

CHILDREN'S RIGHTS



HEARING PROCESS,
SEXUAL VIOLENCE,
EARLY MARRIAGE
AND EDUCATION

Training week for community
elders and zone leaders
in Kakuma refugee camp

25th - 29th
MARCH 2019



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PREAMBLE

Since September 2018, refugees studying with InZone in Kakuma and students from the Universities of Geneva and Kenyatta have been collaborating to create a training on children's rights in the refugee camp of Kakuma. Field research was conducted that highlighted some of the most pressing issues regarding children in the camp. From this research, the themes selected for the training were the hearing process, sexual violence and early marriage, as well as access to education.

The training was created for elders and zone leaders because of their role in resolving conflict within and between communities. The aim of the training was to share knowledge on international and national law. The training also created a platform to discuss concrete steps to take in order to improve the implementation of children's rights in Kakuma. The week of training took place from March 25th to 29th 2019 and was filled with discussions and ideas from all the participants.

During the design of the training, one of the students' concern was to make sure that something tangible would come out of the training, something that contained what was discussed during the week and could be used by you, the elders and zone leaders, day to day. This is why this booklet was created. It contains an explanation of the 'best interests of the child' principle as well as legal bases, participants' recommendations from elders and zone leaders who were present at the training week and other relevant informations regarding each theme in Kiswahili and English.

On behalf of all the students,
Aurore Peirola
Jérémie Heussi

—THE BEST INTERESTS OF CHILD

The principle of the 'best interests of the child' should always guide decisions related to children. To begin with, the possible consequences of these decisions should be assessed in order to evaluate the child's best interests. There is, however, no clear definition of how the principle should be applied. This is why its implementation has to be done on a case-by-case basis.

The principle is about asking yourself the question 'what is the best possible solution for this child regarding this issue and in these specific circumstances'.

Two aspects are crucial to keep in mind when asking yourself what are the best interests of the child:

- It is necessary to hear the child, in order to know what his/her opinion is.
- The best interests of the child can never lead to a violation of his/her human rights. In other words, it is always in the best interests of the child to see his/her human rights respected.

LEGAL BASES

Article 3 (1) Convention on the Rights of the Child (ratified by Kenya)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 4 African Charter on the Rights and Welfare of the Child (ratified by Kenya)

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Article 53 (2) Constitution of Kenya 2010

A child's best interests are of paramount importance in every matter concerning the child.

— HEARING PROCESS

As community elders and zone leaders in Kakuma, you hear children in conflict resolution procedures. In order to improve your practices regarding the hearing of children, you should take effective steps to include the opinion of the child in your decision making.

This is why this section of the booklet contains:

- Legal bases for the right of children to be heard.
- The 5 steps as set out in the General Comment No. 12 of the Committee on the Rights of the Child.
- A list of proposals set forward by elders and zone leaders during the training on how to adapt the 5 steps for their practice in Kakuma.



LEGAL BASES

Article 12 Convention on the Rights of the Child (ratified by Kenya)

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 4 (4) Children Act No. 8 of 2001 (Kenya)

In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity.

5 STEPS TO TAKE WHEN HEARING A CHILD

1

Preparation of the child

General Comment No. 12 of the Committee on the Rights of the Child (CRC):

The child has to be given information consistent with his/her age and maturity, in order for him/her to understand the decision that will be made. It is important to provide all the information that is needed: how the procedure will unfold, what the consequences of his/her testimony may be, what support and what complaints procedure will be available.

Recommendations by elders and zone leaders to prepare the child included:

- Depending on the circumstances:
 - talk to the child first and ask his/her permission to communicate with his/her parents OR
 - talk to the parents first in order to ask them for their permission to hear the child and reassure them.
- Give information to the child in a language she or he understands about:
 - who you are
 - your role in this situation
 - how the procedure will unfold.

N.B.: some participants suggested giving this information at least one day before the hearing, so the child can prepare him/herself.
- Agree with the child on the venue and time of the hearing, the available resources needed, such as an interpreter, and any other relevant information to him/her.
- The child must be able to decide whether she or he will be heard alone or not. Parents should be informed of the decision of the child, unless the child does not want his/her parents to know about his/her decision.

2

Hearing session

General Comment No. 12 of the CRC:

On the one hand, the legal right of the child to be heard has to be respected in every decision affecting him/her. On the other hand, the environment in which the hearing takes place has to be adapted to the age and maturity of the child in order to make him/her feel safe and comfortable. The child must be given the opportunity to be heard but should never be obliged to speak! It is also very important to adapt the hearing to the special needs of the child. Moreover, you should encourage a discussion more than an interrogation. Depending on the circumstances, confidentiality could be necessary for the free expression of the child. Furthermore, girls are sometimes more at ease speaking with women.

Recommendations by elders and zone leaders to conduct the hearing sessions included:

- The child should never be forced to speak because forcing leads to untruths.
- Be cautious about confidentiality, it is important not to break the trust built up with a child.
- Create a safe environment by
 - considering the age and maturity of the child, for example using age-appropriate language
 - making sure the child feels comfortable, for instance through games and jokes.
- Ask the child open-ended questions so she or he is not influenced by the way the interview is conducted.
- If the parents are present, make sure they do not influence the child's testimony.

3

Assessment of the capacity of the child

General Comment No. 12 of the CRC:

An exam has to be conducted to assess the ability of the child to express his/her views and to determine the weight given to his/her testimony in the decision-making process. Children are presumed to be capable of expressing their views in decisions concerning themselves, no matter how old they are.

Recommendations by elders and zone leaders to assess the capacity of the child included taking into account his/her:

- Maturity.
- Age.
- The way she or he gives his/her responses.

4

Feedback on the weight given to the views of the child

General Comment No. 12 of the CRC:

Once the decision has been taken, an explanation should be given to the child on the weight given to his/her views and why, in a language adapted to his/her level of understanding. It will give credibility to his/her testimony, will help him/her feel respected and will improve his/her self-esteem.

No recommendations were made by the elders and zone leaders during this training step.

5

Complaints, remedies and redress

General Comment No. 12 of the CRC:

Children should have access to complaint mechanisms in order to challenge the decision taken. These complaint mechanisms should be available either within the different community levels, or to the police. Corporal punishment is never an appropriate sanction.

Recommendations by elders and zone leaders to provide access to means of complaints, remedies and redress included:

- Have a counselling session on the matter.
- Provide access to another level of complaint if the child is unhappy with the decision or was forbidden to testify by his/her parents.

— SEXUAL VIOLENCE AND EARLY MARRIAGE

As zone leaders and elders, you can have three important roles when it comes to helping victims of sexual abuse and early marriage. First, to create awareness on those offences in your community in order to prevent their occurrence. Second, to identify when these types of violence occur and to make sure they are reported to the relevant actors. Third, to help the reintegration of victims in your community through counselling and awareness campaigns.

This is why this section of the booklet contains:

- A chart with all the relevant actors in the camp who are professionally trained to help victims.
- Legal bases, which effectively prohibit sexual abuse of children and early marriage.
- A list of proposals set forward by elders and zone leaders during the training on how to help the reintegration of victims in the community.



VICTIM'S SUPPORT IN KAKUMA REFUGE CAMP

VICTIM

**PARENTS, FAMILY,
FRIENDS, ELDERS,
ZONE LEADERS...**

first step

REPORTING (SHORT TERM)

Medical/health care entry point	Psychosocial support entry point form Children (under 18)
International Rescue Committee (IRC) General/Main Hospital, Kakuma	The Lutheran World Federation (LWF) SGBV case management for child survivors

second step

LEGAL ACTION (OPTIONAL)

Police and Security	Legal Assistance Counsellors or Protection Officers
Reporting to Police and security: - Government of Kenya Police - RAS Camp Management - The Lutheran World Federation (LWF), Security - UNHCR, Security Safe Shelters: Jesuit Refugee Services (JRS)	UNHCR, Protection Refugee Consortium Kenya (RCK)

third step

HEALING (LONG TERM)

Health care	Psychosocial service etc.	Protection security etc.	Basic needs Livelihood etc.	Reintegration in community
IRC Main Hospital Kakuma	•LWF •JRS •UNHCR •Child Protection •Danish Refugee Council •AAR Japan •Peace winds Japan •UNFPA •CVT •SNV Netherlands •(NRC) Etc.	Protection: -UNHCR, Protection Security: -Government of Kenya Police -RAS Camp Management -LWF, Security -UNHCR, Security Etc.	Basic needs: •National Council of Churches of Kenya (NCCCK) •Camp Protection •UNHCR, Field Unit Shelters: NCCCK NFIS: NCCCK Food assistance: World Food Program (WFP) Livelihood: UNHCR Education: •Windle Trust •JRS •LWF •UNHCR, Education •Film AID Int. •Etc.	Elders & zone leaders

LEGAL BASES OF SEXUAL VIOLENCE

Article 8 Sexual Offences Act No. 3 of 2006 (Kenya)

(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

(5) It is a defence to a charge under this section if -

(a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and

(b) the accused reasonably believed that the child was over the age of eighteen years.

(6) The belief referred to in subsection (5) (b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.

(7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act and the Children's Act.

(8) The provisions of subsection (5) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

Article 11 Sexual Offences Act No. 3 of 2006 (Kenya)

(1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.

(2) It is a defence to a charge under subsection (1) if it is proved that such child deceived the accused person into believing that such child was over the age of eighteen years at the time of the alleged commission of the offence, and the accused person reasonably believed that the child was over the age of eighteen years.

(3) The belief referred to in subsection (2) is to be determined having regard to all the circumstances, including the steps the accused person took to ascertain the age of the complainant.

(4) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act and the Children's Act.

(5) The provisions of subsection (2) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

LEGAL BASES ON EARLY MARRIAGE

Article 4 Marriage Act No. 4 of 2014 (Kenya)

A person shall not marry unless that person has attained the age of eighteen years

Article 14 Children Act No. 8 of 2001 (Kenya)

No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.

LEGAL BASIS ON VICTIMS SUPPORT

Article 39 Convention on the Rights of the Child (ratified by Kenya)

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

WAYS TO HELP THE REINTEGRATION OF VICTIMS IN THE COMMUNITY

PROPOSALS MADE BY ELDERS AND ZONE LEADERS DURING THE TRAINING

Provide individual support measures for the victims

- Support the child's recovery by accompanying him/her to the relevant actors in the camp, such as JRS, LWF, etc. (see the chart on page 15).
- Provide counselling sessions:
 - make sure the victim feels comfortable with the gender of the person she or he can talk to
 - remind the victim that it is not his/her fault
 - ensure confidentiality is respected, if requested by the victim.
- In order to ensure the safety and protection of the victim, it could help to make sure that she or he is accompanied by someone they trust.
- Monitor the recovery of the child after the incident in the following ways:
 - do home visits and keep in contact
 - make sure that she or he is not discriminated, for instance by checking whether she or he still plays with other children
 - ensure that she or he continues his/her education.

Conduct counselling sessions with parents

- Address with the parents of the child the stigma attached to being a victim of sexual violence and/or early marriage.
- Try to ease the tensions between the parents of the victims and perpetrators. Depending on the circumstances, this could imply organizing a meeting with parents.

Put into place awareness measures within the community

- Make an awareness campaign about the stigma attached to victims of sexual violence and early marriage in the community or in the zone.
- Never name the victim in front of the community without his/her consent.
- Strengthen the cooperation between community leaders, elders and religious leaders in order to provide a better support network for victims.
- Be an example to the community by leading the reintegration of the victims.

— ACCESS TO EDUCATION FOR ALL

In the refugee camp of Kakuma, as elders and zone leaders, you can have an impact on access to education. In fact, you have an important role to play in convincing parents to send their children to school and in children attending school.

**This is why this section
of the booklet contains:**

- Legal bases which establish the right to primary and secondary education for all children.
- A list of arguments set forth by elders and zone leaders during the training to convince parents to send their children to school.



LEGAL BASES ON EDUCATION FOR ALL

Article 28 (1) Convention on the Rights of the Child (ratified by Kenya)

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 7 Children Act No. 8 of 2001 (Kenya)

1. Every child shall be entitled to education the provision of which shall be the responsibility of the government and the parents.
2. Every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the United Nations Convention on the Rights of the Child.

CONVINCING PARENTS TO SEND THEIR CHILDREN TO SCHOOL

PROPOSALS MADE BY ELDERS AND ZONE LEADERS DURING THE TRAINING

How to work with parents to promote access to education?

- Choose the right person to initiate the discussion.
- Organize a training for parents on the importance of education.
- Make home visits to talk directly with parents.
- Conduct group discussions within the community.

Ideas of arguments to use for convincing parents:

- State that you could go to the police because the law in Kenya provides that parents have a duty to send their children to primary school.
- Explain to parents that education can be useful for the future, for instance
 - continuing studies either in country of resettlement or upon repatriation
 - accessing jobs.
- Show to parents that you will advocate for change regarding education but that the child first has to be in school.
 - Talk about the negative consequences of the child not getting education, such as exclusion from society, poverty, etc.
 - Take your own experience with school as an example, for instance, if your situation back home was worst than in the camp.



This training was created and implemented by UNIGE-InZone, the Law clinic of the University of Geneva and the Legal aid clinic of the University of Kenyatta.



HAKI ZA WATOTO



**KUSIKIA MCHAKATO,
UNYANYASAJI WA
KIJINSIA, NDOA ZA
MAPEMA NA ELIMU.**

Mafunzo ya wiki kwa ajili ya
wazee wa jamii na viongozi
katika kambi ya wakimbizi ya
Kakuma

25 - 29
M A C H I 2 0 1 9



KWA UJUMLA

30 MASLAHI YA MTOTO

31 Misingi ya Kisheria

32 Kusikia Mchakato

33 Misingi ya Kisheria

34 Hatua 5 za kuchukua unapomsikiliza mtoto

38 UNYANYASAJI WA KIJINSIA NA NDOA YA MAPEMA

39 Msaada wa waathirika katika kambi ya wakimbizi ya Kakuma

40 Sheria msingi za Vurugu za imapeenzi

43 Mapendekezo juu ya njia za kusaidia kuwaunganisha na jamii ya waathirika katika jamii

44 UPATIKANAJI WA ELIMU KWA WOTE

45 Sheria msingi za kuhusu Elimu kwa wote

46 Wazazi kushawishi kupeleka watoto wao shuleni



UTANGULIZI

Tangu Septemba 2018, kundi la wakimbizi wanaosoma na Inzone katika Kakuma na wanafunzi kutoka vyuo vikuu vya Geneva na Kenyatta wamekuwa wakishirikiana kujenga mafunzo kuhusu haki za watoto katika kambi ya wakimbizi ya Kakuma. Uwanja tafiti ulifanyika na ulionyesha baadhi ya maswala makubwa zaidi ya kuhusu watoto katika kambi. Kwa hiyo, dhana ya kuchaguliwa kwa ajili ya mafunzo na utaratibu kusikia, unyanyasaji wa kijinsia na ndoa ya mapema, na pia kupatikana kwa elimu.

Mafunzo iliundwa kwa wazee na viongozi kwa sababu ya mchango wao katika kutatua migogoro ndani na kati ya jamii. Lengo la mafunzo lilikuwa ni kubadilishana ujuzi wa sheria za kimataifa na kitaifa na kujenga jukwaa kujadili pamoja hatua madhubuti ya kuchukua ili kuboresha utekelezaji wa haki za watoto katika Kakuma. Wiki ya mafunzo ilifanyika kuanzia Machi 25-29 2019 na mara kujazwa na majadiliano na mawazo kutoka washiriki wote.

Wakati wa mpango wa mafunzo, moja la pendekezo la wanafunzi lilikuwa ni kuhakikisha kuwepo kitu kinachoonekana na kitakaotumika na wazee na viongozi baada ya mafunzo siku hadi siku. Hii ndio sababu kijitabu hiki kiliundwa. Ina maelezo ya 'maslahi ya mtoto' kanuni pamoja na besi kisheria, mapendekezo kutoka wazee na viongozi waliokuwepo katika mafunzo na taarifa nyingine muhimu kuhusu kila mada kwa Kiswahili na Kiingereza.

Kwa niaba ya wanafunzi wote,
Aurore Peirolo
Jérémié Heussi

—MASLAHI YA MTOTO

Kanuni ya 'maslahi bora zaidi ya mtoto' lazima iongoze maamuzi kuhusiana na watoto. Kwa kuanzia, uwezekano wa matokeo ya maamuzi hayo lazima uyatathmini ili umpe mtoto maslahi bora. Hata hivyo, hakuna ufafanuzi wa wazi wa jinsi kanuni hio lazima itumike. Hii ndio sababu utekelezaji wake unapaswa kufanyika kwa misingi ya kesi moja baada ya nyingine.

Kanuni ni kuhusu kujiuliza swali 'ni nini bora ufumbuzi kwa mtoto kuhusu suala hili na hali hizi maalum.

Nyanja mbili ni muhimu kukumbuka wakati kujiuliza ni nini maslahi ya mtoto:

- Ni muhimu kusikia mtoto, ili kujua maoni yake.
- Maslahi ya mtoto kamwe haiwezi kusababisha ukiukaji wa Haki yake ya kibinadamu. Kwa maneno mengine, ni siku zote kwa manufaa ya mtoto haki zake za binadamu kuheshimiwa.

MISINGI YA KISHERIA

Ibara ya 3 (1) ya Mkataba wa Haki za Mtoto (Imeridhiwa na Kenya)

Katika hatua zote za wana, iwe zinazofanywa na taasisi za umma au binafsi, ustawi wa jamii, mahakama ya sheria, mamlaka ya utawala au vyombo vya kutunga sheria, maslahi bora ya mtoto yatakuwa ni zingatia msingi.

Ibara ya 4 Mkataba wa Afrika wa Haki na Ustawi wa Mtoto (Imeridhiwa na Kenya)

1. Katika matendo yote yahusuyo mtoto yanayofanywa na mtu au mamlaka yoyote maslahi ya mtoto yatakuwa yanazingatiwa kimsingi.

2. Kesi mahakamani au maamuzi ya kitawala ya kuthiri mtoto mwenye uwezo wa kuwasiliana na kutoa maoni yake binafsi, nafasi itatolewa kwa ajili ya maoni ya mtoto kusikika moja kwa moja au kupitia mwakilishi kwa kesi, na yale maoni yatazingatiwa na mamlaka husika kwa mujibu wa masharti ya sheria husika.

Kipengee ya 53 (2) ya Katiba ya Kenya 2010

Maslahi bora ya mtoto ni ya muhimu Zaidi na zingatia msingi katika kila jambo linalohusu mtoto.

— KUSIKIA MCHAKATO

Kama wazee wa jamii na viongozi katika eneo la Kakuma, nyinyi husikia watoto katika taratibu za kutatua migogoro. Ili kuboresha utendakazi wako kuhusu mjadala wa watoto, unapaswa kuchukua hatua madhubuti ili kujumuisha maoni ya mtoto wako katika kufanya uamuzi.

Hii ndio sababu sehemu hii ya kijitabu ina:

- Besi kisheria kuhusu haki ya kusikilizwa kwa watoto.
- Hatua 5 kama ilivyo katika Maoni ya Jumla nambari 12 ya Kamati ya Haki za Mtoto.
- Orodha ya mapendekezo ya kuweka mbele kwa wazee na viongozi wakati wa mafunzo ya jinsi ya kufuata hatua 5 za kumsikiliza mtoto na kuijumuisha katika desturi zao humu Kakuma.



MISINGI YA KISHERIA

Ibara ya 12 ya Mkataba wa Haki za Mtoto (kuridhiwa na Kenya)

1. Mataifa wanachama kuhakikishia mtoto mwenye uwezo wa kutengeneza maoni yake mwenyewe haki ya kutoa maoni hayo kwa uhuru katika masuala yote yanayohusu mtoto, maoni ya mtoto huyo kupewa uzito kulingana na mujibu wa umri na ukomavu wa mtoto .

2. Kwa ajili hiyo, mtoto huyo atapewa fursa ya kujieleza katika kesi yoyote ya mahakama na utawala na kuathiri mtoto, moja kwa moja, au kupitia mwakilishi, kwa njia thabiti za kisheria na utaratibu wa sheria za kitaifa.

Ibara ya 4 (4) Watoto Sheria Namba 8 ya mwaka 2001 (Kenya)

Katika masuala yote ya utaratibu na kuathiri mtoto, mtoto atapewa nafasi ya kutoa maoni yake, na kwamba maoni haya yatazingatiwa kama inaweza kuwa sahihi kwa kuzingatia umri wa mtoto na kiwango cha ukomavu.

HATUA 5 ZA KUCHUKUA UNA-POMSIKILIZA MTOTO

1

Maandalizi ya mtoto

Maoni ya Jumla No. 12 ya Kamati ya

Haki za Mtoto (KHM): Mtoto anapaswa kupewa taarifa thabiti kulingana na umri wake na ukomavu, ili kwa ajili yake kuelewa uamuzi ambao unakwenda kuchukuliwa. Ni muhimu kutoa taarifa zote zinazohitajika: jinsi ya utaratibu huu ni kwenda kufunua, nini inaweza kuwa matokeo yake/ ushuhuda wake, vipi msaada unapatikana na nini malalamiko ya utaratibu utapatikana.

Mapendekezo ya wazee na viongozi wa eneo la Kakuma kuandaa mtoto ni:

- Kulingana na hali,
 - Zungumza na mtoto mwanzo na uulize ruhusa yake kuwasiliana na wazazi wake au
 - Zungumza na wazazi kwanza ili kuwaomba ruhusa yao ili kumsikia mtoto na uwape uhakikishi.—Give informations to the child in a language she or he understands about:
 - wewe ni nani
 - jukumu lako katika hali hii
 - Jinsi utaratibu utakuwa.

N.B.: aadhi ya washiriki walipendekeza kutoa taarifa hii angalau siku moja kabla ya kusikia, hivyo mtoto anaweza kujiandaa mwenyewe.

- Kukubaliana na mtoto juu ya ukumbi na wakati wa kusikia, rasilimali zilizopo zitakazohitajika, kama vile mkalimani na maelezo mengine muhimu kwake.
- Watoto ni lazima wawe na uwezo wa kuamua kama atasikilizwa peke yake au la. Wazazi wanapaswa kuwa na taarifa ya uamuzi wa mtoto, ila kama mtoto hataki.

2

Kikao ya Kusikiliza

Maoni ya Jumla No. 12 ya KHM:

Kwa upande mmoja, haki ya kisheria ya mtoto kusikika lazima iheshimiwe katika kila uamuzi unaomuathiri. Kwa upande mwingine, mazingira ambayo kumsikiliza mtoto unafanyika lazima iandaliwe ku-lingana na umri na ukomavu wa mtoto ili kumfanya awe salama na starehe. Watoto ni lazima wapewe fursa ya kusikilizwa lakini kamwe wasilazimishwe kuongea. Zaidi ya hayo, ni bora kuhimiza majadiliano badala ya mahojiano. Kulingana na hali, kuwa na usiri kunaweza kuwa muhimu kwa ajili ya kujieleza kwa mtoto. Zaidi ya hayo, wasichana mara nyingi hupendelea kuongea na watu wenye jinsi ya kike, wanawake.

Mapendekezo ya wazee na viongozi kuendesha kikao ya kusikia ni:

- Mtoto kamwe asilazimishwe kusema kwa sababu kumlazimisha husababisha uongo.
- Kuwa waangalifu kuhusu usiri, ni muhimu ili kuto-
vunja uaminifu uliojengwa na mtoto.
- Kuweka mazingira salama na
 - kuzingatia umri na ukomavu wa mtoto, kwa mfano katika kurekebisha lugha
 - kuhakikisha mtoto anahisi starehe, kwa mfano kwa njia ya michezo na utani.
- Uliza maswali wazi kwa mtoto ili mtoto huyo majibu yake yasisukumwe na njia mahojiano inavyo-
lekezwa.
- Kama wazazi wako humo, hakikisha hawana ushawishi dhidi ya ushahidi wa mtoto.

3

Tathmini ya uwezo wa mtoto

Maoni ya Jumla No. 12 ya KHM:

mtihani lazima ufanywe kutathmini uwezo wa mtoto kutoa maoni yake na kuamua ushuhuda wake katika kufanya maamuzi. Watoto huchukuliwa kuwa na uwezo wa kutoa maoni yao katika maamuzi juu ya nafsi zao wakiwa umri wowote.

Mapendekezo na wazee na viongozi zone kutathmini uwezo wa mtoto ni pamoja na kuzingatia yake/yake:

- Ukomavu.
- Umri.
- Njia yeye anatoa majibu yake.

4

Maoni ya uzito kutokana na maoni ya mtoto

Maoni ya Jumla No. 12 ya KHM:

Baada ya uamuzi umechukuliwa, maelezo itolewe kwa mtoto, uzito maoni yake yaliyopewa na kwa nini kwa lugha kiwango yake. Itakuwa kuipa uaminifu maoni yake / ushuhuda wake, na atajiskia kuheshimiwa na kuboresha kuamini kwake na kujithamini.

Hakuna mapendekezo yalifanywa na wazee na viongozi zone wakati wa mafunzo kuhusu hatua hii.

5

Malalamiko, tiba na kurekebisha

Maoni ya Jumla No. 12 ya KHM:

Watoto wanapaswa kuwa na utaratibu wa malalamiko ili kupinga uamuzi kuchukuliwa aidha kupitita ngazi mbalimbali za jamii, au polisi. Zaidi ya hayo, adhabu kwa kutumia viboko imekatazwa.

Mapendekezo na wazee na viongozi kutoa huduma ya njia ya malalamiko, tiba na kurekebisha ni pamoja na:

- Kuwa na kipindi cha ushauri juu ya suala hilo.
- Kutoa huduma ya njia nyingine ya malalamiko kama mtoto hakufurahishwa na uamuzi au ulikuwa marufuku kutoa ushahidi kwa wazazi wake.

— UNYANYASAJI WA KIJINSIA NA NDOA YA MAPEMA

Kama viongozi na wazee wa eneo, unaweza kuwa na majukumu tatu muhimu linapokuja suala la kusaidia waathirika wa unyanyasaji wa kijinsia na ndoa za mapema. Kwanza, kujenga ufahamu juu ya makosa ya watu katika jamii yako ili kuzuia matukio yao. Pili, kwa kutambua wakati aina hizi za vurugu hutokea na kuhakikisha kuwa watendaji husika wanaipotiwa. Tatu, ili kusaidia kuwaunganisha waathirika na jamii husika.

Hii ndio sababu sehemu hii ya kijitabu ina:

- Mpango na wahusika wote muhimu katika kambi ambayo ni mafunzo ya kitaaluma ya kusaidia waathirika.
- Sheria msingi ambazo za ufanisi ili kuzuia unyanyasaji wa kijinsia wa watoto na ndoa za mapema.
- Orodha ya mapendekezo ya kuweka mbele kwa wazee na viongozi wakati wa mafunzo ya jinsi ya kusaidia kuwaunganisha na jamii ya waathirika katika jamii.



MSAADA WA WAATHIRIKA KATIKA KAMBI YA WAKIMBIZI YA KAKUMA

WAATHIRIWA

**WAZAZI, MARAFIKI,
FAMILIA, WAZEE NA
VIONGOZI WA KAMBI**



first step

HATUA YA KWANZA - KURIPOTI

Unaweza kuwapigia simu Kamati ya IRC, International Rescue Committee, ili kuhakikisha malezi bora ya kiafya

International Rescue Committee (IRC)
Hospitali kuu, Kakuma

Wafahamishe pia Lutheran World Foundation ili kuhakikisha watoto walio chini ya umri wa miaka kumi na minane wamepata usaidizi wa kisaikolojia

The Lutheran World Federation (LWF)
Nambari ya usaidizi wa watoto



second step

(HATUA YA PILI - KUCHUKUA NJIA YA KISHERIA)

IRC na WLF wataripoti kesi hio kwenye vituo vya usalama n ahata polisi. Ikibidi, nuymba za usalama zitapeanwa na Jesuit Refugee Services (JRS)

Refugee Consortium Kenya kwa upande mwingine italeta usaidizi wa kisheria ama Kamati ya Umoja wa Kimataifa ya haki za wakimbizi (UNHCR) italeta maafisa wa kuleta kinga



third step

HATUA YA TATU - UPONYAJI

Afya	Huduma za kisaikolojia	Kinga, Usalama	Mahitaji ya kimsingi (nyumba, pesa, huduma za watoto na zinginezo)	Kuwarudisha miongoni mwa jamii
IRC Main Hospital Kakuma	-LWF -JRS -UNHCR -Child Protection -Danish Refugee Council -AAR Japan -Peace winds Japan -UNFPA -CVT -SNV Netherlands - (NRC) Nk.	Protection: -UNHCR, Protection Security: -Government of Kenya Police -RAS Camp Management -LWF, Security -UNHCR, Security Nk.	Basic needs: -National Council of Churches of Kenya (NCCCK) -Camp Protection -UNHCR, Field Unit Shelters: NCCCK NFIS: NCCCK Food assistance: World Food Program (WFP) Livelihood: UNHCR Education: -Windle Trust -JRS -LWF -UNHCR, Education -Film AID Int. -Nk.	Elders & zone leaders

SHERIA MSINGI ZA VURUGU ZA IMAPENZI

Ibara ya 8 ya Makosa ya Kujamilana No 3 ya mwaka 2006 (Kenya)

(1) Mtu ambaye anafanya kosa ambayo husababisha kupenya na mtoto hatia ya kosa inaitwa unajisi.

(2) Mtu ambaye anatenda kosa la kunajisi na mtoto wa umri wa miaka kumi na moja au chini atakiwa kushitakiwa kifungo cha maisha.

(3) Mtu ambaye anatenda kosa la kunajisi mtoto kati ya umri wa miaka kumi na mbili na kumi na tano atahukumikiwa juu ya kushitakiwa kwa kifungo kwa muda isiyo chini ya miaka ishirini.

(4) Mtu ambaye anatenda kosa la kunajisi na mtoto kati ya umri wa miaka kumi na sita na kumi na nane atahukumikiwa kwa kushitakiwa kwa kifungo cha muda isiyo chini ya miaka kumi na tano.

(5) Na atashtakiwa kwa mujibu wa sehemu hii kama - (A) imeonekana kuwa watoto kama, kudanganywa mtuhumiwa katika kuamini kuwa yeye alikuwa na zaidi ya umri wa miaka kumi na nane wakati wa tume ya madai ya kosa; na (B) mtuhumiwa sababu aliamini kuwa mtoto alikuwa na zaidi ya umri wa miaka kumi na nane.

(6) Inajulikana katika kifungu kidogo cha (5) (b) ni kuamua kwa kuzingatia hali zote, ikiwa ni pamoja na hatua yoyote mtuhumiwa alichukua kujua umri wa mlamikaji.

(7) Pale ambapo mtu aliyeshtakiwa kwa kosa chini ya Sheria hii ni chini ya umri wa miaka kumi na nane, mahakama inaweza juu ya kushtakiwa, hukumu mtuhumiwa kwa mujibu wa masharti ya Borstal ya Taasisi za Kazi na Sheria ya Watoto.

(8) masharti ya kifungu kidogo cha (5) haitatumika kama mtuhumiwa ni kuhusiana na watoto kama ndani ya digrii marufuku wa damu au mshikamano.

Ibara ya 11 ya Makosa ya Kujamiiana No 3 ya mwaka 2006 (Kenya)

(1) Mtu yeyote mwenye kufanya aibu tendo na mtoto ni hatia ya kosa la kufanya tendo la aibu na mtoto na atawajibika juu ya kushitakiwa kwa kifungo kwa muda wa si chini ya miaka kumi.

(2) atashtakiwa kwa mujibu wa kifungu kidogo cha (1) ikiwa itathibitika kuwa mtoto kama kudanganywa mtuhumiwa katika kuamini kuwa mtoto hayo ilikuwa zaidi ya umri wa miaka kumi na nane wakati wa tume ya madai ya kosa, na mtuhumiwa sababu aliamini kuwa mtoto alikuwa na zaidi ya umri wa miaka kumi na nane.

(3) Imani inajulikana katika kifungu kidogo cha (2) ni kuamua kwa kuzingatia hali zote, ikiwa ni pamoja na hatua mtuhumiwa alichukua kujua umri wa mlalamikaji.

(4) Pale ambapo mtu aliyeshtakiwa kwa kosa chini ya Sheria hii ni chini ya umri wa miaka kumi na nane, mahakama inaweza juu ya kushtakiwa, hukumu mtuhumiwa kwa mujibu wa masharti ya Borstal ya Taasisi za Kazi na Sheria ya Watoto.

(5) Masharti ya kifungu kidogo cha (2) haitatumika kama mtuhumiwa ni kuhusiana na watoto kama ndani ya digrii marufuku wa damu au mshikamano.

BESI KISHERIA KWA NDOA YA MAPEMA

Ibara ya 4 ya Sheria ya Ndoa namba 4 ya 2014 (Kenya)

Marufuku kwa mtu yeyote kuoa isipokuwa mtu huyo ametimiza umri wa miaka kumi na nane.

Ibara ya 14 ya watoto Sheria Namba 8 ya mwaka 2001 (Kenya)

Ni marufuku kwa mtu somo mtoto tohara kwa wanawake, ndoa ya mapema au ibada za kitamaduni, desturi au mila za jadi ambazo zinaweza kuathiri vibaya mtoto maisha, afya, ustawi wa jamii, heshima au maendeleo ya kimwili au kisaikolojia.

MSINGI WA KISHERIA JUU YA WAATHIRIKA SUPPORT

Ibara 39 ya Mkataba wa Haki za Mtoto (kuridhiwa na Kenya)

Mataifa Wanachama zitachukua hatua zote zinazofaa ili kukuza kimwili na kisaikolojia kufufua na kujiunga na jamii kwa mtoto mwathirika wa: aina yoyote ya kutelekezwa, unyonyaji, au matumizi mabaya; mateso au aina nyingine yoyote ya kikatili, unyama au udhalilishaji au adhabu; au vita. Kama ahueni na kuwaunganisha na jamii utafanyika katika mazingira ambayo hukuza afya, heshima na heshima ya mtoto.

MAPENDEKEZO JUU YA NJIA ZA KUSAIDIA KUWAUNGANISHA NA JAMII YA WAATHIRIKA KATIKA JAMII

MAPENDEKEZO YALIYOTOLEWA NA WAZEE NA VIONGOZI WA ENEO WAKATI WA MAFUNDISHO

Kutoa mikakati ya kusaidia mtu binafsi kwa waathirika

- Kusaidia kurejesha mtoto kwa kuwa pamoja na watendaji husika katika kambi, kama vile JRS, LWF, nk.
- Kutoa vikao vya ushauri:
 - kuhakikisha mwathirika anahisi starehe na jinsia ya mtu anayeweza kuzungumza naye
 - kuwakumbusha waathirika kwamba si kosa lake
 - kuhakikisha siri inaheshimiwa, kama ilivyoombwa na mhasiriwa.
- Ili kuhakikisha usalama na ulinzi wa mwathirika, inaweza kusaidia kuhakikisha kwamba yeye au yeye ni akifuatana na mtu wao uaminifu
- Kufuatilia ahueni ya mtoto baada ya tukio hilo:
 - kufanya ziara ya nyumbani na kuweka katika kuwasiliana
 - kuhakikisha kwamba yeye habaguliwi, kwa mfano kwa kuangalia kama yeye bado anacheza na watoto wengine
 - kuhakikisha kwamba yeye anaendelea na Elimu yake.

Kufanya vikao vya ushauri na wazazi

- Elezea wazazi wa mtoto unyanyapaa (stigma) zinatokana na kuwa mwathirika wa unyanyasaji wa kijinsia na / au ndoa za mapema.
- Jaribu kupunguza mvutano kati ya wazazi wa mwathirika-s na wahusika-s. Kulingana na hali, hii inaweza kuashiria kuandaa mkutano na wazazi.

Put into place awareness measures within the community

- Kufanya kampeni kuhusu unyanyapaa zinatokana na waathirika wa unyanyasaji wa kijinsia na ndoa ya mapema katika jamii au katika eneo.
- Kamwe jina mwathirika mbele ya jamii bila yake/ridhaa yake.
- Kuimarisha ushirikiano kati ya viongozi wa jamii, wazee na viongozi wa dini ili kutoa msaada wa mtandao bora kwa waathirika.
- Kuwa mfano kwa jamii kwa uongozi kuwaunganisha na jamii ya waathirika.

—UPATIKANAJI WA ELIMU KWA WOTE

Katika kambi ya wakimbizi ya Kakuma, kama wazee na viongozi wa eneo, unaweza kuwa na ushawishi mkubwa kwa upatikanaji wa elimu. Kwa kweli, una nafasi muhimu sana katika kushawishi wazazi kupeleka watoto wao shuleni na watoto kuhudhuria shule.

Hii ndio sababu sehemu hii ya kijitabu ina:

- Sheria msingi za ambayo kuanzisha haki ya kupata elimu ya msingi na sekondari kwa watoto wote.
- Orodha ya hoja ya kuweka mbele kwa wazee na viongozi wakati wa mafunzo kuwashawishi wazazi kupeleka watoto wao shuleni.



SHERIA MSINGI ZA KUHUSU ELIMU KWA WOTE

Ibara ya 28 (1) ya Mkataba wa Haki za Mtoto (kuridhiwa na Kenya)

Mataifa Wanachama zinatambua haki ya mtoto kwa elimu, na kwa lengo la kufikia hii sasa kuendelea na kwa misingi ya fursa sawa, wao, na hasa:

- (a) Kufanya elimu ya msingi ya lazima na bure kwa wote
- (b) Kuhamasisha maendeleo ya aina mbalimbali ya elimu ya sekondari, ikiwa ni pamoja na elimu ya jumla na ufundi, kuufanya kupatikana kwa kila mtoto, na kuchukua hatua mwafaka kama vile kuanzishwa kwa elimu ya bure na kutoa msaada wa kifedha katika kiasi cha haja,
- (c) Kufanya elimu ya juu kwa wote kwa kuzingatia uwezo kwa kila njia zinazofaa
- (d) Kufanya habari za elimu, ufundi na uongozi kupatikana kwa watoto wote
- (e) Kufuatilia na kutia mkazo mahudhurio mazuri katika mashule na kupunguza viwango vya kuacha shule.

Ibara ya 7 Watoto Sheria Namba 8 ya mwaka 2001 (Kenya)

1. Kila mtoto atakuwa na haki ya elimu ambayo itakuwa ni wajibu wa serikali na wazazi kutimiza.
2. Kila mtoto atakuwa na haki ya kupata bure elimu ya msingi ambayo itakuwa ya lazima kwa mujibu wa Ibara ya 28 ya Umoja wa Mataifa juu ya Haki za Mtoto.

WAZAZI KUSHAWISHI KUPELEKA WATOTO WAO SHULENI

MAPENDEKEZO YALIYOTOLEWA NA WAZEE NA VIONGOZI WA ENEO WAKATI WA MAFUNDISHO

Jinsi ya kukuza upatikanaji wa elimu na wazazi?

- Chagua mtu sahihi kujadili na wazazi.
- Kuandaa mafunzo kwa ajili ya wazazi juu ya umuhimu wa elimu.
- Kufanya ziara nyumbani kwa kuzungumza moja kwa moja na wazazi.
- Kufanya majadiliano ya kundi ndani ya jamii.

Mawazo ya hoja ya kutumia kushawishi wazazi

- Waeleze kwamba unaweza kwenda kwa polisi kwa sababu ya sheria nchini Kenya hutoa kwamba wazazi wana wajibu wa kupeleka watoto wao katika shule za msingi.
- Waelezee wazazi kwamba elimu inaweza kuwa na manufaa kwa ajili ya baadaye, kwa mfano
 - muendelezo wa masomo ama katika nchi ya makazi mapya au ya kuwarejesha makwao
 - kupata ajira.
- Onyesha wazazi kwamba utatetea uboreshaji wa elimu lakini mtoto kwanza anafaa kuwa shuleni kabla ya yote.
 - Majadiliano juu ya matokeo mabaya ya mtoto kutopata elimu, kama vile kutengwa na jamii, umaskini, na kadhalika.
 - Itumie nafasi yako ya elimu, uipokuwa ukisoma kama kielelezo ili kuwa himiza kwamba elimu ni muhimu.



Mafunzo haya yaliundwa na kutekelezwa na UNIGE-Inzone, kliniki ya sheria ya Chuo Kikuu cha Geneva na kliniki ya msaada wa kisheria ya Chuo Kikuu cha Kenyatta.



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