

A GUIDE TO THE COMBATING OF RAPE ACT



Legal Assistance Centre
Namibia
2010

This guide contains a detailed explanation of the Combating of Rape Act 8 of 2000. It explains this law in simple language and gives examples to help you understand it.

There is also a shorter pamphlet on the new law which highlights only a few of the most important points.

Text: Dianne Hubbard

Illustrations: Nicky Marais

Layout: Perri Caplan

Printing: John Meinert Printing

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© Legal Assistance Centre
PO Box 604
Windhoek
Namibia

Tel: 061-223356
Fax: 061-234953
Email: info@lac.org.na
Website: www.lac.org.na

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INTRODUCTION

OVERVIEW

A new law on rape called the Combating of Rape Act came into force in Namibia in June 2000. This new law is one of the most progressive laws on rape in the world.

The new law has a new definition of rape that gives greater protection against rape to men, women, girls and boys. It provides stiff minimum sentences for rapists, and stricter bail conditions for people accused of rape. It has new rules that make the criminal trial less traumatic for the person who has been raped. It also has new rules that will protect the privacy of the person who has been raped.

This booklet contains information about the new law and why it is important. It also contains general information about the problem of rape in Namibia, advice on what to do if you are raped, and suggestions on how to help if you know someone who is raped.

In order to explain the new law clearly, this booklet uses accurate and detailed terms for private parts of the body. Please do not be shocked or offended by this. The law itself uses similar terms for the same reasons. Because rape is such a serious crime, there must be no confusion about what is rape and what is not.



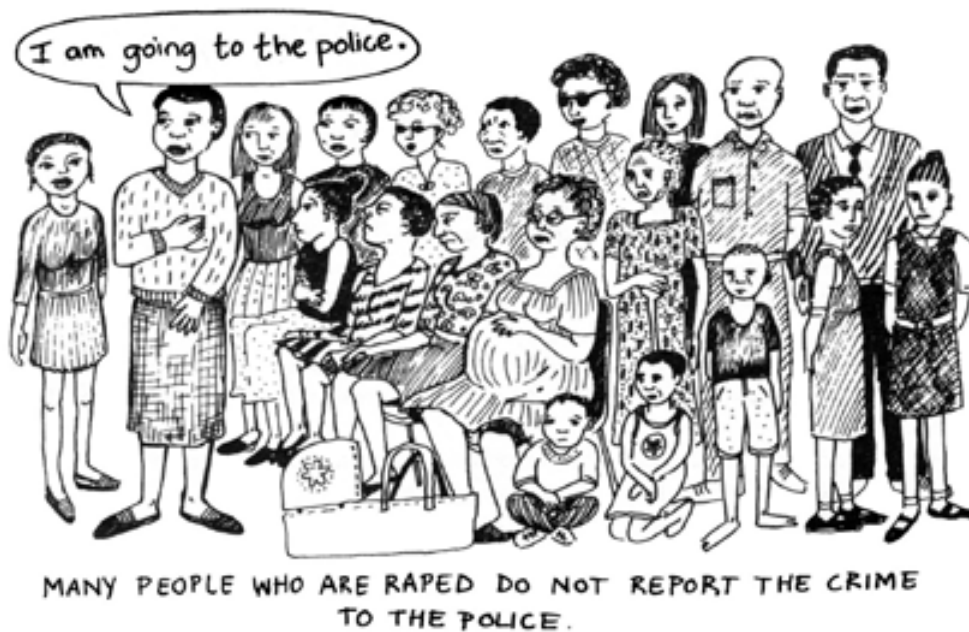
THE PROBLEM OF RAPE IN NAMIBIA

Rape is a serious problem in Namibia. As of 2009, about 1 100 cases of rape and attempted rape were being reported to the Namibian Police each year. Experts believe that only about one out of every 20 rapes that take place is reported to the police. This means that rape is a problem which touches many more people in Namibia than our statistics show. It is possible for men and boys to suffer forced sexual contact, but it is mainly women and girls who experience sexual violence.

Rapes occur in a wide variety of situations. They happen at night and in the daytime. They happen in the home, in riverbeds, along the road, in playgrounds and in schools. They happen in every community in Namibia, in villages and towns, in rural and urban areas.

Court records show that babies of less than one year and elderly women aged 85 have been raped. Women who are in advanced stages of pregnancy have also been raped.

These facts show that rape is not a result of provocation by the person who is raped. *Rape is a crime of power which uses sex as a weapon.*



Rape is intended to humiliate and degrade. Rape reduces people to objects. It often makes them feel isolated. Rape can also cause feelings of anxiety, guilt and inadequacy. Rape is experienced as a loss, so a rape survivor will often go through a period of mourning and grief.

Rape is a horrifying violation of personal dignity and integrity. Attitudes about women in a society have an effect on how many rapes occur in that society. Because most people who are raped are women, rape is less common in societies where women are genuinely treated as being equal to men.

MYTHS ABOUT RAPE

Some people in our society believe false myths about rape, especially the rape of women. These are some examples:

- Women say “no” when they really mean “yes”.
- Women secretly enjoy rape.
- Women are really responsible for rapes because they dress and behave provocatively.
- Rape is not really an act of violence, it is just rough sex.
- Women often consent to sexual relations and then later claim that it was rape.

More false myths about rape are shown on the following pages.

The myths about rape result in blame for the crime being placed on the person who was raped, instead of on the rapist. A rape complainant will not be treated with understanding and sympathy if police, prosecutors, social workers and medical personnel believe the myths. A rape complainant will not get support from her family and friends if they believe the myths. A rape complainant who believes the myths will have difficulty dealing with feelings of guilt and shame. The myths encourage the crime of rape by making excuses for people who rape.

The old law on rape was based on these false ideas. This is why the old law had to be changed. The new law on rape will help society to move away from the myths about rape. Law reform on its own cannot alter attitudes, but it can send out signals that false ideas about rape will no longer be accepted by the law or the courts.

MYTHS ABOUT RAPE

MYTH	RESULT	FACT
Rape is provoked by the complainant.	The blame is taken away from the rapist and shifted to the complainant.	Rape is a violent attack using sex as the weapon. All kinds of people are raped in all kinds of situations. A person does not ask for rape by accepting a date, by acting polite or friendly, or by dressing or walking in ways that society defines as attractive.
Only beautiful young women in mini-skirts get raped. Only “bad girls” get raped. Only promiscuous women get raped.	People believe that rape is something that happens only to certain types of women. They tend to blame themselves for the crime, and so do not report it or seek help from others. They feel embarrassed and ashamed.	Both men and woman can be raped, regardless of age, appearance or economic class. Elderly persons, young children and even tiny babies have been raped.
People get raped when they are out alone at night, in dark and dangerous places. If they stay at home they will be safe.	This myth interferes with freedom of movement, especially for women. It suggests that a woman would not have been raped if she had been “in her place”. It also promotes the false idea that women cannot be raped at home, or by their husbands.	Rapes in Namibia occur in a wide variety of situations, at all times of day or night. Even women asleep in their beds at home have been raped. In fact, one Namibian study found that more than half of all rapes occur in the complainant’s own home.
Rapes are usually committed by strangers. People who avoid strangers will be safe.	People who know their rapists tend to blame themselves more. They cannot believe that a family member or an intimate partner could really be a rapist. People who are raped by someone they know are afraid that no one will believe them, and they are afraid that the rapist will try to get revenge.	According to the Namibian police, most rapes in Namibia involve people who know each other – a family member, a personal friend, or someone who is known to the family. Many rapes are never reported to the police, and the police believe that many of these rapes go unreported because they involve acquaintances.
Anyone who really tries to resist can prevent a rape. It is impossible to rape a person against his or her will.	People do not believe that a rape has occurred unless there are serious injuries. If there are no cuts or bruises, then the complainant must not have tried to resist.	Rapists often threaten to kill the person they are raping if there is any attempt to resist. In Namibia, rapists often threaten rape complainants with knives. Most rapes are committed by men against women, and men are often stronger than women. This means that rapists can often overpower people without a weapon, especially where young children are involved. Even if there are not injuries, the rape complainant may have had a very real fear of injury or death.
Rapes occur only in urban areas.	People in rural areas who report rapes will not be believed.	Rapes happen in every part of Namibia. Rapes in rural areas may not be reported because there is no police station or clinic nearby, or because the family of the victim prefers to resolve the problem with the family of the rape complainant, without involving the police.

MYTHS ABOUT RAPE

MYTH	RESULT	FACT
Rape is an impulsive, uncontrollable act of sexual gratification. It usually takes place when a sexually frustrated man sees an attractive young woman and “just can’t control himself”.	This myth puts the blame on the rape complainant. It makes society think that the rapist is not responsible for his actions. It gives the rapist an excuse for using violence against another person.	Rape is a crime of power which uses sex as a weapon. Rapists themselves describe their motivation as being anger, hatred, conquest, humiliation or degradation – and not sexual gratification. A study of male rapists in South Africa found that less than 6% of them gave a sexual reason for their crime, and less than 40% reported that they experienced any sexual satisfaction from the act.
Rapists are abnormal perverts with an unsatisfied sex drive. Only “sick” or “insane” people rape.	People will not believe that a person who looks and acts “normal” could have committed a rape. They will expect the rapist to have some kind of special identifiable characteristics.	Rapists are “normal” people with normal sex drives. Male rapists often have wives or girlfriends. The only difference between the rapist and other people is that the rapist has a greater than average tendency to be violent and aggressive. The motive for rape is aggression, not sex.
People, particularly women, often lay false charges of rape with the police.	People will not believe a woman who says that she has been raped. This will make women more reluctant to report rapes. This myth also affects the way that the police respond to rape charges. If the police do not believe a woman's story, they will not make a serious investigation of the case. This in turn will reduce the chances of a conviction.	A US study found that the incidence of false reports of rape is exactly the same as for all other serious crimes – about 2%. Information from the Namibian police indicates that only about 1% of all rape reports are unfounded.
A person who does not go to the police was not really raped.	Family and community members may mistakenly think that the rape victim is not being truthful, causing the victim to feel isolated and ashamed.	There are many reasons why a person who has been raped may not want to go to the police or appear in court. The complainant may feel shame. The complainant may be afraid to report the crime. Family members may pressure the complainant not to lay charges, or to accept compensation as an alternative to a criminal case. A complainant may need support to report the case to the police.
If the rapist is not found guilty in court, the rape complainant must have been lying.	Even friends and family members of the complainant may doubt that the rape really happened if the accused rapist is not found guilty.	It is hard to prove rapes because they usually occur in a place where there are no witnesses, and because sometimes the medical evidence is not properly collected. The court may not have enough evidence to find the accused “guilty” even in cases where a rape really occurred.
Rape is a crime which affects only a few people.	People will not believe that rape can happen in their own communities, or to someone they know.	Namibia has a high rate of rape in comparison to the size of its population. Rape also affects people who do not themselves experience rape (especially women), by causing them to live in fear.

This material is adapted from training material used by Women’s Solidarity.

THE NEW LAW ON RAPE

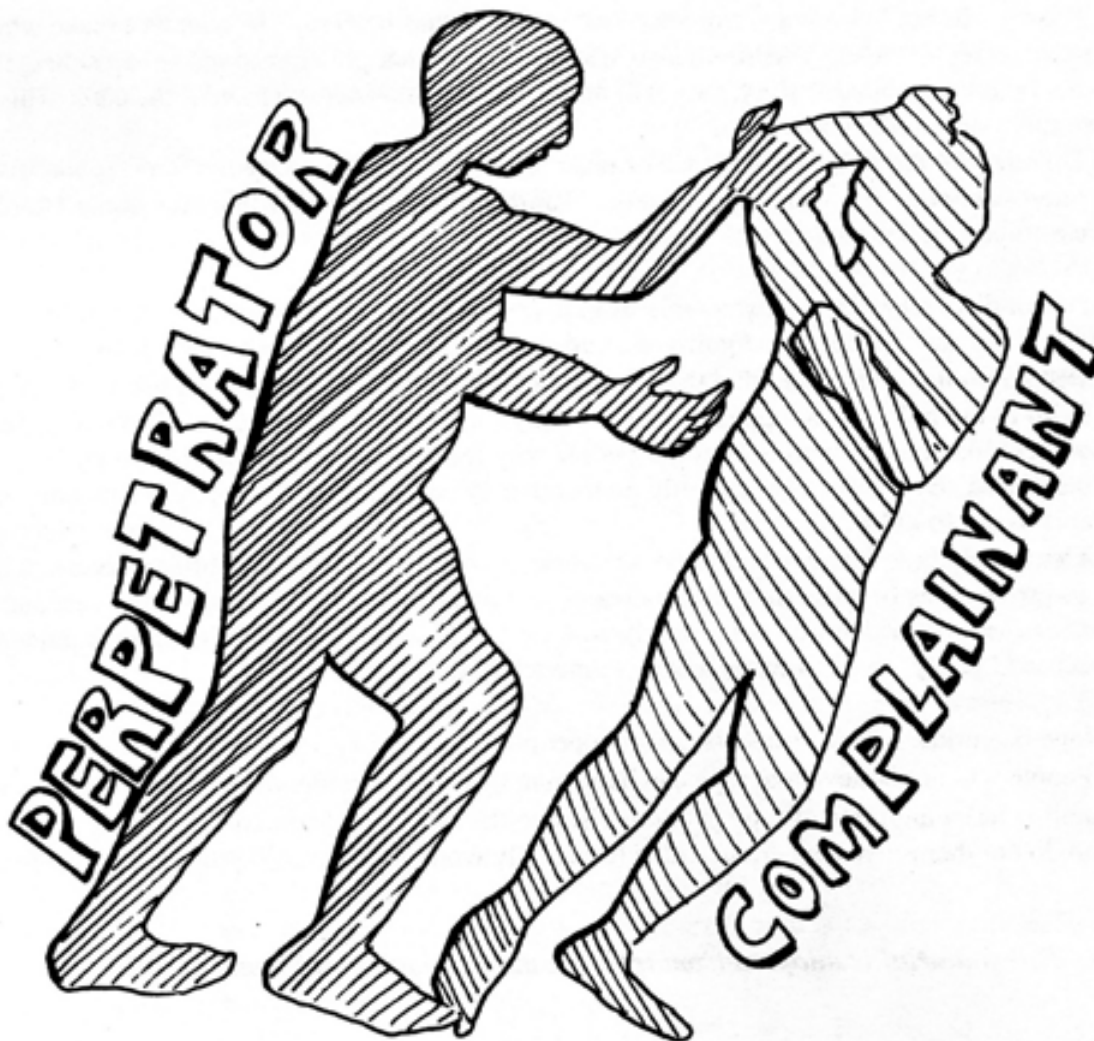
TERMINOLOGY

“Complainant”

It is not good to refer to a person who has been raped as a “victim”. This term suggests a negative meaning. It suggests that a person who has been raped is disempowered in every way. Some people prefer the term “rape survivor” to emphasise the positive fact that the person has faced a terrible experience and survived. The new law uses the neutral term “complainant” for the person who is raped – even if that person has not actually laid a charge.

“Perpetrator”

The term “rapist” should not be used until the person charged with rape has been found guilty by the court. Before that, it is more accurate to talk about an “accused rapist”. It is awkward to keep these two terms separate in a discussion about rape. The new law uses the term more general term “perpetrator”.



WHAT IS RAPE?

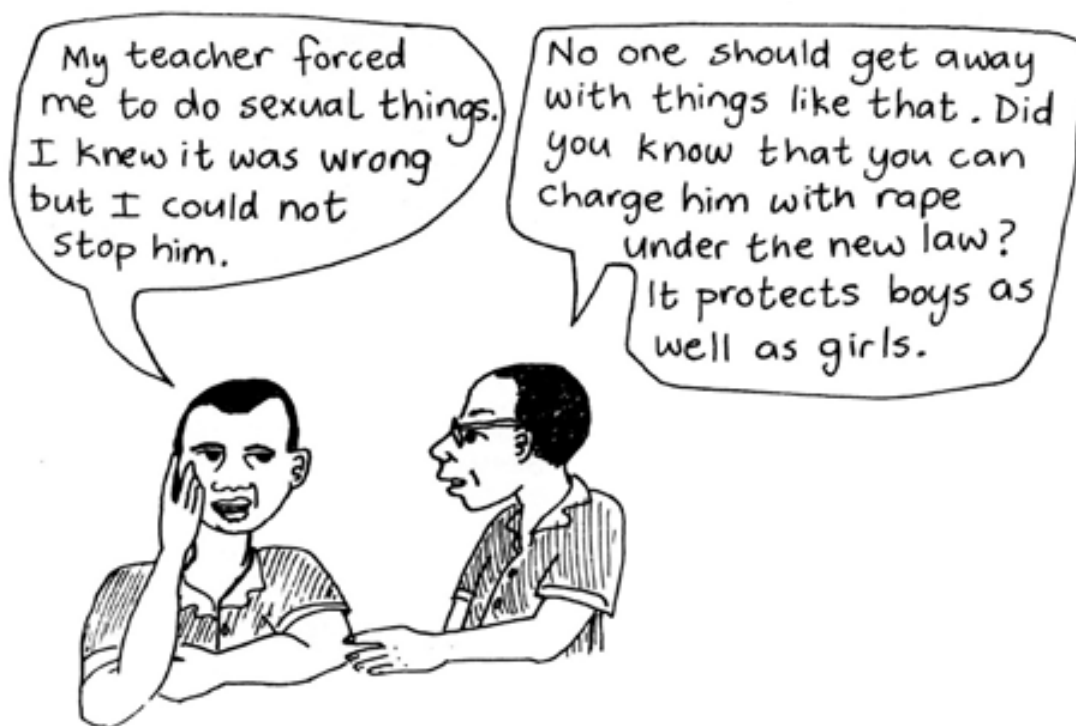
The old law

Under the old law, rape was defined as “intentional unlawful sexual intercourse with a woman without her consent”. This definition had several serious limitations.

- (1) It did not make it possible for men or boys to lay a charge of rape.
- (2) It did not make it possible for wives to lay a charge of rape against their husbands, because sexual intercourse between married persons was not considered “unlawful”.
- (3) It focused on the question of consent, instead of the force or coercion used by the rapist. This meant that the woman who was raped would be asked questions in court about her sexual history and behaviour, or about what she was wearing or doing at the time of the rape. This often made the woman who was raped feel as if she were the one on trial.
- (4) In the eyes of the law, rape occurred only where the penis was inserted into the vagina. Other sexual acts (such as forced oral sex or sodomy or the insertion of objects into the genitals) did not qualify as rape, but only as indecent assault. Sexual assaults on young children could not be prosecuted as rape if penetration could not be proved.

The new law

The new law defines rape as the “intentional commission of a sexual act under coercive circumstances”. To understand this definition, we will have to consider the meaning of “sexual act” and “coercive circumstances”.



“Sexual act”

The definition of sexual act covers the most intimate kinds of sexual contact:

- **the insertion of the penis into the vagina of another person, to even the slightest degree**

It is not necessary to prove that the penis actually entered the vagina. It is enough to prove that it was inserted into the external parts of the female genitals. This is important in cases where young girls are raped. The rapist should not get off more lightly just because the girl was physically too small for complete penetration.

- **the insertion of the penis into the mouth or anus of another person**

- **the insertion of any other part of the body into the vagina or anus**

For example, putting fingers or a hand or a tongue into someone's vagina or anus would be a sexual act.

- **the insertion of any part of the body of an animal into the vagina or anus**

For example, putting the penis or the tongue of a dog into someone else's vagina or anus would be a sexual act.

- **the insertion of any object into the vagina or anus (with an exception for the insertion of objects into the vagina or anus as part of normal medical procedures)**

For example, there are cases of people being raped with objects such as bottles or broomsticks.

- **cunnilingus, which is oral stimulation of the female genitals**

- **any other form of genital stimulation**

This would include simulation of the genitals with the hand, or forcing the complainant to masturbate himself or herself.



Other forms of forced sexual contact are not covered in the definition of rape, but they would be treated as indecent assault. For example, it would not be rape for a person to touch a woman's breasts against her will, or to force his or her tongue into another person's mouth. But these forms of forced sexual contact would be indecent assault.

“Coercive circumstances”

The definition of “coercive circumstances” includes force, threats of force, and other situations which enable one person to take unfair advantage of another. It includes all of the circumstances listed below, but it can also include other forms of coercion which are not mentioned in the law.

- **physical force against the complainant or another person**

An example of using physical force against a third person as a means of rape would be where a man starts beating up a woman's child and says that he will not stop unless she has sexual intercourse with him.

- **threats of physical force against the complainant or another person**

A threat does not have to be made in words. For example, if a person is pointing a gun or a knife at you without saying a word, the message is still clear.

- **threats to cause harm other than bodily harm to the complainant or another person, in circumstances where it is not reasonable for the complainant to disregard the threats**

This could include threats of property damage. But this kind of threat would create the crime of rape only in situations where the complainant did not have any reasonable option except to submit to the sexual act.

For example, suppose that a boyfriend and a girlfriend go together to a deserted place and start kissing. The boyfriend wants the girlfriend to have sexual intercourse and says that if she refuses he will leave her to walk home alone. The girlfriend agrees because she would prefer to have sex with her boyfriend than to be attacked and perhaps raped by someone else. Whether or not submission in such circumstances would be reasonable would depend on the circumstances – such as how isolated the spot was, and the girl's actual state of mind.

Suppose that a man threatens to tell everyone in the community that a certain woman is a prostitute if she does not sleep with him. It would not be reasonable for her to submit to sex with the man and then charge him with rape. The more reasonable option would be to go to the police to lay a charge of attempted extortion. If he proceeds with his threat, she can sue him for defamation or charge him with the crime of *crimen injuria* (criminal insult).

- **the complainant is under the age of 14 and the perpetrator is more than 3 years older**

No force or threat is necessary in such a case. The age difference alone will be interpreted to show that the older person is taking advantage of the younger. Sexual experimentation between children of similar ages will not be treated as rape.

The age of 14 is the age at which children are first assumed to know the difference between right and wrong in terms of criminal law. So it is logical to assume that children below that age are not mature enough to give meaningful consent to sex with an older person.

- **the complainant is unlawfully detained**

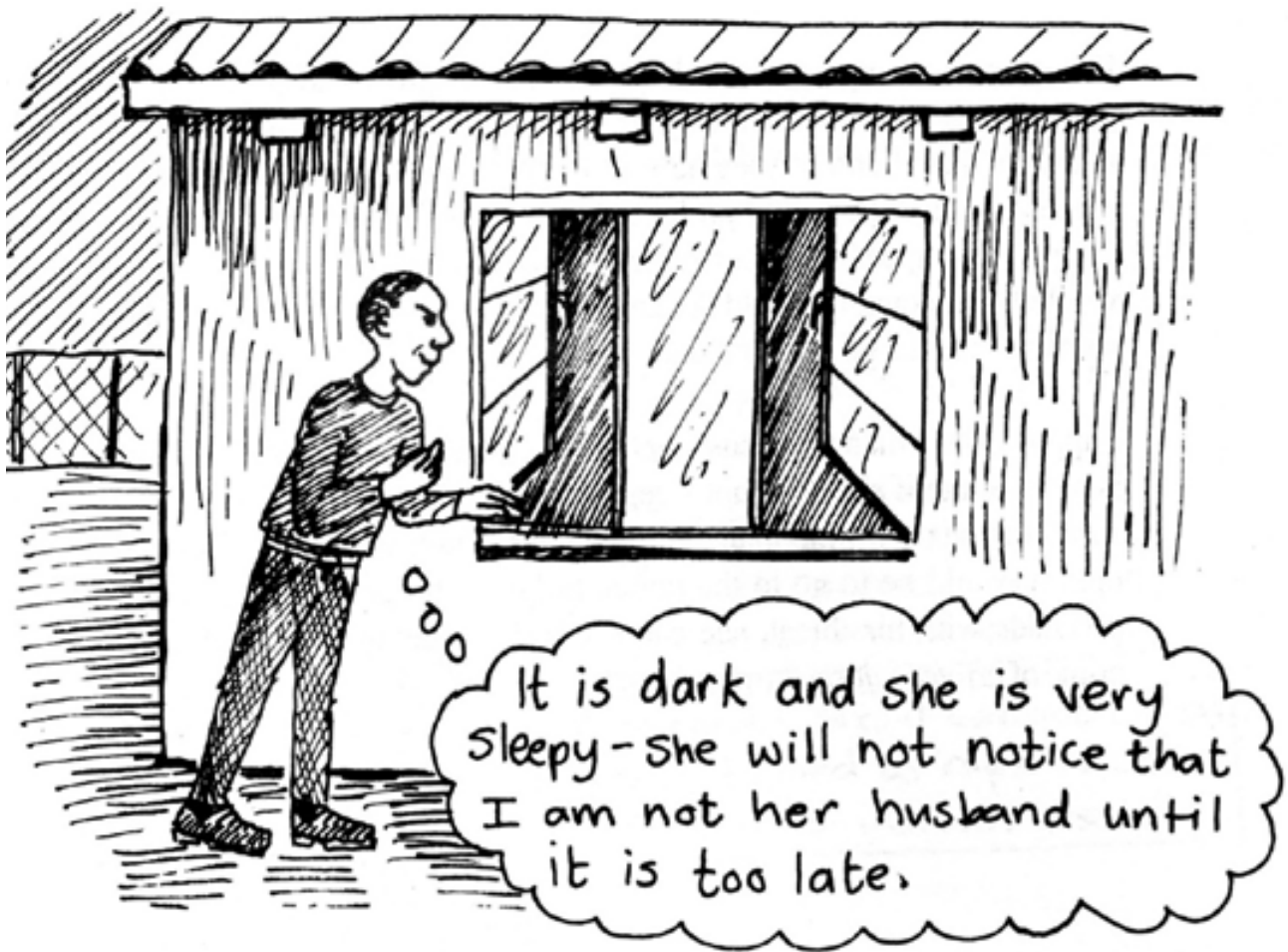
This would apply, for example, to a case where the complainant had been kidnapped. It would also apply to a case where a complainant was confined against his or her will – such as a case where a husband locked his wife inside the family home and prevented her from having any contact with other people.

- **the complainant is**

- **physically or mentally disabled**
- **drunk or drugged**
- **asleep**

and so cannot understand what is happening or is unable to communicate unwillingness

- **the perpetrator pretends to be another person**



- **the perpetrator pretends that what is happening is not actually a sexual act**

For example, a doctor might lead an inexperienced complainant to believe that the sexual contact is actually some form of medical treatment.

- the presence of more than one person is used to intimidate the complainant



Gang rape

Suppose that the perpetrator uses force or any other kind of coercion to make the complainant commit a sexual act with his friend? *Both* are guilty of rape.

A recent court case shows that people who take part in gang rapes will face extremely serious punishment in future.

Suppose that there are three men involved in a gang rape: Fred, George and Joseph. Fred and George hold Hilda down while Joseph has sexual intercourse with her. Then George and Joseph hold Hilda down while Fred has sexual intercourse with her. Then Fred and Joseph hold her while George forces his penis into her mouth. Hilda has been raped three times. And because the men assisted each other, each of them can be charged with three counts of rape. Any gang rape gets the highest minimum sentence of 15 years for a first offence. This means that Fred, George and Joseph will each be facing 15-year sentences for *each* rape – a total of 45 years in prison.



The message is clear.

Gang rape is an absolutely abhorrent crime that will not be tolerated in Namibia.

Changing your mind

The new law on rape also makes it clear that rape can occur even where sexual activity started out as a matter of mutual consent. If coercion comes into play *at any stage*, then the sexual act becomes rape.



AGE OF CONSENT

The old law

Under the old law on rape (which applied only to girls and women), girls were considered mature enough to give meaningful consent to sexual intercourse at age 12. For purposes of similar crimes such as forced sodomy and indecent assault, boys were considered mature enough to give meaningful consent *at age 7*.

These rules were supplemented by the Combating of Immoral Practices Act which made it a lesser crime to have sexual contact with a girl under the age of 16, but provided no additional protection for boys.

The new law

The Combating of Rape Act has raised the age of consent for the crime of rape to 14, for both boys and girls. Because the old law on rape applied only to girls and women, the male perpetrator was automatically the guilty party. But since the new crime is gender neutral, an age gap of 3 years has been added so that the perpetrator can be identified as the older person who has exploited the younger one. The minimum sentence for rape of a child is 15 years, and the maximum is life imprisonment.

For example, if two 12-year-olds have sex in a situation where there is no force or coercion, neither could be charged with rape under the new law. The law would assume that neither was taking unfair advantage of the other, since they are of similar ages. But if a 16-year-old has sex with a 12-year-old, the 16-year-old could be charged with rape even if there was no use of force or coercion.

An amendment to the Combating of Immoral Practices Act has given additional protection to boys and girls under the age of 16, where there is sexual contact with someone more than three years older. This is a lesser offence with no minimum sentences attached. However, the lesser crime covers any “indecent or immoral act” as well as “sexual acts” (which are defined above). The maximum penalty under this companion piece of legislation is N\$40 000 or 10 years in prison or both. The Combating of Immoral Practices Act does not apply to persons who are married in a civil or a customary marriage.

RAPE WITHIN MARRIAGE

The old law

In terms of the old definition of rape, a wife could not charge her husband with rape, no matter what kind of force he used.

The new law

The new law says that **no marriage or other relationship will be a defence to a charge of rape**. This applies to both civil marriage and customary marriage, as well as other relationships.

If an incident would be rape *outside* marriage – because of the use of force or threats of force, for example – then it would also qualify as rape *inside* marriage. The new law says that rape is rape in whatever context it takes place. The fact that it takes place within marriage, or within any other relationship, is no excuse.



A rape is a rape ... even
within a marriage !

MINIMUM SENTENCES

Overview

There are three categories of minimum sentences. For a **first offence**, the minimum sentence will be **5, 10, or 15 years**, depending on the circumstances of the rape. For a **repeat offender**, the minimum sentence is **10, 20 or 45 years**, depending on the circumstances of the rape. The maximum sentence for any rape is life imprisonment.

A repeat offence means a second or third or further conviction of rape against any person, under either the old or the new law.

Which minimum sentence applies?

The minimum sentence is **15 years for a first offence** and **45 years for a repeat offence** in the following situations:

- the complainant suffered serious bodily or mental harm from the rape
- the complainant is under the age of 13 or “exceptionally vulnerable” because of age (which could apply to an elderly person or a young person)
- the complainant is a child under 18 and the perpetrator is that child’s parent, guardian, caretaker or otherwise in a position of authority over the child (such as a teacher or an employer)
- the perpetrator knew that he or she was HIV positive at the time of the rape, or that he or she had another serious sexually transmitted disease (such as syphilis or hepatitis)
- there were two or more persons acting together (such as in a gang rape)
- the rapist used a firearm or any other weapon.

The minimum sentence is **10 years for a first offence** and **20 years for a repeat offence** if none of the circumstances described above are present, but the rape was committed by means of

- physical force
- threats of physical force or
- unlawfully detaining the complainant.

In all other circumstances, the minimum sentence is **5 years for a first offence** and **10 years for a repeat offence**.

Suspended sentences

Sometimes courts will impose a prison sentence, but “suspend” part of it for a certain number of years on the condition that no similar offence is committed within that time. This means that the convicted person will not normally spend the suspended part of the sentence in prison. But suspended sentences cannot be used as a way to get around the minimum sentences for rape. A court is not allowed to suspend a sentence for rape in such a way that the time spent in prison will actually be less than the prescribed minimum sentence.

For example, if the minimum sentence is 15 years, the court could impose a 20-year sentence with 5 years suspended (leaving 15 years to be spent in prison) – but it could *not* impose a 20-year sentence with 10 years suspended (which would leave only 10 years to be spent in prison).

Lighter sentences in unusual cases

The court has the authority to depart from the minimum sentences if it finds “substantial and compelling circumstances” which would make the usual minimum sentence inappropriate in the particular case at hand. This exception helps to make sure that the minimum sentences are not found to be unconstitutional, because there are almost always strange factual situations which lawmakers cannot think of in advance. But the court will not use this exception lightly. Any time a court decides to give a sentence which is less than the minimum sentence, the judge or magistrate must write down the reasons for this decision.

No minimum sentences for young offenders

The minimum sentences will not apply to persons who were under the age of 18 at the time the rape was committed. The theory here is that it is especially important to consider the possibility of rehabilitation for young offenders.



RULES OF EVIDENCE

These rules make some changes to the way that courts are supposed to deal with rape cases.

Perpetrators under age 14

The old law assumed that boys under the age of 14 are not physically capable of having sexual intercourse. But it is common knowledge that different children achieve sexual maturity at different ages. The new law makes no assumptions about the age of sexual maturity. It simply looks to the facts of each case.

In all criminal cases, children under the age of 7 are considered incapable of committing crimes because they do not have sufficient understanding of right and wrong. Children between the ages of 7 and 14 can be convicted of a crime only if the prosecutor can show that they knew they were doing something wrong. These rules will apply in rape cases, in the same way as for other crimes.

Special cautionary rule

Under the old law, a special “cautionary rule” said that courts must treat the evidence of complainants in sexual offence cases with special caution if there was no other evidence to back up their story. This was an extra requirement of caution, over and above the normal degree of caution which the courts must apply in *any* case where there is only a single witness to a crime. This rule had its roots in the myth that women are particularly likely to lay false charges of rape. The new law removes this special cautionary rule. The evidence in rape cases is now treated in the same way as the evidence for any other crime.



Previous consistent statements

Normally a court will not listen to evidence that a witness told the same story to other people before coming to court. The reason is that repeating a story to many people does not make it more true – a lie can be repeated just as well as the truth.

Under the old law, there was a special exception to this rule in rape cases. The theory was that people would be unlikely to tell others that they had been raped if this were not true, because of the shame and embarrassment which is attached to rape. Rape cases generally have a low conviction rate, and the exception was supposed to help complainants by making it less difficult to prove rapes in court.

But in practice the rule began to work in reverse, because of the myth that false charges of rape are common. Courts began to doubt the word of rape victims if they could *not* show that they had told someone else about the rape shortly after it happened. This made no sense. Rape victims may keep the rape secret at first because of shock or shame or fear that they will not be believed. It is not logical to assume that anyone who has really been raped will tell someone else about the incident right away.

The new law says that the court may not draw any conclusions based only on the fact that the rape victim did not tell anyone else about the rape.

Delay

Similarly, if there was a delay between the rape and the laying of a charge with the police, courts in the past often assumed that the allegation of rape must be false.

But once again, this made no sense. There can be many reasons for a delay – such as shock, shame, embarrassment, fear of having to discuss sexual matters with the police or fear of having to testify in court. It is not logical to assume that a delay means that the complainant is lying.

The new law says that a court cannot make any assumptions based only on the fact that the complainant failed to lay a charge immediately.



Psychological effects of rape

The new law makes it easier to introduce expert evidence about the psychological effects of rape for several purposes:

- to show that it is likely that the sexual act took place, or that it took place under coercive circumstances
- to show the degree of mental harm suffered by the victim for the purposes of deciding on the appropriate sentence.

For example, this rule could make it easier for the state to bring a psychologist to court to explain that certain symptoms – such as a sudden loss of appetite, sleeplessness, or inability to concentrate – are part of the aftermath of a rape. This could help support the complainant's story, especially if there was no other evidence of the rape. The court would weigh up the evidence of the expert witness in the same way that expert evidence is treated in other criminal cases.



Similar offences by perpetrator

Normally it is not possible to bring in evidence of previous convictions. The theory is that an accused should be judged only on the case at hand, and not prejudiced because of past conduct. But the law allows the court to listen to evidence about the past sexual activity of the complainant in certain circumstances, so it is only fair to allow the court to listen to evidence of other rapes or indecent assaults by the perpetrator.

The prosecutor can ask the court to listen to evidence of previous rapes or similar offences by the perpetrator. The court will consider evidence about previous offences only if this is relevant, and not unfair to the perpetrator. Evidence of previous convictions cannot be used to try to show that the perpetrator is a person of bad character. But such evidence can be used for other purposes, such as to show that the perpetrator has a tendency to force certain kinds of sexual acts on people.

The judge or magistrate must write down the reasons for allowing or not allowing evidence about previous offences.

Complainant's character

In the past, the court could hear evidence about the character of a complainant of rape or any other sexual offence. This was because of false ideas that certain types of women – particularly women with sexual experience – were more likely to lie about rape. There was no basis in fact for this myth, and there was no similar rule for other crimes.

The new law says that the court will not listen to any evidence about the character of a woman who has suffered rape or another sexual offence. It also says that the court will not listen to any evidence about the “sexual reputation” of the complainant.



Sexual history

In the past, rape complainants were often asked embarrassing questions about their previous sexual history in court. Because rape depended on the absence of the complainant's consent, the perpetrator had an interest in trying to show that she was a woman of loose morals who would say “yes” to anyone.

The new law switches the emphasis away from “absence of consent” to the “presence of coercive circumstances”. This makes it clear that the court should focus on what happened in the case at hand, and not on the previous sexual history of the complainant.

A prostitute can be raped just as well as a virgin. Brutal rapes can and do occur between people who have willingly had sexual relations in the past, because of anger or jealousy or other factors. The fact is that the previous sexual activity of the complainant cannot possibly tell the court whether or not there was force or coercion in the incident at hand.

Perhaps she said "yes" to him before, and perhaps she said "yes" to other men, but how is that relevant if he was holding a knife at her throat that night?



The new law limits the circumstances in which the complainant's previous sexual history can be introduced. The person who wants to introduce such evidence must first ask the court's permission. The court can give permission for sexual history evidence only if it fits within certain categories.

- The evidence can be allowed if it concerns something that has already been discussed by the state prosecutor. For example, if the prosecutor has tried to prove a rape by showing that a young girl was a virgin before the rape and is no longer a virgin, the accused would have the right to show that she had already had sex with other men before the alleged rape.
- The evidence can be allowed to explain the presence of semen, pregnancy, disease or injury, as long as this is related to the question of whether or not there was a rape. For example, if the prosecutor says that the alleged rape was the source of a sexual disease, the accused would have the right to show that the complainant actually got the disease from another sexual encounter.
- The evidence can be allowed if it is such an important part of the accused's side of the story that excluding it would violate the accused's constitutional right to a fair trial.

The court will consider evidence about the complainant's previous sexual history only if it is relevant, and not an unfair violation of the complainant's dignity and privacy.

The judge or magistrate must write down the reasons for allowing or not allowing evidence about the complainant's sexual history.

SPECIAL DUTIES OF A PROSECUTOR

The complainant is not a party to the criminal case. The state has a lawyer called a prosecutor who tries to prove that the person accused of rape actually committed the crime. The accused rapist is on the other side of the case. He or she may be represented by a lawyer as well. The complainant is only a witness.

Because of this, overworked prosecutors in the past often had no contact with the complainant until the day of the actual trial. Many complainants worried about what was going to happen in court, but they had no one to explain the process to them.

The new law addresses this problem by giving prosecutors a special duty to provide information to the rape victim which can help reduce the trauma of the trial (such as an explanation of how the trial will proceed and what questions are likely to be asked).



BAIL

Some people believe that no person accused of rape should be set free on bail before the trial starts. But the Constitution says that all persons are innocent until proven guilty. It is not fair to punish accused persons by holding them in custody before the court has heard their side of the story and decided if they are really guilty. People can be held in custody only if there is a danger that they will try to run away, or a danger that they will interfere with people who will be testifying against them in court. The new rape law allows for bail in rape cases, but it changes the bail procedures to pay more attention to the complainant's concerns.

The problem

In the past, the complainant in a rape case was often unaware that the perpetrator had applied for bail. The complainant might know good reasons why the perpetrator should not be given bail, but this information would not reach the court.

Accused persons who are out on bail are not allowed to interfere with state witnesses. If they do, they can be re-arrested and held in custody until it is time for the trial. Sometimes accused rapists try to frighten the complainant into dropping the charges. Even though this is not allowed, in the past the court would sometimes not hear about it.

The new law sets up new procedures and channels of communication to address these problems.

Special duties of prosecutors

Prosecutors have a duty to make sure that the complainant has given the police or the prosecutor all important information about the crime. This includes information about any reasons why the perpetrator should not be granted bail (such as threats made to the victim) or bail conditions which the court should impose (such as ordering that the perpetrator may not possess a firearm).

Special duties of police

The new law also gives special duties to the police officer who is in charge of the rape investigation. The investigating officer must inform the prosecutor right away if there is any reason to believe that the complainant would be in danger if the perpetrator is released on bail. The investigating officer must inform the prosecutor if the police are investigating the perpetrator in connection with any other crimes. Once bail is granted, the investigating officer must inform the prosecutor right away if the perpetrator violates any of the bail conditions.



Complainant's right to be heard on bail

The complainant must have a chance to inform the court of any threats from the accused *before* bail is considered. The complainant has a right to be notified of the date and time of the bail application. If the bail application is postponed, the complainant must be notified of the new date and time. The person in charge of the police station where the perpetrator is being held must make sure that the complainant gets this information.

The complainant can attend the bail hearing personally. Alternatively, the complainant can ask the prosecutor to present relevant information on his or her behalf. Most complainants will probably prefer the second option, to avoid the trauma of an extra appearance in court and an extra cross-examination.

The court will consider the bail application only if the police can show that the complainant has been notified – unless the delay involved would be so long that it would be unfair to the accused. This exception is necessary to protect the constitutional rights of the accused. Otherwise a rape complainant could “hide”, with the result that the accused would remain in custody for a long period of time without the right to apply for bail.

Complainant's right to information

The complainant must be notified if bail is granted. The complainant must also be notified of the bail conditions which have been imposed.

Automatic bail conditions

It must be an automatic condition of bail in every rape case that the accused rapist is not allowed to have any contact with the complainant.

PRIVACY

Closed court

Under the old law, rape cases involving adults were heard in open court, unless the complainant made a special request that the court be closed during her testimony.

The new law gives greater protection to the privacy of the complainant. It says that the court will be closed to the public during the entire rape trial unless the complainant requests otherwise. If the complainant is a minor, the request to open the court must be made by the complainant's parent or guardian. This provision applies to any criminal case relating to sexual or indecent acts.

Article 12 of the Namibian Constitution says that people are entitled to public hearings, and that judgements in criminal cases must be given in public. But the Constitution says that exceptions can be made to these rules for reasons of “morals”. This exception is the basis for closing the court in rape cases.

No publication of information revealing identity of complainant

The new law makes it illegal to publish any information which might reveal the identity of the complainant. This rule applies to newspapers, radio, television and any other kind of media. No one may publish the complainant's name and address, or photographs which reveal physical features or clothing that might identify the complainant. The protection against publication applies from the moment that the offence is committed, even before the perpetrator has appeared in court. This is important for the protection of the complainant's privacy, since the media often gets information from police dockets before there have been any court appearances.

Information about the identity of the complainant in a rape case can be published only if the court has authorised the publication, or if a complainant who is over the age of 18 has authorised it. The parent or guardian of a rape complainant under the age of 18 does *not* have the power to consent to the publication of that child's identity.

The penalty for publishing information about the complainant's identity without proper permission is a stiff fine of N\$10 000 or imprisonment for up to 1 year, or both.

Article 21 of the Namibian Constitution protects freedom of speech and the press. But the Constitution says that Parliament can make reasonable restrictions on this freedom which are necessary in a democratic society and required in the interests of "decency or morality". This is the basis for restricting freedom of speech in respect of rape complainants.



RAPE AND HIV

As explained above, a rapist who knowingly exposes a rape complainant to HIV through the rape will receive the heaviest minimum sentence. Knowingly exposing someone to the risk of HIV infection is also grounds for a criminal charge of attempted murder, in addition to the charge of rape. A conviction on this charge would be likely to carry a heavy prison sentence, which could be served in addition to the sentence for rape.

It is very important for all rape complainants to have HIV counselling and testing. Rape complainants can also take preventative medication to reduce the chances of contracting HIV from the rape. This medicine should be started as soon as possible after the rape takes place. It must be taken for 28 days in order to be effective. Most hospitals and clinics have free three-day starter packs of preventative medication, which can be used while the rape complainant is arranging to get access to the full 28-day course of medication, but the 3-day package alone will NOT help to prevent HIV. Some medical aid funds cover HIV-prevention medicine. More information about rape and HIV is contained in the chapter below on **“What to do if you are raped”**.

The law does not make provision for testing rape perpetrators for HIV. But preventative medication is most effective if it starts as soon as possible after the rape. This means that there is no time to wait for the results of an HIV test of the perpetrator before making a decision about whether to begin preventative treatment. Also, HIV test results for the perpetrator do not and cannot predict whether the rape survivor will be infected with HIV. It is possible that the rape complainant will not become infected, even if the perpetrator is HIV-positive. It is also possible that a perpetrator who is HIV-positive might test negative, if he or she has been only very recently infected. The only safe course of action is for the rape complainant to assume that the perpetrator may have been HIV-positive, and to act accordingly in terms of medication, counselling and testing.



COMMON QUESTIONS ABOUT RAPE

These are questions which are often asked about the new law on rape. You should already know the answers to some of the questions from the text above, but these questions will help you review your understanding of the new law.

Is it possible for men and boys to be raped?

The new law on rape defines the most intimate forms of forced sexual contact as rape. Some of the sexual acts which are considered to be rape can be forced upon men and boys.

For example, forced sexual contact is rape if it involves the insertion of a penis or any other body part or any object into the anus, or the insertion of a penis into a person's mouth. Forced sexual contact is rape if the attacker stimulates the genitals of a boy or a man with the mouth, or in any other way.

Boys and men are at risk anywhere, but in most societies rape is a particular problem for men who are confined in prison. In this environment, some men use rape as a way to exert power over other prisoners.



Is it really possible for a husband to rape his wife?

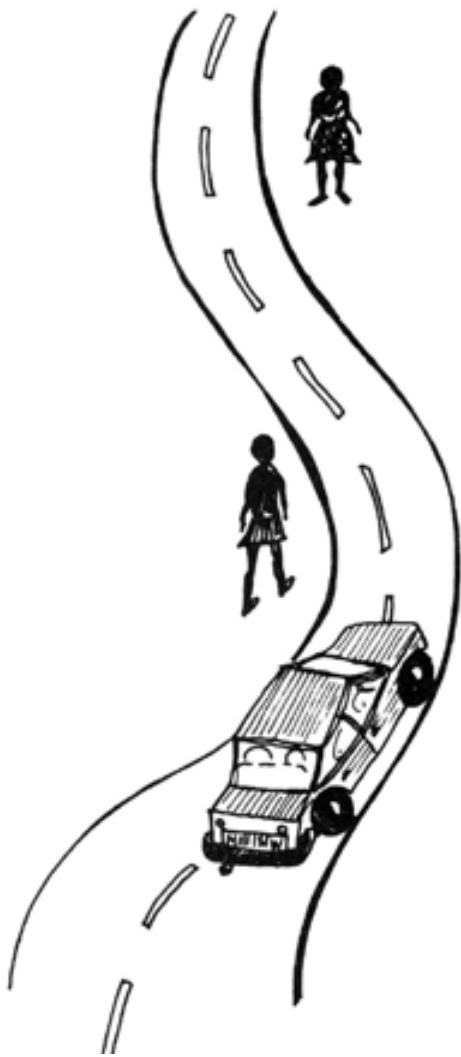
A husband and wife agree through their marriage to be sexual partners in a general sense. But this does not mean that they have agreed to have sexual contact at any time, under any circumstances.

For example, suppose that a wife suspects that her husband is HIV positive, or is engaged in extramarital affairs which could expose him to HIV and other sexually-transmitted diseases. She has a right to refuse to have sexual relations with him, to protect her own life and health.

One case which took place in Namibia involved a husband who threw his wife against a mirror, cracking her head open. He then forced her to the ground and had sex with her while the children looked on in horror. Is this not rape?

Another real-life case involved a husband who forced a broomstick into his wife's genitals. Is this not rape?

Rape involves the use of force or coercion. The crime of rape will not apply to normal sexual relations, or even to situations where one spouse wants sex and the other reluctantly agrees. But it will apply to situations where a spouse is forced into a sexual act against his or her will.



Is it possible for prostitutes to be raped?

A prostitute can be raped. A prostitute offers to engage in a specific sexual act for money. But a prostitute still has the right to refuse to engage in some other sexual act, or to refuse sex in some other situation. No one has the right to use force or coercion against another person, regardless of whether that person is a virgin or a prostitute.

But what about a situation where a prostitute agrees to sex and then lays a charge of rape because the client refused to pay, or because he would not give her more money? This could happen, but the law has many safeguards to make sure that no one is convicted for a crime he did not commit. All crimes have to be proved “beyond a reasonable doubt”, which means that the evidence must be strong. If there is only one witness to a crime, then the evidence of that witness must be treated with caution. These rules apply to all crimes. They make it very unlikely that a person would be convicted on a false charge of rape.

It also happens that a person who has actually committed a rape will falsely claim that the complainant agreed to sex and then asked for money afterwards. Rapists sometimes try to make rape complainants seem like prostitutes so that their story will be believed.

The way to prevent confusion is to look at the evidence to see if force or coercion was used by one person against another in connection with a sexual act. Under the new law, this is all that matters. The issue of prostitution is not relevant.

Does the new law discriminate against men?

Not at all. In fact, it was the old law which discriminated against men and boys because it gave protection against rape only to women and girls.

Most perpetrators of rape are male. But all persons are innocent until proven guilty in the eyes of the law. The law as it now stands still has many safeguards which make sure that no innocent person is convicted of a crime. For example, as already noted above, all crimes have to be proved “beyond a reasonable doubt”, and the court must treat the evidence of a single witness with great caution if there is no supporting evidence (such as another witness or medical evidence or fingerprints). These rules make it very unlikely that a person would be convicted on a false charge of rape.

All people, male and female, have a duty to make sure that a sexual act is being undertaken freely by the other person. If there is any doubt whatsoever, then the sexual encounter should not be taking place. This is not just a matter of law, but of mutual dignity and respect.

Is it possible for a rape case to go forward even if the complainant wants to withdraw it?

For example, it sometimes happens that the family of the person who was raped pressures him or her to withdraw the case, because they prefer to seek compensation under customary law.

It is possible in theory for a rape case to proceed if the rape complainant who initially laid the charge later withdraws it. This seldom happens in practice because it is hard to get enough evidence to prove that the rape took place without the co-operation of the person who was raped. But it might be possible in a case where there were several witnesses and a reliable medical report which included proof of the sexual act in question.



Is it possible for a charge of rape to be laid by someone other than the person who was raped?



It is possible in theory for a charge of rape to be laid by someone other than the person who was raped, such as a witness to the rape. But it is unlikely that there would be enough evidence to go forward with a prosecution under these circumstances. It might be especially hard to prove that the sexual act took place and that force or coercion was really used without the co-operation of the person who was raped.



WHAT TO DO IF YOU ARE RAPED

KEEP EVIDENCE

Evidence means information and physical things that can support what you will tell the court in the rape case. Good evidence is important to make sure that the person who raped you will be found guilty and sent to prison.

Do not wash yourself. The doctor will be able to find important evidence on your body. This evidence will be destroyed if you wash.

Do not change your clothes. There might be important evidence on the cloth.

Do not tidy up the place where the rape happened. Do not wash anything which might have evidence such as blood or semen on it.

If you have to carry anything to the police station which might be used as evidence, **do not put it in a plastic bag.** Plastic can destroy this kind of evidence. Wrap the items in newspaper or some other kind of paper instead.



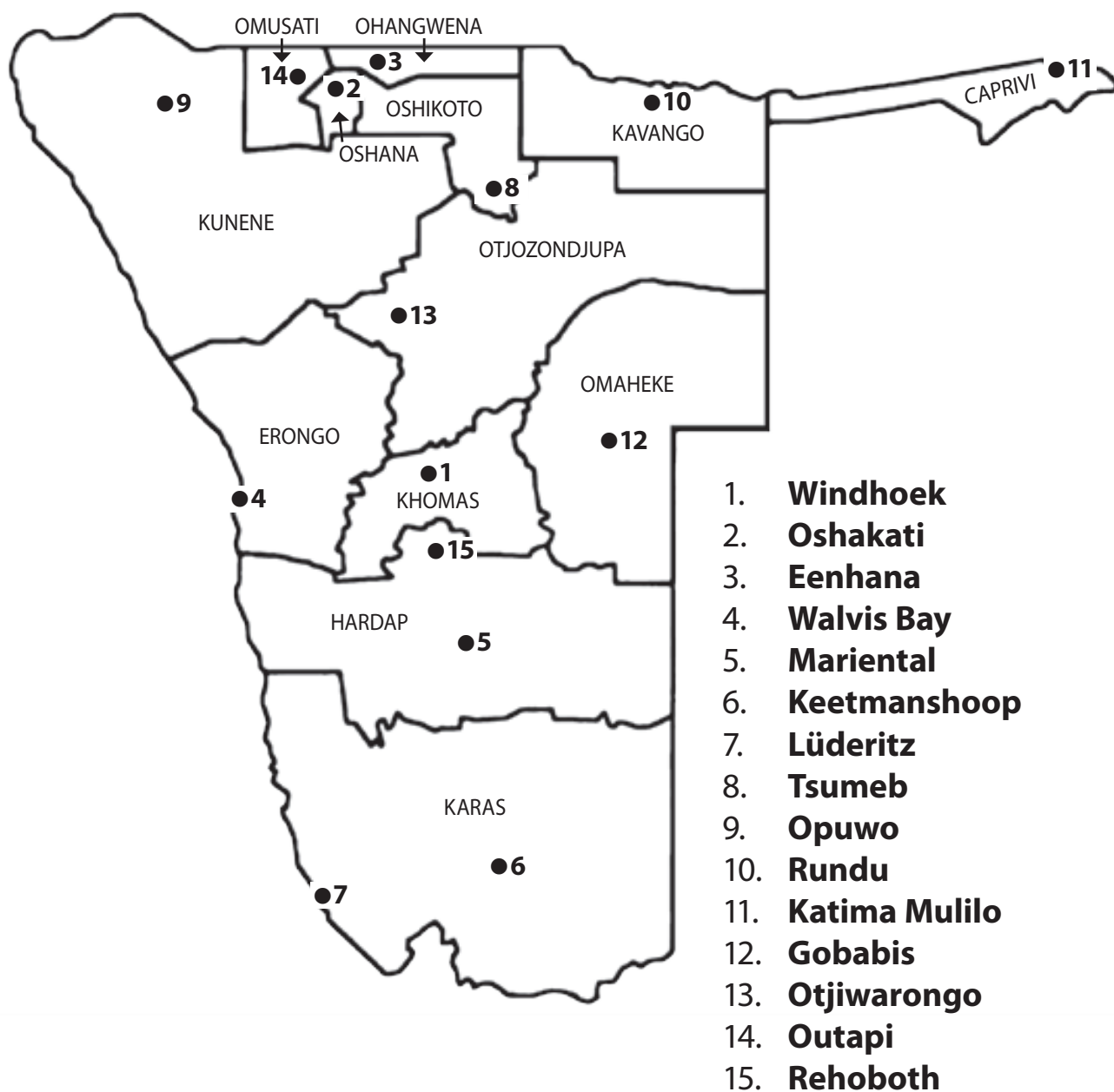
GO TO THE POLICE

You should report the rape to the police so that the person who raped you can be caught. This might prevent the rapist from raping someone else.

If you are a woman, it is also important to report the rape to the police in case you become pregnant from the rape. This will make it easier for you to get a legal abortion if you choose.

If there is a Woman and Child Protection Unit in your area, you can go there to make your report. Police in these units have special training in how to deal with rape cases. They can help you get medical attention right away. They will also arrange for you to speak with a social worker.

Woman and Child Protection Units, 2010



It is best to go to a police station or a Woman Child Protection Unit as soon as possible. The police can help you get to a hospital or a clinic. They can ask you questions about the rape while you can still remember exactly what happened. They can collect evidence which will be helpful in the court case.

You should bring a change of clothes with you to the police station so that they can keep the clothes you were wearing during the rape as evidence.

If you are a woman, you can ask to speak to a female police officer. If you are a man, you can ask to speak to a male police officer. You can also ask to speak about the rape in private, in a room with no one else in it but you and the police officer who is asking you questions. You can bring a friend or a relative with you for support if you wish.

The police officer will ask you questions about the rape and write down your answers. This is called a “statement”. You should try to describe everything that happened. Try to remember every detail. But you do not have to answer any questions that are not about the rape. If the police do not ask you about something you think is important, tell them the information anyway. Do not avoid saying what happened because you are embarrassed. The information may be helpful.

Be sure to tell the police if you know the name of the person who raped you or anything about him/her, such as where he/she lives. This will make it easier for the police to make an arrest.

If you are afraid that the person who raped you may come back and hurt you, be sure to tell the police. Sometimes a rapist will threaten to kill the person who was raped if they tell anyone. If the rapist threatened you, tell the police about this. If you have a good reason for being afraid, then the person who raped you will not be set free on bail.

If the person who raped you is set free on bail, be sure to tell the police right away if he/she tries to see you or speak to you. If this happens, then the bail will be taken away and the rapist will be kept in custody until the trial starts.

Be sure to tell the police if there is anyone else who saw the person who raped you, or heard what was happening. Statements from other witnesses to the rape can be very helpful in the court case.

You do not have to give your statement right away. If you want to rest and come back the next day, this is all right. But the police will want you to see a doctor right away, before important evidence on your body disappears.

You should ask the police to write down the number of your case for you. This will make it easier for you if you want to get information about the case later on.

The police may want to speak to you again, to ask you more questions after they start investigating the case. They might want to visit the place where the rape happened, to look for fingerprints or other evidence. You can also go back to the police station later if there is anything that you forgot to tell.



GO TO A DOCTOR, CLINIC OR HOSPITAL

You must get medical help right away. You might want to go to a doctor, clinic or hospital even before you go to the police, especially if you have been hurt. You must be sure to explain that you have been raped. If you go to the police first, they will take you to the hospital or clinic.

You may have been exposed to HIV as a result of the rape. There is medicine that can reduce your chances of becoming infected with HIV, but it works only if you start taking it very soon after the rape. The sooner you start taking it, the more it will help. Most hospitals and clinics have a three-day starter pack of HIV-prevention medication which you can get for free. You will have to take the medicine for 28 days, but the starter pack will give you time to arrange payment for the full course of medicine. Some medical aids cover HIV-prevention medication. There are also some organisations that will help you find money for the HIV-prevention medication if you cannot afford it.

You may have been exposed to another sexually-transmitted disease as a result of the rape. There is medicine that can reduce your chances of becoming infected with other sexually-transmitted diseases, such as syphilis or hepatitis. It is also best to start taking this medicine as soon as possible.

If you are a woman, you may be in danger of becoming pregnant from the rape. There are pills that can prevent pregnancy if they are taken right away. You should be given four pills, two to take now and two to take 12 hours later.

You will need information about the side effects of medicines which can help to prevent HIV infection, other sexually-transmitted diseases and pregnancy. For example, some of these medications can cause nausea or headaches. You should ask the doctor who gives you these medications to explain what side effects you might experience, and what steps you can take to reduce the side effects.

You will need information about follow-up testing. It is important to be tested at the right times for HIV, for other diseases that could result from the rape, and for pregnancy. You can also get counselling which will help you to feel less afraid about having these tests.

The doctor may be able to collect evidence about the rape. Do not wash or change your clothes before you see the doctor. The doctor will ask you some questions about the rape. The doctor will examine you, and write down information about any injuries that you got from the rape. The doctor will probably want to examine the inside of your vagina or anus, to look for injuries and to collect evidence such as semen. The doctor will probably take some blood from your arm to send to a laboratory for testing. The doctor will also look at the clothing you were wearing during the rape to see if there is evidence such as semen or blood.

IF YOU BECOME PREGNANT FROM THE RAPE

If you did not get the pills which can prevent pregnancy, or if they did not work for some reason, you can get a legal abortion. You should get a pregnancy test right away if your next period is late, and you should tell your doctor that you want an abortion. Your doctor will help explain the procedure to you. You will have to see a second doctor and get a certificate from a magistrate.

You can get a legal abortion even if the rapist has not been found or brought to court. You do not have to wait for the court case.

You can get a legal abortion if you have not laid a charge with the police. But you will have to explain to the magistrate why you did not go to the police.

THE BAIL HEARING

The person who raped you will be arrested if the police can find him/her. The rapist is called the *accused* because he/she is being accused of the crime of rape.

The accused rapist will have a right to ask to be let out on bail until the trial starts. *Bail* is money that is paid to the court to make sure that a person accused of a crime shows up in court for the trial. If the accused person comes to court, the bail money is returned. If the accused person runs away, the court will keep the money.

There will be a hearing (a discussion in court) to decide if the accused rapist will be let out on bail. There will be no bail if there is a strong risk that the accused rapist will run away. There will be no bail if the accused has threatened to hurt you, or if there is some other reason to believe that the accused might try to harm you before the trial starts. You must tell the police if you know of any reason why the accused should not be given bail.

The police must tell you when the bail hearing will be. The bail hearing cannot take place unless you have been informed. You can ask to give the court information, or you can ask the police officer who is investigating the case to speak on your behalf. If you speak at the bail hearing, the accused or the lawyer who is helping the accused will probably want to ask you questions.

THE COURT CASE

If the prosecutor thinks that there is enough evidence to make a case against the rapist, there will be a trial. It may be a long time before the trial takes place. You may have to wait as much as a year.

You do not bring the case against the rapist. The police and the *prosecutor* bring the case. A prosecutor is a lawyer who works on criminal cases for the government.

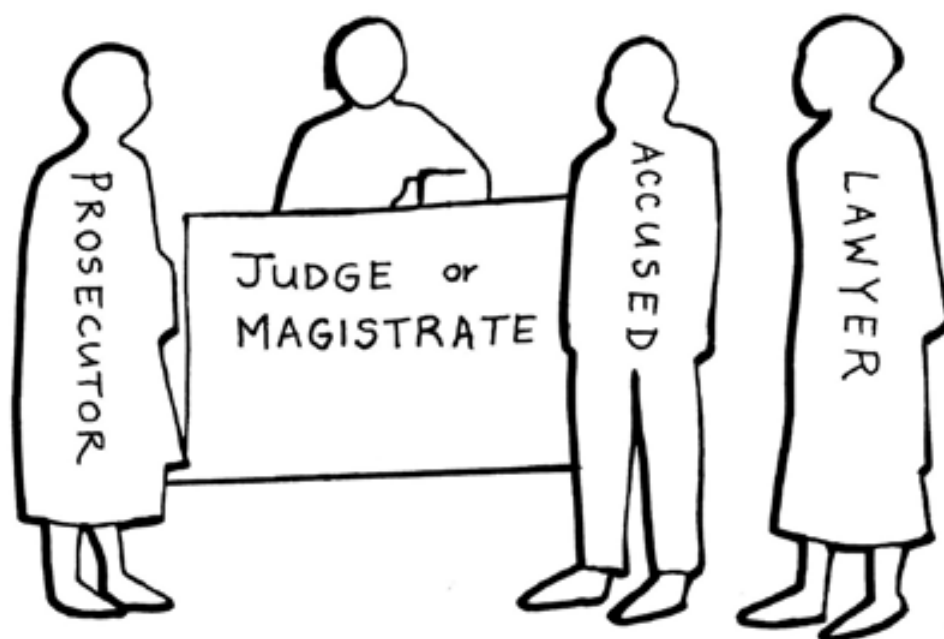
You will have to appear at the trial as a witness. You are called the *complainant* because you have made a complaint to the police about being raped.

If you have to spend money on transport to the court, you can get a refund. If you lost money because you have to miss work to come to the trial, you can get some or possibly all of this money back. You can discuss questions about money with the Clerk of the Court.

The prosecutor should meet with you ahead of time to explain exactly what happens in court. The prosecutor has a legal duty to do this. The prosecutor might ask a social worker to take you to the courtroom ahead of time to show you where you will sit and to give you more details about what will happen on the day of the trial. You can go through the statement you gave to the police before the trial starts, to refresh your memory about the details. You must say the same things in court that you said to the police.

You might want to ask someone to come along with you to the trial – a friend, or a social worker or someone from a counselling group.

A judge or a magistrate will be in charge of the trial. The prosecutor will try to show that the accused rapist is guilty of the crime. The accused rapist will try to show that he/she is not guilty. There may be a lawyer who will ask questions and make statements on behalf of the accused. This lawyer is called the *defence lawyer*, because this lawyer is defending the accused against the charge of rape. You do not have a lawyer representing you because the court case is between the state on one side and the accused rapist on the other side.



The trial will be held in private, unless you want the court to be open to the public. Only the people who must be present will be allowed inside the court: the judge or the magistrate, the prosecutor, the accused and the accused's lawyer. There may also be a person who records what happens in court, a police officer who takes care of things which are presented to the court as evidence and a clerk who helps out.

When it is your turn to give evidence, the prosecutor will ask you questions about what happened when you were raped. The judge or the magistrate might also ask you some questions. The accused, or the lawyer who is representing the accused, will also ask you some questions. This is called *cross-examination*.

The accused (or his or her lawyer) will try to convince the court that the accused did not rape you. This means that some of the questions you are asked in cross-examination may be harsh. The defence will try to show that you are mistaken, or that you are not telling the truth. You must try to stay calm and answer everything truthfully. You must explain exactly what happened, even if it is embarrassing to talk about. If you do not know the answer to a question, say that you do not know. Never make up an answer.



No one may ask you questions about your sexual reputation. 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.

There are only a few questions about your sexual history which can be allowed. 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 judge or the magistrate.

Other people may also give evidence to the court. For example, the doctor who examined you may also give evidence. The police who investigated the case might give evidence. Other people who saw or heard what happened may give evidence. The accused may give evidence, but this is not required.

At the end of the trial, the judge or the magistrate will say that the accused is “guilty” or “not guilty”. If the court finds the rapist “not guilty”, this does not necessarily mean that the judge or the magistrate did not believe you. It means that there was not enough evidence to find the accused guilty. The court has a duty to be very careful not to send any innocent person to prison, so the law says that there must be enough evidence to leave no doubt. If you are the only witness, the judge or magistrate may find that there is not enough evidence.

If the accused is found “not guilty”, he/she goes free. If the accused is found “guilty”, the judge or magistrate will hear more evidence to decide on what the punishment will be. The punishment is called the *sentence*. The decision on the sentence may happen right away, or it may happen a few days or weeks later. The prosecutor will inform you when the sentencing will take place. The prosecutor should also contact you to tell you what sentence the accused got if you are not in court on that day.

COMPENSATION

You can ask the prosecutor to request compensation for some kinds of costs at the criminal trial. But this can make the criminal trial take much longer. Also, there are some kinds of costs that cannot be requested in the criminal case.

You can pay a lawyer to take the accused rapist to court in a separate case, to try to get the accused to pay you for all the costs of the rape. This is called a *civil case*, and the costs are called *damages*. It does not matter in a civil case whether the accused was found “guilty” or “not guilty” in the criminal trial, because the rules for civil cases are different. You can bring a civil case even if the accused was never arrested at all.

If you contract HIV as a result of the rape, damages from a case against the rapist for compensation can help out with the costs involved on dealing with HIV/AIDS

HOW PEOPLE REACT TO RAPE

Different people react to rape in different ways. This section lists some common reactions and describes the stages of response which are experienced by many rape complainants.

THE IMPACT OF RAPE

These are some of the feelings a person who has been raped may experience:

Fear

The rape complainant has very likely been injured or threatened. He/she may feel weak or unsafe. He/she may feel afraid that it could happen again.

Anger

The rape complainant may feel that he/she has lost control over his/her life. The rape complainant may feel angry that such things as rape can happen in our society. The rape complainant may direct his/her feelings of anger towards the rapist, the doctor, the police, family member or himself/herself.

Guilt

The rape complainant may feel guilty. He/she may feel that the rape was somehow his/her fault. The rape complainant may wonder if he/she could have done something to get away from the rapist. The rape complainant might blame himself/herself for walking alone at night, for leaving a door or a window open, or for inviting a “friend” into the house. The rape complainant may worry that he/she did something which unintentionally encouraged the rapist.

Shame

The rapist may have forced the rape complainant to do things which made him/her feel dirty or disgusting. The rape complainant may feel that the rape has destroyed his/her self-respect. The rape complainant may feel that he/she will be blamed for not being able to stop the rape from happening.

Loss of control

The rape complainant may feel disempowered because he/she had to give into the rapist, even though the rapist used force or coercion. Even a small decision, such as what to wear or to eat, may be difficult after a rape.

The impact of a rape can last for many years. A rape complainant who never talks about what happened may still be suffering inside. These are some other possible after-effects of rape:

- uncontrollable crying
- uncontrollable shaking or trembling
- stuttering or stammering
- nightmares, sleeplessness, disturbed sleep, or sleeping more than usual
- weight loss or eating disorders
- nausea or vomiting
- headaches
- repeated bathing or washing
- feeling unusually alert or watchful, being more easily startled or frightened than usual
- general feelings of fear or anxiety
- feeling restless and unable to relax, or sitting quietly with little movement
- feeling numb or withdrawn, or having difficulty feeling or showing any emotion at all
- feeling irritable, angry or confused
- having mood swings (sudden changes of mood)
- loss of memory about aspects of the rape
- fear of sex or loss of interest in sex, even with a supportive spouse or an intimate partner
- fear of being rejected by a spouse or an intimate partner who may now find the rape complainant “dirty”
- fear of strangers
- fear of being alone
- fear of being touched
- distress caused by exposure to something that is a reminder of the rape (such as a television programme showing a similar kind of violence, or passing by the place where the rape occurred)
- flashbacks, which are sudden intense memories of the rape which have the effect of re-living it
- men who have been raped may feel that their masculinity has been taken away, which can lead to suicide, self-harm or unusually aggressive behaviour in an effort to compensate for the feeling of being emasculated
- difficulty making decisions
- difficulty in concentrating
- changes in behaviour (such as increased smoking or drinking, socialising more or less than usual, changes in relationships with family members)
- lack of interest in life or in normal activities, such as work or school
- general depression or sadness
- thoughts of suicide.

Most people who have been raped will experience some of these symptoms, but others may experience few of them or none at all. It is not possible to judge whether someone has really been raped by the number of symptoms that they display.

Some of the possible reactions to rape could affect the rape complainant’s ability to give a clear police statement, or to give detailed testimony in court.



STAGES OF RESPONSE

Each individual will react differently to rape. There is no “proper” or “normal” way to react. All people have different ways of coping with personal crisis, depending on culture, upbringing, age, education level, the nature of the attack and individual personality.

However, there is a broad pattern which is common to many people. Different experts describe different “stages” of response to a rape. Some divide responses into two, three or even four different stages. Responses to rape are grouped into three stages below for purposes of discussion. The different feelings, fears and physical reactions which have been described above can occur in different degrees during any of these three stages. There is no predictable time frame for the different stages of response.

First stage: acute response

Immediate responses vary. Physically, some rape complainants may experience shock. They are likely to feel cold, faint, become confused, feel nauseous or sometimes vomit.

Emotionally, some rape complainants will seem numb or controlled because they are feeling shock or disbelief. They may seem quiet and reserved, or have difficulties expressing themselves. A person who was raped by an acquaintance may have a particularly difficult time overcoming shock and disbelief. A person who suffered an extremely terrifying or brutal rape may experience extreme shock, and completely block out the memory of what happened.

Some rape complainants, on the other hand, will be visibly upset and very emotional. They may show obvious signs of sadness or anger. They may appear distraught or anxious. They may express rage or hostility against police, medical staff or other people who are trying to help them. They may talk a lot, cry, swear, shout, or even laugh. Any emotion is appropriate—because each person has different ways of responding to extreme stress.

These two kinds of immediate responses may even alternate. Rape complainants may experience a variety of emotions or mood swings. They may feel angry, afraid, lucky to be alive, humiliated, dirty, revengeful, degraded. There is no particular response that is “normal”.

Second stage: reorganisation

In the second stage, people who have been raped usually make an effort to come to terms with what has happened. They make an effort to re-establish the routines of their life. Sometimes, people who have been raped make dramatic changes in lifestyle or environment, in an effort to re-assert control over their lives. They may quit a long-standing job or move to a new location to get a fresh start. They may dramatically change their appearance – such as cutting their hair or changing hair colour. But changes such as these are unlikely to succeed in creating a renewed sense of security. In this stage, some people suppress their feelings because dealing with them is so painful.

There is usually some point where persons who have been raped are ready to confront their feelings about the rape. They may want to talk about what happened, or to begin counselling. Some people may feel overwhelmed as they attempt to deal with feelings they have struggled to suppress since the rape took place. They may find themselves taking one step forward and two steps back as they battle to find their way.

While some people are able to move forward with their lives after a rape, others continue to suffer intensely for many years and will need continuous counselling and support.

Third stage: resolution

Most people who have been raped eventually reach a point where the rape is no longer the central focus of their lives. They will never forget the rape, but the pain and the memories associated with the rape gradually become a little less strong. They accept the rape as a part of their life experience and move on from there. Some of the traumatic reactions previously experienced may continue to flare up at times, but this may begin to happen less frequently and with less intensity. Some people say that this is the point at which a person moves from being a rape “victim” to being a rape “survivor”.



HOW TO BE A FRIEND TO SOMEONE WHO IS RAPED

Rape is a terrible, humiliating experience. It is important for everyone who deals with a rape complainant to be sensitive and kind. Here are some things you can do to help:

- Be aware of the different emotions a person who has been raped may be feeling.
- Assume that the person who has been raped is upset, no matter how that person is reacting. Rape complainants may talk about their feelings, or they may hide them inside. They may even seem calmer than their family and friends. Do not let this fool you. Reactions may take place immediately, or they may show up only hours, days, months or years later.
- Treat a person who has been raped very gently. Try to remain calm yourself, so that you are not the cause of further worry.
- Give a person who has been raped privacy and respect. Remember that it is usually very difficult for rape complainants to talk about the physical details of what happened. Do not ask questions just because you are curious. Do not talk about the rape with other people, or when other people are present.



- Do not rush a person who has been raped. Let rape complainants talk about what happened at their own pace.
- Listen sympathetically. Let the person who has been raped know that you appreciate the fact that he or she has been through an extremely traumatic experience.

- If the rape complainant does not want to speak about the rape, accept that silence. Do not try to force communication. Just leave the door open and wait until the rape complainant is ready to talk.
- Try to re-assure the rape complainant that there is a wide range of responses to a rape. Assure the rape complainant that whatever he or she is feeling is “normal”.
- Do not negate the rape complainant’s experience. Do not say things like “You’ll get over it” or “Try not to worry about it” or “Put it behind you”. It is important to acknowledge and accept whatever the rape complainant is feeling. Remember that healing is not a quick or easy process.
- You can suggest options, but do not make decisions for the person who is raped. Taking over will just make that person feel more powerless.
- Discourage a person who has been raped from being alone. He or she will need support and reassurance at this time.
- Encourage rape complainants to get medical assistance immediately. This is vital to reduce the chances of HIV infection, infection with other sexually-transmitted diseases and pregnancy. It is also important to have a prompt medical examination to get evidence for the court case.
- Encourage rape complainants to get counselling, and tell them about local groups that offer counselling. A person who has been raped might not feel ready for counselling right away, but counselling may still be helpful later on.

Counselling is talking about the rape with someone who can help you understand your feelings more fully and find ways of dealing with them. Sometimes spouses and other family members of the rape complainant can also benefit from counselling.



- Assess your own values and beliefs about rape. Do you have a biased attitude? Do you believe in your heart that the person who was raped must have done something to “deserve it”? If you are not able to approach the person who was raped in an open and fair-minded way, then you should not be involved. Do not cause further damage to a person who has already been brutalised by a rape.
- A person who was raped has already been victimised by the rapist. Do not as a member of society victimise that person again.



REMEMBER:
WHATEVER HAPPENED AND
HOWEVER IT HAPPENED,
RAPE IS THE FAULT OF THE RAPIST.

WHERE TO GET HELP

The following organisations offer counselling, advice and support to persons who have been raped:

- **a social worker**
- **your church**
- **your school guidance counsellor**
- **Woman and Child Protection Units**

• Eenhana – Ohangwena Region	065-264204
• Gobabis – Omaheke Region	062-566144
• Katima Mulilo – Caprivi Region	066-251215
• Keetmanshoop – Karas Region	063-221826
• Lüderitz – Karas Region	063-203668
• Mariental – Hardap Region	063-345000
• Opuwo – Kunene Region	065-273148 ext. 138
• Oshakati – Oshana Region	065-2236056 or 2230657
• Otjiwarongo – Otjozondjupa Region	067-300625
• Outapi – Omusati Region	065-251863
• Rehoboth – Hardap Region	062-523223 (NamPol)
• Rundu – Kavango Region	066-266330 (NamPol)
• Tsumeb – Oshikoto Region	067-2235053
• Walvis Bay – Erongo Region	064-219068
• Windhoek – Khomas Region	061-2095375 or 2095374

- **Other organisations**

• Andreas Kukuri Centre, Okahandja	062-503331
• Dutch Reformed Church Benevolence Board, Windhoek	061-374350
• Helping Hand Welfare Organisation, Windhoek	061-257986
• Namibia Women's Association, Windhoek	061-262461
• Philippi Trust Namibia, Windhoek	061-259055
• Save the Children Project, Gobabis	062-564987
• Stop the Violence Women's Group, Okahandja	062-501355
• Walvis Bay Child & Family Centre	064-209457
• Women's Solidarity, Windhoek	061-260924

- **Telephone counselling**

• Helpline	081-1271002
• Lifeline/Childline	061-226889



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