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*Fighting for human rights in Namibia since 1988*



# *Pro* Bono

## INFORMATION ABOUT NAMIBIA'S LAW

### VICTIMS RIGHTS: INFORMATION

The victim of a housebreaking goes to court on five different occasions to testify. No one notifies her of the verdict or the sentence when the case is over. She telephones the magistrate's court to find out what happened in the case only to be told that the information is confidential. She learns of the case outcome only after reminding an administrative official on the phone that Article 12 of the Namibian Constitution requires that judgments in criminal cases must be given in public, which means that the case outcome cannot be secret.

The victim of an armed robbery at her home is told by the police that two of the four suspects have been caught. She contacts the investigating officer repeatedly by text and by phone to find out if the accused were released on bail. After all, the accused men know exactly where she lives. After months of fruitless enquiries, she finally writes a letter directly to the Inspector-General of Nampol and eventually learns that the accused are out on bail – but no one informs her whether there are any bail conditions relevant to her safety, and she has no idea what to do if the accused should approach her before the case is concluded. On one occasion when she goes to court to testify, the case is postponed and two of the men who tied her up at gunpoint walk out of the courtroom right beside her.

A brave child rape victim testifies in court, which is a deeply traumatic experience. After she has finished giving her evidence, she never hears anything else about the case or its ultimate outcome. Family friends make enquiries on her behalf. Two months after the case was concluded, she finally learns that the verdict was “not guilty”. No one explains to her or her family that this does not mean the court disbelieved her testimony, but only that there was not enough evidence to prove the case beyond a reasonable doubt.

These are real, recent criminal cases in Namibia. Dozens of similar tales could be told. No one offered any of these crime victims any support.

At an international level, the starting point is the 1985 *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. This Declaration is a non-binding statement of broad minimum standards for victims. One of its principles is that victims should be informed about the timing and progress of criminal proceedings and their role in these proceedings – particularly where serious crimes are involved. The Declaration also states that victims should receive “proper assistance” throughout the legal process, and that measures should be put in place to ensure their safety, protect their privacy and minimize inconvenience to them.

A 1999 UN *Handbook on Justice for Victims*, which discusses how to apply the Declaration in practice, notes that some jurisdictions encourage the investigating police officer to find out if a victim

wishes to be kept informed of case progress, and if so, to indicate this in the case file. The responsibility to inform the victim of developments should then follow the case file from police to prosecutor.

In the wake of the UN Declaration, many countries adopted charters of victims' rights, with some countries setting out these rights in binding legislation. This is mandatory in the EU, where a 2012 "*Directive establishing minimum standards on the rights, support and protection of victims of crime*" articulated standards which all EU states were required to incorporate into national legislation by the end of 2015 (although not all members of the EU complied with this requirement on time). One of the victims' rights covered in this Directive is the right, on request, to be informed of the time and place of the trial, the nature of the charges against the accused, the progress of the criminal proceedings, the case outcome and the release or escape of the offender from custody or a decision not to proceed with the investigation or prosecution. Another of the many victims' rights issues covered is the need to prevent unnecessary contact between the accused and the victim during the criminal proceedings, with all new court premises being required to incorporate separate waiting areas for victims.

One of the first **United States** laws aimed at protecting crime victims (the *Victim and Witness Protection Act, 1982*), explained the problem well: "Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders."

This law went on to note that, while the accused will normally be provided with a lawyer who can explain the criminal justice process and the accused's rights, the victim receives no legal advice and is usually not even notified of crucial information such as changed court dates or case conclusions.

The US *Victims' Rights and Restitution Act of 1990* set out victims' rights to be informed of the status of the investigation and the criminal case at every step of the way, including the case outcome, sentence and the release or detention status of the offender.

A more recent US federal law, the *Crime Victims' Rights Act, 2004*, lists additional victims' rights, including the right to protection from the accused, the right to accurate and timely notice of any court or parole proceedings, the right to confer with the prosecutor, the right to have the case finalised without unreasonable delay, the right to respect for his or her dignity and privacy, and the right to be informed of the rights and services afforded to victims. This law also added a new enforcement measure by providing that a victim can seek a court order requiring that his or her rights as a victim must be actioned.

In practice, a victim will usually receive a letter from the US Attorney's Office about the forthcoming criminal proceedings, with a PIN number that can be used to access information about the case status by telephone or from a dedicated website. There is also a Victim-Witness Coordinator at each federal prosecutors' office whom victims can telephone at a toll-free number for information about case progress or victim services. This Coordinator also assists victims with travel and accommodation arrangements, including arranging state reimbursement for those expenses when the victim must come from another location to testify.

**Ireland** has enacted a *Criminal Justice (Victims of Crime) Act, 2017* which the government has summarized in a more accessible *Victim's Charter*.

One of the focuses of this law is the victim's right to information – including information about victim support services, legal advice and legal aid available to victims in some types of cases, translation services, protection services if the victim is in danger and possibilities for victim compensation. The victim can specify how much information to receive and what form of communication is preferred.

The right to information about the case can be limited if it might interfere with the investigation, prejudice the criminal proceedings, endanger any person, or endanger State security.

Interestingly, the victim also has the right to request a review of a decision not to proceed with an investigation or a prosecution.

The rights afforded to victims can be claimed by a family member where the victim died as a result of the offence.

Ireland has also established a State-funded Crime Victims Helpline, which is a confidential national helpline staffed by trained volunteers. This helpline offers information and support to anyone affected by a crime, regardless of when the crime took place, who committed it or whether or not it was reported to the police.

**Canada** has a federal *Victims Bill of Rights* enshrined in law and structured around four basic rights: information, protection, participation and restitution.

This law give victims the right to convey their views about decisions which must be made by authorities in the criminal justice system – but it also states that the law must not be applied in a manner that interferes with police or prosecutorial discretion, causes delays in the case or endangers national security or the safety of any person.

With respect to enforcement, every agency involved in the criminal justice system is required to have a complaints mechanism that can be utilised by victims who believe that their rights under the law have been infringed.

In 2007, Canada created the Office of the Federal Ombudsman for Victims of Crime as a mechanism to ensure that the federal government meets its responsibilities to victims. Victims can contact this Ombudsman to get information about rights and services available to them, or to file complaints. This Office is also mandated to work proactively to ensure that policy makers and persons working in the criminal justice system are aware of victims' needs and concerns.

**South Africa** introduced a *Service Charter for Victims of Crime* in 2004, along with a *Minimum Service Standard for Victims of Crime*. The *Charter* is built around seven key rights: (1) the right to be treated with fairness and with respect for dignity and privacy; (2) the right to offer information; (3) the right to receive information; (4) the right to protection; (5) the right to assistance; (6) the right to compensation; and (7) the right to restitution. The *Minimum Service Standards* document explains how the criminal justice system works in simple language and informs crime victims of what services they should expect from different service providers.

Services to victims are coordinated by the government's National Victim Empowerment Programme, which aims to encompass a balanced response to crime that considers the victim, the wrongdoer and the community.

South Africa is in the process of considering a *Victim Support Services Bill* that would entrench and expand the concepts in the *Charter*. The Bill would place specific duties on various state agencies – including the provision of trauma counselling and a 24-hour toll-free hotline where victims of violent crime can report victimisation.

With respect to case information, the Bill would give specific responsibilities to police and prosecutors for keeping victims fully informed of developments and decisions concerning the case investigation and criminal trial. It would also require the prosecuting authority to consult the victim before the criminal proceedings take place and to offer witness preparation services if the victim must give evidence.

In **Namibia**, the Constitution includes an extensive provision on the right to a fair trial but is silent on the rights of crime victims.

Namibian law does already give some attention to victims' rights, in scattered ways. In terms of the Criminal Procedure Act 51 of 1977, trials involving child witnesses and trials involving certain offences (such as sexual and domestic violence crimes) are not open to the general public, and there are restrictions on publishing information that would reveal the identity of the victim.

There is an avenue for inviting victim input on bail in rape and domestic violence cases (either directly or via the investigating officer), and a provision requiring notice to victims of these crimes if bail is granted.

There are also a number of special procedures designed to reduce the trauma of court appearances for vulnerable witnesses, which include children and victims of sexual or domestic violence offences. However, many of these protective procedures exist on paper without being systematically applied in practice.

Parliament has also passed the Witness Protection Act 11 of 2017, which is aimed at protecting witnesses and their families against victimisation – but this Act is yet to be brought into force.

A lack of attention to victims' rights can undermine confidence in the criminal justice system and lead to public reluctance to report crimes or testify in court. The failure to provide information to victims is just one aspect of victims' rights which is neglected in Namibia. We suggest that Namibia should embark on a process of public consultation on this topic, with a view to establishing a Charter of Victim's Rights backed by law, with binding obligations on law enforcement and prosecutorial authorities.

Furthermore, as Namibia moves farther along the road to e-justice, measures to advance victims' rights to information should be incorporated – so that crime victims can, for instance, check on case status online or via sms.

The rights of accused persons are important, but this should not obscure the need to consider victims' rights as well. Without respect for the needs and concerns of victims, the criminal justice system could falter.

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