

WITHDRAWING A RAPE CASE



Are you
making the
right decision?



LEGAL ASSISTANCE CENTRE

Rape is a serious problem in Namibia. Rape cases are committed in the daytime, at nighttime, by a family member or by a stranger. Rape cases are reported across Namibia in rural and urban settings. If you have been raped, you should report the case to the police as soon as possible. It is a normal reaction after a rape to want to forget about it. But it is important to report the rape so that you can get the help that you need and so that the person who raped you can be caught. Some people who have been raped begin to wish that they could drop the case, or decide that it would be better to deal with the rape informally or through the traditional courts. This is called **withdrawal of a rape case**.



Sometimes people who have been raped are in such a state of shock that they seem to show no emotion at all. The horror of what happened can make them numb.

The person who raped you should be punished.

Rape is a serious crime with a serious sentence. The Combating of Rape Act says that the minimum punishment for a rape is 5, 10 or 15 years in prison – depending on the circumstances of the rape. If the person who raped you goes free, he or she may rape someone else.

The person who raped you needs to be told that rape is not acceptable in Namibia.

By taking the case to court, you are sending a message to the perpetrator and society that rape is not acceptable. The punishment is also an example to other people who might commit a similar crime.

You are taking control of the situation.

Many rape survivors feel that the rape has taken away all of their power. By taking the case to court, you are taking back control of your life.

You are able to tell your story.

In the hearing, the court listens to the facts about what happened. You will have a chance to give your account of what the rapist did to you. You are able to show the rapist that you are not a victim of the crime but a survivor.

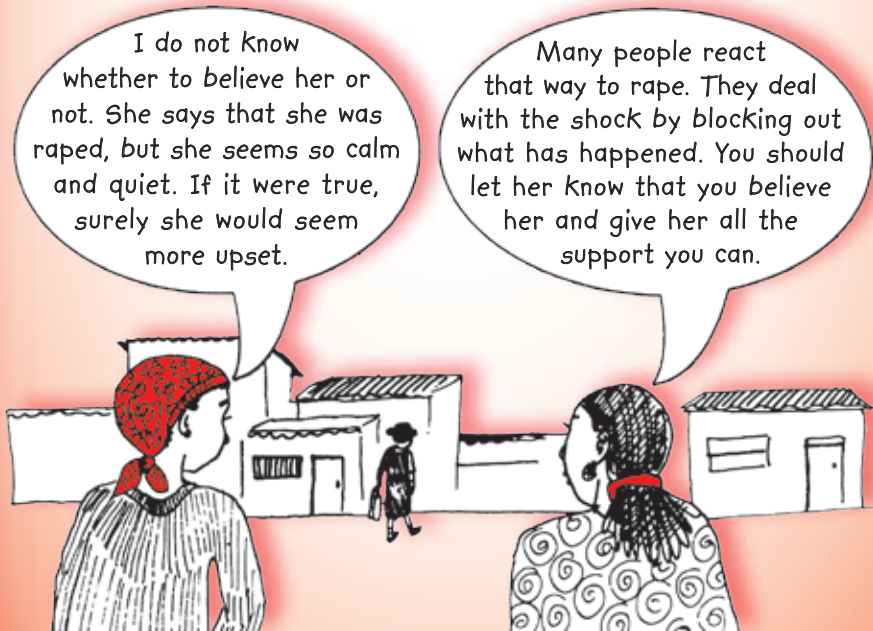
When you have been raped by someone you know

The person who raped you may be someone you know. You may even love the person who raped you. But what this person did is still a crime and should be reported to the police. If you are raped by someone in your family, the rest of your family may not want to believe the rape occurred. But ignoring the rape does not solve the problem. Instead it means that the rapist will learn that there is no punishment for rape. This could mean that the rapist may continue to rape you. Or he may rape someone else in your family.

Speak to someone you trust. This might be a friend or a family member who is supportive. You might also want to speak to a social worker. You can also ask the police officer from the Woman and Child Protection Unit to put you in contact with someone who can give you counselling. Counselling is when you talk to someone who can help you deal with your emotions. This person is a professional who can help you come to terms with what has happened and look forward to the future.

What others in the community will think

Some rape victims are embarrassed about what has happened to them. They are afraid of what people in the community will say. But remember, rape is the fault of the rapist. You are not the one to be blamed.



Economic pressure

You may be financially dependent on the person who raped you. But if the rapist is your parent or your spouse, he may have a legal duty to provide for your basic living expenses. If he threatens to withdraw this basic support, you can go to the maintenance court to get a maintenance order. Even if you are not financially dependent on the rapist, he may try to give you money to withdraw the case. You do not have to accept this offer.

Compensation

The rapist may try to offer you compensation, such as money or goods, to persuade you to withdraw the case. This is sometimes arranged between the families and sometimes through traditional courts. Some people may feel that compensation is a good punishment for rape. But remember, if the case is taken to court, the rapist could be sentenced to a minimum of 5, 10 or 15 years in prison. This is a much more severe punishment than paying money, and it keeps others in the community safe. In some situations you can receive compensation and still lay a criminal charge. You should speak to the prosecutor for more information about this.

Rape is a very serious crime. A person who commits a rape will face a long prison sentence.

It is important for people to understand this new law clearly.



Fears about bail

In most cases the person accused of rape will be arrested soon after you report the rape. A Magistrate will decide whether he will be released on bail before the trial for the rape. If you are afraid that he might harm you, you must tell the police. Your information will be considered during the bail hearing.

If the person accused of rape is given bail, the court will set conditions for him. The prosecutor has a duty to tell you about these conditions. Make sure you know what they are. One condition will be that he may not contact you. If he contacts you or threatens you in any way or breaks any of the other conditions, you should tell the police immediately. The police can arrest him, and he might have to stay in custody until the trial is finished.



The costs of attending court

It should not cost you any money to go to court. If you live in another town, the prosecutor's office will help you make travel and accommodation arrangements. You will also be given N\$50 per day for food and other expenses.

Protecting your privacy

It can be hard to speak about something like rape in front of other people. There are rules in the law which protect your privacy:

- ✳ The trial will be held in private unless you request an open court.
- ✳ It is against the law for any newspaper, radio or television to reveal your identity.
- ✳ The law limits the circumstances in which you can be asked about your sexual history. The court case must focus on what happened in the rape, not on previous sexual experiences.

Making the court experience easier

The prosecutor has a special duty to tell you what will happen in court. This will make the process seem less intimidating. The prosecutor can also ask for special arrangements to be made when you give evidence:

You can give your evidence in a less formal setting. For example, you could give your evidence in the Magistrate's office instead of in the courtroom.

The court can rearrange the furniture in the courtroom or change where people stand. For example, the Magistrate might sit closer to you and the accused might sit farther away so that you feel safer.

A support person, such as a friend or family member, can be with you while you are giving evidence. But remember, he or she cannot speak to you.

You can give evidence behind a screen, a one-way mirror or by means of "closed-circuit television". (This means that you would sit in a separate room to give your evidence. You would be filmed with a camera. The film would be visible in the courtroom on a television set. The film can be seen only on the television in the courtroom, and not on any other television set.) However these facilities are not available in all courts in Namibia.



Dealing with the outcome of the trial

If the Magistrate does not find the person accused of rape guilty, it does not mean that you were not raped. It just means that the case could not be proved in court. All trials have to show that the accused is guilty beyond reasonable doubt. This is a very high standard. Even if the person accused of rape is not found guilty, he has still heard the message that rape is not tolerated in Namibia. By having the courage to take the case to court, you have shown that you are a rape survivor.

The process of withdrawal

If you do decide to withdraw your case, there are a number of steps that must be followed.

1. You should tell the police that you would like to withdraw your case.

You will be asked to fill in a withdrawal statement saying why you want to withdraw the case.

2. Your statement will be sent to the Office of the Prosecutor-General in Windhoek.

You are not a party to the case. Instead, you are a witness in the case between the government and the accused criminal. The government has a lawyer called a prosecutor who will try to prove that the person accused of the rape actually committed the crime. If you choose to withdraw from the case, the prosecutor could decide to continue it without you. The prosecutor might continue with the case if there is enough evidence – perhaps someone saw the rape, or there is good physical evidence to prove that the rape occurred.

3. The prosecutor will need to make sure that you have not been pressured into withdrawing your case.

If you want to withdraw the case, this should be an independent decision that you have made. Other people should not try to pressure you to withdraw the case. Remember, if the rapist is trying to pressure you to withdraw the case, you should tell the police. If you are considering withdrawing a rape case, make sure that you have all the information you need to make this decision. Then make the decision that is right for you.

Rape is a serious crime which should result in a serious punishment.

If you have been raped, you should contact your nearest police station to report the crime if you have not done so already. A police officer can also help to put you in contact with a social worker or counsellor who may be able to help you deal with the emotions you are experiencing.

Rape case withdrawals can have serious consequences for individual women, their communities and society at large.

TELEPHONE NUMBERS FOR WOMAN AND CHILD PROTECTION UNITS, 2009

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

If you are thinking of withdrawing a rape case, please read this pamphlet first to see if the information here addresses your concerns. Before you make your decision, discuss it with a social worker or a counsellor or someone that you trust. Once you have all the relevant information, you can make the decision that is right for you.



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