

CONCEPT PAPER

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Objective

In response to our brief on Domestic and Gender based violence in Kenya, we identified key aims for our resource. As a team our aim was to create a resource that made justice accessible to all and was easy to navigate, but still supplied information over key legal rights and where to go if one experiences an offence. We have created an illustrated booklet containing resources and non-government organisations that can support the victim, the legal rights of the reader, case narratives and suggested next steps. However, we understood the breadth and diversity of our target audience and wanted our booklet to be accessible to as many people as possible. Through the use of graphics and illustrations we sought to make the booklet user-friendly and thus more accessible. We have recognised the varying degrees of vulnerability among our audience and thus, have addressed specific issues on children, men's experiences of gender and domestic violence and the experiences of people with disabilities. For children, we have created a children's pamphlet, "Safe touch and Unsafe touch: Let's talk about it", that accompanies the booklet, so we can expand our audience. Ultimately, we have materialised our aims by creating a booklet that is easy to navigate and prevents the reader from being overwhelmed by text.

Logic of Mechanism

Our booklet begins with a brief section on 'How to use this booklet'. This explains the recurring neutral characters, 'victim' and 'bystander,' who explain, for each offence, the suggested next steps for both situations. Section B is a flowchart. The flowchart seeks to sensitively ask questions to the reader so that they can best identify and understand the offence that may have occurred. Having used the Sexual Offences Act 2006 and the Protection Against Domestic Violence Act 2015 to identify key offences, our booklet covers everything from economic abuse to female genital mutilation and spousal sexual assault. Once the reader has identified the offence or offences that have occurred, the booklet directs them to the appropriate page in Section C and thus saves them the task of searching through excessive pages of text. The severity of gender based and domestic violence offences means that, at times, the reader will need to access the relevant information and helplines as quickly as possible, which serves as the underlying logic behind the flow chart.

Section C makes up the largest section of our booklet. Each identified offence is given at least a double-page spread that includes a consistent format. Each spread contains an image of a scroll that includes important legal rights of the reader in relation to the offence. We have avoided using legal jargon in compliance with one of our key aims: making the law and related resources – ultimately, justice - accessible to all regardless of their education. Having a member of our team who is not studying and has never studied law means that we were able to check the accessibility of our language throughout. Furthermore, on each double-page spread we have a case narrative, often inspired by a Kenyan case, that allows the reader to see that they are not alone in their suffering, breaks down the caselaw, and

show that there are both legal and non-legal resolutions. The following case narrative is a typical example for the offence ‘Indecent Act with a Child’:

In August 2014 in Barango County, Tom, an adult man, performed a sexual act on a 5-year-old girl, Katy. Katy was scared and confused, so she told her guardian whom she trusted. Katy’s guardian made an application on her behalf to have Tom convicted. The act was reported and Tom was convicted of two counts of defilement and sexual assault according to Section 5 of the Sexual Offences Act, 2006. Tom has been found guilty and will be imprisoned for no less than 10 years.¹

The double-page spread also contains details of where the reader can access help. These organisations range from Childline Kenya to the Wangu Kanja Foundation. We have ensured that the variety of organizations we have selected cover a range of resources, from immediate healthcare and HIV prevention to counselling and free paralegal support. The final part included on each double-page spread is the next steps for the ‘victim’ and ‘bystander/ witness’. We have created two recurring genderless, neutral characters - yellow for bystander and green for victim. Each has a speech bubble that contains the appropriate and immediate next steps for the victim or bystander. This format allows the reader to access the important and relevant information without being bombarded with text. At the end of this section we have a double-page spread for men’s experiences of domestic violence, having agreed that this needed to be specifically addressed due to the cultural stigma surrounding male victims, which often means they are deterred from seeking medical and emotional help. Additionally, the booklet addresses gender based and domestic violence against people with mental or physical disabilities. These sections have been included to specifically address the varying degrees of vulnerability that we recognised.

Section D of our illustrated booklet is centred on debunking seemingly prevalent misconceptions in an attempt to prevent people from justifying domestic or gender-based violence. A member of our team has previously travelled to Kenya and worked with Kenyan non-government organisation. Her experience speaking to non-government organisations of urban communities (Nairobi) and rural communities (Kilifi) led her to suggest that we include a section dispelling common misconceptions and myths. By combining the information gathered from her experience, with our research and readings of academic articles and case studies, we identified common myths used to justify gender and domestic based violence to some. Inspired by Paula Tavrow’s study of rape myths in Kenya, we identified four important rape myths, “She asked for it”, “He didn’t mean to”, “It wasn’t really rape” and “She owed him”.² Through the use of 31 focus groups spanning varying areas of rural Kenya, Tavrows’s study was able to identify these myths as the most prevalent. We created the figure of a genderless and neutral doctor to be used a vehicle for providing scientific reasons and rationale to discredit each misconception, one by one. We then shift our focus away from rape myths and look at

¹ Case narrative inspired by: *Isaac Wafula v Republic* [2017] eKLR 93 (HC Crim Div)

² Paula Tavrow and others, ‘Rape Myth Attitudes in Rural Kenya: Toward the Development of a Culturally Relevant Attitude Scale and Blame Index’ (2013) 28(10) *Journal of Interpersonal Violence* 2156 <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.818.1035&rep=rep1&type=pdf> > accessed 17 February 2019

misconceptions surrounding female genital mutilation, virginity testing and widow cleansing. We have attempted to exercise utmost sensitivity while challenging the misconceptions that surround these offences as we understand potentially how deeply embedded they could be in cultures. However, we still feel that it is important to address these misconceptions, for instance, the idea that FGM is medically necessary. The end of the booklet contains a list of all relevant helplines, charities and non-government organisations under the categories of: medical help, legal support, counselling, children's charities and charities that support men. Endnotes have also been included to allow readers who are more interested in the specific laws to further their understanding.

A final and important part of the booklet is the 'Children's Hand out'. This pamphlet was inspired by UNICEF's *Information Booklet on Protection and Response to Offences against Children*, designed specifically for use in Kenya. One of our team members has had experience working with several children's non-government organisation, in particular, HAQ Centre for Child Rights, in New Delhi, who identified the importance of having a section tailored specifically to children. This sensitized us early on to the special degree of vulnerability that plagues children – the root problem being the inability to even recognize the abuse, which is further amplified by the 'shame' or taboo surrounding the issues of sex. From our research we identified a list of offences that are specific to children and understood that this is often a difficult conversation to have with a child. Our child-friendly pamphlet is intended as a tool for parents, guardians or teachers to help them talk to a child about an offence that may have occurred. Our illustration of 'the friendly elephant' is intended to comfort our young readers. Further, our diagram of "safe, unsafe and unwanted touch" aims to help children understand what is acceptable and unacceptable behaviour from adults. The pamphlet, thus, has been designed to aid, or at least help facilitate, these challenging conversations with a child, and support both – the parent/guardian and the child – in this conversation. We have designed the pamphlet as a tool, which can aid, or at least help facilitate, these challenging conversations with a child; we hope that our pamphlet can at least go some of the way in supporting both the parent and child in this conversation.

Legal Issues

Our team initially undertook general research, in order to ensure our resource was culturally appropriate and was specific to the unique legal landscape of Kenya. There are varying and overlapping sources of legislation that govern each of the offences, to provide the most comprehensive guide we have referenced multiple sources of rights where appropriate. This can be seen when considering the offence of child marriage: this is expressly prohibited by the Protection Against Domestic Violence Act 2015, additionally, the Marriage Act 2014 requires marriage to be between two consenting parties, which is a concept also addressed in the Constitution of Kenya, which both indirectly make this a crime.³ The thought behind providing indirectly, effective statutes is that if a claim where an express definition is used fails, more often than not this shall turn on lack of evidence, then there is still a possibility that a conviction could be obtained through the indirect protection offered.

³ Constitution of Kenya, 2010

Additionally, many of the cases that we came across, highlighted the consistent issue with how the police address crimes, particularly those of a sexual or domestic nature.⁴ There are many accounts that allege the police, during the 2017 elections, carried out acts of sexual violence against women, men and children.⁵ This climate may significantly reduce the willingness of the public to pursue legal action directly, in addition to meaning this route does not necessarily provide an effective solution. Wangu Kanja, for instance, the founder of the Wangu Kanja foundation was herself raped when she was carjacked in 2002.⁶ When Kanja reported this to the police they recorded the crime as a robbery. Although we recognise that this case preceded the Sexual Offences Act of 2006, Kanja's reservation about reporting to the police is echoed in other cases. Therefore, to ensure we are not placing any person who is already a victim of a crime, at a greater risk of embarrassment or ridicule, we have recommended they seek assistance from a non-government organisation in pursuing legal action.

We feel through the steps we have taken that we have fulfilled our brief and project objectives. We are aware that there are some limitations of our resource as we were only able to provide an English rather than Swahili version. Further, we recognise we are quite distant from our target audience – culturally and physically. However, our team has responded to these limitations by reaching out to previous contacts from Kenyan non-government organisations to seek feedback as to how we can make our book the most effective and accessible. This will help us verify levels of cultural appropriateness and gain general feedback of the usability of the book. We are awaiting this feedback and our findings will be presented in our presentation.

Bibliography:

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⁴ *CK and other v The Commissioner of Police and Inspector General of the National Police Service and others* [2013] Petition 8 eKLR (HC); *Purity Kanana Kinoti v Republic* [2011] eKLR 752 (HC Crim Div)

⁵ HRW, 'Kenya: Sexual Violence Marred Elections' (HRW, 14 December 2017) <https://www.hrw.org/news/2017/12/14/kenya-sexual-violence-marred-elections> accessed 20 February 2019

⁶ Florence Bett, 'Building a World Free from Gender Based Violence' (*Wangu Kanja Foundation*, 9 March 2017) < <https://wangukanjafoundation.org/category/my-story/> > accessed 20 February 2019

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