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

25th - 29th March 2019
SUMMARY

6 THE BEST INTERESTS OF THE CHILD
7 Legal bases
8 HEARING PROCESS
9 Legal bases
10 5 steps to take when hearing a child
14 SEXUAL VIOLENCE AND EARLY MARRIAGE
15 Chart on victims' support in Kakuma
16 Legal bases
19 Proposals on ways to help the reintegration of victims in the community
20 ACCESS TO EDUCATION FOR ALL
21 Legal bases
22 Convincing parents to send their children to school
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 Peirolo
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.
**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.
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.

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.
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.
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.
**REPORTING (SHORT TERM)**

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

**LEGAL ACTION (OPTIONAL)**

<table>
<thead>
<tr>
<th>Police and Security</th>
<th>Legal Assistance Counsellors or Protection Officers</th>
</tr>
</thead>
</table>

**HEALING (LONG TERM)**

<table>
<thead>
<tr>
<th>Health care</th>
<th>Psychosocial service etc.</th>
<th>Protection security etc.</th>
<th>Basic needs Livelihood etc.</th>
<th>Reintegration in community</th>
</tr>
</thead>
</table>
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.
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
MASLAHI YA MTOTO
Misingi ya Kisheria
Kusikia Mchakato
Misingi ya Kisheria
Hatua 5 za kuchukua unapomsikiliza mtoto

UNYANYASAJI WA KIJINSIA NA NDOA YA MAPEMA
Msaada wa waathirika katika kambi ya wakimbizi ya Kakuma
Sheria msingi za Vurugu za imapenzi
Mapendekezo juu ya njia za kusaidia kuwaunganisha na jamii ya waathirika katika jamii

UPATIKANAJI WA ELIMU KWA WOTE
Sheria msingi za kuhusu Elimu kwa wote
Wazazi kushawishi kupeleka watoto wao shuleni
UTANGULIZI

Mafunzo iliundwa kwa wazee na viongozi kwa saba-bu 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 pendelekezo la wanafunzi lilikuwa ni kuwakikisha 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, mapendelekezo kutoka wazee na viongozi waliokuwepo katika mafunzo na taarifa nyingine muhimu kuhusu kila mada kwa Kiswa-hili na Kiingereza.

Kwa niaba ya wanafunzi wote, Aurore Peirolo
Jérémie Heussi
MASLAHI YA MTOTO

Kanuni ya 'maslahi bora zaidi ya mtoto' lazima longoze maamuzi khusiana na watoto. Kwa kuanzia, uwezekano wa matokeo ya maamuzi hayo lazima uyathathmini ili umpe mtoto maslahi bora. Hata hivyo, hakuna ufafa nuzi wa wazi wa jinsi kanuni hio lazima itumike. Hii ndio sababu utekelezaji wake unapaswa kufanyika kwa misingi ya kesi moja baada ya nyinge.

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 Hakl za Mtoto (Imeridhliwa na Kenya)
Katika hatua zote za wana, lwe zlnazofanywa na taa-
sisi za umma au binafsi, ustawi wa jamii, mahakama ya sheria, mamlaka ya utawala au vyombo vya kutung-
ga sheria, maslahi bora ya mtoto yatakuwa ni zingatlo msingi.

Ibara ya 4 Mkataba wa Afrika wa Hakl na Ustawl wa Mtoto (Imeridhliwa na Kenya)
1. Katika matendo yote yahusuyo mtoto yanayo-
fanywa na mtu au mamlaka yoyote maslahi ya mtoto yatakuwa yanazingatiwa kimsingi.

2. Kesl mahakamanf au maamuzi ya kItawala ya kw-
thiri mtoto mwenye uwezo wa kuwasllana na kutoa maoni yake binafsi, nafasl itatolewa kwa ajili ya maoni ya mtoto kusikika moja kwa moja au kupitika mwakilishi kwa kesl, na yale maoni yatazingatiwa na mamlaka hu-
sika kwa mujibu wa masharti ya sherla husika.

Kipengee ya 53 (2) ya Katiba ya Kenya 2010
Maslahi bora ya mtoto ni ya muhimu Zaidl na zingatlo msingi katika kila jambo Ilinalohusu mtoto.
Kamawazee 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 mapendelezo ya kuweka mbele kwa wazee na viongozi wakati wa mafunzo ya jinsi ya kufuata hatua 5 za kumsikiliza mtoto na kujumuisha 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 hilo, 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 kisheria.

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

Katika masuala yote ya utaratibu na kuathirisha mtoto, mtoto atapewa na maoni yake na kwamba maoni haya yatapangatia kama inaweza kuwa sahihi kwa kuzingatia umri wa mtoto na kilimo cha utaratibu.
HATUA 5 ZA KUCHUKUA UNAPOMSIKILIZA 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 matoleo 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 mwanza 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 umuzi wa mtoto, ila kama mtoto hataki.
Kikao ya KusikIliza
Maoni ya Jumla No. 12 ya KHM:

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 ma-jibu yake yasisukumwe na njia mahojiano inavyoe-lekezwa.

—Kama wazazi wako humo, hakikisha hawana ushawishi dhidi ya usahidi wa mtoto.
Tathmini ya uwezo wa mtoto
Maoni ya Jumla No. 12 ya KHM:
mtihani lazima ufanywe kutathmini uwezo wa mtoto kutoa maoni yake na kiuma ushuhuda wake katika kufanya maamuzi. Watoto huchukuliwa kuwa na uwezo wa kutoa maoni yao katika maamuzi juu ya nafsi zao wakiwa umri wowote.

Maoni ya uzito kutokana na maoni ya mtoto
Maoni ya Jumla No. 12 ya KHM:
Baada ya uamuzi umehuchukiwa, maelezo itolewe kwa mtoto, uzito maoni yake yaliyopewa na kwa nini kwa lugha kwango yake. Itakuwa kuipa uaminifu maoni yake / ushuhuda wake, na atajikia kuheshimiwa na kuboresha kuiamini 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 kuchuku-liwa 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 nyungine ya malalamiko kama mtoto hakufurahishwa na uamuzi au ulikuwa marufuku kutoa usahidi 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 yako ili kuzuia matukio yao. Pili, kwa kutambua wakati aina hizi za vurugu hutokea na kuhiakikisha 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**

**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 waliowahi chini ya umri wa miaka kumi na minane wamepata usaidizi wa kishaikolojia
- The Lutheran World Federation (LWF) Nambari ya usaidizi wa watoto

**HATUA YA PILI - KUCHUKUA NJIA YA KISHERIA**

**IRC na WLF wataripoti kesi hio kwenye vitu o ya usalama n ahata polisi. Ikibidi, nyumbaa za usalama zitapeanwa na Jesuit Refugee Services (JRS)**

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

**HATUA YA TATU - UPONYAJI**

**Afya**

- IRC Main Hospital Kakuma

**Huduma za kishaikolojia**

- LWF
- JRS
- UNHCR
- Child Protection
- Danish Refugee Council
- AAR Japan
- Peace winds Japan
- UNFPA
- CVT
- SNV Netherlands
- (NRC)
- Nk.

**Kinga, Usalama**

- Protection: UNHCR, Protection
- Nk.

**Mahitaji ya kimsingi (nyumba, pesa, huduma za watoto na zinginezo)**

- Basic needs: National Council of Churches of Kenya (NCCK)
- Camp Protection: UNHCR, Field Unit
- Shelters: NCCK NFIS: NCCK
- Food assistance: World Food Program (WFP)
- Livelihood: UNHCR
- Education: Windle Trust JRS LWF UNHCR, Education
- Film AID Int. Nk.

**Kuwarudisha miongoni mwa jamii**

- Elders & zone leaders
SHERIA MSINGI ZA VURUGU ZA IMAPENZI

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

(1) Mtu ambaye anafanya kosa ambayo husababisha kupenya na mtoto hatla ya kosa Inaitwa unajisi.

(2) Mtu ambaye anatenda kosa la kunajisi na mtoto wa umri wa mlaka kumi na moja au chini ataklwa kushita-kwana kifungo cha malsha.

(3) Mtu ambaye anatenda kosa la kunajisi na mtoto katili ya umri wa mlaka kumi na mbili na kumili na tano atahukumiwa juu ya kushita-kwana kwa kifungo kwa muda islyo chini ya mlaka Ishiriini.

(4) Mtu ambaye anatenda kosa la kunajisi na mtoto katili ya umri wa mlaka kumi na sita na kumili na nane atahukumiwa kwa kushita-kwana kwa kifungo cha muda islyo chini ya mlaka kumi na tano.

(5) Na atashtakwana kwa mujibu wa sehemu hii kama -(A) |meonekana kuwa watoto kama, kudanganywa mtuhumilwa katika kuamini kuwa yehe alikuwa na zaalili ya umri wa mlaka kumili na nane wakati wa tume ya maadal ya kosa; na (B) mtuhumilha sababu alichukuu kuwa umri wa mlaka kumili na nane.

(6) Inajulikana katika kifungu kidogo cha (5) (b) ni kuamua kwa kulingatia hali zote, lkiwa ni pamoja na hatua yoyote mtuhumilha alichukua kujua umri wa mlakamkaji.

(7) Pale ambapo mtu aliyeshtakwana kwa kosa chini ya Sheria hili ni chini ya umri wa mlaka kumili na nane, mahakama Inaweza juu ya kushita-kwana, hukumu mtuhumilha kwa mujibu wa masharti ya Borstal ya Taasisi za Kazli na Sheria ya Watoto.

(8) Masharti ya kifungu kidogo cha (5) haltatumika kama mtuhumilha ni kuhusiana na watoto kama ndani ya digirili marufuku wa damu au mshikamano.
Ibara ya 11 ya Makosa ya Kujamija No 3 ya mwaka 2006 (Kenya)

(1) Mtu yeote mwenye kufanya aliu tendo na mtoto njatia ya kosa la kufanya tendo la aibu na mtoto na atawajibika juu ya kushatikia kwa kifungo kwa muda wa si chini ya mlaka kumi.

(2) Atashatikia kwa mujibu wa kifungu kido cha (1) likiwa itathibitika kuwa mtoto kama kudanganywa mтуhumluwa katika kuamini kuwa mtoto hayo ili kuwa zaidi ya umri wa miaka kumi na nane wakati wa tume ya madai ya kosa, na mтуhumluwa sababu aljamini kuwa mtoto alikuwa na zaidi ya umri wa mlaka kumi na nane.

(3) Imani inajulikana katika kifungu kido cha (2) ni kuamua kwa kuzingatia hali zote, likiwa ni pamoja na hatua mтуhumluwa alichukua kujua umri wa mlaka kumi na nane.

(4) Pale ambapo mtu aliyeshatikia kwa kosa chini ya Sheria hil ni chini ya umri wa mlaka kumi na nane, mahakama inaweza juu ya kushatikia, hukumu mтуhumluwa kwa mujibu wa masharti ya Borstal ya Taasisi za Kazila na Sheria ya Watoto.

(5) Masharti ya kifungu kido cha (2) haltatumika kama mтуhumluwa 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 mlaka kurni na nane.

Ibara ya 14 ya watoto Sheria Namba 8 ya mwaka 2001 (Kenya)
Ní 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 kimwilli au kisalkolojia.

MSINGI WA KISHERIA JUU YA WAATHIRIKA SUPPORT

Ibara 39 ya Mkataba wa Hakiz Mtoto (kuridhiwa na Kenya)
Mataifa Wanachama zitachukua hatua zote zinazofaa ili kukuza kimwilli na kisalkolojia kufufua na kujunga na jamií kwa mtoto mwathirika wa: alna yoyote ya kutelekezwa, unyonyajili, au matumizi mabaya; mateso au alna nyingine yoyote ya kikatili, unyama au udhalilisha-jli 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 halisi, hii inaweza kuashiria kuandaa mkuta-no 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 viongo-zi 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 Ḥakī za Mtoto (kuridhiwa na Kenya)
Matalfa Wanachama zinatambua hakī ya mtoto kwa elimu, na kwa lengo la kufikia ili sasa kuendelea na kwa misingi ya fursa sawa, wao, na hasa:
(a) Kufanya elimu ya misingi ya lazima na bure kwa wote
(b) Kuhamisisha maendeleo ya alia mbalimbali ya elimu ya sekondari, ikwina ni pamoja na elimu ya jumla na ufundl, 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 zilazofaa
(d) Kufanya habari za elimu, ufundl na uongozi kupatikana kwa watoto wote
(e) Kufuatilili na kutla 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 hakī ya elimu ambayo itakuwa ni wajibu wa serikali na wazazi kutimiza.

2. Kila mtoto atakuwa na hakī ya kupata bure elimu ya misingi ambayo itakuwa ya lazima kwa mujibu wa Ibara ya 28 ya Umoja wa Mataifa juu ya Ḥakī za Mtoto.
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 kutumila 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 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 matobeo 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.