



Repeal Section 26 = ZERO STIGMA



Breakfast Meeting to Launch the Positive Justice Campaign for the Protection of PLHIV from law-related Stigma and Discrimination

Concept Note

1.0 Background

The promulgation of the Constitution (2010) on the 27 August 2010 provided a new milestone in the field of human rights. Being the supreme law of the country, the Constitution sets standards that all other laws and policies must conform with. The Constitution has:

- Out-rightly outlawed discrimination based on one's health status;
- Made provisions for a more expansive bill of rights which can be relied on by all;
- Made provisions for the reliance on provisions of treaties that Kenya has ratified;
- Outlawed all customary practices that contravene the provisions of the Bill of Rights; and
- Guaranteed the right to human dignity, privacy, freedom and security of the person and association.

Despite the positive provisions of the Constitution and its expansive Bill of Rights, we still have laws and policies that exist that violate the rights of the citizens of Kenya. Section 26 of the Sexual Offences Act is one such provision, which criminalises HIV exposure and transmission.

Unfortunately, this provision places the burden of protecting others from HIV infection on persons living with HIV. Further, it violates the right to health by pushing people away from HIV testing and treatment services. It also violates the right to fair trial and to dignity.

2.0 Justification

It is in this regard that KELIN with support from The Global Fund seeks to file a public interest litigation case to challenge the constitutionality of Section 26 of the Sexual Offences Act with a view to:

- Highlight how the section violates the right to freedom from discrimination, freedom from cruel, inhuman and degrading treatment, the right to dignity and the right to health in the Constitution of Kenya;
- Highlight the possible negative impact that the section has on public health efforts to promote regular testing of HIV and STIs;
- Highlight how the section criminalises low- and no-risk sexual activities;
- Highlight how the section has the potential for discriminatory and irrational enforcement.

KELIN will achieve this objective through an advocacy campaign dubbed *Positive Justice*. The campaign tagline is 'Repeal Section 26 = ZERO STIGMA'.

3.0 Expected Outcomes

The Positive Justice campaign aims to realise the following outcomes:

- Improved awareness by members of the public and other stakeholders on the petition challenging the constitutionality of Section 26 of the Sexual Offences Act;
- Improved awareness on the negative effects of enforcement of Section 26 of the Sexual Offences Act on PLHIV;
- Improved awareness of how Section 26 of the Sexual Offences violates the Constitution of Kenya; and
- Relevant stakeholders including the media, legislature, judiciary, law enforcers and the Ministry of Health advocating for the rights of PLHIV.