

JUSTICE²HEALTH

A view from the frontline

KELIN Newsletter: July - August 2023



Welcome from the Executive Director

Dear KELIN Community,

I trust this message finds you well and determined to keep reclaiming the rights and rebuilding the lives of the most vulnerable populations across Kenya and beyond. The month of July has been filled with strategic engagements that have helped us connect, re-connect and strengthen partnerships in the fight for justice to health.

Some key highlights from July include our participation in the Women Deliver Conference 2023 hosted in Kigali, Rwanda, hosting the TB Community Led Monitoring stakeholders' workshop, joining the world in celebrating 20 years of the Maputo Protocol, and to top it all up, our bi-annual #TeamKELIN retreat.

On a rather low tone, we bid farewell to our extraordinary Deputy Executive Director, Ms. Nerima Were, after 8 years of committed service and exceptional leadership, at KELIN. We wish her well and hope to keep connected in the space of human rights advocacy.

I welcome you to catch up on KELIN's updates in this month's newsletter.

Thank you for your continued dedication and collaboration.

Allan Maleche
Executive Director



Human rights, the Law and Legislation



Human rights are fundamental entitlements and freedoms that every individual possesses inherently, irrespective of their nationality, ethnicity, gender, or any other characteristic. These rights are based on the principles of dignity, equality, and respect for the inherent worth of every human being. They encompass a wide range of civil, political, economic, social, and cultural rights, designed to ensure that individuals can live their lives with dignity, freedom, and justice. Human rights are also inalienable.

The law is a system of rules and regulations that govern the behavior of individuals and societies, ensuring order, fairness, and accountability. It provides a framework for resolving conflicts, protecting rights, and maintaining social harmony. Laws are created by governments through relevant authorities to set standards for acceptable conduct, and they cover various aspects of life, from health to property rights, contracts, and more.

Legislation refers to the process of creating laws through a formal process. This involves the proposal, debate, amendment, and approval of laws by government bodies, such as parliaments. Legislation is crucial for

translating societal values and needs into legal frameworks that guide behavior and protect rights. It reflects the changing dynamics of societies and addresses emerging challenges.

Human rights and the law are deeply intertwined. The legal system is often the primary mechanism through which human rights are recognized, protected, and enforced. Many countries, including Kenya, have incorporated international human rights principles into their domestic laws, creating a bridge between global standards and local regulations. Legal instruments like constitutions, statutes, and treaties establish the legal basis for human rights protections, ensuring that governments and individuals are held accountable for upholding these rights.

Effective legislation is vital for safeguarding human rights. Well-crafted laws provide clear guidelines for behavior, establish mechanisms for seeking redress when rights are violated, and promote a just and equitable society. Additionally, the process of enacting laws itself should adhere to principles of transparency, inclusivity, and accountability, to ensure that the laws truly reflect the interests and needs of the people they affect.

Human rights, the law, and legislation are interconnected concepts that play a pivotal role in shaping societies and promoting justice. Human rights form the foundation of ethical principles, while the law and legislation provide the tools and structures necessary to uphold and protect these rights, ultimately striving for a more equitable and respectful world for all.

At the apex of laws in Kenya is the Constitution of Kenya, 2010. Legislations, which are laws made in Parliament, rank second, with regulations and guidelines closely following. Legislations, Regulations and guidelines are all

made in the spirit of the Constitution of Kenya, 2010 from which they derive their legitimacy. All laws made as well as the processes through which they are made should be in conformity with the provisions of the Constitution.

One of the processes laws are required to go through is public participation, whose purpose is to ensure inclusion, equity, non-discrimination and protection of the marginalised. KELIN's leadership in capacity building on the law-making process and support in advocacy, contributes to the progressive enabling environment for health-related human rights to be realized, one community at a time.

The Threshold for Public Participation in Kenya



Several laws have previously been weighed and found to be wanting as far as public participation goes. This has necessitated the development of a criteria by the Constitutional and Human Rights Division of the High Court of Kenya for application in the determination of the efficacy of the public participation process. To ascertain efficacy, six aspects are examined within the acceptable criteria. A public participation program should:

- a. Be developed in a manner that aligns with the nature of the decision or policy under review.
- b. Apply innovation and flexibility to cater for culture, logistical constraints, and any other relevant factors, depending on the nature of the decision or policy under review.
- c. Include access to, and dissemination of relevant information to the public who will then be afforded a forum in which they can adequately ventilate their views.
- d. Demonstrate intentional inclusivity and diversity. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must consider the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action. Their views must be more deliberately sought and considered.

- e. Not guarantee that everyone's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency involved to take into consideration, in good faith, all the views received as part of the public participation programme.
- f. Not assume the technical or democratic role of the office holders but rather enrich their

views with the views of those who will be most affected by the decision or policy at hand.

It is on this premise that KELIN engages in tracking and evaluating the gains made in the law-making processes, specifically those that have a bearing on health and human rights for the most vulnerable populations in Kenya, at county, national and regional levels.

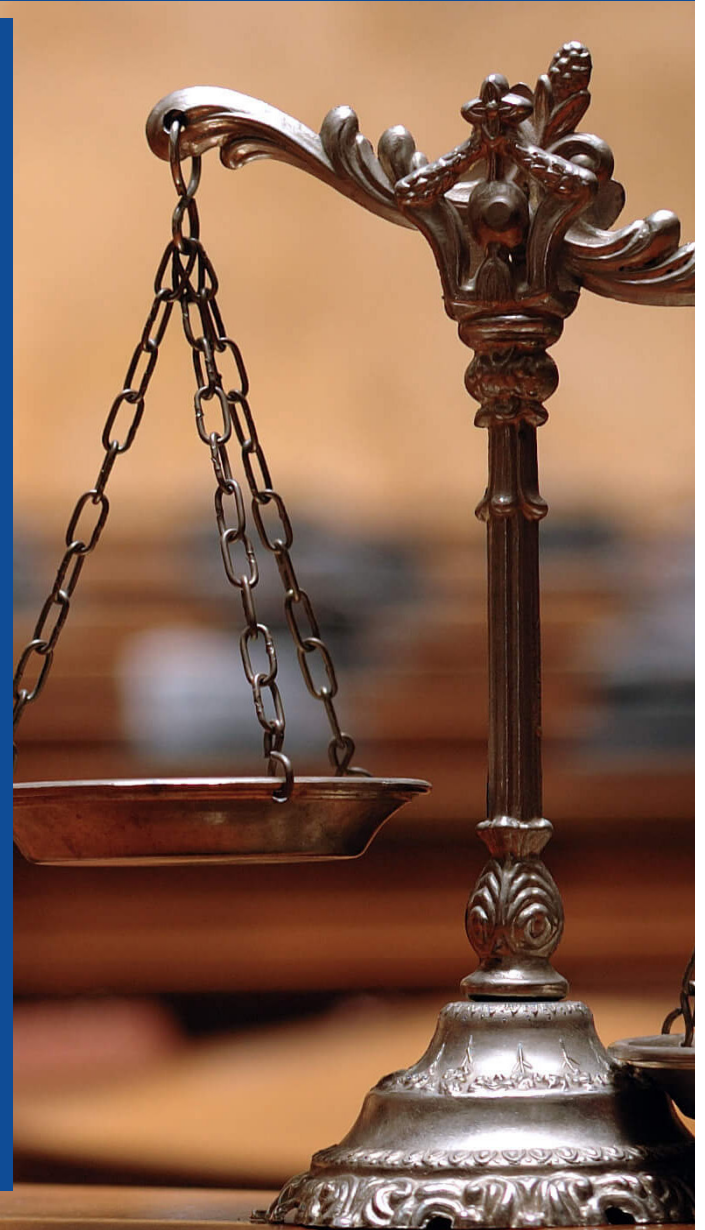
Law Making at the County Level

KELIN has been working with communities to investigate the severity of reproductive health violations, while raising awareness on mortality and morbidity rates propagated by poor reproductive health choices and services.

In Kilifi County, KELIN has been working to support the finalization of the Reproductive, Maternal, Newborn, Child, and Adolescent Health (RMNCAH) Bill. Having instituted [a legal suit against Kilifi County](#) contending the efficacy of the public participation in the development of the said Bill, the County Government of Kilifi invited KELIN to help with ensuring public participation in formulating an RMNCAH Bill that upholds the criteria of inclusivity, transparency and flexibility.

The [court has urged both KELIN and Kilifi County to pursue an out of court settlement.](#)

Considering the foregoing, the County Government of Kilifi invited KELIN to help with ensuring public participation in coming up with an RMNCAH Bill which is inclusive of everyone's RMNCAH rights.



Law Making at the National Level

Cognizant of the gap in legislation over the sexual and reproductive needs of children within the adolescent age bracket, KELIN has alongside other organisations been actively engaged in partnerships with the Ministry of Health to develop policies that are envisioned to influence relevant laws in this space.

Adolescents' and Young Persons' Reproductive Health Policy

One of these policies, the Adolescents' and Young Persons' Reproductive Health Policy (AYPRH) has recently been the subject of an internal validation exercise by officials at the Ministry of Health. This exercise was the first of three scheduled validation exercises during which various specialists and stakeholders interacted with the policy document for purposes of validation and consensus before a possible launch in September 2023.

Note: The contents of the Policy are not in the public domain yet and we are therefore constrained to delve into the contents of the draft Policy document.

The Big 5 Clinical Handbook

KELIN and affiliated organizations participated in the development of the *Clinical Handbook on the Prevention and Management of The Big 5 Direct Causes of Maternal Morbidity and Mortality in Kenya* and the *National Reproductive Health Selfcare Guidelines*, as either partners or stakeholders, exercise. This exercise was driven by the continued need to deliver new approaches to reproductive health care while facilitating deployment of interventions that expand access. The Handbook was developed in line with a legislative mandate (Health Act, 2017) requiring the Cabinet Secretary to issue administrative guidelines and regulations on professional post basic training of all health workers for implementation in line with the national training policy for health professionals.

As with all other laws, this Handbook was subjected to a process of public participation. It is worth noting that due to the highly specialist nature of the audience for which the Handbook was developed, the threshold of public participation is also unique. In the case of technical laws such as this one, input is required from experts of a specific audience that understands the discipline under legislation. Thus, the Handbook was the outcome of a development process by specialists in reproductive healthcare such as the Kenya Obstetrical Gynecological Society (KOGS).

While the handbook was set to be launched on 6 July 2023, by the Division of Reproductive and Maternal Health (DRMH), a notification of postponement was issued, citing unavoidable circumstances beyond its control. A new launch date is yet to be communicated.

The Assisted Reproductive Technology Bill, 2022

The Assisted Reproductive Technology (ART) Bill, 2022 seeks to provide a legal framework for assisted reproductive technology services in Kenya. One of the aims of the Bill is to promote the safety and welfare of all the parties involved in assisted reproductive technology. In addition to regulation through licensing, the Bill also covers ethical and moral considerations of the collection of information from all the assisted reproductive technology procedures which will be performed in Kenya.

The Bill had its day on the floor of the National Assembly during its First Reading exercise on 3 May 2023. Here, the Bill was assigned to the Departmental Committee on Health of the National Assembly for consideration and reporting to Parliament. The Committee, through the Clerk of the National Assembly, made a public memorandum by way of advertisements in the media, inviting members of the public to give their written views on the contents of the Bill.

KELIN participated through sensitization on the contents of the Bill on platforms shared with lawyers in Kenya. The submission of written memoranda closed on 22 May 2023. We are following closely the progression this Bill makes in the National Assembly.

Law Making at the Regional Level

At the regional Level KELIN has been actively engaging with the law-making process at the East African Legislative Assembly (EALA). The Sexuality and Reproductive Health Bill which was drafted in 2017 as a private members Bill by Dr. Odette Nyiramilimo, a Rwandan representative at EALA, has been adopted by the Fifth Assembly of the EALA. Members of the Fourth Assembly almost rejected the Bill on account of Article (4) which provides for the right of every person to enjoy their sexual & reproductive health rights and services provided for by the Act without discrimination on any basis.

The Bill remains an agenda item for the Fifth Assembly. KELIN will be actively engaged in leading the advocacy efforts by convening actors from all EAC members States to determine practical approaches to push for implementation and adoption of the Bill. We shall also be following up on the respective deliberations over the Bill at EALA.

Collaborating for inclusive Law Making

KELIN continues to lead in fostering strategic partnerships that support our motto of #Justice2Health. Aligned to this, we have signed Memoranda of Understanding (MoU) with two partners over the past few months.

- a. KELIN and the Kenya Obstetrical and Gynecological Society of Kenya (KOGS) signed an MoU to foster collaboration in expanding access to reproductive healthcare including access to safe abortion and adolescent sexual and reproductive health rights.
- b. KELIN and the East Africa Law Society (EALS) signed an MoU to advance the promotion and protection of Human Rights at the National and Regional Level. The MoU shall foster collaboration to push for a supportive legal and policy environment for the fulfillment and enjoyment of sexual and reproductive health rights at the national and regional level.
- c. KELIN and the Law Society of Kenya (LSK) signed an MoU to establish channels of communication that permit the creation and interchange of information as well as technical, financial, and institutional

collaboration, between the two institutions in pushing for a supportive legal environment for health and human rights, including sexual and reproductive health rights in Kenya.

Capacity building at County and National level

- a. KELIN trained 35 members of Civil Society in Nakuru on the importance of the County Annual Development Plan (CADP) and County Fiscal Strategy Paper (CFSP). These two processes serve as the foundation for the County's budgeting process and impact the allocation of resources towards the achievement of the highest attainable standard of health.
- b. KELIN and LSK organized a Value Clarifications and Attitude Transformation exercise for the Council of the Law Society of Kenya (LSK), top management and some of the public interest litigation committee (PILC) members. The training was a vital platform for enhancing the knowledge, skills, and attitudes of LSK's Council members and public interest litigation committee members regarding sexual and reproductive health and rights (SRHR). The training was specifically focused on broadening reproductive equity in Kenya, with a view to equipping participants with the necessary tools to champion SRHR issues effectively.

Quick Highlights

Celebrating 20 Years of the Maputo Protocol

KELIN was represented at the Maputo Tea Party, an event held to [celebrate twenty \(20\) years of the Maputo Protocol](#). The Maputo Protocol is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 2.The Kenyan Government placed a reservation on Article 14(2) (C). Article 14 (2) (C) provides for reproductive health rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and well-being of a pregnant woman. Unsafe abortions are a leading cause of death among pregnant women. Consequently, lifting the reservations on Article 14 (2) (C) is an actual life and death scenario for many women.



KELIN at Women Deliver Conference 2023





KELIN joined partners and other stakeholders in Kigali, Rwanda for the Women Deliver 2023 Conference, whose objective was to enable inclusive and co-created spaces that foster solidarity for sustainable solutions on gender equality. KELIN, represented by legal counsel, Nyokabi Njogu, was part of [a panel on the Geo-Politics of Sex and Gender](#). Here is a good summary of [some key lessons from the conference](#).

Community led monitoring for TB accountability



KELIN, with support from the STOP TB partnership, conducted an [inception meeting](#) on 24th July 2023 in Nairobi, aimed at scaling up the involvement of trained TB affected communities to undertake community-led monitoring for accountability on TB and human rights. the conference.

Team KELIN Bi-annual Retreat



July ended on a high note as the entire KELIN team took time off to reflect our work in the first half of 2023 in a three-day retreat themed, Refocus, Realign, Restrategize, left the team re-energized and ready to take on the second half of 2023 with updated mindsets in the fight for #Justice2Health. Here is a feel of [our reflection time](#).

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