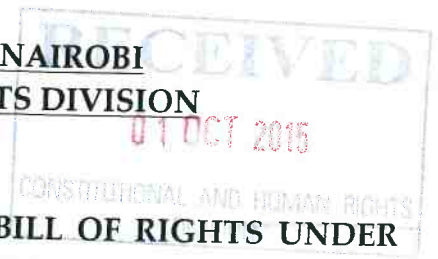


**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 606 OF 2014**



IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 22(1) OF THE CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES  
19,20,21,25,27,28,29,31,33,35,43,45 AND 46 OF THE CONSTITUTION OF KENYA  
(2010)

BETWEEN

L.A.W.....1<sup>ST</sup> PETITIONER  
KENYA LEGAL AND ETHICAL ISSUES NETWORK  
ON HIV & AIDS (KELIN) .....2<sup>ND</sup> PETITIONER  
AFRICAN GENDER AND MEDIA INITIATIVE TRUST (GEM) .....3<sup>RD</sup> PETITIONER

AND

MARURA MATERNITY & NURSING HOME.....1<sup>ST</sup> RESPONDENT  
COUNTY EXECUTIVE COMMITTEE MEMBER  
IN CHARGE OF HEALTH SERVICES – NAIROBI COUNTY.....2<sup>ND</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF HEALTH.....3<sup>RD</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT

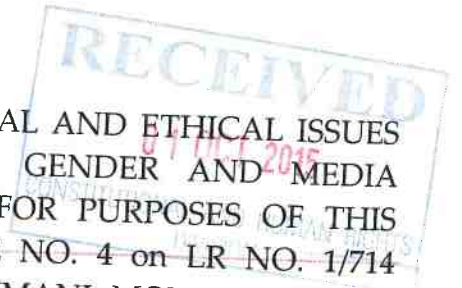
AND

THE SECRETARIAT OF THE JOINT UNITED NATIONS  
PROGRAMME ON HIV/AIDS (UNAIDS Secretariat) .....AMICUS CURIAE  
THE INTERNATIONAL COMMUNITY OF WOMEN  
LIVING WITH HIV(ICW).....INTERESTED PARTY

*Pursuant to Article 22 (1) of the Constitution of Kenya (2010) and The Constitution of  
Kenya (Protection of rights and fundamental freedoms) Practice and Procedure Rules,  
2013.*

AMENDED PETITION

THE HUMBLE PETITION OF L.A.W AND KENYA LEGAL AND ETHICAL ISSUES NETWORK HIV & AIDS (KELIN) AND AFRICAN GENDER AND MEDIA INITIATIVE (GEM) WHOSE ADDRESS OF SERVICE FOR PURPOSES OF THIS PETITION ONLY IS CARE OF KELIN, MAISSONETTE NO. 4 on LR NO. 1/714 KILIMANI, KINDARUMA ROAD, OFF RING ROAD KILIMANI, MOMBASA ROAD, SOMAK BUILDING (Next to AIRTEL) 4<sup>TH</sup> FLOOR, P.O.BOX 112-00202, NAIROBI. IS AS FOLLOWS:-



**INTRODUCTION:**

This matter is about the unconstitutional and unlawful sterilization of L.A.W the 1<sup>st</sup> Petitioner who is a woman living with HIV. The 1<sup>st</sup> Petitioner is a woman who underwent a procedure medically known as bilateral tubal ligation without her informed consent at Marura Maternity and Nursing Home, the 1<sup>st</sup> Respondent herein. The manner in which the procedures took place was non- consensual and therefore unconstitutional and a violation of her reproductive health rights.

The remainder of the Petition is structured as follows:

- a. The Parties
- b. Factual and Procedural Background
- c. The Petitioners' Interests
- d. Summary of the Petitioners' claim and Legal Arguments
- e. The nature of Sterilization and its effects
- f. Particulars of Unconstitutionality
- g. Relevant International law framework on Sterilization of women
- h. Relevant legislative and regulatory framework for sterilization of women
- i. The Petitioners' Humble Prayer.

**a) PARTIES**

1. The Petitioners are as follows:-

- a) LAW is the 1<sup>st</sup> Petitioner herein and is an adult female Kenyan who resides in Nairobi County, within the Republic of Kenya. She is infected with the HIV virus and is on anti-retroviral therapy which she takes daily as prescribed.

- b) Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN), the 2<sup>nd</sup> Petitioner herein is a non-partisan, non-profit making and non-governmental organization duly registered under the Non- Governmental Organizations' Act committed to the protection, promotion and enhancement of enjoyment of the right to health and especially the protection and promotion of HIV related human rights through public interest litigation, advocacy, training and law reform.
- c) African Gender and Media Initiative Trust (GEM), is the 3<sup>rd</sup> Petitioner herein and is a not for profit organisation that works to advance gender equality through research and action on women's human rights. GEM was founded against the backdrop of the need for evidence based programming in women's human rights work in Kenya. The priority issues for GEM include sexual and reproductive health and rights of women, violence against women, economic justice and new media activism.
2. The 1<sup>st</sup> Respondent is a Medical Facility situated in Mathare area and is sued on its own behalf.
3. The 2<sup>nd</sup> Respondent is the County Executive Committee Member in charge of Health Services in Nairobi County and is responsible for policy formulation and leadership on county health facilities and pharmacies, ambulance services, promotion of primary health care, licensing and control of undertakings that sell food to the public, cemeteries, funeral parlors and cremations and liquor licensing.
4. The 3<sup>rd</sup> Respondent is the Cabinet Secretary, Ministry of Health in the National Government and is statutorily mandated to deal with all Health policy matters including those related to reproductive health, family planning and HIV control,

prevention and treatment among others at a national level and is sued in that capacity.

5. The 4<sup>th</sup> Respondent is the Principal Legal Adviser to the Government and the person authorized by law to represent the Government in proceedings to which it is a party and named in that capacity.

**b) FACTUAL AND PROCEDURAL BACKGROUND**

6. The 1<sup>st</sup> Petitioner avers that on or about March 2006 when she was pregnant, she undertook a HIV test at Kariobangi Health Centre which test was positive for HIV. She later went for a follow up test at Baba Dogo Health Centre where the test results confirmed that she was indeed HIV positive.
7. The 1<sup>st</sup> Petitioner during subsequent visits to the Baba Dogo Health Centre, she was advised by a nurse that due to her health and HIV status it was wise for her not to have any more children as having more children would compromise her health and might even cause her death.
8. At eight months into the pregnancy she was sent from the Baba Dogo Health Centre to a Community Health Worker in Korogocho at her residence who gave her two vouchers worth Kshs. 300 one written "CS" and another "TL". She was advised that when she was due for delivery she should use them to deliver at Marura Maternity and Nursing Home.
9. On or about 15 September, 2006, she was admitted at the Marura Maternity and Nursing Home where she was prepared for theatre. Before the operation, the doctor asked her name, age and the number of children she already had. The operation went well and she gave birth to a baby boy.

10. The 1<sup>st</sup> Petitioner soon thereafter lost her husband and she remarried. Her current husband has wanted her to conceive but she has not been successful.
11. On or about July 2010, she visited a free medical camp in Mathare which was held by German Doctors and explained to the doctor that she has been trying to conceive but has been unsuccessful. She underwent medical tests and the doctor informed her that her fallopian tubes are blocked because they had been ligated.
12. The 1<sup>st</sup> Petitioner avers that the procedure of tubal ligation as done on her was an infringement of her reproductive health rights and dignity which occasioned her a social injustice.
13. ~~These actions and conditions described above by the 1<sup>st</sup> petitioner constitute torture in terms of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been ratified by Kenya and thus forms part of Kenyan law in terms of Article 2(5) of the Constitution of the Republic of Kenya, 2010.<sup>1</sup>~~
14. ~~All of these actions and conditions under which the procedures were done and under which she was not given proper and full information to allow her make an informed decision to undergo the tubal ligation are a violation to the 1<sup>st</sup> Petitioner's constitutional rights, impede the effective management of HIV and go against medical best practices.~~

---

<sup>1</sup> Part 1 Article 1 of the convention provides: "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

**c) THE PETITIONERS' INTERESTS**

13. The 1<sup>st</sup> Petitioner acts in her own interest as a person having been sterilized by undergoing bilateral tubal ligation without her informed consent and therefore subjected to torture and inhuman and degrading treatment in contravention of their constitutional and other rights, including their right to be free from torture and inhuman degrading treatment. The 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners act in their own interest, in that judgment of this court will have a major impact on their ability to achieve their core objectives of the 'protection, promotion and enhancement of enjoyment of the right to health and HIV related human rights' and promotion and protection of sexual and reproductive health rights for women respectively.
14. The Petitioners also act in the public interest in that the matter before this Honourable Court has extremely important implications for the health and constitutional rights of those women living with HIV in that it will uphold the requirement that women be given specific information on sterilization and alternative procedures for family planning in order to guard against such intervention being carried out without a fully informed choice.

**d) SUMMARY OF THE PETITIONERS' CLAIM AND LEGAL ARGUMENTS:**

15. The case of the 1<sup>st</sup> Petitioner is a small sampling of cases that have come to the attention of the 2<sup>nd</sup> Petitioner through a report that was produced by Africa Gender and Media Initiative Trust (GEM) the 3<sup>rd</sup> Petitioner herein based on a study conducted among 40 women living with HIV who aver that they were either forced or coerced to accept permanent sterilization procedures (bilateral tubal ligation) in health care facilities in Kenya. The study was conducted between October and November 2011 in Nairobi and Kakamega counties by the African Gender and Media Initiative Trust (GEM) the 3<sup>rd</sup> Petitioner herein in

partnership with Women Fighting Aids in Kenya, Lean on Me and Grassroots Empowerment Trust.

16. This Honourable Court is charged with the "fundamental duty" to "observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights" in terms of Article 21(1) of the Constitution of the Republic of Kenya, 2010 ["the Constitution"]. The High Court has jurisdiction to "hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights" in terms of Article 23(1) of the Constitution.
17. This Honourable Court may moreover grant "appropriate" relief, including a declaration of rights, a conservatory order, an injunction, a declaration of the invalidity of a law and an order for compensation in terms of Article 23(3) (a-e) of the Constitution.
18. The Petitioners therefore believe and assert that it is necessary for this Honourable Court to declare that the act of sterilization of women living with HIV by way of bilateral tubal ligation without their informed consent violates the Constitution and any such sterilization is at all times unconstitutional.

**e) THE NATURE OF STERILIZATION AND ITS EFFECTS**

19. The International Conference on Population and Development (ICPD) Programme of action defines Reproductive health as "a state of physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom

to decide if, when and how often to do so". The World Health Organization defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

20. According to the Society of Obstetricians and Gynecologists of Canada, Tubal Ligation is an operation to stop a woman from getting pregnant. It is permanent. The fallopian tubes, which carry the eggs from the ovary to the womb (uterus) are burned, clipped, cut or tied (the tubes are sealed). The tubes are therefore closed so the sperm and the egg do not meet.<sup>2</sup>
21. Coerced sterilization occurs when financial or other incentives, misinformation or intimidation tactics are used to compel an individual to undergo the procedure while forced sterilization occurs when a person is sterilized without her knowledge or is not given an opportunity to provide informed consent.<sup>3</sup>
22. The decision to sterilize must be voluntary and women should not be pressured by their partners, families or health care providers to undertake the procedure. The decision to sterilize must also be an informed one. Health care providers must explain the details of the procedure, the risks and benefits, the permanent nature of sterilization as well as alternatives to sterilization including non-permanent methods of contraception and again sterilization should never be a pre-requisite for receiving another medical procedure further, sterilization is not an emergency procedure.<sup>4</sup>
23. The impacts of forced and coerced sterilization as evident from the Petitioners averments are:

---

<sup>2</sup> Source: [sogc.org/publications/tubal-ligation-female-surgical-sterilization/](http://sogc.org/publications/tubal-ligation-female-surgical-sterilization/) accessed on 17/1/2014

<sup>3</sup> Against her will: Forced and Coerced sterilization of women worldwide. Open Society Foundations publication; September, 2011

<sup>4</sup> International Federation of Gynecology and obstetrics (FIGO) guidelines on female contraceptive sterilization.



- a. Emotional and relational impact: most women who are sterilized report emotional distress because they can no longer bear children, some women even have clinical depression and end up using anti-depressants. Some women develop a fear of the health care system and facilities and are reluctant to seek further care. Further, some of the women have faced abandonment by partners and social ostracism.
- b. Physical impact: the procedures are such that it takes a long time for women to heal and their menstrual cycle is affected, with menstruations non-existent or irregular. The women are unable to hold urine for a long period of time and they suffer frequent abdominal pains. Women who have undergone the procedure report that they experience reduced sexual desire.
- c. Financial impacts: women report spending money they would otherwise not have spent consulting doctors on reversals or alternative methods of conception.

**f) PARTICULARS OF UNCONSTITUTIONALITY**

24. The 1<sup>st</sup> Petitioner's accounts of her experience at the hands of health care workers demonstrates that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents failed in their obligation to respect, protect and fulfill the fundamental rights of the 1<sup>st</sup> Petitioner.
25. The Respondents were under the obligation to observe, respect, protect, promote and fulfill the rights and freedoms enshrined in the Bill of Rights, Chapter Four of the Constitution.
26. The act of coercive and forceful sterilization of the 1<sup>st</sup> Petitioner violated her rights under the Constitution, specifically to:
  - a. The right to life as under Article 26(1).
  - b. Equality and freedom from discrimination as under Article 27 (1-8).
  - c. The right to human dignity as under Article 28.

- d. Freedom from Torture under Article 29 (d) and from Cruel, inhuman and degrading manner under Article 29 (f). Security of the person as under Article 29 (d & f).
- e. The Right to Privacy under Article 31 (a).
- f. Freedom of expression and specifically freedom to seek and receive information or ideas as under Article 33 (1).
- g. The right to access to information held by another person and required for the exercise or protection of any right or fundamental freedom as under Article 35 (1) (b).
- h. The right to the highest attainable standard of health, which includes the right to health care services including reproductive health care as under Article 43 (1) (a).
- i. The Right to found and have families under Article 45.
- j. The rights of the consumer to be given services of reasonable quality, the information necessary for them to gain full benefit of the services, and protection of their health as in Article 46 (1) (a-c) of the Constitution.
- k. Withholding medical treatment from the 1<sup>st</sup> Petitioner The threat to withhold food portions from the 1<sup>st</sup> Petitioner violated her right to life under Article 26 (1) and (3), right to equality and non- discrimination under Article 27 (1-8), the right to the highest attainable standard of health, which includes the right to health care services, as under Article 43 (1) (a) , right to human dignity under Article 28, freedom from torture under Article 29 (d) and from cruel, inhuman and degrading manner under Article 29 (f) of the Constitution of Kenya.

27. The unlawful and involuntary sterilization of the 1<sup>st</sup> Petitioner was unreasonable, unjustifiable and unconstitutional because it was not done in accordance with the

law and ethics, was not necessary in the circumstances, was not legitimate and necessary and was not the reasonably available alternative of family planning.

28. ~~The unlawful and involuntary sterilization of women living with HIV and in this particular case of the 1<sup>st</sup> Petitioner conducted by the 1<sup>st</sup> Respondent constitutes discrimination on the basis of health and HIV status, in breach of Article 27 (4) of the Constitution.~~

**g) RELEVANT INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK**

28. Article 2 (5-6) of the Constitution of the Republic of Kenya, 2010 states that:

“(5) The general rules of international law shall form part of the law of Kenya” and;

“(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

It therefore follows that the court in exercising its mandate is bound to read and interpret the Constitution and take into account the understandings of fundamental rights at issue and as set out in instruments and conventions agreed to by the government.

29. The actions and inactions of the Respondents and the circumstances under which the 1<sup>st</sup> Petitioner was subjected to the involuntary sterilization by way of bilateral tubal ligation are contrary to a number of international legal instruments voluntarily and customarily agreed upon or ratified by Kenya, including the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination against women (CEDAW), African Convention on Human and Peoples' Rights (ACHPR), the Protocol to the African Charter on

Human and Peoples' Rights (ACHPR) on the Rights of Women in Africa (Maputo Protocol), and the Convention against Torture (CAT). The specific rights violated include but are not limited to:

**a. The Right to the highest attainable standard of health**

- *Article 25, Universal Declaration of Human Rights* ("UDHR"): Establishes for everyone "the right to a standard of living adequate for the health and well-being of himself and of his family".
- *Article 12, International Covenant on Economic, Social and Cultural Rights* ("ICESCR"): "(1) The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; ... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."
- *Article 12, Convention on the Elimination of all forms of Discrimination Against Women* ("CEDAW"): Requires State Parties to "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."
- *Article 16, African Convention on Human and Peoples' Rights* ("ACHPR"): "Every individual shall have the right to enjoy the best attainable state of physical and mental health."
- *Article 14, Protocol to the ACHPR on the Rights of Women in Africa* ("Maputo Protocol" and the General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol:

1. State Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
  - a. the right to control their fertility;
  - b. the right to decide whether to have children, the number of children and the spacing of children;
  - c. the right to choose any method of contraception;
  - d. the right to self-protection and to be protected against sexually transmitted infections, including HIV&AIDS;
  - e. the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV&AIDS, in accordance with internationally recognized standards and best practices;
  - f. the right to have family planning education.

**b. The right to be free from Torture, cruel , inhuman and degrading treatment or punishment**

- *Article 5, UDHR*: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- *Article 7, ICCPR*: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”
- *Article 2 Convention against Torture (“CAT”)*: Requires States to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” and establishes the absolute and unqualified nature of the prohibition of torture.
- *Article 5, ACHPR*: “...All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

- *Article 4(1), Maputo Protocol*: “Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited”.

#### c. Right to Dignity of the person

- *Article 1, UDHR*: “All human beings are born free and equal in dignity and rights.”
- *Preamble, ICCPR, ICESCR, CEDAW, CAT and CRC*: Recognizes the inherent dignity of the human person.
- *Article 5, ACHPR*: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.”
- *Article 3, Maputo Protocol*: “Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.”

#### d. Right to privacy or private life

- *Article 12, UDHR*: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence”.
- *Article 17(1), ICCPR*: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”.
- *Article 8(1), ECHR*: “Everyone has the right to respect for his private and family life, his home and correspondence.” Any interference with this right must be in accordance with the requirements of Article 8(2).

#### e. Right to informed consent and the right to information

- *Article 10(h), CEDAW*: Requires State Parties to ensure that women have “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

- *Article 19, UDHR*: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”
- *Article 19(2), ICCPR*: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally in writing or in print, in the form of art, or through any other media of his choice.”
- *Article 9(1), ACHPR*: “Every individual shall have the right to receive information.”
- *Article 14, Maputo Protocol*: also, States are obligated to “provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.”

**f. Right to determine the number and spacing of one’s children**

- *Article 16(1) (e), CEDAW*: Requires state parties to ensure that women have “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”.
- *Article 14(1)(b), Maputo Protocol*: as above

**g. Right to be free from discrimination and right to equality**

- *Article 2, UDHR; Article 2(1), ICCPR; Article 2(2) ICESCR*: All rights and freedoms in the UDHR, ICCPR and ICESCR are guaranteed “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- *Article 26, ICCPR*: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law” and the law is to prohibit any discrimination on the above mentioned grounds.
- *Article 12, CEDAW*: Requires State Parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” See also *Article 2(e), CEDAW*.
- *Article 2, ACHPR*: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”
- *Article 18(3), ACHPR*: “The State shall ensure the elimination of every discrimination against women”.
- *Article 2, Maputo Protocol*: Mandates the elimination of “discrimination against women through appropriate legislative, institutional and other measures”.

#### **h) Right to Marry and found a family**

- Article 23, ICCPR The right of men and women of marriageable age to marry and to found a family shall be recognized.

29. The right to health has been established as extending to sexual and reproductive health. Reproductive health has been defined by the Committee on Economic, Social and Cultural Rights (CESCR) the body tasked with the interpretation and monitoring of the ICESCR, as:

*“Reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right to access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.”*



30. The CESCR has also confirmed that the right to health includes “the right to control one’s health and body, including sexual and reproductive freedom” and has further elaborated in relation to state duties as regards to women’s right to health that such strategies should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services.
31. The Special Rapporteur to the UN on the right to health has reconfirmed these obligations, stating that, “Reproductive freedom should never be limited by individuals or States as a family planning method, HIV&AIDS prevention, or any other public health agenda.”<sup>5</sup>
32. The Special Rapporteur to the UN on torture and other cruel and inhuman or degrading treatment or punishment in his report to the Human Rights Council emphasizes, “International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender. Examples of such violations include abusive treatment and humiliation in institutional settings, involuntary sterilization and denial of legally available health service...”<sup>6</sup>
33. The Special Rapporteur on Torture unequivocally declared non- consensual sterilization ‘an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman and degrading treatment.

---

<sup>5</sup> Report of the Special Rapporteur on the Rights of everyone to the enjoyment of the highest attainable standard of physical and mental health , Anand Grover, paragraph 58,(Aug.10, 2009),A/64/272

<sup>6</sup> Report of the Special Rapporteur on Torture and other cruel , inhuman or degrading treatment , Juan E. Mendez, Paragraph 46, (Feb.3,2013) , A/HRC/22/53

He calls upon states to 'outlaw forced and coerced sterilization in all circumstances' and clarifies that sterilization for purposes of pregnancy prevention can never be justified on ground of medical emergency at paragraphs 33, 48 and 88) of the report. Moreover, the Special Rapporteur recognizes the particular vulnerability of socially excluded and marginalized groups in the context of forced and coerced sterilization.<sup>7</sup>

34. The African Commission on Human and Peoples' Rights, meeting at its 54<sup>th</sup> Ordinary Session reaffirmed that all medical procedures, including sterilization, must be provided with the free and informed consent of the individual concerned in line with internationally accepted medical and ethical standards and further urged state parties to the African Charter to put in complaint mechanisms, legal assistance, and reparation for women living with HIV who are victims of involuntary sterilization.<sup>8</sup>

35. The World Health Organisation in its Publication "Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO" affirm that special care must be taken to ensure that every person makes a voluntary choice regarding the use of any contraceptive method and particularly for sterilization, since it is a surgical procedure that is intended to be permanent.

#### **h) RELEVANT LEGISLATIVE AND REGULATORY FRAMEWORK FOR STERILIZATION IN KENYA**

---

<sup>7</sup> Ibid note 6

<sup>8</sup> Resolution on Involuntary Sterilisation and the Protection of Human Rights in Access to HIV Services; The African Commission on Human and Peoples' Rights, meeting at its 54th Ordinary Session held from 22 October to 5 November 2013, in Banjul, The Gambia

36. Apart from the Constitution of Kenya, there is no specific legislation in force in Kenya that addresses the issue of informed consent before medical procedures. The Kenya Medical Practitioners and Dentists' Board, the regulatory body of medical practice in Kenya in its mission, vision and the core values eludes to quality of health care upholding ethics, professionalism and justice.

37. The National Family Planning Guidelines for Service Providers (2010) emphasizes informed and voluntary consent prior to female surgical sterilization. The guidelines note that:

*“special care must be taken to ensure that every client who chooses this method does so voluntarily and is fully informed about the permanence of this method and the availability of alternative, long acting, highly effective methods”*

Further, the guidelines caution service providers against providing any incentive for one to accept any form of contraception or in recruiting potential clients to perform surgical operations.

38. The aforementioned guidelines affirm the right of a woman to change her mind even after she had initially consented. In highlighting that people living with HIV have rights to access family planning options, the guidelines do not explicitly state that HIV status should not be used as a criteria to force or coerce women living with HIV to sterilization.

39. The International Federation of Gynecology and Obstetrics (FIGO) Guidelines on female contraceptive sterilization define the conditions under which consent cannot be sought in any case. Of particular importance are:

- a. Prevention of future pregnancy cannot ethically be justified as a medical emergency, and thus cannot be used as a reason for a doctor to sterilize a woman without her full, free and informed consent.

- b. No minimum or maximum number of children may be used as criteria to sterilize a woman without her full, free and informed consent.
- c. Only women themselves can give ethically valid consent to their own sterilization.
- d. Women's consent to sterilization should not be made a condition of access to medical care, such as HIV treatment or of any benefit such as release from an institution.
- e. Consent to sterilization should not be requested when women may be vulnerable, such as when requesting termination for pregnancy, going into labour or in the aftermath of delivery.
- f. As for all non-emergency medical procedures, women should be adequately informed of all the risks and benefits of any proposed procedure and of its alternatives; and
- g. The right of all persons with disabilities who are of marriageable age to marry and to found a family is recognized.
- h. All information must be provided in a language, both spoken and written, that the women understand and in an accessible format such as sign language, braille and plain non- technical language appropriate to the individual woman's need.

40. Human rights are also reflected in standards of medical ethics. The World Medical Association International Code of Medical Ethics stipulates that physicians shall:

- a. Always exercise his/her independent professional judgment and maintain the highest standards of professional conduct;
- b. Respect a competent patient's right to accept or refuse treatment;
- c. Not allow his/her judgment to be influenced by personal profit or unfair discrimination; and,

d. Be dedicated to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity.

41. Forced and coerced sterilization is a violation of international medical ethics and a clear misuse of medical expertise.

42. It is apparent from the guidelines mentioned as read together with the provisions of the Constitution, International Conventions and instruments that there is need for policy and law makers to come up with a law on involuntary/forced/ coerced sterilization. Such policy must be compliant with the Constitution and should incorporate principles from international guidelines and best practices in other jurisdictions.

43. The recently launched Kenya National Patients' Rights Charter, 2013 clearly outlines the rights of patients at Chapter One to include the right to the highest attainable standard of health, right to refuse treatment, right to informed consent to treatment, right to information and right to be treated with respect and dignity. It further provides that every person has a right to complain about health services to the relevant authorities and such complaints should be investigated.

**i) YOUR PETITIONERS' HUMBLE PRAYER**

**REASONS WHEREFORE YOUR PETITIONER HUMBLY PRAYS THAT:**

a. This Honourable Court declares that the act of sterilization of the 1<sup>st</sup> Petitioner by way of bilateral tubal ligation as done by the 1<sup>st</sup> Respondent amounted to a violation of the human and constitutional rights of the 1<sup>st</sup> Petitioner as outlined in the Petition herein.

- b. This Honourable Court declares that it is the right of women living with HIV to have equal access to reproductive health rights, including the right to freely and voluntarily determine if, when and how often to bear children.
- c. This Honourable Court issues an order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to put in place guidelines, measures and training for health care providers and social workers that are in line with FIGO Guidelines on sterilization and informed consent.
- d. This Honourable Court issues an order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to conduct in depth mandatory training of all practicing gynecologists and obstetricians on the revised FIGO ethical guidelines on the performance of tubal ligation.
- e. This Honourable Court issues an order directing the 3<sup>rd</sup> Respondent to review the National Family Planning Guidelines for Service Providers to address the provisions that are discriminatory.
- f. This Honourable Court issue an order directing that there be instituted a mandatory ~~seven (7) days~~ forty eight (48) hours waiting period between the time that a woman freely requests tubal ligation and the performance of the surgery.
- g. This Honourable Court issues an order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to conduct public awareness campaigns to educate patients and citizens about their rights to informed consent, privacy and information and ensure that information on patients' rights is immediately accessible within health care facilities.
- h. This Honourable Court issues an order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to establish clear procedural guidelines for following up on complaints of rights violations and strengthen administrative accountability at hospitals.

- i. This Honourable Court issues an order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to create a monitoring and evaluation system to ensure full implementation of laws and policies regarding the performance of tubal ligation.
- j. This Honourable Court issues an order directing the 3<sup>rd</sup> Respondent to issue a circular directing all medical and health facilities (both public and private) that forceful or coercive sterilization of women living with HIV is not a government policy.
- k. This Honourable Court is pleased to order the 1<sup>st</sup> Respondent to pay general and exemplary damages on an aggravated scale to the 1<sup>st</sup> Petitioner for the physical and psychological suffering occasioned by the unlawful and unconstitutional sterilization.
- l. An Order This Honourable Court issues an order that since this Petition is in the Public Interest, each party should bear their own costs.
- m. ~~This matter be brought up for mention before this Honourable Court six (6) months after the date of judgment to confirm compliance with the orders issued.~~ This Honorable Court issues an order directing the Respondents within 90 days of the Court Judgement to file affidavits in this Court detailing out their compliance with orders d, e, f, g, h, I, j, k and l.
- n. This Honourable Court be pleased to make such other orders as it shall deem fit and just.

**DATED** at Nairobi this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

**AMMENDED** at Nairobi this 18<sup>th</sup> day of September 2015.

*BA*

**ALLAN ACHESA MALECHE**  
**ADVOCATE FOR THE PETITIONERS**

**DRAWN & FILED BY: -**

ALLAN ACHESA MALECHE  
KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN)  
KINDARUMA ROAD, OFF NGONG ROAD, KILIMANI  
MOMBASA ROAD, SOMAK BUILDING (Next to Airtel) 4<sup>th</sup> FLOOR  
P.O. BOX 112-00200, KNH  
EMAIL: [amaleche@kelinkenya.org](mailto:amaleche@kelinkenya.org)  
MOBILE NO: +254 708 389 870  
NAIROBI.

**TO BE SERVED UPON:-**

OJIENDA & CO. ADVOCATES  
VIEW PARK TOWERS, 2<sup>ND</sup> FLOOR  
UHURU HIGHWAY  
P.O.BOX 17245-00100  
NAIROBI

MANEGENE & PARTNERS ADVOCATES  
BRUCE HOUSE- 10<sup>TH</sup> FLOOR, ROOM 1001,  
STANDARD STREET,  
P.O.BOX 7183-00200,  
NAIROBI.

THE HON. THE ATTORNEY GENERAL  
STATE LAW OFFICE  
SHERIA HOUSE  
HARAMBEE AVENUE  
P.O BOX 40112  
NAIROBI

KAPLAN & STRATTON ADVOCATES  
WILLIAMSON HOUSE, 9<sup>TH</sup> FLOOR  
4<sup>TH</sup> NGONG AVENUE  
P.O.BOX 40111-00100



NAIROBI

EMAIL: [KSLitigation@kapstrat.com](mailto:KSLitigation@kapstrat.com)

RACHIER & AMOLLO ADVOCATES

MAYFAIR CENTER, 5<sup>TH</sup> FLOOR

RALPH BUNCHE ROAD

P.O BOX 55645-00200

NAIROBI

NUNGO, ODUOR & WAIGWA ADVOCATES

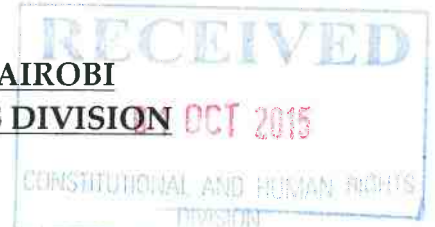
MAISONETTE NO. 1, COURT 30 (Next to Riley Group Security)

MOMBASA ROAD, OFF BUNYALA ROAD

P.O.BOX 70678-00400

NAIROBI

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 606 OF 2014**



**IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 22(1) OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES  
19,20,21,25,27,28,29,31,33,35,43,45 AND 46 OF THE CONSTITUTION OF KENYA  
(2010)**

**BETWEEN**

**L.A.W.....1<sup>ST</sup> PETITIONER**  
**KENYA LEGAL AND ETHICAL ISSUES NETWORK**  
**ON HIV & AIDS (KELIN) .....2<sup>ND</sup> PETITIONER**  
**AFRICAN GENDER AND MEDIA INITIATIVE TRUST (GEM) .....3<sup>RD</sup> PETITIONER**

**AND**

**MARURA MATERNITY & NURSING HOME.....1<sup>ST</sup> RESPONDENT**  
**COUNTY EXECUTIVE COMMITTEE MEMBER**  
**IN CHARGE OF HEALTH SERVICES – NAIROBI COUNTY.....2<sup>ND</sup> RESPONDENT**  
**CABINET SECRETARY, MINISTRY OF HEALTH.....3<sup>RD</sup> RESPONDENT**  
**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**THE SECRETARIAT OF THE JOINT UNITED NATIONS**  
**PROGRAMME ON HIV/AIDS (UNAIDS Secretariat) .....AMICUS CURIAE**  
**THE INTERNATIONAL COMMUNITY OF WOMEN**  
**LIVING WITH HIV(ICW).....INTERESTED PARTY**

**1<sup>ST</sup> PETITIONER'S AFFIDAVIT IN SUPPORT OF THE PETITION**

I, LAW, an adult female Kenyan of sound mind residing and working for gain in Nairobi County within the Republic of Kenya, whose address for purposes of Petition is care of ALLAN ACHESA MALECHE, P.O.BOX 112-00202. NAIROBI, KELIN,

MOMBASA ROAD, SOMAK HOUSE, 4<sup>TH</sup> FLOOR, do hereby make oath and state as follows;

1. **THAT**, I am the 1<sup>st</sup> Petitioner herein and therefore competent to swear this affidavit in support of my Petition herein.
2. **THAT**, I am 29 years old and married to one man and I have two children a boy and a girl aged 6 and 10 respectively.
3. **THAT**, I went to school up to class three in Yimbo before I came to Nairobi to work as a house girl where I met my first husband and married him when I was 14 years old.
4. **THAT**, I am not employed but I run small businesses of selling ice cream and largely depend on my husband for financial support.
5. **THAT**, I have read, explained to me and I have understood the contents of the Petition which my Advocate on record has presented herein and I wish to adopt the contents of the same as if the same were herein set out seriatim.
6. **THAT**, on or about March 2006, I attended the Kariobangi Health Centre for an ante natal clinic visit.
7. **THAT**, I was advised by the health professional who attended to me that it would be wise to undergo an HIV test, to which I consented.
8. **THAT**, the test result indicated that I was HIV positive.

9. **THAT**, I later went for a follow up test at Baba Dogo Health Centre where the test results confirmed that I was indeed HIV positive
10. **THAT**, I am still on anti-retroviral therapy which I take daily as prescribed and I collect them periodically at the SWOP- Majengo Clinic run by University of Nairobi, Department of Medicine- Microbiology.
11. **THAT**, during subsequent visits at the Baba Dogo Health Centre , I was advised by a nurse that due to my health and HIV status it was wise for me not to have any more children as having more children would compromise my health and might even cause my death.
12. **THAT**, The nurse told me that I should find some money to book space to undergo cesarean section to allow me to give birth to a healthy baby.
13. **THAT**, at eight months into the pregnancy I was sent from the Baba Dogo Health Centre to a community health worker in Korogocho who gave me two vouchers worth Kshs. 300 one written "CS" and another "TL" and advised me that when I was due for delivery and I should use the vouchers to deliver at Marura Nursing Home. Annexed herein and marked as LAW-001 is a copy of the Kshs. 100 Voucher.
14. **THAT**, on or about 15 September, 2006, I was admitted at the Marura Nursing Home where I was prepared for theatre. Before the operation, the doctor asked me my name, age and the number of children I already had. The operation went well and I gave birth to a baby boy on 16 September, 2006.

15. **THAT**, soon after the birth of my son in towards the end of 2006, my husband was beaten up by thugs at Daniel Comboni Primary School in Korogocho and he was pronounced dead when he arrived in hospital.
16. **THAT**, I got remarried in 2010 to my current husband whom I met in church at the Redeemed Gospel Church in Korogocho.
17. **THAT**, after a few months in the new marriage with my current husband, he informed me that he wanted us to have some children together, we tried for a long time to conceive but the same did not happen.
18. **THAT**, while attending HIV support group meetings, I heard testimonies of HIV positive women who were having babies in their condition and none of them suffered any adverse health effects.
19. **THAT**, on or about July 2010, I visited a medical camp in Mathare and explained to them that I have been trying to conceive but I have been so far unsuccessful.
20. **THAT**, the doctors carried out some tests on me, tests which I cannot recall, and they later revealed to me that I could not conceive because my fallopian tubes were blocked.
21. **THAT**, I went back to the community health worker who had given me the voucher earlier in 2006 and asked her what 'TL' actually meant and she explained to me that the voucher she gave me written TL meant that I was also going to undergo tubal ligation during the caesarean section and that during the birth of my child at Marura Nursing Home the doctor conducted a bilateral tubal ligation on me.

22. **THAT**, I have on several occasions visited the Marura Nursing home to get the contents of my medical records but they have refused / neglected and failed to provide me with the same.
23. **THAT**, on 8 September, 2014 I wrote to Marura Maternity and Nursing Home requesting for my hospital and medical records. Annexed herein and marked as LAW-002 is a copy of the said letter.
24. **THAT**, I did a reminder on 24 November, 2014 requesting for my hospital and medical records but I am yet to receive any form of communication from the hospital. Annexed herein and marked as LAW-002 (a and b) is a copy of the said letter and a certificate of registration for postage.
25. **THAT**, I was not informed of other options of family planning by the medical and health professionals at Marura Nursing Home and therefore did not get a chance to choose and decide the most appropriate method for me.
26. **THAT**, I did not give my informed consent for the procedure of bilateral tubal ligation to be performed on me.
27. **THAT**, in September, 2014, I visited Hurlingham Family Health Clinic to seek gynecological advice on how to reverse the tubal ligation but I was informed that tubal ligation is 100% permanent and therefore not reversible.
28. **THAT**, a medical report was prepared to confirm the same. Annexed herein and marked as LAW-003 is a copy of the medical report prepared by Dr. Khisa Weston Wakasiaka.

29. THAT, I still desire to have more children but I am unable to due to the procedure of tubal ligation that I underwent.
30. THAT, I know of my own knowledge that my inability to conceive has caused friction and unending disagreements between my husband and I.
31. THAT, as a result of the friction and disagreements between my husband and I because of my inability to conceive and other related circumstances, I have suffered major depressive disorder which have negatively impacted my relationships and social life. Annexed herein and marked LAW-004 is a copy of a report on Psychological and psychiatric evaluation.
32. THAT, I have been advised by my advocate on record, advice which I believe to be true that the procedure of bilateral tubal ligation on me was an infringement of my reproductive rights as I was not given alternative choices of family planning and enough information to enable me make an informed choice.
33. THAT, I am informed by my advocate on record, advice which I believe to be true, that the decision to sterilize by way of tubal ligation should only be done once informed consent is sought and given.
34. THAT, I am informed by my advocate on record, advice which I believe to be true that, it is demonstrable that the 1<sup>st</sup> Respondent, in a failure to exercise reasonableness, omitted to consider the fact that the procedure was not an emergency.

THAT, I swear this affidavit in support of the petition herein.

THAT, what is deposed to herein is true to the best of my knowledge, information and belief, save for where sources of information have been disclosed.

SWORN at Nairobi by the said  
LAW

This 10<sup>th</sup> day of September 2013

BEFORE ME

**SHEILA K. AMANI**  
ADVOCATE &  
COMMISSIONER FOR OATHS  
P. O. Box 44322 NAIROBI  
sheila.amani@kllbo.com

COMMISSIONER FOR OATHS

[Signature]  
DEPONENT

DRAWN & FILED BY: -

ALLAN ACHESA MALECHE  
KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN)  
KINDARUMA ROAD, OFF NGONG ROAD, KILIMANI  
P.O. BOX 112-00200, KNH  
EMAIL: [amaleche@kelinkenya.org](mailto:amaleche@kelinkenya.org)  
MOBILE NO: +254 708 389 870  
NAIROBI.



**Kadi Ya Jamii**

Name: \_\_\_\_\_

Location: *Korogoch*

Date: *15/9/02*

**100**

960117890 027041

This card is valid for one year, from date of issue and is not transferable or exchangeable

This card is valid for one year, from date of issue and is not transferable or exchangeable

**100**

**053074**

**REPRODUCTION ACADEMY**

- Implants
- IUCD
- Female & Male Voluntary
- Surgical Contraceptive
- (Vasectomy & Tubal Ligation)
- Counseling

**DATE**

**SIGNATURE**

C/o Maisonette No. 4 on LR No. 1/714, Kilimani  
Kindaruma Road off Ngong Road,  
Next to Commodore Office Suites ,  
P.O. Box 112- 00202,  
Nairobi.

8 September 2014.

The In charge,  
Marura Nursing Home,  
Mathare North,  
Nairobi.

Dear Sir / Madam,

**RE: REQUEST FOR MY HOSPITAL AND MEDICAL RECORDS**

I was admitted to your facility on or about 15 September, 2006 using the name Lilian Atieno Oduor (Oduor being my fathers' name) I underwent a cesarean operation where after I gave birth to a baby boy on 16 September, 2006 and was later discharged.

I am writing to request that I be provided my hospital records relating to my treatment and management during the time I was admitted at the Marura Nursing Home. These records should include but not limited to all the doctors notes, nurses notes, nursing cardex, signed consent forms and theatre operation notes.

I look forward to hearing from you in this regard.

Yours faithfully,



Lilian Atieno Wango  
C/o Maisonette No. 4 on LR No. 1/714, Kilimani  
Kindaruma Road off Ngong Road,  
Next to Commodore Office Suites ,  
P.O. Box 112- 00202,  
Nairobi.

"REMINDER"

8 September 2014.

The In charge,  
Marura Nursing Home,  
Mathare North,  
Nairobi.

Dear Sir / Madam,


**RE: REQUEST FOR MY HOSPITAL AND MEDICAL RECORDS**

I was admitted to your facility on or about 15 September, 2006 using the name Lilian Atieno Oduor (Oduor being my fathers' name) I underwent a cesarean operation where after I gave birth to a baby boy on 16 September, 2006 and was later discharged.

I am writing to request that I be provided my hospital records relating to my treatment and management during the time I was admitted at the Marura Nursing Home. These records should include but not limited to all the doctors notes, nurses notes, nursing cardex, signed consent forms and theatre operation notes.

I look forward to hearing from you in this regard.

Yours faithfully,

  
Lilian Atieno Wango.



# HURLINGHAM

FAMILY HEALTH CLINIC

Total peace of mind

Dr Khisa W. Wakasiaka MBChB, MMED (NBI)  
Specialist Obstet & Gynaecologist

Dr Kagema Frank MBChB, MMED (NBI)  
Consultant Gynaecologist Obstetrician

Nyaku House, Hurlingham, Behind Barclays Bank, below  
A.A offices - 1st floor suite No. 10, Argwings Koohek Road,  
Nairobi, Kenya

P.O. Box 19460 - 00202 Nairobi.  
Tel: +254 20 271 860 3 / 0720 432 834.  
Email: info@hch.co.ke

8<sup>th</sup> October, 2014.

## MEDICAL REPORT

**Name:** ~~XXXXXXXXXX~~

**Age:** 28YRS

**OpNo:** 18277/9/14

## PRESENTATION

Para 2+0 seroreactive on HAART admitted for diagnostic laparoscopy.

## PHYSICAL FINDINGS

Previous bilateral tubal ligation (BLT) confirmed with no dye spill at laparoscopy.

## INVESTIGATIONS

Hb-10.5g/dl U/E/Cs-Normal

Cervical smear-Negative for intraepithelial/lesion or malignancy with

Bilateral vaginosis.

## CONCLUSIONS/OUTCOME

Confirmed BTL with no dye spill.

**RECOMMENDATIONS**

This is a permanent method of contraception. If conception is derived, then can only be achieved by in vitro fertilization (IVF).

Yours Faithfully

**HURLINGHAM FAMILY HEALTH CLINIC**  
Nyaku Road, Hurlingham  
Argwings Kodhek Road, Hurlingham  
P.O. Box 19489, 00202, NAIROBI  
Tel: 020 271 1111 Fax: 0720 432634

**DR. KHISA WESTON WAKASIKA**

**CONSULTANT OBSTETRICIAN AND GYNAECOLOGIST**

## PSYCHOLOGICAL AND PSYCHIATRIC EVALUATION

**Patients Name:** [REDACTED]  
**Date of Birth:** 02 April 1986  
**Physical Address:** Korogocho, Nairobi Kenya  
**Marital Status:** Married  
**Examiners:** Elizabeth A. Khaemba – Clinical Psychologist  
Dr. David E. Bukusi - Psychiatrist

### SOURCES OF INFORMATION

Client- [REDACTED]

### REASONS FOR EVALUATION

Referred by Kelin International for evaluation of psychological effect of sterilization.

Lillian presented for psychological and psychiatric evaluation on 22<sup>nd</sup> and 29<sup>th</sup> September, 6<sup>th</sup> October, 13<sup>th</sup> October and 21<sup>st</sup> October 2014.

### Presenting Complaints

Lilian reports that in 2006 she got pregnant with her son. At the antenatal checkup in a health centre in Baba Dogo, she was tested for HIV and found to be HIV positive. She was counselled at the health centre. The nurse in charge indicated that if she wanted to live a healthy life, she should stop giving birth. She was also told that HIV medicine did not go well with family planning pills so the only option was to have a tubal ligation (TL). She was advised to have a caesarian section to prevent mother to child transmission. She was told that there were vouchers being sold for Ksh. 300; 200 shillings for delivery, and one hundred shillings for TL. She delivered her baby at Marura Nursing Hospital and was booked into hospital on the 15<sup>th</sup> of September 2006. The doctor informed her that a T.L would be done after the Caesarian Section. After the caesarian section she was informed that the T.L had been done. Later, while attending meetings, she heard that other women have been having babies even when they are HIV positive. She also found out that other women are using family planning pills and are on ARVs.

She was married at the time of diagnosis but her husband died in February 2007. She remarried in 2010. Her current husband insists that he wants a child and is now refusing to take responsibility for the children from her previous marriage. She indicated that her husband has now married another woman who is currently 4 months pregnant. Although her husband still visits her house, he does so only twice a week and he does not take responsibility for the family as he used to before he learnt that she had a T.L. She says that whenever she sees a woman passing by with a child, she wishes she could have a child of her own. She even forgets that she has her own children. She feels that her current marriage will not last. She prays that the other wife delivers a baby girl because a baby boy would traditionally mean that she will be chased from the home. She indicates that her husband has been under pressure from his family to get rid of her as she is said to be barren.

She has gone to see a doctor to try and have her TL reversed but has been told it is not possible to revert. She feels helpless and says she now has no control over her uterus and her marriage. The other options she has been given are either too expensive or impossible for her. These include travelling out of the country to attempt to reverse her TL, adoption, and implantation of an egg in her uterus.

### **History of Psychiatric and General Medical Illness**

She indicated that she has chronic headaches due to stress resulting from worry about her inability to deliver. She has also been losing weight because she worries a great deal about how she can conceive.

### **Family History**

Lilian is the first born in her family. Her father is deceased and her mother lives upcountry (Bondo). She has 3 sisters and 3 brothers. Her mother is aware of her status but her siblings are unaware. Her mother is very supportive of her.

### **Personal Development History**

Lilian indicated that she went to school up to class 3 in Imbo. Her father died when she was in class 3 and she was sent to Nairobi to work as a house maid. She met with her first husband when she turned 14 years and got married.

### **Social History**

Lillian is part of a support group at Redeemed Gospel Church. She has several friends but she indicates that none of them know her status because she is afraid of being stigmatized.

### **Forensic and Substance Abuse History**

She indicated that she had never drank alcohol nor had she ever been arrested.

### **Mental Status Examination**

She was well kempt, clean and appropriately dressed. Her gait appeared normal and she behaved appropriately for the situation. It was easy to create rapport and she spoke openly about her situation. She said that her predominant mood was sad. She appeared dysthymic (abnormal mood); her mood is congruent with affect. Her speech was normal in volume and tone. Her thought process was normal with clear associations. She did not have any abnormal sensory distortions, illusions, hallucinations. She was conscious and alert.

Her concentration, short and long memory was good and she was oriented in space, time and person. Judgement was good.

**29 September, 2014**

### **Corroborative Session**

Lillian came to the session alone. She reports that the lady she was to come with told her that she had an urgent errand to run and was therefore not in a position to come with her.

She looks unhappy and reports that for the last 2 days she has not seen her husband. She says that the greatest challenge she is experiencing right now is stress from her husband's marriage, low finances and business. She says that since the sun is not shining, she is unable to sell her ice cream and does not know what else to do. She is thinking of starting a different kind of business that does not depend on the weather. She indicates that she skips meals because she lacks finances and her husband is unwilling to support her. He only contributes Ksh. 200 in the evenings and this is not sufficient for the daily use of the family.

We discussed alternative business ideas, but she says there are many things that she is still thinking about and she will have to come to a decision. She wondered what factors she could consider to help her come to a decision and I taught her steps that lead to good decision making.



## **Psychiatric Review**

- She looks very sad
- She is part of a support group at her church where she met her husband
- No disclosure to her friends
- Appears quite unhappy
- Low mood

### **Vegetative Functions:**

- Distorted sleep
- Normal appetite

HIV Medical/Clinical review as of 18<sup>th</sup> September, 2018 CD4 cell count - 712 (June, 2014)

Viral load is reducing.

### **Multi-Axial Diagnosis – DSM IV**

**Axis I:** Major Depressive Disorder

**Axis II:** None

**Axis III:** HIV Positive

**Axis IV:** Stress due to inability to give birth, husband has married another woman

**Axis V:** 51-60

### **Working diagnosis: Depression**

#### **Treatment Plan:**

Tab amitriptyline 50mg twice a day for one month (an anti-depressant)

#### **Discussion and Opinion**

Following the tubal ligation, Lilian has suffered a marked psychological reaction. The extent of her depression has had a marked impact upon the quality of her life her social life and interests have been restricted. She also has a poor relationship with her children due to

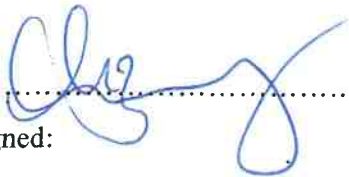
frequent outbursts of anger. There is no indication of a continuation of a pre-existing condition as she was previously happy until her husband discovered that she could not have more children.

### **Conclusion**

Lilian has suffered Major Depressive Disorder due to her inability to conceive and the reaction of her social relationship and circumstances. This has contributed to her outbursts of anger, which have negatively impacted her relationships and social life.

### **Treatment Options**

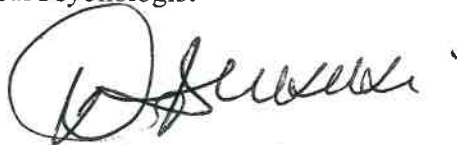
Lilian currently requires anti-depressant medication and cognitive behavioural therapy to treat major depressive disorder.



.....  
Signed:

Elizabeth A. Khaemba

Clinical Psychologist

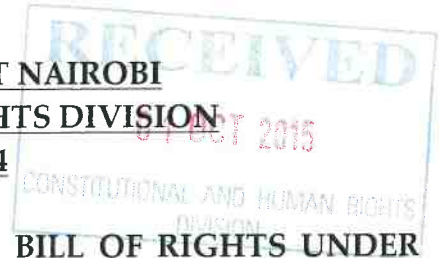


.....  
Signed:

Dr. David E. Bukusi

Psychiatrist

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 606 OF 2014**



**IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 22(1) OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES  
19,20,21,25,27,28,29,31,33,35,43,45 AND 46 OF THE CONSTITUTION OF KENYA  
(2010)**

**BETWEEN**

**L.A.W.....1<sup>ST</sup> PETITIONER**  
**KENYA LEGAL AND ETHICAL ISSUES NETWORK**  
**ON HIV & AIDS (KELIN) .....2<sup>ND</sup> PETITIONER**  
**AFRICAN GENDER AND MEDIA INITIATIVE TRUST (GEM) .....3<sup>RD</sup> PETITIONER**

**AND**

**MARURA MATERNITY & NURSING HOME.....1<sup>ST</sup> RESPONDENT**  
**COUNTY EXECUTIVE COMMITTEE MEMBER**  
**IN CHARGE OF HEALTH SERVICES – NAIROBI COUNTY.....2<sup>ND</sup> RESPONDENT**  
**CABINET SECRETARY, MINISTRY OF HEALTH.....3<sup>RD</sup> RESPONDENT**  
**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**THE SECRETARIAT OF THE JOINT UNITED NATIONS**  
**PROGRAMME ON HIV/AIDS (UNAIDS Secretariat) .....AMICUS CURIAE**  
**THE INTERNATIONAL COMMUNITY OF WOMEN**  
**LIVING WITH HIV(ICW).....INTERESTED PARTY**

*Pursuant to Article 22 (1) of the Constitution of Kenya (2010) and The Constitution of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013.*

## 2<sup>ND</sup> PETITIONER'S AFFIDAVIT IN SUPPORT OF THE PETITION

I, **ALLAN ACHESA MALECHE**, of P.O.BOX 112 – 00202 Nairobi within the Republic of Kenya do hereby make a solemn oath and swear as follows:-

1. **THAT**, I am an advocate of the High Court of Kenya and the Executive Director of Kenya Legal and Ethical Issues Network of HIV & AIDS (KELIN) who has the conduct of this matter on behalf of the petitioners thus competent to swear this affidavit.
2. **THAT**, I have the authority of the Board of Directors to swear this affidavit on behalf of the 2<sup>nd</sup> Petitioner herein.
3. **THAT**, I am conversant with the contents of the Petition herein and I have also interacted with the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners herein and I fully understand the issues in question and I further adopt the contents of the Petition filed herein as if the same were herein set out seriatim.
4. **THAT**, KELIN is a non – partisan , non- profit making organization and non-governmental organization duly registered under the Non- Governmental Organizations Act and committed to the protection, promotion and enhancement of enjoyment of the right to health through public interest litigation, advocacy and law reform.
5. **THAT**, the mandate of KELIN is to protect and promote HIV related human rights in East Africa by providing legal services and support, training professionals on human rights, engaging in advocacy campaigns that promote awareness of human

rights issues, conducting research and influencing policy that promotes evidence based change.

6. **THAT**, KELIN's mission is to promote and protect HIV related human rights for all while its mission is to promote and protect HIV related rights by all.
7. **THAT**, I know as of my own knowledge and based on the reading of the contents of the petition and interactions with the 1<sup>st</sup> Petitioner that she was sterilized by way of bilateral tubal ligation without her informed consent.
8. **THAT**, the 1<sup>st</sup> Petitioner has informed me that she was coerced into agreeing to undergo the procedure with promise of provision of formula milk and payment of maternity fees at the 1<sup>st</sup> Respondents' health facility.
9. **THAT**, the action of sterilization by way of tubal ligation was carried out by the agents of by the agents of the 1<sup>st</sup> Respondent without due regard to the National Family Planning Guidelines for Service Providers (2010).
10. **THAT**, the sterilization of the 1<sup>st</sup> Petitioner without her informed consent violated their rights to health and health services and particularly the right to reproductive health and services as envisioned under Article 43(1)a of the Constitution of Kenya.
11. **THAT**, reasonableness and reading of the National Family Planning Guidelines (2010) requires that anyone who chooses female surgical sterilization does so voluntarily and is fully informed about the permanence of the method and the availability of alternative, long lasting , highly effective methods.

12. THAT, the 1<sup>st</sup> Petitioner was coerced to undergo the procedure of bilateral tubal ligation because of the fact that she is HIV positive and was advised that the procedure was necessary as it would save and prolong their lives.
13. THAT, the 1<sup>st</sup> Petitioner was not given sufficient information by the health care providers at the facility of the 1<sup>st</sup> Respondent to enable her make an informed choice on the procedure of bilateral tubal ligation.
14. THAT, the Constitution at Article 43(1) (a) provides that every individual has the right to the highest attainable standard of health which includes reproductive health care.
15. THAT, Article 27 of the Constitution provides that every person is equal before the law and has the right to equal protection and equal benefit of the law and that one should not be discriminated upon on the basis of their health status but it is clear from the manner in which the 1<sup>st</sup> Petitioner was handled the foregoing provision was violated.
16. THAT, while Article 28 upholds the dignity of an individual which dignity should be respected and protected, the 1<sup>st</sup> Petitioner was subjected to an act which was humiliating and degrading to her.
17. THAT, the Constitution at Article 29 provides for the freedom and security of an individual and further that one should not be subjected to torturous acts whether physical or psychological, the 1<sup>st</sup> Petitioner was subjected to acts which not only were inhuman but were also torturous psychologically.

18. **THAT**, the 1<sup>st</sup> Petitioner was deprived of her fundamental right to be free from torture, cruel, inhuman or degrading treatment contrary to the provisions of Article 25 of the Constitution of Kenya (2010), yet the Constitution guarantees the foregoing freedoms absolutely and without any limitations at all.
19. **THAT**, even when the rights and fundamental freedoms of the 1<sup>st</sup> Petitioner are to be violated, the provisions of Article 24 should be taken into account which Article provides that it is only by law that a right or fundamental freedom can be limited.
20. **THAT**, the Constitution of Kenya (2010) at Article 2 (5) & (6) provides for the use of International law and in particular those which have been ratified by Kenya and therefore makes them part of Kenyan law.
21. **THAT**, the Kenyan government ratified the United Nations Convention against Torture and other cruel inhuman and degrading treatment or punishment on 21 February, 1997 which convention defines torture to mean any act by which severe pain or suffering, whether physical or mental is inflicted on a person.
22. **THAT**, the Special Rapporteur on Torture has also recently confirmed that forced and coerced sterilization may amount to torture. He affirmed that forced sterilization is an act of violence, a form of social control and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.
23. **THAT**, Kenya ratified the International Covenant on Economic, Social and Cultural Rights on 1 May, 1972.

24. **THAT**, Article 12 of ICESCR provides that state parties shall recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and also create conditions which would assure to all medical service and medical attention in the vent of sickness.
25. **THAT**, Kenya also ratified the International Covenant on Civil and Political Rights on 1 May, 1972.
26. **THAT**, Article 9 of the ICCPR provides that everyone has the right to liberty and security of the person.
27. **THAT**, Article 10 of the ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person but it is clear that the 1<sup>st</sup> Petitioner was not treated with such kind of dignity.
28. **THAT**, further, this Honourable Court is bound by Article 20 of the Constitution of Kenya (2010) where the Court has the power to promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom while at the same time seeing to it that the state fulfils its international obligations in respect of Human Rights and fundamental freedoms.
29. **THAT**, the acts of the 1<sup>st</sup> Respondents while handling the 1<sup>st</sup> Petitioner, was contrary to the provisions of Article 10 of the Constitution where they were expected to uphold human dignity , equity , social justice , inclusiveness, equality , human rights



, non-discrimination and protection of the marginalized while making or implementing public policy decisions.

30. **THAT**, further the World Health Organization (WHO) and the United Nations Population Fund (UNFPA) have stressed that given that sterilization is a surgical procedure that is intended to be permanent, special care must be taken to ensure that every woman makes a voluntary informed choice of method. Health care workers should ensure that women are not pressured or coerced to undergo the procedure and that the decision is not made in a moment.
31. **THAT**, I am informed by the 1<sup>st</sup> Petitioner that she was not informed of the advantages and disadvantages of the procedure but was only told that it was the best option for her since she is HIV positive and giving birth according to the health professionals at the facility of the 1<sup>st</sup> Respondent would compromise her immunity.
32. **THAT**, the 1<sup>st</sup> Petitioner was also induced with food portions and payment of hospital bills through a voucher.
33. **THAT**, I swear this Affidavit in support of the Petitioners' petition before this Honourable Court.

THAT, what is deponed to herein above is true as of personal knowledge, save where otherwise stated in which event the same is true as of personal information and belief sources whereof having been disclosed.

SWORN at NAIROBI by the said )

ALLAN MALECHE )

this 10<sup>th</sup> day of September 2015 )

BEFORE ME )

SHEILA K. AMANI  
ADVOCATE &  
COMMISSIONER FOR OATHS  
P. O. Box 44573 NAIROBI  
COMMISSIONER FOR OATHS )

  
.....  
DEPONENT

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 606 OF 2014**



IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 22(1) OF THE CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES  
19,20,21,25,27,28,29,31,33,35,43,45 AND 46 OF THE CONSTITUTION OF KENYA  
(2010)

BETWEEN

L.A.W.....1<sup>ST</sup> PETITIONER  
KENYA LEGAL AND ETHICAL ISSUES NETWORK  
ON HIV & AIDS (KELIN) .....2<sup>ND</sup> PETITIONER  
AFRICAN GENDER AND MEDIA INITIATIVE TRUST (GEM) .....3<sup>RD</sup> PETITIONER

AND

MARURA MATERNITY & NURSING HOME.....1<sup>ST</sup> RESPONDENT  
COUNTY EXECUTIVE COMMITTEE MEMBER  
IN CHARGE OF HEALTH SERVICES – NAIROBI COUNTY.....2<sup>ND</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF HEALTH.....3<sup>RD</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT

AND

THE SECRETARIAT OF THE JOINT UNITED NATIONS  
PROGRAMME ON HIV/AIDS (UNAIDS Secretariat) .....AMICUS CURIAE  
THE INTERNATIONAL COMMUNITY OF WOMEN  
LIVING WITH HIV(ICW).....INTERESTED PARTY

*Pursuant to Article 22 (1) of the Constitution of Kenya (2010) and The Constitution of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013.*

**3<sup>RD</sup> PETITIONER'S AFFIDAVIT IN SUPPORT OF THE PETITION**

I, **GLADYS KIIO**, of P.O.BOX 50429 – 00200 Nairobi within the Republic of Kenya do hereby make a solemn oath and swear as follows:-

1. **THAT**, I am the Programme Manager of African Gender and Media Initiative Trust (GEM) the 3<sup>rd</sup> Petitioner herein thus competent to swear this affidavit.

2. **THAT**, I have the authority of the Board of Trustees of the 3<sup>rd</sup> Petitioner to swear this affidavit on behalf of the 3<sup>rd</sup> Petitioner herein.
3. **THAT**, I am conversant with the contents of the Petition herein and I have also interacted with the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners herein and I fully understand the issues in question.
4. **THAT**, African Gender and Media Initiative Trust (GEM), is the 3<sup>rd</sup> Petitioner herein and is a not for profit organisation that works to advance gender equality through research and action on women's human rights. GEM was founded against the backdrop of the need for evidence based programming in women's human rights work in Kenya. The priority issues for GEM include sexual and reproductive health and rights of women, violence against women, economic justice and new media activism.
5. **THAT**, GEM's mission is to advance gender equality through research and action on women's human rights.
6. **THAT**, I know as of my own knowledge and based on the reading of the contents of the petition and interactions with the 1<sup>st</sup> Petitioner that they were sterilized by way of bilateral tubal ligation without their informed consent and were also coerced into agreeing to undergo the procedure with promise of provision of formula milk, food portions and payment of maternity fees at different health care facilities within Nairobi County.
7. **THAT**, I have had the contents of the Petition herein explained to me by the advocate on record for the 3<sup>rd</sup> Petitioner and I adopt the contents of the Petition filed herein as if the same were herein set out seriatim.

8. **THAT**, I know as of my own knowledge that in January 2012, a Kenyan Television news channel, Citizen, reported that Project Prevention, a United States – based organisation was paying women living with HIV (WLHIV) on the island of Mbita to have intrauterine birth control devices (IUDs) implanted in them.
9. **THAT**, around the same time, leaders of multiple community based, women-led organizations in Nairobi, Kisumu and Kakamega reported that numerous members of their WLHIV psycho-social support groups also had told group facilitators that they had been forced or coerced to accept unwanted sterilization procedures.
10. **THAT**, I also know as of my own knowledge that despite the women’s consistent reporting of forced or coerced sterilization procedures to facilitators during community support group meetings for over two years, there was no formal inquiry to attempt to determine the prevalence of forced and coerced sterilization of WLHIV in Kenya or to examine the circumstances under which it occurs or occurred.
11. **THAT**, I know as of my own knowledge that the 3<sup>rd</sup> Petitioner sought and received Ethical clearance from the Ethical Review Committee at Kenya Medical Research Institute (KEMRI) to conduct a study and investigate and determine the prevalence of forced and coerced sterilization of WLHIV in Kenya and circumstances under which it occurred .
12. **THAT**, in November, 2011 I interviewed forty (40) women living with HIV who reported having undergone forced and/or coerced sterilization procedures in health facilities within Kenya.

13. **THAT**, the data was analyzed and it illustrated a preliminary snapshot of what may be a country wide problem of non-consensual sterilization of WLHIV in Kenya.
14. **THAT**, for the purposes of the study, the 3<sup>rd</sup> Petitioner defined coerced sterilization as the use of financial and other incentives , misinformation or lack of information about the procedure and its consequences , or fear of bodily harm or denial of medical services deployed to influence an individual to undertake the procedure or permit the procedure to occur while forced sterilization was defined as cases in which a person is sterilized without her knowledge or an opportunity to provide consent.
15. **THAT**, after the interviews were conducted, the data was analyzed and a report produced which report detailed the experiences of the forty (40) women and how the experience of forced or coerced sterilization has impacted on their lives and relations. Annexed herein and marked as GK -001 is a copy of the report titled 'Robbed of Choice: Forced and coerced sterilization experiences of women living with HIV in Kenya'
16. **THAT**, I am further informed by the 1<sup>st</sup> Petitioner that she was not informed of the advantages and disadvantages of the procedure but was told that it was the best option for her since she is HIV positive and would die if she continued giving birth and she was also induced with payment of her hospital bill by the issuance of a voucher which she produced at the facility of the 1<sup>st</sup> Respondent before giving birth.
17. **THAT**, I swear this Affidavit in support of the Petition before this Honourable Court.

18. THAT, what is deposed to herein is true to the best of my knowledge, information and belief, save for where sources of information have been disclosed.

SWORN at Nairobi by the said  
GLADYS KIIO



This 8<sup>th</sup> day of September 2014

.....  
DEPONENT

BEFORE ME

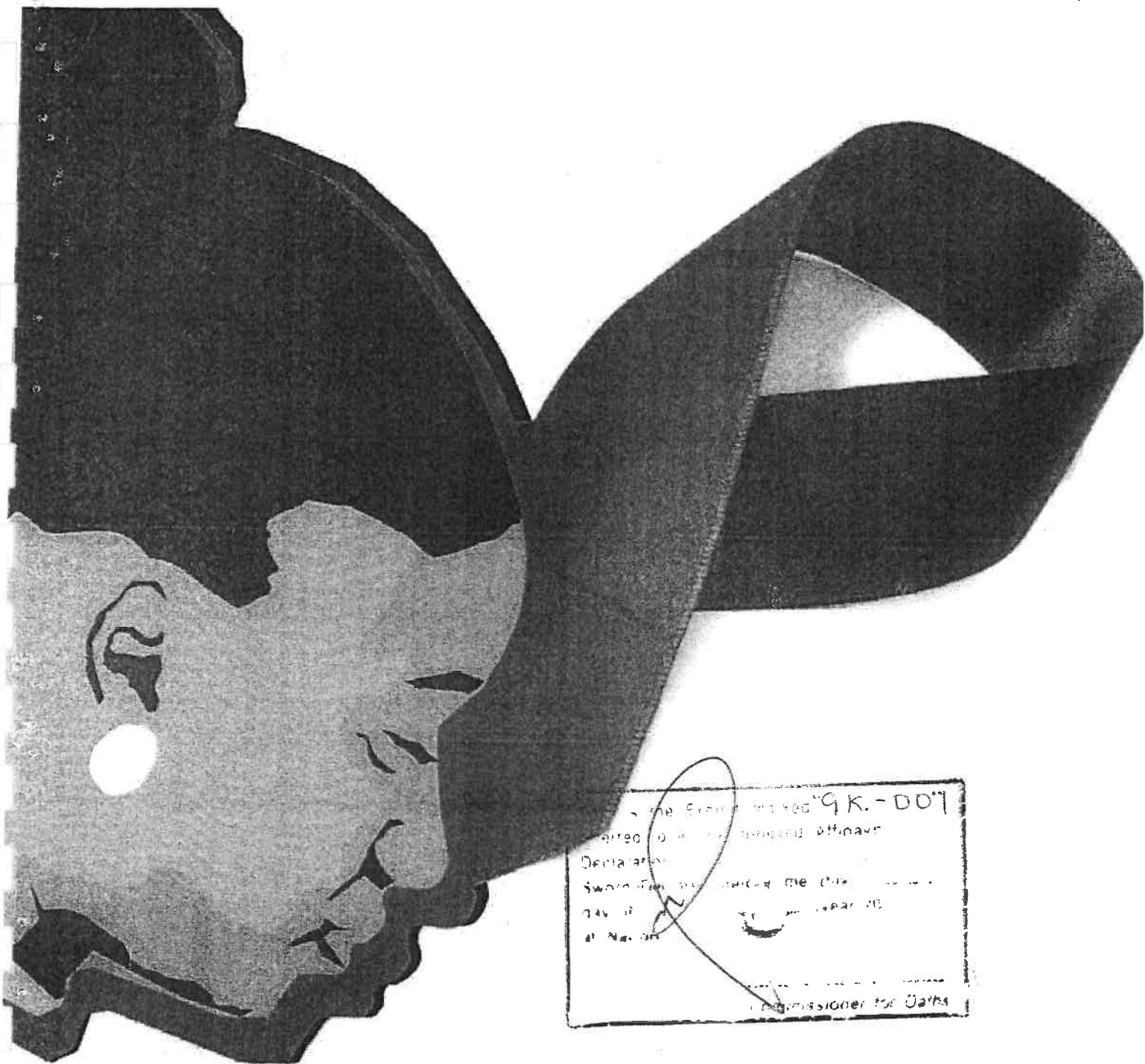
**SHEILA K. AMANI**  
ADVOCATE &  
COMMISSIONER FOR OATHS  
P. O. Box 44573 - 00100 NAIROBI  
sheilawani@yahoo.com



COMMISSIONER FOR OATHS



GK-001



# ROBBED OF CHOICE

Forced and Coerced Sterilization Experiences of Women Living with HIV in Kenya



# **ROBBED OF CHOICE**

*Forced and Coerced Sterilization Experiences of Women Living with HIV in Kenya*

# Acknowledgment

**A**frican Gender and Media Initiative (GEM) wishes to acknowledge the amazing and courageous women who shared their stories to break the silence on non-consensual sterilization of women living with HIV (WLHIV) in Kenya. This documentation goes a long way in contributing to the body of knowledge on reproductive health and sexual rights of women living with HIV. Further, it provides a basis for action by government and relevant stakeholders to end non-consensual sterilization of any vulnerable group of women in Kenya.

Special thanks to Njoki Otieno of Women Fighting Aids in Kenya, Maureen Murenga of Lean on Me and Inviolata Mmbwavi of Grassroots Empowerment Trust for their tireless effort in ensuring that forced and coerced sterilization becomes everybody's business. The three have helped shift the debate on non-consensual sterilization of WLHIV from the private arena in the confines of psychosocial support groups to the public domain in Kenya.

This publication owes a lot to its technical and financial resource partners in the Open Society Foundations, Lydia Guterman and Tamar Ezer and Anne Gathumbi of Open Society Initiative for Eastern Africa.

Last but not least, special thanks to the Namibia Women's Health Network campaign to end the forced sterilization of HIV positive women. The campaign set precedence and inspired the movement of women living with HIV in Kenya to share their own experiences on non-consensual sterilization.

# Foreword

Family planning provides an important pillar in addressing population dynamics, safe motherhood, national and international development as well as environmental sustainability. The health-care giver in the continuum of sexual and reproductive health services is an important counselor, providing important health promotion messages and the service provider needs to be knowledgeable and skilled on the various family planning methods; be cognizant of clients with special needs; gender sensitive and strive to provide evidence based best practices acknowledging the individual's sexual and reproductive health and rights.

Amongst sexually active WLHIV, particular attention to reducing the risk of HIV transmission through use of antiretroviral; partner counseling, testing and treatment; preventing mother to child transmission through modified obstetric and infant feeding practices; with retention of the efficacy of the selected family planning method are important benchmarks. Strategies that include correct, consistent condom use or dual strategy are strongly advocated. HIV-positive women can have healthy babies. Any client considering permanent method of contraception either bilateral tubal ligation in women or vasectomy in men, there is need for ample time to counsel on the method and its implication, attend to clients questions and feedback as cornerstones prior to her providing informed voluntary consent as a standard operating procedure. This is to ensure that her physical integrity and psycho-social well being are maintained.

Forced or coerced sterilization of WLHIV is an infringement of their reproductive rights and dignity as well as social injustice that must be abhorred. However, voluntary sterilization procedures are an important part of a full range of contraceptives options that should be available to all women including WLHIV. Properly performed surgical sterilization procedures should not lead to negative health consequences such as reported in some of the narratives in this report. As we read through these narratives, we need to take a deeper insight into the holistic approach needed when attending to clients seeking family planning and other reproductive health care services.

**Dr Kihara Anne-Beatrice**  
Consultant, Lecturer University of Nairobi (Obstetrics/ Gynecology Dept)  
Vice-Chairperson KOGS

## Executive Summary

**F**orced and coerced contraceptive sterilization violates numerous rights guaranteed under the Kenyan constitution and multiple regional and international obligations that Kenya is signatory to. The Constitution of Kenya (CoK) 2010, states in Article 43. 1(a) that *“Every person has the right to the highest attainable standards of health, which include the right to health care services, including reproductive health care”*. Similarly, Article 29 (d) states *“Every person has a right...not to be subjected to torture in any manner, whether physical or psychological”*.

Similarly, the National Family Planning Guidelines for Service Providers in Kenya (2010) emphasizes informed and voluntary consent prior to female surgical sterilization. The guidelines note that *“special care must be taken to ensure that every client who chooses this method does so voluntarily and is fully informed about the permanence of the method and the availability of alternative, long-acting, highly effective methods”*.

The United Nations Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights (ICCPR), refers to sterilization of women without their consent as a violation of the right to be free from torture and other inhuman and degrading treatment. The Convention on Elimination on All Forms of Discrimination against Women (CEDAW) provides for the right of *“access to specific educational information....including information and advice on family planning.”* Article 10(h).

It is important to reiterate, therefore, that women living with HIV have a right to a family planning method of their choice and right to be sexually active and bear children.

This publication documents heart rendering experiences of 40 women living with HIV, who claimed that they were either forced or coerced to accept permanent sterilization procedures (bilateral tubal ligation) in healthcare facilities in Kenya. The study was conducted between October and November 2011 in Nairobi and Kakamega counties by the African Gender and Media Initiative in partnership with Women Fighting Aids in Kenya, Lean on Me and Grassroots Empowerment Trust.

According to the testimonies by the study’s participants, women living with HIV had undergone non-consensual tubal ligation when they visited health facilities to give birth through cesarean section. Others, who had normal delivery, were also later taken to the operating room for the procedure to be done. Reported circumstances under which the involuntary sterilization occurred include;

- a) Tubal ligation done without a woman's consent during an emergency cesarean section;
- b) Consent form signature obtained when the woman is in labor;
- c) Sterilization was required as a condition for receiving free or reduced-price medical treatment or receiving food and medical aid for their children, especially milk and anti-retroviral medications;
- d) Told by doctors who believed that WLHIV should not have more children to accept tubal ligation and that some of them already had too many children and, therefore, permanent and irreversible contraception was necessary;
- e) Spouse and/or parents gave consent for sterilization on behalf of the women;
- f) WLHIV agreed to sterilization on the basis of misinformation by healthcare providers about their family planning choices or the risks of future pregnancies to their health and that of their baby and
- h) Sterilization performed because of a woman's disability and HIV status.

In many cultures including the African, motherhood is at the core of femininity and status in society. The narratives documented here illustrate how WLHIV who have undergone non-consensual sterilization are no longer considered, women, in their respective communities as these sterilizations are permanent and irreversible in most cases. We hope that this publication will commit the government of Kenya to act by putting in place appropriate measures to prevent and respond to forced and coerced sterilization and ultimately stop torture of WLHIV in healthcare facilities.

**Faith Kasiva**  
Director  
African Gender and Media Initiative

# Introduction

In January 2012, a Kenyan television news channel, Citizen, reported that Project Prevention, a United States-based organization, was paying women living with HIV (WLHIV) on the island of Mbita to have intrauterine birth control devices (IUDs) implanted (Kenya Citizen, 2012). This was in addition to previous media reports in May 2011 that had cited the presence of Project Prevention in Kenya. The news was met with outrage by the Kenyan government, and the Minister for Medical Services remarked that:

*“We can’t say as a government we have been good at providing family planning needs of women or even men but we are putting measures in place. But it is important to stress that even HIV-positive women have the right to have children if and when they desire. HIV doesn’t take that right way, not at all.”* (PlusNews, 2011).

However, around the same time as the Minister’s affirmation of WLHIV’s sexual and reproductive rights, leaders of multiple community-based, women-led organizations in Nairobi, Kisumu and Kakamega reported that numerous members of their WLHIV psycho-social support groups had recently told group facilitators that they had been forced or coerced to accept unwanted sterilization procedures. Despite the women’s consistent reporting of forced or coerced sterilization procedures to facilitators during community support group meetings for over two years, there had been no formal inquiry to attempt to determine the prevalence of forced and coerced sterilization of WLHIV in Kenya or to examine the circumstances under which it occurs.

In November 2011, the author interviewed forty (40) WLHIV who reported having undergone unwanted sterilization procedures in Kenyan health facilities. The analysis of data from those interviews presented here illustrates a preliminary snapshot of what may be a country-wide problem of non-consensual sterilization of WLHIV in Kenya. For the purposes of this study, coerced sterilization is defined as the use of financial or other incentives, misinformation or lack of information about the procedure and its consequences, or fear of bodily harm or denial of medical services deployed to influence an individual to undertake the procedure or permit the procedure to occur. Forced sterilization is defined as cases in which a person is sterilized without her knowledge or an opportunity to provide consent. As illustrated in this report, both practices are present in Kenya.

## Medical and legal framework on informed and voluntary consent in Kenya

While there is no specific legislation in Kenya that addresses the issues of informed consent, medical ethics code of practice in Kenya underscores the importance of informed decision making and consent before medical procedures. Specifically, the National Family Planning Guidelines for Service Providers (2010) emphasizes informed and voluntary consent prior to female surgical sterilization. The guidelines note that *“special care must be taken to ensure that every client who chooses this method does so voluntarily and is fully informed about the permanence of this method and the availability of alternative, long-acting, highly effective methods”*. Further, the guidelines caution service providers against providing any incentive for one to accept any form of contraception or in recruiting potential clients to perform surgical operations. The right of a woman to change her mind even after she had initially consented is affirmed. The guidelines provide a sample consent form that a healthcare provider must administer to any client seeking voluntary sterilization. However, in highlighting that people living with HIV have equal rights to access family planning options, the guidelines do not explicitly state that HIV status should not be used as a criteria to force or coerce WLHIV to sterilization.

Similarly, the Kenya Medical Practitioners and Dental Board, the regulatory body of medical practice in Kenya in its mission, vision and core values statement eludes to quality of healthcare upholding ethics, professionalism and justice.

Forced and coerced sterilization of WLHIV in Kenya violates numerous rights guaranteed in the Kenyan constitution and international human rights laws that Kenya is party to. The Constitution of Kenya (Cok - 2010), states that *“Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.”* Article 43. 1(a). Similarly, article 29 (d) states that, *“Every person has a right...not to be subjected to torture in any manner, whether physical or psychological”*.

The United Nations Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights (ICCPR) that Kenya is party to has referred to the sterilization of women without their consent as a violation of the right to be free from torture and other inhuman and degrading treatment.

The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) provides for the right of *“access to specific educational information...including information and advice on family planning”*. Article 10(h). WLHIV have a right to a family planning method of their choice and the right to be sexually active and bear children. The Special Rapporteur on Violence against Women: *“Forced sterilization is a method of medical control of a woman’s fertility without the consent of a woman. Essentially involving the battery of a woman-violating her physical integrity and security, forced sterilization constitutes violence against women.”* Rahhika Coomaraswamy (1999).

All women have the right to free and informed choice before consenting to sterilization including counselling on the possible consequences of choosing a permanent method of contraception. Healthcare providers should provide all their patients with full and accurate information to ensure that the individual’s decision to undergo sterilization is not subjected to misinformation, incentives and/or threats. The dignity, privacy and confidentiality of the patient must be respected at all times during the process to obtain informed consent. Healthcare providers have an obligation to respect the right to self-determination and to obtain informed consent for any medical procedure.

The International Federation of Gynecology and Obstetrics (FIGO) guidelines on Female Contraceptive Sterilization define the conditions under which consent for a sterilization procedure can be sought, and also note conditions under which consent cannot be sought in any case. Of particular importance to the Kenyan context, are the provisions that *a) Prevention of future pregnancy cannot ethically be justified as a medical emergency, and thus cannot be used as a reason for a doctor to sterilize a woman without her full, free and informed consent; b) no minimum or maximum number of children may be used as criteria to sterilize a woman without her full, free and informed consent, c) Only women themselves can give ethically valid consent to their own sterilization; d) Women’s consent to sterilization should not be made a condition of access to medical care, such as HIV/AIDS treatment or of any benefit such as release from an institution; e) Consent to sterilization should not be requested when women may be vulnerable, such as when requesting termination of pregnancy, going into labour or in the aftermath of delivery; f) As for all non-emergency medical procedures, women should be adequately informed of the risks and benefits of any proposed procedure and of its alternatives and g) The right of all persons with disabilities who are of marriageable age to marry and to found a family is recognized.*

# Methodology

The purpose of this study was to document experiences of selected WLHIV who reported having undergone forced or coerced sterilization. Safety, security and psycho-social support for the study's participants were of utmost concern, and study organizers consulted the World Health Organization guidelines on researching violence against women (WHO, 2004) as part of the protocol development process. A qualitative research inquiry was used. The relevant research permit and ethical approval were obtained from the Ministry of Education and Kenya Medical Research Institute respectively.

All research participants were members of the WLHIV support groups: Women Fighting Aids in Kenya (National), Lean on Me (Nairobi and Kisumu) and Grassroots Empowerment Trust (Kakamega). Prior to participants' recruitment, the research staff carried out community education forums on forced and coerced sterilization with all potential research participants identified in the three support groups to help distinguish potential participants who had voluntarily consented and those who had been forced or coerced. Participant selection criteria included a) A woman living with HIV, b) Aged 18 years and above at the time of the interview and at time of sterilization, c) Having reported experiencing forced or coerced sterilization in Kenya, d) Desire to voluntarily participate in the research.

No monetary incentive was provided for participation. Organizers allowed seven days after the education forum before approaching potential participants about participating in the study. The waiting period was intended to help potential participants process the implications of their possible involvement in the study and to ensure they did not feel pressured to participate. The interview questionnaire was pre-tested by administering it to four potential participants and improvements made to ensure validity.

Forty participants from Nairobi and Kakamega counties who met the participation criteria were selected using snowballing sampling, starting with members of the three support groups. Scheduling of interviews was guided by the utmost protection of the privacy and confidentiality of participants. The choice of venue for interview was determined by the participant. An audio recorder was used to record the conversation with consent from the respondent. The recordings are in the custody of the author and will be destroyed after three years. The interview questionnaires had five sections: Demographics, Sterilization experience, Rights and choices, Disclosure of sterilization status and Impact of the sterilization experience. Data collected were transcribed and the transcripts were used to write a short narrative for each participant's sterilization experience.



# Testimonies

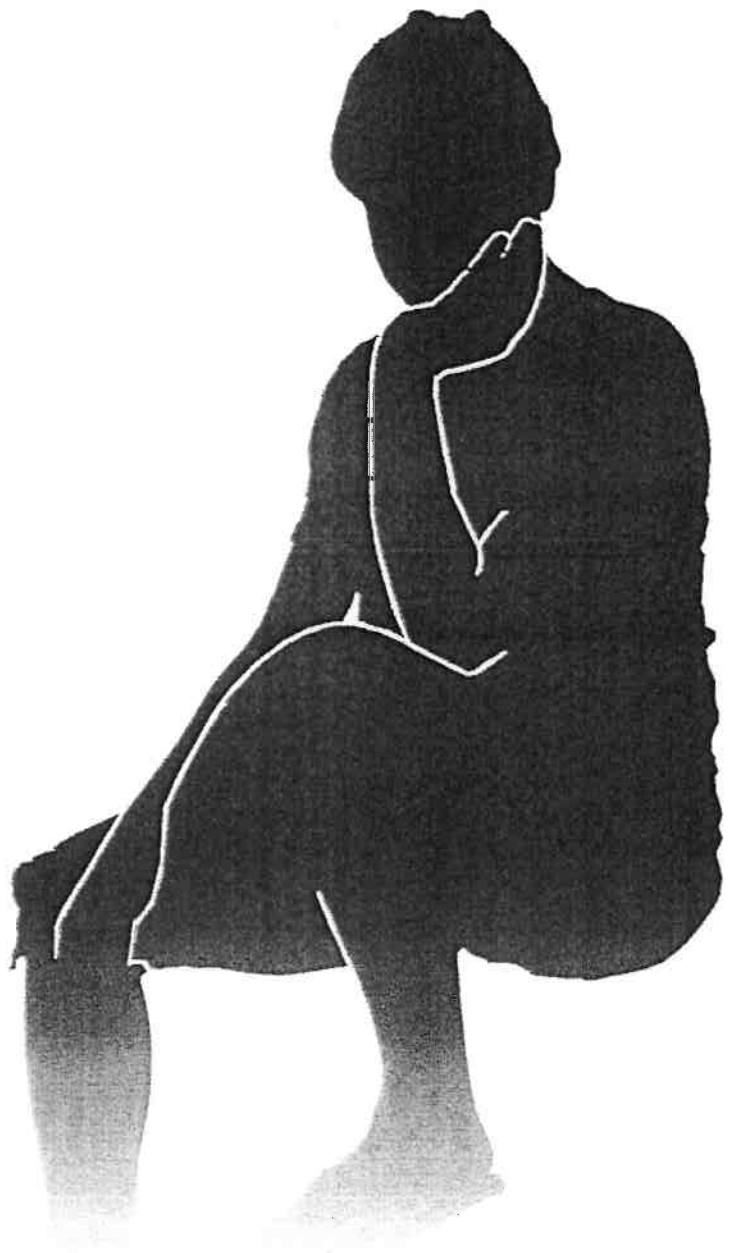
## Selina

According to Selina, she was admitted at the Kenyatta National Hospital in 2000 with tuberculosis and pre-term labor pains. At the time, Selina says that she was seven months pregnant and at delivery underwent a cesarean section. In the process, Selina claims that she was sterilized but only got to know about it seven months later when her husband decided to marry another wife.

Selina's husband had signed the consent forms but did not inform her. She thought her husband only signed forms to allow the hospital operate on her as she delivered.

A young woman of twenty three (23) years, Selina says she was never given a chance to choose the family planning method of her choice. Her husband has since married another wife because he *"could not live with a woman who cannot give birth"*.

*"Your illness cannot allow you to carry a pregnancy to term, so I have no option but to marry another woman,"* Selina recalls her husband's words. A mother of two, her husband sent her away from their matrimonial home and took away their children. *"The sterilization ruined my life,"* she says bitterly.



### Alice

Alice got to know of her HIV status in 2001 when she visited an ante-natal clinic. Alice says that, she remained in denial after she was given the results until 2008 when she had an opportunistic infection. At the time, Alice says that she was pregnant and attended ante-natal clinic where she was advised that she should not breastfeed her baby because of her HIV status.

Following a referral by healthcare providers at the East Deanery Health Centre in Komarock, Nairobi, 28-year-old Alice went to deliver her baby at Pumwani Maternity Hospital. According to Alice, she was coerced into signing consent forms for sterilization by a doctor at Pumwani Maternity Hospital. She was promised milk for her baby in exchange for her consent.

*"While I was groaning in pain, the doctor looked at my file and said to me, 'Woman you are still giving birth and you are HIV positive,?' she recalls. Alice says that she was asked by the doctor to sign consent forms authorizing a tubal ligation. Her ability to give informed consent was impaired as she was in labor.*

*"When they insisted on tubal ligation, I signed the documents so that they could attend to me and relieve me of the pain I was going through. I was not able to reach my husband as he had no phone".*

Alice is yet to disclose the sterilization to her husband. She is worried that if she tells him, he will abandon her and marry another woman. She is also worried that she is no longer be able to satisfy him sexually as her sexual desire has reduced tremendously. She suffers heavy menstrual periods that last for more than seven days. Alice has since sought assistance in many clinics, but the problem persists. Being a vegetable hawker, she cannot



walk long distances or undertake heavy duties. *"Imagine I can no longer wash clothes. I have to constantly beg my friends and my children to wash for me," she says.*

At the time of sterilization, Alice says she did not know of her reproductive health rights or the existence of other family planning methods. This information was not provided to her before being coerced to give consent for tubal ligation. She recommends that women living with HIV should be provided with information on available options for family planning and be given the right to choose what works best for them.



### Nancy

At 29 years old, Nancy says that she faces triple discrimination. She is living with disability, HIV and was sterilized against her will. Nancy tested positive in 2002 and was in denial until 2006 when she suffered streptococcal meningitis and eventually lost her eye sight. At the time she had one child.

In 2007, Nancy decided to have a second child for her old age security. *"I hoped that once the child grows up, he/she would be able to support me."* However, this dream was cut short. Nancy says that she was sterilized at Makindu District Hospital at the age of 25.

Through a network of friends, Nancy had learnt that HIV positive women can have children who are HIV negative. She decided to get pregnant and took the necessary precaution to ensure that the baby would not be infected. Eight months into the pregnancy, Nancy says that she developed severe labor pains and was admitted at Makindu Hospital in critical condition. When she regained consciousness, Nancy had lost the child and had been sterilized. *"The doctor told me 'you are not only positive but also blind'. You cannot continue to have children,'" she says.*

Sick and visually challenged, Nancy suffered as her husband could not live with her any longer. He abandoned her. This was the point at which Nancy decided to accept her status and join a psycho-social support group through which she attended various sensitization programs that have enabled her to live positively. She has since become a counsellor and has been able to transform the lives of many women living with HIV.

Nancy notes that the doctor assumed that since she is blind, she could either have been raped or manipulated into pregnancy. *"He ignored the fact that I was married*



*at the time and had one other child and so I could take care of children despite my condition."*

Nancy constantly experiences abdominal pains and is unable to undertake heavy tasks. She gave up on finding a partner because all the men she meets want children of their own. Her troubles are exacerbated by societal stigma since she is HIV positive, blind and a single parent.

### Maureen

*"The nurse came and picked my card and said 'I can see in your file that you are HIV positive. You must have tubal ligation since HIV positive women are not supposed to give birth.'"*

This is the story of Maureen who at the age of 22 in 2005 says she was sterilized at Kakamega General Hospital. According to Maureen, she was coerced into consenting to the process by a nurse, while in labor and not given any other option.

Maureen says she was verbally insulted and humiliated by nurses at the hospital because of her HIV status. The doctors delayed in attending to her and when the surgery was finally done, the baby survived for only a few hours.

*"I was in pain and crying. I begged them to wait for my husband to come but they refused. They brought the paper and I signed before they wheeled me into the theatre," she says.*

Having discovered her HIV status during a visit to the ante-natal clinic, Maureen says she had taken all the necessary precautions including taking Nevirapine while in labor to ensure that her baby was not infected.



However, she laments that her efforts were in vain because the baby died a few hours after birth. The situation did not get any better when she disclosed to her husband that she had been sterilized. Maureen's husband and family abandoned her at the hospital. *"They even refused to bury the baby."*

Maureen knew of her right to decide on the family planning option of her choice but was coerced to sign the consent forms. *"I knew my uterus was being tied completely and that I would never give birth again. I tried so hard, but I didn't have anyone to help me,"* she says.

Jobless and vulnerable, Maureen suffers serious depression. She is currently receiving counseling support at Grassroots Empowerment Trust in Kakamega town.

Since the surgery, Maureen says that she has gone back to the hospital numerous times to look for the nurse who coerced her into sterilization. She has also tried to find out if she can give birth again but it has all been in vain. She can hardly speak about her situation without breaking into tears. Her husband now has another wife and has refused to take care of her and their only child.

### Doris

*"I don't feel like a woman anymore,"* says Doris who believes she has lost her social status by not having a child.

In 1993, at only 21 years old, Doris says she was sterilized without her consent at Muthara Hospital, the current Tigania District Hospital, after an ectopic pregnancy. Her husband signed the consent forms after being advised by the doctors that Doris *"needed a surgery to clean her womb"*. After the operation, Doris says she was advised to attend a number of follow up clinics. She only came to know that she had been sterilized three years later when she could not conceive.

Doris blames her husband for taking such a drastic and life changing decision without consulting her. She says that her husband consented to her sterilization because she was HIV positive and did not want to have children with her. Since undergoing the forced sterilization, Doris says that her marital relationship deteriorated. Her husband has since married four other wives and has 18 children.

Due to pressure and stigma, Doris separated from her husband in 2003 for some time. *"My husband and his family ostracized me. They said I was a liability,"* she says.

Doris moved to Nairobi and later reconciled with her husband, but says they live a difficult life. *"I am so angry and bitter, I can never trust him. My family also has problems with him because of his decision to intentionally get me sterilized,"* she says.



She became stressed and lonely as she cannot explain to people why she does not have a child. She was forced to foster her late brother's child. She would like civil society organizations to conduct public awareness on the issue of forced and coerced sterilization to empower women and medical practitioners to bring the practice to a stop.

## Testimonies

### Lillian

In 1997, Lillian says that she had a still birth. She conceived again in 1999. According to Lillian, she had never taken an HIV test during pregnancy, but after giving birth, the baby became constantly ill prompting the doctors to recommend a HIV test for herself and the child. They both tested positive.

In 2000, Lillian, a mother of two, says that she was coerced into signing 'strange' documents by the doctor and her husband at a VCT clinic in Makunga Health Centre. At the VCT clinic, they both tested positive for HIV, confirming her results from the post-natal clinic. Numerous counseling visits led to discussion between her husband and a doctor about her sterilization. Lillian says that she did not understand their conversation since they mostly spoke in English. Lillian alleges that the conversation between her husband and the doctor led to the tubal ligation procedure, which neither the doctor nor her husband discussed with her. She thought the surgery was normal treatment for someone living with HIV.

*"I think my husband was advised by the doctor that since we were both HIV positive, we are not supposed to have children," she says. When she inquired about the procedure, Lillian was told the doctors wanted to help her so that she could live longer.*

Four years after the surgery, Lillian says that she did not get pregnant. So she went back to Makunga Hospital to find out what had happened to her and was informed that she had actually been sterilized. Even though her husband was involved in consenting to her sterilization, he has since abandoned her and the children. He moved to Nairobi and she has never seen him since 2007. *"If I knew it was tubal ligation, I would not have accepted," she says.*



Lillian recommends that women should be sensitized on the different options for family planning. *"Some women go for tubal ligation thinking that it is a pill or tablet and end up getting involved with something they do not understand," she says.*

She urges women who have been forcefully sterilized to take the initiative to sensitize other women about it. Lillian feels empty and robbed of her womanhood and that she has lost her social status in the community. Lillian worries that she cannot take legal action against the hospital because she has no documentation to prove her husband consented to the surgery.

## Olive

Olive says that she came to know of her HIV status in 2004 during a visit to the Lions ante-natal clinic in Mathare North. In looking for a second opinion, she went to Pumwani Maternity Hospital to re-confirm her status and later delivered normally in 2005. Olive says that the nurse at Pumwani Maternity Hospital who provided her with milk for the baby after delivery told her that since she already had three children, she should stop getting more because her CD4 count was declining.

Olive claims that she asked about other contraceptive methods that were available and the nurse said *"if I took family planning pills they would interfere with the ARVs and make them lose strength. Also, the other family planning methods would affect my health"*.

*"Then I was tested and my CD4 count was 90 so I was told first I was to go for tubal ligation because if I was*

*to get pregnant again I would leave my newly born child so small and I will not be there to bring him or her up. Then I decided it was better to go for the tubal ligation because I did not have a choice."*

Even though the delivery was normal, Olive says that she was sterilized after giving birth. Olive says that she was operated by Marie Stopes doctors at the Lions clinic. *"We were in a group of those who had been coerced to sign the consent forms since our CD4 count was extremely low."*

Olive says after the procedure, one of the nurses said to her, *"you see we have treated you, if you add more children you will be sick again"*.

She disclosed to her husband about the sterilization because he kept on insisting that he wanted another child and they disagreed on this. This degenerated to constant conflicts and in 2006 he eventually left her and remarried.

## Peris

Peris says she knew that she was HIV positive after her husband died in 2002. She tested positive at MSF clinic at Kwa Wangwa in Kibera. Two months into the pregnancy she was having severe stomach pains for almost a week and was rushed to hospital in Mukumu, in Western Kenya. *"I found a white doctor doing the rounds. If he had not been fast in responding to me. I could have died. They operated on me and removed some fluid on the outside of the uterus and closed it permanently."*

Peris says that the doctor told her that she had an ectopic pregnancy and could have died if she had not sought immediate medical attention. *"I was unconscious when they did the operation."*

The next morning, when the doctors were doing their morning rounds, Peris says she overheard one of them briefing the other that they had performed surgical sterilization on her.

Peris says she asked the doctors to explain to her about the operation. *"The doctor said if the pregnancy continued to grow, I would have died and given that I was HIV positive, with no husband and other children, at my age they decided to do tubal ligation"*.

At the time, Peris says she was vulnerable and could not question the doctor's decision. *"In the rural area health facilities, doctors know best and poor women like me have no right even on their own bodies."*



## Testimonies

### Sara

It was not easy for 50 year old Sara when in 1999 her husband insisted on having their last baby delivered at Makunga Hospital. Sara says that she tested positive for HIV when attending ante-natal clinic and during delivery, she was tricked into signing consent forms for surgery. According to Sara, she did not know what was going on and thought she was signing payment forms. *"They gave me the consent forms for my signature while I was in labor, no one explained to me. I thought they were payment forms."*

Sara says that nobody explained to her why she had to sign the forms although earlier she had rejected the idea of sterilization when it was suggested to her. After signing the documents, Sara notes that the hospital insisted on performing the surgery claiming that they had instructions from her husband.

*"You people with the virus just disturb people. You will give birth to children and the way you have the virus, where will you take the children?"* Sara recalls the doctor telling her.

Sara claims that she was never informed about other family planning options. After she left hospital, Sara's husband confirmed that he had consented to the sterilization. Sara says her husband used her sterilization experience as an excuse to marry a second wife. *"My co-wife is given preferential treatment because she does not have the virus,"* she says. Sara would have liked to have a baby girl since all her other children are boys. She has since lost her husband and struggles to bring up her children on the small piece of land left in her name.

A mother of six, Sara says women must not be coerced into sterilization regardless of the number of children they have. *"The decision to have a child is an individual's, it should not be up for debate,"* she says.

Sara would like the media to highlight violations of the rights of women living with HIV. The tubal ligation has affected her life. *"I am no longer respected, my in laws call me the woman who was afraid of giving birth,"* she says.



## Jane

In 2004, Jane says she went to Kakamega General Hospital for treatment of malaria. This was six weeks after the delivery of her fourth baby. Jane notes that her husband was not happy that she was only giving birth to girls, he wanted to have boys. Subsequently, he decided that she must have a tubal ligation.

*"My husband said he was punishing me for giving birth to girls,"* she says. Jane says that her husband had prior discussions with doctors at the hospital to have her sterilized. All Jane remembers is that she was sedated and when she woke up, she had a huge scar on her lower abdomen.

Jane suspects that her husband had her sterilized without her knowledge out of bitterness. She says that she had tested HIV positive during the ante-natal care but out of fear of violence did not disclose her status to him. Her husband only came to learn about her HIV status later from a friend of his who is a doctor at the Kakamega Hospital. Jane's husband has since married another wife and though he also tested positive for HIV, he blames her for infecting him.

Abandoned in a small farm in her husband's home, uneducated and unemployed, Jane struggles to bring up her four children single handedly. She is bitter that her co-wife has been able to bear sons. *"He would probably treat me with respect and support my children if I was able to have a son,"* she says.

Aware of her rights after sensitization and group therapy for women living with HIV, Jane is seeking legal representation that will enable her get child support and equal division of the matrimonial property.



Having been unaware of her rights at the time of sterilization, Jane now emphasizes the importance of informed consent to all the medical examinations and procedures. She appeals to doctors not to take advantage of women who are not informed of their rights. Jane would like the government to retrain doctors to respect patients' right to information and non-discrimination. Jane was forced to disclose her situation to her mother-in-law when the relationship with her husband deteriorated.

## Testimonies

### Amani

Having tested HIV positive during an ante-natal clinic check-up, Amani says she was advised to deliver in hospital so as not to infect the baby. While in labor before a cesarean section, Amani recalls overhearing nurses recommending that she be sterilized because of her HIV status. That was in 2003 at the Mukumu Hospital.

*"I discovered that the tubal ligation had been done when I took my baby for clinic after delivery. The nurse requested me to allow her to examine my wound, and in the process, a colleague passed by and asked how the tubal ligation scar was healing. I did not know about it and only thought they had cut me because I was having a baby," she says.*

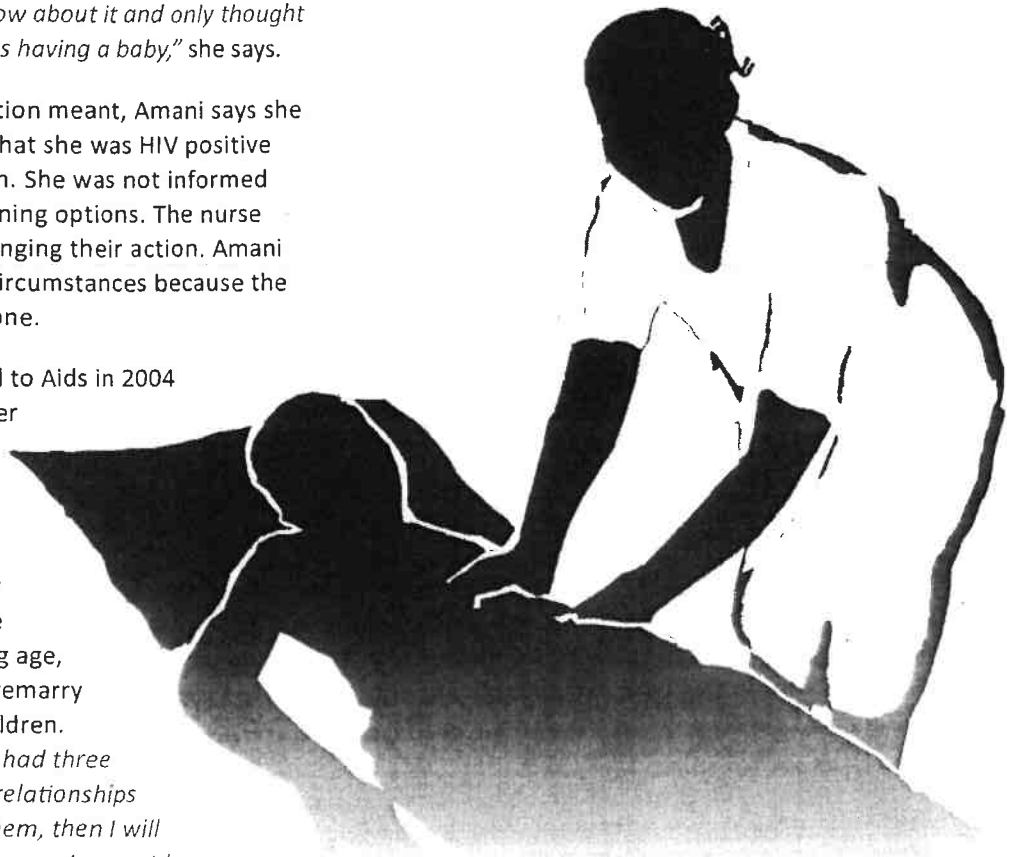
On inquiring what tubal ligation meant, Amani says she was informed by the nurse that she was HIV positive and should not have children. She was not informed of other existing family planning options. The nurse cautioned her against challenging their action. Amani says she had to accept her circumstances because the surgery had already been done.

Amani's husband succumbed to Aids in 2004 and she was chased out of her matrimonial home by the in-laws since she had only given birth to a girl. Unemployed and dejected, she took her daughter to her parents' home. Although she was widowed at a very young age, Amani says that she cannot remarry because she cannot have children.

*"In the last few years, I have had three suitors but I had to stop the relationships because if I get married to them, then I will be abandoned when they discover I cannot have children," she says.*

She hopes a scientific discovery can be made that will be able to reverse tubal ligation so that sterilized women can have children again.

Amani also hopes to find a job at the hospital so that she can learn about reproductive health rights and assist other women in similar circumstances. She appeals to civil society organizations to prioritize sensitization of women's reproductive health rights. Even as she shares these thoughts, Amani cannot carry out heavy chores and constantly experiences back and abdominal pains.



## Testimonies

### Tina

In 2000, Tina had been sickly and decided to seek treatment for suspected typhoid at the Kaimosi Friends Mission Hospital. She says that as part of the provider-initiated testing for pregnant mothers in Kenya, the doctor decided to test her for HIV. Tina says that she tested positive for HIV and was advised by the doctors to choose between dying and accepting sterilization.

*"They just told me that if I continue to give birth then I will just die,"* she says. Tina says that she sought further information on alternative options of family planning but was advised against any method other than sterilization.

Frustrated and ailing, she accepted the sterilization, but never disclosed this to her husband until four years later. He reacted to the news by sending her away.

*"When I told him about the sterilization, he picked a machete and threatened to cut me into pieces,"* she says. *"Had it not been for the children, he would have killed me."*

Her husband's family also became hostile and supported his action. Tina says that she was also rejected by her in-laws after she was sent away by her husband. She moved from the village to the city where she attended sensitization on including HIV treatment literacy and reproductive health rights.

*"I now know that I have the right to be treated without discrimination, right to live and right to have children,"* she says.

Tina has told her parents and children about her sterilization because of her ill health. She appeals to the government to allocate sufficient resources for empowerment of women living with HIV on their rights to informed consent on testing and sterilization.

Tina regrets disclosing to her husband that she had been sterilized. She has been forced to bring up her children by herself. Tina says that as a result of sterilization she has lost the security of marriage and financial support.



### Mary

Pregnant and HIV positive, Mary says she went to Gendia Mission Hospital in Rachuonyo District, Nyanza Province for delivery. According to Mary, she was informed that during delivery she would be put on family planning. She says that she was never told that this meant being sterilized and never getting pregnant again. Mary says she learnt about the tubal ligation from her sister a week after the procedure had been performed.

A mother of one, Mary lost her husband in 2009 and remarried, but has not been able to have children. Out of pressure from her new husband, she has been to a number of hospitals to ask if the procedure could be reversed, but they have all said it is not possible.

Before her pregnancy, Mary says that she had been on Depo Provera (or “the needle” as it is called in the village). She was never given a chance to choose whether to continue with the needle or to get sterilized.

Although Mary told her family about the sterilization for emotional support, she says that she has not disclosed the fact that she was sterilized to her second husband and is afraid that he will abandon her. *“I only encourage him to marry another woman, but I can’t tell him why I am insisting on that,”* she says.

Mary is desperate to have her tubal ligation reversed. In spite of a number of counseling sessions, she is still convinced that one day she will find a solution and have a child.

### Anita

*“I wanted to ask, Is this tubal ligation permanent? Is there any way that it can be reversed?”* says Anita, 27, at a group therapy meeting convened by a local organization.

A mother of three, Anita says she was forcefully sterilized at Kakamega District Hospital in 2009 when she was 25 years old.

*“They decided that since I gave birth through cesarean and had also tested HIV positive, it was better that I have tubal ligation done,”* Anita recalls.

All she remembers is being told that women who are HIV positive should not have children, and on that basis she signed the consent forms. Anita says that she was never informed of other family planning options. She did not know that sterilization was a permanent birth

control method. In labor and under duress, she signed the consent papers without much information on the consequences.

Since the surgery, Anita’s health has deteriorated. She experiences lower abdominal pains and cannot do heavy work. *“I think the surgery was not done well because my stomach is constantly swollen and people always think I am pregnant,”* she says.

Anita appeals to doctors to respect patients’ rights to informed consent. Considering low education levels in the rural areas in Kenya, she urges doctors to give women accurate information. Anita shared information about her sterilization with her family members and is concerned that no man will want to marry her because she cannot bear children.

## Testimonies

### Rebecca

According to Rebecca, when she tested HIV positive in 2002, the results were never disclosed to her. She only confirmed her status in 2005 during an ante-natal clinic checkup after three years of rumors from her colleagues. Due to ill health and regular visits to the PMTCT clinics, Rebecca lost her job as a cleaner with the armed forces.

*“They tested me without my consent and the doctor told the nurses that he was going to perform the tubal ligation as they were delivering my last child. This was at the Defence Forces Memorial Hospital. He said there was no need for me to continue having children since I was HIV positive. I did not understand what he meant by tubal ligation. I just thought it was an easy way of helping me with the delivery,”* Rebecca laments. She says she came to learn that the surgery included sterilization two days after the procedure was performed when a nurse informed her.

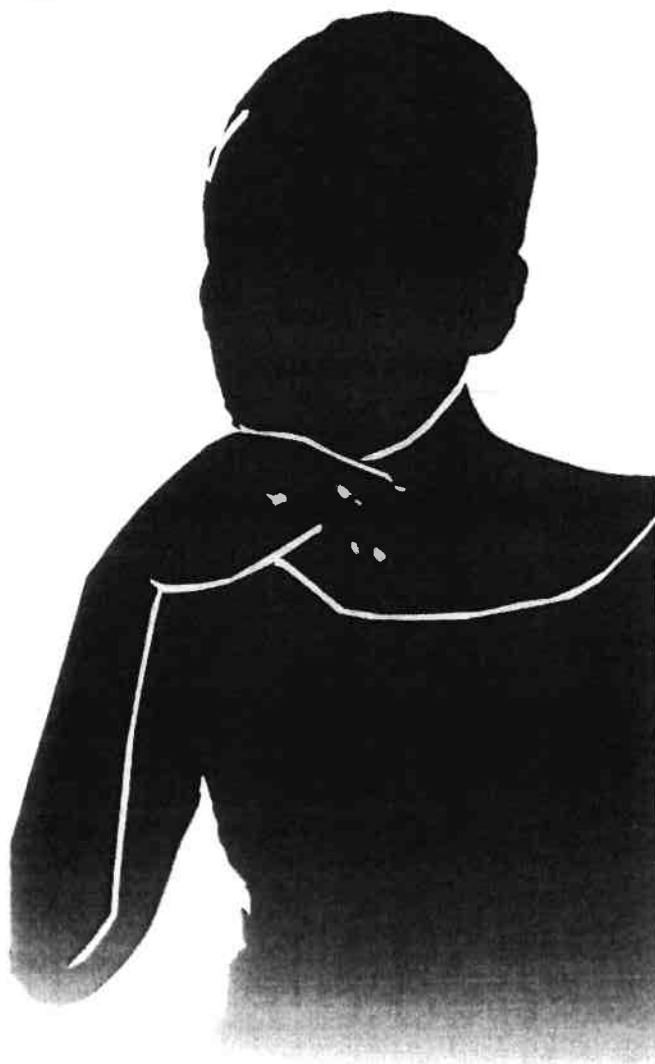
Rebecca has three children, two of whom are HIV positive. She says that, though she never consented to sterilization, she has come to accept her situation. Having attended a number of treatment literacy workshops, Rebecca has learnt that she has the right to informed consent before both HIV testing and sterilization procedures.

In order to live positively, she has trained as a community health worker and earned a certificate in psychology. She conducts door-to-door sensitization on the importance of HIV testing, care and support for people living with HIV and Aids. She cautions women against forced or coerced sterilization.

As a way to prepare her children to overcome stigma and discrimination, Rebecca disclosed her HIV status and the fact that she was sterilized to them. She also wanted them to understand why their younger siblings are constantly on medication. *“I have discovered that*

*disclosure has helped me one way or the other. My eldest son will never let me carry heavy objects if he is around because he understands my status.”*

Rebecca would like to conduct awareness campaigns on forced sterilization. She calls on the government to address contraception needs of women who are HIV positive.



### Nereah

With a history of complicated deliveries, coupled with her positive HIV status, Nereah says her doctors advised that she should not continue giving birth. A mother of two, Nereah has been living with HIV since 2001. She notes that she would like legal action taken against doctors and nurses who force or coerce women into sterilization. She observes that forced sterilization is common among women with low education and low income in the rural areas as well as informal settlements within urban areas.

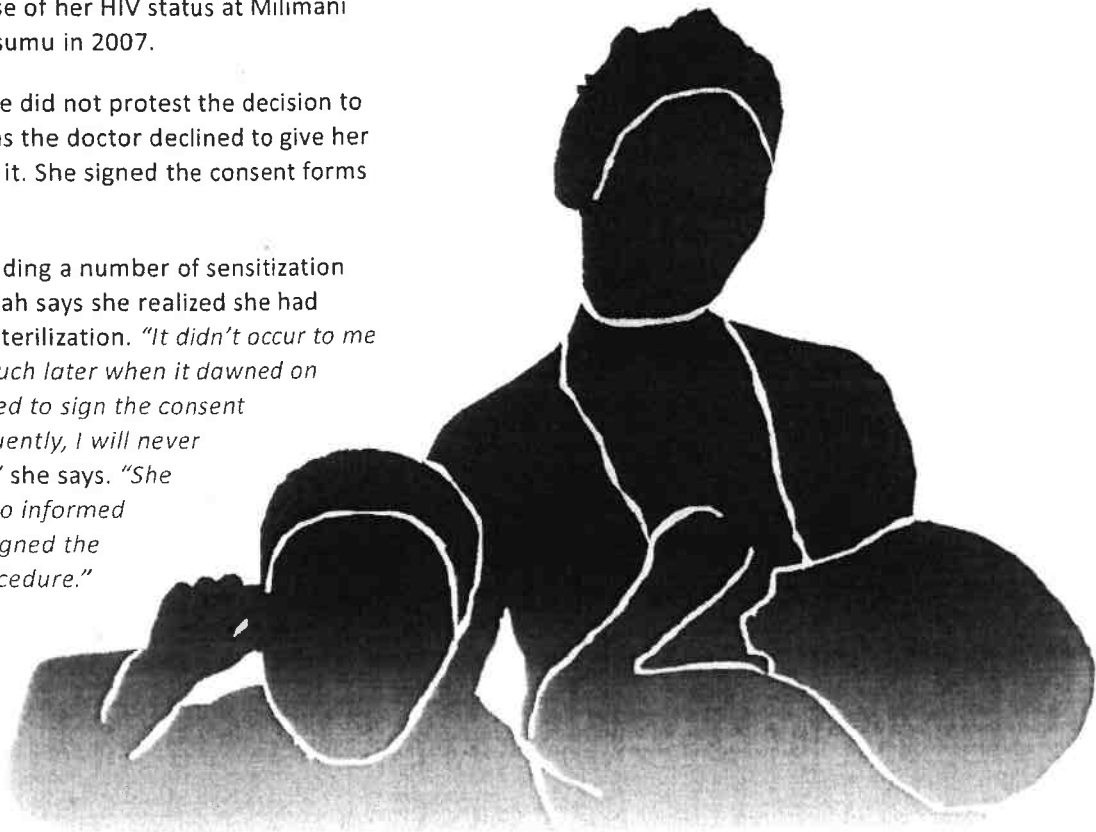
A community health worker and counsellor, Nereah says she was pressured into sterilization by her gynecologist because of her HIV status at Milimani Nursing Home in Kisumu in 2007.

Nereah says that she did not protest the decision to be sterilized, even as the doctor declined to give her time to think about it. She signed the consent forms after the surgery.

It is only after attending a number of sensitization programs that Nereah says she realized she had been coerced into sterilization. *"It didn't occur to me as an issue, until much later when it dawned on me that I was pushed to sign the consent papers and consequently, I will never have a child again,"* she says. *"She violated my rights to informed consent as I even signed the forms after the procedure."*

Nereah appeals to the Ministry of Health to put in place policy guidelines to prohibit forced or coerced sterilization of women living with HIV. She also recommends that medical practitioners be re-trained on women's reproductive health rights to reduce discrimination of people living with HIV.

Nereah has shared her experience in public forums to create awareness on the existence of the problem in Kenya and called for action to be taken against medical practitioners who sterilize women without their consent. She has also shared the experience with her husband who has been supportive.



## Betty

When Betty discovered in 1993 that she was HIV positive after a visit to the ante-natal clinic in her second trimester, she says that her husband was not amused. He accused her of *“bringing the disease to their marriage”*. Arguments and fights were the consequences of her disclosure, which led to their separation. Betty says she was forced to go back to her parents’ home from the city.

At her parents’ home there were no open arms waiting to welcome her. Betty’s parents were dead, and her brothers questioned her ability to bring up her soon-to-be-born fourth baby without an income and a husband.

According to Betty, three weeks after she gave birth, community health workers visited the home and asked her to accompany them to the market center the following day to meet doctors from Marie Stopes who had visited to offer healthcare services to women living with HIV.

*“One community health worker told me, they want to take me to the place because I needed help for my baby because of my HIV status.”*

The community health workers had been referred to Betty by her brother. Though she was hesitant to go, as an incentive, the community health workers offered to pay her fare just for her to meet the visiting doctors.

*“I thought I would get financial assistance from the Marie Stopes doctors to support myself and the children since my brothers were not supportive.”*

When she arrived at the hotel where the doctors had pitched a mobile clinic, Betty says that she was given forms to sign but did not understand the content. *“No one told me what I was signing for. I thought it was part of the registration.”* After signing, Betty notes that a nurse led her to another room. *“The nurse told me to get on the bed to be cut.”*

After the operation, Betty says that she sought information on the reason for the procedure and was told that the community health workers had identified her as a woman who needed tubal ligation because she was HIV positive, separated from her husband with no income and had many children.

Looking back, Betty says that her rights were violated and wishes the doctors explained what the procedure was all about as well as giving her an opportunity to make an informed decision.





## Testimonies

### Kate

Kate says she was rushed to the Kenyatta National Hospital by her daughter because she had an ectopic pregnancy. Since in an ectopic pregnancy the baby cannot survive, the doctor wheeled her into an operation room, removed the fetus and sterilized her without her consent. Kate says the doctors gave her sixteen year old daughter some forms to sign, and she (Kate) did not know what was going on. According to Kate, her daughter was only told to sign a form on behalf of her mother.

Kate notes that this incident happened 15 years ago, and she has not been able to get pregnant since. "I

*got to know that I had undergone a tubal ligation when I started having a lot of pain after I regained consciousness. My daughter was by my bedside, and she told me she had heard the doctor say they did tubal ligation on me."*

While Kate says that even if she warranted a tubal ligation, she is hurt because the choice was made for her by the doctors. "They just said it was an emergency and they wanted to save my life and thought it was a good measure to also cut my tubes."

### Aida

A mother of three children who include a set of twins, Aida says she relied on the MSF-Blue House for medication and anti-retroviral therapy. After giving birth to her last child, she visited the clinic for post-natal care. "I visited Blue House and was told I had to think about tubal ligation because I was a mother who was HIV positive and had many children. I said I did not want to the sterilization because there were many methods of family planning, but I was told if I did not undergo tubal ligation I would not receive the drugs again and should think of what to do after that as I would not be given the milk again."

According to Aida, she had anti-retroviral drugs from the Blue House clinic that would last her a week, and she returned home to think over her options. After agonizing for a week about her choices, Aida says she returned to Blue House because she did not know about other clinics where she could get her supply of medicine and milk for the children. "I decided to consent for tubal ligation so that I could receive help for medicine and milk." Aida says

that she signed the forms and was referred to Mathare North City Council Clinic.

Aida believes that her surgical procedure was botched. "When I got to the clinic, I was called to a room and told to remove my clothes and lie down. The doctors injected me [anesthesia] but I did not become numb or go to sleep and could feel everything that was being done to my body." She says she was stitched and slept on the hospital bed for about one hour. "The whole process took two hours and I walked home about two kilometers away. I arrived home with so much pain, I slept for three days and was unable to do nothing including eating or cooking."

Aida says that she had no prior knowledge of tubal ligation and did not know what to expect. She believes doctors need to explain the procedure to their patients. For Aida the only way to stop forced and coerced sterilization of women living with HIV is through public awareness education.

## Caro

When Caro suspected that she could be pregnant in 2006, she says she decided to visit a public hospital in Nairobi. She was tested for pregnancy and subsequently when attending ante-natal clinic she was also tested for HIV. Caro says her results turned positive and she was immediately enrolled for the Prevention of Mother to Child Transmission Clinic (PMCTC).

Caro received counseling including recommendation for tubal ligation. *"The nurse told me that since I was very young, the only way to live well for many years is not to get pregnant again because if I gave birth my immunity will reduce leading to death and my children will be left orphans."*

Further, Caro notes that she shared with her husband the advice she had received from the nurse who in turn encouraged her to go for the tubal ligation. When she was due to give birth, Caro says she could not afford to raise KSh10,000 that was required as a down payment to book her into a maternity ward in either Pumwani Maternity Hospital or Kenyatta National Hospital. Caro says she shared with the nurse about financial difficulties. The nurse offered to help.

*"She asked me to raise KSh300 and she will send me to a community health worker who will give me a voucher card charging KSh200 for delivery and KSh100 for tubal ligation at Marura Nursing Home, in Mathare North."*

Caro says she obliged since she was in dire financial need. She gave birth through cesarean section and a tubal ligation was done. According to Caro, the doctor who operated on her was from Kenyatta National Hospital. *"The doctor asked if I knew I was going to have a tubal ligation and I said I did because TL was a pre-condition for accessing low cost maternity attention. The doctors did not tell me how tubal ligation will affect my health; he assumed someone else had told me."*

Caro says she returned home four days after the operation. Four months later, thugs attacked and killed her husband when he was on his way from work. Two years later, she met another man who wanted children despite the fact that Caro had told him that she can no longer give birth. They soon parted ways.

Caro would want nurses and doctors to allow mothers to decide for themselves after elaborately explaining the consequences of the procedure including the side effects. The consent forms should be printed in an easy to understand language and possibly written in Kiswahili.



## Testimonies

### Emma

Immediately Emma tested HIV positive in 2001 during a visit to the Prevention Mother to Child Transmission clinic, she claims that her husband abandoned her while she was two months pregnant with their third born child. During a group therapy, Emma says she met a man who was living with HIV and they got married. Soon after, she began attending ante-natal clinic at the MSF-Blue House in Mathare. *"At the clinic, the nurse recommended that since I will give birth through cesarean, I should undergo tubal ligation because of my HIV positive status."*

At first, Emma says she refused to sign the form as instructed but she had no choice since Blue House was catering for her maternity bill at Pumwani. *"The nurse told me if I did not agree to tubal ligation then Blue House will not take care of my maternity expenses. I got to Pumwani and I was given a form, the nurses insisted I had to sign. They called me 'a useless woman with HIV'. I took the form and signed it because I was kept waiting in the labor ward until I signed."*

According to Emma, she was wheeled to the theater on May 20, 2010. Emma says that she delivered

through cesarean section and was sterilized. *"I gained consciousness hours later and was in a lot of pain. I asked the doctor why I was in so much pain and he told me that I had undergone an operation twice, for delivering the baby and the other for tubal ligation. He also said that there is a tail that is normally cut so that HIV positive women cannot give birth."*

Emma says that she was in Pumwani Hospital for three days before she was discharged. It took her two months to recuperate. When she disclosed to her husband about her non-consensual sterilization experience, he was not amused. *"The news made him very unhappy and it affected our relationship because he felt that my other children were not biologically his and he had hoped I would give him a child someday."*

Emma says that before the sterilizations she was a casual laborer who did manual jobs like washing clothes in up market residential estates in Nairobi. *"Since my double operation, I cannot do heavy work so I have no income. Tubal ligation took away my relationship with my husband and my job."*

### Atieno

During the post-election violence of 2007 that took place in Kenya, Atieno says that she was taken ill at the St. Mary's Hospital with severe stomach pain in what looked like heavy menstrual periods that lasted for two weeks. At the hospital, Atieno notes that she was examined and diagnosed with a growth in the stomach. She was immediately taken to the theater for a surgical procedure to remove the growth. *"They removed the growth but also cut my tubes."*

At the time of discharge, Atieno says that she did not know that she had been sterilized. She only got to know about it when she went back for follow up. *"I*

*went back to the hospital after two weeks from the time of operation and found a nurse, who told me that they closed my tubes since I had suffered a serious on miscarriages, was HIV positive and also lost a lot of blood"*

Atieno asked the nurse why they did not seek her consent before they sterilized her and *"the nurse said it was an emergency, they had to do the procedure."*

Unfortunately, Atieno's husband was also killed during the post-election skirmishes. *"Post-election violence took away my husband and my womanhood, I feel lost."*

## Nekesa

In 2008, Nekesa says she got pregnant and was chased out of home by her parents. With nowhere to go, she notes that she moved from her rural village to Kakamega town where she started attending ante-natal clinic. Nekesa says that she also tested positive for HIV and was on medication to prevent transmission of the virus to her unborn child. However, at delivery, Nekesa says she was stunned by health care providers at the Kakamega General Hospital.

According to Nekesa, the doctor warned her that *"It is an offence for women who are HIV positive to have children."* The doctor told her that they will only allow her to have the baby she was due to deliver if she allowed them to perform a surgical operation to permanently stop her from having more children.

Nekesa says that she protested against the sterilization arguing that she may meet a partner who wants children. Her attempts to convince the nurse that she was open to other family planning methods apart from tubal ligation were futile.

*"I asked the nurse why they were discriminating against me because of my HIV status, and she said 'it is illegal for HIV positive women to have children,'"* Nekesa recalls. Though she was in labor, she says that she put up a spirited fight but lost as she was sterilized without signing the consent forms.

Nekesa later got married but was abandoned by her husband for not being able to bear children. *"I wish I never revealed to him that I had been*

*sterilized. My husband was ready to support me but when I disclosed to him that I had been sterilized, he left,"* she says.

She recommends that doctors and nurses be sensitized against abuse of the rights of women living with HIV. She urges that the women also be empowered to make informed choices on family planning methods.



## Testimonies

*Liz*

Liz says that she tested positive with HIV in November 2001 while attending ante-natal clinic at Upendo Hospital in Eastleigh.

When labor set in, Liz claims that she could not raise fees to pay for maternity bills so she gave birth at home. After child birth, Liz notes that she became very sick and was taken to Kenyatta National Hospital. The baby was taken by nurses from MSF-Blue House to Dagoretti Centre where it stayed for three years. When she recovered, Liz took back her child and they began living together.

In 2004, Liz says that she conceived again and continued to attend her clinic at MSF-Blue House where she was given anti-retroviral drugs and milk. She was also advised on how to manage her health. According to Liz, at the time there were a number of women at the Blue House who were HIV positive and were being discouraged from getting pregnant.

*"We were told that if we continue to give birth then we will die so we have to stop permanently. The doctors at Blue House told us that doctors from Kenyatta Hospital were visiting the Lions clinics and carrying out tubal ligation. Blue House doctors said that if we did not go for the tubal ligation, some of us will continue to give birth and our immune system will go down."*

Given that she did not have a job, her husband was jobless as well and they had other children to take care of, Liz says she decided to go to Lions to have sterilization done to protect her immunity. *"I do not have a job. I am just there and we have children. I thought there is no need to refuse, so I decided to have the tubal ligation done. My TL was done in 2005 at Lions which is a City Council clinic next to Redeemed Gospel Church."*

The doctors at Lions Clinic explained to her that she needed to have the sterilization performed but did not tell her about the other available options for family



planning. *"I had to do tubal ligation since I thought truly; we have been told that there is no medicine. Yet this disease kills and if we continue to give birth then our immunity will go down, we are putting our lives in danger and we can die."*

*"I decided if that is what will cause me to leave my children, then it is better to agree and take care of them. I would rather accept to have the sterilization done and then I take care of these other children."*

Liz has had adverse health effects as a result of the operation. *"After the tubal ligation, there are times I feel pain down here. The wound feels painful and the pain moves to my back. At times when I tell my husband I am in pain, he quarrels and says that is something I brought on myself that is why it is causing me problems. So these days even though I feel pain I do not tell him."*

## Mary

From 2008, Mary says she had a persistent cough and decided to go to Eastern Deanery Hospital in the Kariobangi area of Nairobi that is run by the Catholic Church to be tested for Tuberculosis (TB). While at the hospital, Mary was also tested for HIV and the results turned positive. *"I was told that since I was HIV positive, they will give me drugs for TB and they will also help me by counseling."*

Mary was told that TB is curable but HIV was not. The nurses at Eastern Deanery Hospital referred her to the Kariobangi City Council clinic. *"They told me that there are doctors who visit there every three months to carry out tubal ligation for women."*

Since Mary had only one child, she says that she did not like the idea of tubal ligation and therefore, did not go back to the clinic. Mary says she decided she will lie to the nurses at Eastern Deanery because she needed medical services from them.

*"I told them I didn't get a chance to go and they told me they will stop giving me medicine because it seemed I did not want to be helped and improve my life."* Afraid of losing out on the services she was getting from Eastern Deanery, Mary says she visited Kariobangi City Council clinic and signed the forms to give consent for sterilization. According to Mary, the procedure was conducted by doctors from Marie Stopes.

*"The tubal ligation was done on 13th June 2010 by a male doctor and two years later I started having problems of controlling urine."* While the nurses at Eastern Deanery told Mary that there many different types of family planning, they insisted the best one for her is the sterilization.

Because of her inability to control urine, Mary has suffered adverse social stigma. She is not able to travel upcountry because it requires her to sit for long hours in

a bus and yet she needs to use the bathroom frequently. Mary feels pained by what happened to her and would like to seek legal redress. *"The government should make sure that medical practitioners do not deceive women and action should be taken against those who are involved in such malpractices."*

Note: Authors of this report were not able to establish if Mary's condition post tubal ligation was as a result of the operation or progression of her illness.



## Testimonies

*Nelly*

Nelly says she knew of her HIV status when she visited a Voluntary Counseling and Testing (VCT) center in 2009. At the time she was pregnant with her youngest child and was attending ante-natal clinic in Kariobangi. She says that she continued visiting the clinic until she delivered later in the year. After giving birth, Nelly notes that she was told that if she breastfeeds she could infect her child and her immunity would come down. She was put on ARVs.

*"At the Kariobangi South City Clinic, the nurse recommended that since I had five children I had to do the tubal ligation. They told me this was because my immunity was low and I had to undergo the tubal ligation. They also said I should not breastfeed and that they will give my baby milk as I was on septrin. The nurse was very clear and told me that if sterilization is done then the baby would get milk from the clinic. No tubal ligation, no milk."*

Nelly says that she was against the tubal ligation because she wanted more children and made that known to the nurse. She held on to her resolve not to have the sterilization for two months during which she gave birth normally. Two months after giving birth, Nelly says she gave in and agreed to the tubal ligation being done by doctors from Marie Stopes.

However, after the surgery Nelly became very sick, could not stand or bend and her immunity went down. Her periods became very heavy and would last for as long as two weeks. This affected her jua kali (informal) business, which involved travelling to the beach and lakeside to collect dried fish for selling.

Her husband's attitude towards her also changed when she disclosed to him that she had undergone tubal ligation. *"He sees that my life is over, I can't get another child. He does not even eat at home."* Two of her children have disability; the second born is deaf and

dumb and the fourth born is knock-kneed and requires an operation to rectify the problem.

*"Let people be told the truth and be left to decide what is best for them not blackmailed and given conditions for them to be assisted because they can see you are in a difficult situation. Let them tell you advantages and disadvantages of tubal ligation."*

*Note: Authors of this report were not able to establish if Nelly's condition post tubal ligation was as a result of the operation or progression of her illness.*



## Tess

Tess has three children from a previous marriage and one from her current husband. She says in 2000 she fell sick and was taken to Kenyatta National Hospital. At the hospital, the doctors told Tess that she had to be operated on because she had a growth in her stomach. *"They asked me, can you read, and I said yes I could read. He asked if I could sign? I replied in the affirmative. I was given a form which I signed before my husband came back."*

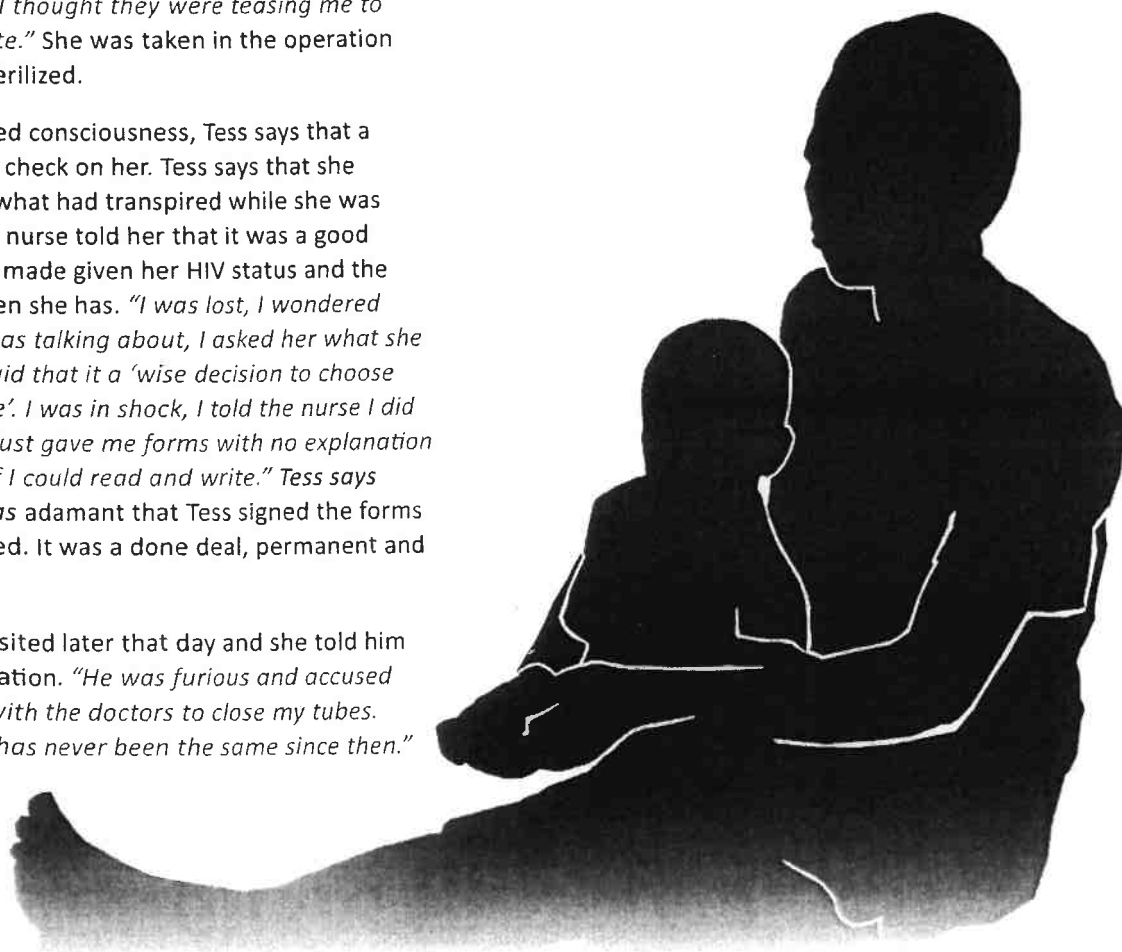
For Tess, the problem is they did not tell her what she was signing for. *"I thought they were teasing me to test if I could write."* She was taken in the operation room and was sterilized.

When she regained consciousness, Tess says that a nurse came by to check on her. Tess says that she wanted to know what had transpired while she was unconscious. The nurse told her that it was a good decision that she made given her HIV status and the number of children she has. *"I was lost, I wondered what the nurse was talking about, I asked her what she meant and she said that it a 'wise decision to choose to close your tube'. I was in shock, I told the nurse I did not decide, they just gave me forms with no explanation after asking me if I could read and write."* Tess says that the nurse was adamant that Tess signed the forms and had consented. It was a done deal, permanent and irreversible.

Tess's husband visited later that day and she told him about the sterilization. *"He was furious and accused me of colluding with the doctors to close my tubes. Our relationship has never been the same since then."*

Tess says the arguments with her husband about the sterilization culminated into a separation and he married two more wives arguing that Tess was of no value to him.

Tess feels betrayed by the doctors and her husband. She wants justice to take its course. *"Why should doctors trick women to sign forms that they do not understand. Tubal ligation is a life changing operation, it is not like you are removing a tooth,"* Tess laments.





## Conclusion

While the country-wide prevalence rates of non-consensual sterilization of HIV-positive women in Kenya are unknown, this study confirms that the violation is happening, and appears to be systemic in public health facilities. As the study was coming to a close, word had spread across the country through the various support groups of women living with HIV about the interviews, and numerous additional WLHIV contacted us eager to share their experiences of non-consensual sterilization, motivated by their resolve to break the silence of what they termed as 'the hidden violation' of women living with HIV.

The study has shown that healthcare providers, both doctors and nurses in some health facilities are violating the reproductive rights of WLHIV by coercing or forcing them to accept unwanted surgical sterilization procedures. Family members, especially spouses and parents, have also participated in coercing or forcing WLHIV to be sterilized, often based on misinformation provided by trusted medical professionals about the need for sterilization. Further, consent was routinely sought when the patient was in a vulnerable position, especially while in labor pains just about to go for a caesarian section. In some instances, incentives such as food were offered. The study illuminates how the intersection of low socio-economic status, HIV and gender exacerbates vulnerability of WLHIV to non-consensual contraceptive sterilization.

It is unethical and a violation of human rights for healthcare providers to intentionally misinform them or collude with their spouses or parents to coerce WLHIV to consent to sterilization. The use of abusive language by healthcare providers on vulnerable women who visit public health facilities is a systemic problem in Kenya (Failure to Deliver, 2007). The lack of or minimum intervention by the government to address patient abuse by public health care providers may embolden them to continue with unethical medical practices including coercing and forcing women living with HIV to undergo contraceptive sterilization.

The impact of non-consensual sterilization on the women's physical, emotional and personal lives and their socio-economic status was evident. WLHIV reporting forced and coerced sterilizations endure immense physical, psychological and social trauma due to the permanent loss of the ability to give birth. Reported health complication post-tubal ligation including severe abdominal and back pains has negatively affected the active lives of these women who are mainly casual workers who rely on their physical fitness to earn a living. However, it was beyond the scope of the study to establish if the reported post-tubal ligation complications were as a result of the procedure or progression of the illness or both.

# Recommendations

The study's findings warrant urgent action by the Government of Kenya. The Government has an obligation to prevent and redress non-consensual sterilization. The study recommends a couple of issues for the Kenyan government including;

1. National survey to better understand the scope of the problem of forced sterilization among women living with HIV and other vulnerable categories.
2. Review of the national family planning guidelines to align to international standards including the FIGO guidelines. The review should update provisions of the national family planning guidelines relating to women living with HIV that are ambiguous to explicit state that women living with HIV should be presented with the full range of contraceptive options, the risks and benefits of each, and that their consent is a must.
3. Clear-cut training on procedures around sterilization for all women with emphasis on the counseling and consent obtaining procedures. Specifically, by strengthening the informed consent requirements in overall and training healthcare providers on these. To safeguard against violations, the report recommends a waiting period between the explanation of the sterilization procedures and the time consent is sought and/or having informed consent be transmitted both verbally and in writing in a language that the client understands.
4. Accessibility to medical records, all patients should have access to their medical records.
5. Public education on reproductive health rights and choices for women living with HIV targeted to both women and men.
6. Establishment of accessible and effective complaint mechanisms. Women who have experienced non-consensual sterilizations must have access to justice including options to adopt a child. Redress should include the possibility of surgery to reverse the TL if the woman wants it though this may not work in all cases but women should be given the option.

## Response from some of the healthcare facilities mentioned in the report

### Female sterilisation in Kenya Response from Marie Stopes

We sought responses from a number of healthcare facilities mentioned in this report. Kenyatta National Hospital did not give a formal written response but verbally denied that such cases happened in their facilities and reiterated that it is against the hospital's policy to forcibly sterilize any patient.

The Medicine San Frontiers "Blue house" committed to investigate the highlighted cases but declined to give a written response.

Marie Stopes Kenya gave the following response;

*The issues raised in this report are of great concern to Marie Stopes International. The principles of voluntarism, informed choice, and informed consent are fundamental to our values, policies, and practices in all of the 42 countries we work in around the world. We undertake rigorous ongoing training and monitoring to ensure that the highest standards on these issues are adhered to at all times, and we are a leader in the sector in our respect for and protection of client rights.*

*We are grateful to GEM for raising awareness of these very important issues, and the harrowing stories these women have been brave enough to share. We thank GEM for the opportunity to include this statement in their report.*

*We would be deeply concerned about any possibility that any woman had the kind of experience outlined in the report while under our care, and emphasise that our policies ensure that all women considering a tubal ligation are counselled by a Marie Stopes Kenya team member both in a group and individually, before choosing freely if they wish to go ahead with the procedure and formally giving consent.*

*All of our clients are first given information about the full range of family planning options in an appropriate language and / or medium, to ensure that they alone*



*can make an informed choice about the family planning method right for them.*

*Individual counselling and signing of the consent form with a Marie Stopes Kenya team member takes place regardless of whether the client has been counselled and / or given consent at a referring clinic previously.*

*Marie Stopes International is committed to ensuring that HIV positive clients have equal, non-discriminatory access to high quality, voluntary family planning services. We recognise the value of integrated HIV and family planning services across the world: for example we are currently working to establish a gold standard in family planning care for both HIV prevention and people living with HIV throughout the Marie Stopes International partnership, to ensure they can access these services without bias or barriers.*

*We provide hundreds of thousands of women in some of the most remote regions of Kenya with access to the full range of family planning methods. It is important to remember that the testimonials in this report represent a very small and, we believe, unrepresentative, sample and do not reflect the very positive experience of these hundreds of thousands of women, including HIV positive women.*

*In the last five years alone, Marie Stopes Kenya has provided over one million family planning services to women and men across the country. Service quality and client satisfaction is regularly monitored through client exit interviews, mystery client surveys, and clinical quality audits, which consistently show good and improving quality of care.*



For further information please contact  
African Gender and Media Initiative  
P.O. Box 48197, 00100  
Nairobi, Kenya  
Tel. 254-20-2724756,2720554  
Fax: 254-20-2718469

Partners

---

