

Advancing the Defence Rights of Children

Group Exercises

Scenario 1 - Mireille

Your client is a 14 year-old girl named Mireille. Mireille is originally from the Democratic Republic of the Congo, and she has been living with her aunt and uncle in a major city in your country for about two years. Mireille is alleged to have set fire to her aunt and uncle's home, and she is now being accused of arson. As a result of this incident, as part of the pre-trial proceedings, Mireille is living with a foster family on a temporary basis, pending the outcome of her criminal proceedings.

You have just been appointed as Mireille's lawyer, and her trial is due to take place in one month's time. You have a consultation with Mireille in the presence of a Swahili interpreter, in which she reveals to you that she was sent to live with her aunt and uncle by her mother two years ago, so that she could get a good education. However, she says that apart from when she goes to school, her aunt rarely allows her out of the house, and she spends most of the time helping her aunt with the housework, and looking after their children. Her uncle has abused her sexually on several occasions, and although her aunt knows about this, she has done nothing to stop him.

Mireille tells you not to tell anyone about this, including her foster carers, social workers, and especially not the police. This is because she knows that there will be serious consequences for her uncle and aunt if the authorities find out. She also does not wish to go back to the Congo, because she believes there is 'nothing for her' in her home country. She is also concerned that her young cousins are likely to suffer the most if her aunt and uncle end up going to prison. Mireille cries whenever you ask her any questions about what happened on the day that she allegedly set fire to her aunt and uncle's house, and you are very worried how she will cope in court. She is particularly distressed, because there has been some media coverage of her case, which made wild allegations that she had burnt the house as part of a witchcraft ritual.

You have seen a report prepared by social services, which are not aware of the sexual abuse taking place, and has proposed a rehabilitation programme for Mireille under which she goes back to live with her aunt and uncle, and continues with her studies at school. Mireille's interpreter is horrified at what is happening, and she says that if you don't tell the police or social services, she will.

Discuss how you would help Mireille. In particular, think about the following questions:

- What kind of support would you get for Mireille, and from whom?
- How would you act on the information provided by Mireille regarding the abuse?
- What would you do in response to what the interpreter has said?
- How would you prepare Mireille for her court hearing?
- What adaptations would you ask for at Mireille's trial, so that she is able to participate effectively in court?
- Is there anything that can be done to prevent the media from reporting on Mireille's trial?

Scenario 2 - Hamed

Your client is an asylum seeker from Afghanistan called Hamed. He is being accused of armed burglary, and he has been held in a pre-trial detention facility with adults for four months whilst waiting for his trial to go ahead. Hamed has already confessed to the crime in a police interrogation, in the presence of a lawyer and there is some evidence to suggest that the crime might have been committed as part of gang activity. Before being detained, Hamed had no fixed abode, and he occasionally slept on the streets.

Despite having a full beard, Hamed insists that he is just 15 years old, but because of his circumstances, he does not have any documents (e.g. a passport or a birth certificate) that confirm his age, and he is also unsure of his exact date of birth. The social services in the area where he has been living has carried out an age assessment that determined that he is around the age of 19, and on this basis, he is being treated by the police and all other authorities involved in his legal proceedings as an adult. Hamed says that he does not trust social services, who do not believe he is a child, and he has asked if his friend Karim, who is 22 years old, could accompany him at his court hearings in the future. Karim is an asylum seeker who travelled to your country with Hamed from Afghanistan.

When you visit Hamed in the detention centre, he tells you that he is desperate to get out and join his older brother, who is now living in Norway. He also tells you that he has had trouble sleeping, and that he has contemplated suicide, but he quickly retracts the latter statement, and asks you to ignore what he said. Out of concern, you tell an official at the detention centre that you are very worried about his welfare, and you ask them to investigate. In response, you get a call from the detention centre that one of the social workers in the detention centre spoke to him and established that Hamed is 'doing fine', and that he gets on well with other detainees.

Discuss how you would help Hamed. In particular, think about the following questions:

- Have there been any violations of Hamed's rights under the Children Directive? If so, what remedies would you seek?
- What would you do about the questions regarding Hamed's age?
- What kind of challenges are you likely to face if you wanted to apply for Hamed's release? How might you overcome those challenges?
- What would you do to protect Hamed's welfare in detention?
- What do you think about Hamed's choice of his appropriate adult? What, if anything would you do to help identify an appropriate adult?
- What kind of sanction (or measure) would you plead for in Hamed's case?

Scenario 3 – Kevin

Kevin is a 17 year-old boy who was arrested two weeks ago for violent assault whilst already serving a suspended sentence for a similar crime committed one year ago. At the time he was sentenced, an individual assessment was carried out, as a result of which he entered into a drug rehabilitation programme, and it was made a condition of his suspended sentence not to take any more drugs.

According to police records, Kevin was repeatedly advised that he should be interviewed in the presence of a lawyer, and they called a lawyer to come to the police station. However, Kevin was adamant that he did not wish to be assisted by the lawyer, and refused to even speak to her when she arrived at the station. Kevin is recorded as saying that he was arrested last year, and that he knows his rights very well from that experience. He decided not to get a lawyer to assist him, because he has 'nothing to hide', and he knows from his past experience that lawyers offer limited practical help. He was eventually interviewed in the presence of his mother, in the capacity of appropriate adult, but with no lawyer present.

Kevin made self-incriminating statements during his interview, but he disputes that he ever made those statements. There is no audio or video recording of this interview – you know that police interrogation rooms do not have such equipment.

Kevin reluctantly agrees to hire you as his lawyer, and during your initial consultation with him, he reveals to you that he has been taking cocaine quite regularly, and that he had committed the crime under the influence of the drug. The rehabilitation programme he had enrolled in previously was not effective, and he had found ways to tamper with the drug testing. As far as you know, neither social services nor the police are unaware that Kevin is dependent on drugs. Kevin asks you to keep this a secret because he knows that if they find out about his dependency, his suspended sentence could be activated, and that he goes to a youth detention centre or prison.

Social services have suggested that they wish to carry out a renewed individual assessment for Kevin, but the police and the prosecutor seem to be of the opinion that this is unnecessary, given that this was conducted less than a year ago. In any event, Kevin is due to turn 18 next week, by which point, under local laws, he will be treated as an adult.

Discuss how you would help Kevin. In particular, think about the following questions:

- What kind of support would you get for Kevin, and from whom?
- Would you tell social services about Kevin's drug habit? If they already knew about his drug habit, how would you work with them to ensure the best outcome for Kevin?
- Did Kevin waive his right to be assisted by a lawyer lawfully?
- Did Kevin have the right to have his interrogation recorded audio-visually?
- Should Kevin continue to be treated as a child in his legal proceedings?
- Should Kevin be entitled to an individual assessment?
- If there have been any violations of the Directive, what should the remedies be?