

A RAPE COMPLAINANT'S GUIDE TO BEING A WITNESS IN COURT



LEGAL ASSISTANCE CENTRE

INTRODUCTION

A person who has been raped will usually be asked to come to court when the rapist goes on trial. The case is between the government and the accused criminal. The person who has been raped will only have to be a witness. A witness is a person who gives information under oath in a court case. A witness has to answer questions in court and tell the truth.

Being a witness can be stressful. Much of that stress comes from not knowing what the process involves. This guide provides an introduction to the court process and the role of a witness in court.

The person suspected of committing a crime is called the “accused”. If you are the victim of a crime, you are called the “complainant”. After you have laid a charge against the accused, he must appear in court. He must say if he admits that he is guilty, or if he will try to show the court that he is not guilty.

If the accused admits that he committed the crime, the magistrate or judge will sentence him. Sentencing is punishment for a crime.

I admit that I raped her.



We refer to accused persons as men in this booklet because it is mostly men who commit rapes in Namibia.

If the accused pleads not guilty there will be a trial. At a trial, the government must prove that he committed the crime. The magistrate or judge must decide that the accused is guilty “beyond a reasonable doubt”.



The government’s lawyer is called a prosecutor. At the trial, the prosecutor will present evidence to show that the crime happened. Anyone who saw or heard what happened may come to court as witnesses. This includes you as the complainant.

You are an important witness, because you are probably the best person to tell the court how the crime happened. There will be other witnesses as well. The police officer who investigated the crime will be a witness. Other people who saw the crime or know something about it might also be witnesses. For example, if the crime involved injuries, the doctor who examined you might be a witness.

Being a witness and telling the court what happened may be hard but it can also be rewarding. You get a chance to tell your story. You are doing your part to ensure that the accused must pay the consequences for his actions.



High Court in Windhoek



Magistrate's Court in Opuwo

GETTING NOTICE OF THE TRIAL DATE

Trial dates are sometimes set many months after the crime. Courts are very busy and trial dates must be scheduled when there is time available. Also, the lawyers need time to prepare.

The police will let you know when to come to court by sending you a paper called a subpoena a few months before the trial date. A subpoena is a court order saying that you must come to court to be a witness. The subpoena will have the date of the trial, the name of the accused and the criminal register ("CR") number. Keep the subpoena in a safe place so that you can look at it if you need to.

If you change where you live after you have laid the charge, you must tell the police so that they know where to send the subpoena.

It should not cost you anything to attend court. If you have to travel to another town to attend court, the prosecutor's office will help you make travel arrangements. If you drive your own car, you will be given a certain amount of money per kilometre travelled. If you do not have a car, the police may be able to drive you or help you make other arrangements. If you have to stay overnight away from your home, the state will pay for accommodation. You will also get \$50 per day for food and other expenses.

If you need time off from work, you should show your employer the subpoena. If your employer does not understand, ask the prosecutor to write a letter for you.

Turn the page to see what the subpoena looks like.



**SUBPOENA IN CRIMINAL PROCEEDINGS TO ATTEND AND GIVE EVIDENCE
in the High / Lower Courts of Namibia**

Division District
..... Regional Division

Place of trial	Court	Date of trial

To any police officer or other person authorised to serve process.

You are hereby commanded in the name of the State to summon the persons(s) of whom particulars appear hereunder, to appear in person before this court at 09h00 on the date of the trial to testify and declare all he/she/they know concerning certain charge(s) preferred against.

.....

charged with the offence(s) of

.....
.....
.....

Name, Sex, Age, etc.	Address	No. of rail warrant

Serve on each of them a copy of this summons and return to this Court what you have done thereon.

Date stamp of issuing office

.....

*** Delete the words which are not applicable.**

Warning:

- (i) Should any change in the abovementioned address take place before the proceedings are finally disposed of or before you are officially advised that you are no longer required as a witness, you are compelled to inform the official who served this subpoena upon you thereof.
- (ii) Failure to comply with either the abovementioned warning or this subpoena renders you liable to arrest and to sentence not exceeding N\$ 300.00 or three months imprisonment.

PREPARATION BEFORE THE TRIAL

A prosecutor will be assigned to your case. The prosecutor should meet with you before the trial for a consultation. Prosecutors are often very busy, so the prosecutor in your case may meet with you for the first time on the day of trial, before court starts.

If you want to speak to the prosecutor before the trial date, you can call the prosecutor's office. Tell them the name of the accused and the criminal register ("CR") number. This information will be on your subpoena. The prosecutor's office will be able to tell you the name of your prosecutor so that you can contact this prosecutor to ask questions ahead of time.

Let the prosecutor know what language you wish to speak in court so that the prosecutor can arrange for an interpreter if you need one. You should use the language you are most comfortable with so that the court will understand exactly what you mean.

The police officer who investigated your case should tell you if there are victim support services in your area. A victim support worker might be a social worker or someone from a non-governmental organisation. This person may be able to tell you more about the court process and even show you the courtroom in advance. If you live near a courthouse, you can go on your own and watch a trial so that you know what the courtroom looks like and what the procedures are. (You will not be able to watch a rape case as these cases are closed to the public.)



LAWS TO HELP RAPE COMPLAINANTS IN COURT

The law has special rules to make things easier in court for rape complainants.

The court is supposed to be closed to the public during a rape case. This should make giving evidence easier. Only the people who are involved in the case should be present. The magistrate or judge, the prosecutor, the accused and the accused's lawyer will be in court. A few other people who work for the court will probably also be present.

It is against the law for any newspaper, radio or television to reveal the identity of a rape complainant. They cannot publish or show your name, your address, your photograph or any other information that might identify you.

The court may make special arrangements during your evidence:

- Relocating of the trial to a less formal setting while you are giving evidence. For example, you could give your evidence while sitting in the magistrate's or judge's office rather than in the courtroom.
- Rearranging furniture in the courtroom, or adjusting where people stand. For example, the magistrate or judge might sit closer to you and the accused might move farther away so you feel safer.
- Allowing a support person to accompany you. You could have a friend or family member stand or sit beside you while you are giving evidence. This person will not be able to talk to you while you are giving evidence, but having a supportive person close by may make you feel safer and more comfortable. This person can also let the court know when you are feeling stressed and need a break.

- In some courts, you can give evidence behind a screen, a two-way mirror or via closed circuit television. (This is when you speak into a camera and the people in the courtroom see and hear you on a television screen. It is called “closed circuit” because no one else can see you on any other television.) If there is television equipment, you might not even be in the same room as the accused.

There are other possible arrangements. You can ask the prosecutor to tell you more.



Closed circuit television room in Windhoek



Screen in Walvis Bay

You should think about which option will be the most comfortable for you and tell the prosecutor. The prosecutor must request these special arrangements from magistrate or judge. The magistrate or judge may not automatically agree to them. If you feel that you want one of the special arrangements, it is best to discuss this with the prosecutor before the trial date. This will give the prosecutor time to organise the arrangements.

Questions about your sexual reputation are not allowed. This means that no one may ask you questions such as “How many people have you slept with?”. Such questions are not relevant to the rape.

A few questions about your sexual history may be allowed, but only in very special circumstances. For example, if there was semen in your body, the accused’s lawyer might try to show that this semen came from sexual intercourse with another person. But no one may ask you questions about any previous sexual experience in your life without first getting permission from the magistrate or judge.

THE TRIAL

On the day of the trial, you should come to court on time. Wear neat and comfortable clothing. You may have to wait before it is your turn to speak. You might want to bring a friend or a quiet activity like a newspaper to read. You might also want to bring something to eat and drink in case you have to be there over lunchtime. (You cannot eat inside the courtroom.)

Waiting outside the court can be stressful if you are afraid that you might see the accused or his friends and family. You should ask if there is a separate place where you can wait. You can wait with the police officer. If anyone bothers you while you are waiting for court, you should let someone know. You can tell the police officer, the court orderly or prosecutor. The courthouse should be a place where you feel safe.

It will be very uncomfortable for you to wait out here with the accused and all his friends. Let us go ask if there is a private place where we can sit until the trial starts.



You will meet with the prosecutor before you speak in court. The prosecutor will have a copy of the statement you made to the police. The prosecutor will review this statement with you. The prosecutor and defence counsel will have a copy of your statement but the magistrate or judge will not. You may be asked questions about your statement so you must tell the prosecutor if there is anything in your statement that is not the truth, or anything which is not exactly accurate.

You will not be allowed in the courtroom until it is time for you to speak in court. You cannot hear the evidence of other witnesses before you speak in court. If you do, the accused may suggest that you are only saying what you have heard other people say. For this reason, you must also not discuss what you will say with anyone other than the police and the prosecutor.



The prosecutor will call you in when you are needed. The court clerk will ask you to state your name. The court clerk will then swear you in. You can make an "oath" or an "affirmation".

- An oath is a promise to God to tell the truth. The clerk will ask if you swear the evidence you shall give shall be the truth, the whole truth and nothing but the truth "so help you God".
- If you do not believe in God then you can affirm. Affirming is a solemn promise. If you affirm the clerk will ask if you solemnly affirm that the evidence you shall give shall be the truth, the whole truth and nothing but the truth. You must raise your right hand when you answer.

Other people will be in the courtroom:

Magistrate or Judge – the person with the task of listening to all the evidence and deciding if someone broke the law. Magistrates and judges wear black robes in court.

In court, people call judges “*My Lord*” or “*My Lady*.” They call magistrates “*Your Worship*.” This is to show respect for the court’s authority.

Prosecutor – a lawyer who represents the state. The prosecutor is not your personal lawyer, but the prosecutor does have a duty to represent your interests at some stages of the trial. Prosecutors and other lawyers wear black robes in court.

Defence counsel – a lawyer who represents the accused’s interests. It can be difficult to answer their questions but it is important. Just like the prosecutor, the defence counsel will wear a black robe in court.

Accused – the person who is suspected of committing the crime. Prepare yourself to see the accused in the courtroom.

Interpreter – a person who works for the court to translate other languages into English and back again. The interpreter’s job is to make sure that everyone understands what is going on. Make sure to wait until the interpreter is finished talking before you start talking again. (If you do not think that the interpreter has translated what you said accurately, you should call attention to this.)

Court orderly – a person in charge of courtroom security. This person makes sure that you are safe in the courtroom. The court orderly will normally be wearing a uniform.

Court clerk – a person who records what happens in court and deals with any documents.



GIVING EVIDENCE

After you have given your oath or affirmation to tell the truth, the prosecutor will ask you questions and you will give your evidence.

Remember:

- Speak in a loud and clear voice so that everyone can hear.
- Be clear about what you are saying and speak slowly. The magistrate or judge and the lawyers will be taking notes, so they need time to write down what you say.
- Tell the truth.
- Listen carefully to all of the questions.
- If it is difficult to understand the question, ask the person who asked the question to explain it before you answer. Do not worry about feeling silly – it is important to avoid any confusion.
- If you do not know the answer to the question, say “I don’t know.” Do not guess.
- You should only tell what happened to yourself. You cannot tell the court what other people said happened to them.

Court is very formal, but it is important for you to be comfortable. This will help you do your job of telling the truth the best that you can. If you need the toilet, a tissue or a break, make sure to let someone know. It is alright if you cry in court. It is alright if you need a break.

The prosecutor will ask you to tell the court what happened. It is important to tell the court all the details, even if it is embarrassing to talk about personal matters or your body. It is important to be clear and exact. The court needs to hear exactly what happened. For example, a witness might say that she slept with a man. To some, this means that she took a nap with him. To others, this means that they had sexual intercourse. It is better to describe exactly what happened with clear words to prevent this kind of confusion. It is alright to say “penis” or “vagina” in court. Magistrates and judges have heard people talk about these things before and will not be upset if you use the correct words. Their job will be easier if they understand you correctly.

CROSS-EXAMINATION

After the prosecutor's questions, the accused or defence counsel will get a chance to "cross-examine" you. This means asking you questions about what you have already said. The magistrate or judge may ask you questions as well.



The accused may or may not have a lawyer. Most people accused of rape will have a lawyer. Some accused can afford to pay for their own lawyer. Others will have a lawyer appointed by government to represent them. Some will not have a lawyer at all and will speak on their own behalf – but this is unusual.

If the accused is representing himself, the prosecutor should tell you in advance. It may be harder for you if you have to answer questions coming directly from the accused, but the prosecutor and the magistrate or judge will make sure that the accused does not ask you inappropriate questions. The prosecutor may ask that the accused put questions to you through the magistrate or judge instead of speaking to you directly. The magistrate or judge does not have to agree to this, but they might – especially if the accused is speaking to you in a way that frightens you.

The questions from the accused or the defence counsel representing the accused will be different from the questions of the prosecutor. The defence counsel asks you questions to see if what you said earlier was correct. These questions may be difficult to answer. The defence counsel may suggest that you are lying or that you have made up your story. The defence counsel may try to make you angry and confuse you. It is important to remain calm and answer the questions. Try not to get upset about the manner in which they are being asked. If you start to feel stressed, take a deep breath or a moment to calm yourself. Remember that you can ask for a break if you need one.

You should answer the questions in a truthful and careful way, just as you did when the prosecutor was asking you questions. It may help you to look at the magistrate or judge during the cross-examination. You are there to tell the magistrate or judge what happened.

While you are giving evidence, the court may take a break and ask you to leave. This does not mean that you have done anything wrong. It just means that the magistrate or judge and the lawyers need to discuss something without you there. The lawyers may disagree about something and the magistrate or judge must decide who is right. Be patient and you will be called back into court to finish giving your information.

The trial may not finish in one day. Some cases will take several days. The days of the trial may be spread out over weeks or even months instead of happening all at once.

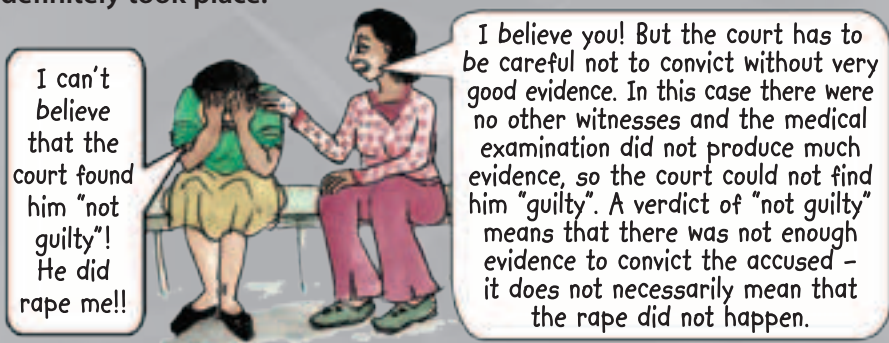
For example, sometime a witness is ill and the case must be postponed until they are better. Sometimes the lawyers need more time to prepare. Defence counsel may need to take a break to speak to the accused. Unexpected things happen and the lawyers need time to think about it or make arguments. The magistrate or judge will also need time to make decisions. Sometimes there is not enough court time – for example, the witnesses may be taking more time than the court expected, and the court may not have set aside enough days in a row for the case to be finished all at once.

CONCLUSION OF TRIAL AND DECISION

Once you have finished giving evidence, the trial will continue. The prosecutor may call other witnesses. When the prosecutor is finished with the state's case, the defence may choose to call their own witnesses. They do not have to. After all the evidence is completed, the prosecutor will tell the magistrate or judge why the accused should be found guilty, and the defence counsel will say why the accused should be found *not* guilty.

After listening to all of the evidence and submissions, the magistrate or judge will make a decision. This may not happen immediately. The magistrate or judge may want to think about the decision and review notes from the trial. It may be a few weeks before you know.

The magistrate or judge must listen to all the evidence and decide the accused committed the crime "beyond a reasonable doubt". This is a high standard. If the magistrate or judge does not find the accused guilty, it does not mean that the crime did not happen. It means only that there was not enough evidence in court to show that the crime definitely took place.



If the accused is not convicted you may be very disappointed. Do not feel that it is your fault. You should be proud that you had your chance to tell the court what happened.

SENTENCING

If the accused is found guilty, the next stage is sentencing. The magistrate or judge must decide how the accused will be punished for the crime.

There are minimum sentences for rape in the Combating of Rape Act. The lowest minimum sentence is five years in prison. The magistrate or judge may decide to sentence the accused to something less than the minimum if he feels there are special circumstances. (The minimum sentences do not apply to people who were under age 18 when they committed the crime.)

Because you are only 15, the law does not force me to order that you spend the rest of your youth in prison. I am going to give you a lighter sentence so that you can have another chance to make something of your life. But you WILL be punished. I hope you have learnt that rape is one of the most horrible crimes.



There will be a sentencing hearing. The prosecutor will tell the magistrate or judge what the government thinks the sentence should be. The prosecutor may call witnesses again to show what impact the crime had on you. You may have to give information to the court under oath again. The prosecutor may also ask a social worker who spoke to you to give evidence about how the crime has affected you. This information will help the magistrate or judge to decide how long the sentence should be.

The defence counsel will give information about the accused's personal circumstances. The magistrate or judge must decide on a punishment based on the facts of the rape, the circumstances of the accused and the interests of society.

AFTER THE COURT CASE IS OVER

Once the court case is over, you may feel that it is easier to put the rape behind you and move on with your life. But it may also happen that the trial has stirred up disturbing memories of the rape. You may feel upset after the trial, especially if the court did not find the accused guilty. Even if the rape took place quite a long time ago, you may want to speak to a social worker or a counsellor who can help you with any traumatic feelings.



The Namibian Constitution says that courts must be “independent” and “impartial” when they make decisions in criminal cases.

Article 12(1)(a)



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