

Kenya: High Court halts HIV+ data collection, upholding dignity & privacy

Many thanks to Professor Ebenezer Durojaye of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights at the University of the Western Cape, for abstracting this significant judgment for REPROHEALTHLAW subscribers. Prof. Durojaye can be reached at ebenezerdurojaye19@gmail.com

Kenya Legal and Ethical Network on HIV & AIDS (KELIN) & 3 others v Cabinet Secretary Ministry of Health & 4 others [2016] eKLR Petition 250 of 2015. (High Court at Nairobi) [Decision online](#).

This case centres on a directive issued by Kenyan President Kenyatta requesting that the names of school-going HIV positive children, their guardians and HIV-positive pregnant women and their addresses be compiled for the purpose of assisting the government to respond and provide appropriate service and support to the children living with HIV/AIDS. The said information should include the number of children infected with HIV, number of guardians or caregivers infected with HIV, number of expectant mothers that are HIV positive and number of breastfeeding mothers who are HIV positive.

This directive was challenged by KELIN and others claiming that it violated the rights and privacy of people living with HIV as guaranteed in the Constitution and the “HIV Prevention and Control Act.” The Court agreed with this submission and found that the disclosure of school-going children’s HIV status will undermine the rights to dignity and privacy of children. While the intention of the government may be laudable, however, the implication of the directive will no doubt infringe on the rights of people living with HIV in general and HIV-positive children in particular. The International Guidelines on HIV provide that data and information about the HIV status of a person should be collected without linking the information to an individual. This decision is significant in the sense that it not only protects the privacy and dignity of HIV positive persons (especially HIV positive children) but also addresses the implication of this for HIV related stigma and discrimination. It is a known fact that people living with HIV experience human rights abuses arising from stigma and discrimination. It is hoped that this decision will send a strong message to governments across Africa to desist from encroaching on right to privacy of HIV-positive persons, particularly HIV-positive children.

The full decision [is online here](#).

[Case Commentary by JURIST](#)

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Kenyan constitutional right to privacy was also upheld in this 2015 decision:

AIDS Law Project v. Attorney General and 3 Others [2015] eKLR, Petition No. 97 of 2010 (High Court of Kenya at Nairobi), declared not only that the criminal provision in Kenya's HIV/AIDS Act was overbroad, vague, and therefore unconstitutional, but also that enforced disclosure of HIV status to sexual contacts violated constitutional right to privacy. [Decision online](#), summarized and discussed in [Legal Grounds III: Reproductive and Sexual Rights in Sub-Saharan African Courts](#) pp. 171-176). [CRR press release](#).

Legal Grounds III: Reproductive and Sexual Rights in Sub-Saharan African Courts (Pretoria: PULP, 2017) [Discusses 54 court decisions 2008-2017, including 12 cases on "HIV"] [Free PDF](#)

Jacinta Nyachae and Paul Ogendi, "Litigating the right to health in Kenya: an analysis of selected cases," in: *Litigating the Right to Health in Africa: Challenges and Prospects*, ed. Ebenezer Durojaye (London, Routledge, 2015) [Book information](#).

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