



BREAKING THE BARRIERS

.....
Annual Report 2022
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The Kenya Legal and Ethical Issues Network on HIV and AIDS

believes in a world where no one lives in fear or oppression and where all have access to a decent standard of healthcare and life. In this world, everyone is treated with dignity and respect.

To achieve this, we engage in long-term human rights-based approach work, build resilience, respond to health violation situations, and seek to address the root cause of health violations through our advocacy work.

In the implementation of our programs and related activities, **we utilize a rights-based approach and focus on five result areas:**

- ▶ A rights-based, gender-transformative, and enabling legal and policy environment on health at the global, regional, national, and county levels are promoted and strengthened.
- ▶ Transparent and accountable governance in health is enhanced for the implementation of quality, accessible, and comprehensive services and the protection of health-related rights.
- ▶ Communities and community structures are empowered to demand and promote social justice for health and to hold the government accountable to deliver on the right to health.
- ▶ Policies, practices, and programs are informed by expanded, improved, and available evidence.
- ▶ KELIN's institutional capacity to deliver on its core mandate is strengthened and sustainability enhanced.

We do this through 5 focus areas:

- 01 HIV ,TB, Key & Affected Populations** 
- 02 Health & Governance** 
- 03 Sexual Reproductive Health & Rights** 
- 04 Strategic Litigation** 
- 05 Women Land & Property Rights** 



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Message from the Board Chair

In this 2022 annual report, I want to take a moment to address an issue that continues to plague our society: the barriers to accessing health justice.

We believe that healthcare is a fundamental right that should be accessible to all, regardless of socioeconomic status, race, gender, or any other factor. Unfortunately, this is not the reality for many people, especially those from marginalized communities in Kenya and beyond.

There are many barriers to accessing health justice, such as the high cost of healthcare, lack of health insurance, limited access to healthcare facilities, and systemic discrimination in the healthcare system. These barriers prevent individuals from getting the care they need, when they need it, and can lead to significant health disparities.

We must work together to break down these barriers and create a more equitable healthcare system. This includes advocating for policies that ensure affordable and accessible healthcare for all, supporting community-based health initiatives, and addressing systemic discrimination and bias within the healthcare system.

We have a long way to go, but I am confident looking at what we have achieved that by working together in 2022, we are making progress towards achieving health justice for all.

Thank you for your ongoing support and commitment to this important work.



Mr. Ambrose Rachier
Board Chair



“We believe that healthcare is a fundamental right. There are many barriers to accessing health justice. Therefore, we must work together to break down these barriers and create a more equitable healthcare system.”

Message from the Executive Director

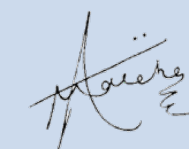
As I reflect on our accomplishments and challenges as an organization, I am certain that we are on track.

In 2022, we made significant progress towards breaking down the barriers to accessing health justice. Our advocacy efforts have resulted in policy reviews at the county, national, and regional levels that have improved healthcare access for many individuals, particularly those from marginalized communities. We have also partnered with community-based organizations to provide education and resources on health and wellness.

Despite these successes, we know that there is still much work to be done. The ongoing health disparities in our society has disproportionately impacted marginalized communities, low-income individuals, and specifically the HIV response. We must continue to address these disparities and ensure that everyone has access to the quality healthcare they need and deserve.

Building on our results in 2022, we will focus on several key areas, including expanding our advocacy efforts, building partnerships with other organizations, and increasing our outreach to underserved communities in 2023.

With your continued support and commitment, we can make meaningful progress towards achieving justice to health, for all.



Allan Maleche
Executive Director



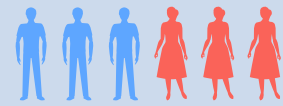
“In 2022, our advocacy efforts resulted in policy reviews at the county, national, and regional levels that have improved healthcare access for many individuals. Despite these successes, we know that there is still much work to be done.”

2022 Results



14

Strategic litigation cases
 3 abortion related cases (2 finalised)
 3 SGBV cases
 5 cases filed in 2022
 1 case as amicus curiae
 2 cases representing a party



1670

Champions;
 (40 TB Champions, 1530 Widows,
 100 DREAMS Girls)



05

Research studies conducted;

- The impact of HIV index testing on access to sexual and reproductive health services for adolescent girls and young women in Kisumu County
- The impact of HIV index testing on access to sexual and reproductive health services for adolescent girls and young women in Kisumu County
- The impact of digital technologies on young people's access to sexual and reproductive health information
- Strategies used for advocacy on contentious sexual and reproductive health issues in the East African Community
- Values based messaging research on family planning and adolescent sexual and reproductive health
- Prosecutorial practices on Section 158-160 of the Penal Code



615

Communities and individuals impacted;

- 420 Adolescent girls and young women
- 60 Community members
- 30 Representatives of key and affected populations
- 20 Community elders
- 85 Community based organizations



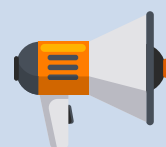
90

Duty bearers
 engaged in capacity building on health rights.



08 Policy briefs developed

- Policy Brief on Intellectual Property Bill
- Policy Brief on front of pack labelling standards
- Policy Brief on HIV Index Testing
- Youth and Land Rights Policy Brief
- Best practices manual on advocating for contentious SRH issues in the East African Community
- TB Human Rights Scorecard
- Landscape analysis on Digital Health & UHC
- Compendium of abortion-related cases



14 Advocacy Campaigns

- #RejectRHPolicy
- #TransformHealth
- #SRHRisEssential
- #Covid19Billionaires
- #PassTheEACSRHBILL
- #DigitalHealthWeek
- #ProtectMyHealthData
- 7 International days



15

Media appearances



119 Cases

successfully resolved by both elders and pro bono lawyers

Breaking the Barriers?

Since its inception, KELIN has worked with vulnerable and marginalized populations because of the nuanced ways in which these populations interact with the law and the health sector. Through our interventions in 2022, we aimed to break the barriers that broadly affect the full enjoyment of health-related human rights, specifically through our focus areas.



The HIV epidemic shows a declining pattern, HIV incidence remains high with the national HIV prevalence estimated at 4.9%, translating to 1.3 million persons living with HIV.¹



Tuberculosis remains one of the world's deadliest communicable diseases affecting 11 million people globally every year, 1.7 million of whom eventually die.² Kenya is among the top 30 high-burden TB countries globally, with a prevalence rate of 558/ per 100,000 members of the population, an increase from the prevalence in 2015.³



Adolescent girls and young women are vulnerable to several violations of health and human rights due to early and unintended pregnancies; unsafe abortions; female genital mutilation; child marriages; STIs; unequal access to land, and economic opportunities.⁴



These inequalities suppress the ability of most women to decide if and when to exercise their sexual and reproductive health rights and their land and property rights, especially where community members propagate patriarchal social norms that negatively affect women.



Court processes are lengthy, often delayed, and costly to our petitioners' mental and emotional well-being.

1.3 MILLION persons are living with HIV in Kenya

11 MILLION people globally are affected by TB every year

1.7 MILLION people die globally from TB every year

Kenya is among **TOP 30** high burden TB countries globally

¹National AIDS Control Council, "Kenya HIV Estimates: Report 2018" (October, 2018) available at <https://nacc.or.ke/wp-content/uploads/2018/12/HIV-estimates-report-Kenya-20182.pdf>.

²KELIN, "Tuberculosis: Data Assessment in Key, Vulnerable and Underserved Populations in Kenya" (January, 2018) available at <http://www.kelinkkenya.org/wp-content/uploads/2018/04/TB-Data-Assesment.pdf>.

³Ministry of Health (2016) "Kenya Tuberculosis Prevalence Survey 2016" available at: <https://www.chskenya.org/wp-content/uploads/2018/04/Final-TB-Prevalence-Survey-Report.pdf>.

⁴ibid



Outcome 1

A rights-based, gender transformative and enabling legal and policy environment on health at the global, regional, national and county levels is promoted and strengthened.

KELIN advocates for using rights-based approaches to ensure that the legal and policy frameworks apply interventions that respect human rights, promote equality and non-discrimination, seek to empower communities through a participatory process, and promote sustainability for lasting solutions.



Increasing demand for healthy diet

With the rising burden of non-communicable diseases (NCDs) in Kenya, KELIN sustained advocacy towards the promotion of healthy diets and recommended the introduction of specific policy interventions to kickstart the process. Among these are [nutrition labeling](#), product reformulation, promotion of physical activities, and restrictions on [marketing unhealthy foods and beverages to children](#). Advocacy included awareness creation on the importance of a human-rights-based approach to the NCD response and information on constitutional rights and responsibilities.

In addition to advocacy, KELIN contributed significantly to the development of a standard on front-of-pack nutrition labeling in Kenya, by mobilizing 20 organizations to make submissions to the Kenya Bureau of Standards (KEBS) supporting the development of the Front of Pack Nutrition Labelling (FOPL) standards in Kenya.

20 ORGANIZATIONS were mobilized to make submissions to the Kenya Bureau of Standards (KEBS) supporting the development of the Front of Pack Nutrition Labelling (FOPL) standards in Kenya.

A LOOK BACK AT 2022

<p>What is FOPL?</p>	<p>Front-of-pack labeling (FOPL) refers to nutrition labeling systems that are presented on the front of food packages and present simple, often graphic information on the nutritional quality of products.</p>
<p>Why does KELIN support FOPL?</p>	<p>KELIN supports FOPL standards in Kenya because they provide a pathway to healthy food environments, promote the adoption and maintenance of healthy dietary practices, and consequently curb the rising burden of diet-related non-communicable diseases.</p>
<p>How does FOPL work?</p>	<p>Front-of-pack nutrition labeling standards will provide consumers with convenient, relevant, and readily understood nutrition information, promote health, and enable consumers to realize their constitutional rights – to health, adequate food of acceptable quality, and consumer rights.</p> <p>In the joint submissions received by KEBS on February 22, 2022, KELIN and partners recommended to the Kenya Bureau of Standard that the standard be made mandatory, noting the unlikelihood of the food industry’s compliance with voluntary standards that highlights the negative properties of products they manufacture.</p>



International Guidelines on Human Rights and Drug Policy

KELIN co-hosted the fourth regional dialogue on the Implementation of the International Guidelines on Human Rights and Drug Policy in a hybrid event with over sixty experts from Sub-Saharan Africa, representing diverse disciplines such as drug policy, human rights, gender, development, criminal justice, and public health.

As part of an ongoing process of regional consultations for the implementation of the guidelines, the dialogue focused on identifying connections to national and regional priorities and determining practical ways of implementing the guidelines locally and regionally.

Various institutions were represented, including health and justice ministries, drug control agencies; judges; national human rights institutions; non-governmental organizations; academia, national judiciaries, donors; and UN and regional bodies.



The co-hosts were the International Centre on Human Rights and Drug Policy at the University of Essex, the United Nations Development Programme (UNDP), the Office of the High Commissioner for Human Rights, the Swiss Federal Department of Foreign Affairs, the Global Partnership on Drug Policies and Development (GPPD) implemented on behalf of the Federal Ministry of Economic Cooperation and Development (BMZ), ENDA Santé (Senegal) and the Civil Society Institute for HIV and Health in West and Central Africa.

Advocating for harmonization of policies

KELIN lives up to its mandate and represents the communities within our networks in public participation around health-related policies. In 2022, the Ministry of Health commenced the process of amending [the HIV and AIDS Prevention and Control Act \(HAPCA\), 2006](#), and called for public participation through comments and submissions to improve HAPCA. In response to this call, KELIN, jointly with the Key Populations Consortium and Esther Nelima, a community health advocate, made [substantive proposals](#) to the Ministry of Health

to harmonize HAPCA with provisions of the [East African Community HIV and AIDS Prevention and Management Act 2012 \(EAC HAPMA\)](#).

“The EAC HIV and AIDS Prevention and Management Act of 2012 does not contain provisions that criminalize people living with HIV. We see a better approach in that Act to HIV treatment and prevention. As a community health champion, I would like to see HAPCA reviewed to be more progressive and to promote and protect the rights of people living with and affected by HIV.”

Esther Nelima, Community Health Advocate.

By harmonizing the provisions, HAPCA would benefit from expounded provisions to protect and promote the human rights of people living with and affected by HIV. The EAC HAPMA.⁵ It was enacted by the East Africa Legislative Assembly in 2012 and assented to by Heads of State.

⁵The EAC HAPMA is an act of the East Africa Community and has force of law in Kenya. Section 8 of the Treaty for the Establishment of the East African Community Act (Act No. 2 of 2000, Laws of Kenya) provides that:

(1) From the date of publication of that Act in the Gazette of the Community, the provisions of any Act of the Community shall have the force of law in Kenya.

(2) An Act of the Community shall come into operation on the date of its publication in the Gazette of the Community or, if it is provided in that Act that some or all of its provisions shall come into operation on some other date (whether before or after the date of publication), those provisions shall come into operation on that other date.



Transform Health Kenya Launch event

Transform Health Kenya

In its capacity as the National Coordinator, KELIN was proud to host the [Transform Health Kenya Coalition launch!](#) The launch ceremony took place on July 14, 2022, during a national conference that brought together over 100 national and County stakeholders working on digital health, including the Ministry of Health Directorate of Health Policy, Research, Monitoring and Evaluation, County Government representatives from Isiolo, Makueni, Machakos, Nyeri and Kisumu, civil society and community-based organizations including those working with women, youth, and key populations, academia, as well as the private sector.

The conference provided a platform for stakeholders to deliberate on the status and required measures to harness technology and data to achieve UHC in Kenya. It also served to introduce the coalition, its goals, theory of change, and strategic partnerships, to guests while allowing organizations to enroll as members.



“The niche for the Transform Health Kenya coalition is to leverage the existing digital technology to drive forward the UHC plan where every Kenyan will have access to quality healthcare... We have to push for an increase in resources. Not just financial resources but also technological and human resources. Through that, we can determine digital technology’s role in making UHC possible.”

Allan Maleche, KELIN Executive Director



“There is increased demand for quality health services in Kenya. Why should we have people traveling distances to receive healthcare when facilities can provide services remotely? ... The mobile phones we have are not just for communicating. Digital technology has the potential to support access to health. Data is the new oil; we must harness it to achieve UHC... The Government of Kenya does not want to leave anyone behind. We will journey on this digital health path together.”

Dr. Sitienei, Head of Directorate of Health Policy, Research, Monitoring and Evaluation, MOH

“There are a lot of good things that come out of digital health technologies, but we have to create safety measures to protect particularly vulnerable communities as they enter into these spaces and ensure that it doesn’t become a secondary place for them to suffer violence”

Nerima Were, Deputy Executive Director, KELIN.

Before this conference, KELIN conducted a [landscape analysis](#) on the legal and policy environment of digital health in Kenya, the findings of which were disseminated and discussed. The analysis recommends a fast-tracked development and enactment of harmonized legislative frameworks for digital health in Kenya. It also ensures that such legislation is developed with input from key stakeholders to be rights-based and people-centered.

Following the launch, Transform Health Kenya has focused on advocacy

- aimed at ensuring that laws and policies on digital health technologies to achieve UHC commitments are developed and adopted at both national and County levels
- for increased adoption and use of digital health technologies at the national and County government for access to equitable, affordable, and quality healthcare
- for increased national and County resources to strengthen digital health technologies to achieve UHC commitments.

Goal: To advocate for the realization of Universal Health Coverage (UHC) in Kenya by 2030 by harnessing digital technology and the use of data.

Some highlights in the advocacy journey include the [Digital Health Week Campaign](#) KELIN led a webinar interrogating the data protection Act, titled: *Is my Health data safe; Has Kenya made any progress in the data protection framework?*

It was also an occasion to reflect on digital health, [its importance and progress in Kenya](#), the relationship between [digital health and universal health coverage](#), and the [legal and policy frameworks on digital health technologies in Kenya](#).

Towards the end of 2022, the coalition membership grew from 15 to 27 member organizations. Check out the [Transform Health Kenya Website](#) to learn more.

Every Body Counts!

Bodily autonomy and integrity mean that every person has the right to make decisions about their body and enjoy the freedom of informed choices.

“Every Body Counts” a campaign launched by the AIDS Rights Alliance in Southern and Eastern Africa (ARASA) launched **Every Body Counts Campaign in 2020** to increase awareness and knowledge of the right to bodily autonomy and integrity to build national and regional movements around BAI issues so that there can be collective advocacy towards

policy change to support BAI.

KELIN, as the convener of the think tank on BAI, has addressed this topic by advocating for the protection and promotion of bodily autonomy and integrity for all persons, with a specific focus on marginalized and vulnerable groups, including adolescent girls and young women, women living with HIV, persons with disabilities as well as sexual orientation and gender identity minorities are among the persons who face violations of bodily autonomy and integrity.

In 2022, KELIN partnered with two think tank members, CGHRD and AYARHEP, to implement a project whose goal was to advocate for an enabling environment for protecting and promoting bodily integrity and autonomy in Kenya. Guided by two objectives:

- To advocate for an enabling environment to protect and promote bodily autonomy and integrity.
- To champion accountability of duty bearers on protecting minorities, marginalized and vulnerable groups' sexual and reproductive rights.

The following advocacy approaches were employed:

1

The think tank members jointly launched an **essay competition** titled: **“My Integrity: My Dignity - What Bodily Autonomy and Integrity Means to Me.”**

ESSAY COMPETITION



My Integrity, My Dignity: What Body Integrity Means to Me

Themes to pick from:

- Reproductive Health & Rights
- Sexual Orientation & Gender Identity
- Ending Sexual & Gender Based Violence

SELECTION CRITERIA AND ELIGIBILITY

- Open to all adolescents and youth in Kenya: 16 - 25 years
- Word count: 1500
- Language: English
- Format: PDF
- **Deadline: 30th April 2022; 2359 EAT**
- Submit via: info@kelinkkenya.org
- Email subject line: Bodily Integrity and Autonomy Essay Competition

AWARDS

- 1st prize winner **KSH. 50,000**
- 2nd prize winner **KSH. 25,000**
- 3rd prize winner **KSH. 10,000**

220 ENTRIES were received

3 WINNERS

were celebrated and awarded in a two-day forum, and KELIN published their essays on various social platforms:

- **1st position:** Stephanie E. - Sexual Orientation and Gender Identity [Black-Jenner-Essay.pdf \(kelinkkenya.org\)](#)
- **2nd position:** Violet Waruguru - Ending Sexual and Gender-Based Violence [Violet-Waruguru-Essay.pdf \(kelinkkenya.org\)](#)
- **3rd position:** Bethy Kerubo - Reproductive Health and Rights [Bethy-Kerubo-Essay.pdf \(kelinkkenya.org\)](#)

2

AYARHEP led in developing youth-friendly materials on bodily autonomy.

The message development considered the following variables:

- messaging for Impact on Bodily Autonomy and Integrity
- messaging against opposition to Bodily Autonomy and Integrity

AYRHEP used the adopted messages to develop youth-friendly information and education materials on bodily autonomy for adolescents and youth for civil society organizations and community-based organizations at the grassroots level



3

KELIN hosted a two-day national dialogue on the protection of minorities during the election period



Stakeholders:

Key and affected populations, adolescent girls and young women, persons with disabilities, and the LGBTIQ+ community.

Ministry of Interior and Coordination, Ministry of Health, civil society organizations, human rights advocates, the media, and parastatals.

Discussion Focus:

Increased risk factors that raise the likelihood of sexual and gender-based violence during the elections period, as well as other grave human rights violations targeted toward minority groups.

Discussions:

- The need for equality and equal protection before the law for key and affected populations, adolescent girls and young women, and persons with disabilities.
- violations against the LGBTIQ+ community during the election period.
- online gender-based violence against young people and the protection of human rights defenders during the 2022 general elections.

Recommendations:

- The participants recommended that there be continued and improved access to health services and commodities during the said period.
- It was also recommended that we uphold respect for human rights principles and standards.



BAI National Dialogue group photo

Collective Action

- Joint letter and statement calling on various agencies to protect minorities during the election period.

4

CGHRD developed a [photo book](#) documenting stories from women dedicated to fighting for women, girls, and LGBTQ+ to have Access to Sexual Reproductive Health and Rights services in Kenya.

- The photo book was launched on December 10, 2022, during International Human Rights Day, which was the last day of CGHRD's Pussy power festival 2022.



Launch of SRHR Unrelenting Advocates - photobook launch on Human rights day 2022



Timothy Wafula of KELIN speaking at the Photobook launch on human rights day



150 WOMEN

from Kisumu, Homa Bay, and Kajiado Counties were sensitized to address climate change impacts and gender-based violence with a focus on food security.

Rights for economies in the Lake region

Leading conversations on a rights-based approach in various facets of our communities is key to the full enjoyment of health-related human rights for all. Following the first Lake region economic block forum, KELIN convened in 2021, and in partnership with the national land Commission, partners fulfilled specific commitments in 2022. Commitments were:

- Investigate pending environmental concerns;
- File existing matters;
- Provide technical support for sustainable environmental management.

Concerning this, KELIN worked with a network of 150 indigenous women in Kisumu, Homa Bay, and Kajiado Counties to address climate change impacts and gender-based violence with a focus on food security.

In 2023, KELIN will hold a follow-up conference to review the commitments' fulfillment.

Land Rights with a gender lens

Integrating gender perspectives into policy and access to justice creates a fair playing field for all. To actualize this, KELIN conducted a capacity enhancement workshop for forty (40) National Land Commission members. As a result of this:

- The National Land Commission revised its recommendation to the Kenya Law Reform Commission on the review of the National Land Policy. This revision highlighted the need to:
 - Operationalize specific women's property rights within national legislation.
 - Prioritize women within the land digitization process.
- KELIN later engaged the National Land Commission in the civil society forum focusing on the ongoing determination of the historical land injustices. This discussion

focused on the women who needed more technical support to file and respond to their cases.

- KELIN reviewed 34 cases affecting women within community land areas and;
- continues to provide legal aid and technical support to vulnerable women and families within our community networks.

Alternative Justice Systems

Our work in communities has demonstrated the value of alternative justice systems (AJS) that support access to justice without the extra strain of lengthy court processes and financial costs.

KELIN, jointly with the National Secretariat on the Implementation of AJS, hosted the first conference to bring to life the AJS policy.

Since the conference, we have observed a 12% increase in cases subjected to AJS.

Specifically, KELIN undertook strategic engagements toward the awareness and onboarding of the AJS in different communities:

- Engaged in onboarding the AJS model laws within Kajiado County and facilitated the submission of the 2022 Kajiado Cosmopolitan Report of over 67 cases to the County government.
- KELIN contributed to developing the Kisumu AJS model to animate the policy in Kisumu and Siaya.
- A process led by the NaSCI-AJS and court users committee (CUC) resulted in the development of a draft model and county action plan based on the justice issues informed by lived realities in the counties.
 - KELIN shared best practices collated over the 12 years of implementation and facilitating access to justice recorded in a compendium of cases developed.



Reclaiming Rights at the Grassroots

The KELIN motto - reclaiming rights, rebuilding lives- is an experience of community members whose land and property rights are violated at the grassroots. To apply a multi-sectoral approach, KELIN trains village elders who serve as mediators, men who head homes, and widows whose rights are often at stake. These stakeholders form a key target for tailormade training to equip them with knowledge on their land rights, harmful cultural and social norms, legal frameworks around the law, and equitable land rights. In 2022, KELIN undertook several training sessions that resulted in positive outcomes:

56 WIDOWS

were trained at Iguhu Kakamega County on their rights and how to reclaim them.

28 ELDERS

were trained at Iguhu Kakamega County on the promotion of rights-based approaches in addressing land disputes.

46 CASES

were assigned to pro-bono advocates to represent widows in court and to secure their titles. Among them:

- 6 women secured titles;
- 4 cases were gazzeted;
- 5 cases awaiting confirmation of a grant;
- 2 cases challenging widows' land ownership are held in our client's favour.

19 ELDERS & 15 AREA CHIEFS

sensitized through meetings (NGAO) to improve access to justice in Kisumu West.

These engagements contributed to NGAO resolving 11 self-reported disputes within the community.

30 MESSENGERS

were trained on communication strategies to promote rights-based approaches for advocacy.

5 messengers utilized the knowledge to retrain their 43 peers

14 community-based organizations engaged their area chiefs with resources on succession

16 messengers identified cases and assisted 22 women in placing caution on their respective pieces of land.

3 messengers intervened in 5 cases where area chiefs asked for money before issuing succession introductory letters.



KELIN facilitated mediations and successful resettlement of **73** cases out of the projected **40** cases that contributed to women gaining control of their land and property in Kisumu, Kakamega, and Homa Bay.

KELIN's Litigation Desk

Two judgments to close off the year

December 2022 was a significant month for persons living with HIV. Two cases that had been pending before the High Court of Kenya at Nairobi were concluded, with the courts delivering two landmark but varied judgments, both of which will appreciably affect the public health response to HIV in Kenya.

LAW & 2 Others V Marura Maternity & Nursing Home & 3 Others; International Community Of Women Living With HIV (ICW) (Interested Party); Secretariat Of The Joint United Nations Programme On Hiv/ Aids & 2 Others (Amicus Curiae) (Constitutional Petition 606 Of 2014) [2022] KEHC 17132 (KLR) (Constitutional And Human Rights) (December 16, 2022) (Judgment)⁶

⁶<http://kenyalaw.org/caselaw/cases/view/249162/>

⁷<http://kenyalaw.org/caselaw/cases/view/248924/>

On December 16, 2022, after 8 years of litigation, Hon. Justice Mrima delivered a landmark judgment in the first case of its kind in Kenya when he declared that forced sterilization of women living with HIV violated human rights.



PETITION 606 OF 2014

It's Time!

**Judgement Day:
16th December 2022**

#MyWombsNotNegotiable

A case summary details the petitioners, the respondents, and the judgment that the respondents have since appealed.

EM & 6 Others V General & Another; HIV Justice Worldwide & Another (Amicus Curiae); National Aids Control Council (Interested Party) (Petition 447 Of 2018) [2022] KEHC 16532 (KLR) (Constitutional and Human Rights) (December 20, 2022) (Judgment)⁷

On December 20, 2022, The High Court dealt a blow to the fight against the HIV response, dismissing a petition that challenged the criminalization of all forms of deliberate transmission of HIV. This Petition challenged the constitutionality of section 26 of the Sexual Offences Act, which criminalizes the deliberate transmission of HIV and other sexually transmitted diseases.

A case summary details the petitioners, the respondents, and the judgment to which KELIN already filed an appeal.

KELIN as Amicus Curiae

KELIN's work has seen the organization's expertise in health-related human rights become widely accepted. In 2022, The courts welcomed KELIN to serve as amicus in several instances:

Mary Nyambura Kangara v Paul Mogaka Supreme Court Petition No 9 (E011) of 2021 Supreme Court was heard on 14th June 2022. In this Petition, the court is considering the question of the division of property acquired during unregistered or unrecognized unions. As amicus, ISLA made submissions recognizing cohabiting relationships as family-forming unions and demonstrated the need to protect parties' rights to property in such unions.

Tike Mwambipile & Equality Now v The United Republic of Tanzania African Court Reference No 042 of 22 where ISLA, jointly with Women Link Worldwide and Human Rights Watch has submitted a brief on Tanzania's national, international, and regional human rights obligations in the elimination of all forms of discrimination against girls and women, to prevent and respond to violence against girls, including in schools, and to safeguard the sexual and reproductive health and rights of girls and women.

Nairobi ELRC Petition 155 of 2021: Clement M. Koigi & Kenya Catholic Doctors Association Versus Joseph K. Kinyua (Head of Public Service) & 3 others: The Petition is before the Employment and Labour Relations Court at Nairobi and challenges a directive that all public servants must be vaccinated or risk disciplinary action.

Naivasha High Court Constitutional Petition No. E002 of 2021: Solomon Ngatia & 387 Others Versus Director of Public Prosecution and Attorney General: The Petition is before the High Court at Naivasha and challenges the constitutionality of various mandatory minimum sentences under the Sexual Offences Act.



Nairobi High Court Constitutional Consolidated Petition No. E500 of 2021: Winfred Clarkson Otieno Ochieng & 12 Others Versus Cabinet Secretary Ministry of Health & 8 Others: The Petition is before the High Court at Nairobi and challenges a directive that persons must be vaccinated to access public offices and services.

Wambui Mwangi v Tony Mochama & Another HCCA 507 of 2019: KELIN supported ISLA's intervention as amicus curiae in an appeal from a defamation case against women who spoke after sexual violence in the High Court at Nairobi in Wambui Mwangi v Tony Mochama (High Court Civil Appeal No 507 of 2019).

While the litigation process may be slow, we have seen the courts as a testament to the law as a tool for change and the protection of rights.

To learn more about what we have been up to, check out our [case tracker](#).

Legislative Process

KELIN continued its tradition of participating in the legislative process and contributing to the following bills:

- East African Community Sexual and Reproductive Health Bill, 2021
- Kenya Medical Supplies Authority (Amendment) Bill, 2021
- Community Groups Registration Bill, 2021
- Land Control Bill, 2021
- The Law of Succession Amendment (Bill), 2021
- HIV Prevention and Control Act (Amendment) Bill, 2021
- Intellectual Property Bill, 2020
- NHIF Bill, 2021
- E-Health Bill, 2021

Championing capacity building for Duty Bearers

KELIN worked to improve the capacity of duty bearers on health rights at both county and national levels. Specifically;

- **24 duty bearers** in Kajiado including County Government, Judiciary, NLC, County Surveyor, AJS Secretariat, NGAO, OCPD and AJS Cosmopolitan. The training focused on implementing a rights-based approach to community land rights and as a result, a subcommittee has been formed to work with National Government Administrative Officers on adopting a rights-based approach.
- Strengthened capacity of **16 Homabay county executive officers** to address sexual violations in the county this resulted in 4 commitments made by Homabay county executive committee members on ways to avert and address violations in the county *strengthen Makongeni safe house, improve budget allocation for SRHR, push for the development of a county child protection policy, operationalize the SGBV policy.*
- **20 members of the Homabay County Assembly Gender Committee** sensitized on the County SGBV policy. At the end of the meeting the members *pledged to allocate 1/6 of the county budget to the departmental budget every financial year to address SGBV in the county. They also pledged to have the construction of safe houses and gender-based violence recovery centers prioritized in the first financial year.*
- **30 national government administrative officers (NGAO)** provided with training on a rights-based approach to women's property rights resulting in 12 of them, with technical support from KELIN, intervening and preventing disinheritance in 12 cases in Homa Bay, Kisumu and Kakamega.

Outcome 2

Transparent and accountable governance in health is enhanced for the implementation of quality, accessible, and comprehensive services and protection of health-related human rights.

One of the indicators that the rights-based approach is working is improved health service delivery. As this continues to be far off, KELIN highlights and addresses the impact of inadequate investments in health systems and services at County and national levels on vulnerable and marginalized populations. We do this by strengthening right holders' ability to monitor transparency and accountability in health governance, which includes health financing, financial systems, operations, procurement, and enhancing public participation in health governance at the county level.



A Call to stop health corruption

Two years into the COVID-19 Pandemic, the health sector in Kenya continues to experience the effects of corruption.

KES. 7.8 BILLION

of public funds meant to provide emergency health commodities during the COVID-19 Pandemic were misappropriated.



2021

Request for information from ODPP on the progress of the Kenya Medical Supply Authority (KEMSA) COVID-19

Outcome: No Response

JUNE 2022

KELIN mobilized civil society and community-based organizations (in collaboration with Transparency International Kenya and Inuka Kenya Trust)

KELIN and partners held a peaceful procession to deliver a petition signed by 2,970 Kenyans to the office of the ODPP.

DEMANDS IN THE PETITION

The ODPP expedites the prosecution of people who flouted procurement laws and regulations at KEMSA during the procurement of COVID-19 commodities ("KEMSA COVID-19 Heist").

The ODPP provides information to the public on the progress made in investigating and prosecuting perpetrators of the said KEMSA COVID-19 Heist.



REASON

7.8 billion Kenya Shillings of public funds meant to provide emergency health commodities during the COVID-19 Pandemic were misappropriated.⁸

As a result of the protest, ODPP provided an update on the action taken. ODPP shared with us a letter they wrote to EACC, returning the investigation files for further investigation.

Petitions filed in 2022

In February 2022, KELIN filed [Petition E002 of 2022 before the Malindi High Court](#) - a petition against the County Government of Kilifi and the County Assembly of Kilifi, challenging the constitutionality of the Kilifi County Maternal, Newborn and Child Health Act due to procedural and substantive elements. The Act was enacted on July 6, 2016, without undertaking meaningful public participation within the County, as required under the Constitution of Kenya (2010) and the County Government Act and Health Act. Moreover, the Act contains provisions that unjustifiably limit the rights and fundamental freedoms of women and girls in Kilifi County.

On Monday, September 11, 2022, Rachael Mwikali & Others v CS Ministry of Health Petition 27 of 2022: Rachael Mwikali, Esther Aoko, the Ambassador for Youth and Adolescent & Reproductive Health Programme (AYARHEP) and the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) filed a petition against the Cabinet Secretary, Ministry of Health, challenging constitutionality of the National Reproductive Health Policy 2022-2032 due to procedural and substantive elements. The policy was passed on July 5, 2022, culminating in a process that the Petitioners contend was unconstitutional for want of public participation.

⁸<http://kenyalaw.org/caselaw/cases/view/249162/>

Outcome 3

Communities and community structures are empowered to demand and promote social justice for health and to hold the government accountable for delivering on the right to health

Communities that know and understand how to advocate for their health-related human rights and build social justice partnerships are true champions in the fight for access to justice. To achieve this, KELIN works closely with community networks who are our implementing partners at the grassroots through community-based organizations and health advocates championing access to justice for all.



Learning from Legal Counsel

With KELIN's litigation work, our legal counsel, Nyokabi Njogu, contributed to a [publication on amicus practices in Africa](#) that ISLA launched on May 12, 2022, during a [live webinar](#) on *Comparative Perspectives on Amicus Curiae Practices in Africa*.

Budget tracking in Nakuru and Homa Bay Counties

Part of our work in enhancing transparency and accountability in health governance is building the capacity of rights holders to effectively engage in public participation and track budgetary allocation and expense of county health budgets that affect access to healthcare of vulnerable and marginalized communities.

We engaged in public participation as civil society and community members of Homa Bay and Nakuru as part of capacity strengthening for budget tracking. Public participation efforts have resulted in an empowered community that understands their rights as citizens and knows how to demand their rights.

KELIN engaged in public participation that resulted in an empowered community that understands their rights as citizens.



First Lady of Kisumu County, Mrs. Nyong'o, with community members, chiefs, and elders at the launch of the milestone report

Challenging SGBV and Gender Inequalities

Through the DREAMS Innovation Challenge, KELIN worked with 45 community-based organizations and widow support groups in all the 15 sub-counties in Homabay and Kisumu Counties to impact SRHR information, life skills on the adolescent girls and young women (AGYWs), generate information on their SRHR needs and to address the gaps in access to sexual and reproductive health justice. Further, KELIN, through a multi-sectoral approach, engaged duty bearers such as justice sector actors and other rights holders to address sexual and reproductive health violations and land rights violations experienced by AGYWs, orphaned and vulnerable children. As a result, KELIN has supported over 1000 adolescent girls and young

KELIN worked with 45 community-based organizations and widow support groups through the DREAMS Innovation Challenge.

As a result, KELIN has supported over 1000 adolescent girls and young women to access sexual and reproductive health justice in Kisumu and Homabay Counties.

women to access sexual and reproductive health justice in Kisumu and Homabay Counties.

Through this initiative, KELIN has strengthened the capacity of community elders to foster support for sexual and reproductive health justice for adolescent girls and young women. These elders also serve as mediators and bridge the gap between adolescent girls and young women, and the duty bearers have created an environment that is enabling adolescent girls and young women to enjoy their rights and to

make informed choices about their sexual and reproductive health.

The project also leveraged existing community structures to train the girls and young women in life skills. We integrated football as a tool for conversation, free expression, and honest feedback on matters affecting girls and young women in their localities.

Watch [the DREAMS girls share their stories](#) from the point of empowerment.

Launch of Milestone Report

Women's Land and Property Rights (WLPR) Program

23rd September, 2022
Kisumu County



In marking thirteen years of KELIN's work facilitating access to justice for the most vulnerable women in Kisumu, Kakamega, Siaya, Kajiado, and Homabay Counties through informal justice systems through cultural structures such as the Luo Council of Elders, we launched a milestone report.

As a result of our work, we successfully resolved over 1032 cases involving vulnerable widows and orphans.

Further, through a partnership with Pastoral Women's Council (PWC) from Tanzania and Uganda Community-Based Association for Women and children welfare (UCOBAC), we embarked on a project aimed at changing peer norms impacting women's land tenure through a curriculum that focuses on weekly courses with over 400 community champions. We have since seen more than 50 men so far

conducting joint registration with their spouses, over 15 men including daughters and wives in written wills, and trained chiefs working in partnership with elders to resolve disputes at the community level.

The launch, officiated by Kisumu County first lady Dorothy Nyongó contributed to receiving more cases, especially from women who sort support to claim their property.

Through collaborative partnerships with the elders and widows, we advocated for the operationalization of Article 159 (2) (c) of the Constitution of Kenya 2010 through the development of the Alternative Justice Systems (AJS) policy 2020. KELIN continues to engage the task force in implementing AJS in western Kenya and sensitizing communities on the opportunities for facilitating access to justice for the most vulnerable.

Outcome 4

Policies, practices, and programs are informed by expanded, improved, and available evidence.

Evidence-based messaging, advocacy, and programming are critical aspects of our approach. Monitoring, evaluation, learning, and research are key in informing, directing, and updating our interventions. In 2022, KELIN was involved in significant research projects locally and globally.



Barriers to Sexual and Reproductive Health services for young women and girls living with HIV

From research on the role of data in HIV index testing programs and its impact on the uptake of SRH services for young women and girls living with HIV

5th October 2022
10:00 am - 11:30 pm EAT

Impact of HIV index testing on access to sexual reproductive health services for Women and girls living with HIV in Kenya

100 Participants

discussed the findings from a study to assess the impact of index testing on access to SRH services for women and girls living with HIV in Kenya.

In our work with communities of people living with HIV, concerns have been regarding how healthcare workers conduct index testing in health facilities. Aligned with our mandate, KELIN undertook a study to assess the impact of index testing on access to SRH services for women and girls living with HIV in Kenya. Through desk research and the experiences shared during the interviews conducted,



Research insights into young people's experiences as technology transforms access to health services and support

The Digital Health and Rights Project Consortium finalized 18 months of research. After speaking with over 170 young people across 7 cities in Ghana, Kenya, and Vietnam, we have published our research report and global policy recommendations, highlighting some of our findings and laying down recommendations for key actors. Our findings reveal that many young people find the digital transformation in health empowering. However, it brings with it risks to privacy, well-being, and security. It is evident that across all three countries, digital governance to protect against these threats is weak at national and global levels, and in light of the positive potential of digital technologies and recommend national governments ensure that affected communities and civil society meaningful participate in decisions from start to end, including the design of digital technologies and in the governance and oversight of their use in health.

we generated an in-depth analysis report and policy brief highlighting five key themes:

- Implementation of HIV index testing programs at facility levels
- Barriers to Sexual and Reproductive Health Services for HIV-positive Clients
- Opportunities in integrating SRH and HIV-related services
- Data protection and safeguards for HIV data
- Participant recommendations about safeguarding HIV patient data

The study findings were disseminated and discussed during a webinar that attracted over 100 participants, including representatives from civil society organizations working around HIV and SRHR, communities and networks of PLHIV and TB, SRH advocates, KP groups, and organizations, including those from the LGBTQ+, sex workers, disability communities, HIV tribunal, the media, ministry of health agencies (NACC/NSDCC and NASCOP), project participants and UN agency representatives.

Outcome 5

KELIN's institutional capacity to deliver on its core mandate is strengthened and sustainability enhanced



Capacity building

Legal Counsel attended three capacity development activities by ISLA: Protection of women's rights in cohabitation unions, the prevention of violence against women in the context of human trafficking, and the protection of women's rights in the extractives industry.

KELIN rolled out the pupillage programme in 2022 and successfully trained one pupil.

In 2022, KELIN successfully completed the first cycle of the associate programme aimed at building the capacity of young professionals on health rights.

Advocacy Campaigns

- Held a twitter space on the 9th of September 2022 titled 'Can one be dismissed from employment based on HIV status?'
- Published a statement via social media, with hard copies delivered to relevant duty bearers including IEBC, NPS, ODP, DCI, IPOA among others highlighting violations faced by minorities during the election period.
- Implemented a Social media campaign on TB and human rights for World TB Day.
- Implemented a Social media campaign on bodily autonomy and integrity.
- Implemented a Social media campaign on research finding on the impact of HIV index testing on access to SRHR.
- KELIN team participated in the anti-FGM campaign; [#InvestDon'tRest.](#)

Awards

2nd Runners Up Award

KELIN received a nomination as Civil Society (Justice & Legal) of the Year Award 2022, awarded 2nd Runners up.



Advocacy Conversations

- Participated in webinar on Human rights and HIV in the digital age: What role for the UN and governments
- Participated in a webinar hosted by Privacy International on "Privacy and Sexual and Reproductive Health in the Post-Roe World" during digital health week
- Presented in a Digital health and rights youth workshop together with partners from STOPAIDS, Restless development and YET4H.
- Participated in a Global Summit on Intellectual Property and Access to Medicines in Istanbul, Turkey.
- Presented at two continental conferences in Senegal and Namibia on the impact of Covid-19 on the HIV responses in Africa.
- 1 book chapter: Drafted a chapter in a book on Resilient Health Systems titled digital health and human rights in an unequal world: Technology, human rights in the Covid-19 recovery and beyond.
- Disseminated women's stories documentary and created awareness on the SYFF website.



Media appearances



News



News on KEMSA Probe advocacy;
<https://www.the-star.co.ke/news/2022-06-15-civil-society-wants-kemsa-probe-report-made-public-in-seven-days/>

<https://www.youtube.com/watch?v=ZKmdIMRQ5z4>



Television



<https://news.switchtv.ke/2022/06/lobby-groups-hold-demo-to-decry-slow.html?m=1>



talk show on Women's rights



Blog | on KEMSA Probe advocacy;

Kenya more: <https://kenyamore.blogspot.com/2022/06/odpp-update-public-on-status-of-kemsa.html>

Kenya Moja: <http://www.kenyamoja.com/video/civil-society-wants-kemsa-probe-report-made-public-seven-days-star-video-54589>

Mbaitu FM: <https://mbaitufm.com/kemsa-on-the-spot-over-graft-cases/>

African Press: <https://www.africa-press.net/kenya/all-news/civil-society-wants-kemsa-probe-report-made-public-in-seven-days>

The Voice: <https://www.youtube.com/watch?v=hNNcgbihOGA>



Other media houses present

K24, People Daily, Royal Media Service, Nation Newspaper, Kenya News Agency



Other appearance/Trends

<https://www.trendsmap.com/twitter/tweet/1537004564444065792>

4 talk shows on Sky FM - WLPR

BBC radio interview on forced and coerced sterilisation judgement in Kenya.

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