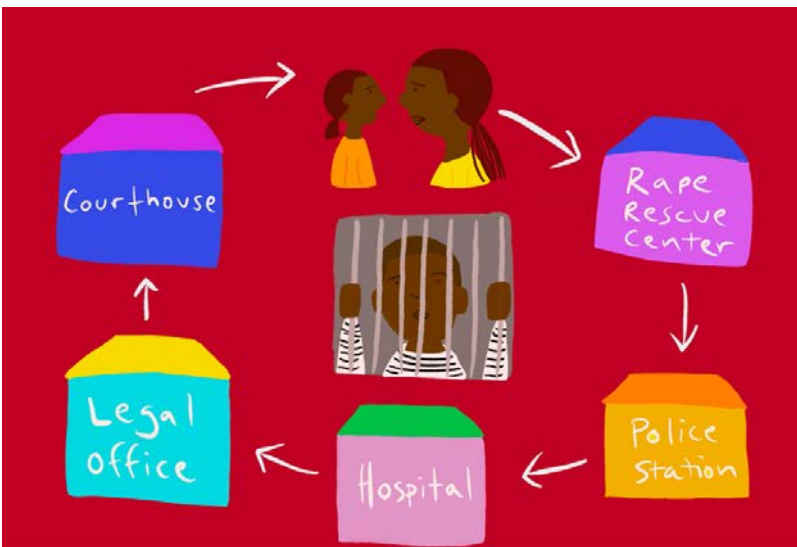
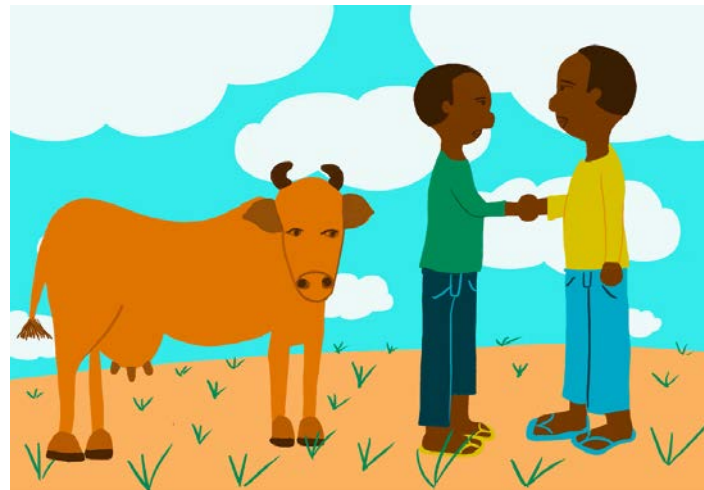


When Adults Try to Hide a Rape

When a child tells someone they were defiled, some adults may think that it is best to deal with the situation outside of the criminal justice system. This is called a private settlement, and it can include the exchange of money or livestock, such as goats or cows. Private settlements may seem like a good idea, but **they actually prevent police from investigating the incident and bringing the perpetrator to justice so that he faces jail.** If a perpetrator is able to pay money to the girl's family instead of going to jail, the perpetrator can continue defiling other girls. A private settlement can send the message to the community that defilement is acceptable when the perpetrator pays money to the child's family to prevent them from pursuing justice for the crime. If a survivor's parent makes an agreement with a perpetrator (i.e. a private settlement), instead of reporting to the police, the parent's action violates the law in Kenya. Making a private settlement is known legally as obstruction of justice. Obstruction of justice is a very serious crime. Magistrates in courts have convicted parents for obstruction of justice and warn parents against agreeing to private settlements. If someone you know tries to engage in a private settlement, you can contact your local rape rescue centre for support, using the information on the back of this page. You can also speak to a trusted adult or report to the police.

Why Are Private Settlements Not Allowed in Defilement Cases?

They deny survivors access to justice. Access to justice is important for survivors of defilement, because the perpetrator's behaviour must be condemned. When a parent chooses to participate in a private settlement with the perpetrator, the perpetrator's behaviour is treated as acceptable. The community sees that someone can commit a horrible crime and still be free.



For the survivor, a private settlement is a form of secondary victimization - **the survivor suffers from more trauma on top of the trauma from the rape.** A private settlement creates secondary victimization at the hands of family, because the parents are taking money and choosing not to pursue justice that will ensure that the girl's rights are respected. This form of secondary victimization can be especially difficult for the girl, because it is from people who she trusts to protect and support her. Parents who enter into private settlements and trade their children's rights for money have violated their child's trust and violated the law.

What Are the Impacts of Private Settlements in Defilement Cases?

The survivor might continue to live in fear, because the perpetrator remains free and continues their terrible behaviour. Private settlements may prevent other girls who experience defilement from coming forward and reporting their experience. This culture of silence is especially damaging because it allows perpetrators to continue their actions with **impunity**. The police, as the gatekeepers of the criminal justice system, should investigate the incident of defilement when it is reported. By taking a private settlement, the parents of the girl are preventing the police from ever finding out about the incident. The police will not know that the incident occurred, so they won't investigate it. **Therefore, many cases never get to court, which leads to silence, impunity and shame and perpetuates rape culture.** When criminal cases go to court, information is public and available to organizations and activists who are fighting for children's rights. They can lobby the government for changes to the justice system and hold the government accountable for handling defilement cases properly. Organizations and activists can also provide resources to support the survivors through the trial, if needed. However, if parents participate in private settlements, there is less information for activists to fight for children's rights.

COMMUNITY CORNER

This week we asked the Justice Club leaders:

*Imagine you were talking to an adult. How would you explain the problem with private settlements to them?
Can you think of other reasons why private settlements are bad for survivors?*



Happy Comet from Homabay said:"Private settlements are bad because if a perpetrator defiled someone and he or she is being hidden, or if that person who has defiled is not arrested, he or she can do it again."

Yellow Rain from Kilifi said:"I will feel shy but I will still explain to them. Because they move away justice of the survivors. They make the survivors feel that they are alone and they are not being helped."



Clear Friend from Kwale said:"Private settlement is bad to the survivors because they don't obtain justice."

Graceful Camera from Kilifi said: "The issue with private settlement is that the survivor feels unsafe as the perpetrator can do the action once more since they have access to the survivor. It also drags the survivor to an endless torment of emotional stress."



To Report a Defilement

To download the free **160 Girls defilement reporting app**: scan the QR code (right) by pointing your phone's camera at the code. The app's web page will appear with an option to download the app. You can also search "160 Girls app" in your phone's app store or submit a "help request" on 160girls.org.



You can also connect with your local rape rescue partners:

CATAG (Homa Bay)
Tel: 0777 977 87/0723977987
E-mail: communityaidtag@gmail.com
Address: P.O. Box 419-40300, Homabay

GVRC Hope Centre County Referral (Homa Bay)
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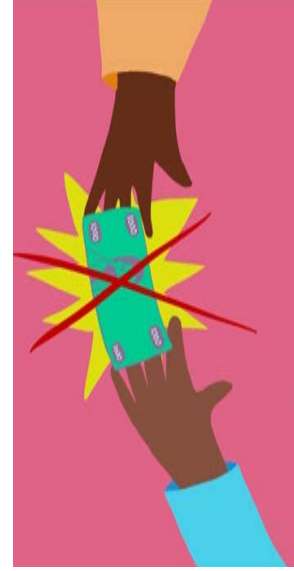
They can offer support, and help you report the defilement to the police. You can also report to the police on your own, or talk to a trusted friend or relative.





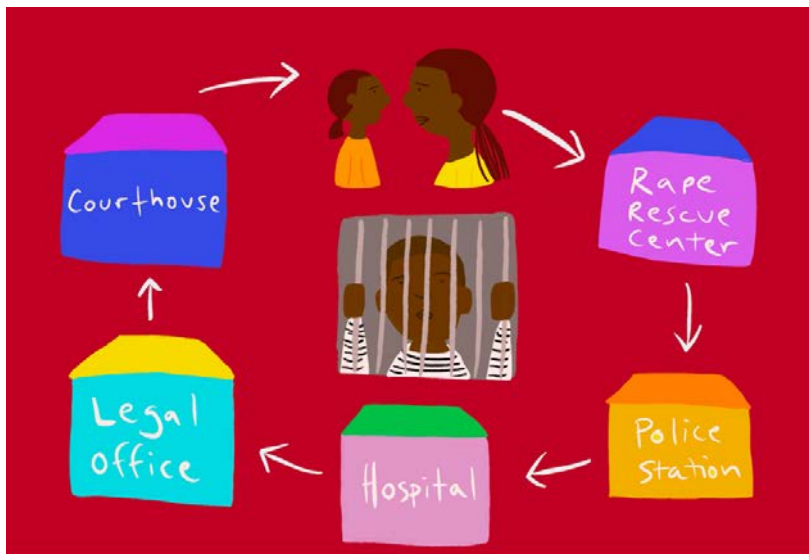
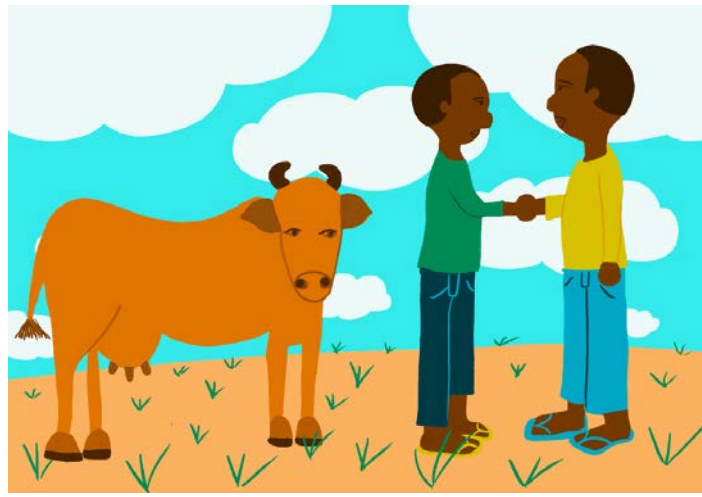
Watu Wazima Wanapojaribu Kuficha Ubakaji

Wakati mtoto anapomweleza mtu kuwa amenajisiwa, wapo wanaodhani kwamba ni vyema zaidi kusuluhisha hali hiyo nje ya mifumo ya haki za kijinai (criminal justice systems). Hii inajulikana kama suluhisho la faragha (siri) au nje ya mahakama, na kuwa inaweza kujumuisha ubadilishanaji wa pesa au mifugo kama vile mbuzi na ng'ombe. Japokuwa suluhu kama hili linaonekana kuwa zuri, linazuia polisi kufanya uchunguzi ili kupata haki na mbakaji kupewa kifungo kinachomfaa. Ikiwa mbakaji ataweza kulipa familia ya msichana aliyebaka ng'ombe badala ya kwenda jela, basi ataendelea kuwabaka wasichana wengine. Huenda suluhu kama hili likatoa ujumbe au hisia kwa jamii kwamba unajisi ni jambo linalokubalika katika jamii hiyo pale mtendaji kitendo hicho anapolipa pesa kwa familia ya mtoto aliyemnajisi ili kukwepa haki ya kosa hilo la jinai (crime). Iwapo familia ya mnajisiwa itakubaliana na mnajisi (kwa mfano, suluhisho la faragha/nje ya mahakama), badala ya kuripoti kwa polisi, wazazi wa msichana aliyenajisiwa watakuwa wanakiuka sheria za Kenya. Kisheria, kusuluhisha kosa nje ya mahakama/faraghani ni sawa na kukwepa au kuzuia haki kutendeka. Kuzuia haki kutendeka ni kosa hatari sana la kijinai. Mahakimu wengi wamewahukumu wazazi waliohusika katika kuzuia haki kutendeka na kuwaonya wazazi hao dhidi ya kufanya makubaliano yoyote faraghani au nje ya mahakama. Ikiwa mtu unayemfahamu atajaribu kujihusisha na usuluhishaji wa kosa la unajisi nje ya mahakama, tafadhali wasiliana na kituo cha kushughulikia waathiriwa wa ubakaji kilicho karibu nawe kwa kutumia taarifa iliyopo nyuma ya ukurasa/makala hii. Vilevile, unaweza kumweleza mtu mzima unayemwamini au kuripoti kwa polisi.



Kwa nini Usuluhishaji Kesi za Unajisi nje ya Mahakama Hauruhusiwi?

Usuluhishaji wa kesi za unajisi nje ya mahakama huwanyima waathiriwa wa ubakaji haki. Kumbuka kuwa haki ni muhimu kwa waathiriwa wa unajisi kwani ni lazima tabia hiyo ya mnajisi ilaaniwe (condemned). Iwapo mzazi atakubali kusuluhisha kesi ya unajisi nje ya mahakama, itaonekana kana kwamba tabia hiyo ya mnajisi inaruhusiwa. Jamii inadhani kuwa mtu anaweza kutenda kosa la jinai na bado akawa huru.



Kwa yule aliyenajisiwa, usuluhishaji kesi yake nje ya mahakama ni sawa na njia nyingine ya kumtendea mabaya/kumwonea – kwamba mwathiriwa anapata kiwewe zaidi juu ya kile alichopata kutokana na kubakwa. Suluhisho la nje ya mahakama linajenga maonevu ya aina nyingine (kando na unajisi) katika familia ya mwathiriwa kwani wazazi hao wanapokea pesa na kukwepa kuhakikisha kuwa haki za mwanao zimeheshimiwa. Aina hii ya maonevu/kutendewa mabaya inaweza kumwia vigumu/kumwathiri msichana aliyebakwa kwani inatekelezwa na watu anaoamini na ambao walifaa kumlinda na kumpa usaidizi kila anapohitaji. Wazazi wanaojihusisha na usuluhishaji wa kesi za ubakaji nje ya mahakama na kuuza haki za wanao kwa pesa wamekiuka imani ya wanao kwao na vilevile sheria.

Athari za Kusuluhisha Kesi za Unajisi nje ya Mahakama/Faraghani

Huenda mwathiriwa/manusura wa ubakaji akaendelea kuishi maisha yenye uoga kwa sababu yule aliyemnajisi bado yuko huru na anazidi kutenda unyama kwa wengine. Usuluhishaji kesi za ubakaji nje ya mahakama unaweza kuzuia wasichana wengine wanaobakwa kujitokeza na kuripoti uovu huo. Tabia au utamaduni kama huu unaathiri pakubwa kwani unawawezesha wanajisi kuendelea na vitendo vyao bila kujali. Polisi, ambao ndio walindaji wa mifumo ya haki wanafaa kuchunguza kesi za unajisi kila zinaporipotiwa. Kwa kukubali kusuluhisha ubakaji wa mwanao nje ya mahakama, wazazi husika wanazua polisi kujua utokeaji wa unajisi huo. Kwa kuwa polisi hawatajua kuwa unajisi huo ulitokea, basi hawatachunguza. Hivyo basi, kesi nyingi za ubakaji hazifikishwi mahakamani jambo ambalo linasababisha ufichaji wa ubakaji, aibu, utendaji unyama kwa kutojali na pia kueneza tabia au utamaduni wa ubakaji. Wakati kesi za jinai zinapopelekwa mahakamani, taarifa hizo hupatikana na umma, mashirika ya kijamii na vilevile wateteaji wa haki za watoto. Hawa wanaweza kushinikiza serikali kubadilisha mfumo wa kisheria na pia kuwajibika katika kushughulikia kesi za ubakaji. Mashirika na wateteaji hawa wa haki za watoto vilevile hutoa usaidizi au msaada kwa waathiriwa hasa mahakamani pale wanapohitajika kufanya hivyo. Hata hivyo, ikiwa wazazi watajihusisha na utatuaji wa kesi za ubakaji nje ya mahakama, hakutakuwa na taarifa za kutosha kwa wateteaji hawa kupigania haki za watoto.

Pembe ya Kijamii

Wiki hii tuliwauliza viongozi wa Justice Club: *Hebu fikiria kuwa unazungumza na mtu mzima. Je, utamwelezaje tatizo kuhusu utatuaji wa kesi za ubakaji nje ya mahakama? Je, unadhani ni sababu gani nyingine zinazofanya usuluhishaji kesi nje ya mahakama kuwa jambo baya kwa waathiriwa wa ubakaji?*

Happy Comet kutoka Homabay: "Usuluhishaji wa kesi za ubakaji nje ya mahakama ni mbaya kwa sababu ikiwa mhalifu alimtia mtu unajisi na anafichwa, au ikiwa mtu huyo aliyenajisi hajakamatwa, anaweza kufanya hivyo tena."



Yellow Rain kutoka Kilifi: "Nitahisi aibu lakini bado nitawaelezea. Kwa sababu wanaondoa haki ya waathirika. Wanawafanya manusura wahisi kuwa wako peke yao na hawasaidiwi."



Clear Friend kutoka Kwale: "Usuluhishaji wa kesi za ubakaji nje ya mahakama ni mbaya kwa walionusurika kwa sababu hawapati haki."

Graceful Camera kutoka Kilifi: "Suala la usuluhishaji wa kesi za ubakaji nje ya mahakama ni kwamba aliyenusurika anahisi kuwa si salama kwani mhalifu anaweza kufanya kitendo hicho kwa mara nyingine tena kwa kuwa anapata manusura. Pia inaburuta aliyenusurika kwa mateso yasiyo na mwisho ya mafadhaiko ya kihisia."



Ili Kuripoti Unajisi:

Pakua (Download) app ya 160 Girls inayohusu kuripoti visa vya unajisi (160 Girls defilement reporting app): skana (scan) msimbo wa QR (QR code) - ulio upande wa kulia kwa kuumulika kwa kamera ya simu yako. Wavuti (website) ya app hiyo itafunguka na kuashiria 'Download'. Vilevile unaweza kuitafuta app hiyo kwenye app store yako au kutuma ombi kwa 160girls.org



Unaweza pia kushirikiana na wadau wa unajisi waliokaribu nawe:

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Tel: 0722208652/0734466466

E-mail: info@icrhk.org

Website: icrhk.org

Hawa wanaweza kukupa msaada pamoja na kukusaidia kuripoti unajisi huo kwa polisi. Vilevile, unaweza kuripoti kwa polisi mwenyewe au kumweleza rafiki au jamaa yako.

