

High Court of Namibia Vulnerable Witnesses' Project

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Introduction

On 10 October 2007, construction of a special facility to cater for vulnerable witnesses at the seat of the High Court in Windhoek was belatedly initiated by members of the Auas Rotary Club,¹ in conjunction with the High Court of Namibia. The High Court Vulnerable Witnesses' Project was intended to mark the centenary of Rotary International, which is the first voluntary, not-for-profit, service organisation in the world. The Project was inaugurated on 21 July 2008 at a ceremony attended by Judges of the High Court, senior officials of the High Court, the Ministry of Justice, and the Ministry of Gender Equality and Child Welfare, as well as media practitioners.²

This paper attempts to highlight the necessity for establishing this facility, designed to meet the special needs of vulnerable witnesses.

The need for specific measures in respect of vulnerable witnesses as a restorative response to crime

As a general rule, the accusatorial system that applies in Namibia – and, indeed, the Namibian Constitution – require a fair and public hearing of, for instance, criminal charges against, and in the presence of, an accused, by an independent, impartial and competent court.

Very often, a vulnerable witness, particularly a very young child, is either reluctant or refuses to testify in the physical presence of the accused, which at once rekindles his/her memories of trauma experienced at the time of the commission of a sexual crime and/or

1 The Auas Rotary Club raised funds amounting to more than N\$250,000 in cash and in goods for this Project – “generosity at its best”, as remarked by His Lordship Judge President Petrus T Damaseb in his opening address.

2 The inauguration ceremony was opened by His Lordship Mr Justice Petrus T Damaseb, Judge President of the High Court of Namibia. Addresses were given by the Judge President, the then President of Auas Rotary Club Albertus Aochamub, the Rotary District Governor of Rotary International District 9350 Elwin Thompson, and the Prosecutor-General Ms Olivia M Imalwa. The author of this article, who is a member of the Auas Rotary Club and a Past District Governor of a Rotary International District, acted as Director of Ceremonies.

acts of domestic violence. Moreover, courtroom attire by the judge, legal representatives of parties and court officials may be found intimidating by such vulnerable witness.

It is generally accepted that sexual crimes and criminal acts of domestic violence inflict psychological trauma on the victims. Such trauma is the more devastating where the victim is a child or the alleged perpetrator is a close relative of, or is known to, the victim. Perpetrators of such crimes deserve to be punished appropriately once their guilt is established beyond a reasonable doubt, and after a fair trial. However, as previously shown, it is not easy for children and other vulnerable witnesses to testify in the physical presence of the alleged perpetrator, since the stress of a direct confrontation with the accused may result in such witness confusing events or details, recalling things incorrectly, or forgetting essential information and consequently losing credibility.³ The author has personal experience of a case in which a young child witness refused to testify or to answer relevant questions whilst physically sitting in the same room with the accused until the court relocated to the Child and Women Abuse Centre at the State Hospital in Katutura.⁴

Happily, legislative intervention, namely the Criminal Procedure Amendment Act,⁵ which introduced a new section 158A of the Criminal Procedure Act,⁶ addresses the needs of vulnerable witnesses, without derogating from the right of the accused to a fair trial.

The amended section 158A(3), which defines *vulnerable witness*, reads as follows:⁷

- (3) For the purposes of this section, a vulnerable witness is a person –
 - (a) who is under the age of eighteen;
 - (b) against whom an offence of a sexual or indecent nature has been committed;
 - (c) against whom any offence involving violence has been committed by a close family member or a spouse or a partner in any permanent relationship;
 - (d) who is as a result of some mental or physical disability, the possibility of intimidation by the accused or any other person, or for any other reason will suffer undue stress while giving evidence, or who as a result of such disability, background, possibility or other reason will be unable to give full and proper evidence.

Furthermore, the new section 158A sets out certain steps regarding “special arrangements” for the convenience and protection of vulnerable witnesses.

3 UNESCO (2001:17).

4 See Hubbard (2004).

5 No. 24 of 2003.

6 No. 51 of 1977.

7 Section 158(A)(1), (2)(a)-(d) and (6) of the Criminal Procedure Act, as amended by the Criminal Procedure Amendment Act.

Primarily, a court before whom a vulnerable witness is to give evidence in criminal proceedings may, on application by any party to such proceedings or the witness concerned, or on its own motion, make an order that special arrangements be made for the giving of the evidence of the witness. Such special arrangements include – the relocation of the trial to another place for the purpose of hearing the evidence of the vulnerable witness

- the rearrangement of the furniture in a courtroom, or the removal or addition of certain furniture or objects in the courtroom, or a direction that certain persons sit or stand at certain locations in the courtroom
- the granting of permission to a 'support person' to accompany the vulnerable witness while such witness is giving evidence, and
- the granting of permission to the vulnerable witness to give evidence behind a screen or in another room which is connected to the courtroom by means of closed circuit television or a one-way mirror, or by any other device or method that allows the accused, his or her legal representative (if any), the prosecutor in the case and the presiding officer to be able to hear the witness and also to observe the said witness while s/he is giving evidence

Of all the foregoing special arrangements, the rearmost involves a high level of technological know-how and equipment.

Prior to the inauguration of the Vulnerable Witnesses' Project at the seat of the High Court, there were no comparable congenial facilities available within the building complex of the seat of the High Court to provide an atmosphere that was conducive to allowing vulnerable witnesses to feel safe to testify. Hence, criminal proceedings, for instance, had to be transferred to other places such as the Katutura Magistrate's Court⁸ or the Women and Child Abuse Centre, which is annexed to the Katutura Central Hospital, in order to facilitate the giving of evidence by a vulnerable witness. With this background in mind, Judge President Petrus T Damaseb pertinently described the situation in his address on the occasion of the inauguration of the High Court Project, as follows:

Since the passing of the Amendment Act, the High Court has been assiduous in establishing the facilities that would enable the Court to implement the relevant provisions of the Act. At present, where a vulnerable witness (particularly a very young child) is reluctant or refuses to testify in the physical presence of an accused, the Court has at times used the facilities provided by the Women and Child Abuse Centre attached to the State Hospital in Katutura. Besides, some Judges have been very imaginative: they have reverted to all manner of arrangements that would create a less intimidating environment in the court room. For example, some Judges have cast away their robes and have literally descended from the Bench in order to get closer to such witnesses, particularly very young children who are alleged victims of sexual assaults.

8 In the Katutura Magistrate's Court, vulnerable witnesses can testify behind a one-way mirror or by means of closed-circuit television from a child-friendly room equipped with inviting toys and furnishings.

The project we are to inaugurate will obviate such problems that have made certain Judges very creative in their effort to see justice done.

The facility and service

With the inauguration of the Vulnerable Witnesses' Project, a specially designed and well-equipped courtroom opened its doors for the hearing of cases involving vulnerable witnesses. The facility includes the provision of closed-circuit cameras that enable the court to conduct proceedings in an atmosphere that is not intimidating, but friendly and comfortable for vulnerable witnesses, especially young children. A specially designed separate room is annexed to the courtroom. From the comfort of the separate room, a vulnerable witness is able to testify without physically coming face-to-face with the accused.

The separate room, which is suitably and comfortably furnished, contains suitable toys, children's books, colouring materials, etc. The vulnerable witness is able to see the judge who controls what images may appear on the big screen in the courtroom and the small screen next to the judge on the Bench. There is a camera in the separate room and there are cameras in the courtroom. One courtroom camera is capable of zooming in on the accused for the purpose of identification by the vulnerable witness, in the event that the accused's identification becomes an issue. Microphones have been installed, one in the vulnerable witness's separate room to be used by the vulnerable witness and an interpreter (if any), and one in the courtroom to be used by the judge, witnesses (other than the vulnerable witness), the accused, interpreters (if any), defence counsel and prosecutors.

Conclusion

The Vulnerable Witnesses' Project has begun to play a vital role in the administration of justice and is thus a most welcome development in the history of the seat of the High Court.

References

- Hubbard, D. 2004. *The "Vulnerable Witnesses" Act. Children in court: Protecting vulnerable witnesses*. Windhoek: Legal Assistance Centre.
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