

**THE “VULNERABLE WITNESSES” ACT**  
**Children in Court: Protecting Vulnerable Witnesses**

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For many people, testifying in court may be a difficult or even terrifying experience. The surroundings are usually formal and unfamiliar, cross-examination (meaning the question asked by the lawyer defending the accused) can be unnecessarily aggressive and the witness may lack a thorough understanding of the courtroom procedure. The witness may also be afraid to testify in the presence of the accused in a criminal case, or in the presence of a hostile party in a civil case. These problems can be particularly acute for children, people with disabilities, and victims of sexual offences or domestic violence.

The following statement was made by a Namibian prosecutor in 1998:

*The current criminal justice system in Namibia leads to a second victimisation of the sexually abused woman or child. It is a standing rule that a complainant giving evidence must do so in the presence of the accused, despite her age. The complainant stands alone in the witness box and can be intimidated by the accused's presence, often a male parent or relative. The complainant becomes more anxious and forgets facts which make her testimony less reliable and valuable in the prosecution. The alien atmosphere of the court combined with other factors as mentioned above, have such an impact on the younger female witnesses that they are often reduced to silence which effectively wins the case for the defense. This is one of the most important reasons why cases of sexual abuse are not officially reported.*

Newspaper accounts of sexual offences demonstrate some of the difficulties experienced by child witnesses. For example, in 1998, a 10-year-old girl testified while sitting across from her accused rapist - a man who had helped to raise her for six years, from the time she was three years old. In full view of the man whom she had regarded as a father, she testified that he had threatened to kill her “with a knife and an axe” if she told what he had done.

Another rape case involving a 10-year-old girl had to be dismissed after the girl froze when she saw the accused rapist in court and was unable to answer even introductory questions. A similar situation occurred when a five-year-old child – allegedly raped when she was three – was unable to answer questions about the difference between right and wrong satisfactorily, while sitting only a few meters away from her alleged attacker. In a case involving a hostel father accused of abusing sexually six young hearing-impaired boys, one of the youngsters (who was 12 years old at the time of the alleged offence) turned and bolted out of the court room on seeing his alleged attacker. He was eventually persuaded to return to the courtroom to give his testimony in sign language.

When it comes to the testimony of children, courts have in the past often required substantial corroboration of the testimony of children, particularly in sexual abuse cases where the child is a victim (it means that the court was not trusting the child and was asking for additional proofs to make sure the testimony of the child was reflecting the

truth). However, recent international research indicates that the testimony of children is not particularly unreliable. For example, the Ontario Law Reform Commission made the following findings in 1991:

*Children, as a class of witnesses, do not have poorer memories than adults and they do not have greater difficulty distinguishing fact from fantasy in the context of witnessed events. Moreover, studies show that adult witnesses are susceptible to distortions as a result of suggestions and post-event influences in their description of particular events. Finally, modern research has demonstrated that there is no foundation to the statement that a relationship exists between age and honesty – the testimony of a child is as trustworthy as the evidence furnished by an adult witness. (Ontario Law Reform Commission, Report on Child Witnesses, 1991)*

Based on those fact and with the support of various Ministries and NGOs, the ‘Vulnerable Witnesses’ Act was passed in parliament at the end of 2003. It is a very important Act that will allow vulnerable witnesses, including children, people with disabilities, and victims of sexual offences or domestic violence to feel safer and more comfortable when reporting a case.

The Criminal Procedure Amendment Act 24 of 2003 provides the following protections for vulnerable witnesses:

- ❑ **alternative venues for trials**, so that they can held in environments which are less intimidating than courtrooms. This act will pave the way for presiding officers to take steps to make vulnerable witnesses feel more comfortable while testifying. For example, a few years ago, a five-year-old child who was a victim of sexual abuse had to stand on a chair while she testified in the High Court because the judge could not see her over the edge of the witness box. In the past, courts expected children and other vulnerable witnesses to conform to the court environment – now it will be possible to adapt the court environment for the comfort of the witness.
- ❑ **testifying behind one-way screens** or by means of closed-circuit television. Since 1987, several countries have permitted the use of closed circuit televisions when vulnerable witnesses are testifying in criminal cases. South Africa, Zimbabwe, Canada, the United Kingdom, New Zealand, Wales, at least 33 US states and several Australian jurisdictions have all enacted legislation allowing the use of closed circuit television. Screens and one-way mirrors are also used in many countries to prevent vulnerable witness from having to testify face to face with the accused. Such techniques make it harder for the accused to intimidate or unnerve the witness.
- ❑ **support persons to accompany witnesses while they are testifying**, so that (for example) a young child could speak to the court while sitting on the lap of a family member

- ❑ **strict limitations on the use of irrelevant cross-examination to badger witnesses**, again to make it harder to intimidate or unnerve the witness
- ❑ **cross-examination through the presiding officer or an intermediary**, to make sure that lawyers do not try to intimidate or confuse a witness
- ❑ **more possibilities for using information given by a young children prior to the trial**, such as statements to social workers or police officers, to avoid the necessity of asking the child to repeatedly recount the details of a traumatic experience

Practical arrangements to make trials more comfortable for vulnerable witnesses are already underway at courtrooms in various parts of the country. For example, a **Victim Friendly Sexual Offence Court Room** was launched at the Katutura Regional Magistrates' Court in September. Vulnerable witnesses in this court can testify behind a one-way mirror, or by means of closed-circuit television from a child-friendly room equipped with inviting toys and furnishings. Terrified witnesses who no longer have to testify under the intimidating stare of their abusers are likely to give more reliable evidence which will lead to more just outcomes for all.

This act is an important step forward in the fight against violence against women and children. It should help to make court appearances less traumatic for victims, while still protecting all the Constitutional rights of the accused. We believe it will help to ensure that guilty people get convicted.