's status to others	1.9
God will deal with the matter	1
Perpetrator later asked for forgiveness	1
Received counselling and support from peers	1
Not a member of workers union	1
Fear of superiors/intimidation	1
Perception that no wrong committed as I was paid all my dues	1
I had too many problems at the time	1

#### 4.11 Benefits of Free Filing of Cases in Court

Respondents were asked whether they felt that because the Constitution now provides that one may go to court without paying filing fees in cases of human rights violations, it would help redress the violations suffered by PLHIV. The majority (92.2 percent) said that this would help, while a minority (7.8 percent) felt that it would not.

**Table 41: How free filing of cases will assist PLHIV**

	%
Will be easier to access justice as it is more affordable	27.6
Will assist vulnerable groups of PLHIV to access legal redress & justice in the absence of income	19
Will assist poor or unemployed PLHIV to access legal redress	18.1
No answer	3.8
Will help women access justice as they are most affected	3
Will provide an opportunity for persons who have been stigmatized to seek redress	3
Will avail options to many PLHIV/ ensure no one is denied their human rights	2.9
Constitution recognizes right to health so access to medicine and nutrition needs will be addressed through the courts	2.9
It will help but should be publicized as Kenyans unaware	2.9
It will end discrimination and violence against PLHIV	1.9
It would create awareness as to rights of PLHIV	1.9
It will scare the violators	1.9
It will allow compensation to those whose rights have been violated	1
It will help those who are denied property	1
It will help the public respect the rights of PLHIV because such cases are many	1
Yes but am not ready to go to court now because culturally it is a taboo to take in laws to court	1
Yes it will help, but we are not sure about corruption	1

The few (7.8 percent) who did not think PLHIV would benefit from the abolition of filing fees, gave the following reasons:

- Difficulty of understanding the rights of PLHIV.
- If you are abused by a child you can't take them to court.
- We don't fully understand the court process unless it's explained.
- No free things exist in Kenya, you will still end up paying indirectly.
- No the court process is too lengthy.
- The courts are too far and one cannot afford transport.
- Even if you win the case, there will be family disharmony regarding your action.
- People with disability will not benefit at all unless their rights are taken into account.
- Corruption/Bribery.
- Lack of awareness about the Constitution.

# 5 CHAPTER FIVE: Conclusions and Recommendations

## 5.1 Conclusions

The study found there to be a very general, but basic, understanding of the concept of human rights violations and discrimination in the context of HIV amongst the participants. There was also a fair level of awareness of the existence of institutions and laws that address violations in the context of HIV, but there was little understanding of how to access these rights.

Human rights violations against PLHIV were reported on a wide scale, particularly in the family, and when accessing health services. However, the majority of participants failed to report cases of human rights violations for a number of reasons, including lack of financial resources, a lack of faith in the system, and due to cultural barriers to taking legal action against family members. Many of the participants who did seek redress were not happy with the outcome because their case took too long to resolve, or was not resolved satisfactorily.

This research focuses specifically on HIV-related discrimination. There is also a need for further research into how inequality increases vulnerability to HIV and exacerbates the impact of HIV on human rights issues, and on how human rights issues impact on access to treatment, care and support.

## 1.1 Recommendations

### 5.0.1 Community Education

5.2.1.1 Given the lack of detailed understanding amongst the study respondents regarding the human rights legislation related to PLHIV, there is a need to engage with communities to provide information and promote discussions around:

- The meaning of human rights violations and discrimination.
- The content of the Constitution 2010 including the Bill of Rights.
- The content of the HIV & AIDS Prevention & Control Act 2006.
- The Equity Tribunal, its functions and benefits, and how it can be accessed by PLHIV.
- All the remedies available to address human rights violations including the formal and informal legal sectors, the Ombudsman, and the National Gender & Equality Commission.

5.2.1.2 Further engagement is needed within communities regarding issues of discrimination against PLHIV that arise in the family context. There is a need for community training initiatives related to the meaning of discrimination, which should also address issues related to property and inheritance rights of family members living with HIV.

## 5.0.2 Training of Service Providers and State Officers

5.2.2.1 Given the human rights violations reported by the study participants at the hands of service providers and public officials, there is a need to engage with service providers to equip them with the knowledge to identify and address the kind of human rights violations and discrimination suffered by PLHIV, with emphasis on those abuses most often suffered by women. These people include:

- **Health officers:** Health officers and medical service providers need to be trained on the rights of PLHIV, with particular regard to the right to privacy and confidentiality. Because health officers are often the first point of contact for PLHIV they also need to be trained regarding when to refer patients for legal advice, and who to refer them to.
- **Employers:** In order to prevent discrimination in the workplace employers should be educated regarding the legal framework related to the rights of PLHIV, with particular regard to issues related to discrimination in the workplace and in recruitment and retention policies. Employers should publicise their policies regarding discrimination against PLHIV in the workplace.
- **Chiefs, elders and local leaders:** For many PLHIV in Kenya it is their Chiefs, elders and local leaders who hear their complaints and determine the outcome of disputes regarding rights violations. There is a need for training programs for these community leaders to ensure that the informal justice sector respects the Constitution of Kenya 2010 and the Bill of Rights, and produces outcomes that promote the rights of PLHIV.
- **Religious leaders:** In light of complaints from participants that religious leaders regularly decline to officiate marriages involving PLHIV, there is a need to provide information to religious leaders regarding the range of human rights that apply equally to PLHIV, and engage them in discussions around morality, ethics, and human rights, with particular regard to the right to marry and have a family.
- **Teachers:** Teachers need to be sensitised so that they are equipped to deal with children living with HIV in a way that is non-discriminatory and ensures that they are able to participate fully in their schooling. Teachers also need to be sensitised regarding the rights of other staff members who are living with HIV.

### 1.1.1 Channels or Mediums of Communication

5.2.3.1 Many of the participants demonstrated an understanding of the existence of human rights legislation offering protection to PLHIV, but they were not aware of the details, which suggest that previous media campaigns to raise awareness on these issues have not so far reached the target population. There is a need to ensure that the channels or mediums of communication to reach PLHIV are accessible to the target population.

5.2.3.2 Printed educational materials should be produced in a simple format and language with possible translation into local languages.

5.2.3.4 Relevant legislation such as the Constitution of Kenya 2010 including the Bill of Rights, and the HIV & AIDS Prevention and Control Act 2006, should be provided to PLHIV and their communities in an easily accessible format through production and distribution of popular versions.

5.2.3.5 Consideration needs to be given to make the legislation accessible in formats that facilitate the inclusion of the different categories of persons with disabilities.



- 5.2.3.6 Community educators should make use of creative mediums for disseminating the information including music, drama, cultural art, and dance, which are entertaining as well as informative.
- 5.2.3.7 The radio is an effective media for disseminating information to community groups, particularly in rural areas. Radio debates and road shows on issues related to the rights of PLHIV should be carried out on a regular basis.

#### **5.2.4 Policy Work**

- 5.2.4.1 Some of the concerns expressed by PLHIV related to discrimination from insurance companies and other private entities. There is a need to ensure that government policy addresses these concerns and is implemented effectively.
- 5.2.4.2 There is a need to engage with the insurance industry to negotiate acceptable health terms for PLHIV that do not exclude them from healthcare on the basis that they have a pre-existing condition, and that addresses their vulnerability to opportunistic infections.
- 5.2.4.3 There is a need for general monitoring of laws and policies to ensure that they do not create barriers to treatment and care for PLHIV.

#### **5.2.5 Access to Justice**

- 5.2.5.1 The majority of participants felt unable to seek redress for human rights abuses they had experienced as a result of their HIV status. There is a need to ensure that PLHIV have better access to justice in both law and practice.
- 5.2.5.2 There is a need for systematic monitoring of the implementation of laws aimed at protecting the rights of PLHIV, and documentation of any problems in this regard.
- 5.2.5.3 PLHIV need to be consulted and involved in the development of the relevant Bills, policies and regulations, to ensure a rights based approach to development of the law and policy in this area.
- 5.2.5.4 PLHIV need to be given access to legal aid to enable them to access legal representation to bring challenges against human rights violations and discrimination cases.
- 5.2.5.5 Complaints handling processes through the formal Court system, the tribunals, and the informal justice system, should be streamlined to ensure that there are no unnecessary delays. This can be achieved by working with the Commission on Administrative Justice, whose mandate is to ensure for administrative actions that are expeditious, efficient, lawful, reasonable and procedurally fair. (Article 47 of the Constitution of Kenya 2010)
- 5.2.5.6 The Equity Tribunal should be operationalised, and decentralised to county levels in Kenya. The Tribunal is in need of the necessary additional resources to allow it to be fully operational.
- 5.2.5.7 HIV and AIDS support groups are instrumental in providing information to PLHIV, and as well as offering vital emotional and social support, these groups are often the first point of contact for PLHIV seeking redress for human rights violations. These groups need to be provided with training and resources so that they are equipped to identify human rights violations and make appropriate referrals.



SUPPORTING COMMUNITY ACTION ON HIV & AIDS AND TB

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