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INTO THE
ATTRITION OF
DOMESTIC VIOLENCE
CASES:
PRELIMINARY FINDINGS**



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TRAINING, SERVICE &
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WOMEN



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Background

Medico-legal research has found that 4 women are murdered everyday by their intimate partners in South Africa and that at least a third of these women sought assistance from the criminal justice system.ⁱ Previous research on the implementation of the Domestic Violence Act [DVA]ⁱⁱ also shows that there are critical attrition points in the criminal justice system where cases of domestic violence simply “fall out”. Despite domestic violence legislation being accessible and progressive in its ambit, implementation continues to be a problem at specific points in the court and policing processes.

This research builds on 5 years of monitoring research conducted by the author and explores the relatively uncharted terrain of ‘case attrition’ in domestic violence cases. It draws heavily on the expertise and contributions of MOSAIC, an organisations which sees some 25 000 cases of domestic violence each year. The research partnership was established in 2005 and continues to build on this preliminary, exploratory research in an effort to improve service provision to victims of domestic violence.

Despite previous research and monitoring projects on the DVA, there is no single South African study investigating the reasons for the high levels of attrition in domestic violence cases. The high level of attrition in domestic violence cases is what criminal justice personnel and the judiciary consider to be one of the most critical

issues frustrating efforts by the criminal justice system to appropriately intervene in domestic violence matters. We have therefore undertaken to investigate these points of attrition in an attempt to develop substantive, procedural and contextual analysis and recommendations for improving the implementation of the Act.

It is important to note that the research findings being presented are preliminary and are subject to further analysis. As a result of these findings, we will be revisiting the data, and where new questions and possibilities for ‘cross-tabulating’ data arise, these questions will be subject to further analysis. It is also important to note that these results are an abridged version of the overall findings, focusing on issues pertaining to the central question of attrition.

The Research Question

In attempting to define the social contours of domestic violence in South Africa and legal responses to it, a central research question emerged for the research partners: *Why do applicants for protection orders not return to court to finalise them?* With the struggle to improve policing and court services to victims, the high level of attrition of domestic violence cases² is a

² MOSAIC has found a disturbing trend relating to the extent to which victims of domestic violence actually follow through with their attempts to secure protection from the state after an incident of violence. Despite reporting incidents to the police and applying for protection orders, a significant proportion of victims do not return to court to have their temporary protection orders finalised by the courts. Early analysis of information collected by MOSAIC in a recent study shows that approximately one half of victims never come back to court after applying for protection orders. Previous research by the co-investigator of this project has also similarly shown that between 50-75% of women who report domestic violence to the police, and lay (or attempt to lay) charges, eventually withdraw them (Artz 1998; 2001).

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cause for concern and raises a number of other critical questions relating to the extent to which recent domestic violence law reforms are indeed relevant and helpful to the 'users' of this legislation. For instance, to what extent do we blame the system for not providing legally mandated services to victims and to what extent do we blame the cyclical and pervasive context of domestic violence itself?

Practitioners in the field of domestic violence know all too well about the cycle of violence and the repeated attempts of victims to leave, reconcile, protect and manage relationships marred by domestic violence. Is this fall out or attrition of cases a result of the failure of criminal justice to implement domestic violence legislation or is it the seemingly unrelenting cycle of violence that keeps victims of violence going back to their abusive partners? Despite progressive legislation such as the Domestic Violence Act – which imposes positive legal duties on the police and the judiciary, amongst other regulations for implementation – the inconsistent and faulty application of the law by the police and other criminal justice agents may result in limiting the effect of the legislation and of discouraging protection order applicants from continuing the legal process.

Research Design

The research has both qualitative and quantitative features including interviews (n=365) with women using the DVA in 4 Magistrate's Courts in the Western Cape and the analysis of intake forms (n=365) regularly used by MOSAIC in assisting applicants applying for protection orders. The research sites included Khayelitsha, Bellville, Philippi and Wynberg courts. The choice of sites was carefully selected, based on a number of critical factors including: (a) that they are jurisdictions which serve a wide range of clients that represent all socio-economic levels and race groups; (b) they are a good representation of courts which are functionally similar, but have some

different characteristics; and (c) the courts have specifically designated domestic violence sections (akin to a domestic violence court) or designated magistrates presiding over domestic violence cases. In the end, research respondents came from 53 different communities across the Western Cape.

Methodology

The sample was purposive, but relatively random in its selection of research respondents within that sample. 365 applicants (domestic violence complainants/victims) were interviewed for the study between December 2005 – February 2006. The only requirements for their participation in the study was that they (a) consented to being in the study at their first appearance (application) at the court; (b) were on the court roll on the Return Date; and (c) did not appear in court on the Return Date during the period of the research. Each interview took approximately 45 minutes to conduct.

Applicants were asked to participate at their first court appearance, which is at the date of application for a protection order. At this stage of the study, researchers explained the purpose of the study in detail – including all of the risks and benefits – and had the applicants sign a 'consent form' to participate in the study. The consent forms were translated and read out in the language of the applicant's choice (English, Afrikaans or Xhosa). The consent form explained that should the applicant not return to court on the Return Date, the researcher will have permission to contact the applicant to discuss the reasons why she did not appear. The study therefore effectively excluded anyone who did not have access to a phone.

Our collective experiences in this sector, however, have proved that the majority of applicants were likely to have access to a phone and that cellular phones are particularly common in South Africa due to the lack of land lines within more informal communities. It was also made clear that this study – and the questions that will be

asked of the applicant should she not return – would be kept anonymous and confidential and would only be used for the purposes of this study. Almost all of the applicants who were randomly contacted for the non-return interview agreed to continue with the interview.

THE PRELIMINARY FINDINGS

Demographic Information

GENDER	Number	%
Female	271	74.25
Male	50	13.70
Blank	44	12.05
Total	365	100

Not surprisingly, most applicants in the study were female (75%), with about 12% being males applying for orders, many of which seemed to be either reciprocal orders or orders against other male family members.

It is not easy to construct an ‘applicant profile’ as she is just as likely to be single (38%) as she is married (34%), but more than 50% are between the ages of 20-40, **half** of whom have children affected by the abuse. Roughly 45% of women applying are unemployed, with 32% working full time and the remainder (23%) either part-time, disabled, pensioned or acquiring other means of income. She is also likely to be abused by her current partner (45% of cases) but is also subject to abuse by relatives (27%) or an ex-partner (17%). She has probably known her abuser, in some form, for the past 13 years of her life and experienced abuse from this person for one third of this time. She has therefore, on average, been in an abusive relationship for 4 years. She may be, however, one of the 1 in 10 women (12%) who have been suffering domestic violence for between 10-20 years of her life.

RELATIONSHIP STATUS		
Status	Number	%
Blank	53	14.52
Single	139	38.08
Married	124	33.97
Separated	8	2.19

Divorced	15	4.11
Widowed	15	4.11
Customary	11	3.01
Total	365	100

Nature and Extent of Abuse Reported by Applicants

Nature	Number	%
Economic	138	37.81
Physical	236	64.66
Sexual	53	14.52
Verbal	309	84.66
Psychological	302	82.74
Threats to Kill	145	39.73

The victim may likely suffer a range of abuses, over time, compounding in severity or frequency. Physical abuse is the most likely form of physical victimisation, with 65% of applicants reporting every kind of physical abuse from beating (56%) to stabbing (5%) and a range of abusive acts in between, including choking (30%), kicking (30%) and punching (10%). Sexual abuse or rape makes up a staggering 15% of domestic violence cases. This means that over 1 out of 10 women in an abusive relationship experiences sexual violence, 25% of which have included forced sex in front of children.

Further exacerbating the domestic violence experience for victims is that at least 40% have been threatened with death by their abusive partners or ex-partners. And in almost half of these cases (18%) women were threatened with death or injury if they returned to court to finalise their protection orders. In almost 1 in 5 cases, the destruction of victims’ property is also a warning not to continue with the criminal justice process and with 46% of abusers abusing alcohol the stakes are high and the abusive behaviour unpredictable.

Verbal and psychological abuse is also a strong feature of these cases, with verbal abuse at 85% and psychological abuse following closely at 83%. Economic abuse, reported in 38% of the cases, may range from not giving the victim money, taking her money, supporting mistresses or

girlfriends, not getting maintenance, neglect and reckless squandering of family income.

The Impact of Domestic Violence

The impact of domestic violence is severe, with 86% of victims reporting symptoms of psychological stress, trauma or anxiety.

Symptoms	Number	%
Excessive crying	153	41.92
Tension or anxiety	253	69.32
Depression	227	62.19
Loss of concentration	162	44.38
Loss of confidence	126	34.52
Fear of abuser	251	68.77
Anger	280	76.71

Children are also deeply affected, with 45% of victims reporting that the abuser frightens the children, makes them feel nervous (48%) and 13% reporting problems at school due to the violence. In 48% of cases the victims believed that their children are suffering emotional or psychological problems and stress (47%). At least half of all children in domestic violence situations are therefore directly suffering psychological, developmental and emotional symptoms of the violence.

Using the Criminal Justice System: Responses to Domestic Violence

Many victims of domestic violence have reported going to the police after an incident of domestic violence (48%), of which 34% went to the police after the last incident of violence prior to applying for a protection order. Of those that went to the police (n=123) after the last incident, less than 10% found the police 'helpful' and on average rated the assistance of the police at "5" on a scale of 1 to 10. Further analysis of how the police managed reported incidents of domestic violence can be found below:

Assistance from SAPS	%
Told to get protection order	54.25
Informed could lay a criminal charge	18.63
Police served protection order	24.93

The Protection Order

Against this background the seemingly high levels of attrition in domestic violence cases is understandable. Fear, intimidation, duress, risk of further violence and lack of information as a result of pursuing legal recourse are all too common. Although it is unclear whether an application for a protection order aggravates domestic violence situations, we can report that in 37% of cases, victims reported that their partners reacted 'very negatively' to orders and in 18% of cases abusers became 'very angry'. The analysis, however, does not demonstrate a significantly negative impact of applying for a protection order, with 10% of victims reporting that after the protection order was served, the respondent threatened to harm the applicant, of which 3% experienced immediate harm or abuse. However, 60% of applicants reported that that protection order (or the concept of a protection order) made them "feel safe".

Protection orders are meant to provide victims with immediate relief after an incident of domestic violence. However, in only 27% of cases victims received their interim protection orders [IPO] on the same day as application and only 3% received (or recalled receiving) a copy of a warrant of arrest.

Then Why Aren't Applicants Returning to Court?

This background gives us some context to the reasons why applicants do not return to court on the Return Date to finalise protection orders. However, when we inquired directly about the reasons, a different, although compatible, range of reasons emerged. The first analysis, which involved a set range of likely reasons compiled by the researchers, revealed some interesting findings about applicants' decision-making within violent contexts, which are set out below. Further qualitative analysis of narratives from the interviews however, revealed much more 'systemic' reasons for not returning to

court and to some extent elucidated what seemed like initially surprising results.

Note that the research respondents could have responded to more than one option:

INITIAL FINDINGS FOR NON-RETURN		
Reason	Number	%
Abuse stopped	132	36.16
Promised not to abuse again	77	21.09
Less abusive	57	15.61
Pleaded to victim not to return to court	25	6.8
Told you not to come back to court	12	3.2
Family members got involved to resolve outside of court	39	10.6
Economic impact	32	8.7
Professional help	12	3.28

More than a third of the victims reported that the abuse had actually stopped after applying for a protection order, regardless of whether that order was served on the respondent or signed by the respondent. Predictably 1 out of 5 (22%) reported that the respondent “promised” not to abuse again. It is important to note that in the majority of these cases (94%), applicants stated that they would reapply for a protection order. In approximately 10% of the cases the respondent pleaded with or told the applicant not to go back to court. In over one tenth (11%) of the cases, family members ‘got involved’ and either attempted to mediate or dissuade the applicant from returning, resulting in her not appearing on the Return Date.

In analysing the qualitative responses, a whole new range of reasons emerged. The most striking was that 18% of applicants were threatened (with death or severe injury) by the respondent if they returned to court to finalise the orders and 10% of the applicants said that the abuse got worse. Applicants reported being gang raped, having stones thrown through their windows, being locked in or restrained in their homes by their abusers or their families and being threatened. Threats included being beaten, stabbed, burned to death in their sleep and being shot with

(an existing) firearm. In one interview, the researcher notes:

He threatens to kill her. He has pointed gun at her. Stabbed and raped her when refused to have sex with him. The respondent runs away when he sees police. He comes back after they have left and threatens her life. He has already pointed a gun at her. She laid a charge but he got away with no bail and brags that he is untouchable. She has run away from home and considers leaving Cape Town. Police told her to do whatever she sees fit as they cannot chase respondent anymore.

In 16% of cases it was reported that applicants made repeated attempts to secure the interim protection order from the courts after application – in some cases going to court 3 or 4 times. These cases also included attempts to phone the courts where there was no answer. Nine percent (9%) of these applicants eventually gave up trying to get the IPO from the courts and therefore didn’t return on the Return Date. Obviously, without an IPO, the applicants would not have known the Return Dates in the first place.

Serving of the order on the respondent can be problematic in three ways:

- No attempt is made by SAPS/Sheriff to serve the order. This might be due to logistical problems or negligence.
- An attempt is made by SAPS/Sheriff to serve the order but the respondent could not be found or refused to sign.
- The order was served but the return of service did not find its way back to court. The hearing cannot take place without this proof that the order was served.

The results show that six percent (6%) of the applicants reported that the IPO’s were not served by sheriff or police and 9% reported that they felt “let down by the system” or “lost interest due to the system”. In one case a woman was told to “go and search for the respondent” by the police and to call the police when she found him as “that was her duty”. She was

too afraid to do that alone and got discouraged. The order was never served. In another case it was reported:

The return of service was not signed. She went to Harare police station and she was told to look for a police van that is doing patrol in order to get the police to serve the IPO to her husband. That was difficult for her as her husband comes at night to the house. She felt helpless [as a result of] the police's attitude and she was told in court that court procedures cannot go further without the return of service. She said she was crying at the police station and no one would help her.

In 15% of cases, the attempt to serve the order was unsuccessful as a result of the respondent (abuser) fleeing, refusing to sign return of service or because he/she moved out of home.

Sadly, in 5% of cases, the applicants reported that they did indeed arrive on the Return Date, but their cases were struck off the roll because they were late, went to the wrong court, sat in the wrong place, went to the toilet or outside while their cases were called. All of these applicants were told to re-apply and there was no possibility of setting new Return Dates.

Of some concern is the fact that in 6% of the cases applicants reported that they did not return because 'the applicant or a family member was sick' and in 9% (almost 1 out of 10) applicants claimed there was a "family crisis or death in the family". These reasons make up 15% of non-return cases, raising some questions about the extent to which these events were legitimate or real reasons provided by the applicants or, more complexly, excuses to cover duress or threats by the respondent or his/her family. Applicants reported having their IPO's ripped up, burned, hidden and stolen by abusers but were not informed by the court that the court would be able to issue another copy and that the document was not officially 'destroyed' or 'not effective'.

In 7% of cases, applicants reported that they "could not leave work" to attend court and in 6% of the cases applicants reported "leaving [the common] home" or

"fleeing home" as a result of the abuse and therefore no longer lived in the same residence or in Cape Town. Approximately 9% of applicants eventually withdrew their applications due to these reasons.

ADDITIONAL FINDINGS FOR NON-RETURN*		
Reason	n=	%
Systemic Reasons		
IPO not issued by court	59	16%
Service of IPO unsuccessful	55	15%
IPO not served	22	6%
Struck off roll	19	5%
Personal Reasons		
Family crisis or death	32	9%
Applicant or family sick	21	6%
Applicant withdrew	32	9%
Did not hand papers to sheriff or police	10	3%
Could not afford sheriff fees	12	3%
Applicant moved or fled	20	6%
Work related	26	7%

*Note: n≠100

Conclusion

The responses indicate that at roughly one third (and up to two fifths) of applicants do not return to court as a result of *systemic* problems such as the courts not issuing protection orders timeously or at all – even after multiple attempts by applicants to secure them from the courts – or cases being struck off the roll when applicants are late or at the wrong venue. Understandably, numerous attempts to get a copy of the protection order, endless phone calls to the courts and continued difficulties with serving protection orders are resulting in a critical and unnatural attrition of cases from the system.

The DVA process seems to have also lost its role as an immediate intervention. The time frames between the last incident of abuse, applying for a protection order and receiving it are crucial to the immediate safety of the applicant and her family. This critical element of domestic violence intervention seems to have been superseded by overzealous striking off of cases from the court roll, high case loads and lack of attention to the personal and

social context of why victims do not return to court. The system, albeit unintentionally, has become mechanical and rigidly technical in the management of these interpersonal and often seriously violent offences.

Other factors, such as duress and threats as well as other *personal factors* such as inability to get away from work and personal 'crises' must be considered by the courts. The fact that 75% of the applicants we interviewed wanted to reapply for protection orders that had been struck off the roll for personal reasons is telling. The reapplication process has an enormous impact on the resources of the system, where the simple act of resetting Return Dates is one effective and simple solution.

On the face of it, there appears to be a sort of 'punishment' element where cases are struck off the roll if applicants – for either systemic or personal reasons – do not return to court. Applicants are forced to reapply for orders and little consideration (and no investigation or follow-up) is given to the reasons for non-returns. Somehow, despite situations in which the papers are 'in order' and where the criteria for issuing of a protection order are met, the majority of cases where applicants do not appear are struck off the roll. In terms of section 5(2) of the Act,

(2) If the court is satisfied that there is prima facie evidence that –

- (a) the respondent is committing, or has committed an act of domestic violence; and*
- (b) undue hardship may be suffered by the complainant as a result of such domestic violence ...*

the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings ...issue a protection order ...

Section 6 also states that:

(6) The clerk of the court must forthwith in the prescribed manner cause –

- (a) the original of such order be served on the respondent; and*
- (b) a certified copy of such order, and the original warrant of arrest contemplated in section 8(1)(a), to be served on the complainant.*

While acknowledging the frustration of criminal justice personnel when applicants do not appear, there is no legal reason why the cases should be struck off the roll. Instead, the Act allows for the finalisation of the order if, as per sections 6(a) and 6(b), proper service has been effected on the respondent and the application contains *prima facie* evidence that the respondent has or is committing an act of domestic violence. If striking cases off the roll is meant to send the message that applicants must take cases seriously, for the courts to take it seriously, the message is sadly off the mark. Instead, the message should be "we are here to protect you, even if you cannot be".

The protection order should be a warning to abusers and not to victims. The intention of the legislation – clearly set out in the preamble of the Act – is to protect the most vulnerable members of society, to promote the right to freedom and security of the person and to afford victims of domestic violence the maximum protection from domestic violence that the law can provide. Somehow, the notion of *the vulnerable victim* has been supplanted with the notion of *the answerable victim* and what seemed to be an understanding of the complex nature of domestic violence, articulated through the legislation, has been replaced with rigid procedural obstacles and a lack of attention to the social and personal contexts of domestic violence.

This research study will be extended to 7 courts during 2007 with the kind assistance of the Open Society Foundation for South Africa.

References

ⁱ Matthews et al. (2004). *Every Six Hours a Woman is Killed by her Abusive Partner*. MRC Policy Brief no. 5. Medical Research Council.

ⁱⁱ **See** Artz, L. & Smythe, D. (2005). "Bridges and Barriers: A five year retrospective on the Domestic Violence Act", *Acta Juridica*, p. 200-227; Smythe & Artz (2005) "Money Matters: Structural Problems with Implementing the DVA", *Agenda*, p. 24-33; Artz, L. (2004a). "Better safe than sorry: Magistrates' views on the Domestic Violence Act", *South African Crime Quarterly* 7, p. 1-8; Artz, L. (2004b) "Tough choices: Difficulties facing magistrates in applying protection orders", *South African Crime Quarterly* 9, p.25-30.; Artz, L. (2003). *Magistrates and the Domestic Violence Act: Issues of Interpretation*, p.1-85. Institute of Criminology, UCT & OSF; Artz, L. (2001). "Policing the Domestic Violence Act: Teething troubles or system failure", *Agenda* 47, p. 4-13; Moul, K. (2004). *Justice Served? Exploring the Use of Informal Justice Mechanisms in Domestic Violence Cases*. UNICEF: South Africa; Parenzee, P., Artz, L., & Moul, K. (2001) *Monitoring the Implementation of the Domestic Violence Act: First Report 2000-2001*, Institute of Criminology: UCT, p. 1-148; and Smythe. D., & Parenzee, P. (2004). "Acting Against Domestic Violence" in W Dixon & E Van der Spuy (eds) *Justice Gained? Crime and Crime Control in South Africa's Transition*. Cape Town: Juta Publishers.