KENYA HIV Leadership through Accountability

April 2010

HUMAN RIGHTS COUNT!

KENYA

Country Assessment 2009

NEPHAK say yes to life

GNP+ GLOBAL NETWORK OF PEOPLE LIVING WITH HIV

UKaid from the Department for International Development

Kenya

Published by:
National Empowerment Network of People Living With HIV and AIDS in Kenya (NEPHAK)
P.O. Box 75654-00200
Nairobi
Kenya

Website: www.nephak.org
Email: infoplha@nephak.org

Acronyms

AIDS	Acquired Immune Deficiency Syndrome
ARVs	Antiretroviral
CBO	Community-Based Organization
DFID	Department for International Development
GIPA	Greater Involvement of People Living with HIV and AIDS
GNP+	Global Network of People Living with HIV
HBC	Home Based Care
HIV	Human Immunodeficiency Virus
IEC	Information, education and communication
KAIS	Kenya AIDS Indicators Survey
KANCO	Kenya AIDS NGO Consortium
KENEPOTE	Kenya Network of Positive Teachers
KNASP	Kenya National AIDS Strategic Plan
NACC	National AIDS Control Council
NAP+	Network of African People Living with HIV/AIDS
NASCOP	National AIDS, STD Control Program
NEPHAK	National Empowerment Network of People Living with HIV & AIDS in Kenya
NGO	Non-Governmental Organisation
OHW/INEPS	Organisation of Health Workers / International Network of Expert Patients
PLHIV	People living with HIV and AIDS
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNGASS	United Nations General Assembly Special Session on HIV/AIDS
WAC	World AIDS Campaign
VCT	Voluntary Counselling and testing

Acknowledgements

First and foremost, we would like to thank all people living with HIV who volunteered their experiences of HIV related human rights violations in the hope of contributing to the evidence to campaign against these violations. Implementation of Human Rights Count! would not have been possible without this input.

The National Empowerment Network of People Living with HIV/AIDS in Kenya (NEPHAK) is immensely grateful to the UKaid from the Department for International Development (DFID) for the financial support, from the Governance and Transparency Fund, which made this study possible.

NEPHAK would like to acknowledge and thank the following organisations who cooperated and supported the implementation of the programme: The Kenya Human Rights Commission, AMPATH, Kenya Network of Positive Teachers (KENEPOTE), Kenya Network of Religious Leaders Affected by AIDS (KENERELA), Organisation for Health Workers/International Network of Experts Patients (OHW/INEPS) and the Kenya Bar Hostess Association.

We are grateful to the AIDS and Rights Alliance for Southern Africa (ARASA) for conducting the training for implementers and interviewers.

We are especially grateful to Prof. Charles Nzioka who led the research process and developed the final report. We trust that these findings will contribute to improving the health and quality of life of PLHIV in general.

The National Empowerment Network of People Living with HIV/AIDS in Kenya (NEPHAK) acknowledges the support from the Global Network of People living with HIV (GNP+) and the World AIDS Campaign (WAC) for their work on the HIV Leadership through Accountability programme. We would like to thank Rahab Mwaniki at NEPHAK and Moono Nyambe, Programme Officer at GNP+, for the technical guidance provided throughout the study.

The Human Rights Count! is one of five evidence-gathering tools being implemented through the HIV Leadership through Accountability programme. The programme combines specific HIV evidence-gathering tools, national AIDS campaigns and targeted advocacy to achieve Universal Access to prevention, treatment, care and support. For more information about the HIV Leadership through Accountability programme please visit www.hivleadership.org.

Contents

Executive Summary

The report summarises the findings of a study undertaken by the National Empowerment Network of People Living with HIV and AIDS in Kenya (NEPHAK) to document the experiences of people living with HIV (PLHIV) regarding human rights violations. It confirms that the human rights of PLHIV are being violated across a wide spectrum of Kenyan society with complaints ranging from murder (in one case) and torture to discrimination at work, in healthcare settings and in the family. The violations tend to continue until the death of the victim or the perpetrator, or until the victim escapes by moving to another place or away from an abusive relationship. In most cases the authorities have not been informed because the victims have no confidence in the legal system or authorities.

The findings and the implementation process reveal that many PLHIV are not aware of their rights and hence are unable to identify instances when such rights are violated. Furthermore, weaknesses in the current legal framework in the country limit the opportunities for seeking redress and justice when PLHIV realise that their rights have been violated on account of their HIV status. Only a small proportion of rights violation cases are reported to the authorities.

In rare instances, the persecution has been stopped by legal action, even involving the payment of compensation. In some of the study sites, PLHIV have banded together for their mutual protection. Counselling and education provided by NGOs and other social players have also been effective. However, the overall picture is grim and a lot could be done to improve the situation. Some of the measures that should be taken based on the findings of this study are as follows:

- A follow up study with, a bigger sample and wider geographical spread should be conducted to examine human rights violations across different vulnerable sub groups of PLHIV.
- Networks of PLHIV and other HIV organisations should advocate and lobby the government to effect commission of the Special Tribunal for HIV related cases, created by the HIV and AIDS Prevention and Control Act 2006.
- Interventions that address stigma and discrimination within the family, community and institutional settings should be intensified.
- The government and civil society organisations should incorporate human rights and legal literacy campaigns in interventions for PLHIV.

Introduction

The HIV Leadership through Accountability programme is a collaboration between the Global Network of People Living with HIV/AIDS (GNP+), the World AIDS Campaign (WAC), national networks of PLHIV and national Civil Society platforms. The programme is funded by UKaid from DFID and combines specific HIV mapping tools, national AIDS campaigns and targeted advocacy for Universal Access. The programme will run for five years and involve 15 countries in total.

In Kenya, the National Empowerment Network of People Living with HIV/AIDS, NEPHAK is leading the effort to document the experiences of people living with HIV and have employed a number of internationally tested, validated tools, aimed at strengthening the evidence on five key areas:

1. Stigma and discrimination (The People Living with HIV Stigma Index)
2. The level of involvement of people living with HIV (The GIPA Report Card)
3. Documenting and analysing current experiences in criminalisation of HIV transmission (The Global Criminalisation Scan)
4. Documenting and analysing human rights violations against PLHIV (Human Rights Count!)
5. Sexual and

HIV and AIDS: Kenya Country Profile

According to the 2008-09 Kenya Demographic and Health Survey, 6.3 percent of Kenyan adults aged 15-49 are infected with HIV (KNBS and ICF MACRO, 2010). As observed in much of sub- Saharan Africa, women in Kenya are disproportionately affected compared to men. HIV prevalence in women age 15-49 is 8.0 percent, compared to 4.3% for men in the same age group. (KNBS and ICF MACRO, 2010). The estimated number of people living with HIV is 1.3 million to 1.6 million (UNAIDS, 2010). New infections were estimated at 100,000 in 2009 for adults. The HIV Prevention Response and Modes of Transmission Analysis (2009) reported that the majority of new infections (44 percent) occur among men and women who are in a union or in regular partnerships. Men who have sex with men (MSM) and prisoners contribute about 15 percent of new infections. Injecting drug users account for 3.8 percent (UNAIDS, 2010).

Currently, there are a number of public and private sector organisations that are contributing to the national HIV response through the provision of various services. For

instance, the National AIDS Control Council (NACC), established by the Government of Kenya, is responsible for providing policy and a strategic framework to coordinate and mobilize resources for the prevention of HIV and for the care and support of PLHIV. In 2009, the NACC launched the third Kenya National AIDS Strategic Plan (KNASP III) in 2009 which spells out the country's approach to addressing the challenges posed by HIV and AIDS at individual, household and community level. As one of the leading non-governmental organisations championing the interests of PLHIV in Kenya, NEPHAK regularly collaborates with other organisations promoting evidence-based advocacy to improve HIV programming. Other entities involved in similar work include the Kenya Ethical and Legal Issues in HIV and AIDS Network (KELIN) which aims to raise awareness about legal issues involving HIV and AIDS in the country.

Human Rights Count!

Despite the many successes scored in improving the quality of life for PLHIV globally, it is widely acknowledged that in many countries, effectively addressing human rights violations against PLHIV remains a major challenge. In extreme cases, PLHIV have been killed on account of their HIV status. In Kenya for instance, 15 year old Isaiah Gakuyo was brutally murdered for being HIV positive.[1]

The Human Rights Count! Project is a GNP+ led initiative which aims to document HIV-related human rights violations against PLHIV with the ultimate goal of developing long term solutions. This is particularly important considering that HIV-related human rights violations, stigma and discrimination are widespread and often creating barriers to access to essential services.

Inspired by the death of Steve Harvey, an AIDS activist in Jamaica who was murdered just before World AIDS day 2005 apparently on account of his sexuality and HIV positive status, the Human Rights Count! project has the following specific objectives:

- To document HIV related human rights violations against PLHIV;
- To raise awareness of human rights amongst PLHIV;
- To provide a quantitative and qualitative analysis of HIV related human rights violations against PLHIV across countries and regions and detect time trends;
- To inform future HIV and human rights related advocacy programming at national, regional and global levels through the building and sharing of evidence and documented cases;
- To mainstream HIV into the work of international human rights organisations;
- To lobby key change agents in response to reported rights violations.

[1] Retrieved from: http://www.unicef.org/infobycountry/kenya_33562.html

Methodology

This exploratory study was conducted by NEPHAK in partnership with other organisations purposively chosen on the basis of their current involvement in human rights issues, HIV related advocacy work or provision of care and support services for PLHIV. These included;

- The Academic Model Providing Access to Healthcare (AMPATH)
- Bar Hostess Association
- Kenya Network of Positive Teachers (KENEPOTE)
- Kenya Network of Religious Leaders living with or personally Affected by AIDS (KENERELA)
- Organisation of Health Workers/International Network of Experts Patients (OHW/INEPS)
- The Kenya Human Rights Commission (KHRC)

This report is based on data collected through semi-structured interviews with individuals who were reported as having suffered some form of HIV related rights violations and were willing to document their experiences. The data collection team comprised fifteen (15) members of NEPHAK who administered questionnaires in Nairobi, Mombasa, Kisii and Mt. Elgon. The decision to include Mt Elgon in the study was primarily based on the tribal conflicts and related human rights abuses that were reported to have taken place in the area.

Support groups of PLHIV in the study towns played a pivotal role in promoting the programme and raising awareness amongst potential respondents. To ensure wider participation, study respondents who required assistance with documenting their experiences were allowed to obtain help. In total, 68 experiences were documented. Out of these, 15 experiences did not amount to HIV related human rights violations and were dropped from the study. Non HIV-related experiences included road accidents, being beaten and raped by militia, extortion for money, police bribery and spousal conflicts. This report is based on the data from the 53 remaining experiences recorded.

Training on human rights has been included as an integral part of Human Rights Count! In partnership with the AIDS & Rights Alliance for Southern Africa (ARASA) a training programme which can be modified to suit different settings has been developed. The aim of the training is to give the implementers of the programme a good understanding of human rights and HIV and a clear guide on how to document human rights violations against PLHIV through the implementation of the Human Rights Count!

In Kenya, this two and a half-day training was held from 17th to 19th September 2009 in Nairobi as part of the process to equip the 15 data collectors with the knowledge and skills to undertake the assignment. Some of the topics covered included: Understanding the link between human rights and HIV; Elements of identifying key human rights and health issues in Kenya; and Understanding Human Rights Count! Participants also found the practical sessions on interviewing techniques based on the research instrument highly beneficial.

Microsoft Excel package was used to compute summary statistics as part of the quantitative data analysis. Additionally, the questionnaires were analysed to identify common themes and gain further insight into the different experiences narrated by the respondents.

One of the study's limitations arises from its geographical coverage. Considering that the study involved a relatively small sample drawn from only four towns in Kenya, the findings may not reflect the experiences of PLHIV in other parts of the country. Another limitation is that respondents who participated in the study are those who could be reached and agreed to have their experiences documented. As such, these respondents may not necessarily have the same characteristics as those who did not participate in the study. Finally, the approach of documenting experiences that may have occurred several years prior to the study may have led to inaccuracies in the responses provided by some of the respondents.

Understanding of human rights and the determination of whether or not a right has been violated is a question of law and assumes an understanding of the technicalities of human rights violations. Implementing the programme showed that most did not have the skills or knowledge, nor should they have been expected to have a full understanding of human rights. Despite these limitations, the study presents useful findings to guide further research and inform the design of interventions to curb human rights violations in the context of HIV.

Results

Demographic Characteristics

These finding are based on the 53 documented cases of HIV related human rights violations. The questionnaire allowed for both self-completion and assisted completion. Forty women and thirteen men took part in the study. Out of the 85.3% who were assisted in completing the questionnaire, 31.7% were assisted by a friend or neighbour, 39% by a social worker while 7.3% received assistance from the a husband, wife or partner. Adult family members (4.9%) and parents or guardians (2.4%) were also cited as sources of help by the respondents.

Age

The ages of the people who reported having their rights violated ranged from 22 to 56 years old. As shown below, victims aged 31-40 years accounted for the majority of those whose rights were violated. Those aged above 51 years were the least represented.

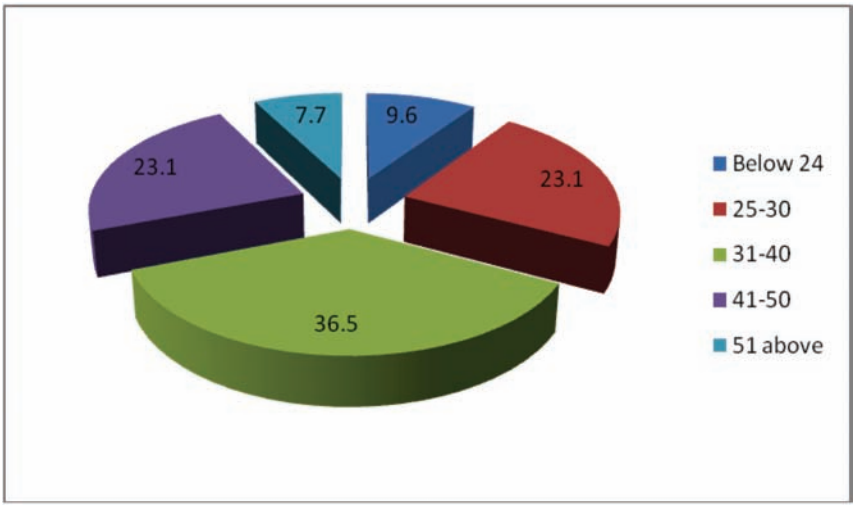

Figure 1: Ages of the victims of Rights Violations

Education Levels

For most of the victims of HIV related human rights violations, the highest level of education attained was primary school (46%) or secondary school (34%) level of education. Those with no formal education accounted for 8% and those with higher education accounted for 12%. These results suggest a correlation between having rights violated and not having a high level of education.

Employment Status

About 42% of the respondents reported to be doing were engaged in casual or part time work as self employed, 26% indicated that they were unemployed and not working at all, and only 6% were in full time formal employment. Some 17% reported their employment status as full-time self employment. The rest (9%) did not list their employment status.

HIV Status

At the time of the violation of their human rights, majority of the victims (82.7%) had tested HIV positive as shown in figure 2 below. For those who were HIV positive at the time of the violations, 42.2% and 40% had been diagnosed for 5-9 years and 1-4 years respectively. 11.1% reported having been tested less than a year before the violation and no respondent reported testing 15 years or more before the violations.

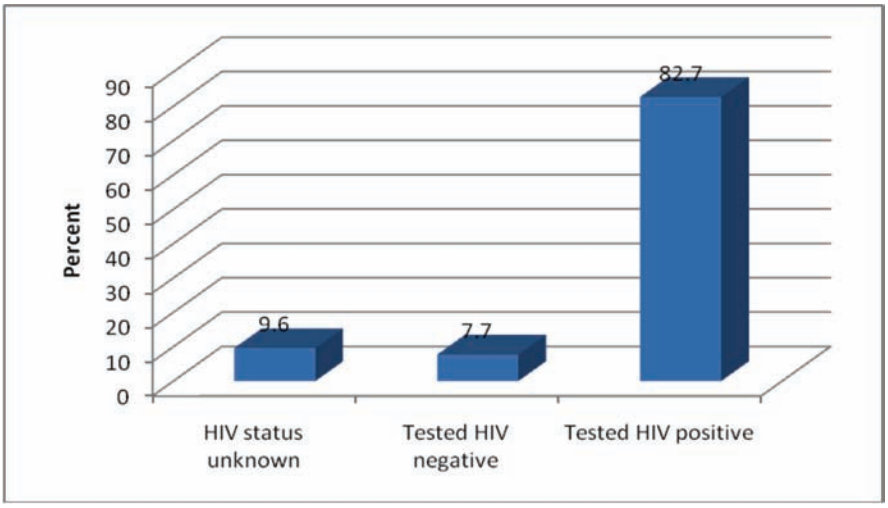

Figure 2: Victim's Sero Status at the time of the Violations

Other Vulnerable sub Group

People who completed the questionnaires were asked to mention the groups they identified themselves with. Table 1 below shows the groups that the victims of human rights violations identified with.

Table 1: Groups the Victims of Human Rights Violations Identify With

Group	Frequency	Percent
Disabled	4	7.5
Gay/Lesbian	1	1.9
Injecting Drug Users	1	1.9
Indigenous group/tribe	11	20.8

Migrant	1	1.9
Pregnant woman	5	9.4
Sex worker	2	3.8
No Response	24	45.4

As table 1 shows, more of the respondents who reported having their rights violated identified themselves with the indigenous group than with any other group. However, nearly half of the victims did not respond to the question.

Respondents were also asked to indicate how many people were affected by the reported act of rights violation. As Table 2 shows, most of the respondents mentioned one person. Violations affecting a family, community or other group were only reported by 3 respondents.

Table 2: People affected by the violations

Number of people affected by the violation	**Frequency**
One person	34
Two people	5
Three or more individuals	-
A family/community or other group	3
No Response	11
Total	**53**

Rights Violated

Acts or events associated with the violation of the right to work or health were the most frequently mentioned by the respondents. Other acts or omissions cited by the respondents include being beaten, detained or denied residence on account of HIV status. A number of respondents reported more than one instance where their human rights were violated.

Respondents were also asked to narrate the story of what happened when the victims' rights were violated. Some respondents indicated that they were not comfortable doing so. Most of the violations reported occurred in the last five years, although some respondents reported human right violations that had occurred in 1994 and 2002. Interestingly, some women reported having been chased away by their husbands from their home on testing HIV positive regardless of whether the man's sero status was positive or not. The women were accused of bringing the virus home.

Work Related Violations

For most respondents, the violation of their right to work was often linked with acts amounting to violation of their right to privacy.

> *"I was taken ill with malaria and body ache that was taking rather too long to get well. In the process the management of the prestigious company decided to conduct an HIV test without my consent thus tormenting me psychologically. I was prevailed upon to resign from the company; we argued for about 3 months until I gave in and resigned on medical grounds. Later I did sue the company and was fully compensated."*
> (Male PLHIV, Nairobi)

> *"I cannot work in places where people know my HIV status because they deny me jobs."*
> Female PLHIV, Mt Elgon

Treatment Related Violations

International law provides for the basic right to the highest attainable standard of health and strictly prohibits discrimination. The right to health implies a right to access a core minimum set of health care services. In one case, this was understood to mean that, prescribed drugs be available from public health facilities, therefore the respondent reported that her right to health had been violated during the three–month period during which she was compelled to buy some prescribed drugs from her resources due non-availability of the drug in the public health facilities.

Privacy and confidentiality rights violations

Confidentiality is an important determinant of the success or failure of HIV related services especially in settings where stigma and discrimination are major challenges. The findings reveal that in a number of instances, respondents had their right to privacy violated by the same people they felt would safeguard their interests.

> *"I tested positive in the year 2000, I was very scared of disclosing my HIV status to my family members because I knew they would reject and discriminate against me. So I went to an organization near my home and told one of the community health workers to help me seek medication. The same day I left there, the health worker had told other people and my mother was also told about it. My mother forced me to go back to take another HIV test and when it turned positive, I was chased away from home."*
> (Female PLHIV, Mombasa)

Reasons for Violations

Most of the victims (80.4%) thought they were treated the way they were because of their HIV status. The other 9.6% were not sure why they were treated the way they treated. Several reasons were advanced as to why the respondents felt their HIV status was the responsible for the violations. One respondent stated that although his dismissal later indicated termination of employment on medical grounds, the fact that it came just after he disclosed his status led him to conclude that his HIV status was at play. In yet another case, the respondent came to such a conclusion because the landlord had specifically mentioned he could not accommodate someone who was HIV positive at the time she was asked to leave the rented house.

Impact of Rights Violation

Respondents were asked to report on how the violations they reported had impacted on their lives. Many responded reported being impacted upon in more than one way. Some 13.2% of the respondents reported to that the violation had impacted them physically (e.g. injury). One respondent narrated how the husband cut off her hand following her disclosure of her HIV positive status.

However, psychological impact was the most frequently cited impact among the respondents. Nearly 80% of the respondents reported stress, shock, depression, loss of self esteem and other similar conditions as a result of the violations.

> *"I always feel depressed because I think people will never understand me as a person living with HIV."*
> Female PLHIV, Kisii

> *"I was very ashamed of my HIV status and very afraid."*
> Male PLHIV, Mombasa

About half of the respondents (50.2%) indicated that they were impacted upon socially (e.g. isolation) due to the violations.

> *"After being diagnosed and found HIV positive by the health authority my husband sent me away from our matrimonial home."*
> Female PLHIV, Mombasa

Loss of a job and consequently the family's income due to human rights violations was the main economic impact cited. About half of the respondents had suffered violations that impacted them economically. Respondents narrated how they could not continue with

business as people did not want to buy from them or lost their late husbands' wealth such as benefits and land.

A victim's relative reported that his uncle was dismissed from serving as a pastor in his church when he tested HIV positive in 2008. Since he was mostly depended on the church for sustenance, he became financially unstable and sold his rural house in order to support his family.

Reporting Violations to State Authorities

Only 27.5% of the victims of the human rights violations indicated that the event had been reported to the relevant state authorities, 3.7% were yet to report the event and the rest had not reported their cases. Those who did not report the human rights violations to state authorities gave the reasons indicated in Table 3. Indicative is that with the telling reasons advanced, there is need to raise awareness on the rights of PLHIV and sensitize the concerned state machinery to be able to address the violations as reported.

Table 3: Reasons for not Reporting to State Authority

Reason for not reporting violation	Frequency
Afraid	7
Did not know that I could report it	7
I was not able to	1
Did not know who to report to	5
I dealt with it and did not matter anymore	1
Did not Know I could/ did not know who to report to / not able / dealt with it/ other...	1
Afraid/ Did not Know I could/ did not know who to report to / not able	1
Did not Know I could/ did not know who to report to	2
No reason given	15

Other reasons respondents opted not to report cases of violations include loss of self-esteem and a general feeling that reporting would not yield anything.

> *"I do not think that the government policies in place can really protect me as a person living with the HIV virus."*
> Male PLHIV, Kisii

For those who had reported the cases, the outcomes were mixed. There were reports of authorities discouraging the aggrieved party from pursuing the perpetrator, as well as instances when no decisive action or no action at all was taken. In yet other situations, reporting the matter yielded positive results.

One respondent reported the matter to the police but the case could not proceed as he could not secure legal representation and the witnesses were reluctant to get involved for fear of stigmatisation.

> *"I won the court case against my former employers and they were ordered to pay me compensation and benefits."*
> (Male PLHIV, Nairobi)

> *"The area chief did not take any action; instead he sided with the perpetrators to frustrate me and he even tried to forcefully have sex with me of which I refused and thus he hated me the most. When I saw danger I ran away for some six months."*
> (Female PLHIV, Kisii.)

Context of Violations and Characteristics of Perpetrators

Human rights violations occur in a wide range of circumstances. While a number of incidents occurred in settings were respondents worked or had gone to seek particular services, the study shows that rights violations sometimes occur within the family, village or neighbourhood. Even places of worship were cited among locations where respondents experienced violations. The results of the study show that 34% of the reported violations occurred in a domestic setting and 66% in relation to public bodies of one sort or another.

> *"It was when I found myself to be positive I then decided to disclose to the church. Thinking I'll be on the safer side. Not realizing isolation would occur in the church... They did this because I told the congregation about my positive status in the church. During church services and ceremonies and everybody now did not like to be together with me because of my HIV status."*
> (Male PLHIV, Nairobi)

In a number of cases, the violations occurred within the health care settings, suggesting the need to include health workers in human rights awareness interventions.

> *"This was back in the year 2002 when I was pregnant. I went to a health centre... I wanted to get tested for HIV and the health worker who attended to me knew me very well. She told the other nurse why are you bothering yourself in testing her? She is a positive and she already has it... she has more men in the community there is no need of you giving her the condoms coz she is positive. A nurse just threw some ten condoms to me I got annoyed and went away without being given that full service that I needed ... "*
> Female PLHIV, Mombasa

Spouses, in-laws and even parents where mentioned as perpetrators of the violations particularly by those respondents who experienced violations within the household setting.

> *"Other family members' aunties, cousins are discussing my HIV status anyhow and disclosing to everyone and this has caused a lot of discrimination and a lot of stigma. I feel bad everyday because all the people in my village know of my status and they stigmatize me because of my auntie."*
> Female PLHIV, Mt. Elgon

Without elaborating, one respondent complained that human rights violations sometimes occurred in the course of conducting research.

> *"You who collect information are part of those people who abuse the HIV/AIDS sufferers. You collect the information but you do not assist."*
> (Male PLHIV, Mombasa)

The results show that 41% of the perpetrators were male while 34% were female. A quarter of the respondents did not indicate the sex of the perpetrator.

Critical Current Issues

In recent years, there have been some attempts at reforming the legal framework to address the human rights in the context of HIV and AIDS. The 2006 HIV and AIDS Prevention and Control Act (HIV Act) was gazetted in 2007, but not all sections are operational. Although it has been praised as a progressive initiative, a recent study on human rights in Kenyan health facilities argues that some of the provisions, in their current form, undermine the right to confidentiality and could discourage people from accessing HIV testing and other related services (CRR and FIDA, 2010).

Further, the government announced plans to set up a tribunal for HIV related cases such as those involving discrimination, transmission of HIV and HIV- related research. Set up under the Attorney general's office, the tribunal will be equivalent to a subordinate court and will have the power to summon witnesses. The tribunal is yet to hear its first case.

It is worth noting despite the weaknesses inherent in the existing legal and policy environment one victim of HIV related rights violation secured a favourable outcome upon taking the matter to court. In 2002, the 45 year old former waitress had visited a hospital with a rash and chest pains. The doctor tested her for HIV which turned positive without first informing her of the test or her status. Without her consent the doctor then disclosed her HIV status to her employer. The employer dismissed her from employment on that information on what was termed as medical grounds. She lost her employment on that basis after working with the company for eight years. She sued the doctor for unlawful disclosure of her HIV status and her employer for dismissing her on that basis (BBC News, 2008). She won the case and was awarded a substantial sum in form of damages in what has been hailed as a precedent setting case regarding the rights of PLHIV.

Discussion

A number of factors contribute to the continued violation of the rights of PLHIV. The constitution is silent on issues of HIV-related stigma and discrimination and has few protections for those experiencing HIV-related stigma and discrimination. Moreover, bureaucracy and a poorly organized legal system mean that seeking redress is a long drawn out process, which discourages PLHIV from lodging cases in the courts. It is also costly to seek justice as the legal fees are beyond the means of most Kenyans. Thirdly the government has no special desk to deal with human rights violations.

The study shows that stigma and discrimination are widespread; occurring even in family and community settings, suggesting that close family members and friends are not guaranteed sources of empathy and support for PLHIV. The incidents of human rights violations occurring within institutional settings such as hospitals and clinics are consistent with the results from a study by the Centre for Reproductive Rights (CRR) and the Federation of Women Lawyers in Kenya (FIDA) that revealed that HIV positive women in Kenya experience human rights violations in the course of seeking reproductive health care services in health facilities.

One area of interest but which could not be assessed from the study is the variations in human rights abuses among different vulnerable groups. Although the data suggest that gender based violations were experienced particularly among women, there were no significant differences between the groups. Furthermore, there were no children or adolescents among the respondents. This is one aspect that could be addressed in future research.

Conclusion

Evidence from this study demonstrates that there is much ignorance of the rights of PLHIV. Many of these rights have been violated out of ignorance or because of the absence of a supportive legal framework that upholds the rights of PLHIV. Many factors come into play including poverty, geographical isolation, inadequate health care and health education, and cultural values.

For women, the social and economic obstacles that make them vulnerable to HIV infection also make them prone to human rights violations as PLHIV. Their position within families and societies means they are often not free to make their own decisions about their sexual relationships or to insist upon measures, such as the use of condoms or fidelity on the part of their partner that would reduce the risk of exposure to HIV. Cultural expectations in relation to marriage and the absence of means of economic support outside the family unit compound the difficulties for women to avoid exposure to the virus. Illiteracy is also a compounding factor.

Respect for the rights of PLHIV must exist if the rapid spread of HIV is to be stopped. There must be a sense within each community that all its members, both those directly affected and those not yet affected, are equally valued and supported. Only within a supportive environment that respects individual worth will people have the courage to acknowledge publicly that they may be infected or at risk of infection and thereby take the first step towards changing the behaviours that place them and others at risk. Where women are unable to protect themselves against the virus because of unequal power relationships, laws such as those dealing with rape within marriage and the age of marriage or sexual consent, which upholds the independent rights of women, will improve the situation of women in the context of the epidemic. It is therefore important to explore creative ways in which the law may be able to be used actively in the response to the HIV epidemic.

From the experiences documented in this study, it is apparent that addressing HIV related rights violations is inextricably linked to challenging the stigma and discrimination associated with being HIV positive. As noted by UNAIDS, confronting stigma and discrimination is a prerequisite for effective prevention and care, and discrimination on the grounds of one's HIV status is constitutes violation of human rights (UNAIDS, 2010). The results of this study also demonstrate that discrimination targeted at PLHIV or those believed to be HIV-infected, leads to the violation of other human rights, such as the rights to health, dignity, privacy and freedom from inhuman, degrading treatment. The predominance of work related violations is to a large extent, an indication of the investment still required around HIV mainstreaming in both the public and private sectors. The equally large proportion of respondents who did not report violations because they didn't know that such a violation had occurred or didn't know where to seek redress suggests that more sensitisation is needed.

Recommendations

Based on the findings and conclusions from this study, the following recommendations are presented:

- A follow up study with, a bigger sample and wider geographical spread should be conducted to examine human rights violations across different vulnerable sub groups of PLHIV;
- Networks of PLHIV and other HIV organisations should lobby the government to effect stayed sections of the HIV and AIDS Prevention Act 2006 and commission the special tribunal for HIV related cases;
- Interventions that address stigma and discrimination within the family, community and institutional settings should be intensified;
- The government and civil society organisations should incorporate human rights and legal literacy campaigns in interventions for PLHIV.

References

- BBC News (2008) "*Kenyan wins landmark HIV ruling*" Available at http://news.bbc.co.uk/2/hi/africa/7499496.stm Accessed [20th October, 2010)
- CRR and FIDA (2008) *At Risk: Rights Violations of HIV-Positive Women in Kenyan Health Facilities* New York: Center for Reproductive Rights.
- GOK (2006) HIV and AIDS Prevention and Control Act, No. 14 (2006) Nairobi: Government Printer
- GOK (2007) *Kenya AIDS Indicators Survey 2007*. Nairobi: Government Printer
- KNBS and ICF Macro(2010) *Kenya Demographic and Health Survey 2008-09*. Calverton, Maryland: KNBS and ICF Macro
- UNAIDS (2010) *United Nations General Assembly Special Session on HIV and AIDS Country Progress Report – Kenya*. Nairobi: UNAIDS

Published by:
National Empowerment Network of People Living With HIV and AIDS in Kenya (NEPHAK)
P.O. Box 75654-00200
Nairobi
Kenya